

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4677 OF 2016

- 1 Shri Bharat Dattatreya Amalkar
age 56 years, occ. Business & agriculture
r/o "Pasay", infront of MJ College
Jalgaon, Dist. Jalgaon
- 2 Sau. Kusum Sajjankumar Agarwal
age 62 years, occ. Business
r/o 298, Jilha Peth
Jalgaon, Dist. Jalgaon
- 3 Shri Mahendra Ajayraj Kothari (HUF)
age 60 years, occ. Business & agriculture
r/o 99, Bhavani Peth
Jalgaon, Dist. Jalgaon
- 4 Shri Saurabh Mahendra Kothari
age 32 years, occ. Business & agriculture
r/o 99, bhavani Peth
Jalgaon, dist. Jalgaon
- 5 Smt. Shantabai Ramvilas Joshi
age 75 years, occ. Business & agriculture
r/o Plot no. 15, Jai Nagar
Jalgaon, Dist. Jalgaon
- 6 Shri Umesh Ramvilas Joshi (HUF)
age 42 years, occ. Business & agriculture
r/o Plot no. 15, Jai Nagar
Jalgaon, Dist. Jalgaon
- 7 Shri Vipin Vijaykumar Chordia
age 34 years, occ. Business & agriculture
r/o Mahaveer Chambers,
Jaikisanwadi
Jalgaon, Dist. Jalgaon
- 8 Shri Vipin Vijaykumar Chordia (HUF)
age 34 years, occ. Business & agriculture
r/o Mahaveer Chambers, Jaikisanwadi

Jalgaon, Dist. Jalgaon

- 9 Shri Vishal Vijaykumar Chordia
age 37 years, occ. Business & agriculture
r/o Mahaveer Chambers, Jaikisanwadi
Jalgaon, Dist. Jalgaon

Petitioners no. 1 to 9 through their
Power of Attorney
Shri Vijaykumar Deepchand Chordia
age 58 years, occ. Business & agriculture
r/o Mahaveer Chambers, Jaikisan Wadi
Jalgaon, Dist. Jalgaon

- 10 Shri Vijaykumar Deepchand Chordia
age 58 years, occ. Business & agriculture
r/o Mahaveer Chambers, Jaikisan Wadi
Jalgaon, Dist. Jalgaon

- 11 Shri Ramesh Waman Bharambe
age 74 years, occ. Agriculture & Retired
r/o 28, Bhagyoday Society
Ganesh Colony, Jalgaon

Petitioners

Versus

- 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.S. Shinde. AGP for Respondents no. 1 to 3 & 6

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

CORAM : R.M.BORDE &

P. R. BORA, JJ.

DATE : 24th MARCH, 2017

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of the learned counsel for the respective parties.
3. Petitioners are praying for declaration that the land bearing gat no. 278/2 of village Pimprala, Tq. & Dist. Jalgaon, which falls within the Municipal limits of Jalgaon and shall be deemed to have been released from reservation or allotment provided under the final development plan prepared for Jalgaon Municipal Corporation in the year 2002 and in respect of the additional area including land belonging to the petitioners.
4. Petitioners contend that an area to the extent of 15 R from eastern side and 37 R from western side out of gat no. 278/2 is reserved in the final development plan prepared for Jalgaon Municipal Corporation for the purpose of Dispensary and Mortality Home. Petitioners contend that after prescription of reservation in relation to the area owned by petitioners under the final

development plan, no steps for acquisition were taken for a period of ten years and as such, petitioners proceeded to issue notice on 24.02.2015 calling upon the Municipal Corporation to acquire the land reserved for public purpose and, it has been further informed that in the event of failure, reservation in respect of the land provided under the final development plan for Jalgaon Municipal Corporation shall be deemed to have been lapsed.

5. It is not a matter of controversy that steps within contemplation of section 126 of the MRTP Act for acquisition of land have not been taken. Steps contemplated by section 126 of the MRTP Act shall mean issuance of section 6 notification. Although it is contended by respondent Municipal Corporation that the proposal has been transmitted to the State Government for acquisition of land, however, it has not been controverted that notification under section 6 has not yet been issued. In view of the decision in the matter of M/s Girnar Traders vs. State of Maharashtra reported in **2011(3) SCC 1**, since steps have not been taken by the State Government or the acquiring body within contemplation of section 126 of the MRTP Act, the reservation/designation under the final development plan in relation to the property owned by petitioners shall be deemed to have lapsed. Although it is contended in the affidavit-in-reply tendered on behalf of the State that the petition is premature since the period of 24 months has not lapsed from the date of issuance of notice i.e. 24.02.2015, the contention in that behalf is not liable to be accepted in view of the decision rendered by the Division Bench in the matter of Ms. Nagina Hakimuddin Akolawala (Hirani) & others Vs. The State of Maharashtra and others reported in

2017(2) ALL MR 459. The Division Bench has taken note of the fact that amendment to section 127(1) of the Act providing for waiting period of 24 months is made applicable from the date of such amendment i.e. 31.12.2015. The Division Bench has ruled that notices issued prior to aforesaid date shall be governed by the unamended provisions. In the instant case, even after lapse of 24 months, there is a dearth of action on the part of respondent-State.

6. In view of the reasons stated as above, conclusion has to be drawn that by operation of provisions of section 127(1) of MRTP Act, since no steps have been taken by the State Government or the acquiring body after service of notice within contemplation of section 127(1) by the petitioner, the reservation/allotment or designation in respect of area owned and possessed by the petitioner under the final development plan prepared for Jalgaon Municipal Corporation shall be deemed to have lapsed and land shall become available to the petitioner for the purpose of development or otherwise, permissible in case of adjacent land under the relevant plan. Lapsing of reservation of the land shall be notified by respondent no. 1 i.e. State Government in the official gazette within a period of six months from today. Rule is accordingly made absolute. No costs.

(P. R. BORA)
JUDGE

(R.M.BORDE)
JUDGE