

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

WRIT PETITION NO. 6658 OF 2015

1. Sayyad Faiyaz Dadamiya,
Age: 58 years, Occu: Agril.
2. Sayyad Halimabee Faiyaz
Age 46 years, occu: Household,
Both R/o Khajanagar, Dadamiya
Manjil, Khadgaon Road, Latur,
Tq. And Distl Latur. ...PETITIONERS

versus

1. The State of Maharashtra
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai -32.
2. The District Collector,
Latur, Tq. And Dist. Latur,
3. The Town planner,
Town Planning Office, Latur,
Tq. And Dist. Latur.
4. The Municipal Corporation
Latur Tq. And Dist. Latur,
through its Commissioner. ...RESPONDENTS

.....
Mr. Suhash P. Urgunde, Advocate for petitioners
Mr. S.M. Ganachari, AGP for respondents No. 1 to 3
Mr. Ashin V. Hon, Advocate for respondent No. 4
.....

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 18th JULY, 2016.

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

1. Rule. Rule made returnable forthwith and heard finally with
consent of learned advocates for the parties.

2. Mr. Urgunde, learned counsel for the petitioners submits that the land of the petitioner bearing survey No. 65 admeasuring 3 Acres, 27 Gunthas situated at village Khadgaon, within the municipal limits of Municipal Corporation, Latur (for short "Corporation") is reserved as site No. 221 for Shopping Centre and Sports Complex in the development plan sanctioned on 02-01-2002. Learned counsel for petitioners submits that for a period of ten years no steps have been taken by respondents for development or acquisition of said land. As such, on 04-01-2014, petitioners issued notice to the respondent No. 4 under section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act"). Said notice was served upon the respondent No. 4. Petitioners along with said notice forwarded the copies of 7/12 extracts, measurement map and copy of Namuna Number No. 8 showing ownership of the petitioners. Said notice was replied by respondents On 28-10-2014. According to learned counsel, as no steps are taken within a period of one year from the date of service of notice, reservation stands lapsed.

3. Mr. Hon, learned counsel for respondent No. 4 - Corporation, submits that in the year 2013 the development rules have been implemented and as per rule 36 of the said rules, if the petitioner is ready to hand over the some portion of the land under reservation then for the remaining portion of land respondent No. 4 - Corporation can permit the petitioners to develop the property and the petitioners were asked to submit the proposal. According to learned counsel, proper documents are not annexed with the notice as is required.

4. We have heard learned Assistant Government Pleader.

5. We have considered the submissions canvassed by learned counsel for respective parties. Survey No. 65 situated at village Khadgaon is larger area. The dates aforesaid stated are not disputed. Sanction of development plan on 02-01-2002 and it being implemented from 08-02-2002 is also not disputed. The land of the petitioners is under reservation in the said development plan for Shopping Centre and Sports Complex is also not disputed. Receipt of notice under section 127 of the MRTP is not disputed. It would be seen that notice under section 127 of MRTP Act is accompanied with photo copies of 7/12 extracts, measurement map and Numuna No. 8A. The same appears in the notice itself. Notice is received by the respondent No. 4 - Corporation on the very same day. As per section 127 of the MRTP Act as prevailing then, if after service of notice for a period of one year no steps are taken for acquisition then acquisition stands lapsed. Amendment to section 127 of the MRTP Act is made increasing period of notice in December 2014. By virtue of it, notice period is increased to two years. Even if said amendment is considered, two years have already lapsed, as yet no notification for acquisition is made in the sense notification under section 126 of the MRTP Act and the provisions of Land Acquisition Act has not been issued till date.

6. In view of judgment of the Apex Court in the case of *Girnar Traders Vs. State of Maharashtra and others* reported in 2011(3) SCC 1, acquisition stands lapsed.

7. Considering the above, writ petition succeeds. Reservation in respect of the land of petitioners bearing survey No. 65 admeasuring 3 Acres, 27 Gunthas situated at village Khadgaon, Taluqa and District Latur as site no. 221 stands lapsed.

8. Parties shall take consequential steps pursuant thereto.

9. Writ petition as such stands allowed in aforesaid terms. Rule is made absolute accordingly. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK