IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1297 OF 2015

1. Shri Rameshchandra Khivraj Chandak,]
Aged 68 years,

2. Smt. Mainabai Vijaykumar Chandak,]
Aged 52 years,]

3. Shri Manoj Vijaykumar Chandak,]
Aged 34 years,]

4. Shri Anand Vijaykumar Chandak,]
Aged 32 years,]

5. Ms. Komal Ritesh Boob,]
Aged 28 years,]
All residing at Gandhi Chowk,]
Nandgaon, District Nashik.] Petitioners

V/s

1. The Chief Officer,]
Nandgaon Municipal Council,]
Nandgaon, District Nashik.]

2. The State of Maharashtra.] Respondents

Mr. Sandeep K. Shinde a/w Mr. S.K. Raut i/b Mr. Sudam Kale, Advocates for the petitioners.
Mr. Chetan Damre, Advocate for respondent No.1.
Ms. R.A. Salunkhe, AGP for the State.

CORAM : NARESH H. PATIL &
M.S. KARNIK, JJ.

Date of Reserving the Judgment: 16th February, 2017.
Date of Pronouncement of the Judgment: 6th March, 2017.

JUDGMENT: [PER SHRI JUSTICE M.S. KARNIK]:

Rule, returnable forthwith. Heard finally by consent of the parties.

2. By the present petition, the petitioners are seeking an appropriate writ, order or direction to hold that the reservation in respect of the land bearing Survey No. 107 (C.S.No.3434) admeasuring 1 Hectare and 42 Aars of Village Nandgaon, Taluka Nandgaon, Dist. Nashik (hereinafter referred to as 'the said land' for short) has lapsed. The Petitioners also pray for a direction to respondent No.2-State to issue Notification under Sub section 2 of Section 127 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as 'the said Act' for short).

3. The development plan of Nandgaon City was approved by the Director, Town Planning Maharashtra State Pune by a Notification dated 25th April, 1994. By way of reservation No. 25, the said land of the petitioners of which they claim to be the owners was reserved for playground. According to the petitioners, as the respondent No.1 Nandgaon Municipal Council did not acquire the same for a period of 19 years from coming into force of the sanctioned development plan, the petitioners issued notice to

respondent No.1 under Section 127 (1) of the said Act on 8th July, 2013. It is further case of the petitioners that as the respondents failed to take any action on the notice issued by the petitioners on 8th July, 2013, the petitioners issued another notice on 25th September, 2014 with a request to issue a Notification in terms of Sub section 2 of Section 127 of the said Act. The petitioners contend that as per the requirement of Section 127 (1) of the said Act, a valid notice is served on the respondent No.1-Planning Authority on 8th July, 2013. The petitioners, therefore, contend that as the respondents failed to take any steps within the permissible period of 12 months from service of the notice, reservation/designation over the said land is deemed to have lapsed and further the said land be released from such reservation and that the said land would be available to the petitioners for the purpose of development.

4. Respondent No.1-Municipal Council opposed the petition. Respondent No.1 by way of affidavit-in-reply dated 18th January, 2017 contends that the notice dated 8th July, 2013 issued by the petitioners under section 127 (1) of the said Act cannot be termed as a notice contemplated under section 127 of the said Act and that it failed to meet the requirement of the said Act as it suffered from want of requisite details.

5. It is further stated in the affidavit that though the respondent No.1 is in dire need of the said land as the Council does not have alternate land for the purpose of future development, however, as the respondent No.1's Council's position is financially weak, therefore, has not carried out any land acquisition process.

6. According to the respondent No.1, as per 13th Finance Commission Report, funds can be made available for the purpose of land acquisition to develop the reserved land. Therefore, the respondent No.1 requested Collector to initiate process for the purpose of acquisition of the said land. Valuation of the land was also carried out for the purpose of purchasing the same and the value of which was shown as Rs. 100,68,800/-. Once again, a request was made by the respondent No.1 vide letter dated 16th April, 2014 to initiate the process of land acquisition. By a communication dated 9th June, 2014 issued by the Collector Nashik, the respondent No.1 was informed that in view of amended Land Acquisition Law with effect from 1st January, 2014, respondent No.1 will take appropriate steps to acquire the said land. The respondent No.1 has further requested the President of Nanded Municipal Council vide letter dated 26th December, 2014 to take necessary action regarding the notice issued by the petitioners seeking proposal in the form of resolution regarding acquisition of the said land. In para 15 of the

affidavit in reply, a specific stand is taken that the said land reserved for the purpose of playground being reservation No. 25 was not acquired due to paucity of funds.

7. The respondent No.1 has also taken a stand that proposal for revised development plan has already been forwarded to the respondent No.2-State and the same is awaiting sanction. The respondent No.1, therefore, prayed that they are in dire need of the said land for future development and it is only on account of paucity of funds that the said land could not be acquired.

8. The respondent No.2-State has also filed an affidavit-in-reply and has taken a stand that though they have received the request of the petitioners dated 25th September, 2014 to issue a Notification in terms of sub section 2 of Section 127 of the said Act in the Government Gazette, they will take a decision only after the proposal is submitted by the respondent No.1 in this regard.

9. We have heard the submissions advanced by the learned Counsel appearing on behalf of the respective parties. Our attention is invited to the decision of the Apex Court in the case of **Girnar Traders Vs. State of Maharashtra, 2007 (7) SCC 55**. The relevant paragraphs of the decision of the Apex Court read thus:

54. "When we conjointly read sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corpn. Of Greater Bombay case. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126 (2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the land owner for his utilisation as permitted under section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the land owner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that section 127 does not come into operation.

55. "Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or

control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same".

56. "The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The steps taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not a step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP 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 cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under section 6 of the LA Act. Clause (c) of Section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus the step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the

LA Act".

10. For the purpose of the present case, useful reference can also be made to the decision of the Apex Court in case of **Praful C. Dave and Ors. Vs. Municipal Commissioner and Ors. (2015) 11 Supreme Court Cases 90**. The relevant portion reads thus:

Paragraphs 21 & 22.

> 21. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or proceedings for acquisition are not initiated within ten years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary upon expiry of the said period of ten years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation where the land owner or the person interested remains silent and in

the meantime a revised plan under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority I.e failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect.

The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section.

If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full pay. Action on the part of the land owner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan.

This, according to us, would be the correct position in law which has, in fact, been clarified in Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenant's Association

> & Ors. [2] in the following terms : "If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise."
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> 20. In fact the views expressed in Bhavnagar University (supra) in para 34 is to the same effect: "The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse".

11. We have gone through the notice dated 8th July, 2013 issued by the petitioners. There is no dispute that the same is received by the respondent No.1-Planning Authority on 8th July, 2013. In the said notice which is addressed to the respondent No.1, details of the said land are clearly mentioned. The same is issued by the petitioners in their capacity as owners of the land. They have also enclosed revenue extracts indicating their interest in the said land. The respondent No.1 except for contending that the notice dated 8th July, 2013 issued by the petitioners is invalid for want of requisite details, failed to substantiate the reasons why the said notice cannot be said to be valid purchase notice under section 127 of the said Act. The petitioners claim to be the owners of the said

land and have along with notice issued under section 127 (1) produced the documents of title viz: property extract of C.S. No. 3434 and the map of the said land. Receipt of the said notice on 8th July, 2013 is also acknowledged by the respondent No.1. A specific stand is taken by the respondent No.1 that the said land which is reserved for the purpose of playground was not acquired due to paucity of funds. The declaration u/s Section 6 of the Land Acquisition Act,1894 has not been published within a period of twelve months from 8th July, 2013. The obvious consequence therefore, is the reservation has lapsed for want of respondents' taking requisite steps as is the requirement of Section 127 of the said Act.

12. The contention of the respondent No.1 that as the proposal for revised development plan had already been forwarded to respondent No.1-State for sanction, the reservation will not lapse cannot be countenanced in the light of the law laid down by the Apex Court in the case of **Praful C. Dave & Ors. Vs. Municipal Corporation & Ors** (supra). The sanctioned development plan of the respondent No.1 came into force on 10th June, 1994. Section 127 notice is served on the Planning Authority on 8th July, 2013. On expiry of the said period of 10 years, the petitioners have taken positive steps i.e service of notice under section 127 and there

occurred a corresponding failure on the part of the Planning Authority to take requisite steps as demanded in the said notice which has resulted into bringing into effect the consequences contemplated by section 127 of the said Act. The action on the part of the petitioners as required under section 127 of the said Act is anterior in point of time to the preparation of the revised plan of the respondent No.1 which is awaiting sanction of the State Government.

13. In our considered view, therefore, the petitioners have served a valid notice under section 127 of the said Act on the Planning Authority after expiry of 10 years from the date of issuance of final development plan and further as the respondents have failed to take requisite steps for acquisition thereof viz: issuance of Section 6 declaration of the Land Acquisition Act within a period of 12 months from the date of service of the notice, the reservation/designation in respect of the said land has lapsed. The petition therefore succeeds and is accordingly allowed in terms of prayer clause (a) and (b). 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 requirements of section 127 (2) of the MRTP Act which shall be done as expeditiously as possible and preferably within a period of six months from today.

14. Rule is made absolute in the above terms with no orders as to costs.

[M.S. KARNIK, J.] [NARESH H. PATIL, J.]