

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12510 OF 2023

Shri Shamrao Nanaso Shingan,]
Age: 82 years, Occupation: Agriculturist,]
R/o. 101, Shukrawar Peth, Sath Shahid]
Chowk, Karad, Taluka: Karad,]
Dist: Satara] ...Petitioner.

V/s

1. State of Maharashtra,]
Through its Principal Secretary,]
Mantralaya, Mumbai 4000032.]
2. The Chief Officer,]
Malkapur Municipal Council,]
Malkapur, District: Satara,]
3. Assistant Director of Town Planning,]
Satara Division]
having office at Zilla Parishad]
Extension Building,]
1st floor, Satara 414001.]
4. Directorate of Town Planning,]
Pune] ...Respondents.

Mr. A. S. Rao for Petitioner.

Ms. Dhruti Kapadia, A.G.P for Respondent Nos.1, 3 & 4-State.

Mr. Umesh Mankapure for Respondent No.2.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 1st April, 2025.

PRONOUNCED ON : 8th April, 2025.

JUDGMENT (Per Kamal Khata, J.):

1) By this Petition under Article 226 of the Constitution of India, the Petitioner who is the owner of land bearing Survey No.261/5B admeasuring 3300 sq. mtrs. situated at Malkaur Nagar Parishad, Taluka Karad, Dist. Satara ('writ land') is challenging the rejection of the Petitioner's plan for development, although the reservation on the writ property has lapsed, on account of failure to acquire the writ property.

2) We have heard both counsel and have perused the papers and proceedings.

3) Mr. A.S. Rao, learned Advocate for the Petitioner draws our attention to the Purchase Notice dated 26th April, 2019 issued by the Petitioner under Section 49(1) of the Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act') which was confirmed by the Government of Maharashtra as per Section 49(4) of the MRTP Act vide its Order dated 23rd October, 2019. As per the mandate of Section 49(7) of the MRTP Act the Respondent No.2 ought to have made an Application to acquire the land as required under Section 126 of the MRTP Act within a period of 1 year from the date of confirmation of the Purchase Notice. That period expired on 22nd October, 2020. Admittedly no steps were taken to comply with the mandate of Section 49(7) of the MRTP Act and therefore the writ land stood released from the reservation and is available to the Petitioner for the

purposes of development. Despite the fact that, the writ land stood released, the Application for development made by the Petitioner was rejected by Respondent No.2 by its Order dated 4th February, 2021.

3.1) It is an admitted fact that, the Respondent No.2 has not taken any steps for acquiring the writ land and can be evinced by the communication dated 1st June, 2022 from the District Collector's Office. He admitted that, the Petitioner had filed an Appeal before the Government of Maharashtra. However for one and half years the same is not heard and the Report dated 4th July, 2019 submitted to the Government of Maharashtra indicates that, the organization namely Santkrupa Swayam Sidh Mahila Bachat Ghat Sanstha for which the writ land was reserved does not exist in the limits of Respondent No.2 and the organization was not available on its communication address. In view of the above, the rejection to develop the writ land was illegal and against the provisions of law. He submits that this is nothing else but harassment to the Petitioner who now is 82 years old. Under these circumstances he has filed the Petition and requests that, the Petition be made absolute.

4) Ms. Kapadia, learned AGP for Respondent Nos.1, 3 and 4 admits that, no reply has been filed to the said Petition although they were given an opportunity on 6th February, 2025. She submitted that, she has received no instructions from the Respondents with regard to the Petition.

She is unable to dispute the Purchase Notice and the fact that, the period for acquisition has lapsed. She therefore fairly submits that, the Court may be pleased to pass necessary Orders as it deems fit and proper.

5) Undisputedly the statutory period of 12 months as contemplated under the MRTP Act after confirmation of the Purchase Notice on 23rd October 2019 by the Government of Maharashtra expired on 22nd October, 2020. Evidently, the Authority has failed to make an Application under Section 49(7) of the MRTP Act to acquire the land after the Purchase Notice was confirmed.

6) It would be useful to reproduce Section 49(7) for ready reference:

“Section 49(7): If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for

the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.”

7) A plain reading of Section reveals that, the reservation, designation, allotment, indication or restriction on development on the land shall be deemed to have lapsed once there is a failure of the appropriate Authority to acquire the land and thereupon the land shall be deemed to be released from the reservation, designation or as the case may be allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land under the relevant plan.

8) Admittedly on 4th February, 2021 even the ground of designation had been deleted in view of the Purchase Notice. Moreover, on 1st June, 2022 the District Collector, Satara had also confirmed that, no Application for acquisition has been made. In these circumstances we hold that the impugned Order dated 4th February, 2021 deserves to be set aside. We accept the statement of Mr. Rao that, he shall withdraw the Appeal that was filed, as an undertaking to the Court.

9) In view of the aforesaid circumstances, we allow the Petition in the terms of prayer clauses (a), (b) and (c), which reads as under:

“(a) This Hon’ble Court be pleased to issue a writ of Certiorari or any other appropriate writ, order or direction in

the like nature under Article 226 of the Constitution of India, thereby quashing and setting aside the impugned order dated 4.2.2021 issued the Respondent No.2 rejecting the plan of the Petitioner on the ground of reservation.

(b) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the like nature under Article 226 of the Constitution of India, thereby directing the Respondent No.2&3 to forthwith consider the building plans submitted by the Petitioner and grant sanction in accordance with the law in respect of the land property of the Petitioner bearing Survey No.261/5B, admeasuring about 3300 sq. mtrs., Malkapur Nagar Parishad, Taluka Karad, Dist. Satara in view of the confirmation of purchase notice u/s. 49 of the MRTP Act, 1966.

(c) This Hon'ble Court be pleased to imposed exemplary cost of Rs.5 lakhs upon the Respondent No.2 for the reason that inspite of the release of the land in view of the confirmation of purchase notice, the Respondent No.2 without any rhyme or reason rejected the Petitioner's plans on a non-existing ground and caused unnecessary harassment, mental trauma, etc. to the Petitioner."

10) The Petitioner shall be entitled to develop his writ land in accordance with law.

11) All concerned to act on the authenticated copy of this Order.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)