

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

WRIT PETITION NO. 5496/2023

Sourabh Muralidhar Raut and Ors. Vs. The State of Maharashtra and Ors.

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. G. K. Mundhada, Advocate for Petitioners.
 Mr. I. J. Damle, A.G.P. for Respondent Nos.1, 2 and 4/State.
 Mr. Y. S. Jaiswal, Advocate for Respondent No.3.

CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 31/01/2025.

. Heard.

2. The petitioners are claiming to be the owners of immovable property bearing Survey No.28/91, admeasuring 5314 Sq.Mtrs. in Achalpur Taluka of Amravati District. In the Development Plan, the said land was earmarked for Primary School and Playground by virtue of Reservation No.59. The said reservation was of 15.01.2003 when the Development Plan was notified.

3. Subsequent thereto, the petitioners applied for grant of permission to change the user from agricultural to non-agricultural and the Revenue Authorities accordingly, granted the same on 05.02.2004. The petitioners having realized that there exists a reservation, have served a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "MRTP Act") which was received by the respondent Municipal Council on 14.12.2020 whereby the petitioners have requested the respondents to purchase the land through the aforesaid purchase notice.

4. It appears that another notice under Section 49 of the MRTP Act was also served by the petitioners on 30.04.2021. In response to which, the documents summoned by the respondent Municipal Council were duly produced, which were in the form of 7/12 extract. It is the case of the petitioners that by virtue of the layout plan being sanctioned after the conversion of the land to the non-agricultural use, the response shown by the petitioners to the notice issued under Section 49 of the MRTP Act establishes that the petitioners hold an interest in the land. According to him, even the record of the respondent Municipal Council in relation to land in question stood in the name of the petitioners and as such, it is not open for them to dispute the ownership and their interest in the land in question. In such an eventuality, it is claimed that not only initially but after the receipt of the purchase notice on 14.12.2020 issued under Section 127 of the MRTP Act, no steps were taken in initial 6 months and the only step in regard to calling the title deeds will not frustrate the claim of the petitioners for seeking declaration under Section 127 of the MRTP Act thereby releasing the land from the clutches of the reservation.

5. As against above, the learned Counsel appearing for the respondent No.3 would urge that after the notice under Section 127 of the MRTP Act was issued, the respondent issued another notice to the petitioners on 05.08.2021 calling upon them to produce not only 7/12 extract but also the ownership documents, the measurement sheet and the map containing the location of

the land which is reserved. It is claimed that there is no compliance of the said notice and as such, the respondents were unable to submit a proposal to the State Government for permission not only to acquire the land but also extend financial benefits for the same.

6. That being so, it is claimed that the petition is liable to be dismissed.

7. The learned A.G.P. would support the aforesaid claim.

8. We have considered the rival submissions of the respective Counsels.

9. The admitted position born out of the record is that the reservation of the land of the petitioners is pursuant to the reservation No.59 for Primary School and Playground in the urban area of Achalpur town, the petitioners being interested persons having got the land converted to non-agricultural use, the respondent Municipal Council sanctioning the layout plan over the same, is not disputed.

10. As such, rightly so pointed out by drawing support from the Division Bench judgment of this Court in the matter of *Abdul Gani N Wadwan Vs. State of Maharashtra and Ors.* reported in *2018 LawSuit (Bom) 1003*, the learned Counsel for the petitioners Mr. Mundhada is justified in claiming that the status of the petitioners as that of a person interested in relation to the land in question stood established. Para 6 of the said judgment reads thus :

“[6] We have considered the submissions. The requirement of sub-section (1) of Section 127 is that owner or any person interested in the land may serve a notice along with documents showing his title or interest in the reserved land. In the present case, third Respondent is not disputing that the Petitioners are the owners. Their contention is that the lands are encumbered by a charge of a co-operative bank. Even if the charge is recorded, the Petitioners do not cease to be the owners or the persons interested. The requirement of sub-section (1) of section 127 is not of producing documents of title. The requirement is of producing documents showing title. Entries in the 7/12 extract constitute sufficient material to come to the conclusion that the Petitioners are certainly persons interested in the land, if not the owners thereof.”

11. Apart from above, once the respondent Municipal Council after having sanctioned the layout plan in favour of the petitioners cannot turn around and claim that the petitioners are not the owners of the land in question. It cannot be said that the respondent Municipal Council could have withheld the proposal for seeking approval from the State Government for acquisition of the land in question so as to honour the development plan reservation and also the extension of financial benefits for the same. Rather, even if, the documents of ownership were not available, the respondent Municipal Council for its own record could have submitted such proposal, which the respondent Municipal Council has failed to do. In such an eventuality, it cannot be said that the respondent Municipal Council was handicapped for want of title documents to submit the proposal to the State Government for honouring the reservation No.59 as claimed above.

Reliance is also placed on para Nos.7 and 10 of the judgment of the Hon'ble Apex Court in the matter of ***Municipal Corporation of Greater Bombay Vs. Hakimwadi Tenants Association*** reported in ***1987 DGLS(SC) 853*** which is reproduced as under :

7. According to the plain reading of S. 127 of the Act, it is manifest that the question whether the reservation has lapsed due to the failure of the Planning Authority to take any steps within a period of six months of the date of service of the notice of purchase as stipulated by S. 127, is a mixed question of fact and law. It would therefore be difficult, if not well-nigh impossible, to lay down a rule of universal application. It cannot be posited that the period of six months would necessarily begin to run from the date of service of a purchase notice under S. 127 of the Act. The condition prerequisite for the running of time under S. 127 is the service of a valid purchase notice. It is needless to stress that the Corporation must prima facie be satisfied that the notice served was by the owner of the affected land or any person interested in the land. But, at the same time, S. 127 of the Act does not contemplate an investigation into title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice. Viewed in that perspective, the High Court rightly held that the Executive Engineer of the Municipal Corporation was not justified in addressing the letter dt. July 28, 1977 by which he required respondents nos. 4-7, the trustees, to furnish information regarding their title and ownership, and also to furnish particulars of the tenants, the nature and user of the tenements and the total area occupied by them at present. The Corporation had the requisite information in their records. The High Court was therefore right in reaching the conclusion that it did. In the present case, the Planning Authority was the Municipal

Corporation of Greater Bombay. It cannot be doubted that the Municipal Corporation has access to all land records including the records pertaining to cadastral survey No. 176 of Tardeo. We are inclined to the view that the aforesaid letter dt. July 28, 1977 addressed by the Executive Engineer was just an attempt to prevent the running of time and was of little or no consequence. As was rightly pointed out by respondents 4-7 in their reply dt. Aug. 3, 1977, there was no question of the period of six months being reckoned from the date of the receipt from them of the information requisitioned. The Municipal Corporation had been assessing the trust properties to property tax and issuing periodic bills and receipts therefor and obviously could not question the title or ownership of the trust. We are informed that the building being situate on Falkland Road, the occupants are mostly dancing girls and this is in the knowledge of the Corporation authorities. The rateable value of each tenement would also be known by an inspection of the assessment registers. We must accordingly uphold the finding arrived at by the High Court that the appellant having failed to take any steps, namely, of making an application to the State Government for acquiring the land under the Land Acquisition Act within a period of six months from the date of service of the purchase notice, the impugned notification issued by the State Government under S.6 Land Acquisition Act, making the requisite declaration that such land was required for a public purpose i.e. for a recreation ground was invalid, null and void.

10. Another safeguard provided is the one under S. 127 of the Act. It cannot be laid down as an abstract proposition that the period of six months would always begin to run from the date of service of notice. The Corporation is entitled to be satisfied that the purchase notice under S. 127 of the Act has been served by the owner or any person interested in the land. If there is no such notice by

the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under S. 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise. In the present case, these considerations do not arise. We must hold in agreement with the High Court that the purchase notice dt. July 1, 1977 served by respondents 4-7 was a valid notice and therefore the failure of the appellant to take any steps for the acquisition of the land within the period of six months therefrom, the reservation of the land in the Development Plan for a recreation ground lapsed and consequently the impugned notification dt. April 7, 1978 under S. 6, Land Acquisition Act, issued by the State Government must be struck down as a nullity.”

12. In that view of the matter, it has to be inferred that the petitioners have appropriately issued a notice of purchase contemplated under Section 127 of the MRTP Act and within the stipulated period of 24 months, the said notice is not honoured by the respondent Municipal Council.

13. That being so, we deem it appropriate to allow the petition in terms of prayer clause – A.

14. Needless to clarify that consequential notification be issued within a period of 3 months from today.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)