



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5923 OF 2022

Vishnu s/o Shankar Mahajan,
Aged about 78 years,
Occupation-Agriculturist,
R/o. Sarafa Line, Buldhana,
Tahsil and District-Buldhana,
through its power of attorney
Rajesh Vishnu Mahajan,
Aged about 37 years,
Occupation-Business,
R/o. Sarafa Line, Buldhana,
Tahsil and District-Buldhana.

.. Petitioner

.. Versus ..

1] State of Maharashtra, through
Secretary, Urban Development,
Mantralaya, Fort, Mumbai-400 032.

2] Municipal Council, Buldhana
through its Chief Officer, Buldhana,
Taluka-Buldhana.

3] Collector, Buldhana,
Collectorate Office, Buldhana.

4] Superintendent of Police,
Police Office, Near State Bank of India
Square, Tahsil and District-Buldhana.

.. Respondents

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Shri S.R. Deshpande, Advocate for Petitioner.

Ms. D.V. Sapkal, Assistant Government Pleader for Respondent
Nos.1, 3 and 4.

Shri A.P. Kalmegh, Advocate for Respondent No.2.

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CORAM : SMT. M.S. JAWALKAR, AND
PRAVIN S. PATIL, JJ.

DATED : 30th JULY, 2025.

JUDGMENT [Per : Pravin S. Patil, J.]

1. **Rule.** Rule made returnable forthwith. By consent of the learned Counsel for the parties, the matter is taken up for final disposal.

2. By this petition, the petitioner is seeking declaration that the land under Reservation Nos.49 and 50, out of Survey No.99/3 of mouza Buldhana, ad-measuring 1.05 H.R. for Police Department and 20 R reserved for Municipal Council, Buldhana Police Authorities be declared as lapsed in view of Section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short, MRTP Act).

3. It is admitted fact that the sanctioned development plan of Buldhana City was issued vide notification dated 03.11.1990 which came into force with effect from 01.01.1991. In the said development plan, the land out of Survey No.99/3 of mouza Buldhana owned by petitioner was reserved for Municipal Naka and Police department. The period of ten years after this

notification was expired in the year 2001. However, till that time, there was no development nor the land acquired by the authority.

4. In the circumstances, the petitioner had issued statutory purchase notice to the respondent on 24.08.2016. The said notice was duly received by the respondent no.2- Municipal Council, Buldhana. However, for a period of two years i.e. 24 months, no action was taken by the respondents either to acquire the land or make any development as per the development plan. As such, according to the petitioner, after lapse of statutory period, the reservation is lapsed. In the circumstances, the petitioner approached to this court seeking declaration as stated above.

5. In response to the notices issued by this Court, the respondent no.2, by its affidavit dated 24.04.2025, stated that due to paucity of funds, the respondent no.2 could not acquire the aforesaid land which was reserved as per the development plan.

6. It is further submitted by Respondent No.2 that the respondent has prepared draft development plan (2nd revision) of Buldhana City under Section 26 of the MRTP Act. After declaring the said plan, the objections were called from the petitioners and after considering the objections raised by the petitioners in draft development plan (second revision) of Buldhana City, same was published on 12.01.2023 under Section 28 (4) of the MRTP Act. As such, it is the submission of the respondent that the property owned by the petitioner which was reserved under Reservation Nos.49 and 50 has been included in the residential zone. Hence, considering this fact, petitioner can not claim declaration as stated in the petition.

7. It is further submitted that the draft development plan (second revision) of Buldhana City is already submitted to the State Government on 24.03.2025 under Section 30 of the MRTP Act and the same is pending for consideration.

8. We have perused Section 127 of the MRTP Act. According to the said provision, after issuing statutory notice, if the respondent-authority failed to acquire or no steps within a period of two years are commenced for its acquisition, the

reservation become available to the owner for the purpose of development.

9. In the present case, it is admitted fact that the notice under Section 127 was issued on 24.08.2016. As per Section 127 of the MRTP Act, the period of two years was expired on 24.08.2018. But during this period neither the land acquired nor steps are taken as contemplated under provisions of law. Hence, the reservation on the land owned by petitioner is lapsed under Section 127 of the MRTP Act.

10. In respect of submission of respondents that development plan (2nd revision) is pending before State Government, therefore, petitioner prayer can't be considered, we are of the opinion that there is no provision to override Section 127 of the MRTP Act, which contemplate that in view of revised development plan, the reservation which is lapsed is restored in favour of State. Hence, we find no merit in the submission of respondents.

11. The petitioner has rightly relied upon the judgment of this court reported in **2017 (4) Mh.L.J. 382 (Ashok Shriram**

Kulkarni .vs. State of Maharashtra and another), wherein this court observed in paras 15 and 17 as under :

15. We have accordingly examined the rival contentions and keeping in view the undisputed facts involved in this case, we find that the petitioner has served a valid purchase notice under section 127 of the said Act for the acquisition of the land which was reserved in the sanctioned development plan of 1982. Admittedly, the steps as required by the provisions of section 127 for acquisition of the said land were not taken by the respondents within a period of 6 months from the date of service of this purchase notice.

17. The respondents instead of issuing a notification under section 127 (2) of the said Act proceeded to revise the development plan and accordingly, the procedure under section 23 (1) and 38 of the said Act was started on 23-1-2022. The said land of the petitioner was now proposed to be reserved for cultural centre and library. The petitioner objected to the proposed plan on 5-5-2007 on the ground that the petitioner's land is under reservation."

By a careful reading of the provisions of sections 127 and 37 (1) of the MRTP Act, which are extracted as above abundantly make it clear that the State Government is not empowered to delete the reservation of the land involved in this case from Railway use and to modify the same for Development Plan Road in the Development Plan after expiry of 10 years and 6 months notice period was over as the appellant has acquired the valuable statutory right upon the land and the reservation of the same for the proposed formation of Railway track was lapsed long back."

12. In view of above said legal position and careful reading of the provision of Section 127 of the MRTP Act, it is clear that the reservation of the land involved in this case is lapsed and

the valuable statutory right of the petitioner after the period of 24 months after receipt of notice is created in his favour. Accordingly, we are of the considered opinion that the petitioner is entitled for the relief claimed in the present petition. Accordingly, we pass the following order :

O R D E R

- (i) The writ petition is allowed.
- (ii) It is hereby declared that the land of the petitioner under Reservation Nos.49 and 50 i.e. Survey No.99/3 of Mouza Buldhana, ad-measuring 1.05 H.R. for Police Department and 20 R which was reserved for Municipal Council, Buldhana Police Authorities is hereby declared as lapsed and accordingly the land is released from the reservation in favour of petitioner for the purpose of development.
- (iii) Respondent No.1 is directed to issue appropriate Notification in this regard within a period of four weeks from the date of receipt of this order.
- (iv) Rule is made absolute in the above terms.

(Pravin S. Patil, J.)

(Smt. M.S. Jawalkar, J.)