



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

WRIT PETITION NO.5752 OF 2023

PETITIONER : Arun S/o Murlidhar Agrawal,
Aged about 54 years, Occ: Agriculturist, R/o
Zakir Hussain Ward, Umarched, Tahsil
Umarched, District Yavatmal.

..VERSUS..

RESPONDENTS : 1 District Collector, Yavatmal.
2 Sub Divisional Officer cum Land
Acquisition Officer, Umarched, Tah.
Umarched, Dist. Yavatmal.
3 Municipal Council, Umarched, through its
Chief Officer, Umarched, Tq. Umarched,
Dist. Yavatmal.
4 State Government, through its Secretary
Ministry of Urban Development Department,
Mantralaya, Mumbai.

Shri. A. M. Ghare, Advocate for Petitioner.
Shri. P. P. Pendke, AGP for Respondents/State.
Shri. V. R. Chaudhari, Advocate for Respondent No.3.

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

DATE : **4th AUGUST, 2026.**

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

. At the outset, Shri. Ghare, learned counsel for
petitioner, seeks leave of this Court to do necessary correction in
prayer clause. Permission granted. Necessary amendment to be
carried out forthwith.

2. Heard Shri. A. M. Ghare, learned counsel for petitioner, Shri. Piyush P. Pendke, learned Asst. G. P. for respondent Nos.1, 2 and 4 and Shri. V. R. Chaudhari, learned counsel for respondent No.3.

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

4. By the present petition, the petitioner seeks a declaration that the reservation bearing No.1 (Playground and 12 Meter Road) affecting the remaining land admeasuring 1.23 H.R. out of Field Survey No.48, Mouza Umarkhed, Tahsil Umarkhed, District Yavatmal, has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, "the MRTTP Act"), on the ground that despite service of the purchase notice, the respondents failed to take steps for acquisition within the period prescribed by law.

5. Petitioner is the owner of Field Survey No.48, Mouza Umarkhed, Tahsil Umarkhed, District Yavatmal, admeasuring 1.89 H.R. The Development Plan for the Municipal Council, Umarkhed came into force with effect from 15.04.1999, wherein the petitioner's land was reserved for Playground and 12 Meter Road under Reservation No.1 and for Primary School and Secondary

School under Reservation Nos.2 and 5. It is not in dispute that out of total land i.e. 1.89 H.R., the land admeasuring 65R came to be acquired pursuant to the Award dated 12.04.2012 in respect of Reservation Nos.2 and 5. The present petition concerns the remaining land admeasuring 1.23 H.R., which continues to be reserved under Reservation No.1.

6. According to the petitioner, after expiry of the statutory period prescribed under the MRTP Act, his predecessor-in-title as well as the petitioner repeatedly called upon the Municipal Council to acquire the reserved land. The petitioner, in particular, addressed a communication dated 12.10.2009 asserting that despite the earlier notice, the respondents had failed to acquire the remaining land within the prescribed period and therefore, the reservation had ceased to operate. The Municipal Council, by its reply dated 02.12.2009, rejected the petitioner's claim on the ground that the Development Plan remained operative for a period of twenty years and therefore, the reservation had not lapsed.

7. The petitioner, further, contends that although the Municipal Council passed resolutions and forwarded the proposals recommending acquisition of the remaining land, no steps contemplated under Section 126 of the MRTP Act were taken

within the statutory period. It is, therefore, the petitioner's case that the reservation affecting the remaining land stood lapsed by operation of Section 127 of the MRTP Act. Aggrieved thereby, the present petition has been filed seeking a declaration of lapsing of reservation.

8. Respondent No.2 - Sub Divisional Officer cum Land Acquisition Officer, Umarkhed, in its affidavit-in-reply, has admitted that the land admeasuring 65R out of Field Survey No.48 was acquired pursuant to the Award dated 12.04.2012. It has, further, admitted that the Municipal Council passed a resolution on 25.02.2010 recommending acquisition of the remaining land reserved for Playground and 12 Meter Road and that the proposals for acquisition were forwarded from time to time. According to respondent No.2, a public notice was also issued by the Land Acquisition Officer. It is, however, contended that no independent cause of action survives against respondent No.2.

9. Respondent No.3 - Municipal Council, Umarkhed, has opposed the petition principally on the ground that no notice under Section 127 of the MRTP Act was served upon the Municipal Council and therefore, the petition is premature. While admitting the reservation of the land under the Development Plan and the

proposals forwarded for acquisition, respondent No.3 has contended that acquisition proceedings had been initiated by forwarding proposals to the Collector and therefore, the reservation had not lapsed.

10. In the backdrop of the rival pleadings, the question that arises for consideration is whether the reservation affecting the petitioner's remaining land admeasuring 1.23 H.R. has lapsed under Section 127 of the MRTP Act on account of failure of the respondents to take the statutory steps for acquisition within the prescribed period.

11. The issue is no longer *res integra*. Section 127 of the MRTP Act contemplates that if the land reserved, allotted or designated in a Development Plan is not acquired within ten years from the date on which the final Development Plan comes into force, the owner or any person interested in the land may serve a purchase notice. If, within the statutory period prescribed after service of such notice, the land is not acquired or no steps as contemplated under Section 126 of the MRTP Act are commenced for its acquisition, the reservation is deemed to have lapsed and the land becomes available to the owner for development as otherwise permissible in law. The said legal position stands authoritatively

settled by the Constitution Bench of the Hon'ble Supreme Court in *Girnar Traders (3) vs. State of Maharashtra* and has been consistently followed thereafter.

12. The aforesaid principle has been reiterated by the Hon'ble Supreme Court of India in *Shrirampur Municipal Council, Shrirampur vs. Satyabhamabai Bhimaji Dawkher and others*, reported in *(2013) 5 SCC 627*, wherein it has been held that :

“42. We are further of the view that the majority in Girnar Traders (2) [Girnar Traders (2) v. State of Maharashtra, (2007) 7 SCC 555] had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

43. The expression “no steps as aforesaid” used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilised for execution of the development plan/town planning scheme, etc., are not left high and dry. This is the reason why time-limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127

or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution."

Thus, the expression "steps" occurring in Section 127 of the MRTP Act, cannot be construed to mean every administrative act or internal correspondence. The steps contemplated by the statute are those which culminate in commencement of acquisition in the manner prescribed under Section 126 of the MRTP Act. Mere resolutions, recommendations, proposals or inter-departmental correspondence do not arrest the statutory consequence envisaged under Section 127 of the MRTP Act.

13. Reverting to the facts of the present case, it is not in dispute that the Development Plan came into force on 15.04.1999. It is equally not in dispute that, except acquisition of land admeasuring 65R reserved for Primary School and Secondary School, the remaining land admeasuring 1.23 H.R. continued under Reservation No.1 for Playground and 12 Meter Road. The respondents themselves have admitted that the Municipal Council merely passed resolutions recommending acquisition and forwarded the proposals to the Collector from time to time. It is, further,

admitted that a public notice was issued by the Land Acquisition Officer. However, neither of the respondents have placed any material on record to demonstrate that a declaration under Section 126 of the MRTP Act came to be issued or that acquisition proceedings, as contemplated by the statute, were commenced in respect of the remaining land.

14. The principal objection raised by Respondent No.3 is that the petitioner did not serve a notice under Section 127 of the MRTP Act and, therefore, the present petition is premature. We are unable to accept the said contention. A plain reading of the communication dated 12.10.2009, placed on record page no. 25 (Annexure-E), leaves no manner of doubt that the petitioner specifically asserted that despite the earlier written notice, the respondents had failed to acquire the reserved land within the prescribed period and that the reservation had consequently come to an end. Merely because the communication does not expressly refer to Section 127 of the MRTP Act would not denude it of its true legal character. The substance of the communication unmistakably satisfies the requirements of a purchase notice contemplated under Section 127 of the MRTP Act. The respondents admittedly received the said communication and replied thereto on 02.12.2009. Their reply does not dispute its receipt; rather, the petitioner's claim was

rejected on the erroneous premise that the Development Plan remained operative for a period of twenty years and, therefore, the reservation could not lapse. Such an understanding is contrary to the statutory scheme embodied in Section 127 of the MRTTP Act.

15. Even otherwise, the material placed on record demonstrates that the respondents merely passed resolutions, forwarded acquisition proposals and issued a public notice. Such acts, by themselves, do not amount to commencement of acquisition proceedings in the manner contemplated under Section 126 of the MRTTP Act. Significantly, respondent No.3 has itself stated in its affidavit that despite forwarding the proposals, no action has been taken by the Land Acquisition Officer. Thus, the respondents' own pleadings establish that no effective steps for acquisition of the remaining land were taken within the meaning of Section 127 of the MRTTP Act. Consequently, the statutory consequence of lapsing cannot be avoided.

16. In view of the aforesaid discussion, we are of the considered opinion that the respondents have failed to demonstrate that the acquisition of the remaining land admeasuring 1.23 H.R. out of Field Survey No.48, reserved under reservation No.1 for Playground and 12 Meter Road, was commenced in accordance with

the provisions of Section 126 of the MRTP Act within the period prescribed under Section 127 thereof. The purchase notice dated 12.10.2009 having been remained uncomplied with, the statutory consequence contemplated under Section 127 of the MRTP Act was necessarily followed. The reservation, therefore, stood lapsed by operation of law and the land has become available to the petitioner for development in accordance with law.

17. The respondents have also sought to justify the continuation of the reservation by relying upon the subsequent exercise of revising the Development Plan. Such an exercise cannot defeat the statutory right which had already accrued in favour of the petitioner upon the respondents' failure to take steps for acquisition within the period prescribed under Section 127 of the MRTP Act. In Writ Petition No. 8756 of 2018 (*Santu Sukhdeo Jaibhave and others vs. Nashik Municipal Corporation and others*), the Division Bench of this Court, has held thus:

“41. In the present case, the notification under Section 6, admittedly, has not been issued. The statutory notice viz. the Purchase Notice under Section 127 of the MRTP Act was issued on 14th July 2015 and it is evident that no steps as contemplated under Section 126(1)(c) read with Section 127 were taken before the expiry of the statutory period of 24 months. We are unable to agree with the submissions of Ms. Deshmukh on the application of the judgment of Prafulla C. Dave (supra) as it would deprive the petitioners of their statutory rights. In this regard, the Apex Court in the case of Godrej And Boyce Manufacturing Company Limited (supra) has held that the statutory right accrued to the owners cannot be taken away by an attempt

to Impose fresh reservation. We are also unable to agree with the contention of Mr. Patil that the publication of the Draft Revised Plan having been published prior to the issuance of the Purchase Notice and the same would have an effect of continuing the reservation on account of the same being sanctioned subsequently.”

18. Thus, once the statutory right under Section 127 of the MRTP Act, has accrued to the landowner, the same cannot be taken away by an attempt to impose a fresh reservation in a revised Development Plan. The said principle squarely applies to the facts of the present case. Accordingly, we proceed to pass the following order:

ORDER

- (i) The writ petition is allowed.
- (ii) It is declared that the reservation bearing Reservation No.1 (Playground and 12 Meter Road) affecting the remaining land admeasuring **1.23 H.R.** out of Field Survey No.48, Mouza Umarkhed, Tahsil Umarkhed, District Yavatmal, has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.
- (iii) Respondent No.4 – State Government shall take consequential steps and publish the notification contemplated under Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966, as

expeditiously as possible and preferably within a period of twelve weeks from the date of receipt of this judgment and order.

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

(RAJ D. WAKODE, J.)

(ANIL S. KILOR, J.)