

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

WRIT PETITION NO.4220 OF 2016

Vegetable and Fruits Market
Association Ltd., Parbhani,
through its President
Sayyed Salim Sayyed Ismail,
Age 52 years, Occu. Business,
R/o Behind Rajarani Function Hall,
Alamgir Colony, Parbhani,
District Parbhani ... PETITIONER

VERSUS

- 1) The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32

(Copy to be served on
Govt. Pleader, High Court,
Bench at Aurangabad)

2. The Parbhani Municipal Corporation,
Parbhani, through its :
Commissioner ... RESPONDENTS

.....
Shri V.D. Sapkal, Advocate for petitioner
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri S.S. Bora, Advocate for respondent No.2
.....

WITH

WRIT PETITION NO.4228 OF 2016

Sayyed Salim Sayyed Ismail,
Age 52 years, Occu. Business,
R/o Behind Rajarani Function Hall,
Alamgir Colony, Parbhani,
District Parbhani ... PETITIONER

VERSUS

- 1) The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32

(Copy to be served on
Govt. Pleader, High Court,
Bench at Aurangabad)

2. The Parbhani Municipal Corporation,
Parbhani, through its :
Commissioner

... RESPONDENTS

.....

Shri V.D. Sapkal, Advocate for petitioner
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri S.S. Bora, Advocate for respondent No.2

.....

WITH

WRIT PETITION NO.4230 OF 2016

Vegetable and Fruits Market
Association Ltd., Parbhani,
through its President
Sayyed Salim Sayyed Ismail,
Age 52 years, Occu. Business,
R/o Behind Rajarani Function Hall,
Alamgir Colony, Parbhani,
District Parbhani

... PETITIONER

VERSUS

- 1) The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32

(Copy to be served on
Govt. Pleader, High Court,
Bench at Aurangabad)

2. The Parbhani Municipal Corporation,
Parbhani, through its :
Commissioner ... RESPONDENTS

.....
Shri V.D. Sapkal, Advocate for petitioner
Shri S.S. Dande, A.G.P. for respondent No.1.
Shri S.S. Bora, Advocate for respondent No.2
.....

CORAM: R.M. BORDE AND
 A.I.S. CHEEMA, JJ.

DATED: 29th July, 2016.

ORAL JUDGMENT (PER : R.M. BORDE, J.):

1. Heard. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, the petitions are taken up for final disposal at admission stage.

2. The petitioners are the owners of parts of lands from Survey Nos.611 to 613, situated at Parbhani proper. There is a reservation provided in respect of part of the properties belonging to the petitioners being reservation Site No.3/33, 3/34 and 3/36 under the final development plan for Parbhani town published on 30.9.1999. The properties belonging to the petitioners have been ear-marked for High School, Health Centre, Shopping Complex and Vegetable Market. In spite of prescribing

reservation in respect of the properties belonging to petitioners under the final development plan published in 1999, no steps have been taken by the planning authority for development of properties or for acquisition thereof.

3. The petitioners, on completion of 10 years, after publication of final development plan, on 16.9.2013, tendered notices to the planning authority within contemplation of Section 127 of the Maharashtra Regional and Town Planning Act. The petitioners called upon the acquiring body to take steps for acquisition of the properties and further informed that, failure thereof may lead to consequence of revocation/ cancellation of reservation/ allotment or designation prescribed in the final development plan in relation to the properties. It is not disputed that, notices tendered to the planning authority by the petitioners have been duly received. The planning authority adopted a resolution and intimated the State authorities to take steps for acquisition of the properties. However, the fact remains that, even after service of notice till this date, no steps within contemplation of law have been taken for acquisition of the properties. It is the contention of the petitioners that, on 24.9.2013 the planning authority directed the petitioners to submit measurement plan, which instructions have been duly complied with by the petitioners on 1.10.2013.

4. It is the contention of the petitioners that, in view of the failure of the planning authority to take steps for acquisition of the properties within period of one year/ two years from the date of service of the notice, the designation, reservation or allotment in relation to the properties in question, prescribed under the final development plan shall be deemed to have lapsed.

5. It cannot be contended that, merely because the planning authority made request to the State Government to initiate steps for acquisition of the properties, the consequences provided under Section 127 will not follow. It is made amply clear by the Apex Court in the matter of **Girnar Traders Vs. State**, reported in **2007(7) SCC 555** that steps within contemplation of law is to issue a declaration under Section 6, comparable to Section 126 of the Land Acquisition Act. In the instant matter, the steps as required within contemplation of law, as clarified by the Supreme Court in the matter of Girnar Traders (supra) have not been taken by the State. In this view of the matter, the request made by the petitioners in the instant petitions deserves to be accepted.

6. The Writ Petitions are allowed. It is declared that,

the reservation, designation or allotment prescribed under the final development plan in relation to the properties covered by the notices issued by the petitioners to the planning authority on 16.9.2013 shall be deemed to have lapsed and the aforesaid properties shall be available to the petitioners for user as in the case of adjoining properties, as prescribed under the development plan prepared by the planning authority. The respondent No.1 is directed to issue notification within contemplation of Section 127(2) of the Maharashtra Regional and Town Planning Act within a period of six months from today.

7. Rule made absolute in above terms. There shall be no order as to costs.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)

fmp/wp4220.16