

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1085 OF 2017

- 1) Hitendra Shankar Patil,
Age-42 years, Occu:Business & Agriculture,
- 2) Yamini W/o Ajit Borole,
Age-52 years, Occu:Business & Agriculture,

Both the partners of Omkar Developers,
Jalgaon, having their registered office at
Plot No.11, Vijay Colony,
Near Ganesh Colony Chowk,
Jalgaon, Tq. and Dist-Jalgaon.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032,
- 2) The Jalgaon City Municipal Corporation,
Through its Commissioner,
Jalgaon City Municipal Corporation,
Jalgaon,
- 3) The Collector, Jalgaon,
Dist-Jalgaon,
- 4) The Assistant Director of Town Planning,
Jalgaon.

...RESPONDENTS

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Mr.Pushkar S. Shendurnikar Advocate for Petitioners.
Mr.S.N. Kendre, A.G.P. for Respondents No.1, 3 and 4.
Mr.Sachin B. Munde Advocate h/f. Mr. V.D. Gunale Advocate
for Respondent No.2.

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**CORAM: SUNIL P. DESHMUKH AND
R.G. AVACHAT, JJ.**

DATE : 16th DECEMBER, 2020

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. This is yet another petition coming up seeking directions to the state government for declaration that reservation of the land of petitioner has lapsed, making it available to present petitioners for development, since reservation has lapsed for non-acquisition despite service of notice under section 127 of the Maharashtra Regional Town Planning Act, 1966.

3. In the present case, after hearing learned counsel for appearing parties, it appears that there is no particular dispute in respect of petitioners being owners of land bearing *gut* No. 275/1 and 275/3A situated at Pimparala Shivar, Jalgaon, admeasuring 589.62 sq. meters and 1603.75 sq. meters, and is shown to be under reservation for garden and 18 meter wide development plan road. The development plan had been published on 11th February 2002. The municipal corporation,

Jalgaon had not taken steps for acquisition of aforesaid reserved properties of petitioners for over twelve years, impelling petitioners to issue notice pursuant to section 127 of the Maharashtra Regional Town Planning Act, 1966, on 31st December, 2014. Despite service of notice, no further action had taken place at the end of respondents. After lapse of two years from 2014, it is case of petitioners that neither development over their property, according to adjoining properties, is being allowed nor there is publication in the government gazette, as required under section 127 (2) of M.R.T.P. Act, regarding reservation having been lapsed over petitioners' land.

4. Learned counsel for respondent - corporation purports to contend that reservation is for "garden" and "development plan road". In the circumstances, it would not be proper to declare that reservation having been lapsed, having regard the purpose underlying the reservation.

He further refers to that land in excess of reserved land of petitioners, which is in residential area, petitioners have submitted lay-out for said portion of land and same has been sanctioned.

He purports to submit that petitioners took advantage of 18 meter wide road and site of garden and have shown approach roads in the lay-out. In the circumstances, the matter will have to be viewed accordingly and he resists the prayers under present writ petition.

5. Though, learned counsel for respondent – corporation purports to contend as aforesaid, statutory consequences flowing from the events as stated hereinabove, while respondents have been duly served by petitioners by issuing notice pursuant to section 127 of the Maharashtra Regional Town Planning Act, can hardly be arrested.

6. Land of petitioners stand released under operation of statutory law from reservation and in the circumstances, it would be obligatory on concerned authorities, to publish the same in government gazette, as required under section 127(2) of the Maharashtra Regional Town Planning Act, 1966.

7. A recent decision of the division bench of this court in the case of *Mahendra Ajayraj Kothari and others vs. the State of Maharashtra and others*, of this very division bench, however, may hold sway to some extent, as the land has been reserved for garden, though

reservation of petitioners' land has been lapsed and petitioners would be entitled to use their land for the purpose of development, as permissible in the case of adjacent lands under the relevant plan, for a year the same will be required to be kept in abeyance letting opportunity to respondent - corporation to acquire subject land within a year.

8. In view of the above, the writ petition is allowed in terms of the following order:

- (a) Reservation of land to the extent of 589.62 square meters and 1603.75 square meters forming part of the land in *gut* No. 275/1 and 275/3A situated at Pimparala Shivar, Jalgaon, stands lapsed.
- (b) The petitioners, however, shall not perform any development activity on the said land for a period of one year.
- (c) The Corporation is entitled to acquire said land in accordance with law.
- (d) In case of failure on the part of the Municipal Corporation to acquire the said land within a period of one year from 01-01-2021, the land will be available to the petitioners for purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

(e) Respondent No. 1 shall notify the lapsing of reservation by an order published in the official gazette.

(f) Rule is made absolute accordingly.

(R.G. AVACHAT, J.)

[SUNIL P. DESHMUKH, J.]

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