Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11597 OF 2012

Shri Ashok Shriram Kulkarni
Age -51 years, Occupation – Legal
R/O – At post Asta, Taluka – Walwa
District – Sangli. .. Petitioner

Vs.

1. The State of Maharashtra
Notice to be served on
Secretary, Urban Development
Department, Mantralaya

2. The Maharashtra Housing and
Area Development Authority ..... R. No.1 is deleted as per order dt.03/12/2013 passed by Hon'ble (Judi -I) Registrar.

3. The Municipal Council, Ashta,
Through Chief Officer,
Ashta Municipal Council,
Tal – Valava, Dist. Sangli. .. Respondents

Mr.Vijay Killedar, for Petitioner.
Mr.A.S.Desai, for Respondent No.3.
Ms.R.A.Salunkhe, AGP for State.

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

RESERVED ON: 23rd FEBRUARY, 2017
PRONOUNCED ON : 22nd MARCH, 2017

JUDGMENT (PER M.S.KARNIK, J.) :

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

2. The petitioner in this Petition prays for issuance of appropriate writ, order, direction to the respondents to de-reserve plot bearing No. CTS 339 1/A – A/B at Ashta, Taluka – Walwa, District - Sangli (hereinafter referred to as the 'said plot' for short).

3. The petitioner contends that he is the owner of the said plot. The said plot was reserved at No.54 for civil and cultural centre by Maharashtra Town Development and Public Health Department. The development plan was sanctioned by respondent No.1 – State Government on 30/06/1982. Respondent No.3 – Ashta Municipal Council passed a resolution on 31/10/1994 cancelling the reservation No. 54 over the said

plot. The reason cited was lack of adequate funds and therefore, resolution to cancel reservation No. 54 was passed. The respondent No.1 however did not take a decision on the said resolution.

4. No steps were taken by the respondents to acquire the said plot under the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the 'said Act' for short) or under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as 'L.A.Act' for short) within a period of 10 years from the coming into force of the sanctioned development plan. The petitioner served a purchase notice under Section 127 of the said Act on 09/09/1996. The respondents thereafter also took no steps to acquire the said plot within 6 months from the date of the service of the purchase notice and therefore, the petitioner contends that the said plot is released from reservation due to lapsing as contemplated in Section 127 of the said Act.

5. Respondent No.3, in response to the purchase notice, by replies dated 18/12/1996 and 04/02/1997 informed the petitioner that steps for acquisition are being taken. The petitioner sent a reminder on 24/10/1997. As the respondents failed to take requisite steps under Section 127 of the said Act, according to the petitioner, the reservation has lapsed.

6. An affidavit-in-reply is filed on behalf of respondent No.3 opposing the Petition. According to the respondent No.3, purchase notice dated 09/09/1996 is applicable to the sanctioned development plan finalised in 1982. According to the respondent No.3, as the plan finalised in 1982 was never executed due to various reasons, they started procedure under Section 26(1) and Section 30 of the said Act on 23/01/2002 to publish draft development plan. Respondent No.3 – Council by its resolution No.52 accorded the sanction to publish draft development plan and report under Section 26(1) of the said Act. On 20/06/2007 the said plot was proposed to be reserved for cultural central and library. The said resolution was

considered necessary by the Council because of substantial growth in population.

7. The notice under Section 26(1) of the said Act was published on 21/07/2007. The petitioner objected to the proposed plan on 05/05/2007. The objection of the petitioner was rejected on 10/03/2010.

8. Respondent No.1 – State finalised the sanctioned revised development plan on 04/04/2012 and G.R. was published on 07/04/2012. The respondents therefore contend that as the purchase notice dated 09/09/1996 is in relation to the plan finalised in 1982, pursuant to the finalisation of the revised sanctioned development plan on 04/04/2012, the said purchase notice is of no consequence and ineffective.

9. It is pertinent to mention here at this stage that while objecting to the draft development plan, the petitioner by his objection dated 05/05/2007 has categorically stated that in pursuance to the issuance of the purchase notice under Section

127 of the said Act in the year 1996 as the respondents have failed to take steps, the reservation has lapsed and therefore, the said plot cannot be shown under the reservation again. This objection as indicated earlier was rejected by respondent No.1.

10. Respondent No.3 has raised the objection that the present Petition suffers from delay and laches and on this ground alone the same be dismissed. Though the purchase notice is dated 09/09/1996, present Petition is filed only in the year 2012 and hence, there is gross delay on the part of the petitioner in approaching this Court.

11. An affidavit-in-reply opposing the Petition is also filed by respondents No.1 & 2 on 22/07/2014. The stand of the respondents No.1 & 2 which is similar to one taken by respondent No.3 is found in paragraph 7 of the said affidavit-in-reply which reads as under :

> "With reference to para No. 8(1) to 8(VIII) of the Writ Petition, I say that the Respondent No.3 submits that the earlier plan which was sanctioned in the year 1982 is subsequently revised under provisions of Sections 23(1) & 38 of Maharashtra Regional & Town Planning Act, 1966 and

> the same has been accorded sanction vide Notification No. Tps-2010/2591/CR2527/10 (DP sanctioned) /UD-13 dt.4.4.2012. In the said sanctioned Development Plan (Second Revised) the suit property is proposed to be reserved for "Cultural Centre & Library" as site No. 4/11 whereas in the first revised sanctioned Development Plan (1982) the said property was reserved for "Civic & Cultural Centre" as site No. 54.
>
> The amendment in Section 127 of the Act has come into effect from 29/09/2009. As per this amendment, the notice under section 6 of the Land Acquisition Act read with 126(2) (a) of the Maharashtra Regional & Town Planning Act, 1966 has to be published within one year from the date of issue of the notice under Section 127 . But the Petitioner has served purchase notice under Section 127 of the Maharashtra Regional & Town Planning Act, 1966 on 09/09/1996 which is well before the aforesaid amendment. As mentioned by the Chief Officer Municipal Council, the acquisition process of the suit land has already been started by the Municipal Council within six months from the date of purchase notice as per the earlier provision. Hence, contention of the petitioner to de-reserve the suit land from revised sanctioned Development Plan is strongly rejected."

12. Heard learned Counsel for respective parties. In the light of pleadings and the submissions made, the following dates and sequence of the events in brief is material to appreciate the controversy.

30/06/1982 : The petitioner's property is shown under reservation at No. 54 of the sanctioned development plan for civil and cultural centre.

09/09/1996 : The petitioner served valid purchase notice under Section 127 of the said Act.

18/12/1996, 04/12/1997 : Respondent No.3 replied stating that steps for acquisition are being taken.

24/10/1997 : The petitioner sent a reminder to the authorities to purchase the said land.

23/01/2002 : Procedure under Section 23(1) and 38 of the MRTP Act was started.

05/05/2007 : Petitioner objected to the said proposal contending that in view of the petitioner's issuing notice under Section 127 on 09/09/1996 and as the respondents failed to take steps within six months, the reservation has lapsed.

20/06/2007 : The Municipal Council accorded sanction to publish the draft development plan and report under Section 26(1) of MRTP Act. The same was reserved at 4/11 for cultural centre and library.

10/03/2010 : Objection of the petitioner was rejected.

04/04/2012 – State Government finalised the revised development plan

07/04/2012 - GR was published.

13. The learned Counsel for the petitioner has placed reliance on the following decisions in support of his submissions :-

I) Praful C.Dave and ors. Vs. Municipal Commissioner and ors. (2015) 11 Supreme Court Cases 90.

II) Godrej & Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra & or. 2015(2) Bom.C.R. 354.

III) Girnar Traders vs. State of Maharashtra, (2007) 7 SCC 555.

IV) Kishore Gopalrao Bapat Vs. State of Maharashtra and another, 2005(4) Mh.L.J.

14. A useful reference can be made to the decision of the Apex Court in the case of **Girnar Traders** *(supra)*. The relevant portion reads 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 landowner 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 landowner 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."

15. We have accordingly examined the rival contentions and keeping in view the undisputed facts involved in this case, we find that the petitioner has served a valid purchase notice under Section 127 of the said Act for the acquisition of the land which was reserved in the sanctioned development plan of 1982. Admittedly, the steps as required by the provisions of Section 127 for acquisition of the said land were not taken by the respondents within a period of 6 months from the date of service of this purchase notice.

16. It would be apposite to extract Section 127 of the said Act for better appreciation of the claim of the parties which deals with the lapsing reservation.

> " **127. Lapsing of reservations**:-
>
> (1) 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 a declaration

> under sub-section (2) to (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, along with the documents showing his title or interest in the said land, on the Planning Authority, Development Authority or as the case may be, the Appropriate Authority to that effect; and if within [twenty-four 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.
>
> (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."

17. The respondents instead of issuing a notification under Section 127(2) of the said Act proceeded to revise the development plan and accordingly, the procedure under Section 23 (1) and 38 of the said Act was started on 23/01/2002. The said land of the petitioner was now proposed to be reserved for cultural centre and library. The petitioner objected to the proposed plan on 05/05/2007 on the ground that the petitioner's land is under reservation.

18. The respondents contend that in view of revised

development plan which was sanctioned on 07/04/2012, the reservation continues and notice dated 09/09/1996 under Section 127 which was applicable only qua the plan finalised in 1982, the same cannot be made applicable in any manner to the revised sanctioned development plan which is finalised on 04/04/2012. The respondents contended that the petitioner is trying to de-reserve his plot on the basis of his earlier notice dated 09/09/1996 and that this plea now is not available to the petitioner on account of the revised development plan of 07/04/2012. This plea of the respondents needs to be examined.

19. The controversy in the present petition can best be answered by referring to the decision of the Apex Court in the case of **Praful C.Dave** *(supra)*. The relevant portion reads thus :

> 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 landowner 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 landowner 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 landowner 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 play. 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 Tenants' Association & Ors. in the following terms :

> "10.....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."

22. In fact the views expressed in Bhavnagar University, in para 34 is to the same effect:

"34...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."

20. A useful reference can also be made to the decision

of the Apex Court in the case of **Godrej & Boyce Manufacturing Co. Ltd.** *(supra),* the relevant portion reads thus:

> "16. It is also an undisputed fact that after 10 years, notice dated 4.9.2002 served by the appellant under Section 127 of the MRTP Act upon the respondent No.1 stating that if, the reserved land was needed for the notified purpose, Railway department may acquire the same by adopting acquisition proceedings, but if the same is not acquired, the clarification to that effect be issued. Thereafter, on 3.3.2003 the period of 6 months as prescribed under the provision of Section 127 of the MRTP Act, after issuance of the above notice by the appellant and served on the respondent No.1, was also lapsed long back. Therefore, the reservation of the land in favour of the Railway was deemed to be released under the above said provision of the MRTP Act. The respondent No. 2-Ministry of Railways informed the Urban Development Department of the State Government on 1.11.2004 stating that there was no proposal for acquisition of the land in the Railways in the near future, is evident from the undisputed fact of the correspondence made between the Ministry of Railways and the Urban Development Department of the State Government, which would clearly go to show that the land reserved even after 10 years and on expiry of service of notice of 6 months there was no intention on the part of the State Government to acquire the reserved land for the purpose reserved in favour of the Railways department to form the Railway tracks between "Thane and Kurla". In that view of the matter, the land reserved for the purpose under Section 127 of the MRTP Act, is lapsed and the appellant is entitled for developing the land as it likes. The State Government instead of clarifying to the notice issued by the appellant, has proceeded further to initiate proceedings under Section 37 of the MRTP Act, proposing the modification in the Development Plan by deleting Railway reservation and adding reservation for Development Plan Road. Section 37(1) of the MRTP Act, which deals with modification of Final Development Plan

reads thus:-

> "37.Modification of final Development Plan - (1) Where a modification of any part of or any proposal made in, a final Development Plan is of such a nature that it will not change the character of such Development Plan, the Planning Authority may, or when so directed by the State Government shall, within sixty days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction. 1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government, shall issue the notice and thereupon, the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority."

By a careful reading of the provisions of Sections 127 and 37(1) of the MRTP Act, which are extracted as above abundantly make it clear that the State Government is not empowered to delete the reservation of the land involved in this case from Railway use and to modify the same for Development Plan Road in the Development Plan after expiry of 10 years and 6 months notice period was over as the appellant has acquired the valuable statutory right upon the land and the reservation of the same for the proposed formation of Railway track was lapsed long back. Further the respondent No. 2 vide its letter dated 1.11.2004 has stated that there is no proposal for acquisition of land for the purpose of which it was reserved.

Section 127 of the MRTP Act, which fell for consideration before the three Judge Bench of this Court in the case of (Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher & Ors.) 3, 2013(3) Bom.C.R.481(S.C.): 2013(5) S.C.C.627 wherein the contention of the appellant that the majority judgment in

the case of (Girnar Traders (2) v. State of Maharashtra) 4, 2008(1) Bom.C.R. 454(S.C.) :2007(7) S.C.C.555 need to be considered by larger Bench as the same is contrary to Section 127 and (Municipal Corpn. Of Greater Bombay v. Hakimwadi Tenants' Asson.) 5, 1988(l) Bom.C.R.578(S.C.) : (1988) Supp. S.C.C. 55 case, was rejected. The Court opined that the same is not contrary to Section 127 of the MRTP Act and further held that there is no conflict between the judgments of the two-Judge Bench in Hakimwadi Tenants' Asson. (supra) and the majority judgment in Girnar Traders (2) (supra) case. Further, the three Judge Bench judgment in Shrirampur Municipal Council, Shrirampur (supra) at paras 45 and 46 supported the observation of Constitution Bench in (Girnar Traders (3) v. State of Maharashtra) 6. 2011(2) Bom.C.R.655 (S.C.) : (2011) 3 S.C.C 1 case relating to Section 127 of the MRTP Act, which read thus:-

"45. In our view, the observations contained in para 133 of Girnar Traders (3) unequivocally support the majority judgment in Girnar Traders (2).

46. As a sequel to the above discussion, we hold that the majority judgment in Girnar Traders (2) lays down correct law and does not require reconsideration by a larger Bench..."

From the above, it is clear that the majority view in Girnar Traders (2) (supra) is held to be good law. Therefore, the case of Girnar Traders (2) (supra) is binding precedent under Article 141 of the Constitution of India upon the respondent No.1. The relevant paragraph 133 from Girnar Traders (3) is extracted hereunder :-

"133. However, in terms of Section 127 of the MRTP Act, if any land reserved, allotted or designated for any purpose specified is not acquired by agreement within 10 years from the date on which final regional plan or final development plan comes into force or if a declaration under sub- section (2) or (4) of Section 126 of the MRTP Act is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice upon such authority to that effect and if within 12 months from the date of 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 the land would become available to the owner for the purposes of development. The defaults, their consequences and even exceptions thereto have been specifically stated in the State Act. For a period of 11 years, the land would remain under reservation or designation, as the case may be, in terms of section Tenants Asson. case (supra), the statement of law laid down in the above referred cases are aptly applicable to the fact situation. Therefore, we have to hold that the impugned notification is bad in law and liable to quashed. The High Court has not examined the impugned notification from the view point of Section 127 of the MRTP Act and interpretation of the above said provision made in the case of Girnar Traders (2) (supra), therefore, giving liberty to the appellant by the High Court to file objections to the proposed notification is futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved has not been utilized for that purpose and a valid statutory right is acquired by the land owner/interested person after expiry of 10 years from the date of reservation made in the Development Plan and 6 months notice period is also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Sections 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the Development Plan from deleting for the purpose of Railways and adding to the Development Plan for the formation of Development Plan Road after lapse of 10 years and expiry of 6 months notice served upon the State Government."

21. Reference can also be made to the decision of this Court in the case of **Kishore Gopalrao Bapat** *(supra),* the

relevant portion reads thus :

> "11. The question, which falls for our consideration in the present petition is whether the Planning Authority exercising power under Section 38 of the M.R.T.P. Act, which deals with revision of development plan, can take away the rights accrued to the owner of the land on account of lapsing of reservation in view of contingencies mentioned in Section 127 of the M.R.T.P. Act. Similar factual and legal situation arose in the case of Shri Baburao Dhondiba Solakhe (cited supra) and this Court after taking into consideration the law laid down by the Apex Court in Bhavnagar University vs. Palitana Sugar Mills (p) Ltd. and Ors., 2003(1) S.C.C. 111, in paragraph (17) observed thus :
>
> > "The legal position as regards M.R.T.P. Act on the basis of aforesaid observations made by the Apex Court in Bhavnagar University emerges that by imposition of a statutory obligation under Section 38 on the part of the State or the appropriate authority to revise the development plan the rights of the owners accrued in terms of Section 127 are not taken away. Section 38 of M.R.T.P. Act, in our opinion, does not and cannot be read to mean that substantial right conferred upon the owner of the land or the person interested under Section 127 is taken away. In other words, Section 38 does not envisage that despite the fact that in terms of Section 127, the reservation lapsed, only because of a draft revised development plan or final revised development plan is made would not automatically result in revival of reservation that had lapsed. If the reservation of the petitioner's land for the purposes of garden had lapsed and as we found in fact has lapsed on 28-2-1992, because of draft revised plan made in the year 1992 and thereafter final revised development plan sanctioned in the year 1999 would not revive the lapsed reservation."
>
> 12. The above referred observations of this Court make it evident that once reservation is lapsed in view of contingencies mentioned in Section 127 of the M.R.T.P. Act, the necessary consequence under the scheme of Section 127 of the M.R.T.P. Act must follow. The land which is released from the reservation becomes available to the owner for the

> purpose of development as otherwise permissible in the case of adjacent land under the relevant plan. This right which is conferred or accrued to the owner of the land due to lapsing of reservation cannot be taken away by the Planning Authority by exercising power under Section 38 of the M.R.T.P. Act."

22. In the facts of the present case, there is no dispute that on 09/09/1996, the petitioner has served a valid purchase notice under Section 127 of the said Act on the planning authority i.e. respondent No.3 calling upon respondent No.3 to acquire the said land. The said notice was issued in view of the fact that respondent No.3 has not acquired or initiated proceedings for acquisition within 10 years from the date on which final development plan has come into force. After service of notice by the petitioner – owner, the mandatory period of 6 months also elapsed within which time the respondents failed to initiate the necessary action as contemplated by Section 127 of the said Act. Admittedly, there is no declaration under Section 6 of the Land Acquisition Act within a period of 6 months from the date of issuance of the purchase notice.

23. As mandated by the provisions of Section 127 of the said Act, the petitioner took positive steps i.e. issuance/serve the notice on 09/09/1996 and there has been corresponding failure on the part of the respondent to take requisite steps as demanded therein. Failure to take such steps has brought into effect the consequences contemplated by Section 127 of the said Act.

24. The contention of the respondents that the sanctioning of the revised development plan in 2012 has the effect of rendering purchase notice dated 09/09/1996 ineffective cannot be countenanced as action on the part of the petitioner in issuing the notice under Section 127 of the said Act and the expiry of period of six months within which time steps are to be taken is anterior in point of time to the preparation of the revised plan.

25. The contention of the respondents that the present

Petition suffers from delay and laches can only be stated to be rejected. The petitioner having served a valid purchase notice under Section 127 of the said Act on 09/09/1996 and the respondents having failed to take steps within a period of 6 months from the date of service of notice, the reservation has lapsed. The provisions of Section 127 provides for consequences of deemed lapsing and upon such deemed lapsing, the land shall be deemed to be released from such reservation 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.

26. Writ Petition therefore deserves to be allowed and is accordingly allowed in terms of prayer clause (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.

27. Rule is made absolute in the above terms with no order as to costs.

(**M.S.KARNIK, J.**) **(NARESH H. PATIL, J.)**