



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO. 12197 OF 2023
WITH
WRIT PETITION NO. 12270 OF 2023

NAGNATH MALIKARJUNAPPA VAZE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

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Mr. V. D. Salunke, Advocate for the Petitioners

Mr. M. M. Nerlikar, AGP for Respondents State

Mr. A. J. Jagtap, Advocate for Respondent No.3 in WP/12197/23 and
Respondent NO.2 in WP/12270/23

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

DATE : 20th July, 2024

ORDER:

1. An identical issue is raised in these Petition as regards lapsing of reservations.

2. In Writ Petition No. 12197 of 2023, the chequered history has been set out in the pleadings. Suffice it to say that the first reservation with reference to which the acquiring body did not make any progress, was subject matter to a demand notice by the Petitioner that the reservation has lapsed.

3. Earlier, Writ petition No. 9483 of 2016 was filed in this Court. Vide order dated 12.06.2017, this Court noticed that there was a fresh development plan that was introduced, subsequently. This Court, therefore, disposed off the said Writ Petition as the same was infructuous. Thereafter, the Petitioners have tendered a notice dated

30.12.2020, addressed to the Municipal Council, under Section 127 of the Maharashtra Regional and Town Planning Act, 1966. A further reminder was issued on 19.01.2021. One more reminder was issued on 26.04.2023. There is no dispute that the Petitioner has a rightful interest in the property. The Municipal Council replied, by a communication dated 25.07.2023, informing the Petitioners that their development plan cannot be accepted since the reservation has not lapsed.

4. The learned Advocate Mr. Jagtap representing the Municipal Council, has relied upon the affidavit in reply filed by Laxman Baswaraj Kumbhar, the Chief Officer of the Municipal Council, in which it is submitted that the Municipal Council is only a planning authority. It cannot take any steps for acquisition of the land. It is neither the acquiring body nor the development authority.

5. The Deputy Engineer, Sub Division Office, Public Works Department, Tuljapur is Respondent No.2 before us. No defence has been taken that steps as recognized by the law laid down by the Hon'ble Supreme Court in **Girnar Traders and Another Vs. State of Maharashtra and others; 2007 AIR (SC) 318**, have been adopted. The fact remains that after the passage of two years from the date of receiving the purchase notice, no further steps have been taken.

6. In the second petition, the purchase notice has been issued on 19.01.2021, under Section 127 of the MRTUP Act. A further reminder is

issued on 25.07.2023. The learned Advocate for the Municipal Council vehemently submits that though affidavit in reply has not been filed in the second matter on behalf of the same Municipal Council, the stand to be taken in this matter is identical to the stand taken in the first matter vide the affidavit in reply. He reiterates that the Municipal Council is only a planning authority and no further steps are expected from the Municipal Council.

7. The respondent No.1 Urban Development Department has not taken a defence that steps are taken for acquisition of the land as are expected to be taken vide the law laid down by the Hon'ble Supreme Court in **Girnar Traders and Another Vs. State of Maharashtra and others; 2007 AIR (SC) 318.**

8. In view of the above, **both these Writ Petitions are allowed.** The concerned reservations with reference to the Writ lands, stand lapsed.

9. The Municipal Council shall communicate the lapsing of reservation to Respondent No.1 along with the entire proposal within a period of 45 days from today. Thereafter, the competent authority shall issue a notification under section 127 (2), within 60 days thereafter.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan