

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

WRIT PETITION NO.10212 OF 2014

Narayan s/o Chaganlal Pahadiya,
Age 50 yrs., Occ: Business,
r/o. House No.2-10-6, Fazal Pura,
Aurangabad.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Municipal Corporation,
Aurangabad,
Through Commissioner.
3. Deputy Director of Town Planning,
Aurangabad.

...RESPONDENTS

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Mr. Chandrakant R.Thorat, Advocate for the
petitioner.

Mr. S.G.Nandedkar, 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 : June 23rd, 2015.

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

1. Heard. Rule. Rule made returnable and heard
forthwith with the consent of learned Counsel for the parties.

2. The petitioner is owner of property bearing C.T.S.No.7405, Sheet No.20 (Reservation No.17), admeasuring 684 Sq.Meters, situated at Fazal Pura, Aurangabad. The property belonging to the petitioner has been earmarked under the Final Development Plan being Reservation No.17 for the purposes of setting up of a primary school. The Final Development Plan is stated to have been published initially in 1975 which has been revised in the year 1991. Since the land of the petitioner was not acquired by the Municipal Corporation and since, as a result of reservation prescribed by the Planning Authority under the Development Plan in relation to the subject property, the petitioner could not develop the same, he proceeded to tender a purchase notice within the contemplation of Section 49 of the M.R.T.P. Act on the State Government on 10.11.2006. The petitioner called upon the State Government to either issue directions to the Municipal Corporation to acquire the property within the time stipulated or, to release the same from reservation. The State Government, after extending opportunity of hearing to the Planning Authority as well as the petitioner, directed confirmation of the purchase notice issued by the petitioner and the decision of the State Government was communicated to the petitioner on 12th April, 2007.

3. The petitioner contends that, inspite of confirmation of the purchase notice in the year 2007, no steps have been taken by the Planning Authority for acquisition of the property. The reservation, allotment or designation in relation to the said property under the Final Development Plan shall be deemed to have been lapsed in view of provisions of sub-section (7) of Section 49 of the Maharashtra Regional and Town Planning Act, 1966. Sub-section (7) of Section 49 of the Act prescribes that

if within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed, as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to have been released from the reservation, designation, or, as the case may be, allotment, indication or restriction, and it shall be available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.

4. It is not a matter of dispute that the Municipal Corporation has not taken steps nor has tendered an application to acquire the land as provided under Section 126 of the Act till this date. In view of mandate of sub-section (7) of Section 49 of the Act, the land under reservation shall be deemed to have been released and the reservation, designation, allotment, indication or restriction, as the case may be, under the Final Development Plan shall be deemed to have been removed, and the land in question shall be available for the owner i.e. the petitioner for development as permissible in case of adjacent land under the relevant plan.

5. It would be open for the petitioner to tender appropriate application to the Planning Authority for development and, on receipt of such application, the Planning Authority shall consider the same in accordance with the provisions of law. It is hereby declared that the reservation, designation, allotment, indication or restriction on development of the subject land shall be deemed to have lapsed, and the

same is available to the petitioner for development as in the case of adjacent land under the relevant plan.

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

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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