

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9758 OF 2014

- 1 Sunanda Pushpak Narkhede,
age: 52 years, occu: agri & Household,
R/o Swami Samarth Nagar, Dharangaon,
Tq.Dharangaon, District: Jalgaon
- 2 Chandrakala Vasantrao Bholane,
age: 50 years, occu: Agri & house hold
R/o Netaji Road, Dharangaon,
Tq. Dharangaon, Dist. Jalagaon.

Both petitioners through
Power of attorney holder
Kalidas Duman Chaudhari,
age: 63 years, ouccu: agri & pensioner,
R/o Shriram Nagar, Chopda,
Taluka Choda, District: Jalgaon

Petitioners

Versus

- 1 The State of Maharashtra
through Secretary,
Urban Development Department,
Mantralaya, Mumbai 32
- 2 Collector,
Jalgaon, Tq. & Dist. Jalgaon
- 3 The Assistant Director,
Town Planning Department,
Jalgaon
- 4 Deputy Director,
Town Planning Department,
Nasik region, Nasik
- 5 Director,
Town Planning Department,
Maharashtra State, Pune
- 6 Chief Officer,
Municipal Council Chopda
At Post Chopda, Tq.Chopda
Dist. Jalgaon.

Respondents

Mr.S.H Tripathi advocate for the petitioners
Mr.V.M. Kagne, AGP for Respondent Nos. 1 to 5
Mr. P.R. Patil advocate for respondent No.6

CORAM : R.M. BORDE & A.I.S. CHEEMA, JJ

Date : 1st FEBRUARY, 2016.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final disposal at admission stage.

3 The petitioners are praying for a declaration that, in view of the inaction on the part of respondents, to take steps after receipt of the notice, within contemplation of section 127 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act), reservation, allotment or designation made in the final development plan prepared for Chopda town in respect of the property belonging to the petitioner, shall be deemed to have lapsed.

4 The petitioners state that, under the final development plan, prepared on 15.2.1986, their property i.e. Site No.4 situate at Chopda, Dist. Jalgaon was prescribed for play ground and site

No.5 was prescribed for shopping complex. The predecessor in title of the petitioners issued notice under section 127 of the MRTTP Act on 18.8.2004, calling upon the Municipal Council to take steps for acquisition of the property and it was informed that, in the event of failure to act in accordance with the provisions of law, the designation, reservation or allotment in respect of the subject property, made in the final development plan, shall be deemed to have lapsed. The petitioners state that, initially steps were taken by the Collector, on receipt of the proposal from the Municipal Council, by making appointment of Special Land Acquisition Officer for taking up the acquisition proceedings on 19.12.2005. However, there-after, no steps were taken and as such, the proceedings initiated did not move further. It is pointed out that, the Municipal Council adopted a resolution on 2.9.2011, wherein, the offer of the petitioners is recorded to the effect that, they would be willing to hand over the area of 25 aar required for 15 M road, without claiming any compensation. It is also recorded in the resolution that, the Municipal Council does not have funds at its disposal for acquisition of the property and as such, it was resolved to request the Collector to drop the acquisition proceedings. The Collector, on receipt of the resolution, cancelled the appointment of the Special Land Acquisition Officer in the year 2012.

5 Counsel appearing for the respondents state that, since the petitioners have agreed to hand over the area prescribed for 15 M road i.e. 0.25 aar, free of costs, in favour of the Municipal Council, they shall abide by the promise. Counsel appearing for the petitioners states that, since 2011, no further steps have been taken and development permission application tendered by the petitioners has been turned down in the year 2013 on the ground that, the area is earmarked in the development plan, for public purposes.

6 Municipal Council cannot insist for transfer of land required for public purpose, free of costs and shall have to enter into negotiations with the petitioners. The prayer made by the petitioners for declaration that, the reservation, designation or allotment in respect of subject property prescribed under the final development plan shall be deemed to have lapsed, deserves consideration. The Municipal Council has not taken any steps, as expected by the Honourable Supreme Court in matter of ***Girnar Traders Versus State of Maharashtra and others*** reported in (2007) 7 SCC 555. The reservation prescribed under the final development plan, in respect of the property belonging to the petitioners, shall be deemed to have been lapsed and is accordingly declared. It would be open for the respondent

Municipal Council, if deemed necessary, to acquire the property for public purpose, in observance of the provisions of Land Acquisition Act.

7 The State shall publish a Notification in the official gazette as required under section 127(2) of the MRTP Act within six months from today.

8 Rule is accordingly made absolute.

9 There shall be no order as to costs.

(A.I.S. CHEEMA, J)

(R.M.BORDE, J)