

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4160 OF 2012

SUNIL JUGRAJ MUTHA
VERSUS
THE STATE OF MAH AND ORS

...

Advocate for Petitioner : Mr. Hrishikesh V Tungar
AGP for respondent Nos. 1 and 2 : Mr. S.S. Dande
Advocate for respondent Nos. 3 and 4 : Mr. Subodh P. Shah.

CORAM : S.V. GANGAPURWALA &
K.K. SONAWANE, JJ.

DATE : 2nd APRIL, 2016.

PER COURT:

1] Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] Learned counsel for the petitioner submits that land of the petitioner bearing Survey No. 489/2/1, admeasuring 4840 square meters, was shown in reservation for traffic island in the revised development plan in the year 1987. No steps were taken by the respondents for acquisition of the said land and as such, the petitioner on 2.1.2006, issued notice under Section 127 of the MRTP Act, 1966. Despite that, the respondents have not taken any steps for acquisition in the form of declaration under Section 6 r/w. Section 127 of the MRTP Act, till date. As such, the land stands de-reserved.

3] Mr Shah, learned counsel for the Municipal Council submits that location of the property is required to be considered. It would be hazardous to the life as well as the traffic if the writ land is allowed to be developed. The said land is situated at junction of 3 roads. Learned counsel for the respondents submits that after receipt of the purchase notice, the respondents had taken steps for acquisition within the prescribed period.

There was also joint measurement.

4] We have heard the learned AGP also.

5] The provision of Section 127 of the MRTP Act is fetters on the powers of eminent domain. The Apex Court in the case of ***Girnar Traders Vs. State of Maharashtra and Ors.(3)*** , reported in ***(2011) 3 SCC 1***. has held that the steps of acquisition would mean issuance of declaration under Section 6 of the Land Acquisition Act read with Section 127 of the MRTP Act.. The respondents do not dispute that till date no declaration under Section 6 of the Land Acquisition Act r/w. Section 127 has been issued.

6] De-reservation of the land on the lapse of time stipulated under Section 127 of the MRTP Act is axiomatic. Considering the above, the writ petition is allowed in terms of prayer clause (C). The writ land shall stand released from reservation. Needless to state that the present order would not be an impediment for the parties to have recourse to the provisions of law, with regard to acquisition, development etc.

7] Rule made absolute in above terms. No costs.

[K.K. SONAWANE,J.]

[S.V.GANGAPURWALA,J]

grt/-