

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

128 WRIT PETITION NO.12048 OF 2019

1. Santosh Chotu Mali
Age : 43 years, occ : agri.,
2. Dinesh Dattu Mali
Age : 36 years, occ: agri.,

Both r/o Khandeshi Galli,
Taloda, Dist. Nandurbar.

Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Urban Development Department,
Government of Maharashtra,
Mantralaya, Mumbai - 32.
2. The Director of Town Planning
and Valuation Dept.
Maharashtra State, Pune.
3. The Assistant Director,
Town Planning Department,
Nandurbar, Taluka and
District Nandurbar.
4. The Collector,
District Nandurbar.
5. The Taloda Municipal Council,
Taloda,
Through its Chief Officer.
Respondents

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Mr. S.U. Choudhari, Advocate for the petitioners.
Mr. S.P. Tiwari, A.G.P. for respondent Nos.1 to 4.
Mr. G.D. Jain, Advocate for respondent No.5.

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CORAM : **S.V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.**

DATE : 3 December 2019.

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

1. Rule. Rule made returnable forthwith. Heard the learned counsel for appearing parties finally, with consent.

2. Mr. Chaudhary, learned counsel for the petitioners submits that on or about 01-04-1966 development plan of respondent No. 5 – Taloda Municipal Council, Taloda (for short "Council") was sanctioned. Said development plan was revised with effect from 01-08-1986. In the revised development plan land bearing Survey No. 164/3A/1 (New Survey No. 242/3A/3) and Survey No.164/3C/1 (New Survey No. 242/3C/1) situated at Taloda belonging to the petitioners was reserved for garden as site No. 31. Learned counsel further submits that no steps were taken by the respondents – authorities either for declaration or acquisition. On 03-04-2014 the petitioners had issued purchase notice to respondent No. 5 - Council under section

127 of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act") and the same was served upon it on the same day.

3. According to learned counsel for petitioners, respondents have not taken any steps for acquisition, they have not issued any declaration under section 126 of the MRTP Act read with section 6 of the Land Acquisition Act, 1894 (for short "LA Act") for a period of one year, as such, reservation stands lapsed. To buttress his submission, learned counsel for petitioners relies on the judgment of the Apex Court in the case of *Girnar Traders Vs. State of Maharashtra and others reported in 2011(3) SCC 1*.

4. Mr. Jain, learned counsel for respondent No. 5 – Council submits that after receipt of purchase notice, the Council has sought guidance from the authorities. Learned counsel admits that as yet declaration under section 126 of the MRTP Act read with section 6 of the LA Act has not been issued.

5. Mr. Patil, learned Assistant Government Pleader for respondent submits that proposal has not been submitted by respondent – Council. If proposal is submitted by the respondent – Council, same would be decided as expeditiously as possible. As per amendment to section 127

of the MRTP Act, notice period is two years. As such, the petitioners cannot claim benefit of the same.

6. We have considered the submissions canvassed by the learned counsel for respective parties. Factual matrix of the matter as narrated on behalf of the parties is not disputed. The petitioners have issued purchase notice on 03-04-2014 and the same has been received by respondent – Council on the same day. Thereafter, till date declaration under section 126 of the MRTP Act read with section 6 of the LA Act has not yet been issued, as admitted by respondent No. 5 – Council. The provisions of section 127 of the MRTP Act is fetters on the power of eminent domain. Amendment to the section 127 of the MRTP Act, prescribing period of two years has come into effect from 29-08-2015. The period of one year after issuance of purchase notice has lapsed on 03-04-2015 i.e. prior to introduction of the amendment. Lapsing of reservation on expiry of stipulated period would be axiomatic. It is not disputed that till date declaration under section 126 of the MRTP Act, has yet been issued. Even considering the amendment to section 127 of the MRTP Act, i.e. period is extended to two years, said two years have also lapsed.

7. Considering the above, writ petition succeeds. Land bearing Survey No. 164/3A/1 (New Survey No. 242/3A/

3) and Survey No. 164/3C/1 (New Survey No. 242/3C/1) situated at Taloda belonging to the petitioners reserved for garden as site No. 31 in the revised development plan of the year 1986 stands released from the reservation. The parties may take consequential steps pursuant to dereservation of said land.

8. Writ petition is allowed. Rule is made absolute in above terms. No costs.

(AVINASH G. GHAROTE, J.)
GANGAPURWALA, J.)

(S.V.

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