

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11351 OF 2015

- 1] Shri Mahendra Ajayraj Kothari ,
Age : 60 Years, Occu. Business & Agriculture,
R/o 99, Bhavani Peth,
Jalgaon, Dist. Jalgaon.
- 2] Shri Saurabh Mahendra Kothari,
Age : 32 Years, Occu. Business & Agriculture,
R/o 99, Bhavani Peth,
Jalgaon, Dist. Jalgaon.
- 3] Sau. Kusum Sajjankumar Agarwal,
Age : 61 Years, Occ. Business,
R/o 298, Jilha Peth,
Jalgaon, Dist. Jalgaon.
- 4] Shri Bharat Dattatreya Amalkar,
Age : 55 Years, Occ. Business & Agriculture,
R/o "Pasay", in front of MJ College,
Jalgaon, Dist. Jalgaon.
- 5] Smt. Shantabai Ramvilas Joshi,
Age : 75 Years, Occ. Business & Agriculture,
R/o flat No.4 & 5, Plot No.15, Jai Nagar,
Jalgaon, Dist. Jalgaon.
- 6] Shri Umesh Ramvilas Joshi,
Age : 42 Years, Occu. Business & Agriculture,
R/o flat No. 4 & 5, Plot No.15, Jai Nagar,
Jalgaon, Dist. Jalgaon.
- 7] Shri Vijaykumar Dipchand Chordia,
Age : 58 Years, Occu. Business,
R/o Mahavir Chambers, Jaikisan Wadi,
Jalgaon, Dist. Jalgaon.

- 8] Shri Vipin Vijaykumar Chordia (HUF),
Age : 34 Years, Occu. Business,
R/o Mahavir Chambers, Jaikisan Wadi,
Jalgaon, Dist. Jalgaon.

[Petitioners No. 1 to 6 and 8 through their
Power of Attorney Holder, Petitioner No.7.)

... Petitioners.

Versus

- 1] The State of Maharashtra,
Through the Secretary,
Ministry of Urban Development
Mantralaya, Mumbai - 32.
- 2] Municipal Corporation Jalgaon,
Through its Commissioner,
- 3] The Town Planner,
Municipal Corporation Jalgaon,
Jalgaon.
- 4] The District Collector,
Jalgaon.
- 5] Commandant General Home-guards &
Old Secretariat, Annexe Building,
3rd Floor, M.G. Road, Near Elphinstan College,
Fort, Mumbai - 400 032.

... Respondents.

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Mr. A. P. Bhandari, Advocate for Petitioners.
Mr. V. M. Kagne, AGP for Respondent Nos.1 & 4.
Mr. V. D. Gunale, Advocate for Respondent No.2 & 3.
Respondent No.5 Served.

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**CORAM : A. V. NIRGUDE &
V. L. ACHLIYA, JJ.**

DATE : 27th APRIL, 2016.

ORAL JUDGMENT : (PER V. L. ACHLIYA, J.)

. Rule. Rule is made returnable forthwith. With consent of parties, Petition is heard finally at the stage of admission.

2] The petitioners herein are praying for declaration that the property belonging to them, i.e. land bearing Gut No. 276, admeasuring 10475 sq. mtr. from village Pimprala, Taluka & District Jalgaon, situated within the Municipal limits of Jalgaon and part of reservation site No.77 for Home-guards (hereinafter referred as "said property") is deemed to have been released from reservation in view of provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

3] It is contention of the petitioners that the property referred above reserved in the Development Plan of City of Jalgaon. First part of the plan was sanctioned on 07.03.2002 and for the excluded part the Development Plan was sanctioned on 10.08.2004 and same came into operation w.e.f. 01.10.2004. In the Final Development Plan Reservation No. 77 is shown as "Site for Home-guards". Petitioners claims to be owner of said property.

4] In the year 2004, District Collector, Jalgaon sanctioned 1 Hector 68 R land from Gut No. 2207 of village Nashirabad, Taluka and District Jalgaon for training center of Home-guards and now

there is two storied building constructed for Home-guard exist on said land. In view of this, the land in question no more requires for respondent no.5, i.e. Home-guards. On 03.02.2014, the petitioners made representation to respondent no.1 for deleting the land from reservation. Although some communications were exchanged, but no fruitful steps were taken. Since the land was not acquired for the period of more than ten years for the purpose for which it was reserved, the petitioners issued notice dated 18.10.2014 to respondents as contemplated under Section 127 of MRTP Act. By the notice issued under Section 127 of MRTP Act, the respondents were called upon to acquire the said land within statutory period provided under Section 127 of MRTP Act. The notice was duly served upon the respondents. By the communication dated 29.10.2014, the respondent No.3 called upon the petitioners to submit measurement map of the property which was responded by the petitioners vide letter dated 18.11.2014 and clarified the position. Once again he urged the respondents to take necessary steps to acquire the land. Vide communication dated 26.11.2014 the respondent no.3 informed the petitioners that the responsibility of getting the lands acquired is of respondent no.5 i.e. appropriate authority for the purpose of whom the land was reserved.

5] By letter dated 9.1.2015, the Senior Administrative Officer Home-guards, Maharashtra State informed the respondent no.3 that the land owned by the petitioners is not required for them as the requisite building is already available with the Home-guard department. Vide representation dated 24.02.2015 the petitioners requested the respondent no.5 for deletion of land of petitioners in terms of section 50 of the Act. In response to the representation vide communication dated 09.03.2015, Senior Administrative Officer, Home-guards, Maharashtra State informed the petitioners

that, in view of letter dated 09.01.2015 the petitioner need not make further communication with the Home-guards department.

6] Since the issuance of notice under Section 127 of MRTP Act, no steps were taken within statutory period of one year or thereafter to acquire the land in question and the reservation of the land in question lapsed on expiry of period of one year from the issuance of statutory notice, the petitioners have filed this petition for seeking the declaration as referred above.

7] The respondent Nos.2 & 3 have filed affidavit-in-reply. In the reply filed, the material facts as pleaded in the petition are not disputed. It is the stand of the respondent Nos.2 & 3 that for Reservation No.77 the acquiring authority is Home-guard department. However, the notice was served upon the home department as well as Corporation. It is further stated that, the Home Department has already communicated to Urban Development Department of Government that they do not want said land. It is further stated that, the Corporation is not planning authority for said reservation for Home-guards and therefore the petitioners are not entitle to seek any relief against respondent Nos.2 & 3.

8] We have heard the submission advanced by learned counsel for the petitioners and the respondents. The respondent No.5 i.e. the Commandant of Home-guards, State of Maharashtra has not filed any reply though notice of final disposal was sent in the matter. The communication as referred above made on the part of respondent no.5 is not disputed by filing the affidavit. Learned AGP appeared for the respondent no.5 and sought time to take instructions in the matter. However, we have not entertained

the request for the sole reason that there are two communications placed on record made from the office of respondent no.5 informing the petitioners that the Home-guards department do not require the land in question reserved for them. Thus there is no dispute as to fact that, steps have not been taken for acquisition of said land within one year from the date of receipt of notice under Section 127 of MRTP Act.

9] There is no dispute that within the period of ten years of date of operation of the development plan, steps have not been taken for acquisition of said land. So also before the expiry of statutory period of one year of service of notice and thereafter, steps have not been taken to acquire the said land. Service of statutory notice is not disputed. The ownership of petitioner is also not disputed. The fact is not in dispute that the Final Development Plan of City of Jalgaon become operational w.e.f. 01.10.2014. The statutory notice U/s 127 of MRTP Act was issued on 18.10.2014, i.e. after the period of 10 years. The fact is also not in dispute that within the period of one year from service of statutory notice, steps have not been taken to acquire the said land. In view of this, the said land under reservation belonging to petitioner shall be deemed to have been released from reservation and available to owner as in case of the adjoining property in view of operation of Section 127 of MRTP Act.

10] In this view of the matter, it is hereby declared that the reservation/allocation or designation in the final Development Plan in respect of said land bearing Gut No. 276, admeasuring 10475 sq. mtr. from village Pimprala, Taluka & District Jalgaon, situated within the Municipal limits of Jalgaon and part of reservation No.77, belonging to the petitioner is deemed to have lapsed and the said

land is available to the owner for the purpose of development of other use permissible in the case of adjoining land under the relevant development plan.

11] The releasing of reservation/allocation/designation under Sub Section 1 of Section 127 of the Act shall be notified in the Government Gazette as expeditiously as possible within (6) six months from today. Rule is made absolute to the extent specified above. There shall be no order as to costs.

[V. L. ACHLIYA]
JUDGE

[A. V. NIRGUDE]
JUDGE