

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

WRIT PETITION NO.6233 of 2013

1. Devanand s/o Narayanrao Kotgire,
Age 47 yrs., Occ: Business and Agri;
r/o. Khivansara Park, Garkheda, Aurangabad
(Partner APK Developers)
2. Attal Realty Ltd.,
Through its Principal Officer and authorized
Signatory Mr.Anupam Radheshyam Attal,
R/o.: 2-A, J.K.Towers, Adalat Road,
Aurangabad
(Partner APK Developers)
3. Prakash s/o Prabhudas Paraswani;
Age 51 yrs. Occ: business, r/o. Sindhi
Colony, Aurangabad.
(Partner APK Developers)

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Urban and Town
Planning Department.
2. Aurangabad Municipal Corporation,
Aurangabad through its Commissioner
Near Town Hall Aurangabad.
3. The Assistant Director, Town Planning
Town Planning Department,
Municipal Corporation, Aurangabad.

...RESPONDENTS

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Mr. Ameet R.Vaidya, Advocate for the petitioners.
Mr.S.G.Karlekar, AGP for respondent State.
Mr.A.M.Karad, Advocate, for respondent nos. 2 and 3.

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

DATE : August 3rd, 2015

ORAL JUDGMENT: (Per R.M.Borde, J.)

1. Heard. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal at admission stage.

2. The petitioners contend that they are owners of land Gat No.30 situate at village Satara, district Aurangabad. It is informed that the Municipal Corporation, Aurangabad, has prepared a Final Development Plan for Aurangabad city and included the area falling within the jurisdiction of Satara village in the Final Development Plan and prescribed reservation for GARDEN in relation to the property of the ownership of the petitioners. The Final Development Plan for Aurangabad Municipal Corporation area was submitted by the Planning Authority and has received final approval from the State Government and has become operational since 15.11.1991.

3. The petitioners contend that, admittedly, village Satara, at the time of preparation of Final Development Plan,

fell outside the area of Aurangabad Municipal Corporation and, as such, it was not permissible for the Corporation to act as the Planning Authority for the aforesaid area and prepare a Development Plan. Reliance is placed on the judgment of the Division Bench in the matter of **Venkatesh Yadavrao Shinde Vs. The State of Maharashtra** in Writ Petition No.1234/2010 (Aurangabad Bench), dated 26th February, 2010, wherein it has been accepted by the State Government that the village Satara falls outside the jurisdiction of Aurangabad Municipal Corporation, and necessary corollary is that the Municipal Corporation, Aurangabad, cannot act as the Planning Authority for the aforesaid area.

The petitioners contend that even if it is assumed that the Final Development Plan forwarded by the Aurangabad Municipal Corporation and sanctioned by the State Government for Satara village is in order, however, in view of operation of provisions of Section 127 of the Maharashtra Regional and Town Planning Act, the reservation, allotment or designation in respect of the land in question shall be deemed to have been lapsed.

The petitioners further contend that they had tendered a notice on the Municipal Corporation as contemplated by Section 127 of the M.R.T.P. Act on 29.9.2009, calling upon the Corporation to take steps in respect of acquisition of the

property covered under the Final Development Plan, and prescribed for garden and D.P.Road purposes, and further informed that in the event of failure of the Corporation to take steps within six months from the date of receipt of the notice, the consequences referred to in Section 127 of the M.R.T.P. Act will follow.

4. The Municipal Corporation, after receipt of the notice issued by the petitioners, informed them that the notice issued is not in conformity with Section 127 of the M.R.T.P. Act since copies of the up-to-date 7/12 extract and the Development Plan have not been annexed to the notice. The petitioners, in reply to the communication issued by the Municipal Corporation, informed the Assistant Director, Town Planning, Municipal Corporation, Aurangabad, that proof as to ownership of the petitioners in relation to the property under reservation was already tendered along with the Plan, however, in order to remove the deficiency, copies of the 7/12 extract and the map prepared by Taluka Inspector of Land Records, Aurangabad, in respect of Gat No.30 of village Satara were forwarded along with the aforesaid communication.

It, thus, can be inferred that the so called deficiency occurring in relation to the notice, has been removed by the

petitioner on 23.10.2009. The Municipal Corporation received the documents forwarded by the petitioners on the same day, however, failed to take steps within contemplation of Section 126 of the Act. The Municipal Corporation merely sought clarification from the State Government as to what course of action shall be followed by the Corporation in respect of the properties situate within the limits of village Satara. Counsel appearing for the respondent Corporation further informs that recently village Satara is included within the Corporation area and, as such, the Municipal Corporation, Aurangabad, has entitlement to prepare a development plan for the aforesaid area.

5. The reservation, allotment or designation in respect of land Gat No.30 under the Final Development Plan prepared by the Municipal Corporation, Aurangabad, on 15.11.1991, shall stand lapsed in view of inaction on the part of respondent Corporation to take steps within six months for acquisition of the property after receipt of notice from the petitioner and removal of the so called deficiencies in the said notice.

6. In view of the mandate of the Supreme Court in the matter of **M/s Girnar Traders Vs. the State of Maharashtra**

(**2011 (3) SCC 01**), the step contemplated under Section 126 of the M.R.T.P.Act is a declaration under Section 6 of the Land Acquisition Act within the period prescribed under Section 127 of the M.R.T.P. Act. Admittedly, the Municipal Corporation has not taken the step and no notification as contemplated under Section 126 of the M.R.T.P.Act read with Section 6 of the Land Acquisition Act has been issued.

Resultantly, the designation, allotment or reservation in respect of the property i.e. Gat No.30 of village Satara prescribed under the Final Development Plan prepared for the Municipal Corporation, Aurangabad, and made operational on 15.11.1991 shall be deemed to have lapsed and the land shall be deemed to be available for the owners for development as is available in the case of adjacent land under relevant development plan. The State Government shall declare lapsing of the reservation in the Government gazette as contemplated under sub-section (2) of Section 127 of the M.R.T.P.Act as expeditiously as possible and preferably within a period of eight months from today.

Rule is accordingly made absolute. No costs.

(P . R . BORA)
JUDGE

(R . M . BORDE)
JUDGE

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