

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

77 WRIT PETITION NO.13433 OF 2018

CHORIYA BUILDERS AND ASSOCIATES THROUGH ITS PARTNER
DILIP DEVICHAND JAIN

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners: Mr. G K Mundhada
AGP for Respondents State: Mr S. B. Pulkundwar
Advocate for Respondent No.2 : Mr. Amol N. Kakade

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 15th April, 2019

ORAL JUDGEMENT:

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

2. Learned counsel for the petitioner submits that land of the petitioner bearing Survey No.510 admeasuring 0.17 Hectare is reserved for shopping Centre in the development plan that came into force with effect from 09.12.1987 as reservation No.46. The learned counsel submits that the petitioner issued purchase notice under section 127 of the Maharashtra Regional and Town Planning Act, 1966 and the same is received by the respondent Municipal Corporation on

05.11.2012. According to the learned counsel, no steps for acquisition had been taken by the respondent within statutory period of 12 months and therefore the reservation stands lapsed.

3. Mr. Kakade, the learned Advocate for the respondent Municipal Council submits that financial position of the respondent Municipal Council is weak, for want of amount required for issuance of Notification under section 6 of the Land Acquisition Act read with section 126 of the MRTTP Act, the notification could not be published. The respondent Municipal Council has applied to the State government for taking necessary steps in that regard.

4. Section 127 of M.R.T.P. Act is a fetter on the power of eminent domain. The fact that the land of the petitioner is reserved for shopping centre as per reservation site No. 46 in the year 1987 is not disputed. It is also not disputed that respondent Municipal council is served with the notice under section 127 of the MRTTP Act on 05.11.2012 and for a period of one year and till date, no steps for

acquisition as required under section 126 of the MRTP Act read with section 19 of the Right to Fair Compensation Act, 2013 is taken. In view of Judgment of the Apex Court in the case of Girnar Traders Vs. State of Maharashtra reported in (2007) 7 Supreme Court Cases 555, the reservation stands lapsed.

5. In the light of above, Rule is made absolute in terms of prayer Clause (A).

6. Writ petition is accordingly disposed of. No costs.

(A. M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

JPC