

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2527 OF 2015

1. Arun s/o Babulal Bharuka
Age 47 years, Occ. Business,
R/o Bajar Peth, Kannad,
Tal. Kannad, Dist. Aurangabad.
2. Subham s/o Mohit Bharuka,
Age 21 years, Occ. Education,
R/o Tilak Road, Kannad,
Tal. Kannad, Dist. Aurangabad.
3. Sanjay s/o Chandulal Bharuka,
Age 43 years, Occ. Business,
R/o Samarth Nagar, Kannad,
Taluka Kannad, Dist. Aurangabad. ... Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032.
2. The Director, Town Planning,
Maharashtra State,
Pune.
3. Assistant Director of Town Planning,
Aurangabad.
4. The Collector, Aurangabad,
Taluka and Dist. Aurangabad.
5. The Municipal Council, Kannad,
Through its Chief Officer,
Municipal Council, Kannad,
Tal. Kanad, Dist. Aurangabad. ... Respondents.

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Advocate for Petitioners : Mr. Devdatt P. Palodkar
AGP for Respondent Nos. 1 to 4 : Mr. K. J. Ghute Patil
Advocate for Respondent No. 5 : Mr. S. S. Shete
Caveat Filed By Advocate Mr. S. B. Talekar (Caveator not made party)

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**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 25th AUGUST, 2015

ORAL JUDGMENT (PER A. V. NIRGUDE, J.) :-

1. Rule. Rule made returnable forthwith. By consent of parties, taken up for final hearing.

2. This petition is filed for seeking declaration under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter, for brevity, referred to as "MRTP Act") that the petitioners' land stood de-reserved from sanctioned development plan of Kannad Municipal Council. The facts are admitted and are as under :

The petitioners are the owners of land admeasuring 1 Hectare 13 R. out of survey No. 26/2-B at Kannad, District Aurangabad. This land was reserved for garden in sanctioned development plan of the town. The development plan came in operation on 29th June, 2006. The petitioners' land was not acquired. So, the petitioners served purchase notice under Section 49(1) of the MRTP Act to the State of Maharashtra through the Secretary, Urban Development Department, Mantralaya, Mumbai. After hearing the parties, the State of Maharashtra confirmed the purchase notice on 9th January, 2013. Section 49 contemplates acquisition as per Section 126 of the

MRTP Act within a period of one year from the date of confirmation of purchase notice. Admittedly, no proposal submitted by the planning authority under Section 126 of the MRTP Act succeeded before the Collector. On 27th January, 2014, the period of one year came to an end. The petitioners then applied for issuance of No Objection Certificate, but in vain. Therefore, this petition is filed.

3. The respondent No. 5 – Municipal Council, Kannad, submitted a reply in which they admitted that the despite of confirmation of purchase notice on 9th January, 2013, they could not take concrete steps for acquiring the land. They stated that they did not have funds for acquisition of land. They also admitted that the proposal filed by them was returned by the Collector. They raised one more point in their reply. They say that another Writ Petition bearing No. 2661 of 2014 was filed by the petitioners earlier for the same relief, and therefore, this petition is not maintainable.

4. After hearing the submissions at bar, we are inclined to reject the objection raised by the Municipal Council. The Writ Petition No. 2661 of 2014 was allowed to be withdrawn with liberty to file the present petition. Therefore, this petition is maintainable.

5. Law on this subject is now settled. One such judgment is

shown to us which is delivered by the Division Bench of this Court in a case of “***Subhash s/o Ramrao Jadhav and others Vs. State of Maharashtra and others***” reported in ***2012 (4) Mh.L.J. 236***. For the reasons recorded in the said judgment, we are also inclined to allow this petition. The petition deserves to be allowed.

6. The petition is allowed in terms of prayer clause “C” and “D”. Rule is made absolute in the above terms. There shall be no order as to costs.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

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