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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10752 OF 2017

1. Rajendra s/o Shivajirao Nagawade,
Age: 47 years, Occu: Agri.,
R/o. Wangdhari, Tq. Shrigonda,
Dist. Ahmednagar
2. Popat Bholaji Dawale,
Age: 50 years, Occu: Service,
R/o. As above
3. Abasaheb Anandrao Jagtap,
Age: 46 years, Occu: Service,
R/o. As above
4. Dattatraya Shankar Lagad,
Age: 64 years, Occu: Agri Service,
R/o. Shrigonda Factory
Tq. Shrigonda, Dist. Ahmednagar
5. Pandharinath Maruti Supekar,
Age: 39 years, Occu: Service,
R/o. Sant Nagar, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar
6. Balasaheb Namdeo Bhor,
Age: 47 years, Occu: Service,
R/o. As above
7. Vishal Bajirao Jadhav,
Age: 45 years, Occu: Agri Service
R/o. C/o. Balasaheb Namdeo Bhor,
Santnagar, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32

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2. The Assistant Director,
Town Planning,
Near Akashwani, Ahmednagar,
Dist. Ahmednagar
3. The Chief Officer,
Municipal Council, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar
4. The Superintendent Post Master,
Postal Department, Ahmednagar,
Dist. Ahmednagar
5. The Director,
Town Planning,
Maharashtra State, Pune

..RESPONDENTS

Mr Niteen V. Gaware, Advocate for petitioners;
Mr S. Y. Mahajan, A.G.P. for respondent Nos.1, 2 & 5;
Mr P. N. Khedkar, Advocate for respondent No.3
Mr R. R. Bangar, Advocate for respondent No.4

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 19th September, 2018

ORAL JUDGMENT : (PER : PRASANNA B. VARALE, J)

Heard Mr Gaware, learned Counsel appearing on behalf of the petitioners. Rule. Rule made returnable forthwith and with the consent of the parties, the petition is heard finally.

2. It is submitted that the petitioners are the owners and possessors of the property situated in Shrigonda, Tq. Shrigonda, Dist. Ahmednagar, admeasuring 1814.25 sq.mtrs, part of City Survey No.2404. It is further submitted by the learned Counsel for the petitioners that this property was

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purchased by the petitioners from one Ashok Nawalmal Gugale for a valuable consideration. The exercise of measurement of spot was also undertaken by the competent authority of the City Survey office of Shrigonda.

3. Learned Counsel for the petitioners then invited our attention to the copy of the development plan placed on record at page 24 of the petition. It is submitted that the Development Plan was sanctioned and approved on 14th March, 1997 and Site No.9 which shows plot of the petitioners, was proposed for reservation of Postal Department. He then submitted that after lapse of considerable period, when the petitioners found that no steps have been taken for utilization of the land for the purpose for which it was kept reserved, the petitioners initially approached the authority i.e. the Chief Officer of the Municipal Council, Shrigonda, by issuance of a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the Act'). A copy of said notice dated 10th April, 2014 is also placed on record at Exh.'D'.

4. Learned Counsel for the petitioners then submits that the petitioners subsequently, on a better appraisal of the facts, issued notice by taking recourse to the provisions of the Act and more particularly under Section 49 of the Act. The notice was issued on 28th March, 2016. It was then submitted by learned Counsel for the petitioners that the notice was under

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consideration and ultimately by taking appropriate steps on 29th March, 2016, the Director of Town Planning, Maharashtra State, Pune passed order thereby confirming the purchase notice. He invited our attention to the order. It is submitted that the authority, on assessment of the material and also on hearing the parties, found favour with the petitioners. It was the observation of the authority that the petitioners are being deprived of beneficial use of the property. As such, the purchase notice was confirmed.

5. Mr Gaware, learned Counsel then submitted that though the purchase notice was confirmed by an order dated 23rd September, 2016, no steps were taken by the authorities for a period of more than 10 months. As the petitioners found that the authorities are not taking appropriate steps, they approached this Court by filing writ petition on 19th July, 2017.

6. On 4th October, 2017, the Division Bench of this Court was pleased to issue notice to respondents. Mr Gaware, learned Counsel then submitted that the Postal Department, in its reply only states about certain communications but these communications cannot be treated as required steps under the provisions of the Act. He then submitted that cumulative effect and consequence of events is only that the petitioners are entitled to seek de-reservation of the land and thereby they would be in a position to use the land for their beneficial purpose.

7. Mr Gaware further submitted that in an identical set of circumstances, the Division Bench of this Court was pleased to consider the issue and the relevant provisions. He then submitted that apart from the settled position of law, in view of the judgment of the Honourable the Apex Court in the matter of **Girnar Traders (II) Vs. State of Maharashtra & ors.**, reported in **(2007) 7 SCC 555** and the judgment of this Court in the matter of **Subhash Ramrao Jadhav & ors. Vs. State of Maharashtra & ors.**, the petitioners have made out a case.

8. Learned Asstt. Govt. Pleader as well as learned Counsel appearing on behalf of Postal Department opposed the petition. Though learned Asstt. Govt. Pleader, by inviting our attention to affidavit-in-reply submitted that the petitioners have based their claim on the provisions of Section 127 of the Act and as per the amended provisions of Section 127 of the Act, required period would be of 24 months and not of one year.

9. Learned counsel appearing on behalf of Postal Department submits that there is exchange of communication and he invited our attention to paragraph 14 of affidavit-in-reply, wherein it is stated that there was certain communication established with the office of the District Government Pleader sometime in the year 2010 and the Postal Department also had a communication with the Regional office on 25th July, 2012 apprising the Regional office the approximate cost of the property to the tune of

RS.25,49,047/- for the area of 3574.25 sq. mtrs.

10. Though learned Counsel appearing for respective respondents oppose the petition and though learned Asstt. Govt. Pleader submits that the claim of the petitioners are based on the provisions of Section 127 of the Act, it is not in dispute that the petitioners subsequently have issued a fresh notice taking recourse to the provisions of the Act and more particularly under Section 49 and this notice is issued on 28th March, 2016. Mr Gaware, learned Counsel for the petitioners was justified in placing heavy reliance on the judgment of this Court in the matter of Subhash Jadhav (referred supra). It will be useful for our purposes to refer to certain observations of the Division Bench of this Court in the said judgment, of which paragraphs 7 and 9 read thus:

“07. It can thus be seen that Section 49 of the MRTP Act, is a complete code in itself. When a owner of the land claims that on account of designation of the land, he is unable to sell it, except at a lower price, he can serve a purchase notice on the State Government. A discretion is vested under Sub-section (4) of said Section, with the State Government to, either confirm the purchase notice, or direct the concerned authority for granting planning permission without condition or subject to such conditions as will make the land capable of reasonably beneficial use. The said sub-section also provides that in case the State Government refuses to confirm the purchase notice, a reasonable opportunity of being heard will be given to the applicant. Sub-section (5) provides that in

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case the State Govt. fails to take any steps within six months from the date of service of purchase notice, the notice shall be deemed to have been confirmed at the expiry of that period, and sub-section (7) provides that in case the appropriate authority fails to make an application for acquiring the land as required under Section 126 of the MRTP Act within one year from the date of confirmation of the purchase notice, the reservation or allotment or restriction on the land shall be deemed to have lapsed and the owner will be entitled to develop his land as permissible in the case of adjacent land.

09. Indisputably, in the present case, though the purchase notice was confirmed on 28.12.2005. No doubt, that an application was made by the appropriate authority on 28.11.2006, so that it would be within a period of one year from the date of confirmation of the purchase notice. However, a perusal of the communication dated 22.2.2007 by the Collector, itself would reveal that the said proposal was not consistent with the statutory provisions. It can, thus, be seen that in the present case, the Appropriate Authority had even failed to make an application as per the provisions of Section 126 of the MRTP Act for acquiring the land within a period of one year from the date of confirmation of purchase notice, and as such, reservation stood lapsed on expiry of one years period from the date of confirmation of the purchase notice, and therefore, the petitioners were free to develop their lands as was permissible in case of adjacent land. It is further to be noted that the Municipal Corporation itself has passed a resolution that if the proceedings were not initiated within one year from the date of confirmation of purchase notice, the land would be de-reserved.”

11. In view of the above referred facts, in our opinion, learned Counsel appearing on behalf of petitioners has made out a case and the petition deserves to be allowed. Rule is made absolute in terms of prayer clause (B). Petition is disposed of accordingly.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

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