

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.7535 OF 2014

01 Suvarna d/o Keshavrao Tavaskar (Lad),
age: 41 years, Occ: Nil,
R/o Near Ganesh Temple,
Rangar Chowk, Georai,
Tq.Georai, District Beed.

02 Rajendra s/o Panditrao Lad,
age: 42 years, Occ: Agril/Nil,
R/o Lad Galli, Georai,
Tq.Georai, District Beed.

03 Santosh s/o Laxmanrao Lad,
age: 26 years, Occ: Agril/Nil,
R/o Lad Galli, Georai,
Tq.Georai, District Beed.

Petitioners

Versus

01 The State of Maharashtra,
through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai.

02 The Director of Town Planning,
Maharashtra State, Pune.

2A The Collector, Beed,
Collector Office, Beed,
District Beed.

03 The Municipal Council, Georai,
Tq. Georai, District Beed.

Respondents

Mr.B.L.Sagar Killarika, advocate for petitioners.
Mr.S.G.Karlekar, A.G.P. For Respondents No.1, 2 and 2A
Mr.A.M.Gaikwad, advocate for Respondent No.3.

CORAM : R.M.BORDE &

P.R.BORA, JJ.

DATE : 15th July, 2015

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

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 Petitioners are owners of part of the property out of S.No.12 situate at Georai town, District Beed. The agricultural land S.No.12-part has been prescribed for utilisation as playground under the final development plan prepared for Respondent No.3-Municipal Council Georai and published on 31.12.1997.

3 Petitioners state that since no steps for acquisition of the property were taken by the planning authority for considerable period, a notice was served on the State Government in the manner prescribed under S. 49 of the Act requiring the appropriate authority to purchase interest of the land of petitioners in accordance with provisions of the Act. The notice was served on 28.08.2010. The State Government, after hearing concerned parties, proceeded to confirm purchase notice by an order dated 06.02.2011.

4 Petitioners state that in spite of confirmation of purchase notice, no steps have been taken by the planning authority for purchase of the property and as such, reservation, allotment and designation in respect of the property, made under the final development plan, shall be deemed to have been lapsed. It is further stated that by a communication dated 31.12.2011,

merely to comply with the formalities, a proposal was sent to the Collector to acquire the land. The proposal tendered by the planning authority to the Collector was returned back with a direction to submit a complete proposal along with necessary documents. Thus, as on 25.01.2012, there was no proposal with the State Government. According to the planning authority, the proposal was again transmitted on 10.04.2012 to the Collector. The Deputy Collector, Land Acquisition, Jayakwadi Project No.2, has been appointed by the Collector to complete the land acquisition proceedings.

5 The proceedings were not completed since the planning authority did not have funds to purchase the property. The resolution was already adopted on 10.07.2005 by the General Body of Municipal Council, Georai, recording that due to paucity of funds, it would not be possible to acquire the land prescribed for Reservation Site No.4 i.e. playground. It was also resolved not to tender a proposal in respect of acquisition to the Land Acquisition Officer since there is no financial provision for payment of compensation. The decision taken in 2005 was reiterated by the General Body of the Municipal Council on 06.11.2012 and it was resolved to grant development permission to the owner of the land. A reference to Reservation Site No.4 is made in the aforesaid Resolution. It does appear that the Resolution adopted by the General Body of the Municipal Council was in pursuance to the notice issued by some other owner of the property, which is also part of Reservation Site No.4. The fact, however, remains that the Municipal Council does not possess requisite funds for purchase of the property and as such, there is reluctance on the part of the

planning authority to acquire the land.

6 In an affidavit-in-reply presented on behalf of Respondent No.3- Municipal Council, it is contended that since the proposal has been moved for acquisition of the property within one year from the date of confirmation, the reservation does not lapse. It is further stated that request has been made to the State Government to extend financial help to the Municipal Council for purchase of the property.

7 The petitioners contend that valuation of the property, as per the Ready Reckoner rates, at present, is Rs.One Crore, whereas, market value of the property is more than Rs.Two Crores. In this situation, the Municipal Council was called upon by an order dated 04.02.2015, to make a provision for an amount of Rs.One Crore and deposit the said amount in this Court within a period of eight weeks from the date of the order. The Municipal Council has presented a communication on record dated 09.04.2015 informing that since financial condition of the Municipal Council is not proper, the Council is not in a position to deposit Rs.One Crore, as directed by this Court. It is further stated in the communication that the State Government may be instructed to provide financial help to the Municipal Council. The communication is taken on record and marked "X" for identification.

8 It must be noted that the purchase notice issued by petitioners has been confirmed in the year 2011. The Municipal Council, by adopting Resolutions in 2005 as well as in 2012, has

reiterated its stand that the Municipal Council does not possess funds for purchase of the property.

9 An affidavit-in-reply has been presented on behalf of the State Government wherein it has not been stated that funds would be made available by the State Government. The situation, that emerges, is that neither the Municipal Council possess requisite funds for purchase of the property, nor the State Government is in a position to provide financial help to the Municipal Council for making payment to the land owners. The Municipal Council has merely completed formality of tendering the proposal, however, has neither deposited value of the land with the Land Acquisition Officer nor has complied with the directions issued by this Court in respect of deposit of amount.

10 Another factor, that is required to be noted, is that some of the land owners out of S.No.12 have approached this Court by presenting Writ Petition No.3676 of 2007 seeking a declaration that the reservation, allotment and designation of the land prescribed for open space in the development plan shall be deemed to have been lapsed. This Court, on consideration of the material placed on record, has declared that reservation of the land of petitioners before the Court in respect of Site No.1 – open space shall be deemed to have been lapsed.

11 It is not a matter of dispute that the land under reservation Site No.4 prescribed for playground also forms part of S.No.12. Since the property forming part of the same Survey number prescribed for reservation Site No.1 has already been

released on account of inability of the Municipal Council to purchase the property, the land, forming part of same Survey number belonging to the petitioners herein, shall have to be declared free from reservation, allotment and designation since the Municipal Council is not in a position to pay price of the land to the land owners. The reservation in respect of playground, open space, shopping complex, Vegetable Market and Primary school is a composite one since the amenities are to be developed at one place. The part of the property, out of S.No.12, has already been released from acquisition. As such, land belong to the petitioners, in the instant petition, also shall be deemed to have been released from the reservation, allotment and designation under the final development plan.

12 For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. The reservation, allotment and designation provided under the final development plan in respect of land belonging to the petitioners out of S.No.12-part, prescribed for Reservation Site No.4 (playground) shall be deemed to have been lapsed and the said land shall be available to the petitioners for development as otherwise permissible in the case of adjacent land owner under relevant plan.

13 Rule is accordingly made absolute. There shall be no order as to costs.

P.R.BORA
JUDGE

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R.M.BORDE
JUDGE