# Shri. Shankar Newandram Budhwani Vs Chief Officer, Vita Municipal Council And Ors

**Court:** Bombay High Court

**Date of Decision:** Feb. 3, 2025

**Acts Referred:** Constitution of India, 1950 â€" Article 226, 300A
Maharashtra Regional Town Planning Act, 1966 â€" Section 31(5), 125, 126, 126(1)(c), 126(2), 126(3), 126(4), 127
Land Acquisition Act, 1894 â€" Section 4, 5A, 6

**Hon'ble Judges:** A. S. Gadkari, J; Kamal Khata, J

**Bench:** Division Bench

**Advocate:** Sandesh D. Patil, Krishnakant Deshmukh, Divya Pawar, Nandu Pawar, Samata Pawar, Nikhil Wadikar, Rupali Shinde

**Final Decision:** Allowed

## Judgement

A.S. Gadkari, J

1) Rule. Rule made returnable forthwith and with the consent of learned Advocates for the respective parties, the Petition is taken up for final hearing.

2) Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India, for a writ of mandamus, for direction to declare that,

the Notice dated 20th January, 2020 (Exh-Ã¢â‚¬Å“BÃ¢â‚¬) and revised Notice dated 6th March, 2020 (Exh-Ã¢â‚¬Å“CÃ¢â‚¬) issued by the Petitioner to Respondent

No.1 under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (Ã¢â‚¬Å“MRTP ActÃ¢â‚¬), to be legal and valid and reservation on the

property of the Petitioner bearing Gat No. 51, H. No. 2/2/2, area H.R 0-55, Assessment 1/06, situated at Yashawant Nagar, Vita, Taluka Khanapur,

District Sangli, having reservation No.136, (Ã¢â‚¬Å“suit landÃ¢â‚¬â€‹ ) has lapsed by operation of law and for other consequential reliefs.

3) Heard Mr. Sandesh Patil learned Advocate for the Petitioner, Mr. Nandu Pawar learned Advocate for the Respondent No.1 and Ms. Rupali

Shinde, AGP for the Respondent Nos.2 and 3. Perused entire record.

4) Brief facts:-

(i) Mr. Newandram M. Budhwani i.e. the father of Petitioner, owns landed property bearing Gat No. 51, Hissa No. 2/2/2, area H.R 0-55, Assessment 1/06 situated at

Yashawant Nagar, Vita, Taluka Khanapur, District Sangli having reservation No.136. The said property is in actual physical possession of the Petitioner.

(ii) The draft development plan of Vita Municipal Council was prepared under the provisions of MRTP Act and firstly came into effect in the year 1986. In the said

plan, reservation for Ã¢â‚¬Ëœ GardenÃ¢â‚¬â„¢ bearing No.136 was put up on the property of the Petitioner. The said reservation continued since the year 1986 and therefore the

Petitioner could not use the said land as per his choice.

(iii) The residents of Survey No.51 made a representation to the Vita Municipal Council to delete the reservation from the said land to the extent of the houses

constructed and occupied in the suit property i.e. reservation No.136 for Ã¢â‚¬Ëœ GardenÃ¢â‚¬â„¢ on the area admeasuring 40 ares on survey No.51 and survey No.45.

(iv) In its Special meeting dated 7th October, 2013, the elected representatives of Municipal Council passed unanimous resolution bearing No.113 dated 7th October,

2013 for deletion of reservation from reserved Survey No.51 and to forward its said proposal for minor modification in the development plan to the concerned

Authority.

(v) Petitioner sent notice dated 25th September, 2012 to the Respondent No.1 under Section 127 of the MRTP Act calling upon the Respondent No.1 either to

purchase the suit land under the reservation or in the alternative to de-reserve it. Respondent No.1 did not reply to the said notice.

(vi) Therefore, Petitioner filed Writ Petition No.1964 of 2014 before this Court. In the reply to the Petition, the Respondent No.1 pointed out that, the draft amendment

plan was sanctioned on 31st August, 2009 and it had came into force from 30th October, 2009. It was the misconception of the Petitioner that, the land described in

his notice was not affected by any reservation or designation and therefore this Court noted that, there was no reason to entertain the said Petition. It was also noted

that, the development plan of the Respondent No.1 was brought into force on 30th October, 2009 and therefore the Notice dated 25th September, 2012, under Section

127 of the MRTP Act could not have been issued. This Court therefore disposed off the said Petition, by Order dated 21st January, 2015.

(vii) The period of 10 years as contemplated under Section 127 of the MRTP Act expired on 30th October, 2019. In the said period of 10 years, the Respondent No.1

did not acquire the suit land of the Petitioner which was reserved for Ã¢â‚¬Ëœ gardenÃ¢â‚¬â„¢ under the reservation No.136 or even took any effective steps to acquire the same

since the date i.e. 30th October, 2009, it came into force.

(viii) Petitioner therefore issued a notice dated 20th January, 2020 under Section 127 of MRTP Act to the Respondent No.1 and called upon it to either acquire his said

land or to declare that, the reservation of it, has lapsed.

(ix) Inspite of notice dated 20th January, 2020 duly served upon the Respondent No.1, it did not take any steps to acquire the suit land and therefore the Petitioner

out of abundant precaution served another notice dated 6th March, 2020 under Section 127 of the MRTP Act, upon the Respondent No.1 and called upon it to do the

needful. Despite receipt of the said second notice also, the Respondent No.1 did not take any steps to acquire the suit land and/or to declare the reservation on it as

lapsed.

(x) Petitioner received a communication dated 16th November, 2021 from the Respondent No.1, acknowledging the service of Notice dated 20th January, 2020 received

by it on 27th January, 2020. By the said communication, the Respondent No.1 gave its offer to the Petitioner that, against the purchase notice dated 27th January,

2020, the Respondent No.1 is ready to give TDR under Section 126 of MRTP Act towards compensation for the acquisition of the suit property. The Respondent

No.1 called upon the Petitioner to submit his say to it, in that behalf.

(xi) Petitioner by his reply dated 25th November, 2021 informed the Respondent No.1 that, he is not interested in transferring the suit land against TDR. That,

Petitioner has already informed the Respondent No.1 to acquire the suit land under reservation for the purpose of Ã¢â‚¬Å“GardenÃ¢â‚¬. Petitioner expressed his inability to

accept the offer given by the Respondent No.1.

(xii) Despite notice dated 6th March, 2020 issued by Petitioner under Section 127 of MRTP Act, the Respondent No.1 did not take any steps to acquire the suit land

within stipulated period and therefore Petitioner filed present Petition on 1st April, 2022 for Ã, the reliefs as noted herein above.

5) The aforenoted facts are deciphered from the record and are admitted facts.

6) Shri. Manojkumar Desai, the Chief Officer of Respondent No.1, Council has filed a detailed Affidavit dated 3rdÃ, August, 2022 in response to the

Petition. It be noted here that, there is no denial to the facts mentioned in paragraph No.4 herein above. In the said Affidavit, the inter-office

correspondence between the Respondent No.1 and other Government Authorities has been relied upon to make this Court to believe that, the

Respondent No.1 took Ã¢â‚¬Ëœeffective stepsÃ¢â‚¬â„¢ for acquiring the PetitionerÃ¢â‚¬â„¢s suit property. Heavy reliance is placed on a fact that, on 15th

November, 2021, the Deputy Superintendent of Land Records issued a letter to the Respondent No.1 requesting it to deposit an amount of Rs.18,000/-

for the purpose of measurement of the suit property. That, on 17 th November, 2021, the Respondent No.1 paid the said measurement fees by

depositing the said amount of Rs.18,000/- with the concerned Authority. Apart from the said fact, there is no other averment to even remotely indicate

that, the Respondent No. 1 adopted any steps for acquisition of suit property under reservation and for issuance of the declaration under Section 6 of

the Land Acquisition Act as enumerated by the HonÃ¢â‚¬â„¢ble Supreme Court in the case of Girnar Traders Vs. State of Maharashtra & Others,

reported in (2007) 7 SCC 555.

7) Mr. Pawar, learned counsel for the Respondent No.1 submitted that, deposit of the said amount of Rs.18,000/- constitutes a step toward acquisition

of the suit property, after receipt of notice under Section 127 of the MRTP Act. He reiterated that, this deposit is indeed a step towards acquisition of

land. However, the submission is recorded solely for its rejection at the threshold, as according to us, as per the settled principles of law, it is not the

step for acquisition of the suit property and certainly not commensurate with the principles of law enunciated by the supreme court in the case of

Girnar Traders (Supra).

8) The HonÃ¢â‚¬â„¢ble Supreme Court in the case of Girnar Traders (Supra) in para Nos. 54 to 58 has held as under:-

54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under

the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the ownerÃ¢â‚¬â„¢s property. The intent and purpose of the

provisions of Sections 126 and 127 has been well explained in Municipal Corpn. of Greater Bombay v. Dr. Hakimwadi TenantsÃ¢â‚¬â„¢ Assn., (1988 Supp SCC 55). If

the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such

land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of

the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by

exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation

and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted

inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire

the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps

towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition

and merely for the purpose of seeking time so that Section 127 does not come into operation.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in

regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the

plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this

section is with legislative intent to balance the power of the State of Ã¢â‚¬Å“eminent domainÃ¢â‚¬. The State possessed the power to take or control the property of the

owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation

provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let

the owner utilise the land for the purpose it is permissible under the town planning scheme. The 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.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word Ã¢â‚¬Å“stepsÃ¢â‚¬ (in plural and not in singular) which are

required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that

the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode

by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State

Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State

Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the

steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under

Section 6 of the LA Act.

58. The MRTP Act does not contain any reference to Section 4 or SectionÃ, 5-AÃ, ofÃ, theÃ, LAÃ, Act.Ã, TheÃ, MRTPÃ, ActÃ, containsÃ, the provisionsÃ,

relatingÃ, toÃ, preparationÃ, ofÃ, regionalÃ, plan,Ã, the developmentÃ, plan,Ã, plansÃ, forÃ, comprehensiveÃ, developments, townÃ, planningÃ, schemesÃ, andÃ,

inÃ, suchÃ, plansÃ, andÃ, inÃ, the schemes,Ã, theÃ, landÃ, isÃ, reservedÃ, forÃ, publicÃ, purpose.Ã, The reservation of land for a particular purpose under the

MRTP ActÃ, isÃ, doneÃ, throughÃ, aÃ, complexÃ, exerciseÃ, whichÃ, beginsÃ, with land Ã, useÃ, map,Ã, survey,Ã, populationÃ, studiesÃ, andÃ, severalÃ, other

complexÃ, factors.Ã, ThisÃ, processÃ, replacesÃ, theÃ, provisionsÃ, of Section 4 of the LA Act and the inquiry contemplated under SectionÃ, 5-AÃ, ofÃ, theÃ, LAÃ,

Act.Ã, TheseÃ, provisionsÃ, areÃ, purposely excluded for the purposes of acquisition under the MRTP Act. TheÃ, Ã, acquisitionÃ, Ã, commencesÃ, Ã, withÃ, Ã,

theÃ, Ã, publicationÃ, Ã, of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read withÃ,

Section 6Ã, of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would

commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the

MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced.

9) The HonÃ¢â‚¬â„¢ble Supreme Court in the case of Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher & Others,

reported in (2013) 5 SCC 627, in para Nos.42, 43 & 46 has held as under :-

42. We are further of the view that the majority in Girnar Traders (2) v. State of Maharashtra, (2007) 7 SCC 555 had rightly observed that steps towards the

acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of

the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly

unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

43. The expression Ã¢â‚¬Å“no steps as aforesaidÃ¢â‚¬ used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere

passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the

proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a

definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the

substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other

interested persons, whose land is utilized for execution of the development plan/town planning scheme, etc., are not left high and dry. This is the reason why time-

limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if

the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be

deemed to have lapsed. Shri NaphadeÃ¢â‚¬â„¢s interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will

be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their

property without the sanction of law and would result in violation of Article 300-A of the Constitution.

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

larger Bench. We further hold that the orders impugned in these appeals are legally correct and do not call for interference by this Court. The appeals are

accordingly dismissed.

10) According to us, the reply dated 16thÃ, November, 2021 issued by the Respondent No.1, in response to the Notice dated 20thÃ, January, 2020

(sic 27th January, 2020), cannot be even remotely construed as a step towards acquisition of the suit property as enumerated by the HonÃ¢â‚¬â„¢ble

Supreme Court in the case of Girnar Traders (Supra). It can at the most be considered as an offer to purchase by the Respondent No.1. As noted

earlier, the Petitioner did not accept the said offer of the Respondent No.1 and has in fact rejected it, by his reply dated 25thÃ, November, 2021.

11) Perusal of entire record clearly indicates that, after receipt of statutory notice dated 6th March, 2020, the Respondents did not take any steps for

acquisition of the suit property. As noted earlier, mere payment for measurement charges with the Deputy Superintendent of Land Records cannot be

considered as a step towards or for acquisition of the suit property.

12) Despite increasing the period from 6 to 24 months from the date of service of the purchase notice under Section 127(1) of the MRTP Act, the

Respondents have failed to take effective steps to acquire the suit property.

13) Be that as it may. Our Courts, as early as in the year 2015, in the case of Uday Madhavrao Patwardhan and Others v Sangli Miraj, and

Kupwad Municipal Corporation, Sangli and Others reported in (2015) SCC OnLine Bom 65,9 have held that, there is no need for the owner to

seek a declaration from the Court. This position in law is reiterated by this Court in the case of Shivgonda Anna Patil v Sangli, Miraj and Kupwad

City Municipal Corporation reported in 2023:BHC-AS:29348-DB. Although, the law on the subject is clear, citizens are compelled to file Writ

Petitions in this Court for the said reliefs.

14) After applying the ratio laid down by the HonÃ¢â‚¬â„¢ble Supreme Court in the aforestated cases, to the case in hand, we are of the considered view

that, the Petition deserves to be allowed in terms of prayer clause (a). The Petition is accordingly allowed and Rule is made absolute in terms of

prayer clause (a).

15) The State Government to notify the lapsing of reservation of the PetitionerÃ¢â‚¬â„¢s land by publishing it in the Official Gazette, as per Section 127(2)

of the MRTP Act within a period of six weeks from the date of uploading of the present Order on the Official website of the High Court of Bombay.

16) It is clarified that, the Petitioner will be entitled to proceed with the development of the property and the Respondents will not delay the granting of

permissions as the notification in the Official Gazette is merely a ministerial act, as held by the co-ordinate Bench of this Court in the case of Arun

Motiram Nimkar Vs. Municipal Corporation of City of Amravati & Ors., reported in 2013 SCC OnLine 739 : (2013) 5 Bom CR 546.

17) All the concerned to act on an authenticated copy of this Judgment.