



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

WRIT PETITION NO.1649 OF 2024

1. Madhukar Gangaram Hajare,
Age about 76 years,
Occupation-Agriculture.
2. Murlidhar Gangaram Hajare,
deceased through legal heirs :
 - 2.1. Nanda Murlidhar Hajare,
Age about 61 years,
Occupation : Household.
 - 2.2. Bhavna Sanjayrao Khante,
Age about 43 years,
Occupation : Household.
 - 2.3. Bharti Manoj Mehar,
Age about 41 years,
Occupation : Household.
 - 2.4. Vaishali Devidas Kuite,
Age about 39 years,
Occupation : Household.
 - 2.5. Sonali Sachid Tadse,
Age about 35 years,
Occupation : Household.
 - 2.6. Bhushan Murlidhar Hajare,
Age about 32 years,
Occupation : Agriculture.
3. Ramdas Gangaram Hajare,
Age about 68 years,
Occupation : Agriculture.

4. Ratan Gangaram Hajare,
Age about 65 years,
Occupation : Agriculture.
5. Kunda Prakash Bhadgare,
Age about 66 years,
Occupation : Household.
6. Manda Amrutlal Channe,
Age about 62 years,
Occupation : Agriculture.
7. Meena Devidas Hajare,
Age about 58 years,
Occupation : Household.
8. Sneha Devidas Hajare,
Age about 38 years,
Occupation : Household.
9. Smita Devidas Hajare,
Age about 33 years,
Occupation : Household.
10. Rahul Devidas Hajare,
Age about 36 years,
Occupation : Agriculture.

All R/o.Ramnagar, Chandrapur. ..

Petitioners

.. Versus ..

1. The State of Maharashtra, through
The Director of Town Planning,
State of Maharashtra, Central Building,
Pune-1.

2. The Municipal Council (M.C.)/
Nagar Parishad, through its
Chief Officer at Ballarpur,
Tq. Ballarpur, Dist. Chandrapur,
Pin-442 902.
3. The Collector, Chandrapur,
Tq. - Dist. Chandrapur,
O/A Collector Office, Chandrapur. .. Respondents

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Shri G.K. Mundhada, Advocate for Petitioners.

Shri A.S. Fulzele, Additional Government Pleader for
Respondent Nos.1 and 3.

Shri M.I. Dhattrak, Advocate with Shri S.A. Sahu, Advocate
for Respondent No.2.

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CORAM : SMT. M.S. JAWALKAR AND

PRAVIN S. PATIL, JJ.

DATED : 18th JUNE, 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 petitioners, who are the legal heirs of original owners of the property, seek relief that reservation of land for Stadium bearing Survey No.31/40/A ad-

measuring 1.22 HR of village Ballarpur, Tah. Ballarpur, District-Chandrapur be declared as lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act') and accordingly they should be declared free to develop the land owned by them.

3. It is the case of the petitioners that they are the joint owners and in possession of land of Survey No.31/40/A of village Ballarpur, Tah. Ballarpur, District-Chandrapur measuring 1.22 HR. On 16.08.2005 Final Development Plan of Ballarpur City was sanctioned and published by the State Government vide Notification No.TPS-2202/1260/CR-2B/2004/UD-9 and came into force with effect from 01.10.2005.

4. According to the petitioners, the land, which was reserved for Stadium, vide Reservation No.45 was not acquired for a period of more than ten years from the date of Final Development Plan came into force. Accordingly, in view of provision under Section 127 of the MRTP Act, the petitioners issued dated 01.11.2021. According to the petitioners, along with the notice, to demonstrate that they are the owners of the

land also enclosed 7/12 extract. The said notice was duly served on the respondents on the same day. It is their further contention that after receipt of notice, there was a resolution of the Sanding Committee dated 31.12.2021, whereby it was decided to commence acquisition proceedings. In pursuance of the Resolution, the communication was also made by the Municipal Council, Ballarpur to the Collector, Chandrapur on 13.09.2022.

5. It is also clear from the record that the Assistant Commissioner of Town Planning, Collector Office, Chandrapur also forwarded the proposal to the Chief Secretary of Urban Development Department on 04.12.2024 for releasing the fund.

6. It is stated by the petitioners that period of ten years has lapsed on 30.09.2015, since the land in question was shown in the development plan. The period of 24 months has also lapsed on 30.10.2023. But there are no positive steps to complete the procedure to acquire the land in question, hence it is deemed that the reservation has lapsed.

7. Learned counsel appearing for the respondent strongly opposed the application mainly on the ground that as per the mandate of Section 127 (1) of the MRTP Act, the petitioners failed to furnish the documents of ownership/interest of the land along with his notice and, therefore, the notice under Section 127 (1) of the MRTP Act is not legal nor proper. So also, the respondent no.1 has objected the petition by saying that in the notice issued by the petitioners, the demarcation plan showing location boundary of area under petitioners' land is not mentioned in the notice and, therefore, the notice issued under Section 127 (1) of the M.R.T.P. Act is not in compliance of the provisions of law.

8. We have heard both the parties at length and perused the record. From the record, it is clear that the petitioners had issued the notice dated 28.10.2021 along with 7/12 extract. It is also the admitted fact that the Municipal Council, Ballarpur has taken the note of the said notice and accordingly in the meeting of the Standing Committee held on 31.12.2021 unanimously decided to commence the acquisition proceedings. After the resolution, Municipal Council, Ballarpur made a

communication dated 13.09.2022 to the Collector, Chandrapur to take appropriate action within the time limit so prescribed under Section 127 of the MRTP Act. Hence, it is clear that by taking cognizance of notice issued by petitioners, Municipal Council did take some steps in the matter.

9. It is further clear from record that in response to the communication of respondent no.2, the office of Collector, Chandrapur on 04.12.2024 forwarded the proposal to the Chief Secretary, Urban Development Department and requested to made available the funds for acquisition purpose.

10. It is thus evident that the respondent nos.1 and 2 had taken the cognizance of the notice. However, they failed to complete the same within 24 months. In the backdrop of these circumstances, the defence taken in the matter that the notice issued by the petitioners was not in proper format is not sustainable.

11. In the background of aforesaid factual position, the judgment relied by the petitioners in the case of ***Vikramsinh***

Jaysingrao Ghatge Kagal .vs. Municipal Council Kagal ; State of Maharashtra, reported in ***2015 (1) ALL MR 520*** is squarely applicable in the matter. In this case, it is observed in para 13 as under :

“13. Having considered the rival submissions it appears that the respondent no.1 had duly received letters dated 7.5.2003, 12.7.2004 and 11.7.2009 addressed by the petitioner. By these letters petitioner had called upon the respondent no.1 to undertake acquisition of the petitioner's land in question for the public purpose namely primary school and playground and extension for MSEB as set out in the development plan. By these letters, the petitioner had categorically requested the respondent no.1 to take possession of the land and to pay compensation to the petitioner in that regard. A perusal of resolution no.47 dated 22.10.2003 passed by the respondent no.1 clearly shows that respondent no.1 treated these letters as an intimation under section 127 of the MRTP Act for acquisition of the land and payment of compensation. By this resolution, the respondent no.1 expressed its inability to acquire the land due to financial difficulties. Letters dated 7.5.2003, 12.7.2003 and 11.7.2009 issued by the petitioners were not rejected by the respondent no.1 or for that matter by respondent nos.3 and 4. In fact it appears that even respondent nos 3 and 4 insisted that further steps be taken to acquire the land which is clear from the affidavit filed on behalf of the respondent nos. 3 and 4. For the first time in the affidavit in reply filed on behalf of respondent nos.3 and 4 a plea has been taken that the letters dated 7.5.2003, 12.7.2004, 11.7.2009 of the petitioner cannot be treated as a notice under section 127 of the MRTP Act. We cannot accept this submission as made on behalf of respondent nos. 3 and 4 that these letters of the petitioner cannot be treated as a notice under section 127 of the MRTP Act, for two reasons, firstly, the letters clearly call upon the planning authority namely respondent nos.1 to acquire the land for public

purpose under reservation and pay compensation in that regard to the petitioner and secondly the respondents at no point of time rejected these letters on this ground as averred in the reply affidavit. Moreover, for all purposes respondent no.1 treated these letters to be a notice under section 127 of the MRTTP Act and understood the same as a purchase notice as is clear from various letters addressed between the parties”.

12. So also recently this court has taken the same view in Writ Petition No.865/2020 (Pravin s/o Dadaji Khobragade .vs. State of Maharashtra and others) decided on 13th June, 2022. It is observed in the judgment in para 5 and 6 as under :

“5. The learned Counsel for respondent No.4, by relying upon the affidavit-in-reply, submitted that the documents of title were not submitted along with the aforesaid notice. However, on 18/03/2021, the Municipal Council had passed a resolution stating therein that on account of financial constraints, it would not be in a position to acquire the said land for the purpose for which it was reserved. It is also pointed out that initially, on 13/12/2019, steps had been taken to acquire the said land in question, but by passing subsequent resolution, it was indicated by the Municipal Council that it would not be feasible to acquire the said land.

6. On hearing the learned Counsel for the parties and on perusing the documents on record, it is clear that the notice dated 19/12/2017 has been served on the Municipal Council. Along with that notice, 7/12 extract of the said land was annexed. This document indicates interest of the petitioner in the said land. Since, notice has been duly served and the statutory period of 24 months has now

lapsed, it is clear that in the absence of any steps taken for acquiring the said land, the deeming fiction contained in Section 127 of the said Act would apply. As a result, on expiry of period of 24 months from service of such notice, the reservation subjected to the said land would stand lapsed.”

13. In view of above legal position and facts of the present case, it is held that the notice under Section 127 of the MRTP Act was properly served to the respondents, but respondents failed to take necessary action within a period of 24 months for acquisition of the land as required under the MRTP Act. Accordingly, the petitioners are entitled to seek declaration as prayed. Hence, we proceed to pass the following order :

ORDER

(i) It is declared that the land reserved for Stadium bearing Survey No.31/40/A admeasuring 1.22 HR of village Ballarpur, Tah. Ballarpur, District-Chandrapur is lapsed under Section 127 of the MRTP Act.

(ii) Respondents shall take steps to notify the de-reservation of aforesaid land expeditiously and as early as possible and in any case within four months from today. The petitioners are free to develop their land accordingly.

(iii) Rule is made absolute in the above terms.

(Pravin S. Patil, J.)

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

Gulande