



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7771 OF 2022

1. Panjabrao Narayanrao Sable,
Age 65 years, Occu: Pensioner,
R/o 70-B-1 Deva Nagari,
Shahanoorwadi, Aurangabad.
Tq. & District Aurangabad.
2. Mrs. Karuna Prakash Chavan,
Age 50 years, Occu: Household,
R/o Mungsapur, Post Jevur,
Tq. Kannad, Dist. Aurangabad.
3. Mrs. Usha Jawahar Agrawal,
Age 60 years, Occu: Household,
R/o Khandsari Colony, Chalisgaon Road,
Kannad. Tal. Kannad, Dist. Aurangabad.
4. Vijay Raghunath Patil,
Age 50 years, Occu: Agri.
R/o Shitamata Galli, Tq. Parola,
District Jalgaon.
5. Dilip Annarao Walunje,
Age 55 years, Occu: Service,
R/o Opposite Bus Stand,
Khandsari Colony, Kannad,
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. R.S. Wani, AGP for the Respondent-State
Mr. S.S. Shete, Advocate for the Respondent No.3
...

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATE : 27th 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 play-ground in view of Notification No.TPS/3005/1352/CR-205(A) 2005 UD-30 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 passing appropriate order.

D) The respondent No.1 may please be directed to issue Notification in the official gazette declaring that the reservation No.18 (Play-ground) issued by the Government vide Notification dtd.29.6.2006 has deemed to be lapsed within stipulated period 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. No.	Name	Survey No. / Gat No.	Area
01.	Panjabrao Narayanrao Sable	25/4/A	0.44.35
02.	Karuna Prakash Chavan	25/4/A	0.03.71
03.	Usha Jawahar Agrawal	25/4/A	0.03.33
04.	Vijay Raghunath Patil	25/4/A	0.02.22
05.	Deelip Apparao Walunje	25/4/A	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 notices dated 13.03.2019 under Section 127 of the MRTP Act. The Council received the notice on 16.03.2019 and 18.03.2019, respectively.

5. The Council issued a communication dated 07.08.2019 to the Petitioners asking for a measurement map. By communication dated 28.02.2020, the Petitioners again received a communication from the Municipal Council requesting for a measurement map. The Petitioners deposited Rs.73,000/-, on 12.03.2020 with the Competent Authority for carrying out measurement. Despite depositing amount the Authorities have not measured the land.

6. The Municipal Council has entered its affidavit in reply through Shri Nandkishore Sarangdhar Bombe, dated 18.04.2024. It is categorically stated that though the Petitioners deposited the amount with the Municipal Council, measurement has not been carried out. Because the Petitioners did not produce the copy of the measurement map, the Council has not taken any further steps.

7. Section 127 (1) of the MRTP Act does not mandate that the measurement map should be accompanied with the purchase notice. The land owners have to produce certain documents only to show their title in the property. 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**.

8. 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.

9. Rule is made absolute in the above terms.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]