

Analyzing the Government's Authority to Reserve the Property in Development Plans for Public Purpose vis-à-vis Individual's Right of Purchase Notice: A Legal Perspective

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Abstract: *The article delves into the intricate legal aspects surrounding the Government's power to reserve private lands / properties for public purpose in Development Plans of the municipal towns vis-à-vis rights of individuals to hold, develop and dispose it. Focusing on a specific case study, where decades old land of individuals has been reserved in the Development Plan without any intention of the Appropriate Authority to acquire it, the purchase notice served by him has been taken for a ride by the Government by fraudulently trying to re-reserve it for unknown public purpose with a view to deny the benefits of land to the owner thereof. This comprehensive analysis examines the Constitutional & Statutory provisions relating to purchase notice as well as the legality involved in confirmation thereof. It explores key issues such as essentials of a valid purchase notice, confirmation thereof, deemed lapsing of reservation of development plan, impact of development plans and rights of land owners against unlawful reservation of their properties for public purpose for decades together with no intention of the Planning Authorities to acquire it within stipulated time. Ultimately, this article provides insight into the potential remedies available to the land owners facing reservation of their lands in development plans and broader implications on socio economic facilities of the town.*

Keywords: Appropriate / Planning Authority, Development Plan, Planning Standard, Reservation, Land Use Change, Legal analysis, Land Acquisition, Constitutional Rights

1. Aims & Objectives

Development Plan may be defined as the plan prepared by the Planning Authorities for the development of the town. It is mandatory under Maharashtra Regional & Town Planning Act, 1966 (hereinafter called "MR & TP Act, 1966) for every municipal town within Maharashtra to prepare the development plan for the lands within its jurisdiction and revise it every 2 decades. Such a plan must cater to the socio economic needs of the projected population of two decades.

Private lands are therefore reserved in the development plans for various public purposes like play grounds, gardens, parks, primary/secondary schools, colleges, vegetable markets, weekly markets, stadiums, town halls, dispensaries, maternity homes, libraries, housing for dis housed etc. based upon the Planning Standards prescribed by the State Government. Private lands are also reserved in Development Plan for various Appropriate Authorities like BSNL, Police Department, Agriculture Produce Market Committee, Social Welfare Department, Educational Institutions etc based upon their requirement of land for their purpose.

The lands so reserved in Development Plans for Planning Authority / Appropriate Authorities are to be acquired by them respectively and to be developed by it for the said purpose for the benefit of public at large. The entire legal process for preparation and sanction to development plans is governed by MR & TP Act, 1966. The plan so prepared is to be implemented (i. e. reserved lands are to be acquired upon payment of compensation to the affected persons and

developed for the said public purpose) in a phased manner within 2 decades whereafter, the Development Plan becomes due for revision. The rights of the Authorities to acquire and develop the reserved land is directory and not mandatory. As a result, these lands which are reserved in Development Plans largely remains to be acquired for decades together mainly due to paucity of funds for payment of compensation to the affected persons. Looking to the financial position of the local authorities, Government has made provision for payment of compensation in terms of Transferable Development Rights or equivalent land etc but it is at the option of the affected person.

In order to balance the rights of Government to reserve private lands for public purposes and individual's right to hold the property, two parallel provisions of purchase notice (u/s 49 applicable within 10 years from the date of coming into force of Development Plan & 127 applicable for reservation in land beyond 10 years from Development Plan) have been incorporated in the MR & TP Act, 1966. If the owner of land claims that his land has become incapable of reasonably beneficial use and that he cannot sell it except at a price lower than market value due the reservation in his land, he can serve purchase notice upon the Government. If land acquisition proceedings are not initiated within the statutory time after confirmation of purchase notice, the reservation in the land is deemed to have been lapsed and the land becomes available to the owner for development in accordance with the zoning of the adjoining land.

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This paper aims at analysis of the said power of the Government for reserving and acquisition of private lands for public purpose and statutory rights of individuals to require the Authority through purchase notice to acquire the land

within stipulated time; failure of which results into lapsing of reservation.

1) **Problem statement and case history:** is as under:

SC	Date	Particulars
1	05.10.2000	DP published u/s 26 by Municipal Corporation, Pimpri-Chinchwad
2	18.08.2009	DP, Pimpri Sanctioned by Govt. u/s 31 of MR & TP Act, 1966.
3	02.03.2015	Excluded Portion of DP, Pimpri sanctioned by Government u/s 31
4	02.03.2015	Applicant's land SN 87 of Dighi, reserved u/site no.2/133 for BSNL.
5	31.10.2015	Application by owner for surrender of reserved land in lieu of TDR.
6	02.03.2017	Inquiry by MC with BSNL whether it needs reserved land?
7	05.10.2017	Owner served Purchase Notice u/s 49 to acquire or delete u/s 50.
8	12.10.2017	Owner withdrew proposal to surrender land in lieu of TDR
9	27.11.2017	BSNL's refusal to acquire land & requested to delete reservation.
10	27.12.2017	Application by owner to Government to delete reservation u/s 50.
11	04.01.2018	MC to Government to re-reserve land instead of deletion u/s 50.
12	05.01.2018	Government's hearing to owners on purchase notice.
13	16.01.2018	Government states Purchase Notice as "infructuous"; directs MC to initiate proceedings for deletion of reservation u/s 50
14	13.02.2018	Government to MC, Pimpri-Chinchwad w. r. t. its application dated 4.1.18 to initiate proposal u/s 37 to re-reserve the land

2) **Legal provisions:** Several provisions out of various Statutes are examined to assess the legality or otherwise relating to purchase notice and consequences of failure of the Planning / Appropriate Authority to acquire the land within stipulated period. The same are discussed as under:

I) **Constitutional: Art.300-A of The Constitution** of India guarantees that no private land/property will be acquired/taken over by the Govt. unless otherwise than:

- For a public purpose,
- Within the procedure established under a valid Law and
- Upon payment of compensation to the affected persons.

II) **Statutory: A) Maharashtra Regional & Town Planning Act, 1966:**

a) **Minor Modification u/s 37:** Where a modification is intended, sue motu or upon application by owner of the land or when so directed by Government to be made by the Planning Authority to any part of the sanctioned development plan, it shall take a resolution in its general body meeting to that effect and publish a notice in Gazette along with newspapers inviting suggestions & objections from any person with respect to the proposed modification, grant hearing to such a person and submit the proposal to government for sanction. The government, if satisfied that it is in public interest to carry out proposed modification, it shall sanction the modification with or without modification/conditions as it deem fit whereupon, the development plan shall be deemed to have been modified accordingly.

b) **Purchase Notice u/s 49:**

(1) Where any land is reserved in any development plan for the purposes of any government / authority for any public purpose and the owner of the land claims:

- that the land has become incapable of reasonably beneficial use in its existing state of reservation or
- that he is unable to sell it except at a price lower than that which

he might reasonably have expected to sell if it were not so designated / reserved, the owner of the land may serve on the

State Government, a purchase notice requiring the Planning / Appropriate Authority to acquire the interest in the land.

(4) If the Government is satisfied that the conditions specified in sub-section 1 (i. e. the land has become incapable of reasonably beneficial use or that the owner cannot sell it except at a lower price and if the purchase notice is valid i. e. served by the owner and is accompanied by ownership documents) are fulfilled, it may confirm the said purchase notice.

(5) If the Government fails to pass any final order as to confirmation of purchase notice within a period of 6 months from the date of receipt of notice, the purchase notice shall be deemed to have been confirmed at the expiration of 6 months.

(7) If within 1 year from the date of confirmation or deemed confirmation of purchase notice, the Planning /Appropriate authority fails to make an application to the Collector for acquisition of the land u/s 126 of MR & TP Act, 1966 r/w section 19 of The Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (accompanied with resolution of the General Body and deposit of tentatively estimated cost of acquisition), the land shall be deemed to be released from the reservation / restriction and shall become available to the owner for the purpose of development according to zoning of adjoining land. This sub-section 7 has been introduced vide Maharashtra Act No.14 of 1971.

c) **Deletion of reservation u/s 50:** If the Appropriate Authority (other than Planning Authority) is satisfied that any land designated / reserved in any development plan in its favor is no longer required, it may request the government to delete the said reservation / designation from the sanctioned development plan. The State Government, upon enquiry, if satisfied that the said reservation in the land is no longer necessary in the public interest, it shall order deletion of the reservation in the land. The land shall thereafter becomes available to the owner thereof for development in accordance with zoning of adjoining land.

d) **Purchase Notice u/s 127:** If any land reserved in a Development Plan for any public purpose is not acquired within 10 years from the date of coming into force of a final

development Plan, the owner of the affected land may serve a purchase notice upon the Planning Authority requiring it to acquire interest in the land or take steps for acquisition of the land within a period of 24 months failing which, the reservation / designation in the land shall be deemed to have lapsed and the land shall become available to the owner for development as per permissible zoning of adjoining land.

3) Analysis of problem in light of Legal provisions:

A) Mistakes of the applicant:

- The basic mistake committed by the applicant is that on one hand, he served purchase notice u/s 49 and secondly, in the same notice, prayed for deletion of reservation u/s 50 if the land is not needed by the Appropriate Authority viz BSNL. Both the sections are mutually exclusive. Moreover, upon failure of the authority to make an application to Collector for acquisition of the land within 1 year from the date of confirmation or deemed confirmation of purchase notice, the land is deemed to be released from the reservation and no further action u/s 50 is required for deletion of reservation.
- The applicant committed another mistake by requesting the government on 27.12.2017 (pursuant to letter dated 27.11.17 of BSNL that it does not need the land) to delete the reservation u/s 50. The government was misled from the said application made by the applicant.
- The applicant ought to have challenged the order dated 16.1.2018 (for the reasons to be specified little later) wherein, the Government has stated that since it has accepted the request of the applicant to delete the reservation u/s 50, there is no propriety to confirm the purchase notice.
- The applicant further committed another mistake by not taking recourse to section 49 of the MR & TP Act, 1966 for release of his land from the reservation before the hon'ble High Court in his WRIT petition.

B) Error of Government:

- The Government has rightly taken action u/s 49 and gave hearing for confirmation or otherwise of purchase notice. But it committed grave error by clubbing two mutually exclusive prayers (for acquisition of land u/s 49 & deletion of reservation u/s 50) and gave precedence to deletion of reservation u/s 50 over purchase notice u/s 49. Accordingly, the Government has wrongfully held that intended confirmation of purchase notice has become infructuous.
- While suggesting the Municipal Corporation to initiate proposal for deletion of reservation on one hand, the Government on the other hand committed grave mistake, rather unlawful act to direct it vide letter dated 13.2.2018 to initiate minor modification proceedings for re-reservation of land for providing parking & other facilities to Pune-Anandi Road. These two directives of the Government are in conflict with each other and cannot coexist together; the later being at the back of the party.

4) Author's Observation:

A) Purchase Notice u/s 49 vis-à-vis deletion u/s 50: It is apparent that the applicant served purchase notice u/s 49 of the Act. It is true that the applicant prayed for acquisition of his land under reservation in the first instance failing which;

requested for deletion of reservation u/s 50. These two sections are mutually exclusive. Moreover, this notice u/s 49 cannot be treated as application u/s 50 as well for the following reasons:

- Applicant served notice to Government & Appropriate Authority as is the mandate of section 49. and not to the Planning Authority.
- The application for deletion of reservation u/s 50 shall originate by the appropriate Authority like letter dated 5.2.2018 by BSNL to Government but this application of BSNL is independent of purchase notice dated 5.10.2017 which was heard by Government on 5.1.18 and decided on 16.1.2018.

B) Precedence amongst two mutually exclusive prayers in a purchase notice:

Once it is established that the purchase notice is a valid notice, has been served on proper parties and has been accompanied by valid (ownership) documents, the time clock starts running and it cannot be stopped or prevented from being run till it reaches its logical legal end i. e. confirmation or deemed confirmation of purchase notice and application for acquisition of land within stipulated time; failure of which leading to inevitable consequence of deemed deletion of reservation.

On the other hand, the prayer of the applicant for deletion of reservation u/s 50 if land is not intended to be acquired does neither have any time limit nor can be acted upon by Government as the said request shall originate from the Appropriate Authority and not the applicant.

Hence, even if the applicant has committed mistake of praying two different remedies under two different provisions, the Government has no other option but to proceed with the purchase notice u/s 49 instead of proceedings u/s 50.

C) Mandate of section 49: Upon receipt of purchase notice, the Government was under an obligation to preliminarily decide the following:

- Whether the purchase notice is valid i. e. whether it has been served by the owner of the affected land or interested person. It has been held by hon'ble Supreme Court of India in Municipal Corporation of Greater Bombay vs Hakimwadi Tenants Association [AIR (1988). SC.233] that period of 6 months (presently 24 months) would necessarily begin to run from the date of service of purchase notice u/s 127.
- However, it is not an abstract proposition. The Corporation was entitled to be satisfied that the purchase notice has been served by the owner or any person interested in the land. The period will not run in the absence of a valid purchase notice. It has further been held in Satish S. Bhole vs State of Maharashtra [(2011).1. BCR.293] that 7/12 is a valid document which was submitted along with purchase notice.
- whether the conditions of sub-section 1 are satisfied as to the claim of applicant that the land has become incapable of reasonably beneficial use or that he cannot sell it except at a price lower than its market value due to the above reservation.

- The term “incapable of reasonably beneficial use” has been introduced vide Maharashtra Act No. XIV of 1971. Thus, mere reservation in the land alone is not enough for the confirmation of purchase notice; the owner of the affected land must establish by way of some statistical data, sale transactions in the locality, its Ready Reckoner rates, non-agricultural potentiality etc. that the land has become incapable of reasonably beneficial use in its existing state of reservation to qualify the purchase notice for confirmation as explained by Director of Town Planning, Pune in his Circular No. MR & TP Act / Section 49 / Purchase Notice precautions / 32 C/ TPV-7 / 2936 dated 21.4.1999.

D) Consequences of sub-section 1 of section 49: Once the Government is satisfied that the conditions u/s 49 (1) are fulfilled, the natural and inevitable corollary is confirmation or deemed confirmation of purchase notice u/s 49 (4). The option of refusal to confirm the purchase notice does not lie with the Government once mandatory conditions u/s 49 (1) of the Act are satisfied. The right of the Government to refuse to confirm the purchase notice **in any other case** as contemplated u/s 49 (4) does not lie if mandatory conditions u/s 49 (1) are fulfilled.

It is important to note that there is nothing in order / letter dated 16.1.2018 of the Government whereunder, satisfaction of the Government as to section 49 (1) is found to be lacking or absent.

E) Order dated 16.1.2018 of Govt. ought to have been challenged by the applicant: Hence, the order dated 16.1.2018 wherein, the Government has refrained to confirm the purchase notice for the reason that proceedings for deletion of reservation u/s 50 have been directed should have been challenged before the Hon’ble High Court u/Art.226 of the Constitution of India followed by deemed deletion of reservation u/s 49 (7) of MR & TP Act, 1966.

F) Order dated 13.2.18 by Government to re-reserve the land u/s 37 is unlawful: As has already been explained, the Government on one hand directs the Planning Authority to initiate proceedings u/s 50 for deletion of reservation from the land of the applicant and on the other hand, directs it to initiate minor modification proceedings u/s 37 to re-reserve land of the applicant without any notice or information or intimation or hearing to the applicant which itself is violative of natural rights of the applicant.

Citation: It has been held by Hon’ble Bombay High Court in Godrej Vs State Of Maharashtra [(2015).1. Scale.578] that action of the Government to modify the Development Plan and introduce reservation u/s 37 subsequent to deemed deletion of reservation u/s 127 is invalid.

One more important aspect to be looked into. The Planning Authority did not accept the offer dated 31.10.2015 & 8.2.2017 of the applicant for surrender of 2261.93 smt of land under reservation free of cost but in lieu of Transferable Development Rights. And now, it has come up vide proposal dated 4.1.2018 to re-reserve the land u/s 37 in its favor, which it cannot justify acquiring it for money compensation.

5) Root cause of the problem: The Development plans are being prepared for the balanced development of the town. In doing so, various lands of persons are being reserved for various public purposes based upon the Planning Standard prescribed by the Government. However, the Planning Standard itself is on a higher and most unrealistic level without having any correlation with the financial capacity of the Planning Authorities to acquire and develop the lands reserved in its favor.

As a result, lands continue to be reserved in the Development Plans decades after decades with no intention or willingness of the Planning Authorities to acquire it for public purpose and owner of such affected or reserved land is left to suffer and prevent him through provisions of section 46, 52 to 55 of MR & TP Act, 1966 to develop his land in accordance with the potentiality gained by the land due to urbanization in course of time. The phenomenon in short can be described in terms of Planning Authority as “**we will neither acquire your land nor will allow you to develop it**”.

Experience shows that the Development Plans throughout the State Of Maharashtra are implemented (i. e. reserved lands are acquired by Planning Authorities) only to the extent of mere 10 to 12% during 2 or more decades life of the development plan till it reaches state of revision u/s 38.

I quote an article titled “Town & Regional Planning in Maharashtra In the Context of the 74th Amendment to The Constitution” written by Mr. J. G. Keskar, Retired Director of Town Planning, Maharashtra State, Pune, which appeared in Architects Trade Journal (sorry; copy with me lacks date) subsequent to his retirement:

- a) that the reservations of private lands in fact serve no useful purpose and the provisions u/s 22 (b & c) of the MR & TP Act, 1966 relating thereto need therefore to be totally deleted,
- b) that the development plans are far too idealistic and bear no relation to the implementing capacity of the Planning Authority as relating between the implementing capacity and the size of investments necessary is very inadequately described u/s 30 (5) of the Act,
- c) that while the Act makes preparation of plans obligatory, it casts no obligation on Planning Authorities to implement the plan,
- d) that the Government shall stop reserving private lands for public purposes (as it can always acquire it u/s 4 of the then Land Acquisition Act, 1984 or section 11 of current Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013) as the Planning Authorities in general lacks the financial ability to acquire the said lands and develop it for public purpose. Instead, land use within the Development Plans shall be regulated through zoning of lands for various purposes like residential, commercial, industrial etc. and development therein be regulated through provisions of building / development permissions u/s 44 of MR & TP Act, 1966.

A very wise advise but it did not come up for the Government to act upon it while he was in service.

2. Conclusion

In view of the above, the applicant has a remedy to move the Hon'ble High Court under Article 226 of The Constitution of India and:

- a) challenge the Order dated 16.1.2018 of the Government wherein, it has stated that there is no propriety to confirm the purchase notice. Consequent thereto, the applicant can pray for declaration as to deemed confirmation of purchase notice u/s 49 (5) leading of course to deemed deletion of reservation u/s 49 (7).
- b) Challenge the order dated 13.2.2018 of the Government whereby, the Government directed the Planning Authority to initiate proceedings u/s 37 to re-reserve the land.

Keywords

- 1) **Appropriate Authority:** means the Authorities in favor of whom, the lands are reserved in the Development Plans like Police Department, BSNL, Social Welfare Department, Agriculture Produce Market Committee, Educational Institutions etc.
- 2) **Planning Authority:** means the local authority which is empowered to regulate the development within its jurisdiction through various statutes like Maharashtra Municipalities Act, 1965, Maharashtra Municipal Corporations Act, Nagpur Improvement Trust Act, Village Panchayat Act, 1958, Maharashtra Regional & Town Planning Act, 1966 etc.
- 3) **Development Plan:** means plan for the development of the town. Such a plan is prepared looking to various socio-economic needs of the population projected for the next 20 years. It is mandatory to prepare a development plan for every municipal town and Nagar Panchayat; though optional for Gram Panchayats. The plan so prepared remains valid for 20 years or till revision thereof u/s 38 is sanctioned by Government, whichever is later.
- 4) **Planning Standard:** is prescribed by the Government as a parameter for zoning and reservation of lands within the Development Plan and largely depend upon the population to be served. E. g. open space, gardens, playgrounds[at]of ½ to 1 acre per every 1000 persons, primary school[at]1acre for every 400 students, high school[at]2 acres for every 1000 students, General hospital[at]4 to 5 beds for every 1000 persons, Dispensary[at]1 acre for every 10, 000 persons etc.
- 5) **Reservation:** To meet the socio-economic needs of the projected population, the lands are reserved in the Development Plans for various public purposes meant for the Planning / Appropriate Authorities to acquire and develop it. However, despite the land being reserved in the Development Plan, the sale-purchase or use thereof in its existing state is not prohibited; its development contrary to the reservation is prohibited. But the fact remains that the land due to reservation becomes incapable of reasonably beneficial use to its owner and has adverse effect on its market value.
- 6) **Land Use Change:** The use of land is governed by the zoning provisions of the Development or Regional Plans sanctioned by the Government from time to time. This is so for planned development of the area and to prevent non-confirming land uses. It is regulated through section 44 of Maharashtra Land Revenue Code, 1966 by

provisions of Non-Agriculture permission and through section 44 of MR & TP Act, 1966 for approval of layouts/subdivisions of lands.

- 7) **Legal Analysis:** It means analysis of Rights & Obligations of Government vis-à-vis persons which can withstand and be enforceable by/before/through the court of Law in case of infringement thereof.
- 8) **Land Acquisition:** Private lands are frequently required by the Government / Planning Authorities/ Appropriate Authorities for various development purposes. It is therefore entitled to procure it despite unwillingness of the owners thereof so long as it is needed for public purpose, it provides for compensation (compensation is not synonymous with market value). The compensation depends upon the statutory objectives to be achieved (and may be much below the prevailing market value) and acquisition must be under the procedure established by the Statute under which, it is acquired. It is interesting to note that solatium is one of the components of compensation (presently 100% of the value determined under Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) which is being provided to the affected persons for the compulsory nature of the land procurement i. e. for the force or the unwillingness of the owner to part with his land.
- 9) **Constitutional Rights:** The Constitution of India provides for enforcement of various rights of individuals in case of infringement thereof by the Government or its agencies/authorities.
 - a) **Article 14** provides for equal treatment before law and prevents discrimination within the same class. This natural right aims at fair opportunity to the affected person to be heard before being condemned.
 - b) **Article 19** provides various freedoms to citizens like freedom of speech & expression, freedom of movement within the country, freedom to form association, freedom to practice any business / profession, freedom against arbitrary arrest etc. and mandamus can be issued by the High/Supreme Court against its violation by any Authority u/Art.226/32 of The Constitution of India.
 - c) **Article 226** provides for enforcement of fundamental rights of individuals in case of breach thereof by the Govt/Authority,
 - d) **Article 227** provides power of superintendence to the High Courts over the judicial and quasi-judicial authorities subordinate to it within the State. Under this provision, any unlawful, biased or arbitrary decision of the Government / Planning Authority affecting any individual can be challenged before the High Court for declaration thereof as "void".
 - e) **Article 300-A** is a Legal Right of individual to purchase, hold, develop and dispose of the property according to one's own wishes but it is subject to the rights of the Government to acquire it provided conditions as specified above are satisfied.

References

- [1] For further details and statutory provisions, refer to the book by the same author entitling: "Encyclopaedia of Land Laws with Court Judgments: A Ready Reckoner for Architects, Civil Engineers, Valuers, Supervisors,

Builders, Developers & Building Consultants”, [ISBN: 978 93 5566 177 7] which is available on Amazon as well.

- [2] Maharashtra Regional & Town Planning Act, 1966.
- [3] The Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013.