

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

WRIT PETITION NO.14093 OF 2017

- 1 Shri. Ratanlal Chunnilal Bafna,
Age 80 years, Occu. Business & Agriculture,
R/o. Nayantara, Subhash Chowk, Jalgaon
- 2 Shri. Pravin Shivraj Jain,
Age 51 years, Occu. Business & Agriculture,
R/o. Baliram Peth, Jalgaon, District Jalgaon
- 3 Shri. Shirish Dalichand Oswal (HUF),
Age 49 years, Occu. Business & Agriculture,
R/o : 5, Housing Society, Jalgaon.
Petitioners No. 1 to 3 through their
Power of Attorney Holder i.e. Petitioner No. 4
- 4 Shri. Suresh Bansilal Jain,
Age 53 Years, Occu. Business & Agriculture,
R/o. 14, Vardhaman Nagar, Jalgaon .. 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

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Mr. Anand P. Bhandari, Advocate for the petitioners.
Smt. V. N. Patil Jadhav, AGP for the Respondents No. 1 to 4.
Mr. P. R. Patil, Advocate for the Respondent No. 5.
Mr. S. D. Dhongade, Advocate for the Respondent No. 7.

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

DATED : 02nd JULY, 2019.

ORAL JUDGMENT :-**(PER : T. V. NALAWADE, J.)**

Heard. Rule. Rule made returnable forthwith. By the consent of both the parties, Writ Petition is taken up for final disposal, at admission stage.

2. The proceeding is filed for the relief of giving direction to respondents to release land bearing Survey No. 325/1, of Jalgaon City, Taluka and District Jalgaon, situated within the Municipal limits of Jalgaon to the extent of an area of 8600 Square Meters (approximately) from Reservations / Designation for "Waghur Canal" and to the extent of an area of 4000 Square Meters, approximately from the reservation for the Proposal of 18 Meter road adjacent to Waghur Canal.

3. The final development plan was published on 11-02-2002 and the notice was issued on 28-02-2017. On the same day, the authority received notice. The correspondence shows that the Corporation has made correspondence with the present petitioner to inform that he needs to make correspondence with Executive Engineer, Waghur Dam Project, Jalgaon, under Section 127 of the Maharashtra Regional and Town Planning Act, 1966. There is one more correspondence dated 01-07-2017, made by the Deputy Executive Engineer, Waghur Dam Project, Jalgaon, showing that the plan of having the canal through Survey No. 327/2/6 and 325/1 was cancelled and these lands were not required for any purpose for canal or for the road as a service road for canal. Thus, specifically for present land, it was informed that there was no intention to acquire the site for aforesaid canal as site was changed.

4. Learned counsel for the petitioners has placed his reliance on the observations in the Order of this Court in Writ Petition No. 3021 of 2015 (Pramila Hiranman Dhake Versus The State of Maharashtra and others) decided with other connected matter on 31-08-2015. In such circumstances, this Court granted relief. Observations are at para No. 4 and 5, they are as under :-

“4. The petitioners contend that, the properties belonging to them which are subject matter of these petitions, have been incorporated in the final development plan and reserved for the purpose for Waghur canal project. The reservation has been prescribed under the final development plan at the instance of respondent No.4 Irrigation Department. The final development plan is enforced from the date 11.2.2002. The petitioners state that the aforesaid land is not required by the Irrigation department for development and as such no fruitful purpose would be served in keeping the reservation in respect of the properties belonging to the petitioners under the final development plan is prepared for Jalgaon Municipal Corporation. Petitioners place reliance on the communication issued by the Irrigation Department on 26.2.2014 informing the Assistant Director of Town Planning that, the land survey No.41 is not required for the purpose of canal by the irrigation department. Apart from this, an affidavit in reply has been presented on behalf of the irrigation department, which is an appropriate authority, stating therein that, the lands belonging to the petitioners are not presently proposed to be acquired for Waghur canal project. The petitioner served a notice upon the planning authority as well as the appropriate authority as contemplated under section 127 of The Maharashtra Regional & Town Planning Act, 1966 (the MRTP Act) on 8.6.2014 informing the appropriate authority to acquire the property within a period prescribed under the provisions or else the reservation shall be deemed to have been lapsed.

The appropriate authority, after receipt of the said notice did not take any steps for acquisition of property and as such, according to the petitioners, the reservation, allotment or designation in respect of property under the Final Development Plan prepared for Jalgaon city, shall be deemed to have lapsed. There is no denial in respect of receipt of notice by the appropriate authority. There is no dual opinion in respect of the fact that the respondent irrigation department is an appropriate authority within the meaning of section 2(3) of the MRTP Act and as such, steps in respect of acquisition of property are required to be taken by the said Authority. In the instant matters, in spite of issuance of notice under section 127 of the Act, no steps are taken for a period of one year from the date of receipt of notice and as such, reservation in respect of the property belonging to the petitioners which is a subject matter of the instant petitions, shall be deemed to have lapsed. The commencement of the proceedings in respect of acquisition of property within the contemplation of section 126 of the Act is the issuance of section 6 Notification under the provisions of Land Acquisition Act, as has been held in the matter of ***Girnar Traders (3) V/s State of Maharashtra*** (2011 3 SCC page 1).

5. In view of above, both the writ petitions deserve to be allowed and same are accordingly allowed. The reservation, allotment or designation in respect of lands belonging to the petitioners which are subject matter of the instant petitions, shall be deemed to have lapsed. The aforesaid lands shall be available to the owners for the purpose of development or otherwise, permissible in case of adjacent lands under the relevant plan. The respondent State is directed to issue a Notification as contemplated under sub-section (2) of Section 127 of the Act in the Government gazette within six months from today."

5. In view of aforesaid circumstances, this Court holds that directions needs to be given as prayed. Hence, the order :-

ORDER

1. The Writ Petition is allowed.
2. The relief is granted in terms of prayer clause 'B' and 'C'.
3. Rule is made absolute in those terms.
4. Notification under Section 127 of the Maharashtra Regional and Town Planning Act, 1966, be issued within six months from today.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

rrd.