

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13930 OF 2019

Satish Soma Bhole,
Age : 65 years, Occu. Business & Agriculture,
R/o. : Tailor House, Shivram Nagar,
Jalgaon, Dist. Jalgaon

.. Petitioner

Versus

- 1] The State of Maharashtra
Through the Secretary
Ministry of Urban Development
Mantralaya, Mumbai – 32
- 2] The Director of Town Planning,
Maharashtra State, Pune
- 3] The Land Acquisition Officer, Jalgaon,
Dist. Jalgaon
- 4] The Collector,
Jalgaon, Dist. Jalgaon
- 5] Assistant Director, Town Planning,
Municipal Corporation Jalgaon,
Jalgaon
- 6] Municipal Corporation, Jalgaon,
Through its Commissioner

.. Respondents

WITH
WRIT PETITION NO. 14531 OF 2019

- 1] Anil Vitthal Kolhe,
Age : 58 years, Occu. Agriculture,
R/o : 158 Rampeth Kolhe Wada,
Jalgaon, Dist. Jalgaon
- 2] Bhaskar Avasu Kolhe
Age : 79 years, Occu. Agriculture,
R/o : 158 Rampeth Kolhe Wada,
Jalgaon, Dist. Jalgaon

- 3] Umesh Dilip Kolhe,
Age : 28 years, Occu. Agriculture,
R/o : 58 Rampeth Kolhe Wada,
Jalgaon, Dist. Jalgaon
- 4] Jayshri Dilip Kolhe
Age : 32 years, Occu. Household,
R/o : 58 Math Galli Rampeth Kolhe Wada,
Jalgaon, Dist. Jalgaon
- 5] Malti Dilip Kolhe
Age : 58 years, Occu. Household,
R/o : 58 Kole Wada Rampeth,
Jalgaon, Dist. Jalgaon
- 6] Yogita Dilip Kolhe @ Yogita Girish Savdekar
Age : 37 years, Occu. Household,
R/o : Plot No. 29, Gat no 78/3-4a-d
Near D N C College Shankarrao Nagar,
Jalgaon, Dist. Jalgaon
- 7] Rupesh Dilip Kolhe
Age : 41 years, Occu. Agriculture,
R/o : 58 Math Galli Rampeth Kolhe Wada,
Jalgaon, Dist. Jalgaon

.. Petitioners

Versus

- 1] The State of Maharashtra
Through the Secretary
Ministry of Urban Development
Mantralaya, Mumbai-32
- 2] The Director of Town Planning,
Maharashtra State, Pune
- 3] The Land Acquisition Officer, Jalgaon,
Dist. Jalgaon
- 4] The Collector,
Jalgaon, Dist. Jalgaon
- 5] Assistant Director, Town Planning,
Municipal Corporation, Jalgaon,
Jalgaon
- 6] Municipal Corporation, Jalgaon,
Through its Commissioner

.. Respondents

**WITH
WRIT PETITION NO. 14527 OF 2019**

- 1] Nivrutti Sridhar Kolhe,
Age : 85 years, Occu. Agriculture,
R/o : Plot No.-11 Kolhe Hospital,
Prabhat Colony Chowk, Jalgaon,
Dist. Jalgaon
- 2] Madhukar Shridhar Kolhe,
Age : 70 years, Occu. Agriculture,
R/o : Ward No. 23 Gandhinagar Sai Niwas,
Itarsi Hoshangabad Madhya Pradesh-461111
- 3] Jagadish Pundalik Kolhe,
Age : 63 years, Occu. Agriculture,
R/o : Ganpati Mandir, Javal Bhadli Bk,
Jalgaon, Dist. Jalgaon
- 4] Govinda Pundlik Kolhe
Age : 60 years, Occu. Agriculture
R/o : Shantai Nivas Juna Khedi Road,
Gopalpura, Jalgaon,
Dist. Jalgaon
- 5] Ravindra Pundalik Kolhe
Age : 50 years, Occu. Agriculture,
R/o : Shantai Niwas Old Khedi Road,
Behind Kolhe Vidhyalay,
Jalgaon, Dist. Jalgaon

.. Petitioners

Versus

- 1] The State of Maharashtra
Through the Secretary
Ministry of Urban Development
Mantralaya, Mumbai-32
- 2] The Director of Town Planning,
Maharashtra State, Pune
- 3] The Land Acquisition Officer, Jalgaon,
Dist. Jalgaon
- 4] The Collector,
Jalgaon, Dist. Jalgaon

5] Assistant Director, Town Planning,
Municipal Corporation, Jalgaon,
Jalgaon

6] Municipal Corporation Jalgaon,
Through its Commissioner

.. Respondents

...

Mr. A.P. Bhandari, Advocate for petitioner in all WPs
Mrs. V.N. Patil – Jadhav, AGP for the respondents no. 1 to 4
Mr. V.B. Patil, Advocate for the respondents nos. 5 and 6

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 2 AUGUST 2022
PRONOUNCED ON : 5 AUGUST 2022**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule in all these petitions. It is made returnable forthwith.

3. Learned AGP waives service for the respondents nos. 1 to 4. Mr. V.B. Patil waives service for respondents nos. 5 and 6.

At the joint request of the parties, these matters are being disposed of finally at the stage of admission.

4. Though the petitioners in all the three petitions are different, they are claiming the same relief regarding lapsing of reservation under section 127 of the Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act'), on similar set of facts, pertaining to the same reservation, Site no. 13 earmarked for fire-brigade by the

planning authority - respondent no. 6. To avoid repetition, the petitions are being disposed of by this common judgment.

5. The facts which are not in dispute, may be summarized as under :-

The development plan for the area of Municipal Corporation, Jalgaon - respondent no. 6 was sanctioned by the Government in two parts; first part was sanctioned on 07-03-2002 and for the remaining part, it was sanctioned on 10-08-2004 and it came into force with effect from 01-10-2004. The land bearing different parts of survey no. 415 belonging to the petitioners, of different area, was reserved as site no. 13 for fire-brigade.

The petitioners issued purchase notices under section 127 of the MRTP Act on 20-09-2017/08-09-2017/31-08-2017, respectively, in all the three petitions. In lieu of compensation, the petitioners were offered TDR but they refused to accept it.

6. The respondent no. 6 corporation then passed a resolution for acquiring the writ site on 16-12-2007. It forwarded a proposal. The Special Land Acquisition Officer by communication dated 28-07-2018 called upon the respondent no. 6 to deposit the entire amount of compensation. However, no steps were taken for issuance of any notification in terms of 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 ("New Land Acquisition Act).

7. The respondent no. 6 has recently deposited an amount of Rs.94,38,240/- with the respondent no. 3 - Land Acquisition Officer on 15 July 2022.

8. The learned advocate Mr. Bhandari for the petitioners would submit that by operation of law and by efflux of time, an indefeasible right has accrued to the petitioners of claiming that the reservation has lapsed. The consequences are inevitable and clearly spelt out by the statute. On admitted facts, since no steps have been taken within 24 months of receipt of the purchase notices, any subsequent development and steps taken towards acquisition would not suffice. Referring to the decision of the Supreme Court in the matter of *Girnar Traders Vs. State of Maharashtra; AIR 2007 SC 3180*, he would submit that the steps contemplated under section 126 of the MRTP Act would be nothing short of a declaration under section 6 of the Land Acquisition Act, 1895 ('Old Land Acquisition Act') corresponding to section 19 of the New Land Acquisition Act. Irrespective of the intention of the respondent no. 6 - planning authority, the petitioners cannot be compelled to accept TDR in lieu of the compensation.

9. He would further submit that even the compensation has not been deposited in its entirety though a resolution was passed long back. Lastly, he would submit that when admittedly no declaration under section 19 of the New Acquisition Act has been issued, the reservation has lapsed automatically and this Court cannot extend the statutory period of 24 months prescribed under section 127 of the MRTP Act. He would point out that any such attempt to extend the period would be contrary to the decision of the Supreme Court in the matter of *Laxmikant and others Vs. State of Maharashtra and others*; 2022 LiveLaw (SC) 315.

10. Per contra, learned advocate Mr. V.B. Patil for the respondents nos. 5 and 6 would submit that a larger public interest needs to be borne in mind. The reservation is for setting up a fire-brigade station. It is not that nothing has moved since receipt of the purchase notice. The respondent no. 6 - planning authority has passed a resolution sanctioning the expenditure. A proposal was forwarded to the respondent no. 3 - Land Acquisition Officer. He never informed about the exact amount of compensation to be deposited. A *bona fide* attempt was made towards acquisition but it did not fructify for no fault of the planning authority. The whole purpose of putting up a reservation for public use would be lost and the petition be dismissed.

11. At the outset, it is necessary to observe that there is no dispute as regards the facts. The development plan had come into force with effect from 01-10-2004 by virtue of section 127 of the MRTP Act. It was imperative for the planning authority to take steps for acquisition of the reserved site within 24 months of receipt of the purchase notices. Though some half-hearted attempts of passing a resolution, putting up a proposal with the Land Acquisition Officer and may be depositing some part amount of compensation with the Land Acquisition Officer as late as on 15-07-2022 have been made, admittedly, as interpreted by the Supreme Court in the matter of *Girnar Traders* (supra), these were only some steps that were taken towards the acquisition but has been clearly short of issuing a declaration as is required under section 6 of the Old Land Acquisition Act and section 19 of the New Land Acquisition Act.

12. The observations in paragraph no. 54 and 62 of *Girnar Traders* (supra) would be relevant which read as under:-

“54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owners property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in *Municipal Corporation of Greater Bombay Case* (supra). If the acquisition is left for a time immemorial in the hands of the concerned authority by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such

an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the land owner for his utilization as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for de-reservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the land owner for de-reservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

62. In the present case, the amended regional plan was published in the year 1991. Thereafter, the steps by making an application under clause (c) of sub-section (1) of Section 126 for issuance of the declaration of acquisition and the declaration itself has to be made within the period of one year from the date of the publication of regional plan, that is, within the period of one year from 1991. The application under Section 126(1)(c) could be said to be a step taken for acquisition of the land if such application is moved within the period of one year from the date of publication of regional plan. The application moved after the expiry of one year could not result in the publication of declaration in the manner provided under Section 6 of the LA Act, under sub-section (2) of Section 126 of the MRTP Act, there being a prohibition under the proviso to issue such declaration after one year. Therefore, by no stretch of imagination, the step taken by the Municipal Corporation under Section 126(1)(c) of making an application could be said to be a step for the commencement of acquisition of the land. After the expiry of one year, it is left to the Government concerned under sub-section (4) of Section 126 to issue declaration under Section 6 of the LA Act for the purposes of acquisition for which no application is required under Section 126(1)(c). Sub-section (4) of Section 126 of the MRTP Act would come into operation if the State Government is of the view that the land is required to be acquired for any public purpose."

In view of such a position in law, the consequences are inevitable. For 10 years of finalization of the development plan, steps were not taken nor were they taken as contemplated in law for 24 months after receipt of purchase notice under section 127 of the MRTP Act and an indefeasible right had accrued in the petitioners to claim that the reservation has lapsed.

13. Allowing any further time to the planning authority to hereafter pay the balance amount of compensation and get the declaration under section 19 of the New Land Acquisition Act to be issued, would tantamount to extending the statutory period of 24 months which, we are afraid, is not permissible in law and more so in the light of the decision of the Supreme Court in the matter of *Laxmikant* (supra).

14. In the matter of *Laxmikant* (supra), this Court had held that the reservation had lapsed as no declaration under section 126 of the MRTP Act was published, but the planning authority was given one year time to acquire the land relying upon the decision of the Supreme Court in the matter of *Municipal Corporation of Greater Mumbai and others Vs. Hiranman Sitaram Deorukhar and others*; (2019) 14 SCC 411. Dealing with the issue while setting aside the order of this Court following were the observations made in paragraphs no. 7 and 9 :-

“7. This Court in **Municipal Corporation of Greater Mumbai** held that the authorities have been given a duty to act as a

cestui que trust (beneficiary of the trust) with respect to public park and had thus directed to acquire land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of six months. Such direction was given under Article 142 of the Constitution of India keeping in view the facts of the case. Such direction and period for acquisition of land is not a law declared by this Court which is to be treated as binding precedent for this Court and the subordinate courts subordinate in terms of Article 141 read with Article 144 of the Constitution. Therefore, once the Act does not contemplate any further period for acquisition, the Court cannot grant additional period for acquisition of land. The land was reserved for a public purpose way back in 2002. By such reservation, the land owner could not use the land for any other purpose for ten years. After the expiry of ten years, the land owner had served a notice calling upon the respondents to acquire the land but still the land was not acquired. The land owner cannot be deprived of the use of the land for years together. Once an embargo has been put on a land owner not to use the land in a particular manner, the said restriction cannot be kept open-ended for indefinite period. The Statute has provided a period of ten years to acquire the land under Section 126 of the Act. Additional one year is granted to the land owner to serve a notice for acquisition prior to the amendment by Maharashtra Act No. 42 of 2015. Such time line is sacrosanct and has to be adhered to by the State or by the Authorities under the State.

9. In view thereof, the direction to acquire land within a period of one year is in fact contravening the time line fixed under the Statute. Consequently, the direction to acquire the land within one year is set aside. The appeal is allowed.”

As can be seen, the period contemplated being a statutory period, there is no question of any extension.

15. Consequently, there is no scope for taking any sympathetic view. Consequences are inevitable and we are merely to spell it out by allowing the writ petitions.

16. The writ petitions are allowed.

17. It is declared that the reservations of site no. 13 of the development plan of Jalgaon city has lapsed.

18. The respondent no. 6 shall now take appropriate steps for issuing notification for release of the property in terms of sub-section (2) of section 127 of the MRTP Act within 4 months.

19. Rule is made absolute in the above terms in the above petitions.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/