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

WRIT PETITION NO.12987 OF 2018

1. Subhashchandra s/o Ramchandra Wani,
Deceased, through his L.Rs.
- 1-a) Arunabai w/o Subhashchandra Wani,
Age : 74 years, Occu. Household,
- 1-b) Shaileshchandra s/o Subhashchandra Wani,
Age 56 years, Occu. Business,
Both R/o H. No.52, Main Road,
Raver, Tq. Raver, District Jalgaon
2. Satishchandra s/o Ramchandra Wani,
Age 70 years, Occu. Agril.,
R/o Ganesh Colony, Jalgaon,
Tq. & District Jalgaon
3. Ravindra s/o Ramdas Patil,
Age 58 years, Occu. Agril.,
4. Rajendra s/o Ramdas Patil,
Age 50 years, Occu. Agri.,
5. Kokilabai w/o Ramdas Patil,
Age 74 years, Occu. Household,
Petitioner no.3 to 5 are R/o 45 Mankar
Plot, Station Road, Raver,
Tq. Raver, District Jalgaon
6. Malati w/o Suresh Patil,
Age 56 years, Occu. Household,
R/o Khanpur, Tq. Raver,
District Jalgaon
7. Vidya w/o Dilip Patil,
Age 48 years, Occu. Household,
R/o Vidya Nagar, Raver,
Tq. Raver, District Jalgaon
8. Nandini w/o Ravindra Patil,
Age 46 years, Occu. Household,
R/o Dharni Road, Malakapur,
Tq. Malakapur District Buldhna

(2)

9. Samadhan s/o Dinkar Patil,
Age 40 years, Occu. Agril.,
10. Dnyaneshwar s/o Dinkar Patil,
Age 45 years, Occu. Agril.,
11. Chandrakant s/o Devidas Patil,
Age 45 years, Occu. Agril.,
12. Pramod s/o Devidas Patil,
Age 40 years, Occu. Agril.,
13. Indubai w/o Devidas Patil,
Age 70 years, Occu. Household,
Petitioner No.9 to 13 are R/o Punkheda,
Tq. Raver, District Jalgaon
14. Vandana w/o Pitambar Patil,
Age 43 years, Occu. Household,
R/o Kochur (Kd) Tq. Raver,
District Jalgaon

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Director of Town Planning,
Maharashtra State, Pune,
District Pune
3. The Joint Director of Town Planning,
Nashik Division, Nashik
District Nashik
4. The Assistant Director of Town Planning
Officer, Jalgaon,
District Jalgaon
5. The Chief Officer,
Municipal Council, Raver,
Tq. Raver, District Jalgaon

..RESPONDENTS

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Mr. A.J. Patil, Advocate for petitioners;
Mr. P.S. Patil, A.G.P. for respondent nos.1 to 4;
Mr A.N. Kakade, Advocate for respondent no.5

(3)

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 25th October 2021

ORAL JUDGMENT (Per S.G. Mehare, J.)

1. Leave to correct the nomenclature of respondent nos. 3 and 4. Amendment be carried out forthwith.

2. Rule. Rule made returnable forthwith and heard finally with consent of the parties.

3. The petitioners are the owners and possessors of the field Gat No.545, measuring 80 Are, situated within the municipal limits of Raver Municipal Council, District Jalgaon. The petitioner nos. 1 and 2 are the original owners of the field. Ramdas Sandu Patil, Devidas Sandu Patil and Dinkar Sandu Patil were the tenants. They are no more. The petitioner nos. 3 to 14 are their legal representatives. The field of the petitioners was earmarked and reserved for the garden in the Development plan, implemented from 1.6.1988. The planning authority, i.e respondent no.5 did not acquire the land as per section 126 of the Maharashtra Regional & Town Planning Act, 1966 (1966 Act for short). Hence, the petitioners have served a purchase notice dated 19.10.2010, on respondent no.5. Respondent no.5 placed the purchase notice of the petitioners before the special meeting of the Municipal Council, Raver. The special meeting considered the subject and resolved to delete the land of the petitioners

(4)

from reservation. The Municipal Council passed a resolution no.22 on 1.3.2011, to cancel the reservation of the land of the petitioners. It has given a reason that the council would have to spend money on developing a garden on the field of petitioner. Instead of the petitioners field, Gut no. 548 should be reserved for garden. Thereafter, the Chief Officer of Municipal Council, Raver addressed a letter dated 13.6.2011 to respondent no.4 Assistant Director, Town Planning Office, Jalgaon, District Jalgaon for sanctioning the resolution of cancellation of the reservation of the field of the petitioners. Respondent no.4, by its communication dated 23.6.2011 informed respondent no.5 that the resolution passed by the Municipal Council in the special meeting dated 1.3.2011 is not according to the law, hence, the proposal cannot be accepted.

4. Respondent no.5 has admitted the case of the petitioners. They have stuck up to their resolution and decision to cancel the reservation of the field of the petitioner.

5. Heard the respective Counsels.

6. Though respondent no. 5 got the resolution passed from the Municipal Council to cancel the reservation of the field of the petitioner, the petitioner was deprived of his right to enjoy the field. The objection taken by respondent no.4 may be the reason for not proceeding with the de-reservation of the field of the petitioners. It is a matter of communication *inter se* between the town planning officers. However the fact remains that

(5)

no steps to acquire the reserved land have been taken by respondent no.5 as provided under section 126 of the 1966 Act.

7. Section 127 of the 1966 Act provides for lapsing of reservation. If the land reserved in Development plan has not been acquired as provided under section 126 of the 1966 Act, within ten years of final development plan, the owner of the land may serve a purchase notice on the planning Authority calling upon him to purchase/ acquire the land reserved within 24 months from the date of receipt of the notice. If no steps as provided under section 126 of the 1966 Act are taken, the reservation shall be deemed to have lapsed. Thereupon the land shall be deemed to be released from such reservation. Such land shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

8. Herein the case, respondent no.5 has admitted that no action was initiated after the receipt of the purchase notice issued by the petitioners. Instead of adopting the procedure under Section 126 of the 1966 Act, the Municipal Council has resolved to cancel the reservation of the field of the petitioners. Without going in to its legality, we consider only the legality of the purchase notice and right accrued therefrom. The inaction on the part of respondent no.5 to acquire the reserved enough to allow the petition.

9. Hence, the following order:-

(6)

- (i) The petition is allowed.
- (ii) It is declared that the reservation of the field Gat No.545, situated at Raver, Taluka Raver, District Jalgaon for garden in the development plan which came into force on 1.6.1988, is deemed to have lapsed and the field shall become available to the petitioner to be developed as otherwise permissible.
- (iii) Respondent no.1 is directed to notify the lapsing of the reservation of Gat No.545 of Raver, by an order published in the Official Gazette, within two month from the receipt of copy of this order.
- (iv) Rule is made absolute in above terms. No order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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