

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

WRIT PETITION NO. 11506 OF 2017

1. Sapan Sushilkumar Zunzunwala,
Age : 41 Years, Occu. : Business & Agri.,
R/o Anand Nagar, Ring Road,
Jalgaon.
2. Sarika Mahesh Maniyar,
Age : 38 Years, Occu. : Agril. & Household,
R/o Pratap Nagar, Jalgaon,
Taluka & District Jalgaon.
3. Vijesh Devkaran Kabra,
Age : 42 Years, Occu. : Business & Agri.,
R/o G 15, MIDC, Jalgaon,
Taluka & District Jalgaon.
4. Ashok Harnarayn Rathi,
Age : 53 Years, Occu. : Business & Agri.,
R/o 327 Jillha Peth, Near Parikh Park,
Jalgaon, Taluka & District Jalgaon.
5. Rajshri Sapan Zunzunwala,
Age : 40 Years, Occu. : Business & Agri.,
R/o Anand Nagar, Ring Road,
Jalgaon, Taluka & District Jalgaon. .. Petitioners

Versus

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

2. Collector, Jalgaon,
Taluka & District Jalgaon.
3. Assistant Director
Town Planning Department,
Jalgaon Municipal Corporation,
Jalgaon.
4. Jalgaon Municipal Corporation,
Through its Commissioner, Jalgaon,
Taluka & District Jalgaon. .. Respondents

Shri Sushilkumar H. Tripathi, Advocate for Petitioners.
Shri K. N. Lokhande, A.G.P. for Respondent Nos. 1 and 2.
Shri P. R. Patil, Advocate for the Respondent No. 4.
The Respondent No. 3 is served.

**CORAM : S. V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.
DATE : 15TH MARCH, 2018.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Leave to amend the prayer clauses with regard to gut number.

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

3. Mr. Tripathi, the learned advocate for petitioners submits that, the petitioners are owners and possessors of land Sy. No. 461/2/2 situated at Meharun, Tq. and Dist. Jalgaon to the extent of 40.50R having purchased the same under registered sale deeds

dated 28.07.2011 and 28.12.2011. The learned counsel submits that, the respondents had published a development plan on 10.08.2004. The land owned by petitioners was reserved as site No. 136 for high school. The learned counsel further submits that, as no steps were taken for acquisition of land by respondents, petitioners issued notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act (for short "M.R.T.P. Act") on 21.08.2015. On the same day Corporation received the said notice. No steps for acquisition were initiated by the Corporation. On 12.05.2016 respondent/corporation offered T.D.R. to petitioners. The offer of T.D.R. was rejected by petitioners on 23.05.2016. The learned counsel submits that, as the steps for acquisition are not initiated within a period of one year from the date of service of notice, reservation stands lapsed. The learned counsel relies on the judgment of the Apex Court in a case of **Girnar Traders Vs. State of Maharashtra** reported in (2011) 3 SCC 01.

4. Mr. Patil, the learned advocate for the respondent No. 4/Corporation submits that, after perusal of the sale deeds it does not appear that the petitioners are owners of 40.50R land. According to the learned counsel for respondent No. 4, the respondent No. 4 had already submitted proposal for acquisition of the land to the competent authority. The learned advocate further submits that, both the sale deeds relied by petitioners have identical boundaries, which raises doubt about actual

ownership and possession of petitioners.

5. We have also heard the learned Assistant Government Pleader.

6. We have considered the submissions canvassed by learned counsel for respective parties. It is not disputed that, the respondents published the development plan on 10.08.2004 and the land is reserved as site No. 136 in the development plan for high school. The total area under reservation is about 5800 square meters. The petitioners claim to be owners of about 40.50R land.

7. The respondent No. 4 does not dispute of having received notice U/Sec. 127 of the M.R.T.P. Act and considering claim of petitioners, respondent No. 4 also ventured to offer T.D.R. to petitioners under letter dated 12.05.2016. The respondent No. 4 had offered T.D.R. upon being satisfied about the ownership of the petitioners.

8. Be that as it may, the petitioners have placed registered sale deeds on record. The respondent No. 4 contends that, it has also forwarded the proposal for acquisition, however, it is a fact that declaration U/Sec. 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013") has not been issued till date. As per the judgment of the Apex Court in a case

of Girnar Traders Vs. State of Maharashtra referred to supra, the steps for acquisition would mean issuance of declaration U/Sec. 6 of the Land Acquisition Act, 1894. The same is akin to declaration U/Sec. 19 of the Act of 2013. No such declaration has been issued till date. The offer given by the Corporation to the petitioners to accept the T.D.R. is not entertained by petitioners. The T.D.R. could have been offered in lieu of acquisition, had the petitioners accepted the same.

9. There does not appear to be any cloud over the title. Even a person interested can make an application U/Sec. 127 of the M.R.T.P. Act. Sec. 127 of the M.R.T.P. Act is a fetter on the powers of eminent domain.

10. As no steps have been initiated within a period as stipulated, the reservations to the extent the notice was given U/Sec. 127 of the M.R.T.P. Act of land owned by petitioners stand lapsed. The consequential notification shall be issued accordingly.

11. Rule is made absolute in terms of prayer clause "A". No costs.

Sd/-

[SUNIL K. KOTWAL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]