IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3229 OF 2011

1. Sou. Hasina Kudbuddin Shaikh,)
2. Sou. Dilshad Faiyyaj Mujawar,)
3. Sou. Nasima Dilawar Mulla,)
4. Sou. Mahiraj Harun Karbhari,)
   All Adult, R/o. 121, Raviwar Peth,)
   Karad, District : Satara.)
5. Shri Irphan Kudbuddin Shaikh,)
   For himself as well as Power of Attorney)
   Holder of above Petitioner Nos.1 to 4,)
   Adult, R/o. Deshmukh Colony,)
   Karanje, Tal. Satara.) ....Petitioners

VERSUS

1. Karad Municipal Council,)
   (Through the Chief Officer))
   Having address at Karad,)
   Tal.Karad, District : Satara.)
2. The Director,)
   Town Planning and Valuation Department,)
   Having office at Central Building, Pune.)
3. The State of Maharashtra,)
   Through its Secretary,)
   Urban Development Department,)
   Mantralaya, Mumbai – 400 0032.) ....Respondents

Mr. Girish S. Godbole with Mr. A. M. Kulkarni and Mr.Sarthak Diwan, advocates for the petitioner.
Mrs. R. M. Shinde, AGP for the State.
Mr. Vikram Chavan I/b. Ms. Niharika Waradkar, advocate for respondent No.1.

CORAM : RANJIT MORE &
SMT.ANUJA PRABHUDESSAI, JJ.

DATE OF RESERVING JUDGMENT : 2nd AUGUST, 2018

DATE OF PRONOUNCEMENT : 29th AUGUST, 2018

ORAL JUDGMENT : (Per Ranjit More, J.)

The petitioners claim to be the owners of final plot No.481, Town Planning Scheme No.1 at Karad admeasuring about 1721.16 square meters (hereinafter referred to as "the said land"). The respondent No.1 is Karad Municipal Council established under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The respondent Nos.2 and 3 are the Director, Town Planning and State of Maharashtra respectively.

2. The petitioners have approached this Court invoking jurisdiction under Article 226 of the Constitution of India seeking declaration that the reservation/designation bearing No.46 on the said land in the sanctioned development plan of the respondent No.1-Karad Municipal Council has lapsed and the said property is deemed to have been released from the said reservation/designation and the same is become available for development to the petitioners.

3. The brief facts giving rise to the present petition are as follows :

The State Government sanctioned the first revised development plan of Karad Municipal Council on 1st December, 1983, in

which, the said land was reserved as reservation site No.46 for Municipal purposes. This plan came into force on 1st February, 1984. On 27th April, 2000, the second revised draft development plan of Karad Municipal Council was published, in which, only Eastern 1/3 portion of land was proposed to be reserved for shopping centre vide reservation No.62, whereas, the Western 2/3rd portion was proposed to be dropped from reservation. On 20th October, 2006, the Karad Municipal Council – Planning Authority submitted second revised draft development plan to the Government under Section 30 of the Maharashtra Regional and Town Planning Act, 1966 (for short the "MRTP Act"). On 21st October, 2009, the petitioners applied for a development/building permission under sections 44 and 45 of the MRTP Act. On 13th November, 2009, the said permission was rejected by the Karad Municipal Council, only on the ground that part of the land was reserved for shopping centre in the second revised draft development plan which was yet to be sanctioned. The petitioners thereafter on 5th March, 2010 issued composite notice to the respondent No.1 and respondent Nos.2 and 3 under sections 127 and 49 of the MRTP Act. There is no dispute that this notice was served by hand-delivery on both the above said authorities and the said authorities have acknowledged the receipt of the said notice on the very same day.

4. Since the statutory period of one year as provided under Section 127 of the MRTP Act expired on 4th March, 2011 and no notification under Section 126 of the MRTP was issued, the present petition came to be filed on 22nd March, 2011, for the reliefs stated hereinabove.

5. We also feel it necessary to make a reference to the facts mentioned herein below which occurred during the pendency of the above petition.

On 1st June, 2011, the Collector-Satara issued notification under Section 126(4) of the MRTP Act to acquire the said land. On 4th April, 2012, the State Government sanctioned the second revised draft development plan but reservation No.62 was kept in excluded portion. On 7th October, 2016, the Government sanctioned the excluded portion of the second revised development plan and instead of only 1/3rd Eastern portion being reserved/designated as site No.62 for multi-purpose hall and shopping centre, the said site No.62 was re-designated for Municipal purposes in respect of the entire subject land. Thus, effectively, the original reservation No.46 was completely reinstated. The petitioners, thereafter, with the leave of the Court, amended the petition and challenged the reservation in second revised development plan qua the said land.

6. Mr. Godbole, learned counsel for the petitioners, took us through the petition, other relevant documents annexed thereto and compilation of additional documents and submitted that since separate cause of actions accrued to the petitioners i.e. under section 127 as well as section 49 of the MRTP Act, the composite notice dated 5th March, 2010, was served upon the Chief Officer of the respondent No.1, Director of Town Planning and State of Maharashtra. So far as notice served upon the Chief Officer of the respondent No.1 is concerned, the same was under section 127 of the MRTP Act and so far as notice served upon respondent Nos.2 and 3 is concerned, it was under section 49 of the MRTP Act. Mr. Godbole submitted that this notice was construed by the respondent No.1 as notice under section 127 of the MRTP Act and the respondent No.1 passed a resolution dated 23rd March, 2010 to acquire the said land. The President of respondent No.1, thereafter, on 6th April, 2010 sent a notice to the Collector with a request to acquire the said land. Reply was also given to the petitioners by respondent No.1 on 1st June, 2010. However, despite completion of one year from the date of service, declaration under 126(4) of the MRTP Act was not issued and, therefore, the reservation on the said land is deemed to have been lapsed. Mr. Godbole submitted that the declaration under section 126(4) of the MRTP Act on 1st June, 2011 is beyond the statutory period of one year and same cannot save the subject reservation. He also submitted

that there is ample material on record to show that the respondent No.1 understood that the subject purchase notice was under Section 127 of the MRTP Act only and this is evident from the resolution dated 23rd March, 2010 of the respondent No.1, the President's letter dated 6th April, 2010 to the Collector- Satara, the respondent No.1's reply dated 1st June, 2010 to notice under section 127 of the MRTP Act and the declaration under section 126(4) of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894. Therefore, now it is not permissible to the respondent No.1 to contend that they construed the purchase notice only under section 49 of the MRTP Act and after confirmation of the same by the Director of Town Planning on 18th June, 2010, within one year i.e. 1st June, 2011, notification under Section 126(4) of the MRTP is issued. Mr. Godbole lastly submitted that, in the light of settled position of law, the second revised development plan qua the said land is of no consequence as this land was already deemed to have been released from reservation and was available to the owners for development.

7. Mr. Chavan, learned counsel for the respondent No.1, opposed the petition vehemently and made following submissions :

i) The composite notice under sections 49 and 127 of the MRTP Act is bad in law as it created confusion in the minds of the authorities.

ii) The notice refers to reservation No.62 and is, therefore, only under section 49 and not under section 127 of the MRTP Act.

iii) Service of notice upon the Chief Officer is bad and it must have been served upon the Municipal Council.

iv) Though the declaration under section 126(4) of the MRTP Act read with section 6 of the Land Acquisition Act, 1894 has been published beyond the period of one year from service of notice under section 127 on planning authority, the reservation does not lapse on account of the fact that within one year from confirmation of the purchase notice by the Director of Town Planning, declaration under section 126(4) of the MRTP Act read with section 6 of the Land Acquisition Act, 1894 was made on 1st June, 2011 and published on 9th June, 2011 and, therefore, there is no lapsing of reservation of the subject land. In short, it is the contention of Mr.Chavan that since the composite purchase notice under sections 127 and 49 of the MRTP was given, it is for the respondent No.1 to choose the proceedings under which they want to proceed.

8. Having gone through the petition, additional compilation and the documents annexed thereto and having considered the rival submissions advanced by the respective counsel, we find merit in the

contention of the petitioners. Undisputedly, the subject land was reserved as reservation site No.46 for Municipal purposes in the first revised development plan of the respondent No.1 and this plan came into force on 1st February, 1984. The second revised draft development plan was prepared by the respondent No.1 on 27th April, 2000, and it was submitted to the Government for sanction on 20th October, 2006. In this plan, only Eastern 1/3rd portion of the land was proposed to be reserved for shopping centre vide reservation No.62 and rest of the Western 2/3rd portion was proposed to be dropped from reservation.

In the year 2009, the petitioners applied for development permission. It was rejected on the ground that part of the land was reserved for shopping centre in second revised draft development plan and, thereafter, the petitioners gave purchase notice on 5th March, 2010 under sections 49 and 127 of the MRTP Act. A copy of the said notice is annexed at "Exhibit-C", page 14 of the petition. The purchase notice is addressed to the Chief Officer of the respondent No.1, Principal Secretary, Urban Development Department on behalf of the respondent No.3, the respondent No.2 and Assistant Director, Town Planning, Satara. The title of the notice shows that it was issued under sections 127 and 49 of the MRTP Act. The notice makes reference that the period of 10 years from 1st February, 1984, had elapsed and the subject land has not been acquired, therefore, cause of action to serve notice under section 127 of

the MRTP Act has arisen in respect of reservation No.46 for Municipal purposes. It further refers that development permission was refused to the petitioners on the ground that there is reservation for shopping centre on part of the land in the second revised draft development plan, which gave petitioners cause of action to serve purchase notice under sections 49 and 127 of the MRTP Act. Thus, the notice clearly avers about two different reservations, refers to two different sections and called upon the planning authority and Director of Town Planning to take necessary action.

The General Body of the respondent No.1 passed a resolution dated 23rd March, 2010, a copy of which is annexed at Exhibit D, page 7 to the additional documents, wherein there is a mention of both the reservation No.46 in final plan and reservation No.62 in second revised draft development plan as well as their purpose and extent of reservation. In the said resolution, it has been specifically stated that in the draft development plan only 1/3 portion is reserved, but since same is not sanctioned, acquisition will have to be done as per sanctioned development plan (reservation No.46). The resolution specifically resolves to submit application to the Collector for compulsory acquisition of the land pursuant to reservation for Municipal purposes in the first revised sanctioned development plan of 1983. The president of the respondent No.1, in pursuance of this reservation, wrote a letter dated

6th April, 2010 to the Collector-Satara requesting him to acquire the said land for Municipal purposes. The proforma –B annexed to the said letter specifically mentions reservation No.46 and General Body Resolution of the respondent No.1 dated 23rd March, 2010.

From the above, two things are very clear that the entire said land was resolved to be acquired only for fulfillment of reservation No.46 and by this date, the Government or Director of Town Planning had not confirmed the purchase notice under Section 49 of the MRTP Act.

9. A reference also deserves to be made to the reply of the respondent No.1 dated 1st June, 2010 to the purchase notice under section 127 of the MRTP Act. In paragraph 7 thereof, a specific reference is made that after service of purchase notice, proposal for acquiring the said land has been submitted. The Director of Town Planning confirmed the purchase notice under section 49(4) of the MRTP Act on 18th June, 2010. This confirmation order is produced across the Bar along with the copy of the same to the learned counsel for the respondent No.1. We have perused the same. This order specifically discloses that the same was made in respect of reservation No.62 for shopping centre in the second revised draft development plan. Paragraph 2 of this order makes a specific reference that pursuant to the notice under section 127 already served by owners, the respondent No.1 has applied to Collector-

Satara and hence, request should be made to the Collector to comply with the amended provisions of Section 127. This confirmation order makes it abundantly clear that the Director of Town Planning clearly understood the purport and meaning of the composite notice that it was served upon the Government and him only for reservation No.62 in second revised draft development plan and was a purchase notice under section 49 and it was served upon respondent No.1 for reservation No.46 under section 127 of the MRTP Act.

10. As stated above, the period of one year from service of notice under section 127 of the MRTP Act expired on 4th March, 2011. Admittedly, till then, declaration under section 126(4) of the MRTP Act read with section 6 of the Land Acquisition Act, 1894 was not published. In that view of the matter, the reservation deemed to have been lapsed on 5th March, 2011 and subsequent declaration on 1st June, 2011 under section 126(4) of the MRTP Act read with section 6 of the Land Acquisition Act, 1894, would not come to the rescue of the respondent No.1. The law in this regard is well settled. The MRTP Act fixes time lines which have to be met, failing which, consequences of lapses follow. Failure to publish declaration within one year from the date of receipt of requisite notice results in statutory lapses. A reference in this regard can be made to the decision of the Apex Court in ***Chhabildas versus State***

of Maharashtra and ors. (2018) 2 SCC 784, and ***Shrirampur Municipal Council versus Satyabhamabai Bhimaji Dawkher 5 (2013) 5 SCC 627*** as well as decision of this Court in ***C. V. Shah versus State of Maharashtra 2006 3 BomCR 216.***

11. Now let us consider the submission of Mr.Chavan, learned counsel for the respondent No.1.

In respect of his first submission regarding the ambiguity in the notice is concerned, we have already stated that the resolution dated 23rd March, 2010 of the respondent No.1, the President's letter dated 6th April, 2010 to the Collector- Satara and the confirmation order dated 18th June, 2010 of the Director of Town Planning conclusively shows that everybody understood the notice correctly and none of the authorities had any confusion about it at any point of time. We, therefore, do not find any merit in the submission.

The second submission of the learned counsel for the respondent No.1 was about the legality of the composite notice. It is settled position in law that the purchase notice has to be liberally construed rather than taking pedantic approach. The purpose of the notice is to inform the authorities about consequences of lapsing in case steps are not taken within the time lines prescribed in the Act. The title of the notice mentions both the consequences. It is addressed to the State

and the Director in terms of purchase notice under section 49 of the MRTP which is never required to be served upon the planning authority and it is addressed as a notice in terms of section 127 to the Chief Officer who is entitled to receive such notice under sections 136 and 152 and this notice is not required to be served on the State. Qua section 49, the notice elaborately states about reservation No.62 in second revised draft development plan, application for development/building permission which is rejected on the ground of reservation No.62 and calls upon the Government to take a decision of confirmation. Qua 127, it refers to the fact that more than 10 years have elapsed from coming into force of the final revised development plan. Thus, we find that the notice meets all requirements of law and, as shown above, there was no confusion in the minds of any of the authorities. The purpose of notice, both under sections 49 and 127 of the MRTP Act, is duly served. In this regard, reference can be made to the decision of the Division Bench of this Court in ***C.V.Shah (supra).*** In this case, it was held that the expression "serve notice....to that effect" cannot be construed to mean that in the notice it is mandatorily required to be stated that the subject land is reserved/designated/allotted in the development plan and that the land has not been acquired within 10 years from the date on which the final regional plan or final development plan came into force or that no proceedings in relation to that land for acquisition has commenced

either under the MRTP Act or under the Land Acquisition Act within 10 years. It was further held that the object of the notice under section 127 is to inform the authority mentioned therein to acquire the land which is designated, reserved or allotted in the final development plan. It was also held that the notice need not set out all the facts and details of the reservation/designation or that the said land has not been acquired within 10 years of the coming into force of the final development plan. The Division Bench concluded that the word 'Notice' denotes an intimation to the party concerned of a particular fact. Notice may take several forms. Form of notice under section 127 is not prescribed, therefore, the notice under section 127 shall meet the sufficient compliance if notice describes the land in sufficient clarity and requires the planning authority or the development authority or the appropriate authority, as the case may be, to acquire or compulsorily purchase the land so reserved, allotted or designated in the development plan. If the facts of the present case are considered on the touchstone of the principles laid down in the case of ***C.V.Shah (supra),*** then, by no stretch of imagination, it can be said that the notice is illegal. The purchase notice must be held to be legal.

The 3rd submission of the learned counsel for the respondent No.1 that the service of notice upon the Chief Officer is invalid and bad is liable to be rejected in view of the provisions of sections 136 and 152 of

the MRTP and the law laid down in the case of ***C.V.Shah (supra).***

The 4th and the last submission of the learned counsel for the respondent No.1 that the reservation of the subject land does not lapse in view of the fact that the declaration under section 126(4) of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 was issued on 1st June, 2011 i.e. within a period of one year from the date of confirmation of purchase notice on 18th June, 2010 is misconceived. The Apex Court in ***Chhabildas (supra)*** had an occasion to consider the provisions of sections 49 and 127 of the MRTP Act. In paragraph 7,the Apex Court made following observations :

> *"(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan."*

The above observations make it clear that **the application contemplated under section 49(7) of the MRTP Act must be an application for acquiring the land for the reservation for which the notice is confirmed**. In the present case, the application for acquisition

is not the one made under section 49(7) for acquisition of 1/3rd Eastern portion covered by reservation No.62 in the second revised draft development plan, but it is an application under section 126(1)(c) for acquiring land under reservation No.46 in the sanctioned final development plan. As a matter of fact, after confirmation of purchase notice on 18th June, 2010, by the Director under section 49(5) of the MRTP Act, neither a resolution is passed by the General Body of respondent No.1 for acquiring the 1/3rd Easter portion nor any application is made or a declaration is issued. We are, therefore, unable to accept the said submission.

12. Now this takes us to consider the effect of the sanction of the second revised draft development plan on 7th October, 2016. By this notification dated 7th October, 2016, the Government reinstated the earlier reservation No.46 on the subject land. The reinstatement of the reservation is of no consequence after lapsing of reservation under section 127 of the MRTP Act and the law in this regard is no more res integra. The Division Bench of this Court in ***Baburao Dhondiba Salokhe versus Kolhapur Municipal Corporation, Kolhapur and anr. 2003 (3) Mh.L.J.*** after considering the decision of Apex Court in Bhavnagar University AIR 2003 SC 511, in paragraph 17 held as follows :

17. The legal position as regards MRTP Act on the basis

of aforesaid observations made by 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 MRTP 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 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 in 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."

13. The decision of **Baburao Dhondiba Salokhe (supra)** was followed by another Division Bench in ***Kishor Gopalrao Bapat and ors. Versus State of Maharashtra and anr. 2005(4) Mh.L.J.466*** and ***Kishor S/o.Siddeshwar Wadotkar (Dr.) vs. Director of Town Planning and ors. 2007(3) Mh.L.J.399.***

14. In the light of the above, we are of the opinion that once the reservation is lapsed, the same cannot be revived. In view of the contingencies mentioned in section 127 of the MRTP Act, the necessary consequence under the scheme of section 127 of the MRTP Act must

follow. The land which is released from reservation becomes available to the owner for the purpose of development. 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 MRTP Act.

15. In the backdrop of the reasons stated above, the petition succeeds. Rule is made absolute in terms of prayer clauses (a), (b), (b-1) and (b-5). Consequently, the subject land becomes available to the owners for the purpose of development as otherwise permissible in case of adjacent land owners under the relevant law. The State Government is directed to issue notification under section 127 (2) of the MRTP Act within a period of three months from the date of receipt of this order.

16. The writ petition stands disposed of.

[SMT.ANUJA PRABHUDESSAI, J.] **[RANJIT MORE, J.]**