

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.11759 OF 2010**

Vijaykumar S/o.Motilal Hirakhanwala,  
Age-75 years, Occu-Business,  
R/o.E1, Cidco, Ridge Road,  
Mumbai 400006

PETITIONER

VERSUS

1. The State of Maharashtra,  
Through the Secretary,  
Ministry of Urban Development,  
Mantralaya, Mumbai - 400 032,
2. Jalna Municipal Council,  
Jalna,  
Through its Chief Officer,
3. The Town Planner,  
Jalna Municipal Council,  
Jalna.

RESPONDENTS

Mr.S.P.Deshmukh, learned counsel for the petitioner.

Mr.D.V.Tele, learned A.G.P. for respondent State.

Mr.H.K.Mundhe, learned counsel for respondent no. 2 & 3.

**(CORAM : P.V.HARDAS, AND  
A.V.POTDAR, J.J.)**

**DATE : 17/02/2011**

**ORAL JUDGMENT : (Per A.V.Potdar,J.)**

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at the stage of admission.

2. By the present writ petition under Article 14, 19(1)(g), Article 226 and 300-A of The Constitution of India, the petitioner has approached this Court for issuance of writ of mandamus, directing respondents to confirm lapsing of reservation and release of land from reservation no.57 over an area of 4000 Sq.Mtrs. of C.T.S.No. 6758, within the limits of Jalna Municipal Council, Jalna, under Final Development Plan in respect of Jalna City in ownership and possession of the petitioner, and also prayed for issuance of appropriate writ for the declaration that reservation no.57 over land bearing no.CTS No.6758, within the Municipal Limits of Jalna stands lapsed and the said land is released from the reservation under Final Development Plan of Jalna city and for issuance of writ directing respondent no.1 to notify the lapsing of reservation no.57 over an area of 4000 Sq.Mtrs. on land bearing CTS No.6758 within the limits of Jalna Municipal Council and the same be directed to be published in official gazette, in pursuant to section 127(2) of The Maharashtra Regional and Town Planning Act, 1966.

3. It is contended by the counsel for petitioner that the petitioner is owner of land bearing CTS No.6758, within the limits of Municipal Council, Jalna admeasuring about 13890 Sq.Mts. Out of the said

land, land admeasuring about 40 R's equivalent to 4000 Sq.Mts. From the said city survey no., have been reserved for the Primary School and playground under reservation no.57 in the Final Development Plan of the Jalna Municipal Council, Jalna. The said Final Development plan was notified and brought into force on 15/05/1989. It is further contended that resolution no.57 came to be passed by the Jalna Municipal Council, respondent no.2, on 27/05/2002 by the Planning Authority. It is further contended that the aforesaid reservation had neither been persuaded nor acted upon over last 21 years. It is further contended that no steps of acquisition of land under resolution had been ever taken. On 28/09/2009, petitioner issued purchase notice u/s. 127 of The M.R.T.P. Act. The said notice was served on respondent no.2 and received by respondent no.2 on 29/09/2009. Section 127 of The M.R.T.P. Act (Amended) and the amended provisions of the M.R.T.P.Act were published in the Government gazette on 25/06/2009. It is further contended that under the amended provisions of the Act, period of 6 months referred u/s. 127 of The M.R.T.P.Act, for taking action had been enlarged to 12 months by virtue of the amendment of the Amended Act of 2009. Failure to take steps of acquisition, the reservation over the land would lapsed and would be deemed to be de-reserved. The said period of 12 months for taking steps of acquisition of land has been expired as referred under the Amended Section 127(1) of The M.R.T.P. Act on 28/29<sup>th</sup> October 2010. It is further contended that the petitioner

issued notice to confirm the lapsing of the reservation and for release of the land and to intimate the same to the State Government to able it to notify and requesting to do the same by 11<sup>th</sup> October 2010 vide notice issued dated 30<sup>th</sup> September, 2010. The said notice was served on the 2<sup>nd</sup> respondent on 01/10/2010. As no response is received whatsoever to the aforesaid request given to the respondents in respect of the said reservation, hence the present petition.

4. After filing of this writ petition, in response to the notice issued, an affidavit in reply was filed by respondent no.2 and 3. In the said reply, notification of the reservation is not disputed. It is contended that vide resolution no.33, on 27/05/2002, the respondents have send the proposal to the Collector at Jalna for acquisition of the same. It is further contended that Special Land Acquisition Officer had issued letter for joint measurement on 28/08/2003. It is further contended that the steps were taken before issuance of the notice by the petitioner dated 28<sup>th</sup> September 2009. It is further contended that the petitioner had not filed the maps alongwith the application. Hence he was directed to submit the map vide letter dated 18/03/2010, in which the site was not located. Lastly, it is contended that the Municipal Council, Jalna have passed the resolution in their General Body Meeting on 29/09/2010 and have resolved the proposed development plan of the Municipal Council as per section 26 of The M.R.T.P. Act, 1966. Notice to that effect was given on 13/11/2010 and was published on

18/11/2010. It is further alleged in the said resolution that the said site is reserved vide resolution no.215. It is further alleged that in the new development plan, it is clarified that the development can be done by mutual reservation and therefore now in the changed circumstances, the notice can not be considered as it was prior to reservation and prayed to dismiss the petition.

5. In this background, heard submissions of learned counsel for petitioner and learned counsel for respondents, as well as learned A.G.P. appearing for the State respondent no.1. It is urged across the bar by the learned counsel on behalf of the petitioner that the prayers in the present petition and the issue involved is squarely covered by the judgment of this Court in the matter of **Shivram S/o.Kondaji Sathe and others Versus State of Maharashtra and others, 2009(2) All MR 347**. It is also urged that the observations in the matter of **Kishor Gopalrao Bapat and others versus State of Maharashtra and another, 2006(1) All MR 232** will also cover the issue in respect of revision of development plan as contended on behalf of respondent no.2 and 3.

6. It is observed in the matter of **Shivram S/o.Kondaji Sathe and others versus State (cited supra)**, to which one of us (Shri.P.V. Hardas, J.) is a party, relying on the observations of the judgment of the Apex Court in the matter of **Girnar Traders Versus State of Maharashtra and others, reported in (2007) 7 SCC 555 = 2007 All**

**SCR 2232**, wherein it is observed by the Apex Court that the requisite steps should be a step of acquisition of land and not a step for acquisition of land. The requisite steps towards commencement of acquisition in such a situation would not include step which may not result in actual commencement of the acquisition and is taken merely for the purpose of seeking time so that section 127 does not come into operation, to defeat the purpose and object of the scheme of acquisition under M.R.T.P. Act. The relevant paragraphs in this judgment are para no.35, 36, 38, 54 to 57 and 59 to 62. It is concluded from the discussion in those paragraphs that it is clear that the objection raised by the respondents, can not be sustained in Law. It has been specifically held by the Supreme Court that the steps under the section within the time stipulated, should be towards acquisition of land. It is a step of acquisition of land and not steps for acquisition of land. It is specifically held by the Supreme Court that, *"It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land can not be permitted to defeat the purpose and object of the scheme of acquisition under the M.R.T.P. Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition can not be said to be a step towards acquisition,"*

7. At this juncture, for clarity, it is necessary to consider the exact text of section 127(1) of The M.R.T.P. Act, before amendment and after

amendment.

**Before Amendment :**

**Lapsing of reservations :** “If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be. Appropriate Authority to that effect ; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.”

**After Amendment :**

“Section 127 of the Maharashtra Regional and Town Planning Act, 1966, shall be re-numbered as sub-section (1) thereof; and -

*(a) in sub-section (1) as so re-numbered, for the portion beginning with the words "or if proceedings for the acquisition of such land" and ending with the words "if within six months", the following shall be substituted, namely :-*

*"of, if a declaration under sub-section (2) of (4) of Section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, or the Planning Authority, the Development Authority, or as the case may be, the Appropriate Authority to that effect ; and if within twelve months."*

*(b) after sub-section (1) as so re-numbered, the following sub-section shall be added, namely :-*

*(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette."*

8. On plain reading of section 127(1) of The M.R.T.P. Act, before amendment and after amendment, one fact is clear that the proceedings of acquisition to be commenced within the period of 10 years from the notification of the plan in the gazette, failing which the reservation will lapse by virtue of the provisions of section 127. It is further clear that after service of notice, the steps to be taken by the authority within 6 months after the service of notice and after



amendment, the steps to be taken within the period of 12 months, and i.e. towards the acquisition of land and not for acquisition of land. The facts of the present writ petition clearly demonstrate that after the notification of the year 1989, no steps were taken by the respondent no.2 and 3 for the acquisition of the land of the petitioner which was reserved by the Planning Authority for 21 years. It is also clear that after notice u/s. 127 was issued on 28/09/2009, which is served and received by respondent no.2 on 29/09/2009, within the period of 12 months till 29.09.2010/30.09.2010, no steps were taken by respondent no.2 and 3 for acquisition of land of the petitioner, as contemplated in Law. From these admitted facts, the ratio as laid down by this Court in the matter of **Shivram Sathe** (cited supra) will be squarely applicable to the facts of the present petition.

9. The submissions of the respondents that after notice period was over, the Planning Authority has again resolved for the reservation of the said plot of land by respondent no.2 and 3, then the question arose, because of this resolution, whether the lapsing of the reservation will revive. It is observed by this Court in the matter of **Baburao Dhondiba Salokhe versus Kolhapur Municipal Corporation, Kolhapur and another, 2003(3) Mh.L.J. 820** that reservation of land under Development Scheme for specific purpose would lapse if such land is not acquired or no steps taken within time as required u/s. 127 of The M.R.T.P. Act. Further it is observed by the Apex Court in the matter of **Bhavnagar University Versus**

**Palitana Sugar Mill Pvt.Ltd. and others, AIR 2003 Supreme Court**

**511**,that Section 21 of the Gujarat Act (Similar to section 38 of The M.R.T.P. Act.) which imposes statutory obligation on the part of State and on the appropriate authority to revise the development plan, does not take away the right of the owner in terms of sub section 2 of Section 20 similar to section 127 of The M.R.T.P. Act. As per the proposition propounded by the Apex Court when applied to section 38 and 127 of The M.R.T.P. Act, it can safely be held that the section 38 does not envisage that despite the fact that in terms of section 127, the designation or reservation shall lapse, the same, only because a draft revised plan is made, would automatically give rise to revival thereof. Section 38 does not manifest a legislature intent to curtail or take away the right acquired by a landowner under section 127 of getting the land defreezed.

10. It is observed in the matter of **Kishor Gopalrao Bapat and others versus State of Maharashtra and another, 2006(1) All MR 232** that lapsing of reservation in view of contingencies mentioned in section 127, once reservation is lapsed in view of contingencies mentioned in section 127, the necessary consequences under the Scheme of 127 must follow i.e. the land, which is released from reservation became available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan. Right conferred or accrued to owner of the land due to lapsing of reservation can not be taken away by the

Planning Authority by exercising power under section 38.

11. By virtue of the decisions, which we have cited in the paragraphs supra, and considering the admitted facts urged before us by both the sides, it is clear that after the notice was served by the petitioner on respondent no.2 u/s. 127(1) of The M.R.T.P. Act, admittedly, no steps were taken for acquisition of land as contemplated u/s. 127 of The M.R.T.P. Act. Consequently, the provision u/s. 127(2) follows as the right accrued in the petitioner, the respondents can not take away that right by simply passing the resolution for the reservation of the said land afresh. As stated earlier, as per the amended provisions u/s. 127(2) of The M.R.T.P. Act, the Planning Authority to intimate about the de-reservation of the property to the Government for official notification in the official gazette. Thus, from the admitted facts, petitioner is entitled for the reliefs which he had claimed in terms of prayer clause 'B' to prayer clause 'D'.

12. In the result, the petition succeeds. Rule made absolute in terms of prayer clause 'B' to 'D' of the petition and the petition stands disposed of accordingly with no order as to costs.

**(A.V.POTDAR, J.)**

**(P.V.HARDAS, J.)**