



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 1724 OF 2024

1. Yogesh s/o Kishanrao Kolhe  
Age 40 years, Occu: Agri.  
R/o Samrat Building, New Bus Stand,  
Kannad, Tq. Kannad, Dist. Aurangabad.
2. Santosh s/o Kishanrao Kolhe,  
Age 42 years, Occu: Agri.  
R/o As above.
3. Anil s/o Sahabrao Jaibhai,  
Age 57 years, Occu: Business  
R/o Pawar Building, Shitalmata Mandir,  
Powar Galli, Kannad,  
Tq. Kannad, Dist. Aurangabad.
4. Ujwala w/o Eknath Walunje,  
Age 50 years, Occu: Household.  
R/o Galli No.3, Vishnu Nagar,  
Jawahar Colony, Aurangabad  
Dist. Aurangabad.
5. Jalam Bhatu Jadhav,  
Age 68 years, Occu: Pensioner  
R/o Sharad Powar Society,  
Chalishaon Road, Near Godrej Show Room,  
Kannad, Tq. Kannad, Dist. Aurangabad.
6. Asha w/o Jalam Jadhav  
Age 42 years, Occu: Service,  
R/o As above.
7. Kishor Vitthalrao Jadhav,  
Age 38 years, Occu: Agri.  
R/o At Post Pishor, Maruti Jadhav Galli,  
Tq. Kannad, Dist. Aurangabad.

... PETITIONERS

V/s.

1. The State of Maharashtra,  
Through Secretary,  
Urban Development Department,  
Mantralaya, Mumbai-32.
2. The Assistant Director,  
Town Planning, City Pride Building,  
Mondha Naka, Jalna Road,  
Aurangabad. Tq. & Dist. Aurangabad.
3. The Chief Officer,  
Municipal Council, Kannad  
Opposite Tahsil Office, Kannad,  
Tq. Kannad, Dist. Aurangabad.

... **RESPONDENTS**

...  
Mr. D.J. Choudhary, Advocate for the Petitioner  
Mr. N.S. Tekale, AGP for the Respondent-State  
Mr. S.S. Shete, Advocate for the Respondent No.3  
...

**CORAM : RAVINDRA V. GHUGE &  
Y.G. KHOBRAGADE, JJ.**  
**DATE : 27<sup>th</sup> August, 2024**

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

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. The Petitioners have put-forth prayer clause-C and D as under:

*“C) It may please be ordered that the reservation No.18 of the lands of the petitioners, issued by the respondents for playground in view of Notification No.TPS/3005/135/ROR-2001/2005/D36 dtd.29.06.2006 came into force w.e.f. 13.8.2006, may please be declared to be lapsed, automatically, in view of Sec. 127 of the M.R.T.P. Act, 1966, by ignoring attempt of the Respondent No.3 to get lands for same purpose in view of fresh notification;*

*D) The respondent No.1 may please be directed to issue notification in the official gazette, declaring that the reservation No.18 (for play ground) issued by the Government vide Notification dtd.29.6.2006 is deemed to be lapsed within stipulated period, by ignoring subsequent attempt of respondent No.3 to get the lands of the petitioners by fresh notification, by issuing writ of mandamus or any other writ, order or direction, in the nature of writ of mandamus.”*

3. The lands belonging to the Petitioners and their areas are mentioned in the following chart:

| Sr. Name<br>No.             | Survey No. /<br>Gat No. | Plot No.          | Area    |
|-----------------------------|-------------------------|-------------------|---------|
| 01. Yogesh Kishanrao Kolhe  | 25/4/A/795              | 03,04,12, 13 & 14 | 0.11.64 |
| 02. Santosh Kishanrao Kolhe | 25/4/A/704              | 1, 2, 10 & 11     | 0.09.38 |
| 03. Anil Sahebrao Jaibhai   | 25/4/A/809              | 27, 28, 41 & 42   | 0.04.46 |
| 04. Ujwala Eknath Walunje   | 28/4/A/3156             | 75                | 0.01.86 |
| 05. Jalam Bhatu Jadhav      | 25/4/A/1744             | 47 & 54           | 0.02.22 |
| 06. Asha Jalam Jadhav       | 25/4/A/1743             | 48 & 53           | 0.02.22 |
| 07. Kishor Vithalrao Jadhav | 25/4/A                  | 76                | 0.01.86 |

4. The dates and events are not disputed. The ownership of the Petitioners and their titles and interest in the properties under reservation, are also not disputed. The development plan for Kannad Additional Area was declared vide GR dated 29.06.2006 and the lands were reserved for playground under reservation no.18. Since no steps towards acquisition were taken within ten years, the Petitioners issued purchase notice dated 25.06.2020 under Section 127 of the MRTP Act. The Council received the notice on 04.08.2020.

5. It is undisputed that the title of these Petitioners is not contradicted or denied by the Corporation. No steps have been taken by the

Council even within two years of the receipt of the purchase notice. In these circumstances, the law laid down in **Girnar Traders V/s. State of Maharashtra & Ors.; (2007) 7 SCC 555**, would be squarely applicable. So also, the law laid down by the Hon'ble Supreme Court in **Balaji Associates V/s. State of Maharashtra and Ors.; (2019) 19 SCC 1**.

6. In the light of the above, **this Writ Petition is allowed** in terms of prayer clause-C and D. The Municipal Council shall forward a communication along with a copy of this order, to Respondent No.2 within 45 days from today. Respondent No.1 shall thereafter issue a notification under Section 127(2) of the MRTP Act, within a period of 60 days. If the Model Code of Conduct is introduced, that would not be an impediment for implementing this order.

7. Rule is made absolute in the above terms.

[Y.G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]