

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

116 WRIT PETITION NO. 3947 OF 2020

MAHAVEER PROMOTERS AND CONSTRUCTIONS CO THROUGH ITS
PARTNER AJAY SHANTILAL LAWANI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Girish S. Rane
AGP for Respondent Nos. 1 to 3 : Mr. A.S. Shinde
Advocate for Respondent No. 4 : Mr. Vijay B. Patil

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**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 21st FEBRUARY, 2022

PER COURT :-

1. The development plan of the Jalgaon Municipal Corporation (for short "Corporation") was sanctioned on 11th February, 2002 and the same was implemented from 7th April 2002. The land of the petitioner to the extent of 6728.41 Sq. meters from land Gut No. 760/1 situated at Avhane, within the limits of Corporation is reserved as Site No. 28 for garden. The petitioner on or about 29th December, 2016 issued notice under Section 127 of the Maharashtra Town Planning Act, (for short "MRTP Act"). The same is served on the planning authority on 30th December 2016. It is contention of the petitioner that no effective steps are undertaken by the Corporation for initiation of acquisition proceeding within stipulated period, hence, the reservation stands lapsed.

2. The contention of respondent No. 4 is that the decision has been taken by the Corporation and resolution has been passed to Award TDR to the petitioner. The said decision is taken in the meeting of General

Body of the Corporation. The learned counsel submits that even respondents had taken steps for joint measurement.

3. The facts as narrated above are not disputed. It is also not disputed that no effective steps are undertaken by the Corporation for initiation of acquisition proceeding within stipulated period of two years. The declaration under section 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 (for short "Act of 2013") is not issued. Reference can be had to the judgment of the Apex Court in a case of ***Girnar Traders Versus State of Maharashtra*** reported in ***(2007)7 SCC 555***.

4. Section 127 of the MRTP Act is a fetter on the power of imminent domain. The right to property, though is not a fundamental right still is constitutional right and now it has been brought within the contours of human right. The rightful owner of the property cannot be deprived of use and enjoyment of the property in perpetuity. Awarding the TDR may not be the steps into acquisition proceedings.

5. The land of the petitioner is reserved for garden. The garden and open spaces are lungs of the city. The planning authority required to take steps for reservation of garden. Reference can be made of the judgment of the Apex Court in the case of ***Municipal Corporation Greater Bombay Versus Hiranman Sitaram Deurkhar decided on 24th August, 2017 in Civil Appeal No(s).11258 of 2017***. At the same time right of the owners are required to be protected. Balance has to be struck. In the result, we pass the following order.

ORDER

- (i) The reservation on the land of the petitioner to the extent of 6728.41 Sq. meters from land Gut No. 760/1 situated at Avhane, within the limits of Corporation

reserved as Site No. 28 for garden in the development plan of respondent Municipal Corporation, Jalgaon, stands lapsed.

(ii) Considering that the land is reserved for garden, the planning authority shall take steps for acquisition of the said land within a period of one year.

(iii) If the Municipal Corporation, Jalgaon fails to take steps to acquire the property within stipulated period of one year from today, the petitioner shall be entitled to use the said land in a manner adjacent land is permitted.

(iv) Thereafter, notification under Section 127(2) of the MRTP Act, be published.

(v) Though we observed that land of the petitioner be released from reservation, the petitioner shall not use the land for a period of one year for any purpose and maintain it in the same condition.

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

(S.G. DIGE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE