

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5568 OF 2012

Nutanlal S/o Tejpal Shah
Age: 64 years, occu: business,
R/o Near Railway Station,
Behind R.T.O. Office, Railway Station Road
Aurangabad, District: Aurangabad
through his irrevocable power of attorney
in favour of partners of the firm
Tirupati Developers, Sailu

1. Surendra S/o Bhagirathji Toshniwal
Age: 44 years, occu: business
R/o Walur, tq. Sailu, Dist. Parbhani

2. Rajesh S/o Jagdishprasad Gupta
Age: 45 years, occu: business
R/o Mahesh Nagar, Sailu
Tq. sailu, Dist. Parbhani

Petitioner

Versus

1. The State of Maharashtra
through: Department of Urban Development
Mantralaya, Mumbai

2. Director of Town Planning,
Central Building, Pune

3. The Municipal Council,
Sailu through its Chief Officer,
Municipal Council, Sailu,
Tq. sailu, Dist. Parbhani

Respondents

Mr. M.V. Deshpande, advocate
h/f Mr. Mrigesh D. Narwadkar advocate for the petitioner
Mr. S.K.Kadam, AGP for respondent Nos.1 & 2
Mr. S.R.Choukidar advocate for Respondent No.3

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

Dated : 24th February, 2015.

ORAL JUDGMENT

(PER: R.M. BORDE, J)

1 Heard.

2 Rule. Rule made returnable forthwith. By consent of the counsel for the parties, taken up for final hearing at admission stage.

3 The petitioners are the owners and possessors of the land which is a part of Survey No.1 admeasuring 1 Hector 20 R situate at Selu, District : Parbhani. It is not a matter of dispute that, the said area is included in the Final Development Plan and the reservation prescribed was for open space. The final development plan was initially published on 1.2.1972. The petitioner tendered a notice on 14.2.2001, calling upon the Planning Authority to take steps for acquisition of the land within time stipulated under section 127 of the Maharashtra Regional Town Planning Act, 1966 and in the event of failure, land shall be deemed to have been released from reservation/allotment/designation prescribed under the Final Development Plan. The Municipal Council initially did not take any step and kept the matter in cold storage. A revised development plan for Selu town was finally published on 18.6.2001. The

petitioner again issued a notice in the year 2006 making reference to earlier notice dated 14.2.2001 and calling upon the Planning Authority to take steps, stating further that in the event of failure of the Planning Authority to take steps within contemplations under the Act, the allotment/designation or reservation under the Final Development Plan shall come to an end.

4 It is not a matter of dispute that a period of 30 years has lapsed since the prescription of reservation of the property belonging to the petitioner under the Final Development Plan. It is not a matter of dispute that on 14.2.2001, petitioner had issued notice to the Planning Authority which was followed by another notice in the year 2006. The Planning Authority, however, adopted a resolution for release of the property since the Planning Authority did not have financial capability to make payment to the owners in respect of the sites under reservation. The resolution adopted by the Municipal Corporation was forwarded to the State Government and Notification as contemplated under section 37(1) of the Act, for effecting minor modifications in the Final Development Plan was published in the official gazette on 18.6.2009. The State Government, however, did not take any further steps. The property of the petitioner is neither released from reservation, nor he has been permitted to develop the said property, nor the state Government has taken any decision in respect of the minor

modification in the Final Development Plan as suggested by the Planning Authority.

5 The argument is advanced by the respondents that since there is a revision in the Final Development Plan in the year 2001 and the period of ten years has not elapsed since the date of notice, which was issued in 2006, the reservation/designation/allotment under the Final Development Plan shall not come to an end. The argument is devoid of any substance. The fact remains that there is reservation prescribed under the Final Development Plan published in the year 1972 and the said reservation is continued even till today. After lapse of more than ten years, petitioner has served notice to the Planning Authority firstly on 14.2.2001 and then in 2006 and since the Planning Authority did not take any steps for acquisition of the property within contemplation of section 127 of the Act, reservation/allotment/designation under the Final Development Plan has come to an end by operation of law.

6 So far as the objection raised by the respondents, on the strength of the revision in the plan in the year 2001 is concerned, the issue is covered by the Judgments delivered by division bench of this Court in Writ Petition No.2173/2012 dated 17.10.2012 as well as Judgment of Division Bench of this Court in case of **Vijaykumar Motilal Hirakhanwala V/s The State of Maharashtra** (W.P.No.11759/2010 dated 17.2.2021), **Bhavnagar**

University V/s Palitana Sugar Mill Pvt Ltd (AIR 2003 SC 511),
Baburao Dhondiba Salokhe vdersus Kolhapur Municipal Corporation (2003 (3) Mh. L.J. 820.

7 For the reasons recorded above, writ petition deserves to be allowed and the same is accordingly allowed. The reservation/designation/allotment prescribed under the Final Development Plan prepared by Selu Municipal Council in relation to the property in question belonging to the petitioner, which is subject-matter of this petition, shall be deemed to have come to an end and the said property shall be available to him for use as in case of the adjacent land holder. A Notification as per section 127(2) of the Act shall be published as expeditiously as possible, preferably within a period of six months from today.

8 Rule is made absolute accordingly in the above terms.

9 Pending Civil Applications do not survive and stand disposed.

(P.R. BORA, J)

(R.M.BORDE, J)