

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

WRIT PETITION NO.6940 OF 2018

1. Kumarsing s/o Hilalsing Patil,
Age : 76 years, Occupation : Agriculturist,
R/o Bungalow No.4, Vikas LIC Colony,
Ring Road, Jalgaon,
District Jalgaon.
2. Nitendrasing s/o Kumarsing Patil,
Age : 51 years, Occupation : Service,
R/o Bungalow No.4, Vikas LIC Colony,
Ring Road, Jalgaon,
District Jalgaon.

....PETITIONERS

-VERSUS-

1. State of Maharashtra.
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-431032.
2. The Director of Town Planning,
Maharashtra State, Pune,
District Pune.
3. The Assistant Director of Town Planning,
Jalgaon, District Jalgaon.
4. The Municipal Corporation of Jalgaon,
Vallabhbhai Tower, Zilla Peth, Jalgaon,
District Jalgaon.
Through it's Commissioner.

....RESPONDENTS

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Advocate for the Petitioners : Shri Wani Girish V.
AGP for Respondents 1 to 3 : Shri S.G. Sangle

Advocate for Respondent 4 : Shri V.D. Gunale

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CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 17th August, 2021

Oral Judgment (Per Ravindra V. Ghuge, J):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners have put forth prayer clauses A and B as under :-

“A) *By a writ of mandamus or orders or directions in the nature of mandamus, petitioner’s land Gat No.340/1 admeasuring H 2 R 40 assessed at Rs.12.32 and Gat No.340/2 admeasuring H 2 R 25 assessed at Rs.11.55 situated within the limits of village Pimprala, Tal and Dist. Jalgaon be declared as released from reservation under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 and is available for the purpose of development permissible in the case of adjacent land under the relevant plan.*

B) *Pending hearing and final disposal of this petition, Respondents be restrained from taking any steps to acquire and to take possession, re-reservation of petitioner’s land Gat No.340/1 admeasuring H 2 R 40 and Gat No.340/2 admeasuring H 2 R 25 situated within the limits of Respondent No.4 Municipal Corporation, Jalgaon.”*

3. Petitioner No.1 is the owner and possessor of the land Gat No.340/1 admeasuring 2 H and 40 R within the limits of village Pimprala, Taluka and District Jalgaon. Similarly, petitioner No.2 is the owner and possessor of the land Gat No.340/2 admeasuring 2 H and 25 R within the limits of the same village.

4. On 10.08.2004, the Development Plan (DP) for Jalgaon city was sanctioned by the State Government. The lands of the petitioners were reserved in the said DP for development of garden, primary school and high school. For 10 years, the Acquiring Authority did not initiate any step in accordance with Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). Finally, the petitioners issued notice on 15.06.2016 under Section 127 of the MRTP Act and offered that respondent No.4/ Municipal Corporation should acquire the said land and pay compensation to the petitioners in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The said notice was received by respondent No.4 on 17.06.2016.

5. These two petitioners have filed this petition on

28.06.2018. Respondent No.4 has offered the Transferable Development Rights (TDR) to the petitioners in March, 2020, which has not been accepted by the petitioners. The said TDR is for about 06 lac square feet land.

6. The learned advocate representing respondent No.4/ Municipal Corporation, after taking specific instructions from the Municipal Corporation, submits that besides offering TDR, the Municipal Corporation does not have money to pay to the petitioners. Monthly salaries of Class IV employees are also not being regularly paid. The Municipal Corporation is in an extremely weak financial condition.

7. Considering that the land at issue was reserved for development of garden, primary school and high school and keeping in view that the Municipal Corporation has put forth a plea that it has no funds at all to pay to the petitioners, we deem it appropriate to refer to paragraph 13 of the judgment delivered by this Court [to which one of us (Ravindra V. Ghuge, J.) is a party] in the matter of *Chalisgaon Municipal Council, Chalisgaon and others vs. The State of Maharashtra and others, 2014 (5) AIR Bom R 24 : 2015(4) ALL MR 256*. The said paragraph 13 reads as under :-

- “13. *Once again, the salutary principle of interpretation, namely, a Statute, particularly a Planning Statute, must be construed bearing in mind the object and purpose it seeks to achieve would apply. The Legislative intent, therefore, cannot be lost sight of and no provision can be seen out of context or in isolation and this principle will apply equally to the interpretation of this provision. This Section falls in Chapter VII titled as "Land Acquisition". That relates to compulsory acquisition of land needed for purposes of Regional Plan, Development Plan, or Town Planning Schemes etc. If the provision, conferring power to compulsorily acquire the land, was not coupled with the mandate to acquire it so as to fulfill the purpose or object of a development plan and the statute in question, then, possibly a complaint could have been made that what is conferred is only a power with no corresponding responsibility or duty. Therefore, acquisition of land, reserved in plan can be either by agreement by paying an amount agreed to and the owner then hands over the land for the required purpose, allocation or designation or in lieu of any such amount, by granting the land owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest or the land owner's interest to be determined by way of any of the principles laid down in the Land Acquisition Act, 1894, but in the form or shape of Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional FSI or TDR against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or acquisition of the land by resorting to the provisions of the Land Acquisition Act, 1894 and to facilitate the same, make an application to the State Government for acquiring the land. Thus, it is*

a futile to urge that because of lack of funds or lack of money, the Council or the Corporation is helpless and cannot provide to the residents or the people at large any amenity by carrying forward or implementing the proposals, designations and allocations in the Development Plan. The property or the land designated, allocated or reserved for such purpose can be acquired by an agreement with the owner, which may provide for making payment of the agreed amount or in lieu of such amount, granting the land owner or the lessor's, the benefits in return of having the proposals or designations or allocations in the development plan implemented and carried out through him. The owner, therefore, benefits by having the unreserved or unallocated or un-designated portion free for other development in terms of the Planning Law and either he surrenders the balance portion for enabling the Planning Authority, Development Authority or Appropriate Authority to enforce or implement the proposals or reservations or he himself develops this amenity, facility and proposal and surrenders it free of costs and free from all encumbrances and in lieu of that, gets the FSI, additional FSI or TDR. Therefore, it is not as if, the land has to be acquired by taking recourse only to the Land Acquisition Act, 1894 or that is the only mode by which the proposals, designations or allocations can be implemented, enforced and carried out.”

8. It is, therefore, obvious that in the period of two years, post service of notice under Section 127, the Municipal Corporation has not taken any steps. Even the TDR was offered almost four years later in March, 2020.

9. It requires no debate that gardens and play grounds are the lungs of every city. Primary and secondary schools

having proper play grounds would lead to physical and mental growth of students, which would make them healthy, both mentally and physically. It is most unfortunate that steps required to be taken under Section 42 of the MRTP Act, are not taken. In several hundreds of cases coming up before this Court, we find that there is total laxity on the part of the Acquiring Body, who are completely oblivious of Section 42 of the MRTP Act. In such backdrop, knowing that the Acquiring Body has done little in furtherance of the operation of any plan or plans, as no steps are taken, we are compelled to entertain such petitions that actually defeat the very intent and object of the MRTP Act, which reads as under :-

“An Act to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid.

WHEREAS, it is expedient to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards thereof; to make better provision for the

preparation of Development plans with a view to ensuring that town planning schemes are made in a proper manner and their executions is made effective; to provide for the creation of new towns by means of Development Authorities; to make provision for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid; It is hereby enacted in the Seventeenth Year of the Republic of India as follows:-”

10. In view of the above, this Writ Petition is allowed.

Lands of these two petitioners referred to herein above shall be deemed to be released from such reservation and shall become available to the owners for the purpose of development as otherwise permissible as like in the case of adjacent lands in the relevant plan.

11. Rule is made absolute in the above terms.

kps

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)