

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

14 WRIT PETITION NO.7793 OF 2019

RAJU SARJERAO GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

WITH WP/7228/2019

PRASHANT SARJERAO GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

WITH WP/7288/2019

JEETENDRA SARJERAO GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr.Devdatt P. Palodkar
AGP for Respondent Nos.1 to 4 : Smt.M.A.Deshpande
Advocate for Respondent No.7 : Mr.Shambhuraje V.
Deshmukh

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**CORAM : S.V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATE : 12/03/2020.

PER COURT :-

1. The land of the petitioners is affected by

development plan. The petitioner issued notice under Section 127 of M.R.T.P. Act on or about 23rd March, 2017. The contention of the petitioner is that respondent has not taken steps for acquisition within stipulated period of two years. The reservation stands lapsed.

2. The total land of the petitioners is 02 Hectors 43 Ares. According to the petitioners 70 Ares land is not under reservation of garden. 41 Ares land is under green belt alongside nala. The land apart from 01 Hector 30 Ares is under compulsory acquisition. The land under compulsory acquisition would not be within the purview of Section 126, for which the notification under Section 126 is already issued. In view of that, same would not be considered for lapsing of reservation under Section 127.

3. The present petitions would be restricted to the claim of the petitioners for lapsing of reservation of an area under the garden, green belt alongside nala. So far as land under compulsory acquisition is concerned, the petitioners/parties may take appropriate

steps as may be permissible under the law.

4. It is not disputed that in respect of land reserved for garden and 20 meter green belt alongside nala, the steps for acquisition has not been initiated with the period stipulated under Section 127. In view of the judgment of the Apex Court in a case of *Girnar Traders Vs. State of Maharashtra and Ors.*, reported in (2007)7 SCC 555 the reservation stands lapsed.

5. Though the reservation for garden and 20 Meter green belt alongside nala would stand lapsed. However, considering the fact that the same is reserved for garden and green belt that are the lungs of the city, we restrain the petitioners from using the said land for one year so as to enable the respondent to acquire the same.

6. The Apex Court in a case of *Municipal Corporation of Greater Bombay Vs. Hiranman Sitaram Deorukhar in Civil Appeal No.11258/2017 (Arising out of SLP© No.30254 of 2014)* decided on August 24, 2017, has observed as under:-

"8. The importance of open spaces for parks and play grounds is of universal recognition, and reservation for such places in development scheme is a legitimate exercise of statutory power, with the rationale of protection of the environment and of reducing ill effects of urbanization. It is in the public interest to avoid unnecessary conversion of open spaces land to strictly urban uses, for gardens provide fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. Once such a scheme had been prepared in accordance with the provisions of the MRTP Act, by inaction legislative intent could not be permitted to become a statutory mockery. Government authorities and officers were bound to preserve it and to take all steps envisaged for protection."

7. The balance has to be struck between individual right and the rights of the public at large. On one hand the provision of Section 127 of the M.R.T.P. Act is fetter on the power of eminent domain, on the other the reservation for garden, play ground,

green belt being lungs of the city, the Planning Authority has to take all steps to acquire the same.

8. Considering the aforesaid aspects, we pass the following order:-

ORDER

A] The land reserved from Gat No.112 at Tisgaon owned by the petitioners for garden and 20 Meter green belt alongside nala stands lapsed from reservation.

B] The petitioner shall not use these lands for any purpose for a period of one year. Within a period of one year, the respondent shall take steps to acquire said property.

C] If within a period of one year, the respondents fail to take steps to acquire the property then the petitioner would be entitled to use the said land as the adjacent land is permitted to be used. However, if the land is in the restricted zone then the

stipulation applicable to the land in restricted zone shall apply. Thereafter the Government shall issue necessary notification about release of aforesaid land from reservation.

D] Writ petition is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE