



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 798 OF 2023

Javed Shaikh Abdul Latif Shaikh

VERSUS

The State Of Maharashtra Through The
Secretary And Others

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Mr. A. P. Bhandari, Advocate for the Petitioner

Mr. V. M. Kagne, AGP for Respondent Nos. 1 to 3 and 6

Mr. M. V. Navandar, Advocate for Respondent Nos. 4 & 5

Mr. A. D. Pawar, Advocate for Respondent No. 7

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CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

DATE : MARCH 08, 2024

PER COURT :

1. The Petitioner has put-forth prayer clauses
'B', 'C' and 'D' as under:

"B) By appropriate Writ, order or direction, it be held that, land bearing Survey No. 345/6+7+10+1 of Jalgaon City, Taluka & Dist. Jalgaon, situated within the Municipal Limits of Jalgaon to the extent of an area of 3460 Sq. Mtrs. (approximately) affected by Reservations / Designation for "Waghur Canal" and 18 meter Road, adjacent to Waghur Canal and the Respondent no. 4 be directed to grant permission for Development to the Petitioner.

C) By appropriate writ, order or direction, the respondent no. 1 may kindly be directed to issue appropriate notification, notifying the land bearing Survey No. 345/6+7+10+1 of Jalgaon City, Taluka & Dist. Jalgaon, situated within the

Municipal Limits of Jalgaon to the extent of an area of 3460 Sq. Mtrs. (approximately) affected by Reservations / Designation for "Waghur Canal" and 18 meter Road, adjacent to Waghur Canal

D) By appropriate writ, order or direction, the respondent no. 1 may kindly be directed to modify the Development Plan of Jalgaon City, thereby recording the effect of deletion of entire designation of Waghur Canal and adjacent 18 Meter Road."

2. An affidavit-in-reply has been filed by Shri. Chandrashekhar Kisan Patil, Sub-Divisional Engineer, Waghur Dam, Sub-Division No. 3, Nashirabad, Tq and Dist. Jalgaon dated 01.03.2024.

3. In paragraph 4 of the affidavit-in-reply, the acquiring authority has mentioned as under:

The information is received by the deponent from the Asst. Engineer, Waghur Dam, Nashirabad, Tq. Dist. Jalgaon that, the canal is not going through the land bearing survey no. 345/6/7/10/1, therefore there is no need to acquire the land bearing survey no. 345/6/7/10/1. By letter dated 30.11.2017 it has been informed to the petitioner that the canal of Waghur project is not going through the land bearing survey no. 345/6/7/10/1 therefore, there is no need to acquire the said land.

4. In paragraph nos. 5 and 6, it is specifically mentioned as under:

5. *The answering respondent says and*

submits that, in view of the position that the land of petitioner is not required for the canal and 18 mtrs wide road and as per Sec. 50 of Maharashtra Regional Town Planning Act, 1966, the appropriate authority is not interested in acquisition of the land affected by the reservation as per development plan, therefore it can be said that the appropriate authority has no any intension to establish the canal from the land of the petitioner.

6. The answering respondent further says and submit that, this Hon'ble Court in writ petition no. 10319/2021 by order dated 20.07.2022 has passed order that, the appropriate authority in that petition has stated that the land is no longer required for the project and after noticing the sand of appropriate authority, the petitioners therein allowed for seeking reservation of lands. Accordingly reservation, allotment or designation in respect of the land of the petitioner therein has declared to be lapsed and the said land made available to the owner for the purpose of development. This Hon'ble Court further directed to State Government to issue notification as contemplated under sub-section (2) of sec. 127 of MRTP Act, 1966 within period of six months from the date of order. The copy of order dated 20.07.2022 in writ petition no. 10319/2021 is annexed herewith and marked as Exhibit R-2.

5. We called upon the learned Advocate for the acquiring authority to state, whether this Petition can be considered prior to the expiry of the two years period pursuant to the purchase notice issued by the Petitioner dated 22/25th August, 2022 under Section 127

of the Maharashtra Regional Town Planning Act, 1966? This is in relation to the land survey/gut no. 345/6/7/10/1, situated in Jalgaon City admeasuring 69R, to the extent of the portion affected by reservation for Waghur Dam Project along with 18 meter DP Road alongside canal, total portion admeasuring 3460 sq. mtr.

6. The learned Advocate for the Petitioner submits that if the acquiring Authority acknowledges that they do not need the land or that the land can be released from reservation, this Court need not follow the dictum in M/S. Girnar Traders vs State Of Maharashtra & Ors, AIR (2007) SC 3180, which mandates the period of two years to lapse after which a notification for releasing the land from reservation can be issued.

6. The learned Advocate for the acquiring Authority submits that this Petition can be entertained today, before lapsing of two years in pursuance to the purchase notice.

7. In view of the above, this Petition is

disposed off with a direction to the Municipal Corporation, Jalgaon to forward a communication to Respondent No. 1 within 30 days from today, declaring that they do not need the land and the same is released from reservation. Considering the peculiar circumstances, Respondent No. 1 would issue the required notification under Section 127 of the Act within a period of 45 days.

8. If similar circumstances emerge in relation to any acquisition of land or any project included in the present pending project, the Jalgaon Municipal Corporation is at liberty to adopt a pragmatic approach in order to issue appropriate orders/communications for releasing of such properties without waiting for any Petitioner to approach this Court.

(R. M. JOSHI, J)

(RAVINDRA V. GHUGE, J)

Malani