

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10208 OF 2017

Sitaram Hajarimal Mantri
age 67 years, Occ. Business and
Agriculture, R/o Mondha,
Near Rokdiya Hanuman Temple,
Sailu, Dist. Parbhani.

..Petitioner

Versus

1. The State of Maharashtra
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai.

2. The Municipal Council,
Sailu, Dist. Parbhani,
Through its Chief Officer.

..Respondents

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Advocate for Petitioner : Shri Manish P. Tripathi
AGP for Respondent 1: Shri G.D.Wattamwar
Advocate for Respondent 2 : Shri R.R.Chandak

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CORAM : PRASANNA B. VARALE & RAVINDRA V. GHUGE, JJ.
Dated: September 10, 2018

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ORAL JUDGMENT (Per GHUGE, J.):-

1. Heard the learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. The petitioner, by this petition, seeks a declaration that the reservation on the land bearing S.No. 220, which is presently recorded in the revenue record as S.No. 220/1, to the extent of 72 Ares, situated at Sailu, District Parbhani as Site No.4, has lapsed, in view of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 ("the said Act").

5. The petitioner has put forth prayer clauses (B) and (C) as under:-

"(B) To hold and declare that, the reservation on the land bearing Survey No.220 (at present which is recorded in the revenue record as Survey No.220/1) to the extent of 72 R land, situated at Sailu, District Parbhani as site No.4 has lapsed in view of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

(C) By issuing writ of mandamus or any other order or directions in the like nature, the respondent authorities may kindly be directed to issue notification declaring that, the reservation on the land bearing Survey No.220 (at present which is recorded in the revenue record as Survey No.220/1) to the extent of 72R land, situated at Sailu, Dist. Parbhani as Site NO.4 has lapsed in view of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966."

6. We have considered the submissions of the learned Advocate for

respective sides and the learned AGP on behalf of the State. We have also perused the affidavit in reply, filed on behalf of respondent No.2 Municipal Council. Reliance is placed by the petitioner, on the judgment of this Court in the case of Anil Banarasidas Jindal Vs. State of Maharashtra and others [2018 (4) Mh.L.J.886].

7. We find from the record that the petitioner is indisputably the owner and possessor of the land ad-measuring 72 Ares, which is presently recorded in the revenue record as S.No. 220/1, situated at Sailu. Respondent No.2 / Planning Authority had passed a resolution, disclosing its intention to revise the Development Plan, in 1994. Suggestions were invited by respondent No.1 to the Draft Development Plan. On 14.7.2001, respondent No.1 notified the Final Development Plan for Sailu Town and the same was effected on 16.8.2001, wherein Site No.4 from S.No. 220/1 was sought to be reserved for a playground. There is no dispute that thereafter, no steps have been taken by respondent No.4 for acquisition of the said land under the Land Acquisition Act, 1894.

8. The petitioner issued a notice under Section 127 of the said Act on 10.11.2014, calling upon the respondents to acquire the land. Even thereafter, the respondents have failed to acquire the land and no steps have been taken.

9. An affidavit filed by the Chief Officer, Municipal Council Shri Devidas Shivaji Jadhav, dated 5.3.2018 indicates that the Municipal Council, in fact, had passed a resolution on 28.11.2003, declaring that the said land is being released from the Development Plan in which it was earlier earmarked as a reserved portion for a Garden and Play Ground known as Site Nos.2 and 4. It, therefore, clearly evidences that the land has not been acquired under the development plan having been released by the Municipal Council by its said resolution.

10. We find from the cited judgment in Anil's case (supra), that the land under similar set of facts was not acquired even after ten years of the finalization of the development plan. Consequent to the above and on similar set of facts, this Court has concluded that the land will have to be released and as an effect of the same, a declaration will have to be published by the State, by way of a notification under Section 127(2) of the said Act, thereby declaring that the land is so released.

11. Neither, the learned AGP nor the learned counsel for the Municipal Council submit that any steps were taken for acquisition in last 18 years and even after the notice dated 10.11.2014 was issued by the petitioner.

12. In view of the above and keeping in view the law laid down by the Honourable Supreme Court in the case of Girnar Traders Vs. State of Maharashtra [(2007) 7 SCC 555] and in view of the decision in the case of Anil (supra), this petition is allowed in terms of prayer clauses (B) and (C). The State shall, consequentially, issue the notification under Section 127(2) of the Act, within eight weeks from today.

13. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

(PRASANNA B. VARALE, J.)

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Ajay
Kishanrao
Losarwar

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signed by Ajay
Kishanrao
Losarwar
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