

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9523 OF 2014

Vikas Bhanudas Jagtap
and Others ...Petitioners

vs.

The Phaltan Municipal Council
Phaltan and Others ...Respondents

Mr. V.S. Talkute, for the Petitioners.

Mr. Milind Deshmukh, for Respondent No. 1.

Mr. V.S. Gokhale, AGP for Respondent Nos.2 & 3

CORAM : A.S. OKA & A.P.BHANGALE, JJ

DATE : 24TH MARCH, 2015.

ORAL JUDGMENT (Per A.S. Oka, J.)

. Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the first Respondent and the learned AGP representing the second and third Respondents.

2] Rule.

3] The concerned counsel waive service on behalf of the Respondents forthwith. The Petition is forthwith taken up for final disposal.

4] The Petitioners claim to be the owners of the land, more particularly described in paragraph 2 of the Petition (hereinafter referred as "*the said land*").

5] The revised Development Plan for the city of Phaltan came into force with effect from 1st March, 1993. In the said sanctioned revised Development Plan, a reservation was shown on the said land held by the Petitioners. On 3rd September, 2013 the Petitioner served a purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "*the said Act*") upon the Respondent No. 1 the Phaltan Municipal Council which is the Planning Authority under the said

Act. The reservation shown in the sanctioned revised Development Plan was Reservation No. 12 for primary school and play ground.

6] On 28th October, 2013 the first Respondent/ Phaltan Municipal Corporation passed resolution by which it was decided to submit a proposal for acquisition of the said reserved land, to the District Collector. The case made out in the Petition is that the notice under Section 127 of the said Act was duly served to the first Respondent on 5th September, 2013 and that within a period of 12 months from the date of service of the notice, a notification/ declaration either under sub-Section 2 or 4 of Section 126 of the said Act has not been issued.

7] Therefore, the present Petition has been filed under Article 226 of the Constitution of India seeking a declaration that the

reservation on the said land has lapsed.

8] Mr. Yeshwant Bhimrao Dange, the Chief Officer of Phaltan Nagar Parishad has filed a reply. He has set out the steps taken by the Municipal Council for the acquisition of the said land. From the said affidavit, it becomes an admitted position that there is no declaration made either under sub-Section 2 or 4 of Section 126 of the said Act within a period of 12 months from 5th September, 2013.

9] The learned counsel appearing for the Petitioners pointed out that on 23rd September, 2013 the first Respondent has published a draft revised Development Plan. The learned counsel appearing for the first Respondent on instruction state that the said land is shown reserved in the said draft Plan for the same purpose. He states that draft revised Development Plan is not yet sanctioned.

10] After having heard the learned counsel for the parties, it is apparent that the case will be covered by the decision of the Apex Court in *Shrirampur Municipal Council vs. Satyabhamabai Bhimaji Dawkher and Others*¹ as a declaration contemplated in sub-sections 2 or 4 of section 126 read with section 6 of the Land Acquisition Act, 1894 has not been issued within a period of 12 months from 5th September, 2013. Sub section 1 of Section 127 of the said Act operates which results into the lapsing of the reservation on the said land. So far as the revised draft Development Plan is concerned, the same has not been sanctioned. It is obvious that when the said draft Development Plan is taken for consideration, the State Government is bound to consider the decision of this Court in the case of *Baburao Dhondiba Salokhe vs Kolhapur*

1. (2013) 5 SCC 627.

*Municipal Corporation*² especially when the same reservation is proposed to be continued in the said draft Plan.

11] Accordingly, we pass the following order:

a) Rule is made absolute in terms of prayer clause (a) with the modification that the said land shall become available to the owners thereof for the purpose of development as otherwise permissible in the case of adjacent land under the relevant sanctioned Development Plan;

b) We direct the State Government to issue a notification in accordance with sub section 2 of Section 127 of the said Act within a period of three months from today;

c) The petition is disposed of on above terms.

(A.P. BHANGALE, J.)

(A. S. OKA, J.)

2. 2003 (3) MhLj 820.