

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
23 WRIT PETITION NO. 12746 OF 2016**

MOTICHAND HUKUMCHAND BUNDELKHANDI AND ANOTHER
..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Durgesh M. Pingale, Advocate for the
Petitioners.

Mr. S. B. Joshi, AGP for Respondent-State.

Mr. Dhananjay B. Thoke, Advocate for the Respondent
No.4.

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**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 31st OCTOBER, 2018.

PER COURT:-

1. Mr. Pingale, learned counsel for the petitioners submits that the development plan was published by the respondent-Municipal Council on 01.03.1990 showing the writ properties of the petitioners reserved for primary school and children playground. The learned counsel submits that no steps are taken by respondent-Municipal council for acquisition of the said properties within a period of ten years from the publication of the development plan. The petitioners on 25.08.2015 issued purchase notice to the respondent-Municipal Council. It is served to the respondent-Municipal Council on the same day. No steps of acquisition has been initiated by the respondents within a period of one year from the

date of service of notice. The declaration under Section 126 of the M.R.T.P. Act read with the provision of Right to Fair Compensation Act has not been published. The land of the petitioners stands released from reservation.

2. Mr. Thoke, learned counsel for respondent-Municipal Council submits that there is an inherent defect in the purchase notice issued by the petitioners. The area of the land under reservation has been wrongly mentioned. The learned counsel submits that every endeavour has been made by the Municipal Council to acquire the property. The proposal has been given by the Municipal Council to the Collector for acquisition of the property on 03.11.2015. Time and again, the Municipal Council was asking the Land Acquisition Department to communicate the amount the Municipal Council is required to deposit. However, no communication was received. The learned counsel submits that the Municipal Council requires the land for the purpose for which it is reserved, the same need not be de-reserved.

3. We have heard the learned A.G.P. also.

4. The following factual matrix is not disputed:

(i) The writ land of the petitioners is reserved for the purpose of primary school and

children playground in the development plan published by the Municipal Council on 01.03.1990. The respondents did not take any steps in respect of the said reserved land.

(ii) The petitioners on or about 25.08.2015 issued purchase notice to the respondent-Municipal Council purportedly under Section 127 of the M.R.T.P. Act.

(iii) It is served to the Municipal Council on the same day.

(iv) As yet the declaration under Section 126 of the M.R.T.P. Act read with provisions of Right to Fair Compensation Act has not been published.

5. One of the ground raised by respondents is that the area has been improperly mentioned in the purchase notice. We have gone through the purchase notice. The area of each and every CTS number has been mentioned by the petitioners. The said area is correctly mentioned. Only the mistake has occurred in the total. The area is specified of each CTS number that is under reservation. Only mistake in the total may not render the notice defective. It would have been another case, if the area of particular CTS numbers would have been wrongly mentioned by the petitioners.

6. The provision of Section 126 of the M.R.T.P. Act is a fetter on the power of eminent domain.

7. As no declaration has been issued under Section 126 of the M.R.T.P. Act read with provision of Right to Fair Compensation Act, in view of the judgment of the Apex Court in a case of **M/s. Girnar Traders V/s. State of Maharashtra and Ors.** reported in (2011) 3 SCC 1, the land stands released from acquisition.

8. In the result the land bearing CTS Nos.748, 749, 764, 765, 766, 767 and 768 total admeasuring 417.47 Sq. Mtrs situated at Chalisgaon, Dist. Jalgaon stand released from reservation. The necessary notification be issued accordingly expeditiously.

9. Writ Petition is accordingly allowed. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/October-18

Devendra
Nandkumar
Kale

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by Devendra
Nandkumar Kale
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