



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

WRIT PETITION NO.6520/2023

1. Amit Motilal Kukreja,
age 41 Yrs., Occ. Business,
R/o 163A, Kannawar Ward,
Desaiganj (Vadasa), Distt. Gadchiroli.

2. Ashok Sugnomal Lulla,
age 50 Yrs., Occ. Business.

3. Virendra Sugnomal Lulla,
age 46 Yrs., Occ. Business.

Petitioner Nos.2 and 3,
R/o Plot No.37, Dayanand Park
Road, Kasturba Nagar, Galli
No.3, Jaripataka, Nagpur.

4. Kishan Lilaram Nagdeve,
age 59 Yrs., Occ. Business,
R/o Rainbasera Armoury
Road, in front of Police Station,
Jawahar Ward, Desaignj (Vadasa),
Distt. Gadchiroli.

... Petitioners

- Versus -

1. The State of Maharashtra,
through the Secretary Urban
Development Department,
Mantralaya, Mumbai.

2. The State of Maharashtra,
through the Director of Town

Planning, Central Building,
Pune.

3. Assistant Director of Town
Planner Nagpur, 2nd Floor,
Government Administrative Building,
Civil Lines, Nagpur.

4. The Municipal Council, City of
Umred, through its Chief
Officer, Umred Municipal
Council, Umred, Tq. Umred,
Distt. Nagpur.

... Respondents

Mr. G.K. Mundhada, Advocate for the petitioners.

Mr. H.D. Marathe, Assistant Government Pleader for respondent
Nos.1 to 3.

Mr. Pawan K Raulkar, Advocate for respondent No.4.

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

DATED: 27.2.2025.

JUDGMENT (Per Mrs. Vrushali Joshi, J.)

Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocates for the parties.

2. By way of the present petition, the petitioners have
approached this Court with a prayer to declare that the
reservation on the land in question owned by the petitioners has

lapsed on the ground that on receipt of purchase notice under Section 127 of the Maharashtra Town Planning Act, 1966 (for short the "M.R.T.P. Act") no steps have been taken by the respondent authorities to acquire the land in question.

3. Brief facts necessary to decide the matter are as under:-

(i) The petitioners are joint owners of old Survey No.534/2 and 534/3 total area admeasuring 9598.85 Sq. Mtrs. of Mouze Umred situated in the limits of Municipal Corporation of the city of Umred, Distt. Nagpur.

(ii) The Revised Plan of city Umred came into force w.e.f. 8.7.2003. Thereafter, Second Revised Draft Development Plan was published and the same came into force on 23.12.2022 in which the land in question was shown as reserved for "Shopping Centre" vide Reservation No.2, for "Municipal Purpose" vide Reservation No.3 and "Playground" vide Reservation No. 4 by the respondents. However, no steps have been taken by the

respondent-Corporation to acquire the land in question within ten years from the date of commencement on which the development plan came into force.

(iii) Previous owners of the said land had served a purchase notice under Section 127 of the Act of 1966 and requested the respondent-Corporation to acquire the land within a statutory period of twenty four months.

(iv) As the statutory period of twenty four months from the date of issuance of notice under Section 127 of the Maharashtra Town Planning Act, 1966 came to an end, they sold the land to the petitioners by executing a sale deed on 26.3.2021 which came to be executed before the Sub-Registrar, Umred of which mutation entry has been carried out on 12.1.2022. No steps were taken by Respondent No.4 to acquire the land and when the above stated Second Revised Draft Development Plan was made available for suggestions and objections, the petitioners

made a representation to include the land in question into the residential zone.

(v) Despite several representations/objections made by the petitioners respondent No.4 has not completed the proceedings of acquisition of the land in question.

4. In order to initiate the proceedings for acquisition of land, notification under Section 126 of the M.R.T.P. Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 must be published.

5. It is a settled position of law that the deeming fiction of lapsing of reservation is contained in Section 127 of the M.R.T.P. Act. If the conditions of Section 127 of the MRTP Act are not complied with then the reservation of the land stands lapsed.

6. Learned Advocate for the petitioners Mr. Mundhada submitted that while finalizing the modifications in the Second Revised Draft Development Plan, respondent Nos.3 and 4 have neither taken into consideration the notice under Section 127 of the MRTP Act nor the number of representations made by the petitioners. He further submitted that after the lapse of reservation in the said land it is the duty of respondent No.1 to publish notification of lapsing of reservation under Section 127 of the MRTP Act in an official gazette of Government of Maharashtra. He further stated that this non-action on the part of respondents clearly is in violation of Article 300A of the Constitution of India.

7. Learned A.G.P. has vehemently opposed the contentions of the petitioners. He pointed out that it is true that notice under Section 127 of the MRTP Act has been sent by Smt. Ghugguskar on 8.9.2014 but the said notice is defective one as the documents pertaining to the ownership of the said land has not been annexed by Smt. Ghugguskar. She was not in need of the

said land and has not initiated any further steps to release the land. He further submitted that for providing various and basic amenities systematically to the people at large situated in the city of Umred, the respondent conducted meeting of the stake holders on 29.9.2022. The people attended the meeting and demanded for the playground unanimously in the city. He further submitted that prior to publication of the said revised plan, some corrections were held to be necessary, therefore, in the meeting conducted under the supervision of the Administrator on 19.1.2022 taking into consideration all the concerned resolutions incorporated some changes in the development of the Town Plan of Umred City and the Town Planner, Umred City vide communication dated 28.3.2023 forwarded the same to the respondent.

8. Learned. A.G.P. argued that notice had been published in the official gazette of the State of Maharashtra and objections were called from the public at large within thirty days from the publication of the notification and a two member committee was constituted to hear the objections as per the

communication dated 23.6.2023 of the Director, Town Planning, Maharashtra State, Pune. Learned A.G.P. supplied emphasis on the submission that as per the Development Planning Standards under the Urban Regional Development Plans Formulation and Implementation Guidelines dated 15.6.1972, the land in question which is reserved for the purpose of Play Ground is necessary and the respondents are in need of the said land considering the population ratio of the Umred City. He further stated that the present petitioners are the land developers and even after knowing the fact that the present land is reserved for public purpose they purchased the land in the year 2021-2022 only for the purpose to sell out the plots on the said land. Therefore, it would be unsustainable to say that injustice has been caused to the petitioners herein. Further the Committee constituted under the Act has duly considered the objections, rejection of which is legal and is in betterment for the development of the city of Umred.

9. We have gone through the record.

10. It is not disputed that the Revised Plan of City of Umrer came into force from 8.7.2003 and Second Revised Development Plan was published and the same came into force on 23.12.2022 in which the land in question was shown as reserved for Shopping Centre vide Reservation No.2, for Municipal Purpose vide Reservation No.3 and for Play Ground vide Reservation No.4. The statutory period of 24 months for notice under Section 127 of the Maharashtra Town Planning Act, 1966 came to an end. It is admitted by the respondent that notice under Section 127 of the Act has been sent by Smt. Ghugguskar on 8.9.2014. Admittedly, no steps have been taken by the respondents to acquire the said land within the statutory period. The petitioners have placed reliance on the judgment of this Court in Atul Wamanrao Joshi and another V/s. State of Maharashtra and others reported in 2021 LawSuit (Bom) 1547 in which this Court has relied on the judgment of Ramakant Wasudeo Pai V/s. State of Mah and others reported in **2021 3 Mh.L.J. 204**. This Court has held by relying on the judgment of

the Hon'ble Supreme Court wherein detailed analysis of Section 126 and 127 of the Act is done has held as follows:-

“The following legal position emerges from the above Supreme Court Judgments:-

(i) Section 127 of the Act is a part of the law for acquisition of lands required for public purposes, namely, for implementation of schemes of town planning. The statutory bar created by Section 127 providing that reservation of land under a development scheme shall lapse if no steps are taken for acquisition of land within a period of 24 months (earlier 12 months/6 months) from the date of service of the purchase notice, is an integral part of the machinery created by which acquisition of land takes place.

(ii) The period of 10 years provided in Section 127 of the said Act is long enough. The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed.

(iii) When sections 126 and 127 of the MRTP act are conjointly read, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property.

(iv) During one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1) (c); and (ii) declaration by the State Government on receipt of the application mentioned in Clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4).

(v) The step taken under the section 127 within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

(vi) The step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under section 6 of the 1894 Act/Section 19 of "2013 Act". The acquisition commences with the publication of declaration under section 6 of the 1894 Act /Section 19 of "2013 Act". The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the 1894 Act / Section 19 of "2013 Act" is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6

declaration/Section 19 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration/Section 19 declaration is issued, it cannot be said that the steps for acquisition are commenced.

(vii) Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of 24 months (Earlier 12 months/6 months) from the date of service of notice by the landowner for dereservation. The steps towards commencement for the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

(viii) The underlying principle envisaged in section 127 of the MRTP Act is either to utilize the land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for the purpose it is permissible under the town planning scheme.”

11. As per the guidelines and the principles of law we have no hesitation to hold that on failure of the respondent Corporation to acquire within two years from the date of notice to

purchase under Section 127 of the Act of 1966 the reservation of land is deemed to have been lapsed.

12. As regards the reservation shown in the Second Revised Development plan is concerned, the said issue is no more res integra. The Division Bench of this Court in the case of Ashok Shriram Kulkarni Vs. State of Maharashtra and others (supra), had an occasion to deal with the similar issue and while discussing the same this Court has held thus:-

21. Reference can also be made to the decision of this Court in the case of Kishore Gopalrao Bapat, relevant portion reads thus:-

"11. The question, which falls for our consideration in the present petition is whether the Planning Authority exercising power under Section 38 of the M.R.T.P. Act, which deals with revision of development plan, can take away the rights accrued to the owner of the land on account of lapsing of reservation in view of contingencies mentioned in Section 127 of the M.R.T.P. Act. Similar factual and legal situation arose in the case of Shri Baburao Dhondiba Solakhe and this Court after taking into consideration the law laid down by the Apex Court in Bhavnagar University vs. Palitana Sugar Mills (p) Ltd. and Ors., 2003(1) S.C.C. 111, in paragraph (17) observed thus:-

"The legal position as regards M.R.T.P. Act on the basis of aforesaid observations made by the Apex Court in Bhavnagar University emerges that by imposition of a statutory obligation under Section 38 on the part of the State or the appropriate authority to revise the development plan the rights of the owners accrued in terms of Section 127 are not taken away. Section 38 of M.R.T.P. Act, in our opinion, does not and cannot be read to mean that substantial right conferred upon the owner of the land or the person interested under Section 127 is taken away. In other words, Section 38 does not envisage that despite the fact that in terms of Section 127, the reservation lapsed, only because of a draft revised development plan or final revised development plan is made would not automatically result in revival of reservation that had lapsed. If the reservation of the petitioner's land for the purposes of garden had lapsed and as we found in fact has lapsed on 28-2-1992, because of draft revised plan made in the year 1992 and thereafter final revised development plan sanctioned in the year 1999 would not revive the lapsed reservation."

12. *The above referred observations of this Court make it evident that once reservation is lapsed in view of contingencies mentioned in Section 127 of the M.R.T.P. Act, the necessary consequence under the scheme of Section 127 of the M.R.T.P. Act must follow. The land which is released from the reservation becomes available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan. This right which is conferred or accrued to the owner of the land due to lapsing of reservation cannot be taken away by the Planning Authority by*

exercising power under Section 38 of the M.R.T.P. Act. "

13. On perusal of the judgment cited by the petitioners in case of Vyankatesh Reality, Amravati (supra) it appears that this Court has relied on the judgment in case of Satish Soma Bhole V/s. State of Maharashtra and others reported in **2011 (1) BCR 293**. The objection was raised on behalf of the respondents that the petitioners are not entitled as at the time of issuing notice they were not the owners of the property in question. This Court has held, in the above said petition, that a person who has not issued a notice would not be entitled to relief under Section 127 of the Act of 1966. It is further held that once a notice is issued under Section 127 of the Act of 1966 the time would not stop running by the sale of the property by the owner of the property as there is no bar for a person to sell his interest in the land which is reserved. It appears from the judgment hereinabove that at the time of purchase of the property by the concerned respondent or planning authority is not extended merely by the sale of the

property after the issuance of notice under Section 127 of the Act of 1966. The objection raised on behalf of respondents to the tenability of the writ petition is devoid of merit and is rejected.

14. In the instant case, undisputedly, the notice was issued by the erstwhile owners of the property. The respondents admittedly have not issued notification under Section 6 of the Land Acquisition Act within a period of one year from the date of notice. If it is not so issued, the provisions of Section 127 of the Act of 1966 would come into play and the reservation of the property mentioned hereinabove for the purpose of Shopping Centre, Primary School and Play Ground would lapse. Thus from the above referred well settled principles of law once the reservation is lapsed in view of the contingencies mentioned in Section 127 of the Act necessary conclusion under the scheme of Section 127 of the Act must follow. The land which is released from the reservation becomes as otherwise permissible in the case of adjacent land under the relevant plan. This right which is

conferred or accrued to the owner of the land due to lapsing of reservation may not be taken away by the planning authority by exercising bar under Section 127 of the Act. In the result, we pass the following order:-

The petition is allowed in terms of prayer clauses (A), (B) and (C).

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)