



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 9613 OF 2024

1. Sushant Chandrakant Yeramwar
Age 44 years, occ. Advocate
2. Mrs Sarikak Sushant yeramwar
age 38 years, occ. Household

Both resident of Flat No. 3
Vivekanand Nagar, Section N-4
Cidco, Aurangabad.
3. Mr. Ashwini LaxmanDevshetwar
age 33 years, occ. Household
Resident of Bhingoli Road,
Shirur Anantpal, Tq. Shirur Anantpal
Dist. Latur.

....Petitioners

VERSUS

1. The State of Maharashtra
Through the Secretary
Urban Development Department
Mantralaya, Mumbai.
2. The Collector,
Latur, District Latur.
3. The Director of Town Planning
Maharashtra State, Central Building,
Opposite Sasun Hospital, Pune
Dist. Pune.
4. The Latur Municipal Corporation
Through it's Commissioner
Latur Municipal Corporation,
Main Road, Latur Dist. Latur

.....Respondents

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Mr. M. S. Kulkarni, Advocate for the Petitioners.
Mr. S. K. Tambe, AGP for the State.
Mr. T.M. Venjane, Advocate for Respondent No. 4.

**CORAM : RAVINDRA V. GHUGE &
SHAILESH P. BRAHME, JJ.**
DATE : 13th SEPTEMBER, 2024.

JUDGMENT : (PER SHAILESH P. BRAHME, J.)

1. Rule. Rule made returnable forthwith.
2. Heard both sides finally at the stage of admission.
3. The Petitioners have invoked jurisdiction under Article 226 of the constitution of India for lapsing of reservation, direction to issue notification under Section 127(2) of the Maharashtra Regional Town Planning Act (hereinafter referred to as 'the Act' for the sake of convenience and brevity) and consequently for declaration that the Writ land would be available for the Petitioners for the development.
4. It is the case of the Petitioners that they are the joint owners of the land Survey No. 45/C/3 admeasuring 0.9.98 acres situated within the municipal limits of Latur. The development plan for Respondent No. 4 – Municipal Corporation was published on

02.01.2002 and the land in question was kept under reservation for the purpose of garden. It is further case of the Petitioners no steps for acquisition of the land in question were taken by the Municipal Corporation for more than 10 years.

5. The Petitioners issued purchase notice on 31.12.2021 to the Respondent No. 4-Municipal Corporation under Section 127 of the Act. There was no response from the Corporation. Thereafter, again on 01.06.2022, further notice was issued to the Corporation. Both the notices were served on the Corporation but there was no response. No steps were taken under the Act for acquisition of the land in question. With this cause of action, the present Petition is filed.

6. Learned Advocate for Respondent No. 4/Municipal Corporation submits that the Corporation is ready to offer Transferable Development Rights (TDR) to the Petitioners. The purchase notices issued by the Petitioners are not legal and the Corporation is not bound to pay any compensation.

7. We have considered the rival submissions of the parties. It reveals from record that the Petitioners are the joint owners of the land in question. A sale-deed to that effect is placed on record which is not disputed. We have also gone through the purchase notices issued by the Petitioners to the Respondent/Municipal Corporation firstly on 31.12.2021 and later on 01.06.2024 2022. Along with notices, requisite documents showing their title were also furnished by the Petitioners. Respondent/Corporation did not respond to those notices. It is evident that no steps have been taken by the Respondent/Corporation for acquisition of the land as laid down in case of Girnar Traders vs. State of Maharashtra, **(2007) 7 SCC 555** and Shrirampur Municipal Council, Shrirampur vs. Satyabhamabai Bhimaji Dawkher, **(2013) 5 SCC 627**.

8. There is no dispute that for more than 10 years, though the land was under reservation, the Respondent/Corporation failed to acquire the land. Thereafter, though both the notices were served on the Corporation, for more than 24 months, no steps were taken as per Section 126 of the Act. We are of the considered view that a case is made out for lapsing of reservation as per Section 127(1) of the Act.

9. The offer of TDR, as submitted by learned Advocate for Respondent No. 4 cannot be countenanced in view of the judgment of Full Bench this Court in case of Shree Vinayak Builders and Developers vs. The State of Maharashtra and others, 2022(4) Mh.L.J. 739.

10. We find that it is desirable to allow the Petition. We, therefore, pass the following order :-

ORDER

(i) The land belonging to Petitioners stands released from reservation.

(ii) The Respondent/Municipal Corporation shall submit the proposal of lapsing of reservation to the Respondent No. 1 / State Government within 45 days and in turn, the Respondent/State Government shall issue a notification u/s 127(2) declaring that the reservation has lapsed, within a period of 60 days.

(iii) Land of the Petitioners shall stand dereserved due to lapsing of reservation under Section 127 of the Act.

(iv) In the event, the Model Code of Conduct is introduced, the same shall not be an impediment for implementing this order.

11. The Writ Petition is allowed in the above terms and Rule is made absolute.

(SHAILESH P. BRAHME)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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