

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14467 OF 2021

- 1] Chatrabhuj Soma Sonawane
Age : 60 years, Occu : Agriculturist,
- 2] Nitin Daulat Sonawane
Age : 33 years, Occu : Agriculturist & Busi.,

1 & 2 R/o. Opposite Shani Mandir,
R/o. Shani Peth, Jalgaon,
Taluka & District Jalgaon
- 3] Vinesh Sundarlal Parapyani
Age : 38 years, Occu : Agri. & Business,
R/o. Ganpati Nagar, Jalgaon,
Taluka & District – Jalgaon
- 4] Satish Bagwandas Jagwani
Age : 58 years, Occu : Agri. & Business,
R/o. 54/55, Adarsha Nagar, Jalgaon
- 5] Ghanshyam Laxmandas Adawani,
Age : 50 years, Occu : Business,
R/o. Dhake Colony, Jalgaon,
Taluka & District Jalgaon
- 6] Suresh Tekchand Prathyani,
Age : 41 years, Occu. : Business,
R/o. 81, Ganesh Nagar, Jalgaon,
Taluka & District Jalgaon
- 7] Omkumar Sundarlal Parapyani
Age : 29 years, Occu. : Agri. & Business,
R/o. Ganpati Nagar, Jalgaon,
Taluka & District Jalgaon
- 8] Dyandev Shridhar Kale
Age : 71 years, Occu.: Agriculturist,
R/o. 527, Vitthal Peth, Jalgaon,
Taluka & District Jalgaon

.. Petitioners

Versus

- 1] The State of Maharashtra,
Through Secretary,

Urban Development Department,
Mantralaya, Mumbai

2] The District Collector,
Jalgaon, Taluka & District Jalgaon

3] Assistant Director,
Town Planning Department, Jalgaon

4] Jalgaon City Municipal Corporation,
Through its Commissioner,
Jalgaon City Municipal Corporation,
Jalgaon, Taluka & District Jalgaon

5] The Executive Engineer,
Waghur Dam Project,
Jalgaon, Taluka & District Jalgaon

.. Respondents

...
Advocate for petitioner : Mr. S.P. Brahme h/f. Mr. S.H. Tripathi
AGP for the respondent – State : Mr. K.N. Lokhande
Advocate for the respondent no. 4 : Mr. V.D. Gunale
Advocate for respondent no. 5 : Mr. Chetan T. Jadhav
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 6 SEPTEMBER 2022

ORDER (MANGESH S. PATIL, J.) :

Rule. Rule is made returnable forthwith. Learned AGP waives service for the respondents nos. 1 to 3. Mr. Gunale waives service for respondent no. 4 – Municipal Corporation and Mr. A.D. Pawar waives service for respondent no. 5. At the joint request of the parties, matter is heard finally at the stage of admission.

2. The petitioners are seeking a declaration regarding de-reservation as contemplated under section 127 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act).

3. The petitioners are the owners of the writ properties being land survey no. 318/2 admeasuring 1 Hectare 67 Are and survey no.318/1#3B/2 admeasuring 76 Are of Jalgaon town. The development plan of Jalgaon (additional area) was sanctioned on 11-02-2002 and came into effect from 07-04-2002. The development plan (excluded part) was sanctioned on 10-08-2004 which came into force on 01-10-2004. The writ property was put under reservation in the development plan for Waghur canal and 18 M wide service road for canal. The respondent no. 4 is the Jalgaon Municipal Corporation whereas respondent no. 5 is the Executive Engineer of the Waghur Dam Project and is stated to be the appropriate authority under section 2(3) of the MRTP Act. Since no effective steps for acquisition of the writ property were taken within the statutory period, a notice under section 127 of the MRTP Act was issued to the respondent no. 5 on 01-02-2019. However, subsequently, the respondent no. 5 due to change in the alignment of the canal, decided to not to go ahead with the project of laying canal through the writ properties. The respondent no. 4 – Municipal Corporation then moved for modification under section 37 of the MRTP Act for de-reservation. Hence the petitioners

have primarily prayed for declaration about lapsing of reservation and in the alternative have sought a direction to the State Government to complete the procedure for modification of proposal submitted under section 37 of the MRTP Act, thereby cancelling the reservation.

4. We have heard both the sides extensively. So far as the material facts are concerned, there is no dispute. Though the writ properties were put under reservation in a development plan of the respondent no. 4 – Municipal Corporation, those were to be utilized by the respondent no. 5 for laying canal of the Waghur Dam Project with a service road. There is also no dispute about the fact that subsequently, the respondent no. 5 took a decision that it no longer required the writ properties and other adjoining properties which were reserved for laying canal. There is also no dispute about the fact a modification has been proposed under section 37(1) of the MRTP Act and still the Government is to take further decision.

5. Consequently, apart from the fact that no effective steps have ever been taken to acquire the writ properties within the statutory period of 10 years and even after lapse of 24 months of the notice under section 127 was served to the respondent no. 5, as a logical and legal corollary, the reservation has lapsed.

6. Some argument was advanced on behalf of the respondents that the notice under section 127 was issued only to the respondent no. 5 – Executive Engineer, Waghur Dam Project and not to the planning authority which is the respondent no. 4 – Municipal Corporation. However, as has been rightly pointed out by Mr. Brahme, in view of the specific wordings of section 127, the notice contemplated therein can be served to any of the authorities mentioned therein, namely, the planning authority, the development authority or the appropriate authority. When admittedly, the reservation was placed on the writ properties for lying the canal and the service road for the respondent no. 5, it was indeed an appropriate authority as defined under section 2(3) of the MRTP Act which reads as under :

“(3) “Appropriate Authority” means any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorised to acquire; ”

7. In our considered view, therefore, the respondent no. 5 being the appropriate authority, even though the notice under section 127 was issued to it alone and not to the respondent no. 4 – Municipal Corporation which is the planning authority, there was no illegality rather, that was sufficient compliance with the provisions of section 127 of the MRTP Act.

8. In view of such state-of-affairs, we allow the writ petition and declare that the reservation on the writ properties has lapsed.

9. The respondents shall take immediate steps for issuance of notification under sub section (2) of section 127 of the MRTP Act.

10. Rule is made absolute accordingly.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/