

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

WRIT PETITION NO.13522 OF 2018

M/s Sarveshwar Associates
Through its Partner
Pravin Vasudeo Khadke,
Age : 53 years, Occu. Business,
Office at Shop No.1, Plot No.470/8,
Bhaskar Market, M.J. College Road,
Jalgaon.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Director of Town Planning,
Maharashtra State, Pune.
3. The Collector, Jalgaon.
4. The Municipal Commissioner,
Jalgaon Municipal Corporation,
Jalgaon.
5. The Assistant Director of Town Planning,
B.J.Market, Jalgaon.

... **Respondents**

...

Mr. A.B.Kale, Advocate for Petitioner.
Mr. G.O.Wattamwar, APP for Respondents–State
Mr. S.B.Munde h/f Mr. V.D.Gunale, Advocate for Respondent
No.5.

...

**CORAM : S.V.GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 24.06.2019.

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

Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.

2. Mr. Kale, the learned counsel for the petitioner submits that the land of the petitioner bearing survey No.115/2 + 3/1 admeasuring 2 H. 15 R. to the extent of 4651 Sq. Mtrs. is under reservation for proposed 18 Mtrs. Development Plan Road in the development plan of the respondent-corporation published on 11.02.2002. The learned counsel submits that as no steps of acquisition were taken within a period of ten years, the petitioner issued a purchase notice under Section 127 of the M.R.T.P. Act on 13.09.2016. According to the learned counsel, even after lapse of stipulated period, no notification under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Section 126 of the M.R.T.P. Act is issued. The lands stand de-reserved.

3. The learned counsel for the corporation submits that the corporation is ready to give T.D.R. to the petitioner. The corporation has also submitted proposal for acquisition of

the said land to the Collector on 04.08.2017. The general body has also resolved by resolution No.85 dated 21.02.2019 that due to precarious financial condition of the Corporation, it would be proper to extend the benefits to T.D.R. to the petitioner in lieu of payment of compensation. However, the petitioner has replied that T.D.R. is not acceptable to him.

4. We have considered the submissions. It is not disputed by the respondent – Corporation that the petitioner has issued notice dated 13.09.2016 under Section 127 of the M.R.T.P. Act and till date no notification under Section 19 of the Right to Fair Compensation Act read with Section 126 of the M.R.T.P. Act has been issued. Section 127 of the M.R.T.P. Act is a fetter on the power of eminent domain. By legal fiction the reservation stands lapsed. After a period of two years of the service of notice under Section 127, the Corporation not taking steps for acquisition that is issuance of declaration under Section 126 of the M.R.T.P. Act read with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, entails lapsing of reservation.

5. It appears that the land is reserved for development plan road. The petitioner has put forth the ground of

precarious financial condition.

6. Considering all the aforesaid aspects of the matter, we pass the following order :

ORDER

1. The land Survey No.115/2 + 3/1 at Jalgaon to the extent of 4651 Sq.mtrs. that is the area under reservation for 18 meters road, stand released from reservation. However, the petitioner shall not use the said land for any purpose for the period of one year. Within a period of one year the respondent – corporation may acquire the property by following due process of law.

2. If within a period of one year, the respondent-corporation does not acquire the property, then the petitioner will be entitled to use the said property as the use of adjacent land.

7. Rule accordingly made absolute in the above terms.
No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

...

vmk/-