

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2797 OF 2016

- 1) Rajesh Chhabildas Khadke,
Age 46 years, Occup. Agri. and Business,
R/o Yogeshwar Nagar,
Kalikamata Mandir Road,
Jalgaon.
- 2) Prashant Chhabildas Khadke,
Age 48 years, Occup. Agri. and Business,
R/o as above.
- 3) Avinash Sudhakar Khadke,
Age 40 years, Occup. Agri. and Business,
R/o 278 Vitthal Peth, Jalgaon.

...Petitioners

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
- 2) District Collector, Jalgaon.
- 3) Jalgaon City Municipal Corporation,
Jalgaon, through its Commissioner.
- 4) Assistant Director of Town Planning,
Jalgaon City, Municipal Corporation,
Jalgaon.

...Respondents

Mr. A. N. Nagargoje, Advocate for petitioners
Mr. S. W. Munde, AGP for respondents No.1 and 2/ State
Mr. S. S. Patil, Advocate for respondent No.3

**CORAM : S. V. GANGAPURWALA &
SMT. VIBHA KANKANWADI. JJ.**
DATE : 31-10-2017

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

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties appearing finally, by consent.

2. It is submitted by the learned counsel for the petitioners that, development plan for the city Jalgaon was published on 11-02-2002. The same came into effect from 01-04-2002. The writ land of the petitioners bearing Gut No.87/1 to the extent of 32-R is reserved for high school as site No.195. According to the learned counsel, no steps were taken for acquisition of land within a period of ten years, as such petitioners issued notice under Section 127 of Maharashtra Regional and Town Planning Act on 18-12-2014. Even after lapse of one year, no steps are taken by the respondent municipal council.

3. Mr. S. S. Patil, learned counsel for respondent No.3 submits that, even prior to expiry of ten years from the introduction of

the development plan, the municipal council had passed resolution thereby making its intention clear of acquiring the land. The proposal to that effect was also forwarded to the collector, but further steps were not taken by the office of the collector. The respondent municipal council is interested in acquiring the writ land, as the land is reserved for high school.

4. Mr. S. S. Patil, learned counsel submits even TDR was offered to the petitioners by the municipal corporation.

5. Mr. A. N. Nagargoje, learned counsel submits that, said offer is not acceptable to the petitioners.

6. We have considered the submissions.

7. It is not disputed that, in the development plan of respondent municipal corporation which came into effect from 01-04-2002 the land of the petitioner admeasuring 32-R of Gut No.87/1 is reserved as site No.195 for high school. It is also not disputed that, notice under Section 127 of Maharashtra Regional and Town Planning Act is issued and served upon the municipal council on 18-12-2014.

8. Till date no notification under Section 126 of the

Maharashtra Regional and Town Planning Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 has been issued.

9. Section 127 of Maharashtra Regional and Town Planning Act is a fetter on the power of eminent domain. The Apex Court in a case of *M/s. Girnar Traders Vs. State of Maharashtra*, reported in (2011 [3] SCC1), has held that, steps for acquisition as contemplated under Section 127 of Maharashtra Regional and Town Planning Act would mean issuance of notification under Section 126 read with Section 6 of Land Acquisition Act. In the present matter, the notification required would be under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act read with 126 of Maharashtra Regional and Town Planning Act. Admittedly no such notification issued till date.

10. In the light of the operation of Section 127 of the Maharashtra Regional and Town Planning Act reservation shall stand lapsed.

11. The petitioners' writ land admeasuring 32-R bearing Gut No.87/1 situated within the Municipal limits of Jalgaon City stands

released from reservation.

12. The necessary notification shall be issued by the respondents to that effect.

13. The writ land will be available to the petitioners for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

[SMT. VIBHA KANKANWADI]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

vjg/-.