

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 12258 OF 2016

1 Satyaprakash Satyaprem Rudrawar
Age 65 yrs.

2 Bharat Prabhakar Rudrawar
Age 60 yrs.

3 Deepak Prabhakar Rudrawar
Age 55 yrs.

4 Anant Damodhar Rudrawar
Age 67 yrs.

5 Subhash Damodhare Rudrawar
Age 60 yrs.

All occ. Business & Agriculture
r/o Main Road, Majalgaon,
Dist. Beed
Through Power of Attorney
Shri Vivek Satyaprakash Rudrawar
Age 50 yrs, occ. Chartered Accountant Petitioners

Versus

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

2 Collector,
Beed.

3 Municipal Council
Majalgaon
Dist. Beed
Through its Chief Officer

4 Government Technical and Central ITI
(Industrial Training Institute)
Majalgaon, Dist. Beed.

Respondents

Mr. V.V. Bhavthankar, advocate for petitioner.
Mr. V.S.Badakh, AGP for respondents 1, 2 and 4.
Mr. S.R. Chaukidar, advocate for respondent no. 3.

**CORAM : R.M.BORDE &
A.M.DHAVAL, JJ.
DATE : 05th July, 2018**

ORAL JUDGMENT : (Per R.M. Borde, J.)

1 Heard.

2 Petitioners are praying for declaration that reservation provided under the final development plan prepared for Majalgaon town in respect of land Survey No. 229 (Old Surey No. 372) and Survey No. 228 (Old Survey No. 371) situate at Majalgaon, shall be deemed to have lapsed and the land is available for the petitioners for development in accordance with the deeming provision, Section 127 of the Maharashtra Regional And Town Planning Act, 1966 (for short, "the Act").

3 The land in question has been designated in the final development plan for Government Technical High School and Industrial Training Institute (ITI). The final development plan has been enforced since 15.06.2000. The petitioners, after lapse of more than ten years, issued a notice to the Chief Officer, Municipal Council, being the planning authority, calling upon it to take steps for acquisition of property within time stipulated under Section 127 of the Act or else, reservation, designation or allotment in respect of the property in question, as provided under the final development plan, shall be deemed to have lapsed.

4 According to the petitioners, the planning authority has not taken steps for acquisition of the property within time stipulated under section 127 of the Act. The petitioners have also relied upon

communication issued by the Sub-Divisional Officer, Majalgaon Project on 06.10.2016 informing the petitioners that an alternative land at village Bhatwad, Tq. Majalgaon has been acquired by the Collector and, the same has been handed over to the concerned for starting Industrial Training Institute and further, a new building has also been constructed on the allotted land. It is, thus, contended that the purpose, for which the reservation was prescribed no more subsists, the declaration, as requested by the petitioners, shall be issued.

5 An affidavit-in-reply has been presented on behalf of the Collector as well as by the in-charge Chief Officer, Municipal Council, Majalgaon. The respondents have controverted the contentions raised by the petitioners. It is contended that the reservation has been provided in the final development plan in respect of the property in question for establishing ITI and Government Technical High School. It is contended that the 'Appropriate Authority, within meaning of Section 2(3) of the Act of 1966, is Deputy Director of Technical Education, Aurangabad. It is contended that the 'Appropriate Authority' is not made party to the petition and as such petition deserves to be dismissed on the ground of non joinder of necessary party.

6 Apart from this, it also transpires that the notice, within contemplation of Section 127 of the Act, has not been issued to the Appropriate Authority i.e. Deputy Director of Technical Education, Aurangabad. The notice appears to have been issued on the planning authority i.e. Municipal Council. It is the Appropriate Authority i.e. Deputy Director of Technical Education, Aurangabad, for whom the land has been reserved in the final development plan prepared for Majalgaon town. It is the Appropriate Authority who shall answer the contentions of the petitioners as regards lapsing of reservation. Since notice has not been issued to the Appropriate Authority, the declaration, as claimed by the petitioners, cannot be issued.

7 An affidavit-in-reply has been presented by the In-charge Office Superintendent, Municipal Council, Majalgaon, wherein it has been stated that the land which was reserved for establishment of Government Technical High School is required for the purpose of development of National Highway and a demand, in that respect has been made. It is further stated that the Municipal Council has resolved to delete the reservation by adopting Resolution No. 24 in the meeting the of municipal council held on 26.03.2018.

8 The petitioners contend that since the land is no more required for development, as proposed, the declaration as requested may be granted.

9 Section 127(1) of the Act, provides for lapsing of reservation. It is provided in Sub-section (1) that if any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final regional plan, or final development plan comes into force or, if a declaration under Sub-section (2) or (4) of Section 126 is not published in the *Official Gazette* within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the planning authority, the development authority or, as the case may be, the appropriate authority to that effect; and if within 24 months from the date of service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

10 In the instant matter, reservation provided in the final development plan is for the purpose of establishing Government Technical High School and ITI. The planning authority or development authority, obviously, does not have anything to do with the reservation in question; and it is the only 'Appropriate Authority' i.e. Deputy Director of Technical Education, Aurangabad, for whose benefit and on whose behalf the land is reserved under the final development plan, shall have to answer the notice and state as to whether the land is required for development.

11 In the instant matter, since the notice has not been issued to the Appropriate Authority as required under Section 127 of the Act, there is no question of drawing an inference as regards the consequences for failure to act within stipulated period as provided under section 127 of the Act.

12 The Appropriate Authority has been defined in Section 2(3) of the Act to mean, any public authority on whose behalf the land is designated for public purpose in any plan or scheme and which it is authorised to acquire. In the instant matter, the land is designated for public purpose in the final development plan on behalf of Deputy Director of Technical Education and the said authority is authorised to acquire the land. Petitioners have neither served notice on the Director of Technical Education or the the Deputy Director of Technical Education or the Collector representing the State Government. Since no notice has been issued on the Appropriate Authority, which is mandatorily required under section 127 of the Act, so as to draw an inference in respect of the consequences on account of failure to take steps within contemplation of section 127 within stipulated period, the declaration sought by the petitioners cannot be granted.

13 In the instant matter, since there is no notice to the Appropriate Authority, petitioners cannot be permitted to claim declaration within contemplation of section 127 of the Act.

14 For the reasons as recorded above, petition does not deserve to be considered favourably and as such stands dismissed.

15 In view of the disposal of petition, pending Civil Applications do not survive and stand disposed of.

16 Rule discharged. No order as to costs.

A.M.DHAVLE
JUDGE

R.M.BORDE
JUDGE

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