

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 346 OF 2022

1. Devidas Govindrao Kaple,
aged 56 yrs, Occ. Agriculturist,

2. Vasudeo Govindrao Kaple,
age 48 yrs, Occ. Agriculturist,

3. Sudhakar Govindrao Kaple,
aged 42 yrs, Occ. Agriculturist,

Petitioner 1 to 3 r/o. Balinpura,
Achalpur, District Amravati

4. Ashish Diliprao Pote,
Age 36 yrs, Occ. Agriculturist,

5. Ritesh Diliprao Pote,
age 38 yrs, Occ. Agriculturist &
Business,

Petitioner no. 4 to 5 Bilanpura,
Achalpur, District Amravati

.....PETITIONERS

..V E R S U S..

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

2. The Director of Town Planning,
State of Maharashtra,
Central Building, Pune-1

3. The Municipal Council Achalpur,
through its Chief Officer, Achalpur,
Tahsil Achalpur, District Amravati

4. The Collector,
Amravati through Sub-Divisional
Officer, (Land Acquisition) (Uppar
Wardha Project) no.2 acting as
Special Land Acquisition Officer,
Amravati, Collectorate Office,
Camp, Amravati 444 601.

....**RESPONDENTS**

Mr. G.K. Mundhada, counsel for petitioners,
Mr. S.M. Ukey, Addl.GP for respondents 1,2 & 4/State,
Mr. M.O. Loney, counsel for respondent 3.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 15.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally
with consent of the parties.

3. The petitioner is seeking declaration that the
reservation for primary school and play ground (reservation 60)
and for dispensary and maternity home (reservation 61) as regards
survey 21 owned by petitioner stand lapsed in view of deeming
fiction of Section 127 of the Maharashtra Regional and Town
Planning Act, 1966 ("MRTP Act").

4. We have perused the affidavit in response filed on
behalf of the Planning Authority. We may extract paragraph 12 of

the affidavit in response.

“12. The respondent no. 3 submits that as financial position of respondent is weak, amount required for issuance of notification u/s 6 of Land Acquisition Act, 1894 or u/s 19 of The Right to Fair Compensation And Transparency In Land Acquisition Rehabilitation, Resettlement Act, 2013 (hereinafter Land Acquisition Act, 2013) has not been deposited and has not been published till date. It is absolutely wrong to say that the steps required to initiate for land acquisition proceedings under the M.R.T.P. Act is publication of declaration under Section 126(4) of the said Act. It is admitted that no such declaration has been published and the period of twenty four months as contemplated under Section 127 of the M.R.T.P. Act, is over.

5. It is an admitted position that the steps for issuance of notification under Section 6 of the Land Acquisition Act, 1894 or its corresponding provision of The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation, Resettlement Act, 2013 (“Act of 2003”) have not been initiated.

6. In view of the irrefutable position on record that the revised development plan came into force on 1.3.2003, that no step was taken to acquire the land, that the Planning Authority was

served with the statutory notice, and that even according to the Planning Authority, steps towards acquisition of land have not been taken, we find no impediment in granting the relief prayed.

7. For the record, we note that there is a suggestion or insinuation in the affidavit in response that the subsequent owners have no right to claim lapsing on the basis of notice issued by the previous owner. We note the suggestion only for rejection.

8. The petition is allowed in terms of prayer clause (A), which reads thus:

“A. Declare that the reservation for primary school and play ground vide reservation no. 60 (affected area admeasuring about 380 sq. mts.) along with the reservation of Dispensary and Maternity Home vide Reservation no. 61 (affected area admeasuring 3518.33 sq. mtr.), on the land owned by the petitioners of Survey no. 21 area admeasuring 1 H00R of village Khel-tapmali, Tq. Achalpur, District Amravati has lapsed under Sec. 127 of the Maharashtra Regional and Town Planning Act, 1966 and that the petitioners are free to develop the land owned by them in the manner permissible to adjacent land as per Development Plan of Achalpur city.

9. The necessary notification be published within the next eight weeks.

10. At this stage, the learned counsel for petitioner Mr. G.K. Mundhada submits that since some land is surrendered for the purpose of DP road, the petitioner is also entitled to corresponding TDR. We leave this issue open for the petitioner to agitate in an appropriate proceedings.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)
belkhede