



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2934 OF 2024

1. Shyamsunder Ramgopal Malpani, Age 69 yrs,
Occ. Business, R/o Ram-Kunj, Amruit Housing
Society, Satav Chowk, Jathar Peth, Akola.
2. Suresh Ramgopal Malpani, Age 58 yrs, Occ.
Business, R/o Flat No.6, 1st floor, Kamala
Towers, Akola.

... PETITIONERS

VERSUS

1. The State of Maharashtra, through the
Secretary, Urban Development Department,
Mantralaya, Mumbai.
2. Assistant Director of Town Planning, Akola,
Akola Municipal Corporation, Akola.
3. The Municipal Corporation, City of Akola,
through its Commissioner, Akola Municipal
Corporation, Akola.

... RESPONDENTS

Shri G.K. Mundhada, Advocate for the petitioners.
Shri A.M. Joshi, Assistant Government Pleader for respondent
no.1/State.
Shri Apurv De, Advocate for respondent nos. 2 and 3.

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

DATE : 03.07.2025.

ORAL JUDGMENT : (Per : Pravin S. Patil, J.)

Heard. **RULE.** Rule is made returnable forthwith.

2. The matter is taken up for final disposal by consent of the parties.

3. By the present petition, the petitioners are seeking direction to respondent no.2 to declare the land reserve for Play Ground vide Reservation no. 6, and 15m and 18m wide DP road, affecting land of Survey no. 14/1/A area ad-measuring 0.38 HR of Mouza Akoli (Bujruk), Tq. Akola and District Akola owned by the petitioners, in the 1st Revised Final Development Plan of Akola City 2004, has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'the MRTP Act') and thereby respondent no. 2 to notify and publish in the official gazette, the lapsing of reservation under Section 127 (2) of the MRTP Act, 1966.

4. It is the case of the petitioner, that on 26.10.2004, 1st Revised Final Development Plan of the city of Akola was sanctioned and published by the State Government. In the said plan, the land was reserved for Play Ground vide Reservation No.6 and 15m and 18m wide DP road affecting Survey No. 14/1/A owned by the petitioners. The Plan was issued on 26.10.2004, however for a period of 10 years, no development of any kind was done on the said land. Hence,

According to the petitioners, the land reservation was lapsed on 25.10.2014 i.e. after a period of 10 years.

5. In view of the same, the first notice was issued under Section 127 of the MRTP Act to the respondents on 03.07.2017. However, the said notice was found defective as description of the property was not properly mentioned. As such, the petitioners did not acted upon the said notice.

6. The petitioners then on 19.04.2018 issued second notice under Section 127 of the MRTP Act to the respondents. The said notice was duly served; however, the petitioners found that it was also defective therefore again not acted upon it.

7. The last notice dated 10.01.2022 under Section 127 of the MRTP Act containing correct property description along with documents i.e. Sale-deed, Measurement Sheet and other documents showing ownership, were duly served on respondent nos. 2 and 3 on 11.01.2022.

8. According to the petitioners, period of 24 months from the date of receipt of notice dated 11.02.2022 was expired on 10.01.2024. However, by that time, no steps were taken by the respondents in

pursuance of notice issued by the petitioners. Hence, according to the petitioners, the statutory period of notice has been completed, they are entitled for declaration as prayed in the petition. The petitioners in support of their submission, has relied upon the following judgments.

(1) Pratap Tularam Ghogale and ors. vs. State of Maharashtra and ors. 2013 BCI 659;

(2) Abdul Gani N Wadwan vs. State of Maharashtra and ors. 2018 4 AIR BomR 178 ;

(3) Ashok Shriram Kulkarni vs. State of Maharashtra 2017 3 AIR BomR 263;

(4) In Writ Petition No. 3898 of 2021 (Chimnay Gurunath Parale vs. State of Maharashtra and ors.) Decided on 12.04.2023;

(5) Abdul Sajid Abdul Samad and anr. vs. State of Maharashtra and ors. 2025 BHC(NAG) 2019;

(6) Sadashiv Tryambak Rajebahadur vs. State of Maharashtra 2023 LawSuit(Bom) 819;

9. Learned Counsel for respondent nos.2 and 3 has strongly opposed the petition by relying upon Section 127 of the MRTP Act. According to him, it is not permissible to issue notices after notices for seeking declaration. According to him, Section 127 of the MRTP Act provides only single notice and said notice should be without any defect. However, in the present case, admittedly, as earlier two notices issued by the petitioners being defective in nature, the petitioners are not entitled to claim the relief in the matter.

9. It is further contended that, in the present case, on 19.01.2024, 2nd Revised Draft Development Plan of Akola City was published under Section 26(1) of the MRTP Act and the suggestion and objection of public were called. There was no reservation for commercial complex bearing Reservation No.198. The only Reservation on Survey No.14/1/A i.e. Reservation No.199 for Play Ground. But no order had been passed by the Planning Committee. Accordingly, till the decision of the Committee, the land concerned cannot be removed from the Reservation No.199.

10. In the light of submission of the respondents, the petitioners have relied upon decision of this Court in the case of *Ashok Shriram Kulkarni vs. State of Maharashtra (supra)*, wherein it has been held once reservation is lapsed in view of contingencies mentioned in Section 127 of MRTP Act, the necessary consequences must follow. The land which is released from the Reservation becomes available to the owner for the purpose of development. The said right cannot be taken away by the Planning Authority by reserving the power under Section 38 of the MRTP Act.

11. Hence, considering the above said legal position, it is clear that in the present case, statutory period of 24 months after the notice

dated 11.01.2022 was expired on 10.01.2024 and 2nd Revised Draft Development Plan of Akola City was published on 19.01.2024. As such, the right crystallized in favour of the petitioners cannot be taken away by way of re-reservation of the land.

12. In respect of objection of three notices issued by the petitioners under Section 127 of the MRTP Act, the petitioners relied upon the judgment of this Court in the case of *Pratap Tularam Ghogale vs. State of Maharashtra and ors. (supra)*, wherein seven times notices were issued and this Court entertained the petition and declared the Reservation as lapsed under Section 127 of the MRTP Act.

13. We are also of the opinion that for invoking Section 127 of the MRTP Act, the last valid notice should be considered and period of 24 months required to be counted from the date of receipt of last notice. Furthermore, according to us, there is no embargo that statutory notice should be issued for only once. Hence, objection of the respondents is not sustainable in the eyes of law.

14. In the present case it is admitted fact that the last valid notice was duly served on respondent nos.2 and 3 on 11.01.2022. The period of 24 months, accordingly, expired on 10.01.2024. But during this period no steps are taken for its acquisition. In the circumstances,

the Petitioners are entitled for the benefit of Section 127 of the MRTTP Act. Hence, in the light of above said reasons, the petition is allowed and it is accordingly declare that the reservation for Play Ground vide Reservation no. 6 and 15m and 18m wide DP roads, affecting the land of Survey no.14/1/A area admeasuring 0.38 HR of Mouje Akoli (Bujruk) Tq. Akola Dist. Akola owned by petitioners, in the 1st Revised Final Development Plan of Akola city, 2004 has lapsed under Sec. 127 of the Maharashtra Regional and Town Planning Act, 1966 and the petitioners are free to develop the land owned by them in the manner permissible to adjacent land as per the Development Plan.

15. Respondent no.2 is directed to notify and publish in the official Gazette under Sec. 127(2) of the MRTTP Act, the lapsing of reservation of Play Ground vide Reservation no.6 and 15m & 18m wide DP roads in the 1st Revised Final Development Plan of Akola, City 2004 affecting the land of Survey no.14/1/A total area admeasuring 0.378 HR of Mouje Akoli (Bujruk) Tq. Akola Dist. Akola owned by petitioners within a period of Eight weeks.

16. The Rule is made absolute in aforestated terms. No costs.

(PRAVIN S. PATIL, J.)

(SMT. M.S. JAWALKAR, J.)

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