

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10474 OF 2019

1. Sattar s/o Saheblal Shaikh,
Age: 51 years, Occu: Business,
R/o Niyamat complex, Osmanpura,
Latur, Tq. & Dist. Latur.
2. Ansar Ahmed s/o Mohd. Husain Shaikh,
Age: 50 years, Occu: Business,
R/o Riyaz Colony, Latur,
Tq. & Dist. Latur. ...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Assistant Director of Town Planning,
Municipal Corporation, Latur,
Dist. Latur.
3. The Municipal Corporation,
Latur, Dist. Latur,
Through its Commissioner. ...RESPONDENTS

Mr Girish Awale, Advocate holding for
Mr D.Y. Nandedkar, Advocate for Petitioners
Mrs Geeta L. Deshpande, AGP for Respondent No. 1
Mr U.P. Giri, Advocate holding for
Mr M.S. Patil, Advocate for Respondent Nos. 2 and 3

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

DATE : 22ND JANUARY, 2020

ORAL JUDGMENT : (PER S.V. GANGAPURWALA, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties at admission stage.
2. Heard Mr Awale, the learned Counsel for the petitioners, Mr. Patil, the learned Counsel for respondent Nos. 2 and 3.
3. The petitioners issued notice under section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'M.R.T.P. Act') on 31.12.2014. In spite of service of notice, steps for acquisition are not initiated. According to the learned Counsel, reservation stands lapsed.
4. The learned Counsel for Respondent Nos. 2 and 3 submits that the land of the petitioners to the extent of 2 Hectar 99 R from Survey No. 6 and 7 is reserved for the purpose of cremation, garden and 30 feet Ring Road as site Nos. 127 and 128 in the development plan dated 2nd January, 2002.
5. The learned Counsel further submits that the proposal has been submitted for the monetary assistance by the Municipal Corporation. As and when the funds are received, the respondents would take steps to acquire the land. The learned Counsel submits that as the writ land is reserved for playground, the same cannot be released. The reliance is placed by the learned Counsel for the petitioners on the Judgment of the Apex Court in the case of ***Municipal Corporation, Greater Bombay***

Vs. Hiranman Sitaram reported in AIR 2017 SC (Supp) 423.

6. We have considered the submissions. The factual matrix is not disputed. The development plan of respondent No. 3 came into effect from 18th February, 2002. The writ land of the petitioners bearing Survey No. 6 and 7 to the extent of 2 Hectar and 99 R is reserved for playground, cremation and 33 feet Ring Road. It is also not in dispute that the petitioners have issued a notice under section 127 of the M.R.T.P. Act on 31.12.2014. The receipt of that notice is also not disputed by respondent No. 3. As per section 127 of the M.R.T.P. Act, if the steps for acquisition are not initiated within a period of one year (at the relevant time), the reservation stands lapsed. The steps for acquisition would include issuance of publication of declaration under section 126 of the M.R.T.P. Act read with section 19 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The reference can be had to the judgment of the Apex Court in the case of ***Girnar Traders Vs. State of Maharashtra reported in (2011) 3 SCC 1.***

7. However, as one of the purpose for the reservations of the land is playground, the Planning Authority/respondent No. 3 is required to take steps to preserve the said land for playground. The playground, garden are the lungs of the city. It is the duty of the Planning Authority to maintain the same. At the same time,

the petitioners also have right to enjoy the property as rightful owner. The right to property none-the-less is constitutional right. Now, it has been brought within contour of the human rights.

8. The Apex Court in the case of *Hiraman (supra)* has observed that the Planning Authority shall endeavour to acquire the land reserved for playground, garden.

9. The balance will have to be struck between the rights of the petitioners and the responsibility of the Planning Authority.

10. Considering the above, we pass the following order :-

(i) The reservation of the writ land at site No. 127 and 128 stands lapsed. However, the petitioners shall not use the land for the period of one year for any purpose. The same shall be maintained as it is.

(ii) The Municipal Corporation may take steps to acquire the land within a period of one year from today.

(iii) In case the Municipal Corporation does not acquire the land by issuing declaration under section 126 of the M.R.T.P. Act, read with section 19 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 or by private negotiation within a period of one year, then the petitioners will be entitled to use the land in the same manner as the adjacent land is permitted. Thereafter,

the Government shall issue notification as contemplated under section 126 (2) of the M.R.T.P. Act.

11. The Rule is made absolute in above terms with no order as to costs.

[SHRIKANT D. KULKARNI, J.] [S.V. GANGAPURWALA, J.]

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