

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

**WRIT PETITION NO. 10940 OF 2015**

Hitesh Raghunath Gade,  
Age: 33 years, Occu. Business,  
R/o: Gade Building Adjacent  
to Leva Bording, Jalgaon,  
Dist. Jalgaon

...PETITIONER

versus

1. The State of Maharashtra  
Through its Secretary,  
Urban Development Department,  
Mantralaya, Mumbai-32.
2. The Director  
Town Planning Department,  
Pune at Pune.
3. The Deputy Director,  
Town Planning Nashik  
Division Nashik.
4. The Joint Director,  
Town Planning, Jalgaon,  
At Jalgaon.
5. The Commissioner,  
Jalgaon Municipal Corporation,  
Jalgaon at Jalgaon.

...RESPONDENTS

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Mr. A.G. Talhar, Advocate for petitioner  
Mr. B.V. Virdhe, AGP for respondents No. 1 to 4  
Mr. Shrikant Patil, Advocate for respondent No. 5

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

**DATED : 15<sup>th</sup> JUNE, 2016.**

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

1. Rule. Rule made returnable forthwith. Heard the learned counsel for appearing parties finally, with consent.

2. Mr. Talhar, learned counsel for petitioner submits that petitioner is owner of property bearing land survey No. 486/2A, admeasuring 00.34 H situated at Mauje Meharun, Jalgaon. On or about 6<sup>th</sup> January, 1993 revised development plan was sanctioned for Meharun and petitioner's land bearing survey No. 486/2A, admeasuring 00.34 H situated at Mauje Meharun, Jalgaon was reserved for garden as site No. 167. Learned counsel for petitioner submits that no steps were taken by the respondent – Jalgaon Municipal Corporation, Jalgaon (for short "Corporation") for acquisition, as such, petitioner has issued notice under section 127 of the Maharashtra Regional Town Planning Act, 1966 ( for short "MRTP Act") on 10-03-2014 and the same has been served upon respondent – Corporation on 29-03-2014. According to learned counsel, till date no declaration under section 126 of the MRTP Act read with section 6 of the Land Acquisition Act, 1894 ( for short "LA Act") is issued, as such, reservation stands lapsed. To buttress his submission, learned counsel for petitioner relies on the judgment of the Apex Court in the case of *Girnar Traders Vs. State of Maharashtra and others* reported in 2011(3) SCC 1.

3. Mr. Patil learned counsel for respondent No. 5 – Corporation submits that, in fact, measurement on the part of petitioner is erroneous and his predecessor had agreed to give 469 sq. meter land

to the Corporation free of costs vide letter dated 07-10-1979. However, said area is not handed over to the Corporation. According to learned counsel, the site is reserved for garden and the respondent -Corporation is ready to give TDR to the petitioner. According to learned counsel, General Body of the Corporation has allowed the proposal for acquisition of the land and sanctioned the funds for acquisition of the land and proposal is also submitted on 23-09-2014 for acquisition of area of 2495 sq. meter. Learned counsel relies on the notification issued by Urban Development Department dated 02-05-2016 and contends that if 70% of the land is handed over to the Corporation free of costs, remaining 30% of the land shall be allowed for development subject to the conditions enumerated therein.

4. We have heard learned Assistant Government Pleader.

5. Factual matrix as narrated above is not disputed. Revised development plan was sanctioned on 06-01-1993 and land of the petitioner bearing survey No. 486/2A, admeasuring 00.34 H situated at Mauje Meharun, Jalgaon was reserved for garden as site No. 167. The petitioner had issued notice on 10-03-2014 under section 127 of the MRTP Act. Said notice is received by respondent No. 5-Corporation is not disputed. It is also not disputed that till date no declaration under section 126 of the MRTP Act read with section 6 of the LA Act has been issued. One of the objections raised by the Corporation is that predecessor of the petitioner had agreed to hand over possession of 469 sq. meter of the land to the Corporation and the same has not been handed over.

6. Mr. Talhar, learned counsel for the petitioner, on instructions' states that petitioner shall hand over area admeasuring 469 sq. meter out of land survey No. 486/2A to respondent No. 5. Said statement is accepted.

7. In light of above, as no declaration under section 126 of the MRTP Act read with section 6 of the LA Act has been issued till date, lapsing of reservation would be axiomatic on the expiry of stipulated period as contemplated in section 127 of the MRTP Act. As such, the reservation would lapse. Useful reference in this respect can be had to the case of *Girnar Traders* (supra).

8. In light of above, reservation in respect of land bearing survey No. 486/2A (City Survey No. 6944), admeasuring 00.34 H situated at Mauje Meharun, Jalgaon reserved for garden as site No. 167 belonging to the petitioner stands lapsed.

9. As the petitioner has agreed to hand over the possession of the area admeasuring 469 sq. meter to the Corporation, petitioner shall hand over possession of the same immediately. The parties shall take further consequential steps pursuant to dereservation of the writ land.

10. Writ petition is allowed. Rule is made absolute in above terms. No costs.

Sd/-

**[ K. K. SONAWANE, J.]**

Sd/-

**[S. V. GANGAPURWALA, J.]**