

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

1001 WRIT PETITION NO.6266 OF 2019

1. Laxmikant S/o Motilal Somani
Age: 64 Years, Occ.: Agri.
R/o. Nandi Stop AUSA Road, Latur,
Dist.: Latur
 2. Subhash S/o Tukaram Kasle
Age: 56 Years, Occ.: Business,
R/o.: Basveshwar Chowk, Latur,
Dist.: Latur
 3. Krushnadevi W/o. Narendra Agrawal,
Age: 55 Years, Occ.: Business,
R/o.: Adarsh Colony, Latur,
Dist.: Latur
- .. Petitioners**

Versus

1. The State of Maharashtra,
Urban Development Department,
Mantralaya, Mumbai
 2. The Collector,
Collectorate, Latur
 3. The Commissioner,
Latur Municipal Corporation, Latur
 4. Town Planning Officer,
Latur Municipal Corporation, Latur
- .. Respondents**

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Advocate for Petitioners: Mr. Deshpande Dhananjay P.
AGP for Respondents No. 1&2: Mr. S. G. Karlekar
Advocate for Respondents No. 3&4: Mr. H. V. Patil

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

DATE: 06th AUGUST, 2021

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.):

1. Rule. Rule returnable forthwith. With the consent of parties, matter is taken up for final hearing.

2. The land of the petitioners bearing Survey No. 73 to the extent of 14 Are is reserved as Site No. 217 for playground under the Development Plan prepared by respondent Municipal Corporation in the year-2002.

3. Mr. Deshpande, learned Counsel for the petitioners submits that the petitioners had issued notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act, 1966 (*hereinafter referred to 'MRTP Act'*) on 16.8.2016 and the same is served upon the Municipal Corporation on the very same day. The learned Counsel submits that steps for acquisition are not initiated within a period of 2 years, the reservation stands lapsed.

4. Mr. Patil, learned Counsel for the Municipal Corporation submits that the Corporation has offered T.D.R. to the petitioners.

5. The factual matrix as narrated above is not disputed. The notice U/Sec. 127 of the MRTP Act is served upon the Planning Authority on 16.08.2016. Till date, steps for acquisition are not initiated, no declaration U/Sec. 126 of the MRTP Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is issued. The reservation stands lapsed.

6. Section 126 of the MRTP Act is a fetter on the powers of eminent domain.

7. The land is reserved for playground. Open spaces, gardens and the playground are lungs of the city. The Apex Court in case of **Municipal Corporation of Greater Mumbai and Others Vs. Hiranman Sitaram Deorukhar and others** reported in **AIR 2017 SC (Supp) 423**, has observed that the

Planning Authority should take all the steps to acquire the properties reserved for garden, open spaces.

8. By operation of statute, the reservation stands lapsed, if, steps for acquisition are not taken within the prescribed period. Considering that the land is reserved for playground, we would still grant a year's time to the respondents to acquire the property and direct the petitioners not to take any steps on the said land for a period of one year.

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

10. It is declared that the reservation on the petitioner's land admeasuring 14 Are of Survey No. 73 reserved as Site No. 217 for playground stands released from reservation. However, considering that the reservation was for playground the petitioners shall not use the said land for any purpose for a period of 1 year. The

Planning Authority may acquire the property during this period.

11. In case, the Planning Authority does not acquire the writ property of the petitioners within a period of 1 year, then the petitioners shall be entitled to use the property as the user of adjacent land is permissible.

12. Rule is accordingly made absolute.

13. Writ Petition is accordingly disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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