IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.30 OF 2017
WITH
CIVIL APPLICATION NO. 1034 OF 2018 IN PIL/30/2017

1. Shri Panjab S/o. Prakashrao Patil,
   Age: 29 years, Occu.: Agriculture,
   R/o. Sant Namdeo Nagar,Balsond,
   Hingoli, Tq. and District Hingoli.

2. Shri Santosh S/o. Shriram Bhise,
   Age: 37 Years, Occu.: Agriculture,
   R/o. Gawalipura, Hingoli,
   Tq. and Dist. Hingoli. … Petitioners

Versus

1. The State of Maharashtra,
   Through its Principal Secretary,
   Urban Development Department,
   Mantralaya, Mumbai -32.

2. The Under Secretary,
   Under Secretary,
   Urban Development Department,
   Mantralaya, Mumbai -32.

3. The Collector,
   Hingoli, District Hingoli.

4. The Chief Officer,
   Hingoli Municipal Council,
   Hingoli, District Hingoli

5. M/s. Nidhi Mercantile Limited
   B-306-209, Dynasty Business Park,
   J.B. Nagar, A.K. Road, Andheri (E),
   Mumbai – 400 059
   Through its Proprietor
   Shri Jugalkishor S/o. Chaganlal Tapadiya,
   R/o. Nirala Bazar,Samarth Nagar,
   Aurangabad, District Aurangabad. … Respondents

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Mr. D.S. Bagul, Advocate h/f Mr. P.D. Bachate, Advocate for Petitioners
Mr. S.B. Narwade, AGP for Respondents No.1 to 3
Mr. Vivek Bhavthankar, Advocate for Respondent No.4
Mr. Anil S. Bajaj, Advocate for Respondent No.5

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CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

RESERVED ON : 18 FEBRUARY, 2026

PRONOUNCED ON : 09 MARCH, 2026

JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. This Public Interest Litigation is instituted in the year 2017 seeking issuance of writ of certiorari and allied directions to quash and set aside the communication dated 21.09.2015 issued from the Urban Development Department, Mantralaya, Mumbai, whereby it was communicated to the Chief Officer, Municipal Council, Hingoli that certain reservations affecting the subject lands have lapsed in terms of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). The petitioner also prays for directions to Respondent Nos. 1 to 4 to maintain the reservation of the disputed property for public amenities such as stadium, high school, primary school, health centre, library, gymnasium, garden/open space etc. In the alternative, it is prayed that the petitioner’s representation dated 9 September 2016 be decided by Respondent Nos. 1 to 4.

2. The factual canvas, in so far as is necessary for adjudication, is that the subject property comprises lands bearing Survey Nos. 143, 144 (part), 146/2, 154 and 155 (and allied sub-divisions, as pleaded), originally owned by Usmanshahi Mills, later stated to be National Textile Corporation. It is pleaded that in the year 1996, the then owner sought non-agricultural permission and the Assistant Director, Town Planning, Aurangabad by order dated 19.11.1996 granted such permission and sanctioned a layout wherein open spaces, primary school and playground were earmarked and internal roads of varying widths were shown. It is further pleaded that MSRTC acquired Plot Nos. 19 to 23 from the sanctioned map and succeeded in establishing its ownership in those plots.

3. The petitioner asserts that the Revised Development Plan of Municipal Council, Hingoli was sanctioned by notification dated 28.04.1994 and came into force from 01.07.1994, and under such plan the subject lands were affected by multiple reservations for public amenities including stadium, high school, primary school, health centre, library, gymnasium, garden and open space. The petitioner then traces a sale deed executed by National Textile Corporation in favour of Respondent No. 5 – M/s Nidhi Mercantile Limited, referring to the property by survey numbers and PR card numbers. The petitioner's

grievance, in essence, is that land reserved for public purposes has been sought to be “de-reserved” through the impugned communication and thereafter Respondent No. 5 has attempted to create third-party interests by carving out and selling plots even from areas which were earlier earmarked for public amenities/open spaces.

4. It is further pleaded that Respondent No. 5 had filed Writ Petition No. 2083 of 2014 before this Court challenging rejection orders dated 22.03.2011 and 19.10.2013 in relation to building permission and also sought a declaration that reservation had lapsed. The municipal council opposed that writ petition contending that it had not received the alleged purchase notice dated 04.02.2008 and that the said notice was forged. The writ petition came to be withdrawn by Respondent No. 5 with liberty to pursue alternate remedies. Thereafter, Respondent No. 5 moved the State machinery; the Under Secretary issued communication dated 21.09.2015 stating that reservation has lapsed and if the municipal council still requires the land it may acquire it by following acquisition law.

5. We have heard learned counsel for the petitioner, learned counsel appearing for Respondent No. 5, learned AGP for the State, and learned counsel/representative for the municipal council and planning authorities. With their assistance we have perused the pleadings and the

material referred to during hearing including the municipal council resolutions, correspondence placed on record and affidavits filed by the concerned authorities including subsequent affidavits indicating the status of the second revised development plan.

6. Learned counsel for the petitioner submitted that the impugned communication is *ex facie* illegal and constitutes colourable and *mala fide* exercise of power. It is submitted that the essential pre-condition for lapse under Section 127 of the MRTP Act is valid service of a purchase notice upon the planning authority/appropriate authority, and as the municipal council's consistent stand was that no such notice dated 04.02.2008 was served, the statutory clock never commenced. It is urged that the State Government could not have declared lapse without first adjudicating the foundational fact of service, particularly when the municipal council had branded the notice as forged. It is also submitted that land reserved for public amenities cannot be allowed to be converted into private layout by administrative fiat. It is finally urged that, in any case, public interest demands protection of the very same land which is reserved in the development plan, and shifting of reservations to other lands cannot answer the grievance because the public amenities were planned with reference to this very locality and this very parcel.

7. Per contra, learned counsel for Respondent No. 5 submitted that the petition is meritless and proceeds on suppression and selective reading. It is submitted that Respondent No. 5 had issued purchase notice dated 04.02.2008 under Section 127 of MRTP Act, followed by reminder dated 03.06.2009, and when municipal council failed to respond, Respondent No. 5 approached the State Government by representation dated 22.12.2010 enclosing the purchase notice and reminder; the State Government forwarded the same to the municipal council and called for report; the municipal council placed the matter before the general body and in the meeting dated 07.03.2012 recorded inability to acquire due to huge cost and resolved to seek grants; however, no acquisition proposal was ever moved within the statutory period. It is further submitted that after the communication dated 21.09.2015, the general body again deliberated and by resolution dated 09.12.2015 recorded that reservations (except one) had lapsed and the land was not required for acquisition. Counsel contended that municipal council's subsequent actions, sanctioning layout, demanding and receiving development/betterment charges, and acting upon the post-lapse regime are consistent only with the position that the notice was within the knowledge of the council and the lapse had occurred by operation of statute. Heavy reliance is placed on the principle that lapse under Section 127 of the MRTP Act is automatic once the statutory

conditions are met and does not require any further "order of dereservation", the impugned communication being at best an intimation of a statutory consequence. For this proposition, reliance is placed on ***Girnar Traders v. State of Maharashtra***, (2007) 7 SCC 555.

8. Learned AGP for the State supported the impugned communication. It is submitted that the State machinery acted upon representation, called for reports, and on the basis of the report of the town planning authority and the municipal council's own record of inaction and inability, communicated that reservation has lapsed. Learned AGP submitted that Section 127 of the MRTP Act does not contemplate a roving adjudication akin to a trial; once the notice is shown to have been received/acted upon and no steps towards acquisition are initiated within the stipulated time, the statutory consequence follows. Reliance is also placed on Supreme Court decisions in ***Girnar Traders*** (surpa) explaining that "steps" means steps leading to acquisition not mere correspondence, and that the provision is intended to prevent indefinite sterilization of private land. Reference is made to ***Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher***, (2013) 5 SCC 627 : AIR 2013 SC 3757) and ***Chhabildas v. State of Maharashtra***, (2018) 2 SCC 784.

9. The municipal council's position, as it emerges from the record and affidavits, is not uniform across time. The earlier stand disputes receipt of the notice; however, later material placed on record records that the State Government's forwarding letter with copy of notice was received and placed before the general body; the general body considered the acquisition cost and expressed inability to acquire; and thereafter, in the meeting dated 09.12.2015, the council resolved that the land is not required to be acquired. In a later affidavit, the municipal council also states that after receipt of the State communication dated 21.09.2015, the general body resolved that the property is not required on various grounds, and it was informed accordingly to the State. The town planning authority's affidavit further indicates that while certain reservations had lapsed, due care was taken to provide reservations in the second revised development plan and that the second revised plan (as accepted) came into force with effect from 10.02.2019.

10. On the above pleadings and submissions, the determinative issues which arise are: (i) whether the petitioner can maintain a PIL to compel continuance of reservation only on the subject lands notwithstanding the statutory regime of lapse under Section 127 of the MRTP Act and subsequent planning measures; (ii) whether, on facts, the

purchase notice requirement under Section 127 of the MRTP Act can be treated as satisfied in the present case; (iii) whether steps towards acquisition were commenced within the statutory period; (iv) what is the impact of the municipal council's resolutions, statements and subsequent conduct; and (v) whether the subsequent second revised development plan safeguarding public amenities elsewhere renders the reliefs infructuous or inequitable.

11. Before we deal with those issues, it is necessary to clear the conceptual misunderstanding that runs through a substantial part of the petitioner's argument. Section 127 of the MRTP Act does not speak of "de-reservation by order". It provides a deeming consequence: upon failure of the planning/appropriate authority to acquire within the specified timeline after service of notice, the reservation "shall be deemed to have lapsed" and the land "shall be deemed to be released" and becomes available to the owner for development as permissible in the case of adjacent land. In ***Girnar Traders*** (supra), the Hon'ble Supreme Court has explained the scheme of Sections 126 and 127 of the MRTP Act and the legislative intent to avoid leaving the landowner at the mercy of inaction. The impugned communication dated 21.09.2015, when read in that light, is not an independent exercise of "power to de-reserve" but an administrative intimation recording the statutory position on the basis of the file noting and reports.

12. We now address the petitioner's first plank that notice was never served upon the municipal council, and therefore the period for lapse never commenced. The law is settled that a valid notice under Section 127 of the MRTP Act is a condition precedent for lapse. However, the present record does not permit the controversy to be decided by isolating the municipal council's initial denial and ignoring subsequent admissions and conduct. The material referred to during arguments, particularly the State's forwarding of the notice annexed to the representation and the municipal council placing the same before the general body, materially alters the complexion. Once the purchase notice and the attendant demand for acquisition are brought within the knowledge of the principal officer/competent authority of the planning authority and is acted upon institutionally, the planning authority cannot be heard to contend that the notice is a nullity on the hyper-technical ground of initial mode of service. In ***Perfect Machine Tools Company Limited v. State of Maharashtra***, (2017) 16 SCC, 482, the Hon'ble Supreme Court has held as under:

> *"4. In the above facts, we are not inclined to go into the argument made on behalf of the Corporation that the notice being addressed to the Chief Engineer (Development Plan), Municipal Corporation of Greater Mumbai, and not to the Commissioner is not a valid notice and, therefore, the operation of the time period specified under Section 127 of the MRTP Act had not commenced. The records in original placed before the Court indicate that the notice along with the note of the Deputy Chief Engineer had been placed before the Municipal Commissioner, who, therefore, had adequate notice of the purchase notice issued under Section 127 of the MRTP Act. Even if it*

> *is to be held that the period of six months would run not from the date of the notice i.e. 29-9-2004 but from the date it was placed before the Commissioner i.e. a date between 16-10-2004 and 18-10-2004, what transpires is that the notice/declaration under Section 6 of the Land Acquisition Act having been issued on 28-6-2005 is still beyond the period of six months as required under Section 127 of the MRTP Act.*
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> *5. In this regard we may also put on record that the initial Notification reserving the land is dated 6-11-1991 and a period of ten years had expired much prior to the issuance of the purchase notice dated 29-9-2004. No steps for acquisition of the land had been taken during the long period i.e. over a decade, that had elapsed and also within the additional time of six months contemplated under Section 127 of the MRTP Act."*

The Supreme Court refused to entertain a technical objection about the notice being addressed to an officer other than the Commissioner when the record showed the notice had been placed before the Municipal Commissioner who had "adequate notice", and even observed that the period could be reckoned from the date it was placed before the Commissioner.

13. We are conscious that ***Perfect Machine Tools*** (supra) concerned service within the municipal corporation and the Commissioner being the principal officer. Yet, the principle that emerges is that the statute's purpose is to trigger acquisition decision-making; where the competent authority has demonstrable knowledge of the notice and the notice is acted upon at the institutional level, the planning authority cannot defeat Section 127 of the MRTP Act by taking a stand of "no service" in the teeth of its own records. In the present matter, the municipal

council's general body deliberations on acquisition cost and its resolution seeking grants presuppose that the demand for acquisition was before it. The petitioner's own narration records that the State forwarded the notice and that the general body met on 07.03.2012 and considered acquisition cost, and later on 09.12.2015 recorded lapse and unwillingness to acquire. Once these facts exist on record, the contention that the statutory period "never began" becomes legally untenable.

14. The petitioner urged that service "through the State Government" is not service "on the municipal council". We do not accept the submission in the manner it is canvassed. Section 127 of the MRTP Act requires service on the "Planning Authority, Development Authority or Appropriate Authority". It does not prescribe a single rigid mode of service; what is insisted upon is that the notice be directly served upon the relevant authority. When the notice is admittedly received in the governmental channel, forwarded to the planning authority for report/action, placed before the general body and acted upon, the requirement of service is satisfied in substance. Any other view would allow the planning authority to nullify Section 127 by simply denying receipt while simultaneously considering and acting on the forwarded notice, which would subvert the statutory object recognized in ***Girnar Traders*** (supra) and ***Chhabildas*** (supra).

15. We also find that the petitioner's reliance on the municipal council's earlier pleading (in Writ Petition No. 2083 of 2014) disputing notice cannot be treated as conclusive when later events and materials show that the notice was in fact before the general body and the council chose not to acquire. This is not a case where the municipal council consistently maintained denial and no internal record existed. Here, the subsequent resolutions and statements point to knowledge and acceptance of the statutory position.

16. The next aspect is whether "steps" towards acquisition were commenced within the statutory period. The jurisprudence is settled that "steps" means real steps towards acquisition as contemplated under Section 126 of the MRTP Act leading to the statutory declaration under the acquisition law; mere resolutions or correspondence are not enough. ***Shrirampur Municipal Council*** (supra) authoritatively reiterates that "steps" commence when the State takes active steps leading to publication of the relevant declaration; otherwise the landowner is left at the mercy of indeterminate delay. The record before us, including the municipal council's own resolutions, shows inability due to lack of funds, and no acquisition proposal being carried to its logical statutory culmination within time. The petitioner, while urging that the council was "willing" to acquire, does not demonstrate any statutory step taken within time that would satisfy Section 127 of the MRTP Act. Even the

stance that grants were required is, in law, an explanation of inability; it is not a “step” within the meaning of Section 127 of the MRTP Act.

17. We therefore conclude that once the notice requirement is treated as satisfied on the above reasoning, the consequence under Section 127 of the MRTP Act necessarily follows due to absence of statutory acquisition steps within the prescribed period. The lapse is automatic by operation of law.

18. We now deal with the submission based on municipal council’s conduct and whether it binds the municipal council and impacts the petitioner’s entitlement in PIL jurisdiction. The record indicates that in the general body meeting dated 09.12.2015, the Chief Officer’s statement that reservations have lapsed was recorded, and the council resolved that the land is not required for acquisition. Whatever may have been the earlier dispute about receipt of the notice, the municipal council’s subsequent institutional conduct, treating the reservation as lapsed, declining acquisition, and thereafter acting consistently with the post-lapse situation, precludes it from re-agitating the foundational plea of “no notice”. Public bodies, no doubt, must act in accordance with law and there is no estoppel against statute; however, here the statute itself produces lapse upon conditions being met, and the municipal council’s conduct is relevant not to override the statute but to assess the

credibility of the “no service” contention and to determine whether this Court should exercise PIL jurisdiction to unsettle the statutory consequence years later.

19. On the petitioner’s argument that Respondent No. 5 withdrew Writ Petition No. 2083 of 2014, and therefore cannot seek relief which he has already given up, we find the premise to be inaccurate. The earlier writ petition was withdrawn with liberty to pursue alternate remedies; it was not decided on merits, granting any finding that reservation had not lapsed. Once the legal regime under Section 127 of the MRTP Act is triggered by notice and inaction, the statutory consequence follows irrespective of whether a litigant succeeded or withdrew earlier proceedings. Further, the State’s impugned communication does not create rights by adjudication; it records a statutory consequence after receiving reports.

20. The petitioner’s central public interest argument is that the reservation for public amenities must be maintained on the very same parcel and cannot be shifted. We find that this submission overlooks the statutory planning framework. Development plans are not immutable; the MRTP Act contains provisions for revision and modification. The affidavits on record indicate that the second revised development plan came into force with effect from 10.02.2019 and, even assuming some

earlier reservations lapsed, the planning authority took due care to provide reservations for public amenities by including such reservations in the second revised plan and/or imposing them on other identified lands. Once the competent planning authority, following the statutory process, revises the plan and safeguards the public purpose reservations, the petitioner cannot insist, as a matter of right, that the public purpose must remain pegged only to the subject lands and no other land. Urban planning is not an exercise in freezing one private parcel forever; it is an evolving arrangement balancing public needs with legal limitations on sterilization of land, the latter being precisely the mischief Section 127 of the MRTP Act addresses. ***Chhabildas*** (supra) reiterates that once reservation lapses, the land becomes available for development "as otherwise permissible in the case of adjacent land under the relevant plan"; it does not mean that public purpose disappears from the town, but that the burden on that specific land cannot be continued indefinitely without acquisition.

21. Even on the broader principle of judicial review in planning matters, it is well established that courts do not substitute their view for that of planning authorities unless a clear statutory breach, arbitrariness, *mala fides* or perversity is shown. ***Bombay Dyeing & Manufacturing Co. Ltd. v. Bombay Environmental Action Group*** (2006) 3 SCC 434 is one among decisions which recognize that planning

decisions under the MRTP framework involve policy considerations and technical evaluation; judicial interference is limited to legality and not merits of planning choice. In the present case, once it is found that the statutory lapse under Section 127 of the MRTP Act is legally sustainable and the subsequent plan safeguards reservations elsewhere. Petitioner's insistence upon reservation only on the subject land becomes an impermissible attempt to micro-manage town planning schemes through PIL.

22. The petitioner also urged *mala fides* and colourable exercise of power. These allegations are serious and must be pleaded with particulars and supported by cogent material. Beyond rhetorical assertions, the record shows that the State sought reports, municipal council deliberated, cited financial incapacity, and ultimately the communication was issued. We do not find material to return a finding of *mala fides*. On the contrary, what emerges is a long period of inaction in acquisition, which is the precise circumstance Section 127 of the MRTP Act addresses.

23. The petitioner's alternative prayer for directing Respondent Nos. 1 to 4 to decide the representation dated 9 September 2016 also does not survive as a standalone mandamus in the present facts. The substance of the representation is the same grievance of maintaining

reservation on the subject land and challenging lapse. Once we hold that the statutory lapse was sustainable and that subsequent revised planning has protected public amenities through the second revised development plan, a direction to “decide” the representation would be an empty formality and would not alter the legal position. PIL jurisdiction is not invoked to secure academic directions.

24. We also cannot be oblivious to the subsequent developments recorded before us; Respondent No. 5 has obtained layout sanction and created third-party rights by sale of multiple plots. While creation of third-party rights cannot sanctify an illegality, in the present case we have not found the lapse or the communication to be illegal. Interference at this distance of time would unsettle transactions and lead to inequitable consequences without a sound legal foundation, particularly when the public interest facet is stated to be addressed through the second revised development plan.

25. In conclusion, we hold that the petitioner is not entitled to a writ for quashing the communication dated 21.09.2015. We hold that, on the facts placed on record, the requirement of notice under Section 127 of the MRTP Act stood satisfied in substance as the purchase notice was brought to the knowledge of the municipal council through the governmental channel, placed before the general body and acted upon,

and thereafter no statutory steps towards acquisition were taken within the stipulated period, resulting in lapse by operation of law. Our conclusion is fortified by the principles enunciated by the Hon'ble Supreme Court in ***Girnar Traders v. State of Maharashtra***, (supra), **Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher**, (supra), ***Perfect Machine Tools Company Limited v. State of Maharashtra*** (supra), and ***Chhabildas v. State of Maharashtra***, (supra). We further hold that, in view of the second revised development plan coming into force with effect from 10.02.2019 and the affidavits indicating that reservations for public amenities have been protected by planning measures, the petitioner cannot insist that the reservation must continue only on the subject land and on no other land, and the reliefs in PIL jurisdiction do not warrant interference.

26. The Public Interest Litigation is accordingly dismissed. There shall be no order as to costs.

27. The amount of Rs.25,000/- out of the amount of Rs.50,000/-, which was deposited by the petitioners, is directed to be refunded to them. The amount of Rs.25,000/- be credited to the High Court Legal Services Authority.

28. In view of disposal of the P. I. L., this civil application No.1034 of 2018 does not survive and stands disposed of.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

S P Rane