

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

WRIT PETITION NO. 7775 OF 2021

M/s Sai Construction,
Through its Partners,

1. Chandrabhagabai Omprakashji Gilda,
Age : 66 Years, Occu. : Business,
R/o "Narayani", Visawa Nagar,
Nanded, Tq. & Dist. Nanded.
2. Satyanarayan Dattaram Patil,
Age : 65 Years, Occu. : Business,
R/o Bhagya Nagar road,
Near Dena Bank Nanded,
Tq. & Dist. Nanded.
3. Subhash Hanumandas Dhoot,
Age : 62 Years, Occu. : Business,
R/o Vazirabad, Oppo. S. P. Office,
Nanded, Tq. & Dist. Nanded.
4. Satish Purushottam Maheshwari,
Age : 58 Years, Occu. : Business,
R/o Vidya Nagar, Nanded,
Tq. & Dist. Nanded.
5. Mohammad Idris Mohammad Ismail,
Age : 62 Years, Occu. : Business,
R/o Sainagar, Nanded,
Tq & Dist. Nanded.

Partner No. 1 to 5 Through GPA
Holder,
Omprakash Kanhaiyalal Gilda,
Age : 67 Years, Occu. : Business,
R/o "Narayani", Visawa Nagar,
Nanded, Tq. & Dist. Nanded.

6. Sambhaji Laxman Pawar (Deceased)
Through one of the legal Heir,
Rajesh Sambhaji Pawar,
Age : 50 Years, Occu. : Business & M.L.A.
R/o Phule Nagar, Nanded,
Tq. & Dist. Nanded. .. Petitioners

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. The Director of Town Planning,
Maharashtra State, Town Planning
and Valuation Department,
Government of Maharashtra,
Central Building,
Near Railway Station, Pune.
3. The Collector,
Nanded, Tq. & Dist. Nanded.
4. Nanded-Waghala City Municipal
Corporation Nanded,
Through its Commissioner,
Tq. & Dist. Nanded.
5. Assistant Director Town Planning,
Nanded-Waghala City Municipal
Corporation, Nanded,
Tq. & Dist. Nanded. .. Respondents

Shri Dhananjay M. Shinde, Advocate for Petitioners.
Shri S. K. Tambe, A.G.P. for Respondent Nos. 1 to 3.
Shri R. K. Ingole, Advocate for Respondent Nos. 4 and 5.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.
DATE : 08TH SEPTEMBER, 2021.**

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

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

2. Mr. Shinde, the learned counsel for petitioners contends that, the land of petitioners bearing Survey No. 30/A/1 (CTS No. 10313) adm. 3 Acres 25 Guntha (14670 square meters) to the extent of 8909.75 square meters situated at village Asadullabad, Tq. and Dist. Nanded is reserved in the development plan published by the respondent Nos. 4 on 03rd August, 2006 that came into effect from 15th August, 2006 for shopping complex and vegetable market as reservation site No. B-51. The learned counsel submits that, the respondents did not take any steps on the reserved land. The petitioners issued notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act (for short "MRTP Act") on 10th November, 2016. Said notice is served upon the respondents on the same day. As yet no declaration U/Sec. 126 of the M.R.T.P Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013") is issued. The reservation stands lapsed.

3. Mr. Ingole, the learned advocate for the Municipal

Corporation submits that, it is not possible for the corporation to raise the funds to the tune of Rs. 10.39 crores i. e. 50% amount of compensation to be paid to the petitioners and as directed by the respondent No. 3. The general body of the Corporation has resolved to acquire the land by private negotiations. The financial and administrative sanction was also taken on 19.12.2019. As the corporation does not have necessary financial capability, the same could not be proceeded further. The corporation is ready to award TDR to the petitioners.

4. Mr. Shinde, the learned counsel for petitioners on instructions of the petitioners submits that, the petitioners are not agreeable to receive TDR.

5. The factual matrix as narrated above is not disputed. It is not disputed that as yet the declaration U/Sec. 126 of the M.R.T.P. Act read with Section 19 of the Act of 2013 is not issued. The steps for acquisition would mean issuance of declaration U/Sec. 126 of the M.R.T.P. Act read with Sec. 19 of the Act of 2013. Reliance can be had to the judgment of the Apex Court in a case of **Girnar Traders Vs. State of Maharashtra** reported in ***(2011) 3 SCC 01***.

6. It has been held that, the right to property is not fundamental right, but it still continues as constitutional right and now it has been brought within the contour of human right. Viewed from the same, Section 127 of the M.R.T.P. Act is a fetter

on powers of eminent domain.

7. In the light of the above, as no steps for acquisition are initiated, the reservation of site No. B-51 on the land of the petitioners bearing CTS No. 10313 situated at village situated at village Asadullabad, Tq. and Dist. Nanded stands released and lapsed. The State Government shall issue notification U/Sec. 127(2) of the M.R.T.P. Act expeditiously and preferably within a period of six (6) months from today.

8. The rule is made absolute in above terms. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

bsb/Sept.21