

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO. 5040/2004

1. Vijaysingh Surendra Singh Gahilot,
Aged adult, Occupation : Business,
2. Smt. Kalalbai Govindsingh Gahilot,
Aged adult, Occupation: Household,
3. Shri Madhavrao S/o Kisan Walokar,
Aged adult, Occupation:

All R/o Patur, Tahsil Patur,
District Akola.

.... Petitioners

// VERSUS //

1. The State of Maharashtra,
through the Secretary of Ministry of
Urban Development,
Mantralaya, Mumbai-32.
2. The State of Maharashtra,
through its Secretary Ministry of
Revenue & Forest Department,
Mantralaya, Mumbai-32
3. The Commissioner,
Amravati Division, Amaravati
4. The Collector, Akola,
Tahsil & District Akola.

5. The Special Land Acquisition Officer,
Ketepurna, Morna Project,
Akola, Tahsil & District Akola.
6. The Assistant Director,
Town Planning Department,
Akola, Tahsil & Dist. Akola.
7. The Municipal Council, Patur,
through its Chief Officer, Patur,
Tahsil Patur, District Akola.
8. Shah Babu Education Society, Patur
District Akola, through its Secretary
Sayaaed Burhan S/o Sayyad Nabi,
aged 48 yrs, R/o Patur, District Akola.
9. Palak Shikshak Sangh,
Shah Babu Urdu High School,
Patur through its Vice President -
Abdul Quddus s/o Sk. Abdullah,
R/o. Patur, Tq. Patur, Distt. Akola.

... Respondents

Shri A.M. Ghare, Advocate for the Petitioners

Shri D.P. Thakare, AGP for the Respondent Nos. 1 to 6 - State

None for the Respondent Nos. 7 to 9

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 10 MARCH 2021

ORAL JUDGMENT : (PER:- NITIN JAMDAR, J.)

By this Petition, the Petitioners are challenging the
Notification dated 20 June 2002 issued by the Special Land Acquisition

Officer, Akola, declaring the proposed acquisition of the lands owned by the Petitioners. The Petitioner has also sought a declaration that reservation No. 6 declared by Respondent No. 7 - Municipal Council Patur has lapsed.

2. It is a case of the Petitioners that the Petitioners are owners of Survey No. 244 (New 245) at Patur, District Akola. The Respondent No. 7 - Municipal Council Patur was the Planning Authority for the city of Patur as per the *Maharashtra Regional and Town Planning Act, 1966* (for short the "*Act of 1966*"). The Respondent No. 7 - Municipal Council Patur prepared a draft Development Plan, and lands of the Petitioners were reserved for extension of secondary school. The Development Plan was approved in the year 1976. Thereafter, Petitioner No. 3 issued a notice to Respondent No. 7 -Planning Authority that no acquisition has taken place for over 20 years in the reserved land and called upon Respondent No. 7 -Planning Authority to take necessary action.

3. According to the Petitioners, since no steps were taken within the period prescribed under Section 127 of the *Act of 1966*, the reservation has lapsed.

4. Respondent No. 8 also filed a Petition directing that the lands be acquired since it was reserved for extension of secondary school.

5. The Petitioners amended the Writ Petition and incorporated a challenge on the ground that the Petitioners' lands do not fall within the

jurisdiction of Municipal Council Patur, and it was submitted that the entire action of including the lands of the Petitioners, i.e. Survey Nos. 244 (Part), 246 (Part) and 247 (Part) in the Development Plan of Municipal Council, Patur itself illegal and, therefore, no acquisition proceedings in furtherance of this reservation can be taken.

6. The amendment was carried out on 29 October 2018. In this amendment, the Petitioners have placed reliance on the decision of the Division Bench of this Court dated 19 October 2018 in the Writ Petition No. 1462/2017, wherein the Division Bench had declared the area which comprised the lands of the Petitioners do not fall within the jurisdiction of Municipal Council Patur, but the limit of Shirla Gram Panchayat and had restrained the Municipal Council Patur from recovering taxes.

7. To this amendment reply affidavit was filed by Respondent Nos. 1 and 6 on 07 January 2020, wherein this position was accepted. However, it was only stated that the Review Application is filed in respect of the order dated 19 October 2018.

8. Thereafter, when the Petition came up on Board on 21 January 2021 except the learned AGP, none was present for the Respondents, and thereupon following order came to be passed:

“Heard the learned counsel for the Petitioner.

2. None appears for the Respondent Municipal Council.

3. As regards Writ Petition No. 5040 of 2004, the Petitioner who is the owner of the land specified in the petition, is aggrieved by the notification dated 20 June

2002 issued by Respondent No.5-The Special Land Acquisition Officer in respect of the proposed acquisition of the Petitioner's land on the ground that they have been reserved as per Reservation No.6 declared by the Respondent No.7-Municipal Council, Patur.

4. On 29 October 2018, the Division Bench of this Court passed the following order:

"1. Petitioners have challenged preparation of a development plan by respondent No.7 by treating their village Jirayat Patur as the part of respondent No.7.

2. In Writ petition No.1462 of 2017 decided on 19.10.2018, Division Bench of this Court has found that in absence of final notification under Section 6 of Maharashtra Municipal Councils, Nagar Panchayat and Industrial Township Act 1965, Jirayat Patur cannot become part of respondent No.6.

3. If this judgment is accepted, petitioner is bound to succeed.

4. Judgment is delivered very recently.

5. Hence, we allow amendment.

6. Necessary amendment be carried out within one week.

7. Liberty to respondents to file additional reply/affidavit, if any, within a further period of two weeks."

5. This order came to be passed in view of the decision of Division Bench of this Court in Writ Petition No. 1467 of 2017 dated 19 October, 2018 holding as under :

"5) The boundaries of the Gram Panchayat are fixed in terms of the notification issued under section 3 of the Maharashtra Village Panchayat Act. From the affidavit filed by the State Government in this matter, it is apparent that the notification, if any, was

issued under Section 4 of the said Act, is not available even with the State Government. There is nothing available on record to suggest even remotely that the villages in question constitute part and parcel of Patur Municipal Council prior to coming into force of the Act of 1965. There is no dispute that for the first time draft notification was issued on 25th June, 1998, proposing to include the villages in question within the municipal limits of Patur Municipal Council and as yet no final notification has been issued. These villages are undisputed included in the area of Shirla Gram Panchayat. There has to be a corresponding notification issued under Section 3 of the Maharashtra Village Panchayat Act for excluding the villages in question from the area of Shirla Gram Panchyat. It is also not in dispute that till this date, no such notification has been issued.

6] In the absence of notification under Section 6 of the Act of 1965 and under Section 3 of the Bombay Village Panchayat Act, including the areas of the Villages in question within the municipal limits of Patur Municipal Council and excluding such areas from the territorial limits of Shirla Gram Panchayat, the collection of tax by the respondent – Municipal Council, Patur from the residents of these areas would be unauthorized and illegal. We cannot, therefore, permit the respondent Municipal Council, Patur, to collect the property tax from the residents of the aforesaid villages and it shall be open for the Gram Panchayat, Shirla to collect the tax from such residents.

The petition is accordingly allowed. No order as to costs.”

The Division Bench therefore, declared the position that the Shirla Gram Panchayat will not be within the jurisdiction of Municipal Council, Patur.

6. *This Petition has been adjourned from time to time, on the ground that the Respondent-Municipal Council has made an application for Review. No order reviewing the decision dated 19 October 2018 is placed on record. Therefore, declaration given by the Division Bench on 19 October, 2018 holds the field. We could have disposed of the Petition, reiterating has already declared by the Division Bench in Writ Petition No. 1664 of 2017, however, since learned Counsel for the Respondent No.7 Municipal Council is not present, stand over to 11 February, 2021.*

7. *In the meanwhile, the Respondents will not take any steps to give effect to the Reservation No.6, which is the subject matter of the present petition.*

8. *As regards Writ Petition No. 2990 of 2006, prima facie in view of the declaration given by the Division Bench in the Writ Petition No. 1467 of 2017 on 19 October, 2018 holding that this land will not fall within the jurisdiction of Patur Municipal Council, the Reservation No.6 cannot be given effect to as sought.*

9. *Stand over to 11 February 2021.”*

The order dated 21 January 2021 reproduced above is self-explanatory. Today when the matter was called out in the morning session, none appeared on behalf of Respondent No. 7 – Municipal Council Patur and Respondent Nos. 8 and 9. We kept the matter back in the afternoon session. Yet, none appeared for the Respondents except the learned AGP.

9. As noted in the order dated 21 January 2021, it is accepted even by Respondent No. 7 that the area does not fall within the jurisdiction of Municipal Council Patur. However, the only ground was of

pending Review Application. No order of the Review Application is placed on record. The decision of the Division Bench of this Court dated 19 October 2018 is holding the field for almost two and a half years. The Petition cannot be kept being indefinitely adjourned. Neither the Respondent Nos. 7 to 9 are remaining present when the matter is called out, nor the Review Application is being proceeded with.

10. In these circumstances, there is no option but to quash and set aside the acquisition proceedings based upon the requisition of Respondent No. 7 on the ground that the reservation is provided in the Development Plan of Patur city.

11. The Rule is made absolute in terms of Prayer Clause (A).

12. The declaration sought for in prayer Clause (B), in view of the above observations, has become superfluous.

13. We clarify that the acquisition is set aside on the above grounds, and it is open to the Respondents if they intend to do so to acquire the lands by taking recourse to appropriate positions of law.

14. No order as to costs.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]