

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2629 OF 2015

AREFKHAN ISMAILKHAN AND OTHERS
VERSUS
STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. V. D. Sapkal.
AGP for Respondent Nos.1 & 3 : Mrs. M.A. Deshpande.
Advocate for Respondent No.2 : Mr. S.S. Tope.

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CORAM : S. V. GANGAPURWALA &
A. M. BADAR, JJ.

DATE : 15th FEBRUARY, 2016.

PER COURT:

1] Rule. Rule made returnable forthwith. With the consents of parties, take up for final hearing.

2] The land of the petitioners bearing Gat No. 89 to the extent of 81 R of village Itkheda, Taluka and District Aurangabad, is reserved for Drama Theater as per the development plan dated 15.10.1991. As, within 10 years, the respondent planning authority did not take any steps for acquisition the petitioner's father issued a purchase notice on 9.1.2002 under Section 127 of the MRTP Act, to the respondent Municipal Commissioner. A proposal was sent to the Commissioner by the Assistant Director of Town Planning on 7.6.2002. Thereafter, there were communications wherein request was made by the Assistant Director of Town Planning to initiate the proceedings for acquisition. Till date, the respondents have not issued declaration under Section 6 of the Land Acquisition Act, 1894 r/w. Section 126 of the MRTP Act. As such, the petitioners have approached this Court for declaration that the reservation of land Gat No. 89 of village Itkheda stands lapsed.

3] We have heard Mr. Sapkal, learned counsel for the petitioner, learned AGP and Mr. Tope, learned counsel for respondent No.2.

4] The factual matrix as narrated above, is not disputed by the respondents. Mr. Tope, learned counsel on instructions submits that the respondent No.2 would offer TDR to the petitioner. However, he does not dispute the date of issuance of purchase notice and service of same upon the Corporation.

5] In the present writ petition, we are concerned with the legal status of the land, Gat No. 89 to the extent of 81 R. Provisions of Section 127 of the MRTP Act, act as fetters on the power of eminent domain. Within the statutory period of six months, as contemplated at the relevant time, no steps are taken for acquisition. Steps for acquisition would mean issuance of declaration under Section 6 of the land Acquisition Act, read with Section 126 of the MRTP Act, as is held by the Apex Court in the matter of *Girnar Traders Vs. State of Maharashtra and Ors* (3), 2011 3 SCC 1.

6] In the light of that, Rule is made absolute in terms of prayer clauses (B) and (C). The notification be issued expeditiously. No costs.

[A.M. BADAR]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

grt/-