

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

18 WRIT PETITION NO.1735 OF 2018

1. Arun Namdeorao Tak,
Age 65 Years, Occu. Business.
2. Ravindra Arun Tak,
Age 41 Years, Occu. Business.
3. Rahul Arun Tak,
Age 38 Years, Occu. Business.
4. Lilabai Arun Tak,
Age 58 Years, Occu. Household.
5. Dattatraya Chandrakant Shahane,
Age 47 Years, Occu. Agri.
6. Ashok Chandrakant Shahane,
Age 45 Years, Occu. Agri.

All R/o. Padmavati Galli,
Parali Vaijinath, Beed.

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Director of Town Planning
Central Building, Pune.
3. The Town Planner,
Old Municipal Council Building,
1st Floor, Beed.
4. The Municipal Council,
Parali Vaijinath, Dist. Beed,
Through the Chief Officer.

..RESPONDENTS

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Mr. B. R. Waramaa, Advocate for the Petitioners.
Mr. P. K. Lakhotiya, AGP for Respondents-State.
Mr. Vivek Vasantrya Bhavthankar, Advocate for
Respondent No.4.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.
DATED : 10th APRIL, 2019.**

ORAL JUDGMENT (Per: S. V. Gangapurwal, J.):—

1. Rule. Rule made returnable forthwith.
With consent of the parties, matter is taken up for
final hearing at the admission stage.

2. It is the contention of petitioners that
the land of petitioners was reserved in the
development plan sanctioned in the year 1991 and
subsequently, modified in the year 1998.

3. According to petitioners the petitioners
issued purchase notice under Section 127 of the
Maharashtra Regional and Town Planning Act, 1966 on
02.04.2012. No steps for acquisition have been
initiated within the period of one year from the
date of service of notice. According to the
learned counsel the Site No.57, 54, 60 and 62
prescribed in the development plan dated 20.07.1998
stand de-reserved.

4. We have heard the learned A.G.P. and Mr.
Bhavthankar, learned counsel for the respondents.

5. The respondent no.4 has filed an affidavit
thereby stating that respondent no.4 has submitted

a proposal on 11.12.2014 to respondent no.1-Government to the effect that it does not have necessary funds to comply the purchase notice. The Council is unable to acquire the land and the reservation is deemed to have lapsed. According to the learned A.G.P. the reservation sites qua the ownership of the petitioner is required to be verified by the Municipal Council.

6. As far as the relief sought for declaring reserved sites 54 and 62 described under development plan dated 20.07.1998 is concerned the petitioner is not entitled for relief. In the notice dated 02.04.2012 the petitioner had not issued purchase notice for purchase of the land effectuated under the reservation site nos.54 and 62. The issue would only remain with regard to the site nos.57 and 60.

7. The site no.57 is reserved for housing for dishoused and site no.60 is reserved for primary school and playground that is the playground attached to the primary school. Site no.58 is reserved for playground. However there is no prayer with regard to the site no.58, as such the same need not be considered by us.

8. It is admitted fact that the purchase notice has been served upon the Municipal Council. Municipal Council is the planning authority and the appropriate authority. The Municipal Council has not denied the claim of the petitioner. Till date

Notification under Section 11 of the Right to Fair Compensation Act and Section 126 of the Maharashtra Regional and Town Planning Act, 1966 has not been issued. In view of the judgment of the Apex Court in case of **Girnar Traders Vs. State of Maharashtra and Others** reported in **2011 (3) SCC 1**, if no steps for acquisition are taken during the period of one year, the acquisition would stand lapse.

9. It is also held that the Section 127 of the Maharashtra Regional and Town Planning Act, 1966 is a fetter on the power of the eminent domain.

10. Considering the above, it is held and declared that the reservation site nos.57 and 60 as shown in the development plan dated 20.07.1998 stand lapsed. The said lands stand de-reserved. The said land would be available for utilization as the adjacent land is available. The necessary Notification be issued by the State Government accordingly. The prayer with regard to the site 54 and 62 stands negatived as the same is not subject matter of the notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966. This order qua the petitioners only.

11. Rule accordingly made partly absolute in above terms. No costs.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE