

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

WRIT PETITION NO.4111 OF 2015

1. Bharti Satish Bhole
Age 55 years, Occ: household
R/o. Shivram Nagar, Jalgaon.
2. Abhishek Omprakash Agrawal
Age 38 years, Occ.: Business & Agriculture,
3. Ritesh OmprakashAgrawal,
Age 34 years, Occ: Business & Agriculture,

Both R/o 122, Navi Peth, Jalgaon
Tq. & Dist. Jalgaon.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32.
2. The Director of Town Planning,
Maharashtra State, Pune.
3. The Collector,
Jalgaon District, Jalgaon.
4. Jalgaon Municipal Corporation
Jalgaon,
Through its Commissioner,

...RESPONDENTS

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Mr. A.B.Kale, Advocate for petitioners;
Mr. D.R. Kale, AGP for State;
Mr. V.D.Gunale, Advocate for Respondent No.4.

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**CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.**

Date of Reserving Judgment : 05th January, 2016.
Date of Pronouncing Judgment : 08th January, 2016.

JUDGMENT :- (Per P.R.Bora, J.)

1) Heard. Rule. Rule made returnable forthwith and with the consent of learned Counsel for the parties, the petition is taken up for final hearing.

2) The petitioners are seeking declaration that, the land of the petitioners which forms part of plot No.2 from Survey No.168/2/B situated at village Mehrun, Tq. and Dist. Jalgaon, reserved for the road widening in sanctioned development plan shall be deemed to have been released from reservation in view of inaction on the part of respondent Corporation to take steps for acquisition of the said property within one year after receipt of notice from the petitioners under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, referred to as `MRTP Act').

3) Petitioners are the owners of plot No.2 from survey No.168/2/B situated at village Mehrun Tq. and Dist. Jalgaon. The said property was purchased by the petitioners on 13.12.1982, at that time, the said land was outside the limits of the then Jalgaon Municipal Council. The limits of the then Jalgaon Municipal Council were extended on 11.09.1987 and since then the said land is within the limits of the then Jalgaon Municipal Council. The final development plan for Jalgaon Municipal Council was prepared and was submitted to the Government for sanction on 11.02.2002. It received the final approval from the State Government and become operational

with effect from 01.04.2002. In the said sanctioned development plan, western portion of the subject plot admeasuring 1.5 Mtr. x 30 Mtr. i.e. 45 Sq. Mtrs. in total has been reserved for road widening of 15 Mtr. D.P.road.

4) It is the contention of the petitioners that, though the development plan has been sanctioned by the Government and is made functional with effect from 01.04.2002, the respondent authorities have not taken any step for acquisition of the land of the petitioners shown to be reserved in the said development plan. It is the further contention of the petitioners that, after lapse of ten years, the petitioners issued notice under section 127 of the M.R.T.P. Act to the respondents on 06.12.2012. It is the further contention of the petitioners that, though the aforesaid notice has been duly received to the respondent authorities, no action has been taken by the respondents towards acquisition of the land under reservation. In the circumstances, it is the contention of the petitioners that, the reservation so laid on the subject land shall be deemed to have been lapsed and the land shall be released from the such reservation.

5) Shri Chandrakant Rangnath Nikam who is serving as Assistant Director of Town Planning in the respondent No.4 Corporation has filed affidavit in reply on behalf of respondent No.4. Respondent No.4 has contended that, it has already submitted a proposal for acquisition in respect of land under reservation to the Collector, Jalgaon on 30.03.2013. It is further contended that, the Corporation in its general body meeting held on 28.02.2013 had passed a resolution, thereby giving necessary sanction for 15 Mtr. wide road and has also

resolved to submit the necessary proposal for acquisition under the provisions of the Land Acquisition Act to the District Collector, Jalgaon. It is further submitted that, after coming into force of the new Act, the Corporation has forwarded a fresh proposal under the provisions of new Land Acquisition Act on 02.09.2014 for acquisition of the land under reservation. It is therefore, the contention of the respondent No.4 Corporation that, the prayer of the petitioner to declare that the reservation on the subject land shall be deemed to have been lapsed cannot be accepted. Corporation has admitted the receipt of the notice under section 127 of M.R.T.P. Act tendered by the present petitioners. The Corporation has further contended that, since the meager portion of the plot belonging to the petitioners has been reserved for road widening, the Municipal Corporation may permit the additional FSI of the area reserved for road widening, if the petitioners surrender such land for road widening.

6) We have considered the contentions raised on behalf of the petitioners as well as respondent No.4 Corporation. There is no dispute that, the development plan was prepared for the Jalgaon Municipal Corporation area and was submitted to the Government on 11.02.2002, and it has received the final approval from the State Government and become operational with effect from 01.04.2002. In para 4 in its affidavit in reply, respondent No.4 Corporation has contended that, for the extended limits of Jalgaon Municipal Corporation, the Government has sanctioned the development plan in two parts and vide orders dated 11.02.2002 and 10.08.2004, the said development plan has come into force with effect from 01.10.2004. However, in so far as the

contention of the petitioners that, the development plan in so far as it relates to the area within which the land under reservation falls has come into force with effect from 01.04.2002 is concerned, the same has not been denied or disputed by the respondent No.4 Corporation. Further, the respondent No.4 Corporation has admitted that, the notice under section 127 of M.R.T.P. Act tendered by the petitioners has been received to the respondent No.4 Corporation on 11.12.2012. Though, it has been contended by respondent No.4 Corporation that, it has submitted the proposal for acquisition of the land under reservation to Collector, Jalgaon, the fact remains that, the respondents have not taken any effective step towards the acquisition of land under reservation by issuing notification under section 126 of M.R.T.P. Act read with section 6 of the Land Acquisition Act within the period of one year after service of notice as stipulated under section 127 of the M.R.T.P. Act.

7) In view of the facts as above, it has to be held that as the Planning Authority has failed to initiate acquisition proceedings in respect of the land under reservation within the stipulated period of one year from the date of receipt of notice under Section 127 of the MRTP Act served by the petitioners on the Planning Authority, the reservation, allotment and designation shall be deemed to have been lapsed and the land shall be deemed to have been released from such reservation, allotment or designation and shall be available to the Petitioners for the purpose of development as otherwise permissible in the case of adjacent land in respect of the relevant development plan.

8) In the result, the petition succeeds. It is hereby declared that the reservation, allotment or designation prescribed in respect of the subject property i.e. portion admeasuring 1.5 Mtr. x 30 Mtrs, 45 Sq. Mtrs. in total out of Plot No.2 in Survey No.168/2/B situated at Mehrun, Tal. and Dist. Jalgaon, shall be deemed to have been lapsed and said property shall be deemed to have been released from such reservation, allotment and designation, and shall be available to the petitioners for the purpose of development as otherwise permissible in the case of adjacent land under the relevant development plan. The lapsing of reservation shall be notified in official gazette as contemplated by Sub-section (2) of Section 127 of the M.R.T.P. Act within period of four months.

. Rule is made absolute accordingly. No costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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