

(2025) 04 BOM CK 0272
In the Bombay High Court
Case No : Writ Petition No. 9318 Of 2023

Sunil Laxman Dond And Ors

APPELLANT

Vs

Commissioner, Nashik Municipal Corporation And Ors

RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Regional and Town Planning Act, 1966 — Section 127, 127(2)
Land Acquisition Act, 1894 — Section 6

Citation : (2025) 04 BOM CK 0272

Hon'ble Judges : A. S. Gadkari, J;Kamal Khata, J

Bench : Division Bench

Advocate : Shrishailya S. Deshmukh, M.L. Patil, M.P. Thakur

Final Decision : Allowed

Judgement

Kamal Khata, J

1) Rule made returnable forthwith. By consent of parties, the Petition is heard finally.

2) Heard Mr. Shrishailya Deshmukh for the Petitioners; Mr. M.L. Patil for Respondent No.1 and Ms. M.P. Thakur, AGP for Respondent Nos.2 to 4. Perused entire record produced before us.

3) By this Writ Petition under Article 226 of the Constitution of India, Petitioners seek a declaration that, their land bearing Survey No.7A (part) Hissa No. 4A, village Chehedi Budruk (writ land) situated within the jurisdiction of Nashik Municipal Corporation ('NMC') be released from reservation in the final development plan. Additionally, they seek a declaration that the fresh reservation No.473 and 474 upon the writ land

that is notified on 9th January 2017 is illegal in view of the purchase notice duly served on 3rd March 2014, and a direction to the State Government to issue a notification, in terms of Section 127(2) of the Maharashtra Regional and Town

Planning Act, 1966 ('MRTP Act') within a period of 3 months, to declare lapsing of reservation on the writ land and to permit the Petitioners to develop their land in accordance with law.

BRIEF FACTS:

4) The Petitioners are residents of Nasik and are the owners of agricultural land bearing Survey No.7/A/4/A admeasuring around 78 gunthas situated at village Chehedi Budruk, within the jurisdiction of Nasik Municipal Corporation (NMC). The development plan for Nasik City was sanctioned by the Urban Development Department in 4 parts and published on 28th June 1993, 19th August 1994, 15th May 1995 and 19th February 1996 respectively. The Petitioner's land measuring 16,000 sq. mtrs. is shown as reserved for public purpose, namely "High School and Primary School" having reservation No.143. The Petitioners sent the purchase Notice on 3rd March 2014 under Section 127 of the MRTP Act to the Respondents on the failure of NMC to acquire the land for more than two decades (statute mandates 10 years). The Assistant Director of Town Planning ('ADTP') of NMC acknowledged the receipt of the Notice served by the Petitioners and called upon them to submit documents showing their ownership to the property, map of the property and other documents including measurement sheet issued by the Superintendent of Land Records. The letter also mentioned that, if the Petitioners were ready to hand over the area under reservation to the Corporation then they would be entitled to TDR and for that the agreement will be executed. By the letter dated 11th April 2014, the Petitioners informed the Estate Officer of NMC that, they were not agreeable to accept TDR as compensation for their reserved land.

5) Upon the expiry of the statutory period of 12 months from the service of purchase Notice, on 3rd March 2015 the Petitioners informed the Respondents that, the reservation upon the land had lapsed and they were entitled to develop their land in accordance with law. In response to the Petitioners letter dated 3rd March 2015 the NMC through the Estate Officer on 10th April 2015, addressed a letter stating that, the proposal for land acquisition in respect of the Petitioners land is submitted to the Office of the Collector on 22nd December 2014 and was pending decision. Later, on

27th May 2015, the ADTP, Nashik by his letter informed the Petitioners that the Petitioners proposal as per their intimation letter dated 3rd March 2015 for land acquisition is rejected by the Collector, Nashik. The Petitioners were informed that, the land acquisition proposal, submitted by the NMC

for acquisition of the Petitioners' land was sent back on 17th April 2015 to the NMC for compliance. The Petitioners once again addressed reminders

to the NMC and the other Respondents on 25th March 2015, 21st April 2023 and 23rd May 2023 intimating them that, since no steps were taken pursuant to the purchase Notice issued by them under Section 127, the reservation had lapsed and demanded the land be released. These letters demanded issuance of

necessary notification declaring the release of the land from reservation from the concerned Authorities. Since they failed to

issue the notification, the Petition was filed on 19th June 2023.

6) Mr. Deshmukh learned counsel for the Petitioners, invited our attention to the decision annexed at page 56 of the Writ Petition No.12016 of 2016 in respect of two similar Writ Petitions, who had given similar Notices under Section 127 of the MRTP Act involving lands from the same survey number i.e. 7A at Village Chehedi, Budruk. By the judgement dated 10th October 2022, this Court had allowed the Writ Petition and declared lapsing of reservation on their land and released it from reservation. He also brought to our notice that, the Special Leave Petition filed by the Commissioner, Nashik Municipal Corporation had been rejected by the Hon'ble Supreme Court as noted in paragraph 6 of the Order dated 10th October 2022, and the notification for their release has been issued.

6.1) Mr. Deshmukh submitted that, the letter dated 17th April 2015 clearly demonstrates that the land acquisition proposal submitted by the NMC was merely a formality to show that some steps have been taken. According to him, no action was taken to acquire the land, no revised proposal was sent to the Office of the Collector and according to the well settled law as laid down in the case of Girnar Traders V/s. State of Maharashtra & Ors. Reported in (2007) 7 SCC 555 since no steps were taken for acquisition, by publication of declaration under Section 6 of the Land Acquisition Act, 1894, as provided by Section 127(2) of the MRTP Act, the reservation has lapsed.

6.2) He submitted that, certain part of the land belonging to the Petitioners Survey No.7A is already acquired for highway and DP road and therefore the Petitioners cannot be put to further hardships by keeping their land under reservation for an indefinite period. He contended that, the draft revised plan for the NMC being published on 4th June 2015 and its sanction coming into effect on 9th February 2017 showing the Petitioners land under Reservation No.474 for Public Amenities and No.473 for Fire Brigade Station will not have an effect of continuing the reservation. He accordingly submitted that, the Petition be made absolute.

7) Mr. Patil learned Advocate for Respondent No.1-NMC submitted that, the land acquisition proposal had been sent to the Deputy Superintendent of Land Records, Nashik on 9th February 2016 for joint measurement. The fee for the measurement was deposited which was communicated to their Office on 14th September 2016. A reminder letter to the Deputy Superintendent of Land Records was sent on 10th August 2018 in response to the same, the Deputy Superintendent submitted the panchnama by the Surveyor dated 16th November 2016 and 24th October 2017 informing the NMC that, the land owner had taken objection on the measurement being taken. Another couple of reminders were sent for measurement to the Deputy Superintendent of Land records on 20th July 2022, 16th December 2022 and 10th May 2023. He submitted that,

the NMC also raised a query with regard to the acquisition while giving reference to the two Writ Petitions. In response, the Deputy Superintendent of Land Records called upon the NMC to submit documents for measurement. He submitted that, the Deputy Superintendent of Land Records and NMC would deposit 30% of the award amount after they received the joint measurement report. The Office of the NMC also sent a further letter dated 19th October 2023 calling upon the NMC to deposit 30% of the award amount. However, the amount was not deposited. He therefore relying on the Affidavit of Smt. Seema Arjunrao Ahire dated 8th December 2023 submitted that, this Court may pass such Orders that may be necessary.

8) Mr. Patil could not distinguish the judgement of this Court from the case of Damu Vaman Mogal & Ors. V/s. The Hon'ble Minister for Urban Development, State of Maharashtra, Mantralaya, Mumbai & Ors. in Civil Writ Petition No.12016 of 2016, BHC-AS:25126-DB. Mr. Patil fairly conceded that the facts in this Petition were identical to the facts involved in the case of Damu Vaman Mogal (supra).

REASONS AND CONCLUSIONS:

9) It is an undisputed fact that, a Purchase Notice was issued for the writ land on 3rd March 2014. It was received and responded to, by the Respondents. It also called upon the Petitioners to submit documents showing ownership to the property and also mentioned that they were willing to hand over TDR as and by way of compensation for the land. The subsequent correspondence by the Petitioners with the Respondents also clarified that, they were not interested in accepting the TDR as compensation for their land. The 12 month statutory period under the Notice expired on 3rd March 2015. Furthermore, it is noted that, no steps have been taken to acquire the land until the filing of the Petition on 19th June 2023.

10) We find that, the Respondents have failed to take necessary steps to acquire the land as per the settled law in Girnar Traders (supra) as required under Section 127(2) of the MRTP Act. The contention that the Purchase Notice is defective is merely an afterthought. We respectfully agree with the judgement in the case of Shri Popat Kisan Maske V/s. The Hon'ble Minister for Urban Development reported in 2017 SCC OnLine Bom 9696 where it was held that, not submitting of requisite documents together with the purchase Notice does not invalidate the Purchase Notice.

11) It is not the case of the Respondents that, the steps for acquisition could not be commenced or completed for want of relevant documents from the Petitioner. There were several correspondences exchanged even after the purchase notice was issued in which the Respondents have not sought the documents for initiating or completion of steps as such. Accordingly, we find that such contentions raised after due lapsing has already taken place cannot be a ground for invalidating notice issued almost ten years prior to the filing of the Petition.

12) With regard to the contention that, there was fresh reservation imposed in the Development Plan, in the case of Godrej and Boyce Manufacturing Company Limited vs State of Maharashtra and Others reported in (2015) 11 SCC 554 followed by this Court in the case of Santu Sukhdeo Jaibhave and Others vs Nashik Municipal Corporation and Others reported in 2022 SCC OnLine Bom 5273, it was held that the statutory right accrued to the owners cannot be taken away by an attempt to impose fresh reservation in a development plan. The ratio of the above cases squarely applies to the present case.

13) It would be pertinent to note that our Courts as early as in the year 2015 in the case of Uday Madhavrao Patwardhan and Others V/s. Sangli, Miraj and Kupwad Municipal Corporation, Sangli and Others reported in 2015 SCC OnLine Bom. 659, have held that there is no need for the owner to seek a declaration from the court. This position in law is reiterated by the court in the case of Shivgonda Annapatil V/s. Sangli, Miraj and Kupwad City Municipal Corporation reported in 2023 BHC AS-29348 DB. Although the law on this subject is clear, citizens are compelled to file Writ Petitions in this court for the said reliefs. The State must take steps and issue appropriate directions to all concerned to help similarly placed citizens and prevent filing of such Writ Petitions and lessen the litigation.

14) In the case of Arun Motiram Nimkar V/s. Municipal Corporation of City of Amravati and Others reported in 2013 SCC online 739, the Co-ordinate Bench of this court held that, the Petitioners will be entitled to proceed with the development of the property and the Respondents will not delay in granting permissions as the notification in the Official Gazette is merely a ministerial act.

15) We accordingly pass the following order:

(a) Rule is made absolute in terms of prayer clauses(a) to (d).

(b) The State Government to notify the lapsing of the reservation of the Petitioners land by publishing it in the Official Gazette as per Section 127(2) of the MRTP Act within a period of 6 weeks from the date of uploading of the present Order on the official website of the High Court of Bombay.

16) All concerned to act on an authenticated copy of this Judgement.