

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2732 OF 2023**

- |    |                                     |   |                 |
|----|-------------------------------------|---|-----------------|
| 1. | Lilabai Vasantrao Hiray             | ] |                 |
|    | Age: 61 years, Occ: Household       | ] |                 |
| 2. | Pannalal Vasantrao Hiray            | ] |                 |
|    | Age: 44 years                       | ] |                 |
| 3. | Abhijit Vasantrao Hiray             | ] |                 |
|    | Age: 41 years                       | ] |                 |
| 4. | Bansilal Vasantrao Hiray            | ] |                 |
|    | Age: 38 years                       | ] |                 |
|    | All having address Bungalow No. 10, | ] |                 |
|    | Shankar Smruti, Jai Ambika Colony,  | ] |                 |
|    | Malegaon Camp, Malegaon,            | ] |                 |
|    | District: Nashik.                   | ] | ... Petitioners |

**V/s.**

- |    |                                  |   |  |
|----|----------------------------------|---|--|
| 1. | The State of Maharashtra         | ] |  |
|    | Through its secretary,           | ] |  |
|    | Urban Development and Public.    | ] |  |
|    | Health Department,               | ] |  |
|    | Mantralaya, Mumbai- 400 032 .    | ] |  |
| 2. | The Commissioner.,               | ] |  |
|    | Malegaon Municipal Corporation,  | ] |  |
|    | Malegaon, Nashik.                |   |  |
| 3. | The Director,                    | ] |  |
|    | Town Planning Department for     | ] |  |
|    | Malegaon, having office at 5B,   | ] |  |
|    | Prestige Park,                   | ] |  |
|    | 'B' Wing, Opp. Bitco College,    | ] |  |
|    | Matrubhumi Co-operative Society, | ] |  |
|    | Near Jagtap Mala, Nashik Road,   | ] |  |
|    | Nashik- 422 101.                 | ] |  |

- |    |   |             |                 |
|----|---|-------------|-----------------|
| 4. | The Assistant Director,<br>Town Planning Malegaon Municipal<br>Corporation, Malegaon. | ]<br>]<br>] |                 |
| 5. | The Collector, Nashik<br>Dist. Nashik.  | ]<br>]      | ... Respondents |

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Ms. Manisha Devkar for the Petitioners.

Shri. Kedar Dighe, Addl.GP, a/w Ms. Reena A. Salunkhe, AGP for the Respondent-State.

Mr. S. S. Patwardhan for Respondent No. 2

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**CORAM : A. S. GADKARI AND  
KAMAL KHATA, JJ.**

**RESERVED ON : 23<sup>rd</sup> April, 2026.**

**PRONOUNCED ON : 30<sup>th</sup> June, 2026.**

**Judgment (Per : A. S. Gadkari, J) :-**

- 1) Rule. Rule made returnable forthwith. By consent of the learned counsel for the parties, the Petition is heard finally at the stage of admission.
- 2) Heard Ms. Devkar, learned Advocate for the Petitioners, Mr. Dighe, learned Addl. GP for Respondent-State and Mr. Patwardhan, learned Advocate for Respondent No.2. Perused entire record.
- 3) By this Petition, the Petitioners seek a declaration that, the Reservation No. 378 designated for a burial ground and affecting their land, has lapsed under the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act).

**Background:**

4) The Petitioners are owners of land bearing survey No. 117/4 admeasuring 1 H 93 R and 2 H 46 R and 18 R (Potkharaba) situated at Village Sangmeshwar, Taluka Malegaon, District Nashik (the subject land). In the Draft Development Plan prepared by the Planning Authority and published by Malegaon Municipal Corporation, the subject land was reserved for a burial ground. The Draft Development Plan was sanctioned on 15<sup>th</sup> September, 2006. Despite the passage of more than 15 years, the Respondents failed to acquire the subject land. According to the Petitioners, the reservation stood lapsed on account of the Respondents' failure to acquire the subject land within the statutory period.

5) The Petitioners served a Purchase Notice on the Malegaon Municipal Corporation on 19<sup>th</sup> November, 2018 by hand delivery. The copy of the said notice was also forwarded to Respondent Nos.2 and 3 by registered post on 22<sup>nd</sup> November, 2018. A second Purchase Notice was issued on 5<sup>th</sup> December, 2018 since the Respondents failed to respond to the first Notice.

6) By their letter dated 11<sup>th</sup> December, 2018, the Deputy Commissioner, Malegaon Municipal Corporation, called upon the Petitioners' Advocate to produce the documents of ownership over the subject property including the 7/12 extracts and measurement map of the land record.

7) By a letter dated 20<sup>th</sup> December, 2018, the Petitioners father enclosed the 7/12 extract, the map of the town planning, the measurement map of the land Authority, to the Malegaon Municipal Corporation by hand delivery. The same was acknowledged by the said Corporation.

8) The statutory period of 24 months prescribed under Section 127 of the MRTP Act, reckoned from the date of service of the Purchase Notice, expired on 19<sup>th</sup> November, 2020.

9) Ms. Manisha Devkar, learned Advocate for the Petitioners submitted that, despite the service of the Statutory Purchase Notice, the Respondents failed to acquire the lands or take requisite steps for its acquisition under Section 126 and 127 of the MRTP Act, read with the provisions of Section 19 of Fair Compensation Act, 2013 (the 2013 Act). She submitted that, the Malegaon Municipal Corporation has also failed to issue a declaration recording the lapsing of reservation of said property. She, therefore, prayed that the Petition be made absolute.

10) In their defense, Mr. Dighe, Addl. G.P. for the State and Mr. Patwardhan for the Commissioner, Malegaon Municipal Corporation, relied upon the Affidavits dated 16<sup>th</sup> January, 2025 of Mr. Nitin Sadgir, Divisional Officer, Malegaon and 28<sup>th</sup> November, 2024 of Mr. Shantaram Chaure, the Town Planner-II of Respondent No.2 respectively.

10.1) The Affidavit dated 28<sup>th</sup> November, 2024 of Mr. Shantaram Chaure acknowledges receipt of the second Purchase Notice issued by the

Petitioners on 5<sup>th</sup> December, 2018 and sets out, in a tabular form, the steps purportedly taken by the Planning Authority. Mr. Patwardhan also emphasis on the press note issued by the Respondent No.2 cautioning the prospective purchasers against the purchase of portions of subject land it being under reservation.

10.2) The Affidavit dated 16<sup>th</sup> January, 2025 filed by the Collector, Nashik District, similarly sets out the steps purportedly taken by the State Authorities. Relying upon the said Affidavit, Mr. Dighe submitted that the period during which the authorities were unable to take the requisite steps on account of the COVID - 19 pandemic ought to be excluded while computing the statutory period.

10.3) He further submitted that, the subject land was measured by the office of the District Inspector of Land Records, Malegaon, on 18<sup>th</sup> April, 2024. As certain defects and discrepancies were noticed in the measurement, letters dated 6<sup>th</sup> May, 2024 and 18<sup>th</sup> December, 2024 were addressed to the Corporation, directing it to obtain a revised measurement through the competent authority. According to him, in the absence of a revised joint measurement of the subject land, the acquisition proceedings could not be taken forward. He also drew our attention to the assurance given in the Affidavit that the Petitioner would be appropriately compensated for the acquired land upon completion of the measurement process.

**Reasons and Conclusion:**

11) It is abundantly clear to us that, the State and the concerned Authorities are either blissfully unaware of the settled legal position or have deliberately chosen to disregard it. As a result, landowners are compelled to approach the Court for enforcement of their statutory rights.

12) The Division Benches of this Court in *Ramakant Vasudeo Pai vs. State of Maharashtra & Ors.* reported in 2021 (3) Mh.L.J. 204 and subsequently in *Trilok Singh Pahlajsingh Rajpal & Anr. v MCGM and Ors.* reported in 2022 SCC OnLine Bom 2347 after considering the relevant precedents, have held that, the steps towards acquisition can be said to have commenced only when the State Government accepts the proposal for acquisition and, pursuant thereto, publishes a declaration under Section 6 of the Land Acquisition Act, 1894 or Section 19 of the 2013 Act.

13) Thus, it is only the publication of a declaration under Section 6 of the 1894 Act or Section 19 of the 2013 Act that constitutes commencement of acquisition proceedings for the purposes of the MRTP Act. Such proceedings culminate in the making of an Award under Section 126(3) of the MRTP Act. Unless such a declaration is issued, it cannot be said that the requisite steps for acquisition have commenced.

14) Evidently, neither of the two Affidavits discloses that any declaration under Section 19 of the 2013 Act was issued or that any legally cognizable step towards acquisition was taken by the Malegaon Municipal

Corporation or State Government within the prescribed period, even after excluding the Covid – 19 period, as contended by the Respondents.

15) In *Girnar Traders vs. State of Maharashtra* reported in (2011) 3 SCC 1, the Supreme Court observed that, the legislative object underlying Sections 126 and 127 of the MRTP is to ensure the expeditious acquisition of the land reserved under the town planning plan. Section 127 grants the authorities not only an initial period of ten years but also a further period of 24 months (2 years), after service of a Purchase Notice, either to acquire the land or to take legally recognized steps towards its acquisition. Mere administrative steps that may eventually lead to acquisition are insufficient.

16) Lands cannot lie locked under reservation indefinitely. The underlying principle is that the land must, in a given time, be utilized for the purpose for which it is reserved in the plan, or, if not done, the owner must be allowed to utilize the land as permissible under the town planning law.

17) The failure of the Authorities to take steps which result in the actual commencement of the acquisition of the 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 the Government may or may not accept. Unless steps resulting in the actual commencement of acquisition proceedings are taken within the statutory period, the consequences prescribed under Section 127

must necessarily follow. No legally recognized steps towards acquisition were taken in the present case.

18) In view of the above and the settled principles of law, the Petition is allowed in terms of prayer clause (b) which reads as under:

“(b) That on perusal of the same and on further hearing to the Petitioners, this Court be kindly pleased to issue appropriate Writ or Order and thereby be kindly pleased to declare that the Reservation No.378 as provided in the development plan sanctioned on 15/09/2006 in respect of subject matter property i.e. a land admeasuring of 1 H and 93 R and 00-18 R Potkharaba out of the Survey No.117/4 situated at village Sangameshwar, Taluka Malegaon, District Nashik belonging to the Petitioners has lapsed as per the provisions of Section 127 of the Maharashtra Regional Town Planning Act, 1966 and the said subject matter property has become free from reservation.”

19) The Respondent No.1 is directed to notify the lapsing of reservation within a period of two months from the date of this Judgment.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)