

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1983 OF 2015

- 1] Pramod S/o Ramnarayan Agrawal,
Age : 55 Years, Occu : Business & Farmer,
- 2] Saurabh Mahendra Kothari,
Age : 30 Years, Occu : Business & Farmer,
- 3] Umesh Ramvilas Joshi (HUF)
Age : 40 Years, Occu : Business & Farmer,
- 4] Sau. Kusum Sajjankumar Agrawal,
Age ; 61 Years, Occu : Business & Farmer,

Vipin Vijaykumar Chordia,
Age : 33 Years, Occu : Business & Farmer,
The General Power of Attorney
Holder of the petitioner No.1 to 4
R/o - 8, Mahavi Chambers,
Jaikisan Wadi, Jalgaon 425001.

...PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32.
- 2] The Director,
Town Planning Department,
Pune, at Pune.
- 3] The Deputy Director,
Town Planning Nashik
Division, Nashik.
- 4] The Joint Director,
Town Planning, Jalgaon
At Jalgaon.
- 5] The Joint Director,
Town Planning,
Jalgaon Municipal Corporation
at Jalgaon.

- 6] The Commissioner,
Jalgaon Municipal Corporation
Jalgaon, at Jalgaon.

...RESPONDENTS

WITH

WRIT PETITION NO. 1984 OF 2015

Sau. Alka Kisan Varade,
Age : 59 Years, Occu : Business,
Through General Power of Attorney,
Shri Dr. Kisan Namdeo Varade,
Age : 65 Years, Occ : Doctor,
R/o -8, Shri Mahavir Chember
Jaikisanwadi Jalgaon 425 001.

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32.
- 2] The Director,
Town Planning Department,
Pune, at Pune.
- 3] The Deputy Director,
Town Planning Nashik
Division, Nashik.
- 4] The Joint Director,
Town Planning,
At Jalgaon.
- 5] The Joint Director,
Town Planning,
Jalgaon Municipal Corporation
at Jalgaon.
- 6] The Commissioner,
Jalgaon Municipal Corporation
Jalgaon, at Jalgaon.

...RESPONDENTS

...

Mr. Ajay G. Talhar : Advocate for Petitioners
Mr. N. B. Patil : AGP for Respondent Nos.1 to 4
Mr. S. S. Patil : Advocate for Respondent Nos.5 & 6

CORAM : R.M. BORDE & A.M. BADAR,JJ.
DATE : 15TH SEPTEMBER,2015.

ORAL JUDGMENT (PER R. M. BORDE, J.) :

1] Heard.

2] Rule. Rule made returnable forthwith. Taken up for final disposal at the admission stage.

3] Petitioners are praying for issuance of directions to the respondent No.6 - Planning Authority to issue declaration that the Reservation No.33 prescribed for Primary School and Play ground on the property situated at Gat No.16 (Part), Nimkhedi, Tq. and Dist. Jalgaon having area 14000 square meters, as well as, in respect of the area to the extent of 2529 square meters, under reservation No. 88 in relation to property bearing Gat No. 247/1 situated at Pimprala, shall be deemed to have been lapsed in view of the operation of provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 and that the aforesaid properties are available to the land owners for development, as in the case of adjacent lands.

4] It is not a matter of dispute that petitioners are owner and possessor of the aforesaid properties and said properties are reserved for public purpose under the final Development Plan prepared by respondent No.6, Jalgaon Municipal Corporation in the year 2002.

5] Since no steps were taken by the planning authority for

acquisition of the aforesaid properties for a period of 10 years from the date of designation of reservation under the Final Development Plan, the petitioner issued notice within contemplation of Section 127 of the MRTP Act on 28/10/2013 and 1/7/2013, to the planning authority, calling upon the said authority to take steps for acquisition of the properties, otherwise, it was informed that the reservation, allotment or designation in respect of the aforesaid property under the Final Development Plan shall be deemed to have lapsed.

6] The petitioner contends that the planning authority has failed to take steps within a period of one year from the date of receipt of such notice and as such, the designation, allotment or reservation under the Final Development Plan concerning the aforesaid properties shall be deemed to have lapsed.

7] Learned counsel appearing for the respondent - Planning Authority contends that, in fact, petitioners were offered TDR in respect of their properties by communication dated 11.11.2013. However, the petitioners refused to accept the same. The Planning Authority, therefore, adopted a resolution dated 19.12.2013 thereby decided to acquire the properties for public purpose and transmitted a proposal to the Land Acquisition Officer on 16/4/2014. It is, therefore, contended that since steps have been taken for acquisition of the property, the deeming provision shall not operate and the properties cannot be deemed to have been released from reservation.

8] The issue is no more res-integra in view of the judgment delivered by the Honourable Supreme Court in the matter of *Girnar Traders (II) vs. State of Maharashtra and others reported in 2007(7) SCC 555*, wherein, the Honourable Supreme Court, in para 57 of the judgment observed thus :-

“57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word `steps (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.”

9] In view of the judgment of the Supreme Court in the matter referred to above, steps within contemplation of Section 127 of the MRTP Act, mean issuance of declaration under Section 6 of the Land Acquisition Act. It is not a matter of dispute that no declaration under Section 6 has

been issued till this date. In that view of the matter, the contention of the petitioners that property shall be deemed to have been released from reservation, deserves acceptance.

10] It is stated learned counsel for petitioners that some area out of Gat No. 247 has been taken in possession by the Municipal Corporation for developing 15 meter and 12 meter road. It would be open for the petitioner to claim compensation or TDR in respect of the aforesaid property taken in possession by the Municipal Corporation by adopting appropriate proceedings.

11] For the reasons recorded above, both the writ petitions deserve to be allowed and same are accordingly allowed. Reservation, designation or allotment in respect of the properties belonging to petitioners under the Final Development Plan prepared by Municipal Corporation Jalgaon, shall be deemed to have lapsed by operation of provision of Section 127 of the MRTP Act and the aforesaid properties shall be available for the petitioners for development as in case of adjacent lands, under the relevant plan. Necessary notification under sub-section (2) of Section 127 of the MRTP Act, shall be issued by the State Government, within a period of 8 months from today.

12] Rule is made absolute accordingly with no orders as to costs.

[A.M. BADAR, J]

[R.M. BORDE, J]

grt/-