

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

WRIT PETITION NO. 6768 OF 2021

1. Hemant Bhagwat Kolhe,
Age : 46 Years, Occu. : Agril. & Business,
2. Madhuri Hemant Kolhe,
Age : 37 Years, Occu. : Household,

1 and 2 both R/o 437, Vithal Peth,
Jalgaon, Tq. & Dist. Jalgaon.
3. Hemant Baliram Bonde,
Age : 48 Years, Occu. : Business,
4. Suwarna Hemant Bonde,
Age : 41 Years, Occu. : Household,

3 & 4 both R/o Plot No. 11,
Old Postal Colony, M. J. College
Road, Jalgaon.
5. Faisal Abdul Gaffar Malik,
Age : 39 Years, Occu. : Agril. & Business,
R/o 308, Shani Peth,
Jalgaon. .. Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. Collector, Jalgaon,
Taluka & District Jalgaon.

3. Assistant Director,
Town Planning Department,
Jalgaon.
4. Jalgaon Municipal Corporation,
Through its Commissioner,
Neharu Chauk, Jalgaon. .. Respondents

Shri S. P. Brahme, Advocate h/f Shri Syed Azizoddin R.,
Advocate for Petitioners.

Shri A. R. Kale, A.G.P. for Respondent Nos. 1 to 3.

Shri V. D. Gunale, Advocate for the Respondent No. 4.

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

DATE : 17TH 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 land of the petitioners bearing land Gut No. 86/2/3 is reserved for high school under reservation site No. 195 to the extent of 33R in the development plan sanctioned on 10th August, 2004. No steps were taken by the planning authority. The petitioners issued notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act (for short "M.R.T.P. Act") on 28th October, 2014. It is served on the planning authority on the same day. It is submitted that, as yet declaration U/Sec. 126 of the M. R. T. P. Act read with Section 19 of the Right to Fair Compensation in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (for short “Act of 2013”) is not issued. According to the learned counsel for the petitioners, the reservation stands lapsed.

3. The learned advocate for the planning authority submits that, the proposal was also given by the planning authority for acquisition. The planning authority also had shown its intention to give T.D.R. to the petitioners. The same is not accepted. According to the learned counsel steps are initiated by the planning authority.

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. Though the petitioners are owners of land gut No. 86/2/3 to the extent of 45R, notice U/Sec. 127 of the M. R. T. P. Act is issued only in respect of site No. 195 reserved for high school. The petitioners, it appears have not issued notice in respect of other part of land reserved for play ground. In view of that, present petition is limited to the extent of lapsing of reservation of site No. 195 for high school.

6. The factual matrix regarding the date of sanction of development plan, issuance of notice U/Sec. 127 of the M.R.T.P. Act, the receipt of it and as yet no declaration published U/Sec. 126 of the M. R. T. P. Act read with Section 19 of the Act of 2013 is not disputed.

7. Section 127 of the M. R. T. P. Act is fetter on powers of eminent domain. The right to property though now is not fundamental right, it still continues to be a constitutional right and now it has been brought within the contours of human right. The property of the legitimate owner cannot be reserved in perpetuity and that is the purport of Section 127 of the M. R. T. P. Act.

8. In the light of the above, we pass the following order.

9. It is declared that, the reservation bearing site No. 195 to the extent of 33R of land owned by the petitioners in gut No. 86/2/3 stands released from reservation. The petitioners are entitled to use the said land as the user of the adjacent land. The State Government shall issue notification U/Sec. 126(2) of the M.R.T.P. Act regarding lapsing of reservation, expeditiously and preferably within a period of six (06) months from today.

10. Rule accordingly is made absolute in above terms. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

bsb/Aug.21