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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10936 OF 2019

1. Balchand s/o Hirachand Jain,
Age 81 years, Occ. Business
2. Gulabchand s/o Ramchand Jain,
Deceased through legal heir,
Shamkorbai Gulabchand Jain,
Age 70 years, Occ. Nil

Both R/o Hira-Vansh, Kunte Road,
Amalner, District Jalgaon

... PETITIONERS

VERSUS

1. The State of Maharashtra
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32
2. The Director of Town Planning,
Central Building, Pune
3. The Town Planner,
B.J. Market, D Hall,
Jalgaon
4. The Municipal Council,
Amalner, District Jalgaon,
through the Chief Officer
5. Somchand Bhanaji Lalka,
Deceased through legal heirs :
- 5-A) Chetna Sharad Momaya
Age 51 years, Occu. Household
R/o Hem-Ratan, Arihant Society,
Kusugal Road, Keshwapur, Hubli
- 5-B) Haren s/o Raichand Lalka,
Age 58 years, Occu. Chartered Accountant

5-C) Sachin Raichand Lalka,
Age 48 years, occu. Service.

Both R/o Matru-Krupa,
TPS-III, 51st Road, Opp. Janud Apartment,
Borivali (W), Mumbai – 51

6. Tilokchand Bhanaji Lalka,
Deceased through legal heirs
Chetna w/o Sharad Momaya
Age 51 years, Occu. Household,
R/o Hem-Ratan, Arihant Society,
Kusugal Road, Keshwapur, Hubli

... RESPONDENTS

.....
Mr. B.R. Warma, Advocate for the petitioners
Mr. G.O. Wattamwar, A.G.P. for respondents No.1 to 3
Mr. G.V. Wani, Advocate for respondent No.4
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CORAM : **SUNIL P. DESHMUKH AND**
 R. G. AVACHAT, JJ.

DATE : **29th OCTOBER, 2020**

JUDGMENT (PER R.G. AVACHANT, J.)

Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for parties.

2. By this petition under Article 226 of the Constitution of India, the petitioners seek declaration that the reservation of the Site, No.45, described in development plan dated 20/4/1994 of Amalner, District Jalgaon has lapsed for

non-compliance of notice dated 7/7/2012 issued under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the Act'), with a mandamus to notify the same in official gazette.

3. Heard Mr. Warma, learned counsel for the petitioners, Mr. Wattamwar, learned A.G.P. for respondents No.1 to 3 and Mr. Wani, learned counsel for respondent No.4.

FACTS :-

4. The petitioners are co-owners of a plot being T.P.S. No.239/9/26, situated at Amalner, District Jalgaon (for short 'the writ plot'). The development plan of Amalner town was sanctioned way back in 1994. The writ plot has been reserved for library. The petitioners, on 7/7/2012, served upon the respondent No.4 - Municipal Council, Amalner a notice under Section 127 of the Act, calling upon it to acquire the writ plot or take necessary steps towards its acquisition. The notice had also been served on the respondent No.2 Director of Town Planning, Pune. The Municipal Council has not complied with the notice. On the other hand, it passed a resolution on 8/10/2012, expressing its inability to acquire the writ plot. The Municipal Council, in its resolution, observed that there was well equipped library located at the hub of the

town. The Municipal Council did not have funds to acquire the writ plot. It, therefore, decided to withdraw the plot from the reservation. The Chief Officer of the respondent No.4, by his letter dated 10/1/2013, informed the said decision to the Chief Secretary of Urban Development Department, State of Maharashtra. The respondent No.1 did not act in deference to the resolution passed by the Municipal Council, Amalner. Hence the Writ Petition.

5. Section 127 of the Act reads thus :

“127. Lapsing of reservations :-

(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twenty-four months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent

land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.”

6. The respondent No.4 is a planning authority for the purposes of Section 127. Admittedly, the writ plot has been reserved for a library in a development plan dated 30/4/1994. Within a period of 12 months from the date of service of notice dated 7/7/2012 the planning authority has neither acquired the writ plot nor did it take steps towards its acquisition. On the contrary, it expressed its financial inability to acquire the writ plot and, therefore, informed the State of Maharashtra in Town Planning Department to dereserve the writ plot. The respondent State sat on the proposal moved by the Municipal Council.

7. Since there is non-compliance of provisions of Section 127 of the Act, the writ plot is deemed to have been dereserved and has become available to the petitioners and other co-owners for the purpose of development, as otherwise permissible in the case of adjacent lands under the relevant plan. The respondent State is under obligation to notify lapsing of reservation, by an order to be published in the

official gazette. Since nothing has been done in terms of Section 127 of the Act, the Writ Petition deserves to be allowed in terms of prayer clauses (A) and (AA) and the same is accordingly allowed. Rule made absolute accordingly.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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