



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6009 OF 2024

Ashish S/o. Subhash Sul,
Age: 44 years, Occu: Service,
R/o. "Sai", Keshav Nagar,
Behind Amba Hanuman Temple, Latur,
Tal. & Dist. Latur.

... PETITIONER

V/s.

1. The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032.
2. Commissioner,
Latur Municipal Corporation, Latur,
Tal. & Dist. Latur.
3. Town Planning Officer,
Latur Municipal Corporation, Latur,
Tal. & Dist. Latur.

... RESPONDENTS

...
Mr. Prakash Paithankar, Advocate for the Petitioner
Ms. Neha Kamble, AGP for the Respondent-State
Mr. H.V. Patil, Advocate for the Respondent Nos.2 & 3

...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.

DATE : 8th August, 2024

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

1. This matter was posted today for dictation of order. However,
since the Board Department inadvertently did not list the matter on the daily

cause-list, the matter was taken on the main board, by the consent of the parties.

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

3. The chronology of events are as under:

a) The Petitioner is the owner and in possession of the land Gut No.48/1, ad-measuring 0 H 58 R at Latur.

b) On 29.08.1989, the Latur Municipal Corporation (then Latur Municipal Council) passed a resolution under Section 38 with Sub-section 1 of Section 23 of the M.R.T.P. Act, 1966 for preparing a revised draft development plan. Notice of the said declaration was published, on 07.12.1989.

c) The Government of Maharashtra sanctioned a part of the draft development plan for the area on 02.01.2002, which was published in the official Gazette I-A, Aurangabad Divisional Supplement/1.

d) A corrigendum was issued, on 17.04.2002. The Petitioner's land was included in the reservation for a High School with a Play Ground and a Primary School with a Play Ground, identified as Site Nos.301 and 302.

e) The Petitioner claimed to be unaware of the reservation and moved an application on 04.11.2015, seeking permission to develop the property in Gut No.248/1.

f) The Respondent No.3-Municipal Council issued a letter dated 16.11.2015, to the Petitioner calling upon him to submit a measurement map,

a copy of the 7/12 extract and copies of the lay out. The said communication does not have the mention of reservation.

g) The Petitioner moved one more application on 16.11.2015, which was responded to by the Respondent No.3 on 27.11.2015, informing the Petitioner that there is a reservation on the land.

h) His application was rejected.

i) The Petitioner issued a purchase notice, on 01.12.2015.

j) The Municipal Council – Respondent No.3 replied on 09.12.2015, calling upon the Petitioner to submit certain documents.

k) The Petitioner submitted communication dated 14.12.2015 and tendered the relevant documents to the Municipal Council.

l) The Petitioner once again moved an application on 15.12.2015 and 16.08.2016.

4. The learned advocate representing the Municipal Council (present Municipal Corporation), has tendered an affidavit in reply dated 07.08.2024 filed through Smt. Kanchan Babruwan Tawade, Deputy Commissioner, Latur City Municipal Corporation, wherein two grounds have been raised. Firstly, that relevant documents were not supplied by the Petitioner and secondly, that the Transferable Development Rights (TDR) was offered to the Petitioner,

which was declined. It is, however, conceded that neither has there been any revision of the reservation, nor any steps have been taken.

5. In view of the above, the only controversy that needs adjudication is whether the Petitioner tendered the documents as required by the Corporation and what would be the effect of the Petitioner's refusal to accept the TDR. We find from the communication dated 14.12.2015, that the Petitioner has placed three documents on record. These documents are the 7/12 extract, Gav Namuna 8-A and the measurement details of the original map, which is a part of the original development plan. So also, it is undisputed that the Petitioner is the owner of the property and the Municipal Corporation has not taken a stand that there is some different owner or that the Petitioner does not have any interest in the property.

6. In so far as the refusal to accept the TDR is concerned, this issue is no longer *res integra*. In the judgment of the Full Bench of this Court in **Shree Vinayak Builders & Developers V/s. State of Maharashtra & Ors.; (2022) 6 Bom CR 410 (FB)**, it has been concluded that offering of a TDR is not a step towards acquisition considering the law laid down by the Hon'ble Supreme Court in **M/s. Girnar Traders V/s. State of Maharashtra & Ors; 2007 SCC 3180** and **Girnar Traders V/s. State of Maharashtra & Ors. 2011 3 SCC 1**.

7. In view of the above, **this Writ Petition is allowed in terms of prayer clause-B and C**, which read as under:

“B) By Writ of Certiorari or any other appropriate Writ, Order in the like nature may kindly be issued by quashing the reservation site Nos. 301 and 302 in respect of the land of petitioner situated at Gut No. 248/1 adm. 00H-58R situated at proper Latur, Tal & Dist. Latur as per the development plan published by Municipal Corporation, Latur on 02.01.2002 for the construction of High School & Playground and Primary School & Playground (HSPG & PSPG).

C) By Writ of Mandamus or any other Writ, Order in the like nature may kindly be issued by directing the respondent Nos.1 to 4 to de-reserve the site Nos. 301 and 302 from the Development Plan of Latur Municipal Corporation, Latur dated 02.01.2002 which is on the Situated at Gut No.248/1 situated at proper Latur Tal. & Dist. Latur.”

8. We direct the Municipal Corporation to forward the proposal to the State Government declaring that the reservation has lapsed along with a copy of this order, within 45 days. Thereafter, Respondent No.1 shall follow the due procedure laid down in law and issue a notification under Section 127 (2) of the M.R.T.P. Act, within 60 days. If the Model Code of Conduct is introduced, that would not be an impediment for implementing this order.

9. Rule is made absolute in the above terms.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]