

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

WRIT PETITION NO. 9790 OF 2021

1. Premchand S/O. Dayaram Bhole,
Age 75 years, Occ. Agriculture,
R/o. 485/2 Vitthal Peth,
Jalgaon, Tal and Dist. Jalgaon
425 001.
2. Madhav s/o. Krushna Khadke,
Age 64, Occ. Agriculture,
R/o. 118, Swapnil Building,
Ganesh Colony, Jalgaon,
Tal and Dist. Jalgaon,
425 001.
3. Umakant s/o. Vishnu Bhangale,
Age 54 years, Occ. Nil,
R/o. 118, Swapnil Building,
Ganesh Colony, Jalgaon,
Tal and Dist. Jalgaon,
425 001.
4. Manoj s/o. Motiram Khadke,
Age 34 years, Occ. Business,
R/o. Leana Building, G-902,
Bellacasa, Pashan, Pune,
411 021.

... PETITIONERS.

VERSUS

1. The State of Maharashtra,
through Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.

2. The Joint Director Town Planning
Department, Nasik Division,
New Central Administrative Building,
1st floor, Divisional Commissioner,
Office Campus, Nasik Road,
Nasik 422 001.
3. The Municipal Corporation,
Jalgaon through its Commissioner,
M.G. Road, Neharu Square,
Jalgaon 425 001.
4. The Assistant Director of
Town Planning, Municipal Corporation,
Jalgaon, Bhikamchand Jain Market,
Jalgaon 425 001.

.. RESPONDENTS.

Mr. Jitaendra V. Patil and M.S. Chaudhari, Advocates for petitioners,
Mr. A.R. Kale, AGP for respondent Nos. 1 and 2,
Mr. V.B. Patil, Advocate for respondent No.4.

**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 29th MARCH 2023

JUDGMENT [PER S.G. CHAPALGAONKAR, J].:-

1. Heard. Rule. Rule made returnable forthwith.
2. The petitioners have approached this court under Art 226 of constitution of India seeking declaration that Development Plan reservation of land Gat No. 152/3 admeasuring 2 Hectare 10 R situated at Pimprale, Dist. Jalgaon is lapsed and land is available for petitioners unrestricted use. The petitioners further seek direction against

respondent No.1 to publish notification u/s 127(2) of MRTP Act in the Government Gazette to that effect.

3. The contention of the petitioners is that land bearing Gat No. 153/3 admeasuring 2 Hectare 10 R situated at village Pimprale Taluka & District Jalgaon, is jointly owned by them. The name of the petitioners is mutated as joint owners. There is no dispute about the ownership amongst them. The land in question has been affected by the Development plan reservation of Jalgaon Municipal Corporation and earmarked for playground vide notification dated 11.2.2002 published in the Maharashtra Government Gazette Part I, Nasik Division.

4. Respondent No.3 Municipal Corporation Jalgaon is the planning authority. The final development plan has been enforced w.e.f. 19.10.2004, with certain modifications. The western portion of site No.123 has been included in the residential zone and remaining portion has been retained with reservation for High School and play ground. Although period of more than ten years elapsed, no steps for acquisition of reserved land are taken by respondents.

5. The petitioners served purchase notice dated 19.8.2019 to respondents under Section 127 of the MRTP Act. In pursuance of the notice, respondent No.1 issued a communication dated 17.10.2019 directing respondent No.3 Municipal Corporation to take steps, for acquisition of the land of the petitioners in accordance with law. Similarly, respondent No.4 Assistant Director of Town Planning replied the purchase notice vide his communication dated 13.11.2019. He called upon the petitioners to provide the map showing sub-division of the land.

He offered TDR in lieu of monetary compensation. The contention of the petitioners is that they are not willing to accept the alternate offer of TDR in lieu of monetary compensation.

6. According to the petitioners, the respondents have failed to take necessary steps in terms of the Land Acquisition Act within the statutory period of 24 months from the date of service of purchase notice, consequently, the reservation stood lapsed and the respondents are bound to issue notification in terms of Section 127(2) of the MRTP Act, declaring lapsing of reservation.

7. The respondent nos. 1 and 2 have filed affidavit in reply stating that the development plan for additional area of Jalgaon city has been sanctioned under Section 31(1) of the MRTP Act, 1906 and same have been enforced w.e.f. 7.4.2002. Further vide notification dated 10.8.2004, the development plan of excluded part has been sanctioned and enforced w.e.f. 1.10.2004. Land bearing Survey No. 152/part east side situated at mouje Pimprala is reserved under site No.123 for High School and play ground. The appropriate authority for acquisition of this reservation is Jalgaon Municipal Corporation. The purchase notice dated 19.8.2019 under section 127 of the MRTP Act has been served. The Municipal Corporation was directed to take necessary action as per the provisions of the Act. It is further contended that the respondent corporation has communicated the petitioners to accept TDR in lieu of monetary compensation. In that view of the matter, the reservation would not lapse.

8. The respondent Nos. 3 and 4 have filed affidavit in reply

contending that the petitioners failed to furnish necessary documents showing their title and interest in the land alongwith purchase notice. The communication dated 13.11.2019 was given to the petitioners for compliance of aforesaid requirements. However, they failed to comply the same. In the alternative, the petitioners are offered TDR in lieu of monetary compensation. The Corporation has submitted proposal dated 31.12.2019 for acquisition reserved land to the District Collector however, for want of measurement map, showing sub-divisions of ownership, it is not possible to take further steps towards acquisition.

9. We have heard the learned advocates for the respective parties and appreciated the pleadings and material on record. Admittedly, the development plan for additional area of Jalgaon city has been sanctioned and enforced w.e.f. 1.10.2004. The land owned by the petitioner is affected by reservation. Since the date of enforcement of development plan, no steps for acquisition have been taken by the respondents. The petitioners/owners of the land have served purchase notice dated 19.8.2019 under Section 127 of the MRTP Act to the respondents including the Planning Authority i.e. Municipal Corporation, Jalgaon. It has been replied vide communication dated 13.11.2019 stating that purchase notice is not accompanied by the map depicting sub-divisions of the land. In the alternative, TDR has been offered in lieu of monetary compensation.

10. Pertinently, petitioners are owners of Gat No. 152/3 admeasuring 85 R. The petitioners served purchase notice dated 19.8.2019 which is accompanied by 7x12 extract of the land of the petitioners alongwith /village map/Development map etc. Since Gat No.

152/3 is a separate Gat number having its own boundaries and the petitioners are joint owners, no further documents for identification of the land could have been required. Therefore, in our considered view, the purchase notice issued by the petitioners contains requisite details to establish particulars of land sought to be deserved and same is compliant with the requirements under Section 127 of the MRTP Act.

11. After service of purchase notice dated 19.8.2019, no steps have been taken for acquisition of the land. Mere offer to accept the TDR in lieu of monetary compensation do not constitute the requisite steps. It is trite that land owner cannot be compelled to accept the compensation by way of alternate mode like TDR in lieu of monetary compensation. The petitioners never consented qua the offer. It appears that the respondent No.3 has merely forwarded the proposal dated 31.12.2019 to the District Collector, Jalgaon for acquisition of the land. Except this empty formality, no effective steps are taken within statutory period of two years.

12. The learned advocate for the petitioners placed his reliance on the judgments in the case of *Balaji Associates Vs. State of Maharashtra (2019)19 SCC 1* and *Shrirampur Municipal Council Vs. Satyabhamabai (2013)5 SCC 627*, where in the Reference is given to para.43 of the said judgment, in case of Girnar Traders (2) which reads thus :-

“The expression “No steps as aforesaid” used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceeding for the acquisition of

the land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilized for execution of the Development plan/Town Planning Scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution.

13. In view of the aforesaid legal position, the contention of the respondents that an offer of TDR in lieu of monetary compensation shall be construed as effective step towards acquisition cannot be accepted. Similarly, mere submitting proposal to the District Collector would not amount to effective steps. Law recognizes declaration under section 126 of the MRTP Act or notification under Section 6 of Land Acquisition Act to be the effective step. In the present case, no such effective steps are taken.

In result Writ Petition Succeeds. We proceed to pass order as under.

ORDER:

- A. We hold and declare that Development plan reservation on petitioners' Land bearing Survey No. 152/part east side situated at Pimprala reserved under site No.123 earmarked for High School and play ground has lapsed and land has become available to the petitioners for their desired development.
- B. The State Government shall notify an Order / Declaration lapsing of reservation in the official gazette in terms of Section 127(2) of the MRTP Act as expeditiously as possible and preferably within a period of 3 months from the date of this order.

14. Rule made absolute in above terms. No costs.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-