

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

WRIT PETITION NO. 1205 OF 2021

Kiransing Yograjsing Parihar,
Age : 65 Years, Occu. : Agriculturist,
R/o Parihar Chowk, House No. 14,
Dharangaon, Tq. Dharangaon,
District Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
 2. The Assistant Town Planner,
Jalgaon, Tq. & Dist. Jalgaon.
 3. Dharangaon Municipal Council,
Dharangaon, Tq. Dharangaon,
District Jalgaon,
Through its Chief Officer.
 4. The Sub Post Master,
Post Office, Dharangaon,
Tq. Dharangaon, Dist. Jalgaon.
 5. The Chief Post Master,
Aurangabad Region, Aurangabad.
- .. Respondents

Shri A. R. Syed, Advocate for the Petitioner.
Shri S. G. Sangle, A.G.P. for the Respondent No. 1.
Shri Jitendra V. Patil, Advocate for the Respondent No. 3.
Shri Amol Patale, Advocate for Respondent Nos. 4 and 5.
The Respondent No. 2 is served.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

DATE : 23RD AUGUST, 2021.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The development plan of the respondent No. 3/Municipal Council was published on 12.12.2005 (with effect from 27.12.2005). The land of the petitioner from Sy. No. 910 (Gut No. 610) [CTS No. 5328] is reserved under the reservation site Nos. 15, 16 and 18. The site No. 15 is reserved for post office to the extent of 0.24R. The site No. 16 is reserved for shopping complex to the extent of 0.38R and site No. 18 is reserved for parking to the extent of 0.08R.

3. The petitioner on or about 08.12.2016 issued notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act (for short "MRTP Act") to the planning authority and also to the post office (respondent Nos. 4 and 5).

4. The notice is served upon the planning authority and the post office. The learned counsel submits that, no declaration U/Sec. 126 of the MRTP Act read with Section 19 of the Right to Fair Compensation in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013") has been issued till date. The reservation stands lapsed.

5. The learned advocate for the planning authority submits that, to the extent of site No. 16 land reserved for shopping complex, the resolution is passed by the Municipal Council and proposal has been sent to the Collector. The respondent No. 3 has also paid the necessary measurement charges, but further steps are not completed. No fault lies with the municipal council.

6. The learned advocate further submits that, so far as site No. 15 reserved for post office is concerned, the Municipal Council did not receive further communication from the office of the post office and no further steps are initiated.

7. The learned advocate for respondent Nos. 4 and 5 submits that, the matter is pending consideration with the higher officer of the respondent Nos. 4 and 5 and they are considering feasibility of acquisition. As such the Municipal Council was communicated not to take further steps.

8. We have considered the submissions canvassed by the learned advocate for the respective parties.

9. The factum of the land of the petitioner under reservation is not disputed by the respondents. The respondents also did not dispute receipt of notice U/Sec. 127 of the MRTP Act. Same appears to be served upon them on or about 26.09.2016. The respondents have not taken further steps for acquisition. In that event the reservation stands lapsed. Reference can be had to the judgment of the Apex Court in a case of Girnar Traders and another

Vs. State of Maharashtra and others reported in (2011) 3 SCC 01.

10. Section 127 of the MRTP Act is fetter on powers of eminent domain.

11. With regard to site No. 18, the petitioner has not issued notice U/Sec. 127 of the MRTP Act. As such, present petition would be considered only to the extent of reservation of site Nos. 15 and 16.

12. Till date the respondents have not issued a declaration U/Sec. 126 of the MRTP Act read with Section 19 of the Act of 2013. In view of that, the reservation stands lapsed.

13. It is hereby declared that the reservation of site Nos. 15 and 16 in the development dated 12.12.2005 (with effect from 21.12.2005) to the extent of land Sy. No. 910 (gut No. 610) [CTS No. 5328] to the extent of 24R reserved for post office and land to the extent of 38R reserved for shopping complex stands released from reservation. The Government shall issue notification U/Sec. 126(2) of the MRTP Act within a period of six (06) months from today.

14. Rule accordingly made absolute in above terms. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]