

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6645 OF 2016

- 1 Shri Vipin Vijaykumar Chordia
age 34 years, occ. Business & agriculture
r/o 8, Mahavir Chambers,
Jaykisan Wadi
Jalgaon 425 001.
- 2 Shri Rupesh Rameshchand Munot
age 37 years, occ. Business
r/o 8531, Ganesh Wadi
Jalgaon 425 001
- 3 Sau Khushi Mahesh Munot
age 34 years, occ. Business & agriculture
r/o "Arihant", 28/29, Muktai Nagar
Jalgaon
- 4 Shri Girish Mukundchand Lodha
age 32 years, occ. Business & agriculture
r/o Shingada Talav, Nashik

Petitioners no. 2 to 4
through the General Power of Attorney
Holder, Petitioner no. 1.

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 | Town Planner
Municipal Corporation Jalgaon
Jalgaon | |
| 6 | Assistant Director, Town Planning
Jalgaon Division,
Jalgaon | |
| 7 | The District Collector
Jalgaon | Respondents |

Mr. A.P. Bhandari, advocate for the petitioner.
Ms. R.P. Gour, AGP for Respondents 1 to 3, 6 & 7.
Mr. V.D. Gunale, advocate for respondents 4 and 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. 277/1/1 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 admeasuring 1489.43 sq. mtrs. is reserved in the final development plan prepared for Jalgaon Municipal Corporation for the purpose of D.P. Site Parking. 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 30.05.2015 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. 30.05.2015, 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

dyb