



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

**WRIT PETITION NO.8259 OF 2022**

1. Vishal Vasantrao Winedeshkar,  
 Age 50 years, Occupation – Business,  
 R/o. Plot No.204, Ramdhun Apartment,  
 Sahastrabudhe Layout,  
 Bharat Nagar, Amravati Road,  
 Nagpur
2. Vaibhav Vasantrao Winedeshkar,  
 Age 44 years, Occupation – Business,  
 R/o. Plot No.104,  
 Rachna Sayantara Apartment,  
 Near Vayusena Nagar,  
 Hazari Pahad, Nagpur

**...PETITIONERS**

**VERSUS**

1. The State of Maharashtra,  
 through the Secretary,  
 Urban Development Department,  
 Mantralaya, Mumbai – 32
2. The Director of Town Planning,  
 State of Maharashtra,  
 Central Building, Pune – 1
3. RTO, Amravati through its  
 Regional Transport Officer,  
 Regional Transport Office,  
 Camp Road, Amravati – 444 601
4. Municipal Council (M.C.)/Nagar Parishad  
 through its Chief Officer at Achapur,  
 Tq. Achapur, District Amravati

**...RESPONDENTS**

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Mr. G.K. Mundhada, Advocate for the petitioners.  
Mr. N.S.Rao, Assistant Government Pleader for respondent Nos.1 to 3/State.  
Mr. Yash S. Jaiswal, Advocate for respondent No.4.

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**CORAM** : **AVINASH G. GHAROTE &**  
**URMILA JOSHI-PHALKE, JJ.**

**DATED** : **SEPTEMBER 29, 2023**

**JUDGMENT** (Per Urmila Joshi-Phalke, J.)

**RULE.** Rule made returnable forthwith. Heard finally with the consent of learned Counsel for both the parties.

2. By this petition, the petitioners have claimed that the declaration that the reservation in 1<sup>st</sup> Revised Development Plan for the City of Achalpur for Regional Transport Office vide Reservation No.TPS-2899/7639/CR-123/(A)/99/UD-30 dated 15/01/2003 admeasuring 1.77 HR village Khel-tapmali, Taluka Achalpur, District Amravati be declared as lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred as “the MRTP Act” for short) and it be declared that the petitioners are free to develop the land owned by them as per the development plan permissible to adjacent land. The petitioners also claim directions to the respondents to notify and publish lapsing of reservation in the official Gazette under Section 127 of the MRTP Act.

3. The petitioner Nos.1 and 2 were owners of the land Survey No.83/1 admeasuring 1.77 HR of village Khel-tapmali, Taluka Achalpur, District Amravati (hereinafter referred as "said land" for short) which is situated within the Municipal Limits of the Achalpur Municipal Council. Respondent Nos.1 and 2 are the executives. Respondent No.2 is the Director and Technical Head of Town Planning and Valuation Department of Maharashtra State whereas respondent No.3 is the Regional Transport Officer for Amravati Region and is responsible for establishment of the RTOs in Amravati division and the appropriate authority for whom the reservation is made and under legal obligation for acquiring the affected land as per Section 2(3) of the MRTP Act. Respondent No.4 is the Municipal Council established under the statute for proper management of Achalpur City and is the local authority in view of Section 2(15) of the MRTP Act. In view of 1<sup>st</sup> Revised Development Plan for the City of Achalpur which was published in Government Gazette vide order No.TPS-2899/7639/CR-123/(A)/99/UD-30 dated 15/01/2003 which came into force with effect from 01/03/2003. By the said Development Plan, respondent No.4 – Municipal Council has reserved the above said property for the purpose of Regional Transport Office (ARTO) vide Reservation No.105. The petitioners were deprived from the beneficial use of the said land from residential use as the land owned by them was reserved for the

Development Plan of Achalpur city. Though the land was reserved for the Development Plan but no steps were taken by the respondents for the acquisition of the said land within the prescribed period. Therefore, on 15/10/2020, the petitioners have issued notice under Section 49 and Section 127 of the MRTP Act. By the said notice, they requested the respondents to initiate the acquisition of the said land as it has been reserved for the above stated purpose. The petitioners were exploring both the remedies available to them as per the statue under Section 49 and Section 127 of the MRTP Act. Said notice was sent along with 7/12 extract, 8-A extract, measurement sheet, Part plan and relevant portion of the chart showing details of reservation published under Section 31(6) of the MRTP Act. Said notice was received by respondent No.4 on 23/10/2020. Respondent No.4 vide letter No.4190 dated 11/11/2020 directed the petitioner to issue notice under Section 49 and Section 127 of the MRTP Act separately. In response to the notice issued and received by respondent No.2 by the petitioner to 20/10/2020, respondent No.2 vide letter No.127 dated 07/01/2021 informed the learned Counsel of the petitioners that the said notice is given under Section 49 and Section 127 of the MRTP Act and it is not a valid legal notice and asked the petitioners to issue separate notice under Section 127 of the MRTP Act with all the relevant documents.

4. As per the contention of the petitioners as the notice under Section 49 and Section 127 of the MRTP Act was received by respondent No.4 and respondent No.3 was the appropriate authority responsible for the acquisition of the land, respondent No.4 vide letter No.170 dated 13/01/2021 informed respondent No.3 that the said notice has been received and respondent No.3 is the appropriate authority for the said reservation. Hence, respondent No.3 shall initiate the acquisition proceedings.

5. In response to the joint notice under Section 49 and 127 of the MRTP Act, respondent No.3 had submitted the report to respondent No.2 on 23/03/2021 which was accompanied with the report of respondent No.3 which was submitted to Upper Chief Secretary of the office of Transport Commissioner, Mumbai. As per the said report, proposal for acquisition of the said land had been submitted to the Senior officer for approval of initiation of acquisition of the said land dated 23/10/2020.

6. As the statutory remedy under Section 49(4) of the MRTP Act was initiated by the petitioner hence the hearing was held before respondent No.2. Though respondent No.3 was interested to acquire the said land and the petitioners fulfilled the statutory condition in view of

Section 49(1)(b)&(e), after the hearing respondent No.2 by way of order dated 12/04/2021 under Section 49(4) of the M RTP Act rejected the purchase notice issued by the petitioners.

7. As the petitioners were aggrieved and were desirous to develop the said land, they were pursuing their issues before the appropriate authority. They have issued the notice under Section 49 and Section 127 of the M RTP Act on 15/10/2020. Inspite of rejection of notice under Section 49(4), the cause of action under Section 127 of the M RTP Act was continuing. The respondents were under statutory obligation to commence and complete acquisition proceeding under Section 126(2) and (4) read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 within the statutory period of 24 months from the receipt of the said notice under Section 127 of the M RTP Act. Said purchase notice was served on the respondents on 23/10/2020. The statutory period of 24 months after issuance of notice under Section 127 came to an end on 22/10/2022 and, therefore, the petitioner approached to this Court for direction of lapsing of the reservation as no steps are taken by the respondents to acquire the said land.

8. Said petition is opposed by respondent No.4 on the ground that the notice issued was not a proper notice. It was further submitted

by respondent No.4 that the statutory duty is on respondent No.3 to take timely action for forwarding proposal (ARTO) for acquisition under Section 126 read with Section 19 and to forward the proposal to the Collector. The action was not taken and submitted that respondent No.3 is the appropriate authority and prays for dismissal of the writ petition.

9. Heard Mr. G.K. Mundhada, learned Counsel for the petitioners. He reiterated the contention raised in the writ petition. In addition to the same he submitted that in view of the statutory provisions, it was the duty of the respondents to acquire the land within the statutory period of 24 months after issuance of the purchase notice, no effective steps are taken by the respondents. The statutory period has come to an end on 22/10/2022. The respondents have not issued any notification under Section 126 (2) of the MRTP Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013.

10. Heard Mr. Yash Jaiswal, learned Counsel for respondent No.4 and Mr. N.S. Rao, learned Assistant Government Pleader for respondent No.1. They both have submitted that the notice issued by the petitioner is not within the purview of Section 49 and Section 127 of the MRTP Act. It is further submitted that it was respondent No.3 who has to take appropriate action and prays for the dismissal of the petition.

11. In view of above facts and circumstances, it is necessary to consider whether the petitioners have made out the case for lapsing of the reservation. It is an admitted fact that the land was reserved in the year 2003 vide Reservation No.105 in the Revised Development Plan for the City of Achalpur published in the official gazette on 15/01/2003 which has came into effect on 01/03/2003. The land was reserved for establishment of RTOs in Amravati division. There is no dispute as far as the factual aspect is concerned as no steps for acquiring the land have been taken. The position has reached at the stage where the petitioners who are the owners of the land have now issued a notice under Section 49 as well as under Section 127 of the MRTP Act on 15/10/2020 and 11/11/2020. The statutory period of 24 months has already been expired inspite of which no proceeding for acquisition have been commenced which resulted into filing of the said writ petition.

12. The entire controversy in this petition revolves around Section 126 and Section 127 of the MRTP Act. The statutory mandate under Section 126 denotes that while acquiring the land for public purposes, the due procedure given under Section 126(2) of the MRTP Act is to be followed. Section 126 of the MRTP Act is reproduced hereunder :

***“126. Acquisition of land required for public purposes specified in plans***

*(1) When after the publication of a draft Regional Plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, [any Appropriate Authority may, except as otherwise provided in section 113A] [acquire the land,—*

*(a) by agreement by paying an amount agreed to, or*

*(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor’s interest to be determined by any of the said Authorities concerned [on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], Floor Space Index [FSI] or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or*

*(c) by making in application to the State Government for acquiring such land [under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections [or under the provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], as the case may be, shall vest absolutely free from all*

*encumbrances in the Planning Authority. Development Authority, or as the case may be, any Appropriate Authority.*

*(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or [if the State Government (except in cases falling under section 49 (and except as provided in section 113A)] itself is of opinion] that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, [in the manner provided in section 6 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section :*

*[Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]*

*[(3) On publication of a declaration under the said section 19], the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be,—*

*(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;*

*(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as undeveloped area; and*

*(iii) in any other case, the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft*

*town planning scheme:*

***Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 :***

***Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under subsection (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.]***

***[(4) [Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration,] is not made, within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning [(Amendment) Act, 1993)], the State Government may make a fresh declaration for acquiring the land [under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.]”***

13. Whereas Section 127 of the MRTP Act speaks about consequences if timeline is not followed by the Government by taking appropriate steps. It states that if no steps are taken by appropriate authority within 24 months from the date of service of such notice, the

reservation, allotment or designation shall be deemed to have lapsed. Thus, the MRTP Act fixes timeline which have to be followed, failing which consequences of lapses to be followed.

14. The Hon'ble Apex Court in the case of ***Chhabildas Vs. State of Maharashtra and ors. [(2018) 2 SCC 784]*** in paragraph No.7 observed thus :

*“(7). If within one year from the date of confirmation of the notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under Section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.”*

15. In another judgment of the Hon'ble Apex Court in the case of ***Prafulla C. Dave and ors. vs. Municipal Commissioner and ors. [(2015) 11 SCC 90]*** held thus:

*“21. Under Section 127 of the M.R.T.P. Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the*

*appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the M.R.T.P. Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or proceeding for acquisition are not initiated within 10 years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to be lapsed within which time the authority can still initiate the necessary action. Section 127 of the M.R.T.P. Act or any other provision of the M.R.T.P. Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of 10 years. On the contrary, upon expiry of the said period of 10 years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127 of the M.R.T.P. Act.....”*

16. In *Kolhapur Municipal Corporation and others. vs. Vasant Mahadev Patil (dead), through LRs & Others, [2022 LawSuit (SC) 171]*, the Hon'ble Supreme Court held that when by operation of law the reservation is deemed to have lapsed under Section 127(1) of the Act of

1966 the reservation lapses for all purposes and for all times to come. In the said decision the Hon'ble Supreme Court was further pleased to observe that on the deemed lapse of such reservation under Section 127(1) of the said Act no writ of mandamus can be issued by the High Court to direct acquisition of that land and pay compensation to the land owners as on the lapse of such reservation the land becomes free and the land owners can use the land as if there was no reservation but subject to the provisions of the Act of 1966.

17. In the light of what has been held hereinabove, we find that as no steps are taken by the respondents, the petitioners are entitled for the relief of a direction to permit them to develop the land that was subjected to reservation and notice under Section 127(1) of the MRTP Act was issued. Accordingly, it is held that in terms of notice dated 15/10/2020 and 11/11/2020 issued with regard to the land bearing Survey No.83/1 admeasuring 1.77 HR of village Khel-tapmali, Taluka Achalpur, District Amravati, the reservation is deemed to have lapsed. The petitioners are hence entitled for the relief of a direction to permit them to develop the land as prayed by them which was subjected for reservation and notice under Section 127(1) of the MRTP Act was issued.

18. In the result, we proceed to pass the following order :

(i) Writ petition is allowed.

(ii) It is declared that the reservation in the development plan in respect of Survey No.83/1 admeasuring 1.77 HR of village Khentapmali, Taluka Achalpur, District Amravati reserved vide Reservation No.105 stands lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

(iii) Respondent No.2-Director of Town Planning, State of Maharashtra, Pune shall issue notification indicating lapsing of aforesaid reservation within a period six weeks from the receipt of copy of the judgment.

(iv) It is declared that the petitioners are free to utilize the aforesaid land in the manner as permissible under the development plan as applicable to the adjoining land.

19. Rule is made absolute in the aforesaid terms. No costs.

**(URMILA JOSHI-PHALKE, J.)      (AVINASH G. GHAROTE, J.)**