

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

WRIT PETITION NO. 8978 OF 2015

1. Kesaranand Ginning and Pressing Factory
Pvt. Ltd. Bramhane, Tq. Shindkheda,
District Dhule through its Partner
Mr. Dnyaneshwar Ananda Bhamre,
Age : 54 Years, Occu. : Agril. & Business,
R/o Daul, Taluka Shindkheda,
District Dhule.
2. Kesaranand Buildcon Pvt. Ltd.,
Bramhane, Taluka Shindkheda,
District Dhule,
Through its Director,
Mr. Dnyaneshwar Ananda Bhamre,
Age : 54 Years, Occu. : Agril. & Business,
R/o Daul, Taluka Shindkheda,
District Dhule. .. Petitioners

Versus

1. The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Director,
Town Planning Department,
Maharashtra State, Pune.
3. The Collector, Dhule,
Taluka and District Dhule.

4. Dondaicha Varwade Municipal Council,
Through its Chief Officer. .. Respondents

Shri Amol S. Sawant, Advocate for Petitioners.

Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 to 3.

Shri Milind Patil, Advocate for the Respondent No. 4.

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

DATE : 25TH FEBRUARY, 2016.

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

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

2. Mr. Sawant, the learned counsel submits that, the lands of petitioners as detailed in para 4 of the writ petition were reserved in the final development plan dated 31st October, 1981 for Cottage Hospital. The learned counsel submits that, no steps were taken by the respondent No. 4 for acquisition of the said properties, as such the petitioners on 08th March, 2011 issued notice U/Sec. 127 of the Maharashtra Regional Town Planning Act (for short "M.R.T.P. Act"). The said notice is served on the respondent No. 4 on 09th March, 2011. Within a period of one year from service of notice U/Sec. 127 of the M.R.T.P. Act no steps are taken by the respondent No. 4 for acquisition, no declaration U/Sec. 6 of the Land Acquisition Act r/w Sec. 126 of the M.R.T.P. Act is issued till then. The learned counsel submits

that, on 05th July, 2012 even resolution is passed by the Municipal Council to the effect that the writ land owned by petitioners deserve to be de-reserved for multifarious reasons. The learned counsel submits that, even on 13th December, 2012 the petitioners had applied for construction permission along with the lay out. The same is also not considered. Subsequent revision thereafter would not affect the case of the petitioner.

3. Mr. Patil, the learned counsel for the respondent No. 4/Municipal Council submits that, subsequently on 28th December, 2012 revised development plan has been published. Thereafter, no notice U/Sec. 127 of the M. R. T. P. Act has been issued by petitioners. The land cannot stand de-reserved. The learned counsel further submits that, Resolution dated 05.07.2012 relied by petitioners can be of no avail to petitioners, as that would not create any legal right in favour of petitioners. The construction permission applied by the petitioners has been rejected by the Municipal Council.

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. Section 127 of the M. R. T. P. Act, acts as fetters of powers of eminent domain. The dates and events as narrated supra are not disputed by the respondents. The development plan being

sanctioned on 31st October, 1981 is not disputed. The respondents have not disputed the ownership of petitioners, nor it is the case that, the notice U/Sec. 127 of the M.R.T.P. Act does not confirm to the requirement of the said provision. The subsequent revised development plan is with effect from 28th December, 2012 i. e. after lapse of more than 1 and 1/2 year of the service of notice U/Sec. 127 of the M.R.T.P. Act. Even during the interregnum the petitioners had filed application for development of said property before revised development plan had come into existence. The rights of the petitioners have been crystallized.

6. The Apex Court in a case of **Girnar Traders Vs. State of Maharashtra** reported in **(2011) 3 SCC 1**, has held that steps for acquisition would mean issuance of the declaration U/Sec 6 of the L. A. Act r/w Section 126 of the M.R.T.P. Act. The same admittedly is not issued till date.

7. The subsequent revised development plan which is more than 1 and 1/2 year after the issuance of notice U/Sec. 127 of the M.R.T.P. Act would not affect the rights of petitioners crystallized earlier. The same is also considered by the Apex Court in a case of **Godrej and Boyce Manufacturing Co. Ltd. V/s. State of Maharashtra and others** vide judgment dated **21.01.2015** in **Civil Appeal No. 1086 of 2015**.

8. In light of the above, Rule is made absolute in terms of prayer clause "A". No costs.

9. Needless to state on the basis of rule being made absolute in terms of prayer clause "A", the petitioners may make application with the respondent No. 4/ Municipal Council.

Sd/-

[A. M. BADAR, J.]

Sd/-

[S. V. GANGAPURWALA, J.]