

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

WRIT PETITION NO. 12082 OF 2017

1. Sau. Shakuntala Vasant Patil,
Age: 65 years, Occ.: Household,
R/o. Jivan Vikas Colony,
Jalgaon, District Jalgaon.
2. Tukaram Namdeo Borole,
Age: 71 Years, Occu.: Advocate,
R/o. "Ekdant" 42, Bhikamchand Jain
Gruhanirman Society, Near S.M.I.T
College, Bhikamchand Jain Nagar,
Jalgaon, District Jalgaon.
3. Mukund Gopalrao Shanbag,
Age: 64 Years, Occu.: Agriculturist,
R/o. Shanbag Bungalow, M. J. College Road,
Jillha Peth, Jalgaon, District Jalgaon.
4. Supadu Narayan Borole,
Age: 76 Years, Occu.: Retired,
R/o. HaranKhede, Taluka Bodwad,
District Jalgaon.
5. Changdeo Budha Patil,
Age: 65 Years, Occu.: Retired,
R/o. C/o. Sopan Zendu Narkhede,
Plot No.1, Aaradhana Colony,
Behind Girna Water Tank, Jalgaon
District Jalgaon.
6. Sopan Zendu Narkhede,
Age: 67 Years, Occu.: Agriculturist,
R/o. Plot No.1, Aaradhana Colony,
Behind Girna Water Tank, Jalgaon
District Jalgaon.

7. Janardan Waman Rane,
Age: 58 Years, Occu.: Service,
R/o. Talvel, Taluka Bhusawal,
District Jalgaon.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary,
Urban Development Department
Mantralaya, Mumbai.
2. Collector,
Jalgaon, Taluka & District Jalgaon.
3. Assistant Director
Town Planning Department,
Jalgaon Municipal Corporation,
Jalgaon.
4. Jalgaon Municipal Corporation,
Through its Commissioner,
Nehru Chauk, Jalgaon,
Taluka Jalgaon, District Jalgaon.

... RESPONDENTS

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Mr. Sushilkumar H. Tripathi, Advocate for Petitioners.

Mr. D. R. Kale, AGP for Respondent Nos.1 & 2.

Mr. Pradip R. Patil, Advocate for Respondent Nos.3 & 4.

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CORAM : **T. V. NALAWADE &
K. K. SONAWANE, JJ.**

DATE : 16th July, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed for relief of declaration that reservation Site No.28 (Primary School and Play Ground) under Development Plan of Jalgaon (Additional Area) of 2002 over the land of Petitioners bearing Gat No.44 (old Survey No.314) situated at village Avhane, Taluka Jalgaon, District Jalgaon, has lapsed and the Petitioners are entitled to use this land for the purpose of development.

3 It is the contention of Petitioners that in the year 2002, development plan for aforesaid purpose came into force. It is contended that no steps were taken for acquisition of the land of Petitioners for aforesaid purpose and so on 24th December, 2014, a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "MRTP Act") was given to the Respondents by the Petitioners. It is contended that on 31st December, 2014, Respondent No.3 collected record from the

Petitioners like measurement map, development map etc. but no steps were immediately taken. It is contended that by letter dated 6th April, 2015, Respondent No.3 illegally rejected the notice issued by Petitioners on the ground of non-supply of documents. It is contended that on 2nd September, 2015, again fresh notice was given and record like 7/12 extract, sale-deed, measurement map and partial development plan was supplied to the Respondents, local body, which wanted to acquire the property. It is contended that on 14th September, 2015, Respondent No.3 issued notice to the Petitioners and offered Transferable Development Rights (TDR) as compensation. It is contended that on 21st September, 2015, the Petitioners specifically refused to accept the TDR and asked compensation in terms of money. It is contended that as no effective steps are taken as yet, the Petitioners are entitled to get the relief of aforesaid declaration. The petition came to be filed on 7th March, 2017.

4 The Respondent, local body has filed reply. It is contended that acquisition was for Site No.28 not for Site No.26. It is contended that after receipt of notice under Section 127 of MRTP Act,

they served purchase notice to the Petitioners. It is contended that the Respondent, local body has offered TDR by letter dated 14th September, 2015 in lieu of compensation. It is contended that as per the provision of Section 127 of MRTP Act, only after 24 months the reservation will lapse if notification under Section 126 of MRTP Act is not issued.

5 The learned counsel for Respondent, local body placed reliance on observations made by the Apex Court in the case reported as **2017 SCC OnLine 1739**, (*Municipal Corp. of Greater Mumbai Vs. Hiranman Sitaram Deorukhar*). The learned counsel drew the attention of this Court to the observations made by the Apex Court in paragraph 13 and they are as under:

“13. Thus the provisions for open spaces in the statutory scheme were in effect made a statutory mockery. The authorities were bound to act with circumspection and to act timely to take steps to issue the requisite declaration as per development plan. They were well aware of the consequences. The inaction was impermissible in such an issue of great public importance, having constitutional imperative under Article 21 read with Article 48A and further it was in breach of fundamental duty imposed

under Article 51A(g) to protect natural environment, and having the potential to lead to the derogation of the public interest. Such inaction is intolerable, and the area ought to be preserved for park only. More so, considering its situation that it is encircled by garden area, the court cannot be a moot spectator and permit statutory provisions to become a mockery by inaction or lethargy on the part of the unscrupulous authorities. No reason is coming forth as to why steps were not taken by the concerned authorities to act in the public interest, as per the statutory mandate, and as per development plan. The duty is cast upon the authorities to act as *cestui que* trust with respect to the public park. As a matter of fact, Authorities ought to have issued forthwith a requisite declaration and ought to have completed the proceedings. Be that as it may, since there is lapse of reservation, and the land is still required for public park, and since now the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the 2013 Act') have come into force, obviously the compensation has to be paid in accordance with the provisions contained in the said Act. In the circumstances, we direct that the land shall continue to be reserved and to be used for the public garden. However, the compensation shall be determined and paid in accordance with the principles laid down in the 2013 Act. Thus, we set aside the order passed by the High Court. Let compensation be determined after hearing the interested parties and it shall be decided within a period of six months from today. The

appeals are accordingly allowed. No order as to costs.”

The learned counsel submitted that in view of the aforesaid observations, acquisition can still be made though under the Act of 2013, but reservation will not lapse.

6 The learned counsel for Petitioners placed reliance on the decisions given by this Court at Principal Seat and this Bench and they are reported as **2018 SCC OnLine Bom 2608**, (*Satish Prakash Rohra & Anr. Vs. Municipal Corporation of Greater Mumbai & Ors*) at Principal Seat, and (Manupatra) **MANU/MH/1683/2019**, (*Trimurty Enterprises Vs. The State of Maharashtra and Ors.*) decided at this Bench in Writ Petition No.11452 of 2018 on 11th April, 2019. In both these matters, aforesaid decision of Apex Court viz. *Municipal Corp. of Greater Mumbai Vs. Hiranman Sitaram Deorukhar (supra)* was considered and opportunity was given to the acquiring body to see that immediate steps are taken for acquisition and in case of failure to take such steps within particular period, a declaration was to come into force that reservation has lapsed. In view of these circumstances and as admittedly the Respondent, local body has no money to pay the compensation and it is heavily indebted, this Court holds that such

conditional order needs to be made in favour of the Petitioners. In the result, the following order is passed:

ORDER

- I. The petition is allowed subject to condition that period of one year is given to the Respondent, local body to acquire the land of the Petitioners within one year from the date of decision of this matter and acquisition needs to be completed in every aspect including making the payment of compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- II. During this period, the Petitioners shall not carryout any development on the aforesaid land and shall not create any third-party interest in respect of the land and shall not part with possession of the land.
- III. On failure of the Respondents to complete the acquisition and to pay compensation within one year from the date of this decision, it will be open to the Petitioners to deal with their land, they may develop their land as owner.

- IV. On failure of completion of acquisition and to pay compensation within one year from the date of this decision, the Government shall issue notification as contemplated under Section 127 (2) of the Maharashtra Regional and Town Planning Act, 1966.
- V. Rule is made absolute accordingly.

[K. K. SONAWANE, J.]

[T. V. NALAWADE, J.]

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