

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

WRIT PETITION NO.10838 OF 2017

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| <p>1. Sandeep Madhavrao Dhume,
Age. 63 years, Occ. Agriculturist & Business,
R/o. # 301, Daisylea, Daisylea Lane,
17/A, Bhausahab Hire Marg,
Malbar Hill, Mumbai - 400 006.</p> <p>2. Milind Madhavrao Dhume,
Age. 58 years, Occ. Agriculturist & Business,
R/o. # 151, Shree Poornanand Saraswati CHSL.,
C.S. #62, Banganga, Dongarsi Road,
Walkeshwar, Mumbai - 400 006.</p> <p>3. Pankaj Madhavrao Dhume,
Age. 55 years, Occ. Agriculturist & Business,
R/o.# 152, Shree Poornanand Saraswati CHSL.,
C.S. #62, Banganga, Dongarsi Road,
Walkeshwar, Mumbai - 400 006.</p> <p>4. Kalpana Taranath Kamat,
Age. 70 years, Occ. Agriculturist & Business,
R/o. Rath Mansion, Flat # 1, Dr. V.J. Rath Marg,
Shivaji Park, Dadar, Mumbai - 400 028.</p> <p>5. Rituja Taranath Kamat,
Age. 47 years, Occ. Agriculturist & Business,
R/o. Rath Mansion, Flat # 1, Dr. V.J. Rath Marg,
Shivaji Park, Dadar, Mumbai - 400 028.</p> <p>6. Aaradhana Taranath Kamat,
Age. 44 years, Occ. Agriculturist & Business,
R/o. Rath Mansion, Flat # 1, Dr. V.J. Rath Marg,
Shivaji Park, Dadar, Mumbai - 400 028.</p> <p>7. Satish Balbhimrao AKA Gulabrao Deshmukh,
Age. 72 years, Occ. Agriculturist & Business,
R/o. Gajendra Bunglow, # 118, Shreya Nagar,
Near Zambad Estate, Aurangabad - 431 005.</p> | <p>.. Petitioners</p> |
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8. Rajeshwar Satishrao Deshmukh,
Age. 48 years, Occ. Advocate,
R/o. Gajendra Bunglow, # 118, Shreya Nagar,
Near Zambad Estate, Aurangabad - 431 005.

Versus

1. The State of Maharashtra,
Through the Urban Development Department,
Mantralaya, Mumbai - 400 032.
Through its Secretary, .. Respondents
2. The Director,
Town Planning and Valuation Department,
Maharashtra State, Central Building Complex,
Pune - 411 001.
3. The Aurangabad Municipal Corporation,
Aurangabad, through its Commissioner,
Aurangabad - 431 001.
4. The Assistant Director, Town Planning,
The Aurangabad Municipal Corporation,
Aurangabad - 431 001.

Mr. D.P. Palodkar, Advocate for the petitioners.
Mr. G.O. Wattamwar, Advocate for respondent/State.
Mr. A.P. Bhandari, Advocate for respondent No.3.

**CORAM : SUNIL P.DESHMUKH &
S.M.GAVHANE,JJ.**
DATED : 24.06.2019

ORAL JUDGMENT [PER : S.M.GAVHANE,J.] :-

1. Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally with consent.
2. By this petition under Articles 226 and 300-A of the Constitution of

India, the petitioners have claimed following reliefs in terms of prayer clauses (A) and (B) :-

“A) The Hon'ble High Court may be pleased to issue an appropriate writ, order or direction in the nature of writ, thereby declaring that the petitioners' properties under Aurangabad City Survey No.9233/2 admeasuring 9293.70 Square Meters (1,00,000 Square Feet) and also under Aurangabad City Survey No.9233/4 admeasuring 2463.10 Square Meters (28,440 Square Feet) situated at Jinsi Maidan, Juna Mondha, Aurangabad City, are free from encumbrance of reservation and designation of the said Revised DP of 18/03/1995 which was modified on 17/08/2002 reserved at Site No.33, 34 and 35 as Maharashtra State Electricity Board, High School and Play Ground respectively.

B) The Hon'ble High Court further be pleased to direct the Respondent Nos.1 and 2 to notify and publish in the official gazette the lapsing of reservation and the designation of site No.33,34 and 35 of the petitioners' properties i.e. under Aurangabad City Survey No.9233/2 admeasuring 9293.70 Square Meters (1,00,000 Square Feet) and under Aurangabad City Survey No.9233/4 admeasuring 2463.10 Square Meters (28,440 Square Feet) situated at Jinsi Maidan, Juna Mondha, Aurangabad City forthwith.”

3. According to the petitioners, City Survey No.9233 (part) was purchased by the petitioners from the erstwhile Market Committee, Aurangabad, by registered sale-deed dated 22.08.1990 and since then the petitioners are in peaceful and vacant possession of the said property as

owners. Said property was subsequently sub-divided by the City Survey Office under City Survey No. 9233/1, 9233/2, 9233/3 and 9233/4. Petitioner Nos.1 to 6 are co-owners of the property City Survey No.9233/2 and petitioner Nos.1 to 8 are co-owners of the property City Survey no.9233/4. City Survey No.9233/2 is admeasuring 9233.70 sq. mtrs. (1,00,000 sq.ft) and City Survey No. 9233/4 is admeasuring 2463.10 sq. mtr. (28,440 sq. ft.). The petitioners contend that in the revised development plan, which came into effect from 18.03.1995, the petitioners' properties i.e. Survey No.9233/2 and 9233/4 were shown under the reservation for High School and Play Ground reserved as site Nos.34 and 35 respectively. Said revised Development Plan was modified and modification was sanctioned on 17.08.2002 under the provisions of Section 31 of the Maharashtra Regional and Town Planning Act (hereinafter referred to as "MRTP Act"), whereby part of the petitioners' properties was re-designated as reserved for Maharashtra State Electricity Board as site No.33. Since more than 10 years, petitioners' property is under reservation. Therefore, on 20.05.2014, petitioners' issued notice to respondent Nos.3 and 4 under the provisions of section 127 of the MRTP Act and called upon them to take steps to initiate proceedings and acquire the same, which was duly served on said respondents by hand delivery on 21.05.2014. Inadvertently, period was mentioned as 30 days in the said notice. Therefore, the petitioners again by corrigendum dated 02.12.2014 informed respondent Nos. 3 and 4 to read said 30 days period as one year. Said corrigendum was also served on said respondents. However, respondent Nos.3 and 4 have not taken steps after service of notice and were

not interested in acquiring the petitioners' property. Therefore, reservation on the petitioners' property is deemed to have been lapsed and said property is free from encumbrance of reservation. Therefore, this petition for directions as stated earlier.

4. Learned Advocate for the petitioners made submissions in the light of afore-mentioned contentions of the petitioners. Relying upon decision of Division Bench of this Court dated 11.04.2019 in Writ Petition No.11452 of 2018, he submitted that the petitioners would take proper recourse in respect of site Nos.33, reserved for the Maharashtra State Electricity Board, site No.34 reserved for High School is deemed to be de-reserved and as regards site No.35 for Play Ground, period of one year may be granted to the respondent authorities to acquire the same. In the said decision, it was observed in paragraph Nos.10 and 11 as under :-

“10. The reservation site No.145 for the play ground stands lapsed. However, the petitioner shall not perform any activity on the said land for the period of one year. The Municipal Corporation is entitled to acquire the said land under the provisions of the statute within this period. If the Municipal Corporation fails to acquire the land within a period of one year, then the said land would be available to the petitioner for use in the same manner as the use of the adjacent land is permitted.

11. The reservation of primary school is concerned, admittedly, no steps for acquisition has been taken within a stipulated period.

In view of that, reservation for the primary school i.e. reservation site No.144 stands lapsed. The petitioner is entitled to use the said available in the same manner as the use of the adjacent land is permitted.”

. Learned Counsel has also referred to decision of this Court at Principal Seat in the case of Satish Prakash Rohra & Anr. Vs. Municipal Corporation of Greater Mumbai, 2018 SCC OnLine Bom 2608.

5. Mr. Bhandari, learned Advocate for respondent Nos.3 and 4, referring the affidavit-in-reply submitted on behalf of said respondents submitted that there is no dispute that reservation of site No.33 is for the Maharashtra State Electricity Board, reservation of site No.34 is for High School and reservation of Site No.35 is for Play Ground affecting property bearing City Survey No.9233 and that the petitioners purchased the said property. It is submitted that notice issued by the petitioners under section 127 of the MRTP Act is not as per the said provisions and documents establishing interest of the petitioners in the property were not accompanied with the said notice. For the purpose of Site No.33, which is earmarked for MSEB sub-station, notice ought to have been served on the appropriate authority. However, no such notice appears to have been served. Further-more, said appropriate authority is not party to the present petition. Therefore, present writ petition in respect of site No.33 is not maintainable. It is submitted that these petitioners are not entitled to declaration as sought in the petition.

6. We have also heard Mr. Wattamwar, learned AGP for respondent Nos. 1 and 2.

7. There is no dispute that the petitioners purchased property Survey No.9233. It was sub-divided in Survey Nos. 9233/1, 9233/2, 9233/3 and 9233/4. Ownership of petitioner Nos.1 to 6 to City Survey No.9233/2 and ownership of petitioner Nos. 1 to 8 to City Survey No. 9233/4 is not in dispute. So also, it is undisputed that as per revised plan, which came into effect from 18.03.1995, the petitioners' above-said property was reserved for High School and Play Ground as per site No.34 and 35 respectively. Subsequently, said revised development plan was modified and sanctioned on 17.08.2002 and as per modified revised development plan, site No.33 from the property of the petitioners was reserved for the Maharashtra State Electricity Board.

8. There is no dispute that the petitioners served notice dated 20.05.2014 (Exh."F") on respondent Nos.2 and 3 i.e. Director, Town Planning and Aurangabad Municipal Corporation and the said respondents received said notice on 21.05.2014. By the said notice through advocate, said respondents were called upon to take steps to acquire the property or to initiate the proceedings for purchase of the same at market rate and on failure to do so, it was stated that the said property shall be deemed to be de-reserved and be deemed to be free from any reservation, quoting section 127 of the MRTP Act in the said notice and only 30 days period was given in the said notice, however,

subsequently corrigendum to the notice referring to one year had been issued. In-fact, this notice was given under section 127 of the MRTP Act, prior to amendment in the said section raising 12 months period to 24 months by amendment. However, as there had been no controversy raised over legality of composite notice and the fact that after receipt of notice, petition was filed on 18.08.2017, nearly after three years, it can be said that sufficient period was given to the respondent – authorities. So also even after modification in revised development plan, which modification was sanctioned on 17.08.2002, for a period of more than 10 years, the respondent authorities have not acquired the property of the petitioners. Therefore, reservation of High School as per site No.34 stands lapsed. As regards, reservation of Play Ground as per site No. 35, one year time is required to be given to the respondent – authorities, particularly Municipal Corporation (Respondent No.3) to acquire the land in the light of decision of the Division Bench dated 11.04.2019.

9. Admittedly, site No.33 was reserved for the Maharashtra State Electricity Board. Said authority is not made party to the petition. So also, notice under section 127 of the MRTP Act is not served on the authority of the Maharashtra State Electricity Board. Therefore, the petition as regards relief in respect of Site No.33 is not maintainable and is liable to be dismissed, leaving it open to the petitioner to take proper recourse in respect of said reservation.

10. In view of above, we pass following order :-

(A) Writ petition is dismissed in respect of reservation of Site No.33, leaving it open to the petitioners to take proper recourse in respect of said reservation.

(B) Reservation of site No.34 for High School, stands lapsed by virtue of operation of section 127 of the MRTP Act and the subject land shall become available to the petitioners-owners for the purpose of development as otherwise permissible in the case of adjacent land under relevant sanctioned development plan.

(C) The State Government shall forthwith issue a notification contemplated under sub-section (2) of section 127 of the MRTP Act, in respect of site No.34.

(D) In respect of reservation site No. 35, we grant time of one year from the date of receipt of writ of this order to the respondents to initiate and complete the proceedings for compulsory acquisition of the subject land under reservation site No.35, in accordance with the provisions of the new Land Acquisition Act. Therefore, for a period of one year as above, notwithstanding the directions issued under clause (E) below, the petitioners or the owners of the subject land shall not carry out any development on the subject land or shall not create any third party rights therein and shall not part with possession thereof.

(E) On failure to comply with clause (D) above, reservation of site Nos.35 for play ground shall stand lapsed by virtue of operation of section 127 of the MRTP Act and that the subject land shall become available to the owner thereof for the purpose of development as otherwise permissible in the case of adjacent land

under the relevant sanctioned Development Plan.

(F) On failure of the respondents to complete acquisition and to pay compensation to the person interested within a period of one year as above, it will be open for the owners to deal with the subject land i.e. Site Nos.35 as held in clause (D) above.

(G) On failure of the State Government to complete the acquisition and to pay compensation within a period of one year as above, the State Government shall forthwith issue a notification contemplated under sub-section (2) of section 127 of the MRTP Act.

11. Writ petition is disposed of. Rule is accordingly made absolute on above terms.

[S.M.GAVHANE,J.]

[SUNIL P.DESHMUKH,J.]