



Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7018 OF 2023

Shri. Sakharam Mahadev Jadhav,
Since deceased his Legal Heirs
Shri. Kailash Sakharam Jadhav
Age-59 Years, Occ. Business,
R/at- 201, Jadhav Market,
Post- Kulgaon, Tal- Ambernath,
Dist- Thane.

...Petitioner

~ versus ~

- 1. State of Maharashtra,**
[Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order
XXVII, Rule 4, of the Code of Civil
Procedure, 1908]
- 2. The Urban Development Department,**
Through its
The Principal Secretary,
State of Maharashtra,
Mantralaya, Mumbai-32
[Summons to be served on the Learned
Government Pleader appearing for

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State of Maharashtra under Order
XXVII, Rule 4, of the Code of Civil
Procedure, 1908].

3. **Metropolitan Commissioner**
M.M.R.D.A.,
Bandra-Kurla complex,
Bandra [E],
Mumbai- 400051.
4. **The Kulgaon- Bandlapur Municipal**
Council,
Kulgaon (E),
Tal- Ambarnath,
Dist- Thane-421503.
5. **The Chief Officer,**
Kulgaon- Badlapur Municipal Council,
Tal- Ambarnath,
Dist- Thane-421503.

...Respondents

APPEARANCES

For the Petitioner **Mr Tanaji Mhatugade.**

For Respondents Nos. 1 & 2- State **Mr AA Alaspurkar, AGP.**

For Respondent No. 3 **Mr Akshay Shinde.**

CORAM : M.S. Sonak &
Kamal Khata, JJ.

RESERVED ON : 22nd August 2024

PRONOUNCED ON : 27th August 2024

JUDGMENT (Per Kamal Khata, J):-

1. Rule.

2. Rule made returnable forthwith. Heard finally at the admission stage by consent of counsel.

3. Aggrieved and dissatisfied by the inaction on the part of the Respondents and their failure to follow the provisions of Maharashtra Regional and Town Planning Act 1966 (MRTP) by not issuing the notification of lapsing of Reservation No. 51 as "Garden", the Petition under Article 226 of the Constitution of India 1950 is filed.

4. This Court, in the case of *Uday Madhavrao Patwardan & Ors vs Sangli Miraj Kupwada City Municipal Corporation, Sangli & Ors*¹, had held that there is no need for the owner to seek a declaration of the *lapsing of reservation* from the court, the relevant paragraph 16 reads thus:

"16. ... After service of a valid notice under section 127 to either the Appropriate Authority or the

1 (2015) SCC OnLine Bom 659.

Planning Authority, as the case may be, if steps as contemplated by section 127 are not taken within the period stipulated in the section the reservation shall be deemed to have lapsed and the land in respect of which the notice is issued shall be deemed to be released from the reservation. Thus, by operation of law the land stands released from the reservation and the Planning Authority or Appropriate Authority cannot treat the land as reserved. In fact there is no need for the owner to seek a declaration from the court of law on the basis of notice under section 127. The effect of lapsing of reservation on the basis of the notice is automatic....”

(Empahasis added)

5. This judgment was passed in 2015. The law is abundantly clear. The Petitioner requested all the concerned authorities to effect such lapsing. In spite of this well-settled and laid-down law, the notification was not published. Thus, this Petition.

Factual matrix:

6. The Petitioner owns the property bearing Gat no. 53/1, admeasuring 175.58 sq mts (part) Gat no. 54/1, admeasuring 607 sq mts, and Gat no. 54/1, admeasuring 505 sq mts, situated at Village Mangrul, Taluka Ambernath, District Thane presently located within the local jurisdiction Kulgaon Badlapur Municipal Council (*“said lands”*). The factual narrative is thus:

7. Under the draft development plan of Kulgaon Badlapur Municipal Council published in 2000 and sanctioned on 25 July 2005, the said lands of the Petitioner were reserved as “Garden” vide Reservation No. 51. The Mumbai Metropolitan Development Authority (MMRDA) established under Section 40(1)(C) of the MRTTP was the Special Planning Authority for Ambernath-Kulgaon Badlapur and surrounding areas.

8. Obviously, the Petitioner could not utilise the potential of their said lands. Admittedly, for about 15 years, starting from 25 July 2005 to October 2020, the said lands remained under reservation. Further, admittedly, no steps have been taken for acquisition by either any agreement or by publication of declaration as contemplated under Section 126 of the MRTTP Act.

9. On 22nd October 2020, the Petitioner issued and served a Purchase Notice under Section 127(1) of the MRTTP Act upon the Respondents. Copies of the purchase notice are annexed at Exhibit ‘B’ of the Petition at pages 19 to 48. The Petitioner received two communications dated 24th November 2020 and 23rd May 2022 from MMRDA. According to the communication, Respondent Nos. 4 and 5 were directed to initiate steps concerning the purchase notice and to complete the procedure within the time-bound programme. The two-year statutory period after the issuance of the purchase notice ended on 21st October 2022.

10. Mr Mhatugade, learned counsel for the Petitioner, submitted that the Petition was filed on 19th April 2023, aggrieved by the respondents' inaction.

11. Mr Shinde, for Respondent No. 3, relying on the Affidavit of Mr Bhushan H (planner with MMRDA), submitted that as per Chapter 20 of the General Gazette (Notification bearing no. TPS 1209/1777/CR-53/10/UD-12) of the Government of Maharashtra in respect of implementation of development plan for Ambernath, Kulgaon-Badlapur, the implementation of the development plan report of the area is the responsibility of the local municipal body, namely Kulgaon Badlapur Municipal Council (**KBMC**). He submitted that soon after receiving the purchase notices dated 22nd October 2020 and 3rd November 2020, the same was forwarded to Respondents Nos. 4 and 5. On 24th November 2020, the KBMC apparently submitted a proposal for the acquisition of land to the Collector by letter dated 25th January 2021. He submitted that the MMRDA has no role in the acquisition and development of reservations under the development plan. The entire responsibility is on KBMC.

12. Heard the counsels.

13. In our assessment, trust and transparency are crucial for cultivating a robust relationship between the government, judiciary, and citizens. Accessible public records and clear communication channels are vital for demonstrating accountability and integrity in decision-making processes. The

cohesion among the legislature, judiciary, and executive branches significantly influences public confidence in the government. Any disconnect among these entities can lead to diminished trust and undermine the respect for these institutions, ultimately contributing to a deterioration of societal values.

14. It is apparent in the facts of the present case that the steps contemplated in law were not taken. That was stated in our recent judgement in the case of *Sampat s/o Keru Chaudhary & Ors v State of Maharashtra & Ors*² where we held as under:

“17. It would be worthwhile extracting the relevant paragraphs of the case of *Shivgonda Anna Patil vs Sangli Miraj Kupwad City Muncipal Corproation*³ where we held as under:

8. In the case of Balkrishna Jagannath Lad, and referred to in case of Babanrao Dattu Versus State of Maharashtra, a bench of coordinate strength of this court, relying upon the case of Bhavnagar University Versus Palitana Sugar Mill (P) Ltd, has taken the view that once the reservation lapses in terms of Section 127 of the MRTP Act, just because there is a revised development plan or final revised development plan, the lapsing of the reservation does automatically revive.

9. In Girnar Traders Versus State of Maharashtra, the Supreme Court observed that

2 2024: BHC-AS:30275-DB

3 2023: BHC-AS:29348-DB

the legislative intent of the provisions under Sections 126 and 127 of the MRTTP is to expeditiously acquire the land reserved under the Town Planning Scheme. Section 127 not only permits inaction for a period of 10 years but gives a further time to either 'acquire the land' or 'take steps for acquisition', not just steps which may lead to acquisition. Lands cannot lie locked under 'reservation' indefinitely. The underlying principle is that the land must, in a given time, be utilized for the purpose for which it is reserved in the plan, or, if not done, the owner must be allowed to utilise the land as permissible under the town planning law. A failure of authorities to take steps which result in the actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept.

10. Further, the Division Bench of this Court in case of Ramakant Vasudeo Pai and later in Trilok Singh Pahlajsing Rajpal and Ors Versus MCGM & Ors, after adverting to various judgments held that **the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes a declaration under Section 6 of the Land Acquisition Act 1894 or Section 19 of The Right to Fair**

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is a Section 6 declaration under the 1894 Act (or a Section 19 declaration under the 2013 Act) which would commence the acquisition proceedings under the MRTTP Act and would culminate in the passing of an award under Section 126(3) of the MRTTP Act. Unless and until a Section 6 /Section 19 declaration is issued, it cannot be said that the steps for acquisition have commenced.”

(Emphasis added)

15. It is abundantly clear that the KBMC has not taken the steps contemplated by law in this case. Thus, the authorities should have followed the law in *Uday Madhavrao Patwardan & Ors (supra)* and published the notification releasing the Petitioner’s property from the reservation. In our view, requiring the Petitioner to file this Petition was not warranted.

16. The principles of law laid down by the Apex Court and this Court apply to the facts of this case. We are bound by the judgments, which fully support the Petitioner’s case.

17. Thus, because of the settled law and upon applying such law to the undisputed facts in the case, the Petition is allowed in terms of prayer clause [A] as under:

“[A] That this Honourable Court be pleased to issue a writ of mandamus or writ in the nature of mandamus

or any other appropriate writ, direction and order under Article 226 of the Constitution of India, 1950, directing the Respondent No.1 and 2 to issue notification of Lapsation by declaring that the Reservation No.51 viz; "Garden" stands lapsed in respect of Petitioners land bearing Survey No. 53/1, 541 and 54/2, situated at village Mangarli, Tal-Ambarnath, Dist- Thane."

18. Further, the State Government is directed to notify the *lapsing of the reservation* by an order to be published in the official gazette as per the requirement of Section 127 subclause 2 of the MRTP ACT. This shall be done as expeditiously as possible, preferably within six months from today.

19. If the Petitioner submits any applications for development permissions, they must be considered expeditiously and, in any event, not later than within a year of their submission.

20. The rule is made absolute and this Petition is disposed of with no cost order.

21. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)