



(1)

902wp12752.21

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

902 WRIT PETITION NO. 12752 OF 2021

1. Vikas Vasantryao Patil **...PETITIONERS**
Age-69 years, Occu-Agriculturist
2. Vilas Yashwantrao Patil
Age-69 years, Occu-Agriculturist
3. Kiran Yashwantrao Patil,
Age-63 years, Occu-Agriculturist
4. Pradip Vasantryao Patil,
Age-58 years, Occu-Agriculturist

R/o. House No.281, Vitthal Peth,
Jalgaon, Dist. Jalgaon

VERSUS

1. The State of Maharashtra, **...RESPONDENTS**
(Through Its Secretary,
Urban Development Department
Mantralaya, Mumbai -32)
2. The District Collector, Jalgaon
Dist. Jalgaon
3. The Chief Officer,
Savada Municipal Council,
Tq. Raver, Dist. Jalgaon

Mr. Ajay G. Talhar, Advocate a/w Mr. Darshan Sahuji, Advocate
and Mr. Anand Bangar, Advocate for the Petitioners
Mr. S. K. Tambe, AGP for the Respondents/State
Mr. B. S. Deshmukh, Advocate for Respondent No.3

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

DATE : 14th MARCH, 2024

ORAL JUDGMENT (Per Ravindra V Ghuge, J):

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioners have put forth prayer clause-C as under:-

C] By appropriate writ order or direction it may kindly be declared that the reservation Site No.29 and 30 of Primary School and Play Ground on Land Gat No.661, Savada Tq. Raver, Dist. Jalgaon to the extent of Area 52-R is deemed to have been lapsed in view of the provisions of the 127 of the Regional Town Planning Act and to that effect the respondents may kindly be directed to issue the notification.

3. We considered the submissions of the learned Advocates for the respective sides and have gone through the Petition paper book with their assistance. The factual matrix is undisputed. The Respondent-Municipal Council published a

notification under Section 29 (1) of the MRTP Act, 1966 on 15-09-1998 inviting suggestions and objections as regards the revised plan of Savada city. On 28-11-1998, the Petitioners raised their objections. On 30-06-2000, the Respondent passed the Resolution and proposed deletion of Reservation Nos.29 Primary School.

4. On 02-03-2006, Respondent No.1 passed a resolution without taking into account the fact finding report of a committee that sanctioned deletion of reservation. On 29-10-2011, Respondent No.3 published a public notice in news paper indicating the passing of resolution to modify the sanction granted to the development plan under Section 37 of the MRTP Act. Again objections were called from the general public. On 03-08-2019, the petitioners served a notice under Section 127 of the MRTP upon the respondent authorities.

5. The Municipal Council acknowledged the receipt of the purchase notice from the Petitioners, vide communication

dated 19-11-2019, and further informed the Petitioners that they may accept transferable development rights (TDR) or development right certificate (DRC). Petitioner No.1 replied to the Municipal Council by communication dated 30-12-2019, indicating therein that the petitioners are willing to accept compensation as per the prevailing market rates. The petitioners are not willing to accept the TDR/FSI.

6. The Municipal Council once again called upon the Petitioners by its communication dated 11-09-2020, indicating that the Petitioners should approach the Municipal Council with a Rs.100 non-judicial stamp paper and swear an affidavit for private negotiations and acceptance of compensation. The Petitioners replied vide letter dated 05-10-2020 that the Petitioners desire compensation in accordance with the Right To Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

7. Respondent No. 3 has filed an affidavit-in-reply

dated 23-02-2023, contending that a proposal dated 10-06-2021, for acquisition was forwarded to the District Collector, Jalgaon.

8. The matter rests here. No steps have been taken by the Municipal Council, Jalgaon which could be in tune with the law laid down by the Hon'ble Supreme Court in the case of *Girnar Traders and another Vs State of Maharashtra and others reported in 2007 AIR (SC) 318*. The Full Bench of this Court at the Nagpur Bench has also dealt with the issue as regards offering of the TDR in *Vinayak Builders and Developers Vs State of Government and others (Writ Petition No.2231/2019) dated 25-07-2022 (Nagpur Bench)*, wherein it has been concluded that offering of the TDR and refusal to accept it, would not mean that the acquiring body has initiated steps for acquisition of the land indicated under the development plan.

9. It has also been held by the Hon'ble Supreme Court in the case of *Balaji Associates Vs State of Maharashtra reported*

in (2019) 19 SCC 1 and Shrirampur Municipal Council Vs Satyabhamabai reported in (2013) 5 SCC 627, that forwarding of a proposal to the District Collector or to the State Government is not an appropriate step towards acquisition so as to be in conformity with the law laid down in Girnar Traders and another (supra).

10. In view of above, **this Writ Petition is allowed in terms of prayer clause-(C)**. Respondent No.3-Municipal Council, Jalgaon shall forward a communication to Respondent No.1 within 30 days from today, for de-reservation on account of lapsing of reservation. Thereafter, within 90 days, Respondent No.1 shall issue an appropriate notification under Section 127(2) of the MRTP Act.

11. Rule made absolute in above terms.

[R. M. JOSHI, J.]

[RAVINDRA V. GHUGE, J.]