

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

WRIT PETITION NO. 8183 OF 2014

1. Vijaykumar Champalal Jain
age 52 years, occ. Business
r/o Pankhidki, Amalner,
Tq. Amalner, Dist. Jalgaon.
2. Smt. Premavati Champalal Jain
age 76 years, occ. Household
3. Sanjaykumar Champalal Jain
age 47 years, occ. Business
4. Rajesh Champalal Jain
age 41 years, occ. business
5. Sau. Ashabai Tejkaran Goleccha
age 52 years, occ. Household
6. Sau. Ushabai Anilkumar Surana
age 45 years, occ.household

All r/o Pankhidki, Amalner
Tq. Amalner, Dist. Jalgaon.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
through the Secretary
Urban Development Department
Mantralaya, Mumbai.
2. Director of Town Planning &
Valuation Department,
Maharashtra State, Pune.
3. The Assistant Director,
Town Planning, Jalgaon.
4. Amalner Municipal Council
Amalner, District Jalgaon
Through its Chief Officer

.. RESPONDENTS

Mr. J.R. Shah, advocate for petitioners.
Mrs. Y.M. Kshirsagar, AGP for the State.
Mr. G. V. Wani, advocate for respondent no. 4.

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**CORAM : R.M. BORDE &
N. W. SAMBRE, JJ.
DATE : 13th JANUARY, 2015.**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.
3. Petitioner is praying for issuance of writ, order or direction thereby directing /declaring that final p lot no. 241 admeasuirng 1 Hector .0788 R out of 3 hector 22.09 R, situate at Joshipura, Amalner, Tq. Amalner, Dist. Jalgaon being Site No. 46 under development plan dated 30.04.1994 of Amalner Municipal Council, Amalner, Dist. Jalgaon, is free from from the encumbrance of reservation by virtue of provisions of section 127 of the Maharashtra Regional and Town Planning Act.
4. Final development plan for Amalner city has been declared on 30.04.1994 and the subject property has been earmarked for play ground being Site No. 46. Petitioner contends that since municipal authority did not take steps for acquiring the property within the time stipulated, notice dated 11.10.2010 came to be issued by petitioner calling upon Municipal Council to acquire the property under reservation. However, Municipal Council did not take any steps. Petitioner, therefore, tendered revised notice on 18.10.2010 calling upon the Municipal Council to act in accordance with

the provisions of M.R.T.P. Act. Petitioner contends that within the time stipulated under section 127 of the Act, respondent – Municipal Council did not take steps and did not initiate proceeding for acquisition of land. Reservation, allotment or designation under final development plan prescribed by the State Government for Amalner Municipal Council shall be deemed to have lapsed and the land is available for petitioner for development as in case of adjacent land holder. Learned counsel for respondents has not disputed the factum of service of notice on Municipal Council by petitioner on 11.10.2010 and revised notice dated 18.10.2010. It is also admitted that no steps as contemplated under the provisions of M.R.T.P. Act have been initiated by Municipal Council.

5. In the matter of Girnar Traders (II) V/s State of Maharashtra & others reported in (2007) 7 SCC 555 the Supreme Court has observed thus :

54..... If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126 (2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under Sub Section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the

acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

57. It may be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRPT At, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (C) of Section 126 (1) merely provides for a mode by which the State Government can be requested for acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub Section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under section 6 of the LA Act.”

In the instant matter, since the Municipal Council did not take steps as mandated in Girnar Traders matter and no notification under section 6 has been issued, reservation / allotment or designation under final development plan declared by the State Government in relation to the property under question belonging to petitioner shall be deemed to have lapsed. Petition thus deserves to be allowed and the same is accordingly allowed.

6. It is declared that designation/reservation/allotment under final development plan prepared for Amalner Municipal Council prescribing reservation under Site No. 46 to the extent of petitioner's property shall be

deemed to have lapsed and the land is available for petitioner for development as in case of the adjacent land holder. Respondent – State Government shall issue appropriate notification as contemplated by section 127(2) of M.R.T.P. Act, as expeditiously as possible, preferably within six months from today. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

(N. W. SAMBRE)
JUDGE

(R. M. BORDE)
JUDGE

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