



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

WRIT PETITION NO.4532 OF 2024

PETITIONERS : 1 **Abdul Rashid Shaik Musa,**
Age: 58 years, Occ: Business, R/o Mujafar
Nagar Akola, Tq. & Dist. Akola.

2 **Shital Sanjay Bharsakale,**
Age: 42 years, Occ: Business, R/o Shivaji
Nagar, Banosa, Daryapur, Tq. Daryapur,
Dist. Amravati.

..VERSUS..

RESPONDENTS : 1 **The State of Maharashtra** through the
Director of Town Planning, State of
Maharashtra, Central Building, Pune.

2 **The Municipal Council (M.C.)/Nagar
Parishad** through its Chief Officer at
Daryapur, Tq. Daryapur, Dist. Amravati.

3 **Assistant Director Town Planner,** Tatte
Building, Behind Labour Court, Camp,
Amravati.

Shri. G. K. Mundhada, Advocate for Petitioners.
Ms. Kalyani P. Marpakwar, AGP for Respondents/State.
Shri. M. I. Dhatriak, Advocate for Respondent No.2.

CORAM : **ANIL S. KILOR AND RAJ D. WAKODE, JJ.**

DATE : **3rd AUGUST, 2026.**

ORAL JUDGMENT : (PER : RAJ D. WAKODE, J.)

. Heard Shri. G. K. Mundhada, learned counsel for the
petitioners, Ms. Kalyani P. Marpakwar, learned Asst. G. P. for
respondent Nos.1 and 3/State and Shri. M. I. Dhatriak, learned
counsel for respondent No.2.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

3. The petitioners have approached this Court seeking a declaration that the reservation affecting the land owned by them has lapsed under Section 49(7) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the aforesaid Act” for the sake of brevity).

4. Brief facts, leading to filing of the present writ petition, are as follows:

4.1. Petitioners are the joint owners of land bearing Survey No.129, area admeasuring 0.87 H.R., situated at Village Daryapur, Taluka Daryapur, District Amravati (hereinafter referred to as “the aforesaid land”). The aforesaid land falls within the jurisdiction of the Municipal Council, Daryapur.

4.2. The Final Development Plan for Daryapur Municipal Council came to be sanctioned under Section 31 of the aforesaid Act *vide* notification dated 28.03.2013 and the same came into force on 29.04.2013. Under the aforesaid Development Plan, the aforesaid land was reserved for “Play Ground and Library” under Reservation Nos.14 and 15 respectively.

4.3. Since the petitioners intended to develop the aforesaid land, on 06.08.2022, they submitted an application seeking permission for development of the aforesaid land under Section 44 of the aforesaid Act. The aforesaid application came to be rejected by respondent No.2 - The Municipal Council/ Nagar Parishad, on 10.09.2022 on the ground that the aforesaid land was affected by the reservations under the sanctioned Development Plan. Consequently, the petitioners issued a purchase notice dated 11.10.2022 under Section 49(1) of the aforesaid Act calling upon the Appropriate Authority to acquire the aforesaid land, which is at record page No.19 (Annexure - A). The said purchase notice was duly served upon the respondents. After following due procedure contemplated under Section 49 of the aforesaid Act, and after granting an opportunity of hearing to the parties, respondent No.1 - State of Maharashtra, confirmed the purchase notice by order dated 13.04.2023 under Section 49(4) of the aforesaid Act and directed respondent No.2 to initiate acquisition proceedings by making an application for acquisition of the aforesaid land within the statutory period.

4.4. Sub-section (7) of Section 49 of the aforesaid Act provides that if, within one year from the date of confirmation of the purchase notice, the Appropriate Authority fails to make an

application to acquire the land as required under Section 126 of the aforesaid Act, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed and the land shall become available to the owner for development otherwise permissible in the case of adjacent land under the relevant Development Plan.

5. The learned counsel for petitioners, Shri. G. K. Mundhada submitted that, although the purchase notice was confirmed on 13.04.2023, respondent No.2 failed to make the application for acquisition within the statutory period of one year. It is their specific case that the proposal for acquisition was submitted in the Office of the Collector only on 14.05.2024, i.e. after expiry of the statutory period on 12.04.2024. It is, therefore, contended that the reservations stood lapsed by operation of Section 49(7) of the aforesaid Act.

6. Respondent No.2 has filed its submissions opposing the petition. Its principle contention is that the proposal for acquisition was prepared and forwarded on 04.04.2024, i.e. before expiry of one year from the date of confirmation of the purchase notice and therefore, the requirement of Section 49(7) of the aforesaid Act stood complied with. According to respondent No.2,

the subsequent date on which the proposal came to be received in the Office of the Collector is inconsequential.

7. Respondent Nos.1 and 3 have also opposed the petition. While admitting that the proposal was received in the Office of the Collector on 14.05.2024, it is contended that in view of Section 148A of the aforesaid Act, the period during which the Model Code of Conduct for the Parliamentary Elections remained in operation is liable to be excluded while computing the limitation prescribed under Section 49(7) of the aforesaid Act. It is, therefore, submitted that the application made by respondent No.2 must be treated as having been made within the prescribed period and consequently the reservation has not lapsed.

8. The Hon'ble Supreme Court of India, while considering the scheme of Section 49 of the aforesaid Act, in the case of *Chhabildas vs. State of Maharashtra and Ors.* reported in *(2018) 2 SCC 784*, after considering the earlier line of authorities, has authoritatively held as under:

“23. On a conspectus of the above authorities, the following position in law emerges:

23.1. In all Section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc. shall be deemed to have lapsed.

23.2. If within the period specified in Section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein the market value shall be the market value of the land as on the date of Section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this is not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

23.3. If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under Section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7)."

Thus, the Hon'ble Supreme Court of India has unequivocally held that in all cases arising under Section 49 of the aforesaid Act, once the purchase notice is confirmed, the Appropriate Authority is under a statutory obligation to make an application for acquisition of the land within one year from the date of such confirmation. Failure to make the requisite application within the prescribed period results in the automatic lapsing of the reservation, designation or restriction on development by operation of Section 49(7) of the aforesaid Act.

9. This Court, while applying the aforesaid principles in ***Harishchandra Agrawal vs. State of Maharashtra*** (Writ Petition

No.4946 of 2024, decided on 30.03.2026), held that for the purposes of Section 49(7) of the aforesaid Act, the material date is the date on which the application is actually made to the Collector and not the date on which the proposal is merely prepared or dispatched by the Appropriate Authority. In the said case, though the proposal had been prepared before expiry of the statutory period, it was found that the same had actually reached the Office of the Collector after the prescribed period of one year. Consequently, this Court held that the reservation had lapsed under Section 49(7) of the aforesaid Act.

10. In the present case, there is no dispute that the purchase notice issued by the petitioners came to be confirmed by respondent No.1 on 13.04.2023 under Section 49(4) of the aforesaid Act. Consequently, the Appropriate Authority was required to make an application for acquisition of the aforesaid land within one year therefrom, i.e. on or before 12.04.2024.

11. It is also not in dispute that though, respondent No.2 prepared the proposal for acquisition on 04.04.2024, the said proposal was actually received in the Office of the Collector on 14.05.2024. Respondent Nos.1 and 3 have specifically admitted the said date in their affidavit-in-reply. Thus, the factual position

regarding the date on which the application reached the Office of the Collector is not in controversy.

12. The principal contention advanced on behalf of respondent Nos.1 and 3 is that, in view of Section 148A of the aforesaid Act, the period during which the Model Code of Conduct for the Parliamentary General Elections remained in force is liable to be excluded while computing the period prescribed under Section 49(7) of the aforesaid Act. It is, therefore, submitted that the proposal received by the Collector on 14.05.2024 must be treated as having been made within the prescribed period.

13. We have carefully considered the aforesaid submission. Section 148A, introduced by Maharashtra Act No.19 of 2020, provides for exclusion of time while computing the period in relation to any Development Plan, Regional Plan or Scheme under the provisions of Chapters II, III, IV and V of the aforesaid Act, where such period is affected due to enforcement of the Model Code of Conduct in respect of any election. The obligation cast upon the Appropriate Authority under Section 49(7), however, is to make an application for acquisition of the land as required under Section 126 of the aforesaid Act. Section 126 forms part of Chapter VII dealing with acquisition of land. *Prima facie*, therefore, the exclusion

contemplated by Section 148A does not extend to the statutory obligation of making an application for acquisition under Section 49(7) of the aforesaid Act.

14. Be that as it may, even assuming that the benefit of Section 148A is available, respondent Nos.1 and 3 have not placed any material on record to demonstrate that the delay in making the application was occasioned due to enforcement of the Model Code of Conduct. Except making a bald assertion in the affidavit-in-reply that the Code of Conduct remained in force during the relevant period, no material has been produced to show that the Appropriate Authority was either prohibited or otherwise prevented from making the application within the statutory period prescribed under Section 49(7) of the aforesaid Act. In absence of any such material, the contention cannot be accepted merely on the basis of a general assertion.

15. On the contrary, the record indicates that respondent No.2 itself prepared a proposal on 04.04.2024 and submitted the same on 14.05.2024 i.e. during the existence of Code of Conduct. Respondent Nos.1 and 3, in their reply, have categorically stated that the Model Code of Conduct was operating upto 06.06.2024. Thus, the proposal was submitted during the very period when the Model

Code of Conduct was admittedly in operation. This circumstance itself demonstrates that the Appropriate Authority was not disabled from undertaking the statutory exercise of forwarding the proposal for acquisition. The act of forwarding an acquisition proposal pursuant to the confirmation of a purchase notice under Section 49(4) is a statutory administrative action undertaken in discharge of an existing legal obligation and not a fresh policy decision attracting the rigors of the Model Code of Conduct. However, the proposal admittedly came to be received in the Office of the Collector only on 14.05.2024, i.e. after expiry of the statutory period prescribed under Section 49(7) of the aforesaid Act.

16. In view of the aforesaid discussion and the settled legal position, we find that the Appropriate Authority failed to make the application for acquisition of the aforesaid land within the period of one year from the date of confirmation of the purchase notice, as contemplated under Section 49(7) of the aforesaid Act. The proposal, though prepared on 04.04.2024, admittedly reached the Office of the Collector only on 14.05.2024. In view of the law laid down by the Hon'ble Supreme Court of India in the case of Chhabildas (supra) and followed by this Court in Harishchandra Agrawal (supra), the relevant date is the date on which the application is actually made to the competent Authority.

Consequently, the reservation affecting the aforesaid land stood lapsed on expiry of the statutory period prescribed under Section 49(7) of the aforesaid Act.

17. Learned counsel appearing for the petitioners has also contended that the proposal submitted by respondent No.2 was incomplete inasmuch as the mandatory requirements contemplated under the applicable provisions governing acquisition were not complied with and has relied upon the communication dated 26.05.2026 issued by the Office of the Deputy Collector (Land Acquisition). Since we have already held that the application itself was not made within the period prescribed under Section 49(7) of the aforesaid Act, it is not necessary for us to examine the aforesaid contention on merits. The said question is, therefore, left open.

18. In the light of the above discussion, we have no hesitation in holding that the reservation affecting the petitioners' land has lapsed under Section 49(7) of the aforesaid Act. Consequently, the petitioners are entitled to develop the aforesaid land in accordance with the user permissible in respect of the adjoining land under the relevant Development Plan. Hence, we proceed to pass the following order:

ORDER

- (i) The writ petition is **allowed**.

(ii) It is hereby declared that Reservation No.14 of “Play Ground” and Reservation No.15 of “Library”, affecting the land bearing Survey No.129, area admeasuring 0.87 H.R., situated at Village Daryapur, Taluka Daryapur, District Amravati, owned by the petitioners, have lapsed under Section 49(7) of the Maharashtra Regional and Town Planning Act, 1966.

(iii) It is further declared that the petitioners are entitled to develop the aforesaid land in the manner permissible to the adjacent land under the relevant Development Plan.

(iv) The concerned respondents shall, within a period of eight weeks from the date of receipt of the copy of this judgment and order, publish the necessary notification in the Official Gazette declaring that Reservation No.14 (Play Ground) and Reservation No.15 (Library) affecting the aforesaid land have lapsed under Section 49(7) of the Maharashtra Regional and Town Planning Act, 1966.

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

(RAJ D. WAKODE, J.)

(ANIL S. KILOR, J.)