

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10573 OF 2016

Shakiloddin Sharfoddin Badgujar,
Age: 44 Years, Occu.: Agril.,
R/o.: Mominpura, Kinwat,
Tal.: Kinwat, District: Nanded

.. **Petitioner**

Versus

1. State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32
2. Director Textile Secretariat,
Floor, New Central Building,
Maharashtra State,
Pune, Tal. and Dist.: Pune
3. Director,
Town Planner, Town Planning Office,
Pune, Tal. and Dist.: Pune
4. District Collector,
Collector Office, Nanded
5. Assistant Director,
Town Planner, Town Planning Office,
Nanded, Dist.: Nanded
6. Special Land Acquisition officer,
Land Acquisition Office,
Nanded, Dist.: Nanded.

7. Agricultural Produce Market Committee,
Kinwat, Tal.: Kinwat,
District: Nanded,
Through its President / Secretary

8. Municipal Council,
Kinwat, Tal.: Kinwat, Dist.: Nanded,
Through its Chief Executive Officer

.. **Respondents**

Shri V. J. Dixit, Senior Advocate h/f Shri L. V. Sangeet, Advocate for the Petitioner.

Mrs. R. P. Gour, A. G. P. for Respondent Nos. 1 to 6.

Shri Upendra B. Bilolikar, Advocate for Respondent No. 7.

Ms. Deepali S. Biyani h/f Shri B. A. Darak, Advocate for Respondent No. 8.

**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 28th September, 2017

JUDGMENT *(Per S. V. Gangapurwala, J.) :*

1. Rule. Rule Returnable forthwith. With the consent of parties taken up for final hearing.

2. Mr. Dixit, learned Senior Advocate for the petitioner submits that petitioner is the owner and possessor of land Gut No. 4/1 to the extent of 40R situated at Kinwat, Taluka – Kinwat. The said land is reserved in the Development Plan sanctioned on 15.2.2002 for the purpose of Market Yard. As no steps were taken for 10 years the petitioner on 26.9.2014 issued a Purchase Notice U/Sec. 49 of the Maharashtra Regional and Town Planning Act, 1966 (*hereinafter to be referred as “M.R.T.P.*

Act) to the respondents. After hearing the parties the Purchase Notice was confirmed U/Sec. 49(4) of the M.R.T.P. Act by order dated 6.1.2015. Learned counsel submits that for 1 year thereafter no steps are taken for acquisition. The application is not filed by the Appropriate Authority nor the Planning Authority for acquisition of the said property, as such, in view of Section 49 (7) of the M.R.T.P. Act the acquisition stands lapsed. The petitioner is free to develop the said property.

3. Mr. Bilolikar, learned counsel for respondent No. 7 Agricultural Produce Market Committee submits that, respondent No. 7 requires the writ land for its market yard, there is no other land available. However, because of the weak financial condition of respondent no. 7 steps could not be taken for acquisition. The respondent No. 7 has moved the Government for sanction of grants and the same is being considered. The writ petition be dismissed.

4. We have heard the learned counsel for respondent No. 8 and the learned A. G. P.

5. The following facts are undisputed:

I] The Development Plan is sanctioned on 15.2.2002.

II] The land of petitioner to the extent of 40R from Gut No. 4/1 at Kinwat is reserved for Market Yard in the Development Plan.

III] Notice U/Sec. 49 of the M.R.T.P. Act is issued on 26.9.2014.

IV] The respondent No. 3 confirmed the Purchase Notice on 6.1.2015.

V] Till date no application is made by respondent Nos. 7 or 8 for acquisition of the said property.

6. Considering the aforesaid factual matrix and the fact that no application has been made for acquisition till this date, the provisions of Section 49(7) of the M.R.T.P. Act would come into operation. Section 49(7) of the M.R.T.P. Act reads as under:

“Section 49.....

(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.”

7. In view of the aforesaid provision the Appropriate Authority has failed to make an application to acquire the land within 1 year from the date of confirmation of the notice. The reservation or restriction on development of the land is deemed to have lapsed and the land is deemed to be released from reservation and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the plan.

8. In light of the above, Rule is made absolute in terms of prayer clause "A". No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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