

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

WRIT PETITION NO.12630 OF 2022

1. Satish Chandrashekhar Bidve
Age: 46 years, Occu: Business
2. Jagdish Chandrashekhar Bidve
Age: 47 yrs, Occu: Business
3. Shridevi Chandrashekhar Bidve
Age: 74 yrs, Occu: Household
All R/o. Lokhand Galli, Latur,
Tq. And Dist. Latur.

.... **PETITIONERS**

V/s.

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Director of Town Planning
Maharashtra State, Pune.
3. The Collector, Latur.
4. The Deputy Director Town Planning
Latur, Division Latur.
5. The Municipal Commissioner,
Latur, Municipal Corporation, Latur.
6. The Town Planning Officer,
Latur, Tq. And Dist. Latur.

.... **RESPONDENTS**

...
Advocate for Petitioners : Mr. T.G. Gaikwad
AGP for Respondents/State : Mr. P.K. Lakhotiya
Advocate for R/5 & 6 : Mr. H.V. Patil
...

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATE : 19th August, 2023

JUDGMENT (Per: Y.G. Khobragade, J.):-

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

2. The Petitioners have put-forth prayer clause-C and D as under:

C) To direct the respondents to De-reserve the land bearing Gut No. 23 admeasuring to the extent of 15R (each) of petitioner No. 1 to 3 (total 45 R) and to the extent of 5H.4640R of the petitioner no. 1 and 2 situated at Kanheri Tq. Latur, Dist. Latur which is reserved for the purpose of Town Center and for that purpose issue necessary orders;

D) To direct the respondents to delete the reservation of land of the petitioners bearing land bearing Gut No. 23 admeasuring to the extent of 15R (each) of petitioner No. 1 to 3 (total 45 R) and to the extent of 5H.4640R of the petitioner no. 1 and 2 situated at Kanheri Tq. Latur, Dist. Latur which is reserved for the purpose of Town Center from Development Plan as per section 50 of the Maharashtra Regional Town Planning Act and for that purpose issue necessary orders;

3. We have considered the strenuous submissions of the learned advocates for the respective sides. The Respondent Nos. 5 and 6 fairly submit that the Petitioners are joint owners of Land Khata Number 14735 out of Gat No. 23 ad-measuring 5 H 4640 R situated at Kanheri, within the limits of Respondent No.5 the Municipal Corporation Latur. On 02.01.2002, the Respondent No.5 prepared and published draft Development plan of Latur

City, which came into force with immediate effect and out of lands of the Petitioners 45 R was reserved for a Play Ground and a Town Center vide reservation nos.162 and 163 respectively. However, even after lapse of more than 10 years, no steps have been taken for acquisition of the land. Therefore, the Petitioners issued a purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 on 29.01.2015, but no steps have been taken by the Respondent No.5-Development Authority.

4. On 03.12.2015, the father of Petitioner Nos.1 and 2 submitted a representation and prayed for cancellation of reservation on the ground that the reserved land already developed and the Respondent No.5-Municipal Corporation passed resolution dated 22.05.2013 for construction of Town Center on open space of ITI College and conducted stone laying ceremony. Therefore, the Petitioners pray for de-reservation of land under Section 127 of the MRTP Act.

5. Mr. H. V. Patil, the learned counsel appearing for the Respondents 5 & 6 vehemently opposes this petition and submits that, the Petitioner Nos. 1 to 3 are the owners of 15R (each) in land survey no.23. The Petitioner Nos.1 and 2 are the owners of land ad-measuring 5H. 4640 R situated at Kanheri village within limits of Latur Municipal Corporation, from which land site no.162 is reserved for play ground and site no.163 is reserved for town center in development plan. The Petitioners issued purchase notice dated 29.01.2015

in respect of land, which has been reserved under development plan dated 02.01.2002. Accordingly, a proposal was forwarded to the Respondent No.2 on 02.06.2015 for taking effective steps for acquiring the land, however, it was returned back due to paucity of funds and some deficiencies. The said proposal was submitted before the standing committee, however, no effective decision has been taken over the said proposal. In the alternative, he submits that the Corporation is willing to offer TDR to the Petitioners. However, for that purpose the Petitioners will have to get the reserved land measured from competent Government Authority and submit the proposal accordingly. The Petitioners have not annexed the ownership documents and measurement map with the purchase notice. He, therefore, submits that the notice is bad in law.

6. The learned advocate for the Petitioners submit that the issue as regards tendering of the map and 7/12 extract, is no longer valid ground in the light of the judgment delivered by this Court dated **16.12.2014** in **Writ Petition No. 4823 of 2014, Dattatraya Shamacharya Dharmadhikari and others Vs. The State of Maharashtra and others**. In so far as the alternate submission is concerned, he informs that the Petitioners are not willing to accept TDR.

7. We find that the Petitioners cannot be compelled to accept the TDR in the light of the Full Bench judgment of this Court delivered in **Shri Vinayak Builders & Developers Vs. The State of Maharashtra and others; 2022(4) Mh.L.J. 739**.

8. It is obvious that, under draft Development plan of Latur City published on 02.01.2002, the Respondent No. 5 reserved Petitioners 45 R land out of Gat No. 23 ad-measuring 5 H 4640 R bearing Khata Number 14735 situated at Kanheri, for the Play Ground and Town Center vide reservation nos.162 and 163. However, even after the lapse of more than 10 years, no steps have been taken by Respondent No.5 for acquisition of the said land. Admittedly, the Petitioners have issued a purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 on 29.01.2015, but even after service of said notice, no steps for acquisition of the said land as required under Section 126(2) are taken by the Respondent no. 5 Development Authority within period of 24 months. The law laid down by the Hon'ble Supreme Court in **Girnar Traders V/s. State of Maharashtra; (2007) 7 SCC 555** and by this Court in **Santu Sukhdeo Jaibhave and Others V/s. Nashik Municipal Corporation; 2023 (2) Bom. C.R. 469**, squarely applies to this case.

9. In view of the above, **this petition is allowed**. The reservation is declared to have lapsed. The Respondent No.5-Municipal Corporation Latur shall submit it's proposal to Respondent No.1 within a period of 30 days from today, declaring that the land is released from reservation. Thereafter, Respondent No. 1 shall issue a notification under Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966, within 45 days.

10. Needless to state, keeping in view the order passed by the Hon'ble Supreme Court on 27.02.2023 in Special Leave Petition (Civil) Diary No. 39782/2022 in the matter of **Municipal Corporation, Jalgaon v/s Satish Soma Bhole**, the Respondent No.5 - Municipal Corporation would be at liberty to initiate fresh proceedings for acquisition in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11. Rule is made absolute in the above terms.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]