

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 5445 OF 2021**

Shri Vitthal Awasu Kale
since deceased hence through
Legal representative
Shri Pramod Vitthal Kale
Age 51 years, Occupation : Service and farmer
Resident of : 158, Shri Vitthal Krupa Niwas,
Opposite Kashibai Kolhe School
Nashirabad Road, Jalgaon.

.. Petitioners

Versus

1. The State of Maharashtra
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Collector,
Jalgaon, Dist. Jalgaon.
3. The Jalgaon Municipal Corporation,
through it's Commissioner,
Jalgaon Municipal Corporation,
Nehru Chowk, Jalgaon,
District Jalgaon.
4. The Assistant Director of Town Planning
Jalgaon Municipal Corporation, Jalgaon,
District Jalgaon.

.. Respondents.

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Mr. Mukul S. Kulkarni, Advocate for petitioner
Mr. P.G.Borade, AGP for resopndent Nos. 1 and 2
Mr. V.B. Patil, Advocate for respondent Nos. 3 and 4

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**

DATE : 22 JUNE, 2022.

ORAL JUDGMENT [PER C.V. BHADANG, J] :-

Rule made returnable forthwith. Learned counsel for the respondent waives service. Heard finally by consent of parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner is seeking a declaration that the land bearing Survey No. 496/3B admeasuring 86 Ares situated at Jalgaon stands de-reserved on account of failure of the respondent Municipal Corporation to acquire the land in spite of service of notice dated 26.12.2012 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

3. The brief facts are that, the aforesaid land belonging to the petitioner has been reserved for Site No.21 in the Revised Development Plan of Jalgaon city, which came into force on 11.2.2002. In spite of expiry of 10 years in February 2012, no steps have been taken for acquisition of the land. The father of the petitioner issued a purchase notice under section 127 of the MRTP Act, 1966 on 26.12.2012, which was served on the respondent Corporation, however, no steps were taken for acquisition of the land, within the statutory period as permissible. The father of the petitioner expired on 12.6.2013 and when the petitioner as his successor sought

permission for development of the land, the same was refused.

4. We have heard the learned counsel for the parties. Perused record.

5. It is not in dispute that although the land is reserved in the Revised Development Plan of the year 2002, no steps have been taken by the respondent Municipal Corporation, for its acquisition in spite of service of notice under Section 127 of the MRTP Act, 1966, except that after receipt of purchase notice the respondent Corporation claims that a resolution was passed on 15.3.2013. The learned counsel for the respondent Corporation states that the said resolution alongwith the proposal for acquisition was forwarded to the State Government. However, except an entry in the outward register of the Corporation, the copy of such proposal for acquisition is not traceable in the office of the Corporation. The learned counsel for respondent made an alternate submission to grant reasonable time in order to enable the respondent Corporation to initiate the acquisition proceedings. It is pointed out that reservation was for a vegetable market and shops. He pointed out that the surrounding area has already been developed and, therefore, there is a necessity for acquisition of land for establishing the vegetable market and shops. Except this there are no contentions raised.

6. The learned counsel for petitioner placed reliance on the decision of the Honourable Apex Court in the matter of *Balaji*

Associates vs. State of Maharashtra in 2020(1) All M.R. 410 (SC); Laxmikant and others vs. State of Maharashtra and others 2022(3)ALL M.R.318 as also in the matter of Shrirampur Municipal Council, Shrirampur vs. Satyabhamabai and others (2013) 5 SCC 627.

7. It is submitted that the Honourable Apex court has disapproved grant of any extension for initiating the acquisition proceedings, as in the submission of the learned counsel, the lapsing of the land is automatic on account of operation of the statutory provision, once there is failure to initiate acquisition proceedings within the statutory period.

8. We have carefully considered the circumstances and the submissions made. The material facts as noticed above are not in dispute. It can be seen that except the claim that a resolution was passed and a proposal was sent to the State Government for acquisition, there are no other steps taken by the Municipal Corporation for initiating acquisition. Even a copy of the proposal is said to be not traceable in the office of the Corporation. The Supreme Court in the case of Shrirampur Municipal Council (Supra) in para. 21 has held that in view of the majority view in Girnar Traders (II) the steps towards acquisition can be said to commence when the State Government takes active steps for acquisition of the land, which leads to publication of declaration under Section 6 of the Land Acquisition Act, 1894 (the old Act). We also note that in the judgment of Laxmikant (supra) in para.6, the Supreme Court has disapproved

granting any additional period, which the Supreme Court has found, was not contemplated in the Act. In that view of the matter, we find that the petition has to succeed.

9. Petition is accordingly allowed in terms of prayer clauses (A) and (B). Rule is made absolute in aforesaid terms with no order at costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.

grt/-