

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16236 OF 2024

Kiran Vijay Deshmukh and Another.

...Petitioners.

Versus

The State of Maharashtra and Another.

...Respondents.

Dr. Ramdas Subban, Amol A. Kanaki, Shrikant Kampelli, Pravin Sabban, Rohit Chitiken for the Petitioner.

Mr. Someshwar M Wale i/b Vishwanath Patil for the Respondent-Corporation.

Mr. V. M. Shinde, AGP for the Respondent-State.

Coram : M. S. Karnik &
Sharmila U. Deshmukh, JJ.

Date : September 22, 2025.

Order (Per Sharmila U. Deshmukh, J.):

1. Heard learned Counsel for the Petitioners.
2. By this petition under Article 226 of the Constitution of India, the
Petitioners pray for following reliefs:

(a) This Hon'ble High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order thereby holding & declaring that the petitioner's lands designated/ specified/ reserved for the Garden purposes under Reservation No. 12/86 area admeasuring 6656.86 sq. mtrs. out of the total land admeasuring H. 1=56 Ares situated at Survey No.40/2/B/1, Dahitane, Taluka-North Solapur, District-Solapur, have lapsed as per the provisions u/S.127 of the Maharashtra Regional & Town Planning Act, 1966, and further that the lands are released from said reservations, allotment or designation and have become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent lands under the Plan;

(b) This Hon'ble High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or

order directing the respondent Government to forthwith notify the lapsing of reservation of said lands by an order published in the Official Gazette as required u/S. 127 (2) of the MRTP Act, 1966;

(c) This Hon'ble High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order directing the Respondent No.1 & the respondent No.2 Municipal Corporation to grant the necessary development permission in the matter giving effect forthwith to the prayer clause-(a) above from the date of the Hon'ble High Court orders by making appropriate markings as to the said lapsing on the said reserved lands;

3. Facts of the case, in brief, are that the Petitioners' land admeasuring 6656.86 sq. mtrs out of total ownership land admeasuring 1-H 56-R situated at Survey No.40/2/B/1, village Dahitane, Taluka North Solapur, District Solapur came to be reserved for garden being reservation site No. 12/86. The development plan for Solapur Municipal Corporation was sanctioned on 28th October 2004 and brought into force with effect from 15th December 2004.

4. Since the land was not acquired within the period of 10 years as contemplated by the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 [for short "**MRTP Act**"], the Petitioners issued purchase notice dated 27th May 2022 which was received by the Corporation on 27th May 2022 itself. As per the requirement of Sub-Section (1) of Section 127 of MRTP Act, along with purchase notice, Petitioners annexed copies of 7/12 extract, part development plan, Zone Certificate, Measurement Sheet, Index-II and

Annexure-VI.

5. The Respondent-Corporation by letter dated 22nd June 2022 asked the Petitioners to accept TDR and called for further information for verifying the authenticity of documents submitted by the Petitioners along with purchase notice. The Petitioners by letter dated 18th November 2022 replied to the Respondent-Corporation stating that they are not interested in TDR and demanded compensation and also submitted original of documents which the Petitioners were called upon to furnish.

6. Learned Counsel for the Respondent-Corporation invited our attention to the affidavit-in-reply filed on behalf of the Respondent-Corporation. It is submitted that due to financial crunch, the Respondent-Corporation is not in a position to pay the compensation. It is submitted that, therefore, the Respondent-Corporation offered TDR to the Petitioners, which Petitioners ought to have accepted in view of the provisions of Regulation 11.2.2 of the UDCPR and/or to undertake development through the Accommodation Reservation mechanism as per Regulation 11.1 and Table 11A of the UDCPR. It is submitted that the Respondent-Corporation has already shown its *bona fide* and willingness to grant TDR in respect of the said portion of the land to the Petitioner. It is further submitted that the notice under Section 127 of MRTP Act does not comply with the requirement of Sub-

Section (1) of Section 127 of MRTP Act and the same is premature, reason being the Respondent-Corporation called upon the Petitioner to comply with the deficiencies, which deficiencies were complied with by the Petitioners only on 18th November 2022 and this petition is filed on 9th October 2024, meaning thereby the period of 24 months which ought to have been reckoned in the present case with effect from 18th November 2022, had not yet expired. It is therefore submission of learned Counsel for the Respondent-Corporation that present petition is premature and deserves to be dismissed on this ground alone.

7. We are not inclined to accept the submissions of learned Counsel for the Respondent-Corporation. There is no dispute that Petitioners are the owners of the land in question. So far as the notice under Section 127 of MRTP Act is concerned, the land in question was not acquired within 10 years from the date on which the final development plan came into force nor a declaration under Sub-Section (6) or Sub-Section (4) of Section 126 of MRTP Act was published in the official gazette within a period of 10 years. As a result of this, the Petitioners who are the owners of the land in question, served a notice along with documents showing their title or interest in the said land, on the planning authority. The Petitioners enclosed copies of title documents verifying the authenticity of documents already submitted. This was complied with by the Petitioner on 18th November 2022. There is no

dispute about the ownership of Petitioners and that the notice was served in terms of Sub-Section (1) of Section 127 along with documents showing Petitioner's title and/or interest in the said land. There is thus compliance of Sub-Section (1) of Section 127 of MRTP Act.

8. Further, we do not find any merit in the contention of learned Counsel for the Respondent-Corporation that the Petitioners ought to have accepted TDR. There is no provision in the MRTP Act which mandates that offer of the Respondent-Corporation for accepting TDR by the person issuing purchase notice under Sub-Section (1) of Section 127 of MRTP Act, is mandatory in nature. Such an offer is not binding on the Petitioners. It is open for the Petitioners to turn down the offer and insist for the consequences of the issuance of notice under Sub-Section (1) of Section 127 of MRTP Act.

9. Next ground which the learned Counsel for Respondent-Corporation harps upon is that reservation is in public interest and therefore financial crunch of the Respondent-Corporation is a factor which *bona fide* prevented the Corporation from acquiring land and hence same should not be held against the Corporation. We see no merit in this submission too. So long as the requirements of Sub-Section (1) of Section 127 of MRTP Act are fulfilled by the Petitioners, consequences of lapsing of reservation has to follow.

10. The Writ Petition is, therefore, allowed. The reservation of the

said plot of land shall be deemed to have lapsed. The said plot shall be deemed to be released from such reservation and the same shall be available to the Petitioner for the purpose of development as otherwise permissible in case of adjacent land under the said plan.

11. In terms of Sub-Section (2) of Section 127 of the MRTP Act, the State Government shall notify the lapsing of reservation by an order published in the official gazette.

12. Writ Petition stands disposed of.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik, J.]