

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3021 OF 2015

Pramila Hiranman Dhake
age: Major, occu: Housewife
R/o Plot No.10, Sant Savta Mali Nagar
Mali Nagar, Amrut Dham, Panchawati
Nasik

Petitioner

Versus

- 1 The State of Maharashtra
- 2 Jalgaon Municipal Corporation
Through Its Commissioner,
Jalgaon
- 3 The Assistant Director of Town Planning,
Jalgaon Municipal Corporation,
Jalgaon
- 4 Irrigation Department
through Its Executive Engineer,
Waghur Dam Department,
Jalgaon

Respondents

WITH
WRIT PETITION NO.3138 OF 2015

- 1 Avadhoot Rajaram Attarde,
Age: 64 years, occu: Agriculture
R/o 122, Rampeth, Jalgaon
- 2 Alka Eknath Attarde
Age: 52 years, occu: Agriculture
R/o Eshwar Colony, Aurangabad

Petitioners

Versus

- 1 The State of Maharashtra
- 2 Jalgaon Municipal Corporation
Through Its Commissioner,
Jalgaon

- 3 The Assistant Director of Town Planning,
Jalgaon Municipal Corporation,
Jalgaon
- 4 Irrigation Department
through It's Executive Engineer,
Waghur Dam Department,
Jalgaon

Respondents

Mr.M.V. Navandar advocate for the petitioners

Mr.S.S. Patil advocate for respondent Nos.2 & 3

Mr. N.B. Patil, AGP for Respondent State.

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

Dated : 31st AUGUST, 2015.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard. Rule.

2 With the consent of the parties, petitions are taken up for final decision, at admission stage.

3 The petitioners are praying for issuance of declaration that the reservation prescribed under the final development plan prepared for the city of Jalgaon in respect of the property belonging to the petitioners being Survey No.416/2-A admeasuring 48 R and survey No.416/2-C admeasuring 52 R is deemed to have lapsed and the aforesaid property is deemed to have been

released from reservation, allotment or designation and is available to the owners for the purpose of development as otherwise permissible in case of adjacent land under the relevant plan.

4 The petitioners contend that, the properties belonging to them which are subject matter of these petitions, have been incorporated in the final development plan and reserved for the purpose for Waghur canal project. The reservation has been prescribed under the final development plan at the instance of respondent No.4 Irrigation Department. The final development plan is enforced from the date 11.2.2002. The petitioners state that the aforesaid land is not required by the Irrigation department for development and as such no fruitful purpose would be served in keeping the reservation in respect of the properties belonging to the petitioners under the final development plan is prepared for Jalgaon Municipal Corporation. Petitioners place reliance on the communication issued by the Irrigation Department on 26.2.2014 informing the Assistant Director of Town Planning that, the land survey No.41 is not required for the purpose of canal by the irrigation department. Apart from this, an affidavit in reply has been presented on behalf of the irrigation department, which is an appropriate authority, stating therein that, the lands belonging to

the petitioners are not presently proposed to be acquired for Waghur canal project. The petitioner served a notice upon the planning authority as well as the appropriate authority as contemplated under section 127 of The Maharashtra Regional & Town Planning Act, 1966 (the MRTP Act) on 8.6.2014 informing the appropriate authority to acquire the property within a period prescribed under the provisions or else the reservation shall be deemed to have been lapsed. The appropriate authority, after receipt of the said notice did not take any steps for acquisition of property and as such, according to the petitioners, the reservation, allotment or designation in respect of property under the Final Development Plan prepared for Jalgaon city, shall be deemed to have lapsed. There is no denial in respect of receipt of notice by the appropriate authority. There is no dual opinion in respect of the fact that the respondent irrigation department is an appropriate authority within the meaning of section 2(3) of the MRTP Act and as such, steps in respect of acquisition of property are required to be taken by the said Authority. In the instant matters, in spite of issuance of notice under section 127 of the Act, no steps are taken for a period of one year from the date of receipt of notice and as such, reservation in respect of the property belonging to the petitioners which is a subject matter of the instant petitions, shall be deemed to have lapsed. The

commencement of the proceedings in respect of acquisition of property within the contemplation of section 126 of the Act is the issuance of section 6 Notification under the provisions of Land Acquisition Act, as has been held in the matter of ***Girnar Traders (3) V/s State of Maharashtra*** (2011 3 SCC page 1).

5 In view of above, both the writ petitions deserve to be allowed and same are accordingly allowed. The reservation, allotment or designation in respect of lands belonging to the petitioners which are subject matter of the instant petitions, shall be deemed to have lapsed. The aforesaid lands shall be available to the owners for the purpose of development or otherwise, permissible in case of adjacent lands under the relevant plan. The respondent State is directed to issue a Notification as contemplated under sub-section (2) of Section 127 of the Act in the Government gazette within six months from today.

6 Rule is accordingly made absolute.

7 There shall be no order as to costs.

(P.R. BORA, J)

(R.M.BORDE, J)