

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

WRIT PETITION NO. 7325 OF 2014

1. Baburao s/o Savaliram Wani,  
Age 58 years, Occu : Agri.,  
R/o Vaijapur, Tal. Vaijapur,  
District Aurangabad
2. Gambhirrao s/o Bhimrao Deshmukh,  
Age 59 years, Occu : Agri.,  
R/o as above
3. Shivaji s/o Tryambakrao Autade,  
Age 48 years, Occu : Agri.,  
R/o as above
4. Subhash s/o Vitthalrao Dhotre,  
Age 52 years, Occu : Agri.,  
R/o as above
5. Pundlik s/o Kisanao Jadhav,  
Age 65 years, Occu : Agri.,  
as above
6. Parvatibai w/o Nivrutti Waghchaure,  
Age 55 years, Occu : Agri.,  
R/o As above
7. Jagannath s/o Shukleshwar Ingale,  
Age 50 years, occu: Agri.,  
R/o as above
8. Dadahari s/o Murlidhar Gaikwad,  
Age 58 years, occu : Agri.,  
R/o as above
9. Dinkar s/o Parasram Ugale,  
Age 52 years, Occu. Agri.,  
R/o as above

10. Gorakh s/o Devrao Pandit  
Age 52 years, occu : Agri.,  
R/o as above
11. Somnath s/o Rangnath Shete,  
Age 58 years, Occu : Agri.,  
R/o as above
12. Sau. Shobhabai w/o Sahebrao Mapari,  
Age 57 years, Occu : Household,  
R/o as above .. Petitioners

***versus***

1. The State of Maharashtra,  
Through its Secretary,  
Urban Development Department,  
Mantralaya, Mumbai
2. The Chief Executive Officer,  
Zilla Parishad, Aurangabad,
3. The Deputy Director,  
Town Planning Office,  
Aurangabad Division, Aurangabad  
District Aurangabad
4. The State of Maharashtra  
through Deputy Secretary,  
Urban Development Department,  
Mantralaya, Mumbai - 32
5. The District Collector,  
Aurnagabad
6. The Chief Officer,  
Municipal Council, Vaijapur,  
Tal. Vaijapur, Dist. Aurangabad .. Respondents

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Mr Prasad Jarare, Advocate holding for Mr S. S. Thombre,  
Advocate for petitioners

Mr S. S. Dande, Asstt. Government Pleader for respondents  
no. 1, 3 and 5

Mr Shrimant Mundhe, Advocate for respondent no. 2

Mr N. D. Sonvane, Advocate for respondent no. 6

CORAM : SUNIL P. DESHMUKH AND  
R. G. AVACHAT, JJ.

DATE : 8<sup>th</sup> April, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.

2. Petition has been moved, seeking directions to release petitioners' land from reservation and to hold and declare that reservation over land survey number 278 situated at Vaijapur, taluka Vaijapur, district Aurangabad to the extent of 48 aar owned by petitioners in development plan has lapsed.

3. Succinctly referred to, petitioners are purchasers of land admeasuring about 48 aar from said survey number 278. Area of 1 hectare, 76 aar land had been reserved under reservation number 51 for cottage hospital campus under sanctioned development plan dated 01-05-1985. An area of 48 aar land belonging to petitioners from said survey number 278 had been affected under the same. Site no. 51 was reserved for cottage hospital campus and site

no. 55 for social welfare department and hostel. Subsequently, revised development plan had been sanctioned by government through its urban development department under notification dated 21-12-2012 coming into effect from 05-05-2013. In said sanctioned development plan, petitioners' land comprising survey number 278 had been shown in residential zone.

4. It appears that in the meanwhile, petitioners had issued a notice dated 15-03-2010 to the appropriate authority purportedly pursuant to section 127 of Maharashtra Regional Town Planning Act, 1966 in respect of site bearing no. 51 (cottage hospital campus), marking copy the same to various authorities including municipal council. There is no dispute that said notice had been served on zilla parishad as well as municipal council.

5. Subsequently, petitioners had moved this court in present writ petition, seeking relief in terms of prayer clause (B) reading, thus :

*" B. By issuing appropriate writ, order or directions in the like nature, it be hold and declare that, the reservation of the*

*Survey No. 278 situated at Vaijapur, Tal. Vaijapur, District Aurangabad to the extent of 48 R. owned by the petitioners in the development plan of Municipal Council, Vaijapur has lapsed, the said land be released from the reservation and will be available to the petitioners for development. " ,*

as the petitioners had been given to understand and had been believing that such a petition would be necessary.

6. Respondent no. 6 – municipal council though purports to put up resistance to the petition claiming that in subsequent development plan, land of the petitioners is being reserved for shopping centre bearing reservation no. 85 and further referring to that matter is pending with the State government, respondents no. 1, 3 and 4 have submitted their affidavit in reply to the writ petition stating in paragraphs no. 4 and 8, thus, :

*" 4. With reference to para No. 3 of the Writ Petition I say and submit that, as per the provisions in Maharashtra Regional and Town Planning Act, 1966, the Development Plan of Vaijapur (Revised) for its original limit was sanctioned by Government in Urban Development Department vide notification No. TPS-3084/2087/CR/246/UD-6, Dated 18.2.1985 & which came into force with effect from Dated 1.5.1985. In the said Sanctioned Development Plan for Vaijapur (R.), the petitioner's land ad-*

*measuring @ 48 Are from S.no. 278/2/1 was affected by Site No. 51 " Cottage Hospital Campus ", and site no. 55 " Social Welfare Department & Hostel ". The Appropriate Authority for acquisition and development of Site No. 51 was Zilla Parishad, Aurangabad & for Site No. 55 was Social Welfare Department.*

*Thereafter, Revised Development Plan of Vaijapur (original + Additional limit) is partly sanctioned by Government in Urban Development Department vide Notification no. TPS 3012/591/CR-94/2012/UD-30, Dated 21.12.2012 which has come into force with effect from Dated 5.5.2013. In the said Sanctioned Revised Development Plan of Vaijapur (original+Additional limit), the suit land from S. no. 278 is shown in residential zone.*

*8. With reference to para No. 8 of the Writ Petition I say that, as stated earlier in Para no. 3 the revised Development Plan of Vaijapur (original + Additional limit) is sanctioned on Dated 21.12.2012 and has come into force with effect from Dated 05.05.2013. As per this revised sanctioned Development Plan (original + Additional limit), the suit land which was affected by Site No. 51 " Cottage Hospital Campus " and Site No. 55 " Social Welfare Department & Hostel " of earlier Development Plan is now included in Residential Zone. Hence the petitioner is entitled for Residential Use in the suit land. "*

7. Having regard to aforesaid, with paragraphs from affidavit of respondents no. 1, 3 and 4 quoted hereinabove, it surfaces that purpose for which writ petition has been

filed had already been met with as the concerned land has been shown in residential zone. It is not the case of respondents that in the sanctioned revised development plan of 2012 enforced in 2013, the land has been under reservation. In view of aforesaid, it does not appear that orders are required to be passed in writ petition.

8. Writ petition is, accordingly, disposed of.

R. G. AVACHAT,  
JUDGE

SUNIL P. DESHMUKH  
JUDGE

pnd/-