

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6542 OF 2021

1. Ramchandra Laxminarayan Soni,
Age 69 years, Occu. Agri. & Business,
R/o. 127, Navi Peth, Jalgaon
Taluka & District Jalgaon.
2. Aarti Dhiraj Soni,
Age 40 years, Occu. Agri. & Business,
R/o. 49, Navi Peth, Jalgaon,
Taluka & District Jalgaon. **...Petitioners.**

Versus

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Assistant Director,
Town Planning Department,
Jalgaon Municipal Corporation,
Jalgaon, Tq. & Dist. Jalgaon.
3. Jalgaon Municipal Corporation, Jalgaon,
Through its Commissioner,
Nehru Chawk, Jalgaon,
Taluka & District Jalgaon. **....Respondents.**

Mr. S.P. Brahme h/f. Mr. Syed Azizoddin R., Advocate for petitioners.

Mr. S.P. Tiwari, A.G.P. for respondent No. 1/State.

Mr. Sachin Munde h/f. Mr. V.D. Gunale, Advocate for respondent Nos.
2 and 3.

**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**
DATED : 11/08/2021.

ORAL JUDGMENT : [PER S.V. GANGAPURWALA, J.]

1. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final disposal.

2. Heard the learned counsel for the petitioners and the learned counsel for respondents.

3. It is submitted that in the final development plan sanctioned and published in the year 2002, the land of the petitioners bearing Gat No. 125 to the extent of 6400 Sq. Mts. is reserved for garden as site No. 116. The petitioners on or about 27th September 2018 issued a notice under section 127 of Maharashtra Regional Town Planning Act ('MRTP Act' for short). The said notice is served on respondents. The petitioners were offered with TDR in lieu of the compensation. The petitioners refused the same.

4. The learned counsel submits that as the steps for acquisition were not initiated within the stipulated period of two years, the reservation stands cancelled.

5. The learned counsel for respondents/planning authority submits that the petitioners have forwarded the proposal for acquisition. The planning authority has not committed any illegality.

6. The factual matrix as narrated above is not disputed. The land of the petitioner is reserved as site No. 116 to the extent of 6400 Sq. Mts. from the land Gat No. 125 situated at Pimprala for garden. The petitioners issued notice under section 127 of MRTP Act on 27.9.2018. Admittedly, no declaration under section 126 of MRTP Act r/w. Section 6 of the land Acquisition Act has been issued till the date. The reservation has lapsed by operation of statute. The provision of Section 127 of the MRTP Act is fetter on the power of eminent domain.

7. The land of the petitioner is reserved for garden. Open spaces, playgrounds, gardens are the lungs of the cities and the planning authority has to take steps for acquiring the property.

8. The Apex Court in the case of **Municipal Corporation of Greater Mumbai vs. Hiranman Sitaram Deorukhar** reported as (2017) **SCC Online 1739** has observed that in such cases where the land is reserved for garden the planning authority shall acquire the property.

9. We would be required to balance right of the petitioner, so also the reservation made for garden.

10. In the light of above, we pass the following order :

- (I) It is declared that the reservation of garden reserved at site No. 116, Gat No. 125 to the extent of 6400 Sq. Mtrs. stands

released from the reservation.

- (II) The petitioner shall not use the land for any purpose for a period of one year and shall maintain the land in the same position as it is for a period of one year.
- (III) The Planning Authority is entitled to proceed further for acquisition of the said land during this period.
- (IV) If within a period of one year, the Planning Authority does not acquire the property, the petitioner shall be entitled to use the said land as adjacent land and after the lapse of one year, if the land is not acquired, the Government shall notify the lapsing of the reservation under section 127 (2) of the MRTP Act.

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

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

ssc/