

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

WRIT PETITION NO. 2645 OF 2016

1. Vijay Vasant Rao Gotiwale, .. Petitioners
Age-55 years, Occu-Business
& Agriculture
R/o. Afu Galli, Raver, Tq. Raver,
Dist. Jalgaon
2. Kailas Laxman Dhanke,
Age-52 years, Occu-Agriculture,
R/o. Rasalpur, Tq. Raver,
Dist. Jalgaon
3. Murlidhar Karkisandas Manwani,
Age-75 years, Occu-Business & Agriculture,
R/o. Mankar Plot, Raver,
Tq. Raver, Dist. Jalgaon
4. Hemant Vasant Rao Gotiwale,
Age-47 years, Occu-Business & Agriculture,
R/o. Afu Galli, Raver,
Tq. Raver, Dist. Jalgaon
5. Pravin Supdu Paspohe,
Age-45 years, Occu-Advocate & Agriculture,
R/o. Ramchandranagar, Station Road,
Raver, Tq. Raver, Dist. Jalgaon
6. Vijay Murlidhar Manwani,
Age-47 years, Occu-Business & Agriculture,
R/o. Mankar Plot, Raver,
Tq. Raver, Dist. Jalgaon

Versus

1. The State of Maharashtra, .. Respondents
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai-400 032
2. The Raver Municipal Council, Raver
Through its Chief Officer,
Raver Municipal Council, Raver,
Tq. Raver, Dist. Jalgaon
3. The Collector, Jalgaon,
Dist. Jalgaon
4. The Assistant director of Town Planning,
Raver, Dist. Jalgaon

Mr.Pushkar S. Shendurnikar, Advocate for the petitioner
Mrs.R.P.Gaur, AGP for the respondent/State
Mr.Amol N. Kakade, Advocate for respondent No.2

**CORAM : S.V. GANGAPURWALA&
S.M. GAVHANE, JJ.**

DATED : 04.10.2017

ORAL JUDGMENT [PER: S.V. GANGAPURWALA, J.] :-

. Mr. Shendornikar, learned counsel for the petitioner states that the development plan of Raver, Dist. Jalgaon came into effect from 01.06.1988. The land of the petitioners bearing Gut No.565/1 (old Survey No. 239/P), adm. 0.20-R + 0.20-R =(40-R) is reserved for park in the said development plan. Learned counsel submits that respondent Municipal Council did not take any steps for development of the said property. The petitioner had

purchased the said property under registered instrument in the year 2013. The petitioner served notice under Section 127 of the MRTP, Act to the Municipal Council on 16.08.2014. For one year the respondent Municipal Council did not take any steps to issue notification under Section 126 r/w Section 19 of the Act, 2013 or Section 126 r/w Section 4 of the Land Acquisition Act. Learned counsel submits that in view of the provisions of section 127, of the MRTP Act, the reservation stands lapsed.

2. Mr. Kakade, learned counsel for the respondent submits that respondent/State had issued notification under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 on 15.07.2015 thereby making its intention clear of acquiring the said property. On 13.08.2015 Resolution also came to be passed by the Municipal Council disclosing its intention of acquiring the property. Thereafter joint measurement has taken place.

3. Learned counsel submits that it would be clear that steps for acquisition had been initiated within stipulated period of one year, in view of that the reservation does not lapse.

4. We have considered the submissions. Amendment to Sections 126 & 127 of the MRTP Act thereby deleting the provisions of the Land Acquisition Act, 1894 and incorporating the provision of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 came to be substituted w.e.f. 29.08.2015.

5. The preliminary notification under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 is akin to Section 4 of the Land Acquisition Act, 1894. The said acquisition it appears is at the behest of the State and not at the behest of the Municipal Council.

6. Be that as it may no further declaration under Section 126 r/w 6 of the Land Acquisition Act was issued within a period of one year from the date of service of notice under Section 127 of the MRTP Act. Even if the provision of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 has to be applied then notification under Section 126 r/w Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 ought to have been issued within a period of one year from the date of service of notice

under Section 127 of the MRTP Act. The same admittedly has not been issued within a statutory period of one year.

7. Section 127 of the MRTP is fetter on the powers of the eminent domain. Considering the fact that steps for the acquisition have not been taken within a period of one year from the date of service of notice under Section 127 of the MRTP Act the acquisition stands lapsed. Reference can be made to the judgment of the Apex Court in the case of M/s. Girnar Traders Vs State of Maharashtra reported in AIR 2007 SC 3180 and Shrirampur Municipal Council, Shrirampur Vs Satyabhamabai Dawkher and others reported in AIR 2013 SC 3757.

8. In the light of the above the reservation of writ land Gut no.565/1 (old Survey No.139/P) adm. 0.20-R + 0.20-R (40-R) situated at Raver, Tq. Raver, Dist. Jalgaon stands released from the reservation and the said land is available to the petitioner for development as otherwise permissible in case of adjoining land in the relevant plan. Consequential steps shall be taken by the Municipal Council expeditiously, preferably within six months. Rule made absolute.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]