

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.592 OF 2020

M/s Vinayak & Company.
A registered firm through its
Partner Sow.Sunita Gopal Agrawal,
Age : 56 years,
Occupation : Household/ Business,
R/o 38/1&2, Ananddham Aptt. "B",
Vidya nagar, Near Jalna Road,
Aurangabad.

...PETITIONER

- VERSUS -

1. The State of Maharashtra.
Through it's Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. Aurangabad Municipal Corporation.
Through it's Commissioner,
Main Building, Town Hall,
Behind Post Office, Aurangabad.
3. Deputy Director of Town Planning,
Town Planning Office,
Jubilee Park, Aurangabad.
4. Divisional Sports Complex,
Managing Committee, Aurangabad.
Through it's Secretary/Director of Sports,
Aurangabad Division, Aurangabad.
5. Rajendrakumar Madanlal Surana,
Age : 64 years, Occupation : Business,
R/o 7, Mahesh Nagar, Jalna Road,
Aurangabad.

...RESPONDENTS

WITH
CIVIL APPLICATION NO.3856 OF 2022
IN
WRIT PETITION NO.592 OF 2020

RAJENDRAKUMAR MADANLAL SURANA
VERSUS
M/S VINAYAK & COMPANY

...
Advocate for the Petitioner : Shri Bajaj Anil S.
AGP for Respondents 1, 3 and 4/State : Shri S.B. Yawalkar
Advocate for Respondent 2 : Shri J.R. Shah
Advocate for Respondent 5/ Intervenor : Shri S.S. Bora
...

CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 13th June, 2023

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*):-

(a) Civil Application No.3856/2022:-

1. Considering the conspectus of the matter and the identity of the Applicant with relation to the writ land, the Civil Application is allowed. The Applicant be arrayed as Respondent No.5 in the Writ Petition. Addition be carried out forthwith.

(b) Writ Petition No.592/2020:-

2. The learned Advocate Shri Bora causes an appearance on behalf of the added Respondent No.5. He submits that as he has common interest with the Petitioner and he supports the Petitioner.

3. **Rule.** Rule made returnable forthwith and heard finally by the consent of the parties.

4. The Petitioner has put forth prayer clauses B and C as under:-

“B) By issue of an appropriate writ, order or direction it may be held that the reservation of the land bearing C.T.S. No.15842/A, Survey No. 55 admeasuring 8902 Sq. Mtrs. situated at Mouje Garkheda, Tq. & District Aurangabad, covered under the reservation site No. 248 for Sport Complex-cum-Commercial Centre provided under Notification TPS-3007/227/CR-129/2007/UD-30 dated 19th September 2007, has been lapsed and the land of the petitioner described aforesaid is available for development as permissible to the adjoining land owners;

C) Pending the hearing and final disposal of this writ petition, the Respondent No.2 may be directed to consider the application for development made U/s 44 and to take appropriate decision and grant permission to the petitioner for development of the land;”

5. Considering the issue before us, the dates and

sequence of events need to be recorded, as under:-

(a) On 15.10.1991, the notification was published by the State Government wherein, the powers conferred under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 were invoked by the Urban Development Department and it sanctioned the Development Plan submitted by the then Aurangabad Municipal Council for the part of the area under No Development Zone of the old sanctioned Development Plan and for the additional area included in its jurisdiction by the Notification dated 31.12.1982, excluding the areas under the jurisdiction of the City and Industrial Development Corporation of Maharashtra Limited (CIDCO) and the Maharashtra Housing and Area Development Authority (MHADA).

(b) Vide the notification dated 19.09.2007, the powers under Section 37 were exercised and the modified proposal was sanctioned by the State Government and which was made applicable to the Development Plan of Aurangabad city.

(c) The Petitioner issued the notice dated 19.09.2017 invoking Section 127 of the Maharashtra Regional and Town Planning Act, 1966, which was served on Respondent No.2/ Municipal Corporation on 27.09.2017, through Respondent

No.3/Deputy Director of Town Planning on 27.09.2017, and on Respondent No.4/Sports Authority on 28.09.2017.

(d) On 19.11.2019, a reminder application was once again tendered.

(e) It is undisputed that this petition is with regard to only two acres of land, which has not been utilized though reserved by the notification dated 19.09.2007.

6. The first date of the notification, which is 19.09.2007, will have to be excluded and ten years will have to be reckoned with, effective from 20.09.2007. Ten years would expire after 19.09.2017. The learned AGP Shri Yawalkar submits that the notice issued by the Petitioner under Section 127 is defective on being premature by one day.

7. We do not find that this submission could be entertained in view of Section 127(1), which clearly indicates that twelve months have to be calculated from the date of service of such notice. In short, ten years will have to be reckoned with by holding the date of service of notice as the date of reference. These ten years will have to be calculated preceding the date of service of notice. 24 months will then have to be calculated from

the date of service of notice for the purposes of enabling the Acquiring Authority to initiate steps as ordained by the law laid down in *Girnar Traders vs. State of Maharashtra and others, (2011) 3 SCC 1*.

8. Shri Yawalkar submits, on instructions, that in terms of paragraph 12 of the affidavit in reply filed on behalf of Respondent No.4 by Shri Suhas Patil, Deputy Director, Sports and Youth Services, Aurangabad Division, Aurangabad, the Urban Development Department has taken the stand that all efforts will be made to prevent encroachment on the play ground and the land being used for sports purposes and reservation for such sports activities, will never be altered. He contends that this communication dated 29.08.2003 is issued under Section 158(1) of the MRTP Act, 1966 which reads as under:-

“158. *Power to make Rules.*

(1) *The State Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules to carry out all or any of the purposes of this Act.”*

9. In view of the above, we are afraid that the said contention on behalf of Respondent No.4 in the light of Section 158(1) can never be an impediment or obstacle, much less, have

overriding effect on Section 127 of the MRTP Act, 1966.

10. It is a conceded position before us that none of the Respondents have initiated any steps as are recognized by Section 127(1) within 24 months from the date of service of notice, which is 27.09.2017 insofar as the Municipal Corporation and 28.09.2017 insofar as the Sports Authority. Almost six years have lapsed by now.

11. In view of the above, **this Writ Petition is allowed in terms of prayer clause B.** Consequentially, we direct Respondent No.2 to intimate Respondent No.1 within two weeks that the reservation for the said writ land of two acres has lapsed. In pursuance thereof, Respondent No.1 would issue a notification under Section 127(2) of the MRTP Act, within a period of two months from the date of receipt of the communication from the Municipal Corporation.

12. Rule is made absolute in the above terms.

kps

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)