

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

WRIT PETITION NO. 5886 OF 2015

Dwarkadas Babulal Agrawal,
Age : 78 Years, Occu. : Business,
R/o Guru Krupa, LIC Colony,
Dhule, District Dhule.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. Collector, Dhule,
Taluka & District Dhule.
3. Assistant Director,
Town Planning Department,
Dhule.
4. Deputy Director,
Town Planning Department,
Nasik Region, Nasik.
5. Dhule Municipal Corporation,
Through its Commissioner,
At Post Dhule, Tq. Dhule,
Dist. Dhule.

.. Respondents

Shri Aditya Sikchi, Advocate h/f Shri S. P. Shah, Advocate for the
Petitioner.

Ms S. S. Raut, A.G.P. for Respondent Nos. 1 to 4.

Shri Mukul S. Kulkarni, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.
DATE : 04TH JULY, 2016.**

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The learned counsel for the petitioner submits that, since the year 1964 the property of the petitioner is under reservation. In the year 1986 revised development plan was prepared and land Sy. No. 572/A admeasuring 2H 9.25R was reserved for garden, play ground and primary school as site Nos. 64 and 65. The learned counsel submits that, on 18th October, 1999 the petitioner issued notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act (for short "M.R.T.P. Act") to the respondent No. 5/Municipal Corporation. On 20th October, 1999 the municipal corporation passed a resolution thereby demonstrating its intention to acquire the property and sending proposal to the Collector for acquisition. The learned counsel submits that, pursuant to the said notice no declaration U/Sec. 126 of the M.R.T.P. Act read with Sec. 6 of the Land Acquisition Act (for short "L. A. Act") was issued. Thereafter, on 23.12.2010 again draft development plan was sanctioned, wherein, though the petitioner has raised an objection, the site No. 216 for primary school and site No. 217 for garden were kept under

reservation. According to the learned counsel on lapse of one year from the date of issuance of notice U/Sec. 127 of the M.R.T.P. Act, if no steps are taken for acquisition, the reservation lapses. The learned counsel relies on the judgment of this Court in Writ Petition No. 2600 of 2014 dated 29th April, 2016.

2. Mr. Kulkarni, the learned counsel for the respondent No. 5/Municipal Corporation submits that, in spite of communication, he could not get any instructions.

3. We have considered the matter on merits. The resolution of the municipal corporation is placed on record which clearly demonstrates the receipt of the notice U/Sec. 127 of the M. R. T. P. Act from the petitioner.

4. It is not disputed that, till date notification U/Sec. 126 of the M.R.T. P. Act read with Sec. 6 of the L. A. Act has not been issued. Subsequent revision of the development plan would be of no avail as is held by the Apex Court in the case of **Godrej and Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra and others** reported in ***2015(2) All M. R. 921 (SC)***.

5. If, no steps are taken within the time stipulated U/Sec. 127 of the M.R.T.P. Act by issuing declaration U/Sec. 126 of the

M.R.T.P. Act read with Sec. 6 of the L. A. Act, the lapsing of reservation is axiomatic.

6. Considering the above, the writ petition is allowed in terms of prayer clause "A". The land bearing Sy. No. 572/A included as reserved as site No. 216 and 217 in second draft development plan and site No. 64 and 65 in revised development plan of Dhule to the extent of the petitioner is released from reservation. The parties shall take consequential steps pursuant to the same.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/July 16