

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

WRIT PETITION NO. 5378 OF 2015

1. Satish Soma Bhole,
Age : 50 years, Occ. Agriculturist,
R/o. Shivaram Nagar,
Jalgaon, Tq. & Dist. Jalgaon.
2. Suresh Shankar Mahajan,
Age : 67 years, Occu. Agriculturist,
R/o. Shanta Nivas, Vishnu Nagar,
Jalgaon, Tq. & Dist. Jalgaon.
3. Anuradha Abhishek Bagdiya @ Agrawal,
Age : 39 years, Occu. Household,
R/o. Ganesh Kunj, Akashwani Chowk,
Jalgaon, Tq. & Dist. Jalgaon.
4. Bharati Satish Bhole,
Age : 53 years, Occ. Household,
R/o. Shivaram Nagar,
Jalgaon, Tq. & Dist. Jalgaon.

... Petitioners

VERSUS

1. The State of Maharashtra,
through its Secretary, Urban Development Department,
Mantralaya, Mumbai – 32.

2. The Municipal Corporation, Jalgaon.
Through its Commissioner,
3. The Collector, Jalgaon,
Dist. Jalgaon.
4. The Director of Town Planning,
Pune.
5. The Assistant Director of Town Planning,
Jalgaon Municipal Corporation,
Jalgaon.

... Respondents

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Mr Ajeet B. Kale, Advocate for the petitioners
Mr V. H. Dighe, AGP for respondent/State
Mr V. D. Gunale, Advocate for respondent No. 5
Respondent No. 2 served.

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CORAM : **S. V. GANGAPURWALA &
A. M. BADAR, JJ.**

DATE : **4TH MARCH, 2016.**

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

. The present petition is filed seeking directions against the respondents to grant permission by issuing commencement certificate in view of Section 45(5) of the Maharashtra Regional Town Planning Act

(in short “of the said Act”) holding that the petitioners are granted deemed permission for development of the land bearing Final Plot No. 524 as per plan submitted at Exh. "G".

2. Mr. Kale, learned counsel for the petitioners submits that the revised development plan of the Jalgaon City came into force on 06.01.1993 and the writ property was reserved as site No. 126 and 127 for the purpose of play ground and primary school. The respondent did not acquire the plots, the petitioners issued purchase notice under Section 127 of the said Act. *In spite* of the same, the respondents did not act upon the said notice and the petitioners filed Writ Petition No. 1808 of 2002. The writ petition is allowed by this Court vide judgment and order dt. 13.08.2010 and this Court held that final plot no. 524 of Jalgaon stands released from reservation to the extent of each petitioners' share. The learned counsel submitted that, thereafter the petitioners have drawn lay out and submitted plan for sanction to the respondents authority. The said application is rejected vide order dt. 31.02.2002. Aggrieved thereby, the petitioners filed the Writ Petition No. 801 of 2013. This court disposed of the writ petition with direction to the petitioners to approach the Government by filing an Appeal u/s 47 of the said Act. The petitioners thereafter filed an appeal before the

Government. Respondent No. 1 allowed the said appeal and directed the Municipal Corporation to take appropriate decision in accordance with law and grant permission for development as sought by the petitioners. The said appeal was allowed on 17.09.2013. The respondents were communicated with the said order, however, even after lapse of one year, no decision has yet been taken. As such, in view of Section 45(5) of the said Act, the petitioners are entitled to develop the property on the basis of deemed permission.

3. Mr Gunale, learned counsel for respondent - Corporation submits that, in fact the allotment of plot No. 524 was in lieu of Plot No. 599. The original owner had sold many plots. According to the learned counsel, the procedure of handing over and taking over was not completed, revised development plan came into force on 15.02.1993 and final plots No. 524 and 526 as shown are reserved for play ground and primary school. The learned counsel submits that, larger public interest would prevail over interests of individual plot owners. As such, in respect of the plots reserved for public purpose, the permission cannot be granted. He places reliance on the judgment of the Division Bench of this Court in a case of Mani D. Seervai Ors. Vs. State of Maharashtra (Through the Secretary Ministry of Urban Department).

& Ors. reported in AIR 2001 Bom 229. The learned counsel submits that, the petitioners cannot take advantage of their own wrong and their predecessor in title. The possession of final plot No. 524 is not handed over to the original owner of final plot No. 599. The petitioners are not entitled for the benefit of Section 45(5) of the said Act.

4. We have heard learned AGP also.

5. We have considered the submissions canvassed by the learned respective counsel.

6. The issues which are sought to be raised by the present respondents - Corporation are already decided by this Court in Writ Petition No. 1808 of 2002 with other writ petitions, vide judgment dated 13.08.2010. Writ petition was filed by the petitioners pursuant to the notice under Section 127 of the said Act. While deciding the said writ petition, this Court had come to the conclusion that the possession had handed over, the Corporation is not the owner of the said plot. The contention of the respondent – Corporation about the encroachments made on original plot No. 526 due to acts of commission on the part of the owners thereof was also dealt with. It was held that, when the

scheme comes into force, all rights in the original plots are extinguished and the ownership springs in the reconstituted plots. It was also considered that, the petitioners have interest in the plot No. 524 though they are subsequent purchasers. All these contentions raised in the present petition by the respondents by way of affidavit in reply were already dealt with in an earlier writ petition. In light of that, it will not be open for respondent – Corporation now to raise the same contentions.

7. Moreover, even the appeal filed by the petitioners under Section 47 of the said Act has been partly allowed by the Government, the respondents have not assailed the said order. The respondents are bound by the said order wherein the respondents were directed to take fresh decision.

8. Considering the aforesaid conspectus of the matter, the respondents shall grant permission to the petitioners for development in respect of the writ land pursuant to the application filed by them after satisfying itself that the said application and the plan confirm to the bye-laws and shall not reject the same on the ground raised by the Corporation in the present writ petition.

9. Rule accordingly made absolute in the aforesaid terms with no order as to costs.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]

sgp