

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

WRIT PETITION NO.10093 OF 2015

1. Anil Banarasidas Jindal .. **Petitioners**
Died through legal heirs

1a. Anita Anil Jindal,
Age-42 years, Occu-Household/Agril

1b. Nikhil S/o. Anil Jindal,
Age-22 years, Occu-Business

1c. Shubham S/o. Anil Jindal,
Age- 19 years, Occu-Business,

All/R/o. "Jindal Manor", Near Hawaldar Hospital,
Sambhaji Nagar, Jalna.

2. Narayan S/o. Appasaheb Chalge,
Age-45 years, Occu-Business,
R/o. Sambhaji Nagar, Jalna
Tq. & Dist. Jalna

Versus

1. The State of Maharashtra .. **Respondents**
Through its Secretary Urban
Development Department
Mantralaya, Mumbai
2. The Director of Town Planning,
Maharashtra State, Pune
3. The Deputy Director of Town Planning,
Aurangabad Division, Aurangabad

4. The District Town Planning Officer, Jalna
5. The Chief Executive Officer,
Municipal Council, Jalna
Tq. & Dist. Jalna

Mr.Mahesh R. Sonawane, Advocate for the petitioners
Mr.S.Y.Majahan, AGP for respondent Nos. 1 and 2
Mr.S.R.Bagal, Advocate for respondent No.5

**CORAM : S.S. SHINDE &
S.M.GAVHANE, JJ.**

RESERVED ON :12.02.2018

PRONOUNCED ON :21.03.2018

J U D G M E N T [PER: S.M. GAVHANE, J.]

. Rule. Rule made returnable forthwith. With the consent of the parties the matter is taken up for final hearing.

2. By this petition under Article 226 of the Constitution of India the petitioners have claimed following substantive reliefs:

C) To issue Writ of Mandamus or any other writ or direction in the nature of Writ of Mandamus, directing the respondents to De-reserve the property of the petitioner bearing land Survey No.170A, admeasuring 40 R land which is reserved for the purpose of Primary School and play ground from site no.197 and for site no.198 admeasuring 37R for Ground, situated at Jalna, District Jalna, and petitioners be permitted to develop

said property, and for that purpose issue necessary orders.

D) To direct the respondents to delete the reservation of land of petitioners from Land Survey No.170A, admeasuring 40 R land which is reserved for the purpose of Primary School and play ground from site no.197 and for site No.198 admeasuring 37R for Ground, situated at Jalna, District Jalna from the development plan as per provisions of the Maharashtra Regional Town Planning Act.

3. According to the petitioners they are owners and possessor of the land bearing Survey No.170-A, adm. 40-R and 37-R, situate within the limits of Jalna Municipal Council. Out of the said lands 40-R land has been reserved for Primary School and 37-R land has been reserved for playground respectively as Site Nos.197 and 198 (the said lands are hereinafter referred to as the subject lands). Anil Banarasidas Jindal husband of petitioner No.1a and father of the petitioner Nos.1b and 1c, and petitioner No.2 are the original owners. After death of Anil Jindal in 2009 as per succession the names of petitioner Nos. 1a to 1c are mutated in the record and 7/12 extract.

4. Further it is the case of the petitioners that on 17.05.1985 the respondent authorities have prepared and published the draft development plan of Jalna city and the Director of Town Planning Maharashtra State, Pune has sanctioned the said development plan of Jalna city

vide its notification/ordinance dated 17.05.1985 bearing TPS 2984/2588/CR/326 [N] UD 06 and the notification has been published in the Maharashtra Government Gazette. In the said notification at Sr. Nos.55 and 56 land admeasuring 40-R and land admeasuring 37-R from Survey No.170 are reserved for ground and primary school respectively. Respondent No.5 the Planning Authority has finally prepared and published draft development plan of Jalna City and the Director of Town Planning Maharashtra State, Pune has sanctioned the said development plan by its notification/ordinance dated 04.04.1989 bearing No. TPS 671/CR/09 UD 12 and the notification has been published in the Maharashtra Government Gazette. The final sanctioned development scheme is implemented from 25.05.1989, thereby respective subject lands are finally put under reservation for public purpose i.e. for primary school and play ground.

5. According to the petitioners, the respondent authorities have not taken any steps whatsoever to acquire the subject lands within ten years as per the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the 'MRTP Act'). Therefore, the petitioners have issued purchase notice dated 16.05.2001 under Section 127 of the MRTP Act. Thereafter again

petitioners have sent the notice on 12.02.2003 to the respondent authorities alongwith relevant documents of ownership of the petitioners to the subject lands, but till the year 2012 respondents have not taken steps for acquisition of the subject lands. Lastly on 19.10.2012 again the petitioners have sent notice under Section 127 of the MRTP Act to the respondent authorities with copy of 7/12 extract calling upon respondent No.5 Planning Authority to acquire the subject lands as the same are not acquired within a period of ten years from the date of reservation. The respondent authorities received above notices still they have taken no steps to acquire the subject lands and also they have not paid compensation as per the market price. As such, the act of the respondents is illegal, arbitrary and malafide. The petitioners contended that till date no proposal for acquisition of subject lands is forwarded by the Planning Authority, nor any proposal is pending with the Office of the Special Land Acquisition nor the declaration under Section 6 of the Land Acquisition Act has been issued. Therefore, as the respondent authorities have not taken steps within one year of service of notice under Section 127 of the MRTP Act on them the subject lands are available to the petitioners for development in view of the mandate of section 127 of the MRTP Act as the subject lands have

automatically stands de-reserved. Therefore, this petition to issue directions as referred earlier to the respondents.

6. The affidavit of Sukhdeo Anandrao Pawar, Town Planner Jalna, District Jalna has been filed in-reply on behalf of respondent Nos. 1,2,3 and 4. In the said affidavit it is stated that he is filing said affidavit-in-reply as authorized by respondent Nos.1,2 and 3. Further contents of the affidavit are that the revised development plan of Jalna (part revised) was sanctioned by the Government in Urban Development Department under the provision of Maharashtra Regional and Town Planning Act, 1966 vide notification No.TPS-2984/2588/CR-326(A)-UD-6 dated 17.05.1985 and had come into force with effect from 15.07.1985. As per sanctioned revised development plan (partly) of Jalna the subject land bearing Survey No.170 of Jalna was affected by site No.60 "Primary School" (having an approximate area of about 0.40 Hectares) and partly affected by Site No.59 "Playground" (having an approximate area of about 1.50 Hectares). Partly revised development plan of Jalna was sanctioned in the year 1985 by the Government in Urban Development Department and not by the Director of Town Planning Maharashtra State Pune, as contended by the petitioners.

Thereafter, the Municipal Council, Jalna decided to revise the said earlier sanctioned Development Plan under the provisions of Maharashtra Regional & Town Planning Act, 1966 and accordingly a Draft Development Plan of Jalna (2nd Revised) was prepared and the same was submitted under Section 30(1) of the Maharashtra Regional and Town Planning Act, 1966 to the Government for final sanction. The Government in Urban Development Department partly sanctioned the 2nd revised Development plan under Section 31 of the said Act vide notification No.TPS-2912/1091/CR-181/2012/UD-30 dated 02.04.2013. As per 2nd Revised Development Plan of Jalna the suit land bearing No.170 of Jalna is affected (with some changes in area and designation) by Site No.197 Primary School and playground (having an approximate area of about 0.40 hectares) and Partly affected by Site No.198 Garden (having an approximate area of about 0.85 hectares).

7. Further it is stated in the affidavit that the petitioners have served notice on Municipal Council, Jalna under Section 127 of the Act vide letter dated 19.10.2012 in respect of reservation for site No.197 Primary school and playground and site No.198 for garden proposed in 2nd revised draft development plan as published under Section 26 of the MRTTP Act in Government

gazette on 18.11.2010. The said notice had been received by the Planning Authority i.e. respondent No.5. The petitioners served notice on 19.10.2012 within a period of two years from the date of publication of the Draft Development Plan under Section 26 of the MRTTP Act. Hence, the notice served on 19.10.2012 by the petitioners on the planning authority i.e. Municipal Council, Jalna is premature and the same is not tenable in view of the provision under Section 127 of the MRTTP Act.

8. The affidavit-in-reply of Santosh Mahadeo Khandekar, Chief Officer, Municipal Council, Jalna has been filed on behalf of respondent No.3. In the said affidavit it is stated that the development plan for Jalna was sanctioned by the appropriate Government/Authority vide notification No.TPS/2984/2588/CR-326(A)-UD-6 dated 17.05.1985 which came into force with effect from 15.07.1985. As per this development plan the land of the petitioners in Sr. No.170 was affected by site No.59 for playground and second revised development plan of Jalna came to be sanctioned by appropriate Government/Authority under Section 31 of the MRTTP Act, 1966 vide notification dated TPS/2912/1091/CR-181/2012/UD-30 dated 02.04.2013. As per this revised development plan the land of the petitioners

in survey No.170 is affected by Site No.197 for primary school and playground and by site No.198 for garden. The second revised development plan has been sanctioned on 02.04.2013 and therefore the period of ten years prescribed for acquiring the reserved land would be available at least upto the year 2023. The said second revised plan is not challenged by the petitioners. The notices were issued by the petitioners purportedly as per Section 127 of the Act or in reference to the earlier plan/reservation of the year 1985 which has no bearing upon present plan/reservation. The period provided for acquisition of land is not yet over and therefore the reservation as per revised plan is not at all lapsed. Earlier reservation was for primary school and playground and now as per second revised plan the land is reserved for primary school, playground and garden. It is stated that the present petition sans merit and deserves to be dismissed.

9. There is no dispute that subject lands are owned and possessed by the petitioners and out of the subject lands 40-R land has been reserved for ground and 37-R land has been reserved for primary school as per development plan sanctioned by the Director of Town Planning Maharashtra State, Pune on 17.05.1985 as

mentioned at Sr. Nos. 55 and 56 in the said notification. So also, there is no dispute that said development plan was published in the Maharashtra Government Gazette on 04.04.1989 and the final sanctioned development scheme is implemented from 25.05.1989. Moreover, it is not in dispute that within ten years of sanction of development plan by notification dated 04.04.1989 and implementation of final development scheme from 25.05.1989 the respondent authorities have not taken any steps to acquire the subject lands. So also, there is no dispute that the petitioners served in all three notices i.e. dated 16.05.2001, 12.02.2003 and 19.10.2012 under Section 127 of the MRTP Act on the respondent authorities. But even after service of said notices the respondent authorities have not taken steps to acquire the subject lands within one year of service of said notices on them.

10. As per reply affidavit filed on behalf of respondent Nos.1,2,3 and 4 the Government in Urban Development Department partly sanctioned the 2nd revised development plan of Jalna under Section 31 of the MRTP Act vide notification dated 02.04.2013 and as per said 2nd revised development plan out of the subject lands Site No.197 has been reserved for primary school and playground and Site No.198 has been reserved for garden

and the draft development plan (2nd revised) was published under Section 26 of the MRTP Act in the Government gazette on 18.11.2010. The petitioner has not denied these contentions in the affidavit by filing rejoinder. Therefore it can be said that earlier development plan sanctioned on 04.04.1989 was modified and 2nd revised development plan was sanctioned vide notification dated 02.04.2013.

11. We have heard the learned Advocates appearing for the petitioners, respondent Nos. 5 and learned AGP for respondent Nos. 1 and 2. With their assistance we have perused the pleadings and the documents on record.

12. Learned Advocate appearing for the petitioners submits that when the respondent authorities have not acquired the subject lands within ten years from publication of development plan on 04.04.1989 and implementation of final sanction development scheme from 25.05.1989 and further when the said authorities have not taken steps to acquire the subject lands within one year of purchase notice dated 12.02.2003 issued by the petitioners to the said authorities under Section 127 of the MRTP Act the subject lands have been deemed to be de-

reserved as a right in that respect has been accrued to the petitioners. Therefore modification of reservation of the subject lands by notification under Section 31 of the MRTP Act dated 02.04.2013 as per second revised development plan adding reservation of garden in the earlier reservation of primary school and playground is not permissible and hence petitioners are entitled to reliefs of declaration and directions as claimed in the petition. To support his submissions learned Advocate appearing for the petitioners has relied upon the decision in the case of Godrej and Boyce Manufacturing Company Ltd. Vs State of Maharashtra and others reported in 2015(11)SCC 554 wherein in para No.20 following observations have been made.

“20. In view of the abovesaid statement of law declared by this Court in the cases referred to supra, after adverting to the judgment of majority view in Girnar Traders (2) case is accepted in Shrirampur Municipal Council, wherein it is held that Girnar Traders (2) case is not conflicting with Hakimwadi Tenants Assn. Case 5, the statement of law laid down in the abovereferred cases is aptly applicable to the fact situation. Therefore, we have to hold that the impugned notification is bad in law and liable to be quashed. The High Court has not examined the impugned notification from the viewpoint of Section 127 of the MRTP Act

and interpretation of the abovesaid provision made in *Girnar Traders* (2), therefore, giving liberty to the appellant by the High Court to file objections of the proposed notification is a futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved for has not been utilised for that purpose and a valid statutory right is acquired by the landowner/interested person after expiry of 10 years from the date of reservation made in the development plan and 6 months notice period has also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Section 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefits of the appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the development plan from deleting for the purpose of railways and adding to the development plan for the formation of development plan of road after lapse of 10 years and expiry of 6 months notice served upon the State Government.”

13. In the present case the subject lands were reserved for primary school and playground as per development plan of Jalna city sanctioned by its notification dated 17.05.1985. The Director of Town Planning Maharashtra State has sanctioned the said development plan by its notification dated 04.04.1989 and

final sanctioned development scheme was implemented from 25.05.1989. The subject lands have not been acquired by the respondent authorities within ten years of publication of development plan in Maharashtra Government Gazette from 04.04.1989 i.e. before 04.04.1999. So also, even after one year of service of the purchase notice dated 12.02.2003 the respondents have not acquired the subject lands. Therefore, applying the ratio laid down in the case of *Godrej (Supra)* the modification in the reservation by the respondent authorities as per notification dated 02.04.2013 cannot take away the statutory right under Section 127 of the MRTTP Act acquired by petitioners land owners. Thus, the contention of respondent No.3 that as the 2nd revised development plan is sanctioned on 02.04.2013 the period of ten years prescribed for acquiring the reserved land which is available upto 2023 is not over the reservation as per 2nd revised development plan is not at all lapsed and therefore petitioners are not entitled to declaration claimed in the petition, is not acceptable.

14. For the reasons discussed herein above as the respondent authorities have not acquired the subject lands within ten years of coming into force of development plan on 25.05.1989 and even after one year of

purchase notice dated 12.02.2003, as the same is not at all the case of the respondents, the reservation of the subject lands has been lapsed and the subject lands are deemed to have been de-reserved. Therefore, we pass the following order:

O R D E R

- a. The Writ Petition is allowed.
- b. Rule is made absolute in terms of prayer clauses (C) and (D). No order as to costs.
- c. We direct the respondent/State to publish a notification under Sub-Section (2) of Section 127 of the MRTP Act, as expeditiously as possible preferably within six months from today.

[S.M.GAVHANE, J.]

[S.S. SHINDE, J.]