

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

WRIT PETITION NO.6767 OF 2014

1. Shri Ratanlal Chunilal Bafna,
Age 78 years, Occupation Business.
2. Shri Vijay Bansilal Jain,
Age 50 years, Occupation Business.
3. Shri Shashikant Shivram Jain,
Age 58 years, Occupation business.
4. Shri Shirish Dalichand Oswal,
Age 48 years, Occupation Business,

All are residing at Subhash Chauk,
Bhavani Peth, Jalgaon.

...PETITIONERS

VERSUS

1. The State of Maharashtra
through The Ministry of Urban Development,
Mantralaya, Mumbai.
2. The Director,
Town Planning, State of Maharashtra, Pune.
3. The Deputy Director,
Town Planning, Nashik Division, Nashik.
4. The Assistant Director,
Town Planning, Jalgaon.
5. The Jalgaon Municipal Corporation
Through the Commissioner,
The Jalgaon Municipal Corporation, Jalgaon.

...RESPONDENTS

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Mr. D.P.Palodkar, Advocate, h/f Mr.Anand P.Bhandari, Advocate
for petitioners.

Shri S.G.Karlekar, APP for respondent State.

Shri Shrikant S.Patil, Advocate, for respondent no.5.

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

Date: August 5th, 2015

JUDGMENT :- (Per P.R.Bora, J.)

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

2. The petitioners claim that the reservation laid by the Planning Authority in respect of land Gat No.330/A/2 admeasuring 1 H. 87 R. 16 Meters owned by the petitioners, situate at Jalgaon, within the municipal limits of Jalgaon, has been lapsed by operation of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, referred to as `MRTP Act'). It is the contention of the petitioners that inspite of receipt of the notice under Section 127 of the MRTP Act, since appropriate authority / acquiring body has not acquired the land under reservation, the said land can become available to the petitioners for the purpose of development in accordance with the Rules and Regulations as in the case of the adjacent land.

3. Averments in the petition reveal that the subject land was reserved for primary school and playground in the Development Plan for Jalgaon city, prepared and sanctioned by the Government in the year 1993. In the said Plan, reservation No.20 was shown as the site reserved for primary

school and playground. It is further revealed that though the petitioners were constantly pursuing the matter to release their land from reservation so that they can develop the said land in accordance with the Rules and Regulations, neither the land was de-reserved nor any step was taken for acquisition of the said land. In the circumstances, the petitioners sent a notice dated 4.6.2012 to respondent no.5 Municipal Corporation and also to other respondents for de-reservation of the subject land. No steps were however taken by the Planning Authority under Section 126 of the M.R.T.P. Act read with Section 6 of the Land Acquisition Act. The petitioners had, therefore, filed Writ Petition No.5445/2013, before this Court seeking a declaration that the reservation shall be deemed to have been lapsed. The said writ petition was disposed of by this Court by observing that there was no notice as contemplated under Section 127 of the MRTP Act. It was further observed by this Court that the petitioners were at liberty to issue notice as contemplated under Section 127 of the Act to the Planning Authority. The petitioners, therefore, issued a notice under Section 127 of the MRTP Act to respondent no.5 Municipal Council and other respondents through their Counsel on 7.9.2013, calling upon the Planning Authority to purchase the subject land within the stipulated period or else, to delete the said land from reservation. Since no steps as contemplated under Sections 126 and 127 of the M.R.T.P.Act have been taken by the Planning Authority in the given period, the petitioners have filed the present petition.

4. One Dileep Gangadhar Sarpate, Assistant Director of Town Planning, Nandurbar, holding additional charge of the post of Assistant Director, Town Planning, Jalgaon, at the

relevant time, has filed affidavit in reply on behalf of respondent nos. 1 to 4 on 14.11.2014. Subsequently, Shri Chandrakant Raghunath Nikam, Assistant Director of Town Planning, Jalgaon Municipal Corporation, Jalgaon, has also filed affidavit in reply on behalf of respondent no.5 on 10.12.2014. The respondents have not disputed the fact that the subject land, belonging to the petitioners, is reserved for primary school and play ground and shown in the Development Plan of Jalgaon city as reservation site no.20. The respondents have further not disputed receipt of notice dated 7.9.2013 under Section 127 of the MRTP Act issued by the petitioners.

The respondents have raised an objection that the present petition is premature and hence is liable to be rejected since the same has been filed before expiry of period of one year after service of the notice upon the respondents under Section 127 of the MRTP Act. It is further contended that after receipt of the notice from the petitioners under Section 127 of the MRTP Act, respondent no.5 Corporation had offered T.D.R. to the petitioners in lieu of compensation. According to the respondents, this was effective step taken by the acquiring body towards compliance under Section 126 of the MRTP Act. It is further contended that the site reserved for primary school and playground and for 15 meters wide road is required for the public purpose and for the welfare of the citizens and hence, the same cannot be released. On these grounds, the respondents have prayed for dismissal of the petition.

5. As stated hereinabove, most of the facts stated in the petition are undisputed. The only objection which has been raised by the respondents is that the petition is premature. It is true that the notice under Section 127 of the MRTP Act was

issued by the petitioners to respondent No.5 Municipal Corporation and other respondents on 7.9.2013 and the present petition has been filed on 25th March, 2014, i.e. before expiry of the period of one year from the date of notice under Section 127 of the MRTP Act. The respondents have, therefore, prayed for dismissal of the petition on this sole ground. We are however, not convinced with the objection so raised. Nothing has been pointed out by the respondents or nothing has been brought on record by them to show that till date any effective step of acquisition of the land under reservation has been taken by the acquiring body. It is, thus, evident that the respondents have not taken any effective step of acquiring 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.

6. 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 petitioners 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 Petitioners for the purpose of development as otherwise permissible in the case of adjacent land in respect of the relevant plan.

7. 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. land Gat No.330/A/2 admeasuring 1 H. 87 R. 16 Meters owned by the petitioners, within the municipal limits of Jalgaon, shall stand 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.

Rule is made absolute accordingly. No costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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