

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

WRIT PETITION NO.5312 OF 2016

1. Mariyam Begum Abdul Jalil Khan .. **Petitioners**
Age-70 years, Occu-Household,
R/o.[CTS No.6671/1] H.No.1-24-53/P,
Rohila Galli, Aurangabad
Dist. Aurangabad
2. Mrs.Zakia Begum W/o. Mohd. Habib Khan
Age-57 years, Occu-Household,
R/o. [CTS no.6671/2] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
3. Irshad Mohd. Khan Shamshad Khan
Age-68 years, Occu-Pensioner,
R/o. [CTS no.6671/3] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
4. Smt.Nasim Bagum W/o. Masosod Khan
Age-45 years, Occu-Household,
R/o. [CTS No.6671/4] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
5. Shaikh Irfan S/o. Shaikh Amin
Age-33 years, Occu-Business,
R/o. [CTS No.6671/5 & 6] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
6. Shaikh Osman S/o. Shaikh Amin
Age-50 years, Occu-Business,
R/o. [CTS No.6671/6] H.No.1-24-53/P,

Rohila Galli, Aurangabad,
Dist. Aurangabad

7. Mohd. Jafar S/o. Mohd. Ayyub
Age-50 years, Occu-Business,
R/o. [CTS No.6671/7] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
8. Syed Rashiduddin S/o. Syed Abidulla Qadri
Age-66 years, Occu-Business,
R/o. [CTS No.6671/8] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
9. Ibrahim Khan S/o. Ahmed Khan
Age-40 years, Occu-Business,
R/o. [CTS No.6671/9] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
10. Amanatullah Khan S/o. Sadullah Khan
Age-72 years, Occu-Business,
R/o. [CTS No.6671/10] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
11. Manzoor Khan S/o. Mustafa Khan
Age-38 years, Occu-Business,
R/o. [CTS No.6671/18] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
12. Smt.Tesneem Fatema W/o. Gazanfar Ali
Age-50 years, Occu-Teacher,
R/o. [CTS No.6671/19] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad

13. Syed Gulam Jeelani S/o. Syed Gulam Sofi
Age-65 years, Occu-Pensioner,
R/o. [CTS No.6671/20] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
14. Shaikh Mohd. Iqbal S/o. Shaikh Amir
Age-65 years, Occu-Pensioner,
R/o. [CTS No.6671/20] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
15. Smt.Anisa Anjum W/o. Syed Afzaluddin
Age-40 years, Occu-Household,
R/o. [CTS No.6671/20] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
16. Mohd. Rafiq S/o. Haji Baba
Age-59 years, Occu-Business,
R/o. [CTS No.6671/23] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
17. Mohd. Farooq S/o. Abdul Razzak
Age-45 years, Occu-Business,
R/o. [CTS No.6671/23 & 24] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad
18. Majeed Khan S/o. Mustafa Khan
Age-36 years, Occu-Private Service,
R/o. [CTS No.6671/24] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad

19. Mohd. Munir S/o. Mohd. Yakub Siddiqui
Age-61 years, Occu-Business,
R/o. [CTS No.6671/24] H.No.1-24-53/P,
Rohila Galli, Aurangabad,
Dist. Aurangabad

VERSUS

1. The State of Maharashtra .. **Respondents**
Through Secretary, W.B.D.B. Department,
Mumbai
2. The Director,
Town Planning,
Maharashtra State
Office at Pune
3. Municipal Corporation,
Aurangabad through
Municipal Commissioner,
Aurangabad
4. The Municipal Commissioner,
Municipal Corporation,
Aurangabad
5. The Collector,
Collector Office,
Aurangabad

Mr.R.R.Mantri, Advocate h/f Mr.Zia-Ul Mustafa, Advocate
for the petitioners

Mr.P.S.Patil, AGP for respondent Nos.1,2 and 5

Mr.J.R.Shah, Advocate for respondent Nos.3 & 4

Mr.D.S.Bharuka, Advocate for applicant in CA No.3935/17

(5)

wp5312.16

**CORAM : S.V. GANGAPURWALA &
S.M. GAVHANE, JJ.**

RESERVED ON : 24.11.2017

PRONOUNCED ON : 20.03.2018

J U D G M E N T [PER: S.M. GAVHANE, J.] :-

. Rule. Rule made returnable forthwith. With the consent of the parties the writ petition is taken up for final hearing.

2. By this petition under Article 226 of the Constitution of India the petitioners seek declarations as per prayers in Clause "B" to "E" that their properties mentioned in Para No.1 of the petition (which are referred in detail later on) as de-reserved, that the reservation of garden in development plan has been lapsed as against the petitioners regarding their properties, that their properties are free properties and can be developed by them in accordance with law and respondents cannot claim any reservation thereon, and that the orders of the respondents making the houses of the petitioners reserved for the purposes of garden be declared as null and void and illegal and further claimed to cancel the same in terms of Section 127 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as 'the MRTP, Act)

3. The City Survey Nos. [P.R. card Nos.] 6671/01, 6671/2, .6671/3, 6671/4, 6671/5 & 6, 6671/5 & 6, 6671/6, 6671/7, 6671/8, 6671/10, 6671/18, 6671/19, 6671/20, 6671/20, 6671/20, 6671/20, 6671/23, 6671/23 & 24, 6671/24 and 6671/24 with houses thereon, situated within limits of Municipal Corporation, Aurangabad, which are respectively in the names of the petitioners as per sequence of their names in the petition, as described in para No.1 of the petition (hereinafter referred to as 'the subject properties') are the properties of the petitioners'.

4. According to the petitioners they are residing in the subject properties since long and prior to them their ancestors and predecessors-in-title were residing there. The said area is densely populated area having residential locality. The petitioners' houses have been given Municipal House Numbers by respondent No.3 Municipal Corporation, Aurangabad. The Municipal Corporation, the then Municipal Council, Aurangabad and earlier local authority have provided facilities like water supply, sewage and even drainage to the subject properties. The petitioners have either repaired, re-developed even re-constructed, either with due permission

or with the knowledge of the Municipal Corporation, Aurangabad, then Municipal Council, then local body, the subject properties.

5. The petitioners have contended that as per development plan of Municipal Corporation, Aurangabad area of 'the subject properties' was reserved for garden purpose and later on it was removed from the reservation. Subsequently again in the year 2001 it was included in the reservation for garden by publishing revised development plan dated 18.11.2001 which was published vide notification dated 17.08.2002. The town planning authority is not able to acquire the subject properties by private agreement or compulsory acquisition within 10 years of development plan. No public notices were given/issued to the petitioners and others and they were not heard. The development plan and the revised development plan appeared to be passed illegally and without following due procedure, behind back of the petitioners. The petitioners had issued notices to the respondents calling upon to consider their case for deletion of reservation of garden facility and to de-reserve their houses therefrom. But they did not de-reserve the same.

6. In the above circumstances the petitioners on 29.09.2014 issued purchase notice (Exh.F) under Section 127 of the MRTP, Act (hereinafter referred to as the purchase notice) to respondent No.2 Municipal Corporation, Aurangabad, respondent No.4 the Commissioner of Municipal Corporation, Aurangabad and the Town Planning Authority of the Municipal Corporation, Aurangabad by RPAD and also said notice was given by hand to said authorities. The respondent authorities received the purchase notice on the same day, as per endorsement of the office of the respondents on the office copy of the purchase notice. The purchase notice by RPAD was served on the respondents on 30.09.2014. In spite of service of the purchase notice the respondents did not purchase the subject properties and did not take any steps for the same and therefore, after lapse of one year of service of the purchase notice on the respondents the subject properties are deemed to be de-reserved as the purchase notice has not been complied in accordance with the provision of Section 127 of the MRTP Act within stipulated period by the respondents.

7. By amending the petition the petitioners have contended that under Section 127 of the MRTP, Act apart from owner even a person interested in the land can serve

the notice. There is no dispute that the petitioners are the persons who have interest in the subject properties. In fact, there can be no dispute about title of each of the petitioners to the respective plots/properties. Subject property was owned by Mohammad Abdul Sattar Khan etc., who sold it to Sadulla Khan S/o. Naser Khan on 20.10.1944, fasli, by registered sale deed for Rs.2,200/-. In or about 1970 the work of City Survey was undertaken and Sadulla Khan appears to have died by that time and his sons Abdul Khan etc were present at that time of enquiry by City Survey. This property was given Chalta No.158, Municipal No.1-16-17, area 4711.09 sq. mts. and was given final City Survey No.6671. The respective petitioners have purchased part of the said property by registered sale deed. The said survey No.6671 then recorded as House No.1-24-53 was permitted to be sub-divided into several plots by the erstwhile Municipal Council on 03.07.1979. Thus, the petitioners are title holders. They have been residing for years together by constructing their houses and as such apart from being owners, they are persons interested. It is contended that merely because the subject properties are designated in the development plan for garden etc, it does not divest title of the petitioners as owners of the said subject properties, nor it automatically vest in the planning

authority/corporation. Its acquisition as per law and payment of compensation can only divest title of the owners.

8. The petitioners further contended that the subject property Plot No.6671/1 belongs to the petitioner No.1. It appears to be the contention of the respondents that the construction of pucca storied house on the said property owned by petitioner No.1 has been made without pre-permission of planning authority. Petitioner No.1 has already applied to the respondent /corporation to treat her structure as compounded structure or Gunthewari and to protect it, in the light of amended provision of the MRTP Act, as per amending Act No.XXXII of 2017 and the said application is pending. Further it is contended that one Fardan Baba Farjan had filed writ petition No.4064/2016 in this Court contending that petitioner No.1 has encroached on land reserved for garden and has made illegal construction thereon. Petitioner No.1 appeared through Advocate in the said petition. On 27.06.2017 the said petition was finally disposed of without notice of final disposal and the Corporation was directed to take necessary steps in accordance with law. The application bearing CA No.9825/2017 to re-call the said order was filed as it was passed in absence of the

Advocate for the present petitioner No.1. The Court directed action as per law and hence the said application was withdrawn. The respondent Corporation malafide and to grab the land without payment due to some people having vested interest making farce of misinterpreting the order of this Court in writ petition No.4064/2016 and issued notice No.923/2017 dated 19.07.2017 stating that the construction of petitioner No.1 is to be demolished in 7 days and hence she should vacate the said construction else they would do it and demolish. Thus, the petitioners are not left with any other remedy than to file this petition for getting the subject properties de-reserve.

9. Respondent Nos.1,2 and 5 have not filed any reply.

10. Respondent Nos.3 and 4 have filed short affidavit-in-reply dated 06.04.2017 (Page-58) of Avinash B. Deshmukh, Assistant Director, Town Planning, Aurangabad stating that the petitioners have served the notice under Section 127 of the MRTTP Act and by this petition the petitioners are seeking declaration that the land is deemed to have been released from encumbrances of reservation. The petitioners have no right to serve the notice under Section 127 of the MRTTP Act. The

petitioners are not owners of the disputed properties. The petitioners have failed to aver in the writ petition and also in the purchase notice that they are the owners of the properties. The petitioners ought to have disclosed their interest in the properties.

11. Further it is contended that petitioner No.1 had instituted RCS No.92/2012 in the Court of Civil Judge, Senior Division, Aurangabad (The Corporation Court) claiming that she is owner of Municipal House No.1-24-53/P constructed on plot having CTS No.6671/1, however CTS No.6671/1 does not correspond the Municipal House No.1-24-53 nor the record shows that the Municipal House No.1-24-53 belongs to petitioner No.1. It stands in the name of Smt.Mehraj Khatun Turab Khan of Manjurpura, Aurangabad. There is no record that CTS No.6671/1 was sub-divided in parts. The learned Corporation Court while rejecting the application [Exh.5] specifically observed in Para No.27 as under :

“27. Neither CTS No.6671 nor 6671/1 is mentioned in the sale deed of the plaintiff. Only Municipal House number is mentioned. City Survey number is not mentioned on property tax receipt issued by defendant No.1 to the plaintiff. Thus it cannot be held that plaintiff is owner of CTS No.6671/1, nor can it be said that Municipal House No.1-24-53, situates on CTS No.6671/1”

12. It is further contended that the petitioners

have no locus to file the writ petition for seeking declaration that reservation is lapsed as they are not the owners of the subject properties nor they are having any lawful interest in the subject properties by which they can divest the title.

13. Respondent Nos.3 and 4 have filed additional short affidavit-in-reply dated 14.11.2017 [Page-292-A] of Pawankumar Lalojirao Aloorakar, Assistant Director, Town Planning, Municipal Corporation, Aurangabad, after the petitioners have amended the petition raising the contentions in paragraph Nos. 28-A to 28-H and on denying the petitioners' contentions in the said paragraphs and title of the petitioners to the subject properties it is stated that Section 127 of the MRTP Act, mandates that notice under Section 127 of the MRTP Act is required to be served alongwith documents of title or interest in the said land on the planning authority. Since the purchase notice is served without any documents of title, the same is not valid. On the basis of such invalid notice no right is accrued to the petitioners and no relief could be granted to that effect. The averements made regarding CA No.9825/2017 are incorrect. This Court by order dated 25.07.2017 was pleased to keep the said application on 27.07.2017 and in the meantime suggested the Corporation

not to carry out demolition. On 27.07.2017 the Advocate for the applicant had withdrawn said C.A. No.9825/2017.

14. Further, it is stated that the the petitioners have amended the prayers seeking injunction in respect of structure standing on CTS No.6671, Sheet No.22, Situated at Rohila Galli, Aurangabad. The said amended prayer is misleading, the said prayers are not germane to the cause of action, for which the present petition is filed. This structure erected by petitioner No.1 was subject matter of writ petition No.4064/2016. This Court by order dated 27.06.2017 directed the Corporation to take necessary steps against illegal construction and therefore no injunction to protect illegal construction would be granted in this petition. The title of the petitioners cannot be decided in the present writ petition. The documents placed on record, can not make out the source of the title of the petitioners and their vendors. The notice under Section 127 of the MRTP Act is not valid notice and no relief on the basis of invalid notice can be granted and therefore the petition deserves to be dismissed.

15. After filing of the affidavit-in-reply dated 06.04.2017 [Page No.58] on behalf of the respondent Nos.3

and 4, the petitioners have filed the rejoinder affidavit dated 28.04.2017 [Page No.89] of Irshad Mohammed Khan S/o. Shamshad Mohammed- petitioner No.3, stating that the said affidavit-in-reply filed by respondent No.3 and 4 is not true and correct. The petitioners are owners and possessors of their respective properties and they are residing in their respective houses. Thus, they are interested persons. The copies of P.R. cards showing the names of original owners Abdullah Khan, Ahmedullah Kha, Iqbaulnnisa W/o. Hasan Khan, Asadullah Khan and Amanullah Khan etc. and subsequent purchasers and the successors are annexed. The copy of map of City Survey department of CTS No.6671 is annexed. The subject properties are given Municipal House No.1-24-53/P in the record of Municipal Council. The petitioners are paying taxes to respondent No.3 Municipal Corporation about subject properties. The tax receipt/ and demand notice are annexed. In spite of issuance of the purchase notice to the respondents and after lapse of more than two years even till today I.e, till filing of affidavit no steps are taken by the respondents to either acquire the disputed properties in accordance with the provisions of the Land Acquisition Act or by agreement. Therefore, it is stated that the writ petition may kindly be allowed and the subject properties of the petitioners from 6671/1 to 6671/24, all

of Sheet No.22 may be declared to be free from reservation and that the petitioners can develop the same in accordance with law. RCS No.92/2012 was filed by petitioner No.1 for injunction. The present writ petition is filed under altogether different provisions of law. Therefore, rejection of temporary injunction application in the above said suit has no bearing on this petition. Moreover, it was individual matter of petitioner No.1 and it was not a matter of other petitioners. Till filing of the affidavit-in-reply, the Corporation never questioned or enquired with the petitioners about their title.

16. Moreover, after filing of additional short affidavit-in-reply dated 14.11.2017 of Assistant Director, Town Planning, Aurangabad by the respondent Nos. 3 and 4 the petitioners have filed the rejoinder affidavit (Page No.309) of petitioner No.1 Mariyam Begum Abdul Ali Khan dated 23.11.2017 stating that when the purchase notice under Section 127 of the MRTP Act was sought to be given by hand, the Clerk concerned asked to provide the copies of P.R. Cards without which he was not ready to accept. As such, the copies of the P.R. cards were given by hand with notice to all the authorities. It is only to avoid exposure of respondents that the file concerned, the notice under section 127 of the MRTP Act

and action taken, if any, is not produced. In the affidavit-in-reply sworn on 06.04.2017 no such contention is raised because of the fact that the copies were already supplied with notice. No reply at any time was given to purchase notice dated 29.09.2014 by the respondents. The notice dated 29.09.2014 is preceded by notice dated 04.03.2013. Respondents replied the said notice, title of the petitioners was not at all disputed. Writ Petition No.5709/2014 was based on notice dated 04.03.2013 in which P.R. cards are annexed. In the judgment of RCS No.969/2009 the development plan is held to be illegal as without following mandatory procedure. The respondents permitted sub-division of plots and P.R. cards are prepared and taxes are recovered. Petitioner No.8 Syed Rashiduddin S/o. Syed Abidulla Qadri was given construction permission on 23.03.1981 and completion certificate on 12.10.1982. Petitioner No.18 was given construction permission on 16.06.2013 about CTS No.6671/24. In the suit, title of the petitioners was never disputed. The dispute is raised at the instance of intervenor who claims to have objected notice given under Section 127 of the Act, on 05.04.2016. The respondent Corporation was served on 20.07.2016, but did not file reply till 06.04.2017 which shows that it waives defects in notice, if any.

17. So also, the petitioners have filed additional affidavit dated 09.11.2017 (Page No.309) of Majeedkhan S/o. Mustafakhan the petitioner No.18 stating that on 10.06.2013 he and his brother Mansoorkhan petitioner No.11 have purchased by registered sale deed CTS No.6671/2-H with old standing house thereon. Soon after it, they had applied to the Corporation to seek permission to make new construction of ground + first floor and submitted plan. The Respondent Corporation vide printed Book No.241, Sr. No.6017 on 26.12.2014 granted construction permission No.831/2014/15 on same CTS No.6671/24. It is stated that accordingly construction is made and the Municipal Corporation has granted tap connection and recovering Municipal taxes.

18. One Fardan Baba Farjan has filed CA No.3935/2017 against the petitioners and respondents in the writ petition No.5312/2016 to add him as intervenor in the writ petition as respondent, to participate in the proceedings on the grounds that he is owner and possessor of the house Property bearing No.6669, situated at Rohila Galli, Deodi Bazar, Aurangabad. He is residing in the said house alongwith his younger brother and family members since more than 60 years. As per revised

development plan of Aurangabad city dated 17.08.2002 CTS No.6671, Sheet No.22 was reserved for garden by Government notification dated 18.04.2001 and the plan was sanctioned by the Government notification dated 17.08.2002. Thereafter, said reservation is continued till date. There is no de-reservation of any portion of CTS No.6671. After sanction of development plan in the year 2002 as per information received by the petitioner from the Town Planning Authority, there was no sub-division of CTS No.6671, but respondent Nos.1 to 19 have in collusion with the officer of Municipal Corporation sub-divided CTS No.6671. There is no provision in Municipal Corporation, Act to make sub-division in City Survey Record, but its only City Survey Office by following due procedure of law on the basis of information given under Section 149 and 150 of the Maharashtra Land Revenue Code, 1966 can make mutation on the basis of document of title. However, without production of documents of title the Municipal Corporation illegally sub-divided CTS No.6671 in the name of respondents Nos. 1 to 19 [petitioners in writ petition No.5312/2016]. However, as per law the respondents can not get title over the properties which they claimed as owners. Even then the said respondents, (petitioners in the writ petition) have filed the writ petition claiming

that they are owners of the subject properties and they have issued purchase notice and filed this petition for de-reservation of the subject properties. This petitioner has taken objection to the said purchase notice on 05.04.2016.

19. Learned Advocate for the petitioners submits that the petitioners are not only owners of the subject properties but they are also persons interested in the subject properties in the light of provision under Section 127 of the MRTP Act. They have been residing in the subject properties since their forefather. The Municipal Corporation has provided all the facilities to their houses in the subject properties. They have been paying taxes of the subject properties to the Municipal Corporation. Earlier subject properties were shown reserved for garden as per development plan, but subsequently the said reservation was cancelled. Therefore, again the subject properties cannot be reserved for garden as per revised development plan dated 18.11.2001. No steps were taken by the respondent authorities to acquire the subject properties within 10 years of the publication of the revised development plan dated 18.11.2001 and therefore the petitioners are entitled to claim declaration to de-reserve the subject

properties in the light of provision under Section 127 of the MRTP Act, and therefore, they had issued the purchase notice (Exh.F) to the respondent Municipal Corporation, its Commissioner and the Town Planning Officer, Municipal Corporation, Aurangabad. Even after receipt of the said notice, the respondents have not taken steps to acquire the subject properties within one year and therefore, the petitioners are entitled to declaration to de-reserve the subject properties as requested in the petition. The petitioners have submitted the documents of title to the subject properties when purchase notice was given by hand to the respondent authorities. The said respondents have also waived the condition of attaching documents of title with the purchase notice as the purchase notice is not replied by the said respondents. The title of the petitioners was not denied when first affidavit-in-reply was filed on 06.04.2017 and thus respondent Nos.3 and 4 have waived defect in the purchase notice, if any. It is submitted that thus, the grounds on which the purchase notice is claimed to be invalid by the respondent Nos. 3 and 4 are not sustainable.

20. Learned Advocate appearing for the petitioners has in support of his submissions relied upon the following decisions:

a] In the case of Girnar Traders Vs State of Maharashtra, 2007 [7] SCC 555 in Para No.56 the Apex Court has observed as under:-

“56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilize the land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not 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.”

b] In the case of Hirabaidattatray Baabar and ors Vs Sangli, Miraj, Kupwad Municipal Corporation & ors reported in 2007[4]Bom.C.R. 151 Equivalent Citation 2007[5]All.M.R.396: 2007[5]Mh.L.J.90, in Paragraph Nos. 10 the Division Bench of this Court has observed thus:

The law as it stands, is that the time to be computed for calculating the period of six months is the making of the application to the State Government under Section 126 of the M.R.T.P. Act, from the date of receipt of the purchase notice under Section 127 of the M.R.T.P. Act.

c] In the case of Ramchandra Shankar Joshi and others Vs State of Maharashtra and others reported in 2016[1]Mh.L.J.765: 2015[6]AIR Bom R 364 in paragraph Nos. 7 & 8 the Division Bench of this Court has observed thus:

“7. It is a settled position of law that notice contemplated under Section 127 of the Act of 1966 is to be given by the owner or the person having interest in the land which is reserved, allotted or designated for the particular purpose in the development plan. 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 is further settled position in law that form of notice under Section 127 is not prescribed. Therefore such notice shall meet sufficient requirement in describing the land in clear terms and require the planning authority or 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. In case such a notice in a proper form is served on the concerned authority and no steps are taken within six months from the date of service of such notice, the reservation/allotment/designation shall be deemed to have lapsed and the land shall be deemed to have been released from the said reservation.

8. Therefore, the precondition for the land owner or the person interested to claim benefit under the provisions of section 127 of the Act 1966 would be to give proper notice describing the land in sufficient clarity and intimating the concerned authority in clear terms.”

d] In the case of M/s. Gupta Loom Industries & Anr Vs The State of Maharashtra and ors reported in 2016 [6]ALL MR 307 the Division Bench of this Court in Paragraph Nos. 13 and 14 has observed as under:-

“13. It is true that the notice under sub-section [1] of Section 127 has to be construed strictly as non-compliance with the notice has a drastic consequence of lapse of reservation. Therefore, the mandatory requirement of law is that strict compliance must be made of while issuing a notice under Sub-Section [1] of Section 127. In the facts of the case, we find that specifically on the basis of the said notice dated 7th October, 2010, the General Body of the Municipal Corporation passed a

resolution for initiating acquisition proceedings. The proposal for the acquisition specifically refers to the said notice. Hence, even the said Corporation has acted upon the said notice dated 7th October, 2010 by treating it as a notice under Section 127.

14. It is well settled that if certain requirements or conditions are provided by a statute for the benefit of a person, the said requirements or conditions though mandatory, may be waived by the said person if no public interest is involved. In the facts of the case, the Municipal Corporation acted upon the said notice by passing a resolution to initiate acquisition proceedings which shows that the alleged defects in the notice were waived by the said Corporation for whose benefit certain requirements are provided in Section 127.”

e] In the case of Municipal Corporation of Greater Bombay Vs Dr.Hakimwadi Tenants' Association and others reported in 1988 [Supp]Supreme Court Cases 55 it was observed in Para No.10 that:

“We must hold in agreement with the High Court that the purchase notice dated July 1, 1977 served by respondents 4-7 was a valid notice and therefore with the failure of the appellant to take any steps for the acquisition of the land within the period of six months therefrom, the reservation of the land in the

Development Plan for a recreation ground lapsed and consequently, the impugned notification dated April 7, 1978 under Section 6 of the Land Acquisition Act issued by the State Government must be struck down as a nullity.”

f. In the case of Supreme Industries Ltd. Through its Authorized Signatory Vs State of Maharashtra and others in Writ Petition No.7163/2016 decided on 10.08.2017 by the Division Bench of this Court [Coram:R.M.Borde and S.M.Gavhane, JJ] in para 10 it was observed as under:

10. Since the Municipal Corporation has acted upon the notice issued by petitioner, as has been held by the Division Bench in the matter of Gupta Loom Industries (Supra), the alleged defect in the notice shall be deemed to have been waived by the Municipal Corporation for whose benefit certain requirements are provided in Section 127 of the Act. It also must be noted that in spite of adopting resolution on 29.04.2015, no steps have been taken by the Municipal Corporation till today. The Corporation in fact does not dispute receipt of notice issued by petitioner under Section 127 of the Act and ownership of petitioner over the property. However, it is harping upon the technical defects which, in the facts of the case, for the reasons recorded above, do not hold good.

g] In the case of Krishna Kumar Mediratta Vs Phulchand Agrawal reported in 1977 DGLS (SC)45 it was held that, it is not the breach of every mandatory duty in performing a prescribed act that could make an action totally ineffective or void ab initio. The filling of the application is one thing and completion of some annexed duty, which is legally separable, is another unless a statute or a rule provides otherwise.

21. Learned Advocate appearing for respondent No.4 submits that the petitioners are not owners of the subject properties. They have not annexed the documents of title to the subject properties with the purchase notice under Section 127 of the MRTP Act. Learned Advocate further submits that as per section 127 of the MRTP Act the land owners have to supply copies of documents showing their title or interest in the land with notice. Since the petitioners did not annex documents of their ownership to the subject properties with notice under Section 127 of the MRTP Act there is no compliance of the said provision and therefore the purchase notice given by the petitioners is invalid and therefore, as the petitioners have no locus to file the writ petition they are not entitled to relief of declarations as claimed in the petition to declare that the subject properties are deemed to be de-reserved since

no steps have been taken by the respondents to acquire the said properties within one year of service of the said notice. The learned counsel appearing for respondent No.4 has relied upon decisions in the case of Jaika Vaniyya Ltd, Nagpur and another Vs State of Maharashtra and others 2013[4]Mh.L.J.161 and in the case of Perfect Machine Tools Co. Ltd. Vs State of Maharashtra and ors 2008[2]Mh.L.J. 404.

22. We have also heard the learned Advocate appearing for intervenor /applicant in CA No.13212/2017.

23. We have carefully considered the submissions of the learned Advocates for the petitioners, respondent No.4 and the applicant-intervenor. So also, with their assistance we have perused the petition, affidavits-in-reply, rejoinder affidavits, intervenor's application and the documents relied upon by the petitioners.

24. The petitioners' claim is based on the provision under Section 127 of the MRTP Act which reads thus:

“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) or (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, on the Planning Authority, the 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*.

25. On plain reading of provision under Section 127 of the MRTTP Act, it is clear that notice contemplated thereunder is required to be served on Planning Authority, Development Authority or as the case may be appropriate authority. The petitioners are expected to give 12 months time (as per the provision prevailing

then) to the said authorities to acquire the land. As such proceedings for acquisition, therefore, need to be commenced within said period of 12 months. If the proceedings are not so commenced the reservation of land is deemed to have lapsed. After such lapsing the land is released from reservation and becomes available to the owners for the purpose of development or otherwise permissible in case of adjacent land under relevant plan. The owner or any person interested in the land/property under reservation may serve the notice contemplated under Section 127 of the MRTTP Act.

26. According to the petitioners the subject properties were reserved as per development plan for garden. As said development plan was not completed within stipulated time again the subject properties came to be reserved for garden as per revised development plan dated 18.11.2001. Respondent Nos.3 and 4 have not specifically denied this fact in their reply affidavits. There is no dispute that the petitioners issued the purchase notice (Exh.F) under Section 127 of the MRTTP Act dated 29.09.2014 to the respondents Municipal Corporation, Aurangabad, respondent No.4 Municipal Commissioner and Town Planning Officer for Municipal Corporation, Aurangabad. According to the petitioners the said notice

was served upon these authorities on 30.09.2014. Respondent Nos. 3 and 4 in their above said reply affidavits have not specifically denied the fact of service of purchase notice on them on 30.09.2014 by RPAD. On the contrary in the reply affidavit submitted on behalf of respondent Nos. 3 and 4 in paragraph No.3 it is stated that petitioners have served the notice under provision of Section 127 of the MRTP Act and by filing the present writ petition, the petitioners are seeking declaration that the land is deemed to have been released from the encumbrances of reservation. Therefore, we hold that the petitioners have served the purchase notice on respondent Nos. 3 and 4 and Town Planning Officer, Municipal Corporation, Aurangabad on 30.09.2014 by RPAD.

27. The contesting respondent Nos.3 and 4 have objected the reliefs claimed by the petitioners on two grounds, i.e. on the ground that the petitioners are not owners of the subject properties and that the petitioners did not annex the documents showing their title to the subject properties with the purchase notice. Therefore the purchase notice is invalid and hence the petitioners are not entitled to reliefs of declaration claimed in the petition.

28. In the first place we shall deal with the objection raised by the contesting respondents that as alongwith purchase notice the petitioners did not annex the documents of their ownership/title to the subject properties which is mandatory requirement of purchase notice as per Section 127 of the MRTP Act the said notice is invalid and hence the petitioners are not entitled to de-reservation of the subject properties as claimed by them. On perusal of purchase notice (Exh.F) it does not show that alongwith said notice the petitioners had enclosed the documents of their title to the subject properties. Moreover, it is not their case in the petition that alongwith purchase notice which was sent by them on 29.09.2014 by RPAD they had annexed the documents of their ownership to the subject properties.

29. In the rejoinder affidavit dated 23.11.2017 (Page No.309) of petitioner No.1, it is stated in paragraph No.2 as under:-

“It is submitted that when notice was sought to be given by hand, the clerk concerned asked to provide copies of P.R. cards without which he was not ready to accept. As such copies of P.R. cards were given by hand with notice to all authorities. It is only to avoid exposure of respondents that the files concerning the notice under Section 127 of the MRTP Act and action taken, if

any is not produced. In the affidavit in reply sworn on 06.04.2017 no such contention is raised because of the fact that copies were already supplied with notice. It is denied that notice dated 29.09.2014 is not valid. No reply at any time was given to this notice by respondents.”

From the above contents of affidavit it appears that the petitioners have claimed that when notice was served on all the authorities by hand, on asking the concerned clerks copies of the P.R. cards of the subject properties were given by hand to all authorities.

30. As referred earlier in their affidavit-in-reply dated 06.04.2017 (Page No.58) respondent Nos. 3 and 4 have not specifically denied the contention of the petitioners that the purchase notice was also given by hand to the respondents as per endorsements on the purchase notice (Exh.F). On perusal of the purchase notice (Exh.F) it seems that it bears three seals i.e. one seal of Municipal Corporation, Aurangabad dated 01.10.2014, second seal of Municipal Corporation, Aurangabad dated 01.10.2014 and third seal of Aurangabad Municipal Corporation, Town Planning Department dated 01.10.2015. These seals /endorsements were obtained after delivery of the purchase notice by hand on the said three

authorities. These endorsements did not show that with the purchase notice documents of ownership to the subject properties were delivered to the concerned Clerks of the said three authorities. In fact, when the purchase notice was given by hand to all the three authorities mentioned in the said notice and if the documents of ownership were delivered to the concerned Clerks of the said authorities as stated in the rejoinder affidavit of petitioner No.1, it was possible for the person who had given documents of ownership of the subject properties to the concerned Clerks of the said authorities, to obtain endorsement to that effect alongwith seals of all the three authorities in token of receipts of purchase notice with the documents of title by hand. But, when there is no such endorsement on the purchase notice (Exh.F), the contention of the petitioner No.1 in rejoinder-affidavit (Page No.309) that when notice was sought to be given by hand the concerned Clerks asked to provide copies of P.R. cards without which he was not ready to accept and as such the copies of P.R. cards were given by hand with purchase notice to all authorities appears to be after thought and is not sufficient to say that documents of title to the subject properties were given with the purchase notice to all the three authorities.

31. There is no dispute that respondent Nos.3 and 4 have filed short affidavit-in-reply (Page No.58) on 06.04.2017 for the first time after their appearance stating that the petitioners have no right to serve the purchase notice, that the petitioners are not owners of the subject properties and that the petitioners have no locus to file the writ petition. In the said affidavit it is not contended that the purchase notice was served on the respondents without the documents of title and only in the affidavit-in-reply dated 14.11.2017 (Page No.292-A) respondent Nos. 3 and 4 have raised objection that since the purchase notice is served without any documents of title, the same is not valid. As mentioned earlier, it is not mentioned in the purchase notice (Exh.F) that it was served on the respondents alongwith documents of title of the subject properties so also it is not the case of the petitioners in the memo of the writ petition that the purchase notice was served on the respondents alongwith the documents of their title to the subject properties. Considering these aspects and say in the short affidavit dated 06.04.2017 filed on behalf of respondent Nos.3 and 4, after thought statement in the rejoinder-affidavit dated 23.11.2017 (Page No.309) of petitioner No.1 that copies of P.R. cards were given by hand with the purchase notice to all the authorities is

not acceptable. In all the above circumstances merely because contesting respondent Nos. 3 and 4 have not stated in short affidavit dated 06.04.2017 that the purchase notice was served without documents of title to the subject properties it cannot be said that the petitioners have served the purchase notice with documents of title as claimed by the petitioners in the rejoinder-affidavit dated 23.11.2017. It is true that respondents have not replied the purchase notice. But, in the circumstances noted above merely because respondents have not replied the purchase notice no inference can be drawn that the purchase notice was served on respondents by the petitioners with documents of title.

32. Learned Advocate appearing for the petitioners relying upon the ratio laid down in the case of M/s. Gupta Loom Industries & Anr cited (supra) and Supreme Industries Ltd. Through its Authorized Signatory cited (Supra) submitted that, in the present case as respondents have not replied purchase notice it can be said that they have waived the condition of attaching the documents of title with purchase notice. In both the above said decisions the respondent Municipal Corporation had passed resolution for initiating acquisition proceedings to acquire the land after receipt of the purchase notice and

acted upon the said notice. Therefore, it was held in the said decisions that respondents have waived the alleged defect in the notice. In the present case, it is not the case of any of the respondents that after receipt of the purchase notice the respondent Municipal Corporation has passed resolution to initiate acquisition proceedings to acquire the subject properties. Thus, facts of above decisions are different from facts of this case. Therefore, the arguments advanced as above on behalf of the petitioners is not accepted and the ratio laid down in the above decisions is of no help to say that the respondents have waived the condition of attaching documents of title with the purchase notice.

33. For the reasons discussed above we hold that the petitioners have failed to prove that the purchase notice (Exh.F) was served on the respondents with the documents of title by hand. Thus, as the purchase notice was not served on the respondents authorities with the documents of title to the subject properties and that ownership of petitioners is disputed by respondent the said notice is invalid. Therefore, there is substance in the arguments advanced by the learned Advocate appearing for respondent No.4 relying upon the ratio laid down in the case of Jaika Vanijya Ltd. Nagpur and another (Supra) and

Perfect Machine Tools Co. Ltd. (Supra) that the purchase notice is invalid as the documents of title were not attached to it.

34. Now it is to be seen whether the purchase notice is invalid as the petitioners did not give twenty four months period to the respondent authorities to take steps from the date of service of said notice on them in view of the amendment in Section 127 of the MRTP Act, after service of the purchase notice on them and prior to filing this petition. There is an amendment in Section 127 of the MRTP Act, deleting twelve months period substituting it by twenty four months period within which the authorities are required to take steps to acquire the property after service of the purchase notice. In view of the decision in the case of Vishnuvasant Developers, Digras and others Vs State of Maharashtra and another reported in 201(2)Mh.L.J.284 it was held that the amended provisions of Section 127 (1) of the Act that extend the period for taking effective steps to twenty four months, as against twelve months, as provided by the unamended provisions would not be applicable to a matter where the owner or any person interested in the land has served a notice on the planning or the appropriate authority, as the case may be, before the amended provisions came into

effect on 29.08.2015. Therefore, amended provision of Section 127 (1) extending the period of twenty four months for taking effective steps by the respondents would not be applicable to the present case and therefore, it cannot be said that the purchase notice in the present case is invalid on that ground.

35. For the forgoing reasons we hold that as the petitioners did not attach the documents of their title to the subject properties with the purchase notice (Exh.F) which was served on the respondents, the said notice is invalid.

36. In view of the fact that the purchase notice is invalid as observed above we find it not necessary to consider the aspect whether the petitioners are owners of the subject properties which is disputed question of fact.

37. As the purchase notice is invalid the petitioners are not entitled to declaration to de-reserve the subject properties as claimed in the petition and therefore, on the said ground alone petition is liable to be rejected.

38. The learned counsel appearing for intervenor in Civil Application No.13212/2017 has submitted that the subject properties have been reserved for garden and therefore those cannot be de-reserved even if the respondent authorities have not acquired the subject properties within ten years of the publication of revised development plan and the respondents have not taken steps within twelve months to acquire the subject properties after service of purchase notice on them by the petitioners. To support his submissions he has relied upon the decision of Supreme Court in a case of Municipal Corporation of Greater Mumbai and other Vs Hiranman Sitaram Deorukhar and others in Civil Appeal No.11258/2018 arising out of SLP (C) No.30524/2014 decided on 24.08.2017.

. In the said case total 90500 sq. yard area was reserved for garden. The disputed portion was 3090 sq. yard. In the year 1967 the disputed property was reserved for garden in the development plan. The said development plan was revised in the year 1991-1992. The reservation of the disputed properties was further continued for the purpose of garden. On 05.10.1992 respondent Nos. 2 to 12 and the deceased namely

Sitaram Deorukhar entered into an agreement for sale dated 05.10.1992 in favour of respondent No.13. On 18.10.1992 power of attorney was executed in favour of respondent No.13 to institute a suit in relation to the property. Power of attorney served a notice for purchase under Section 127 of the MRTP Act on 25.07.2007. The Municipal Corporation gave its approval to initiate the purchase proceedings of the land. On 19.10.2007, Improvement Committee, passed resolution No.126 and recommended to the Corporation to acquire the land of village Borivali reserved for public purpose i.e. for the garden. On 21.01.2008 a proposal was submitted to the Collector for acquisition of land in question. Thus the Corporation submitted that it had taken the effective steps within six months from the date of the purchase notice for an acquisition of the land as per the then prevailing time limit. On 25.02.2008, the petitioner/attorney had been informed that his application for permission to allow development on land under reference could not be considered under the provisions of the MRTP Act. Consequently, writ petition was preferred by

respondent Nos.1 to 13 in the High Court i.e. W.P.No.2535 of 2008. Prayers made in the writ petition was that the reservation may be quashed and set aside as it had lapsed, and permission may be given to them to develop the said property in accordance with the Rules and Regulations of the Corporation. The High Court by the impugned order held that the reservation had lapsed, and that the land is deemed to have been released from the reservation, and that the area reserved for the garden has become available to the owner thereof for the purpose of development. In the appeal preferred by the Corporation, the Apex Court has observed as under:-

“In the light of aforesaid principles, it is shocking in the instant case that in spite of prayer having been made on behalf of the Municipal Corporation, the State Government did not issue a declaration under Section 126 of the MRTP Act. Thus the provisions for open spaces in the statutory scheme were in effect made a statutory mockery. The authorities were bound to act with circumspection and to act timely to take steps to issue the requisite

declaration as per development plan. They were well aware of the consequences. The inaction was impermissible in such an issue of great public importance, having constitutional imperative under Article 21 read with Article 48-A and further it was in breach of fundamental duty imposed under Article 51A(g) to protect natural environment, and having the potential to lead to the derogation of the public interest. Such inaction is intolerable, and the area ought to be preserved for park only. More so, considering its situation that it is encircled by garden area, the Court cannot be a moot spectator and permit statutory provisions to become a mockery by inaction or lethargy on the part of the unscrupulous authorities. No reason is coming forth as to why steps were not taken by the concerned authorities to act in the public interest, as per statutory mandate, and as per development plan. The duty is cast upon the authorities to act as *cestui que* trust with respect to the public park. As a matter of fact, authorities ought to have issued forthwith a requisite declaration and ought to have completed the proceedings. Be that as it may, since there is lapse of reservation, and the land is still required for public park, and since now the provisions of Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the 2013 Act') have come into force, obviously the compensation has to be paid in accordance with the provisions contained in the said Act. In the circumstances, we direct that the land shall continue to be reserved and to be used for the public garden. However, the compensation shall be determined and paid in accordance with the principles laid down in the 2013 Act.

Thus, we set aside the order passed by the High Court. Let compensation be determined after hearing the interested parties and it shall be decided within a period of six months from today. The appeals are accordingly allowed. No order as to costs.”

39. Admittedly, in the present case subject properties have been reserved for garden as per revised development plan. They have not been acquired within ten years of the publication of revised development plan. It is held that the purchase notice is invalid and therefore, the petitioners are not entitled to declarations sought in the petition to de-reserve the subject properties and the petition is liable to be rejected. However, as the authorities have not put forth

any reason why they have not taken steps in the public interest as per statutory mandate and as per revised development plan to acquire the subject properties for garden, applying the ratio laid by the Hon'ble Supreme Court in the case of Municipal Corporation of Greater Mumbai (supra) directions are required to be issued to the respondent authorities in the light of mandate of the Hon'ble Supreme Court in the said decision. Therefore, we pass the following order.

O R D E R

a. It is directed that the subject properties shall be used for public garden. The Municipal Corporation shall initiate acquisition proceedings of the subject properties reserved for garden within six months from today and shall complete the said proceedings within one year thereafter and pay compensation accordingly to the legitimate persons.

It is made clear that we have not dealt about the aspect of ownership. The parties are at liberty to agitate about the ownership and possession in appropriate proceedings as is

permissible in law.

b. Accordingly, rule made absolute in above terms. Writ petition stands disposed of. No order as to costs.

c. In view of the disposal of the writ petition, Civil Application Nos. 3935/2017 & 13212/2017 stand disposed of.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]

. After pronouncement of judgment Mr. Mantri, learned Advocate submits that the protection was granted with regard to the construction on the writ land, the same be continued for a period of eight (8) weeks.

2. Mr. Shah, learned Advocate for the respondent vehemently opposes the request.

3. Considering the fact that interim protection was operating during the pendency of this petition, the said protection shall continue for a period of four (4) weeks from today.

(47)

wp5312.16

4. Needless to state, on lapse of four (4) weeks, the said protection shall come to an end.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]

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