

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4674 OF 2016

1] Shri Ritesh Sureshchandra Sethiya,
Age : 38 years, Occu.: Business & Agriculture,
R/o. 8, Mahavir Chambers, Jaykisanwadi,
Jalgaon – 425 001

2] Shri Vipin Vijaykumar Chordia,
Age : 34 years, Occu. Business & Agriculture,
R/o 8, Mahavir Chambers, Jaykisan Wadi,
Jalgaon – 425 001

.. Petitioners

VS.

1] The State of Maharashtra
Through the Secretary
Ministry of Urban Development,
Mantralaya, Mumbai – 32

2] The Director of Town Planning Department,
Pune

3] The Deputy Director,
Town Planning, Nashik Division,
Nashik

4] Municipal Corporation, Jalgaon,
Through its Commissioner

5] Assistant Director, Town Planning,
Municipal Corporation Jalgaon,
Jalgaon

6] The District Collector,
Jalgaon

.. Respondents

Mr. A.P. Bhandari, Advocate for the petitioners

Mr. A.R. Kale, A.G.P for the respondents 1 to 3 and 6-State

Mr. V.D. Gunale, Advocate for respondent no.5

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 22-06-2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally, by consent of the parties.

2. This Writ Petition seeks a declaration that on account of the provisions of law and particularly set out in section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "M.R.T.P. Act"), the reservation of gat no. 247/1(P) of village Pimprala, Tq. and Dist. Jalgaon situated within the Municipal limits of Jalgaon, to the extent of 1168.80 square meter has lapsed and the land stand released from the reservation.

3. It is not in dispute that this land was designated as public garden in the development plan for the city of Jalgaon. The development plan was sanctioned in two parts. First part was

sanctioned on 07/03/2002 and the rest of it on 10/08/2004. Later on this land was notified and reserved for “Garden, simplicitor”.

4. The petitioners issued a notice dated 02/02/2015 under Section 127 of the M.R.T.P. Act. A copy of this notice is at Annexure “C” to the Petition. In the notice, the petitioners stated as to how they are interested in this land, how it was reserved for garden and further they specifically urged that though the plan was in force and from 10/08/2004, still no attempts were made to acquire the land. The period of 10 years expired on 10/08/2014.

5. It is in these circumstances, they called upon the authorities to take steps and within the meaning of section 127(1) of the M.R.T.P. Act, the land has to be acquired or steps as mentioned in that Sub-Section have to be commenced for its acquisition else the reservation, allotment or designation would lapse. Jalgaon Municipal Corporation on 09/02/2015 acknowledged receipt of this notice and stated that the Municipal Corporation is ready and willing to offer Transferable Development Rights

("T.D.R." for short) and even the petitioners allowed it to acquire the land. The petitioners informed on 11/02/2015 that there cannot be any voluntary act of handing over the property / land to the Municipal Corporation in lieu of T.D.R. Then the petitioners confined that they are not interested in handing over land to the Municipal Corporation. The Corporation should take steps in accordance with law.

6. The Municipal Corporation then moved the Collector of the District and informed him that the general body has resolved to sanction funds for such acquisition of land on 20/03/2015. Hence, the Collector commenced the process. The request was to issue the requisite notification under Sub-Section 4 of Section 126 of the M.R.T.P. Act and thereafter initiate steps in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) for acquisition of the land. The petitioners submit that there is a specific endorsement in the file of the Corporation that the petitioners have not voluntarily handed over the land and that acquisition would have to commence in accordance with law.

7. The petitioners submit that from all these records, it does not appear that the steps as contemplated by law have been taken. It is then stated that though the proposal was forwarded to the Municipal Corporation and reminder was addressed on 09/04/2015, it appears that nothing was done and therefore the petitioners were constrained to approach the Government by a written representation dated 18/02/2016 – Annexure “G” to the Petition.

8. It is then submitted that there are several judgments and orders including that of this Court which expressly hold that if the requisite steps are not taken and within the meaning of Sub-section (Section 127(1) of M.R.T.P. Act), then, the reservation lapses and the lands stand released from the reservation.

9. In answer to this Writ Petition, an affidavit-in-reply has been filed by one Manohar Yashwant Bhargave working as Assistant Director of Town Planning, Jalgaon. The basic facts are not disputed and the relevant paragraphs read as under:-

“9. I say and submit that the petitioner has served notice under section 127 on Appropriate Authority on 05/02/2015 and Since, before the completion of period of “**12 months**” the Government has amended the provision of section 127(1) of the principal Act, the amended provisions will be applicable i.e. within a period of “**twenty four months**” from the date of service of such notice, land shall be acquired or steps for acquisition are commenced i.e. before 04/02/2017 in view of the order of Hon'ble High Court in Writ Petition No.3654/2006 & ors., on 31.03.2012.

10. I say and submit that the Municipal Corporation, Jalgaon has initiated the necessary steps for acquisition of land under petition. Further before the completion of period of “**twenty four months**” from the date of service of such notice, petitioner has approached the Court. The petition is pre-mature & hence, the contention made by Petitioner's regarding lapsing of reservation being not correct may not be considered.”

10. It is in these circumstances, it is submitted that the Petition is pre-mature because period of 24 months is yet to expire.

11. There is an affidavit filed by respondents 4 and 5 and in that affidavit, the same stand is taken, namely, that the period would be 24 months as the amended Section and Sub-Section

would apply.

12. At the hearing of this Writ Petition, Mr. Bhandari, learned Advocate appearing for the petitioners would submit that the point raised for consideration in this Petition is no more Res Integra. It is covered by the Division Bench judgment of this Court rendered at Nagpur in the case of **Ms. Nagina Hakimuddin Akolawala (Hirani) & Anr. Vs. The State of Maharashtra & Ors.** reported in **2017(2) ALL MR 459** (Writ Petition no. 2676 of 2016 decided on 6th February, 2017). The Division Bench has taken the following view :-

“8. After hearing the respective counsel we find that the requirement of waiting for 24 months has been prescribed on 31.12.2015 only. Till that date waiting period was 12 months, and hence, before that date a notice under Section 127[1], giving acquiring body time of more than 12 months to initiate steps for acquisition could not have been legally issued. Service of a valid notice is the point with reference to which “waiting period” is to be counted. Hence, notice duration is essential ingredient of the cause of action. The cause arises when such a notice is

received by the planning authority. Hence, notice and time both cannot be severed from each other. Division Bench of this Court in its judgment dated 22.12.2016 has rightly found that the amended enhanced waiting period is, therefore, applicable only to notices u/section 127[1] issued on or after 31.12.2015.

9. Here except for sending a proposal to the office of Collector, respondent nos.2 to 4 have not taken any steps as envisaged in law which would lead to acquisition. As no steps are initiated, it is apparent that on the date on which present petition is filed, i.e. on 02.05.2016, the reservation had already lapsed.”

13. In view of the judgment of the Division Bench, we are of the opinion that there is no substance in the contentions of the respondents.

14. Mr. Gunale, learned Advocate appearing on behalf of the contesting respondents fairly concedes that the legal position and prevailing is in terms of this Division Bench judgment rendered at Nagpur in the case of **Ms. Nagina Hakimuddin Akolawala**

(Hirani) and anr. Vs. The State of Maharashtra and ors. (referred supra).

15. As a result of the above discussion, the present Writ Petition also succeeds. Rule is made absolute in terms of prayer clauses (B) and (C). There would be no order as to costs.

Sd/-
[MANGESH S. PATIL]
JUDGE

Sd/-
[S.C. DHARMADHIKARI]
JUDGE

arp/