

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

WRIT PETITION NO.7461 OF 2018

1. Mahendra Ajayraj Kothari,
Age: 63 years, Occ: Business & Agri.,
R/o. Saurabh Jewellers, Sarafa
Bajar, Jalgaon
2. Sau. Nathidevi Pravinchandra Jain,
Age: 53 years, Occ: Household,
R/o. Jilha Peth, Jalgaon
District Jalgaon
3. Sau. Kamladevi Prasannachand Jain,
Age: 52 years, Occ: Household,
R/o. Jilha Peth, Jalgaon
District Jalgaon
4. Sau. Pushpadevi Gyanchand Ostwal,
Age: 75 years, Occ: Household,
R/o. Jilha Peth, Jalgaon
District Jalgaon
5. Sau. Vinoddevi Paramchand Nahar,
Age: 60 years, Occ: Household,
R/o. 99, Sarafa Bajar, Jalgaon

Petitioners No.2 to 5,
Through their General Power of
Attorney Holder i.e. petitioner No.1

PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary
Ministry of Urban Development,

Mantralaya, Mumbai-32

2. The Director of Town Planning
Department, Pune
3. The Deputy Director,
Town Planning, Nashik Division,
Nashik
4. Assistant Director,
Town Planning Department,
Jalgaon
5. Municipal Corporation, Jalgaon
Through its Commissioner
6. Assistant Director, Town Planning,
Municipal Corporation, Jalgaon
Jalgaon
7. The Executive Engineer,
Waghur Dam Project, Jalgaon

RESPONDENTS

Mr A.P. Bhandari, Advocate for the petitioners;
Mr V.S. Badakh, A.G.P. for respondent Nos.1 to 4;
Mr Pradip R. Patil, Advocate for respondent Nos.5 & 6;
Mr Suresh D. Dhongade, Advocate for respondent No.7

**CORAM : PRASANNA B. VARALE &
R.G. AVACHAT, JJ.**

DATED : 19th JULY, 2019

ORAL ORDER:

The petitioners approached this Court with

prayer clauses (B) and (C), which read thus :

(B) The Honourable Court be pleased to issue writ of Mandamus or any other appropriate writ, directing the respondents to release land bearing Survey No. 327/2/6 of Jalgaon City, Taluka & Dist. Jalgaon, situated within the Municipal Limits of Jalgaon to the extent of an area of 3700 sq. Mtrs. (approximately) from Reservations / Designation for "Waghur Canal" and to the extent of area of 2500 square meters approximately from the reservatikon for the purpose of 18 meter Road, adjacent to Waghur Canal.

(C) By appropriate writ, order or direction, the respondents be directed to issue appropriate notification, notifying the release of land bearing Survey No.327/2/6 of Jalgaon City, Taluka & Dist. Jalgaon situated within the Municipal Limits of Jalgaon to the extent of an area of 3700 Sq. Mtrs. (approximately) from Reservations/Designation for "Waghur Canal" and to the extent of area of 2500 square meters approximately from the

reservation for the purpose of 18 meter Road, adjacent to Waghur Canal and respondents be directed to grant permission for development in respect of the property affected by such reservations.

2. It is submitted in the petition that the petitioners are owners of property bearing Survey No. 327/2/6 totally admeasuring 93 Are situated at Shivar Jalgaon City, Taluka and District Jalgaon. Portion of approximately 3700 sq. mtrs. Shown to be affected by Waghur Canal and approximately 2500 sq. mtrs. Portion shown to be affected by 18.00 meter road, connected with the canal is the subject matter of the present petition.

3. Mr. Bhandari, learned Counsel appearing for the petitioners by inviting our attention to the order passed by the Division Bench of this Court dated 2nd July, 2019 in Writ Petition No.14093 of 2017 submitted that except area affected in Writ Petition No.14093 of 2017, rest of

the facts are identical in the present petition and it can safely stated that the petitioners are identically circumstanced with the petitioners in Writ Petition No.14093 of 2017.

4. Perusal of the order dated 2nd July, 2019 passed in Writ Petition No.14093 of 2017 shows that the petitioners have forwarded purchase notice and in response to the notice, the petitioners when informed to establish correspondence with the authority of Waghur Dam Project, Jalgaon and in turn, Executive Engineer, Waghur Dam Project, Jalgaon informing the petitioners that the lands were not required for any purpose for canal or for the road as a service road for canal and in view of the decision of this Court in Writ Petition No. 3021 of 2015 (Pramila Hiranman Dhake vs The State of Maharashtra and others) decided with other connected matter on 31st August, 2015 as well as oftenly quoted judgment of the Hon'ble the Apex Court in the matter of

Girnar Traders vs State of Maharashtra, reported in **2011 (3) S.C.C. 1**, Writ Petition No.14093 of 2017 was allowed in terms of prayer clauses (B) and (C). The Division Bench of this Court further directed the respondents to issue notification under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 within stipulated period of six months from the date of the order.

5. In the present petition also, the facts are identical and in the affidavit in reply filed on behalf of respondent No.7 Mr. Vinod s/o Prakash Patil, Assistant Executive Engineer, Grade-I, Waghur Dam Sub Division No.3, a statement is made at paragraph-12 that the land falling under City Survey No. 327/2/6 Jalgaon Shivar is not presently proposed to be acquired for canals of Waghur River Project.

6. We see no reason to take a different view than the view adopted by the Division Bench of this Court in

the order dated 2nd July, 2019 in Writ Petition No. 14093 of 2017. Resultantly, writ petition is allowed in terms of prayer clauses (B) and (C). The notification under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 be issued within six months from today.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]