

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

991 WRIT PETITION NO. 3842 OF 2020
ANIL PRABHAKAR AUNDHEKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Pramod C. Mayure
AGP for Respondent Nos. 1 to 4 : Mr. S.P. Tiwari
Advocate for Respondent Nos. 5 and 6 : Mr. S.C. Bora
Advocate for Respondent No. 7 : Mr. Mahesh Deshmukh

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

DATE : 5th JANUARY, 2022

PER COURT :-

1. We have heard Mr. Mayure, learned counsel for the petitioners, Mr. Bora, learned counsel for the planning authority, the learned AGP for respondents- State Authorities and Mr. Deshmukh, learned counsel for the Agricultural Produce Market Committee (*APMC*).
2. The land of the petitioners bearing Survey No. 54/1 (22 Acres 33 Gunthas) and 55/1 (17 Acre 09 Gunthas), total admeasuring 40 Acres & 2 Gunthas situated at Parbhani-Jintur Road is reserved as Site No. 4/08 for APMC. The development plan came into effect from 16-12-1999.
3. The petitioners issued a notice U/Sec. 127 of the Maharashtra Regional Town Planning Act, 1966 (*M RTP Act*) on 21-11-2017. The receipt of the said notice by the planning authority is not disputed.
4. It is also not disputed that no steps are taken for acquisition by issuance of a 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 (*Act-2013*)

within a period of two years from the date of service of the said notice. In fact, no such declaration is issued even till date. The Agricultural Produce Market Committee, it appears has communicated the planning authority that the reservation be released under its communication dated 10-04-2017.

5. It is abundantly clear that steps for acquisition would be initiated by issuance of declaration U/Sec. 126 of the MRTP Act read with Section 19 of the Act-2013 as held by the Apex Court in case of ***Girnar Traders Vs. State of Maharashtra and others*** reported in ***(2011) 3 S.C.R. 1.***

6. 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.

7. As no steps for acquisition are taken within a period of two years from the issuance of notice U/Sec. 127 of the MRTP Act, the reservation stands lapsed.

8. In light of the above, it is held that the reservation on the writ land of the petitioners stands lapsed. The petitioners are entitled to use the land as the adjacent land is permitted to be used. The State Government shall issue notification to that effect, preferably within a period of six (06) months.

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

(S.G. DIGE)
JUDGE

mtk

(S.V. GANGAPURWALA)
JUDGE