

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

WRIT PETITION NO. 8829 OF 2024

1. Baburao Gangadhar Jadhav
Since Deceased through Legal heirs

1A. Vimal Baburao Jadhav
Age : 64, Occu. : Homemaker,
R/o. Ananwalli, Gangapur Road,
Nashik.

1B. Ganesh Baburao Jadhav
Age: 31, Occu. : Business,
R/o. Ananwalli, Gangapur Road,
Nashik.

1C. Dipak Baburao Jadhav
Age: 34, Occu. : Business,
R/o. Ananwalli, Gangapur Road,
Nashik.

1D. Pooja Baburao Jadhav
Age: 30, Occu. : Homemaker,
R/o. Ananwalli, Gangapur Road,
Nashik.

1E. Smt. Nirmala Baburao Jadhav
Age: 54, Occu. : Homemaker
R/o. Ananwalli, Gangapur Road,
Nashik.

... **Petitioners**

V/s.

1. State of Maharashtra,
Urban Development Department
Through the Government Pleader,
Office of Government Pleader,

1st Floor, PWD Building,
Bombay High Court, Fort,
Mumbai 400 032.

2. Commissioner, Nashik Municipal
Corporation, Nashik.

3. Director, Town Planning, Nashik
Municipal Corporation, Nashik.

4. The Collector, Nashik.

... Respondents.

Mr. Bhushan Raut a/w Mr. Vipul Shirsath for the Petitioner.
Mr. K. B. Dighe a/w Ms. Savita Crasto, AGP for the Respondent-State.

**CORAM : M.S. KARNIK, AND
RANJITSINHA RAJA BHONSALE, JJ.**

**RESERVED ON : 5th AUGUST 2026.
PRONOUNCED ON : 17th AUGUST 2026.**

ORDER (Per: RANJITSINHA RAJA BHONSALE, J) :-

1. The present Petition is filed under Article 226 of the Constitution of India and under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short, "MRTP Act"). The Petitioner seeks a direction to the Respondents to declare that the reservation for public amenities upon the subject property vide sanctioned Development Plan for Nashik Corporation has lapsed and that the said lands are released from the reservation and available to the Petitioner for development.

2. By an Order dated 2nd July 2024, notices were issued to the Respondents. By the said Order, the Respondents were informed that, the Petition would be heard and finally disposed of at the admission stage. The record indicates that Respondent Nos. 2 and 3 have been duly served.

3. Heard Mr. Bhushan Raut, learned counsel for the Petitioner, Mr. Kedar Dighe along with Ms. Savita Crasto, learned AGP for the Respondent-State.

4. The Petitioners are the lawful owners of land admeasuring 1500 Sq. Mtrs., bearing Survey No. 14/1/A/3, situated at Village Anandwalli, Taluka and District Nashik (said land). On 16th November 1993, the Government of Maharashtra sanctioned the Development Plan for the Nashik Municipal Corporation. Under the said Development Plan, the said land of the Petitioners was reserved for the purpose of ESS/I Electric Sub Station under Reservation No. 74 and for Post Office under Reservation No. 75. As the Respondents did not take steps to acquire the property under reservation, the Petitioners issued purchase notice dated 12th December 2006 under Section 127 of the MRTP Act. The purchase notice was duly served upon and received by the Nashik Municipal Corporation, which by reply letter dated 11th January 2017 contend that it was not the acquiring body. It is not the stand of the Corporation that, the purchase notice is defective. Thus, the Petitioner's

purchase notice under Section 127 has to be regarded as a valid purchase notice.

5. The said reservation/proposal for land acquisition was withdrawn by the Maharashtra State Electricity Distribution Company on the ground that the land cost for the acquisition was high. The Maharashtra State Electricity Distribution Company was of the opinion that they should explore the possibility of getting land at lower costs in a nearby locality or suggest an alternative location. The said fact is evident from the internal communications dated 24th January 2007 and 29th February 2008 of the Maharashtra State Electricity Distribution Company.

6. On record is a copy of the Order dated 23rd September 2014, passed in Writ Petition No. 8549 of 2012. The writ petition was filed by the adjacent owner of the property, Mrs. Komal H. Malpani, who was similarly affected by the same reservation of Post Office and Electric Sub Station as the present Petitioners and had approached this Court seeking a declaration that the said reservation in respect of her property had lapsed. The said Writ Petition was allowed by this Court by Order dated 23rd September 2014 with the following observations:-

“16. In the light of the aforesaid observations, the inevitable conclusion is that the reservation of the petitioner's land in question namely for a 'electric substation and for a 'post office' has lapsed and the land has become available to the petitioner

to be developed as otherwise permissible, as in the case of the adjacent land under the Development Plan. Writ Petition therefore deserves to be allowed and is accordingly allowed in terms of prayer clause (a). Respondent no.7-State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirements of section 127 (2) of the MRTP Act which shall be done as expeditiously as possible and preferably within a period of six months from today.”

7. It is the case of the Petitioners that, in spite of the fact that the earlier reservation had lapsed, the Petitioners' property was again subjected and notified as reserved for public amenities/reservation No. 244 on 9th January 2017.

8. The crux of the arguments of learned Counsel for the Petitioners is that, the said said same land could not have been again reserved for public amenities space when the earlier reservation of ESS of Electric Sub Station and Post Office had lapsed after following the procedure as prescribed under Section 127 of the MRTP Act.

9. The Hon'ble Supreme Court in the case of *Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd., And Ors.* reported in (2003) 1 SCC 111 has observed that:-

“14. In view of the above-referred settled legal position, the land of the petitioners cannot be again subjected to same reservation, which was made earlier in 1978 development plan and, therefore, we have no hesitation to hold that the act of the Planning Authority subjecting the land of the petitioners once again to reservation is unsustainable in law

and, therefore, we declare the said reservation as illegal and unsustainable in law and land of the petitioners, i.e. plot No. 90/1 and 90/2 is declared to be released from reservation made in the final development plan, which was published on 9-1-2004. The petitioners are entitled to make appropriate application for permission to develop the land in question to the Planning Authority. If such application is made by the petitioners, respondent No. 2 Planning Authority is directed to decide the same on its own merits according to law as early as possible and in any case not beyond the period of three months from the date of receipt of such application.”

10. The Hon’ble Supreme Court in the case of Godrej And Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra reported in AIR 2015 SC (Supp) 1 has observed that:-

“....Therefore, we have to hold that the impugned notification is bad-in-law and liable to be quashed. The High Court has not examined the impugned notification from the viewpoint of Section 127 of the MRTP Act and interpretation of the abovesaid provision made in the case of Girnar Traders (2) (AIR 2007 SC 3180) (supra), therefore, giving liberty to the appellant by the High Court to file objections to the proposed notification is futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved has not been utilized for that purpose and a valid statutory right is acquired by the land owner/interested person after expiry of 10 years from the date of reservation made in the Development Plan and 6 months' notice period is also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Sections 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the appellant herein. Therefore, it is not open for the State

Government to issue the impugned notification proposing to modify the Development Plan from deleting for the purpose of Railways and adding to the Development Plan for the formation of Development Plan Road after lapse of 10 years and expiry of 6 months' notice served upon the State Government.”

11. This Court in *Anil Dattatraya Girme And Ors. Vs. State of Maharashtra And Ors.*, reported in (2020) 1 Bom Cr 353, held that land once dereserved from the Development Plan by operation of law cannot be reserved again in a revised plan with some variation. On the same lines, this Court in *Trilok Singh Pahlajsingh Rajpal And Anr. Vs. Municipal Corporation for Greater Mumbai And Ors.* reported in 2022 SCC OnLine Bom 2347 and *Pursushotam Vishandas Raheja Vs. State of Maharashtra* reported in (2022) SCC OnLine Bom 6704 has specifically held that, land once dereserved from the development plan by operation of law cannot be reserved again in the second revised plan with some variation.

12. The aforementioned judgments of the Hon'ble Supreme Court and of this Court are squarely applicable to the facts of the present case. In the present case, the first reservation was by the Development Plan 1993, wherein the Petitioners' said property was reserved for the purpose of ESS Electric Sub Station and Post Office. The Petitioners had served the required purchase notice dated 12th December 2006 under the MRTP Act. The proposal for the land acquisition was withdrawn by

the Maharashtra State Electricity Distribution Company on the ground that the land cost was on the higher side. The adjacent owner and similarly affected individual, i.e. Komal H. Malpani, had challenged the said reservation by filing Writ Petition No. 5849 of 2012, which was allowed by Order dated 23rd September 2014 after hearing the parties, and the reservation for the Electric Sub Station and for the Post Office in the development plan of 1993 was declared to have lapsed. It is on the same land of the Petitioners that the Government has once again placed a reservation under the Development Plan of 2017 for public amenities spaces.

13. Considering the facts of the case and the aforementioned law, we are of the view that land which is dereserved from the revised Development Plan by operation of law cannot be reserved again in the Development Plan with some variation in purpose.

14. In view of the above the following order is passed.

- i) The reservation of the Petitioners' land for public amenities space under Reservation No. 244 is deemed to have lapsed and the suit lands are released from the reservation and available to the Petitioners for development as per the permissible user and in accordance with law.
- ii) Respondent authorities are directed to take

necessary steps to correct Municipal records along with the revenue record, if required, in respect of the said land and for releasing the land from the reservation.

iii) Petition is allowed in terms of prayer clause (a) and (d).

[RANJITSINHA RAJA BHONSALE, J.]

[M.S. KARNIK, J.]

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