

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

WRIT PETITION NO.9414 of 2013

1. Shri Dnyaneshwar s/o Lalchand Chaudhari,
Age 33 years, occ: Private Service,
r/o Plot No.42, Manmad Gin,
Near Mahadeo Mandir, Dhule,
Tq. & Dist. Dhule.
2. Sau.Kamalbai w/o Ganpat Chaudhari,
Age 56 years, Occ. Household,
r/o 76, Rajendra Nagar,
Behind Arihant Jain Mangal Karyalaya,
Dhule, Tq. & Dist. Dhule.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
through its Secretary
Urban Development Department,
Government of Maharashtra,
Mantralaya, Mumbai-32.
2. The Director of Town Planning
And Valuation Department,
Maharashtra State, Pune.
3. The Assistant Director,
Town Planning Department,
Dhule, Tq. & Dist. Dhule.
4. The Dhule Municipal Corporation,
Dhule, Tq. & Dist. Dhule,
Through its Commissioner.
5. The Town Planner,
Dhule Municipal Corporation,
Dhule, Tq. & Dist. Dhule.

.. RESPONDENTS

Mr. S.P.Tiwari, h/f Mr. N.L.Choudhari, Advocates for petitioners.
Mr. G.R.Ingole, AGP for respondent State.
Mr. S.P.Shah, for respondent nos. 4 and 5
Respondent nos. 3 to 5 served.

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**CORAM : R.M. BORDE &
P.R.BORA, JJ.
DATE : January 16th, 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. Petitioners are praying for issuance of writ, order or direction thereby directing /declaring that land admeasuring 0.35 Hector, out of survey No.403, situated within the limits of Dhule Municipal Corporation, Dhule, belonging to the petitioners, is free 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 the then Municipal Council, Dhule, has been sanctioned in the year 1986 and the subject property has been earmarked for construction of "Matan Market" being Site No. 123. Petitioners contend that since Municipal

authority did not take steps for acquiring the property within the time stipulated, notice dated 3/2/2009 came to be issued by petitioners calling upon Municipal Corporation to acquire the property under reservation. Thereafter, in the year 2011, the second revised Development Plan of Dhule city was sanctioned wherein, under the provisions of Section 28(2) of the Maharashtra Regional and Town Planning Act, 1966, a Planning Committee was constituted which, in its report at Sr.No.353, cancelled the reservation site No.123 i.e. the petitioners land in survey No.403. However, Municipal Corporation did not take any steps. Petitioner contends that within the time stipulated under section 127 of the Act, respondent – Municipal Corporation 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 Dhule Municipal Corporation 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 respondent has not disputed the factum of service of notice on Municipal Council by petitioners on 3.2.2009. It is also admitted that no steps as contemplated under the provisions of M.R.T.P. Act have been initiated by the Dhule Municipal Corporation.

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 Corporation 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 Dhule Municipal Corporation prescribing reservation under Site No. 123 to the extent of petitioners 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.

(P.R.BORA)
JUDGE

(R. M. BORDE)
JUDGE

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