

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10365 OF 2014

- 01 Ramesh Kisan Patil,
age: 66 years, Occ: Agril.,
R/o Raver, Tq. Raver,
District Jalgaon.
- 02 Sou.Shashikala Ramesh Patil,
age: 60 years, Occ: Agril.,
R/o Raver, Tq. Raver,
District Jalgaon.
- 03 Vaibhav Ramesh Patil,
age: 32 years, Occ: Agril
and Advocate, R/o Raver,
Tq.Raver, District Jalgoan.
- 04 Digambar Ramdas Patil,
age: 45 years, Occ: Agril.,
R/o Munjalwadi, Tq. Raver,
District Jalgaon.
- 05 Sou.Kamini Devidas Chaudhari,
age: 55 years, Occ: Agril.,
R/o Raver, Tq. Raver,
District Jalgaon.
- 06 Pravin Madhavrao Shete,
age: 45 years, Occ: Agril.,
Khamgaon, Tq. Khamgaon.
- 07 Sou. Rekha Vijay Gotiwale,
age: 45 years, Occ: Agril.,
R/o Raver, Tq. Raver,
District Jalgaon.
- 08 Sou. Nilima Hemant Gotiwale,
age: 40 years, Occ: Agril.,
R/o Raver, Tq. Raver,
District Jalgaon.
- 09 Ravindra Ramdas Patil,

age: 51 years, Occ: Agril.,
R/o Raver, Tq. Raver,
District Jalgaon.

- 10 Ramdas Ziparu Patil,
age: 75 years, Occ: Agril.,
R/o Kochur, Tq. Raver,
District Jalgaon.
- 11 Sou. Vidya Dilip Patil,
age: 40 years, Occ: Agril.,
R/o Munjalwadi, Tq. Raver,
District Jalgaon.
- 12 Rajendra Ramdas Patil,
age: 40 years, Occ: Agril.,
R/o Munjalwadi, Tq. Raver,
District Jalgaon.
- 13 Sou. Shobhabai Gajanan Patil,
age: 60 years, Occ: Household,
R/o Narvel, Tq. Muktainagar,
District Jalgaon.
- 14 Sou. Sulabhabai Sudhakar Patil,
age: 58 years, Occ: Nil,
R/o Raver, Tq. Raver,
District Jalgaon.
- 15 Sou. Kokila Subhash Patil,
age: 52 years, Occ: Agril.,
R/o Narvel, Tq. Muktainagar,
District Jalgaon.
- 16 Sou. Sugandhabai Ramdas
Patil, age: 70 years, Occ: Agril.,
R/o Munjalwadi, Tq. Muktainagar,
District Jalgaon.

Petitioners

Versus

- 1 The State of Maharashtra,
through its Secretary,
Urban Development Department,

Mantralaya, Mumbai.

2 The Director of Town Planning
and Valuation Department,
Maharashtra State,
Central Building, Pune.

3 The Collector, Jalgaon,
District Jalgaon.

4 The Assistant Director,
Town Planning,
Jalgaon, B.J.Market,
Jalgaon, District Jalgaon.

5 The Raver Municipal Council,
through its Chief Executive
Officer, Raver, District Jalgaon.

Respondents

Mr.J.R.Shah, advocate for petitioners.
Mrs.A.V.Gondhalekar, A.G.P. for Respondents No.1 to 4.
Mr.Amol N. Kakade, advocate for Respondent No.5.

CORAM : R.M.BORDE &

P.R.BORA, JJ.

DATE : 09th February, 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 praying for issuance of writ, order or direction thereby directing /declaring that reservation provided in the Development Plan of dated 09.12.1987 through Notification No.D.P.Raver(R)-TRV-IV/7819 dated 09.12.1987, which came into force with effect from 01.06.1988, in respect of land bearing

Survey No.1/2/2/1/A and 1/2/1A4, Gat No.16, situate at Hole Shivar admeasuring 3400 square meters, for 30 meter development road, be deemed to have lapsed and land is released from reservation by virtue of provisions of section 127 of the Maharashtra Regional and Town Planning Act.

3 Final development plan for Raver city has been declared on 01.06.1988 and the subject property has been earmarked for 30 meter development road. Petitioners contend that since municipal authority did not take steps for acquiring the property within the time stipulated, notice dated 17.01.2013 came to be issued by the petitioners calling upon the Municipal Council to acquire the property under reservation. The Municipal Council, Raver, informed petitioner no.2 vide communication dated 17.04.2013, that the Municipal Council has submitted a proposal for acquisition of petitioners' land to the Collector, Jalgaon.

4 Petitioners contend that within the time stipulated under section 127 of the Act, respondent – Municipal Council did not take steps and did not initiate proceedings for acquisition of land, reservation, allotment or designation under final development plan prepared by the State Government for Raver Municipal Council shall be deemed to have lapsed and the land is available for petitioners for development as in case of adjacent land holders.

5 Learned counsel for respondents has not disputed the factum of service of notice on Municipal Council by the petitioners on 17.01.2013. It is also admitted that no steps, as contemplated

under the provisions of M.R.T.P. Act, have been initiated by the Municipal Council.

6 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.”

7 In the instant matter, since the Municipal Council did not take steps as mandated in **Girnar Traders (II) Vs. State of Maharashtra & others** (*supra*), 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 petitioners shall be deemed to have lapsed. Petition, thus, deserves to be allowed and the same is accordingly allowed.

8 It is declared that designation/reservation/allotment

under final development plan prepared for Raver Municipal Council prescribing reservation in respect of land bearing Survey No.1/2/2/1/A and 1/2/1A4, Gat No.16, situate at Hole Shivar admeasuring 3400 square meters, for 30 meter development road, to the extent of petitioners' property, shall be deemed to have lapsed and the land is available for petitioners for development as in case of the adjacent land holders. 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.

9 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

adb/wp1036514

R.M.BORDE
JUDGE