

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2818 OF 2015

Dr.Pralhad Purshottm Choudhary
Age: 75 Yrs., occu. Doctor,
R/o Ganesh Colony, Jalgaon.

- PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Secretary
Ministry of Urban Development
Mantralaya, Mumbai-32.
- 2) Municipal Corporation,
Jalgaon, Through its
Commissioner.
- 3) The Town Planner,
Municipal Corporation,
Jalgaon.
- 4) The District Collector,
Jalgaon.

- RESPONDENTS

Mr.AP Bhandari, Advocate for Petitioner;
Mr.NB Patil,AGP for State.
Mr.SV Gundre, Advocate h/for Mr.VD Gunale, Adv.
For Respondent Nos. 2 and 3.

**CORAM : R.M.BORDE &
P.R.BORA,JJ.**

DATE : 21st July,2015.

JUDGMENT (PER:-P.R.BORA,J.)

- 1) Heard. Rule. Rule made returnable forthwith.
With the consent of learned Counsel for the parties,
the petition is taken up for final hearing.

2) Shri A.P.Bhandari, learned Counsel appearing for the petitioner, submits that the land owned by the petitioner, bearing Gut No.251/2, situated at village Pimprala, Tq. And district Jalgaon, situated within the municipal limits of Jalgaon, admeasuring 31 R., is reserved for primary school and garden in the development plan of the city of Jalgaon, sanctioned on 7.3.2002. The learned Counsel further submits that notice dated 28.10.2013 under Section 127 of The Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act"), is duly served upon Respondent Nos. 2 and 3, i.e. Appropriate Authority/Planning Authority. He further submits that on receipt of the aforesaid notice, Respondent No.2 – Municipal Corporation, had called upon the petitioner to submit the title documents and the lay-out of the property under reservation. The learned Counsel further submits that the petitioner accordingly furnished the title documents as well as the measurement plan and the sanctioned lay-out to Respondent No.2 – Corporation, along with his covering letter dated 20.2.2014. The learned Counsel further submitted that in spite of the service of notice under Section 127 of the MRTP

Act, no notification has been issued by the respondents under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 within the period of one year after service of the notice and the subject reservation, therefore, stands lapsed.

3) Shri Chandrakant Raghunath Nikam, Assistant Director of Town Planning, Jalgaon Municipal Corporation, Jalgaon, has filed an affidavit in reply on behalf of Respondent Nos. 2 and 3, contending therein that after receipt of the notice issued by the petitioner, the Municipal Corporation has taken the requisite steps for acquisition and the proposal to that effect has been submitted to the Collector. It is further contended that the proposal so submitted for acquisition is under process. It is further contended that considering the population growth of the city and the extension of the municipal limits, the subject land is required for primary school and play-ground. It is further contended that the petitioner is entitled for compensation including all the benefits thereof. It is further contended that since the proposal for acquisition is forwarded

to the Collector on 19.6.2014, the respondents have taken effective steps within the period of one year of the receipt of the notice under Section 127 of the MRTP Act. According to the respondents, the petition, therefore, is liable to be dismissed.

4) We have carefully considered the submissions made on behalf of the petitioner and the respondents. The respondents have not disputed that the land owned by the petitioner is reserved in the development plan sanctioned on 7.3.2002 for primary school and playground. The respondents have further not disputed the receipt of the notice under Section 127 of the MRTP Act issued by the petitioner. The only ground raised by the respondents is, that the acquisition proposal has already been forwarded to the Collector; and as such, the reservation would not get lapsed under Section 127 of the MRTP Act.

5) The legality and validity of the notice under Section 127 of the MRTP Act has not been questioned by the respondents. After purchase notice issued by the petitioner on 28.10.2013, the Municipal Corporation passed a resolution on 13.5.2014 for

acquisition of the land under reservation and to send the proposal for acquisition to the Collector, Jalgaon. Accordingly, the Municipal Commissioner, vide his letter dated 19.6.2014 has sent a proposal for acquisition of the land under reservation to the Collector, Jalgaon. However, no further steps of whatsoever nature seem to have been taken. The question is, whether the proposal forwarded by the respondents/Municipal Corporation to the Collector for acquisition, can be said to be an effective step of acquisition of the land under reservation, as envisaged under Section 126 of the MRTP Act. The answer is 'No'. The steps taken by Respondent Nos. 2 and 3 did not culminate into Section 6 declaration under the Land Acquisition Act within the period stipulated by section 127 of the MRTP Act.

6) The law is well-settled 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. Mere passing the resolution or moving a proposal for acquisition to the Government, would not mean that

effective steps of acquisition have been undertaken by the acquiring body. The respondents have thus failed in taking effective steps of the land under reservation by issuing notification under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act within the period of one year after service of the notice as stipulated under Section 127 of the MRTP Act.

7) In view of the facts as above, it has to be held that as the Planning Authority has failed to initiate acquisition proceedings in respect of the land under reservation within the stipulated period of one year from the date of receipt of notice under Section 127 of the MRTP Act served by the petitioner on the Planning Authority, the reservation, allotment and designation shall be deemed to have been lapsed and the land shall be deemed to have been released from such reservation, allotment or designation and shall be available to the Petitioner for the purpose of development as otherwise permissible in the case of adjacent land in respect of the relevant plan.

8) In the result, the petition succeeds. It

is hereby declared that the reservation, allotment or designation prescribed in respect of the subject property i.e. Gut No.251/2 of village Pimprala, Tq. And Dist. Jalgaon situated within the Municipal limits of Jalgaon admeasuring 31 R., owned by the petitioner, shall be deemed to have been lapsed and said property shall be released from such reservation, allotment and designation and shall be available to the petitioners for the purposes of development as otherwise permissible in the case of adjacent land under the relevant plan. The lapsing of reservation shall be notified in official gazette as contemplated by Sub-section (2) of Section 127 of the M.R.T.P. Act within period of four months.

9) Rule is made absolute accordingly. No costs.

Sd/-
(P.R.BORA)
JUDGE

Sd/-
(R.M.BORDE)
JUDGE

bdv/
fldr 11.8.2015