

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

WRIT PETITION NO. 8111 OF 2019

Sayyed Sajed Ali Sayyad Afsarali and another .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Mr. P. P. More, Advocate for the Petitioners.

Mrs. V. S. Chaudhary, AGP for Respondent Nos. 1 to 4.

Mr. Sadashiv S. Shete, Advocate for Respondent No. 5.

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

DATED : 11th MARCH, 2020.

PER COURT:-

. At the request of the learned counsel for the petitioners leave to amend the prayer clause is granted.

2. The land of the petitioners is reserved for garden and playground as Site No. 18 under the development plan of respondent No. 5 / Municipal Council published on 29.06.2006. The area under reservation is 70 R.

3. The petitioners issued notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'Act of 1966') on 28.09.2016. It is served upon the Municipal Council on

05.10.2016. The contention of the petitioners is that within a period of two years from the date of issuance of the notice under Section 127 of the Act of 1966, the steps for acquisition are not taken. As such, the reservation stands lapsed. The learned counsel for the petitioners relies on the judgment of the Apex Court in a case of *Girnar Traders Vs. State of Maharashtra* reported in *2007 (7) SCC 555*.

4. Mr. Shete, learned counsel for respondent No. 5 submits that the draft development plan under Section 31 of the Act was published on 07.06.2000. The petitioners have purchased the land on 21.10.2002. The petitioners could not have purchased the land after the draft development plan was published. The learned counsel further submits that as the land is reserved for garden and playground the reservation would not lapse. The Municipal Council is entitled to acquire the property. The learned counsel relies on the judgment of the Apex Court in a case of *Municipal Corporation of Greater Mumbai and others Vs. Hiranman Sitaram Deorukhar and others* reported in *(2019) 14 SCC 411*.

5. The aforesaid factual matrix is not disputed. The petitioners have purchased the property prior to the sanctioned development plan dated 29.06.2006. There was no embargo for the petitioners to purchase the said property after the development plan is sanctioned. No steps for

acquisition were initiated by the respondent No. 5. Eventually, notice under Section 127 of the Act of 1966 is issued by the petitioners and is served upon the Municipal Council / planning authority on 05.10.2016. For a period of two years from the service of notice, the steps for acquisition are not initiated by the respondents.

6. Section 127 of the Act of 1966 is a fetter on the power of eminent domain. The reservation stands lapsed.

7. The reservation of the land is for the purpose of garden and playground. The Apex Court in a case of *Municipal Corporation of Greater Mumbai and others Vs. Hiranman Sitaram Deorukhar and others (Supra)* has observed that the land reserved for playground and garden operates as lungs of the city. The planning authority should acquire the property.

8. The balance will have to be struck. The right to property though is not a fundamental right, it still continuous to be a constitutional right. Now-a-days it has been brought within the ambit of human right. Considering the above, we pass the following order.

9. The reservation Site no. 18 of the petitioners land survey no. 25/3 to the extent of 70 R stands lapsed. However, the petitioners shall not use the writ property for any purpose for a period of one year.

10. The respondent No. 5 / Municipal Council shall take steps to acquire the writ property within a period of one year. If within a period of one year the respondent No. 5 / Municipal Council does not acquire the property, then the petitioners are entitled to use the property as the user of adjacent land is permitted. The State shall thereafter issue notification releasing the land from reservation.

11. In the light of the above, writ petition is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.