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

903 WRIT PETITION NO. 5344 OF 2024

FARJANABI ANWAR HUSSAIN KHATIK

VERSUS

**THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
OTHERS**

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Mr P. R. Katneshwarkar, Senior Advocate i/b Mr R. R. Kazi,
Advocate for Petitioner

Mr A. B. Girase, G.P. for Respondent Nos.1 & 2

Mr S. B. Munde, Advocate for Respondent Nos.3 and 4

CORAM : RAVINDRA V. GHUGE

AND

Y. G. KHOBRADE, JJ.

DATE : 20th September, 2024

PER COURT:

1. The Petitioner has put forth prayer clauses (A) and (B), as under :-

“A. This Hon'ble Court may be pleased to issue appropriate writ, order or directions to hold and declare that the land Survey No. 347/1B admeasuring 0.52.50 situated at Shivaji Nagar, Near Mughal Garden, Usmania Park, Jalgaon Taluka & District- Jalgaon is de-reserved and available for development and further direct them to publish the Notification in the Government Gazette to that effect.

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B. This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondents to de-reserve and release the Survey No. 347/1B admeasuring 0.52.50 situated at Shivaji Nagar, Near Mughal Garden, Usmania Park, Jalgaon Taluka & District- Jalgaon from reservation and issue permission to develop the same in accordance with law.”

2. We have heard the learned Advocates for the respective sides and have gone through the Petition paper book with their assistance. The learned Advocate appearing on behalf of Respondent Nos.3 and 4/Jalgaon Municipal Corporation tenders a copy of the communication received by him, dated 19/09/2024, which is marked as ‘X’ for identification.

3. The Petitioner is the owner of the property bearing Gut No. 347/1B admesuring 52.50 Are, situated at Taluka and District Jalgaon. Vide a Notification dated 11/02/2002, published in the Maharashtra Government Gazette Part-I, Nashik Division, the said land was placed under reservation for a Playground. Vide a Notification dated 10/08/2004, the State Government sanctioned a part of the Draft Development Plan of Jalgaon and issued the

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Notification, indicating reservation for the extension of the Jalgaon City Development Plan, which is marked as Sr. No.11 for a Playground and a High School.

4. Until 14/03/2022, no steps have been taken by the Corporation. Hence, a purchase notice dated 14/03/2022, under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act'), was served upon the Corporation. Since no development took place for 24 months, this Writ Petition has been filed on 06/05/2024.

5. The learned Advocate for the Respondent/Corporation strenuously submits on instructions 'X' that, the Corporation is willing to offer T.D.R. or Reservation Credit Certificate (R.C.C.) to the Petitioners. They are at liberty to choose either of the two options. In view of offering either the T.D.R. or the R.C.C., this Writ Petition is devoid of merits and deserves to be dismissed.

6. We do not have to spend any time in considering the submissions of the Corporation, for the reason that, the law has been settled in **Shree Vinayak Builders and Developers Vs.**

State of Maharashtra and others, [(2022) 4 Mh.L.J. 739] (Full Bench) : [(2022) DGLS (Bom.) 2061]. It is settled by the Full Bench of this Court that, offering the T.D.R. or R.C.C., is not in conformity with the law laid down by the Hon'ble Supreme Court in **Girnar Traders Vs. State of Maharashtra & others, [AIR (2007) SC 3180]**.

7. In view of the above, since no development has taken place at the end of the Corporation, which could be termed as being a step for acquisition, as recognized by **Girnar Traders** (supra), **this Writ Petition is allowed** in terms of prayer clauses (A) and (B).

8. The Corporation shall issue a letter to Respondent No.1 / Secretary, Urban Development Department, Mumbai, conveying that the reservation has lapsed in the light of the order of this Court, within a period of 30 days from today. Thereafter, the State Government shall 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, the same shall not be an impediment for complying with the above directions.

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9. Before parting with this matter, we deem it appropriate to record that, similar matters involving the same Jalgaon Municipal City Corporation, have been before us, frequently. In at least one dozen matters, we have dealt with offers of the Corporation with regard to T.D.R. and R.C.C. Placing reliance upon **Shree Vinayak Builders and Developers** (supra), we have allowed such Petitions and we have rejected the claim of the Corporation. Yet, the said Corporation continues to take the same stand which unfortunately creates unnecessary litigation. As such, henceforth, if we come across such matters, in which the Jalgaon Municipal Corporation is a Respondent, and if a stand is taken that the T.D.R. or R.C.C. is offered, we would be imposing costs on the Corporation for dragging litigants into unnecessary litigations.

10. We expect the learned Advocate for the Respondent/Corporation, to specifically place this order before the Commissioner of the Municipal Corporation.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

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