

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

WRIT PETITION NO. 7577 OF 2018

Ramesh Madanlal Kothari,
Age : Major Years, Occu. : Business,
R/o "Kothari House",
Near State Bank of India,
Dondaicha, Tq. Shindkheda,
District Dhule. .. Petitioner

Versus

1. The Amalner Municipal Council,
Amalner, District Jalgaon,
Through its Chief Officer.
2. The State of Maharashtra
Through its Department of
Urban Development,
Mantralaya, Mumbai – 32. .. Respondents

Shri Subodh P. Shah, Advocate for the Petitioner.
Shri Girish Rane, Advocate for the Respondent No. 1.
Mrs. Geeta L. Deshpande, A.G.P. for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 27TH AUGUST, 2019.

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

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

2. The contention of the petitioner is that, the land owned by the petitioner bearing gut No. 405/1 (Sy. No. 44/1) situated within the Municipal limits of Amalner Municipal Council is reserved under development plan sanctioned on 30th April, 1994 as site No. 78 stands dereserved. According to the petitioner the writ land of the petitioner is reserved for garden under development plan dated 21.10.1978 as site No. 76. The development plan was revised on 30th April, 1994 and the said land was reserved as site No. 78 for extension of garden.

3. The original owner was Smt. Sugandhabai Deshmukh. She served a purchase notice on 22.02.2005 upon the Municipal Council. The municipal council passed a resolution bearing resolution No. 43 to acquire the land of the petitioner. However, no further steps were taken. Reminder was issued on 02nd February, 2010. The original owner Sugandhabai sold the property to the present petitioner. The present petitioner by way of abundant caution again issued notice on 24.12.2013. Same is also received by respondent No. 1. The respondent No. 1 has not taken steps for acquisition. In view of that, reservation stands lapsed.

4. Mr. Rane, the learned counsel for the respondent No. 1/Municipal Council submits that, the municipal council does not dispute receipt of notice dated 22.02.2005 issued by the petitioner. The respondent has not received notice dated

24.12.2013. The learned counsel further submits that, the writ land is reserved for garden. As the writ land is reserved for garden, same cannot be de-reserved. The learned counsel relies on the judgment of the Apex Court in a case of **Municipal Corporation of Greater Mumbai Vs. Hiranman Sitaram Deorukhar** decided on **August 24, 2017 in Civil Appeal No. 11258 of 2017.**

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. It is not disputed that, the writ land is reserved since the year 1978 in the development plan initially sanctioned on 21.10.1978 and revised development plan dated 30th April, 1994. It is not disputed by the Municipal Council that, purchase notice issued by the original owner on 22.02.2005 is received by the municipal council. Resolution was also passed by the municipal council to acquire the said property, however, till date steps for acquisition are not taken.

7. The provisions of Sec. 127 of the Maharashtra Regional Town Planning Act is a fetter on the power of *eminent domain*. In view of the judgment of the Apex Court in a case of **Girnar Traders Vs. State of Maharashtra** reported in (2007) 7 SCC 555 as no steps for acquisition are initiated, the reservation stands lapsed. Admittedly till date the declaration U/Sec. 126 of

the M. R. T. P. Act has not been issued.

8. The reservation of the site is for the garden. The Apex Court in a case of **Municipal Corporation of Greater Mumbai Vs. Hiranman Sitaram Deorukhar** (supra) has observed that, the municipal councils are required to preserve the open spaces, play grounds, parks. Once the area had been reserved, authorities are bound to take steps to preserve it in that manner only. In fact, the municipal council ought to have taken steps for acquisition as on date.

9. Considering the judgment of the Apex Court in a case of **Municipal Corporation of Greater Mumbai Vs. Hiranman Sitaram Deorukhar** (supra) and the judgment of the Apex Court in a case of **Girnar Traders Vs. State of Maharashtra** (supra) we pass following order.

ORDER

I. The reservation over the writ land stands lapsed, however, the petitioner shall not use the said land for any purpose, nor shall change the user of the said land for a period of one year.

II. The Municipal Council, Amalner may take steps to acquire the property within a period of one year from today.

III. If the Municipal Council, Amalner fails to take steps to acquire the property within a period of one year from today, the

petitioner shall be entitled to use the land in a manner adjacent land is permitted to be used.

IV. After lapse of one year, if writ land is not acquired, then the State Government shall issue notification of writ land standing de-reserved.

V. Rule is made absolute in above terms. No costs.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]

bsb/August 19