



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

WRIT PETITION NO. 15224 OF 2023

1. Prabhakar Ramdas Kale
Age:56 years, Occu: Agri.
R/o. 122, Maroti Peth,
Old Jalgaon, Jalgaon,
Taluka & District Jalgaon
2. Dnyaneshwar Nivrutti Kale
Age: 58 years, Occu: Agri.,
R/o. 7, Ram Peth, Old Jalgaon,
Jalgaon, Taluka & District Jalgaon
3. Vijay Nivrutti Kale
Age: 54 years, Occu: Agri.,
R/o. 7, Ram Peth, Old Jalgaon,
Jalgaon, Taluka & District Jalgaon
4. Umesh Subhash Kale
Age: 34 years, Occu: Agri.,
122, Maroti Peth, Old Jalgaon,
Jalgaon, Taluka & District Jalgaon
5. Vaibhav Subhash Kale
Age: 27 years, Occu: Agri.,
122, Maroti Peth, Old Jalgaon,
Jalgaon, Taluka & District Jalgaon
6. Smt. Rekha Subhash Kale
Age: 51 years, Occu: Household,
122, Maroti Peth, Old Jalgaon,
Jalgaon, Taluka & District Jalgaon

... PETITIONERS

VERSUS

1. The State of Maharashtra
Through Principal Secretary,
Urban Development Department,
Mantralaya, 1st Floor, Mumbai – 400 021
2. Collector, Jalgaon
Taluka & District Jalgaon
3. Director,
Town Planning Department,
Maharashtra State, Pune
Central Offices, Old Building,
Pune – 411 001
4. Assistant Director
Town Planning Department,
Jalgaon City Municipal
Corporation, Jalgaon
5. Jalgaon City Municipal Corporation,
Through its Commissioner,
Neharu Chauk, Jalgaon,
Taluka & District Jalgaon

... RESPONDENTS

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Mr. Mahesh Deshmukh, Advocate h/f Mr. S. H. Tripathi, Advocate for
Petitioners

Mr. A. B. Girase, Government Pleader for Respondent Nos. 1 to 3

Mr. S. B. Munde, Advocate for Respondent Nos. 4 and 5

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 23.01.2024

JUDGMENT (Per : Y. G. Khobragade, J.) :-

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

2. The Petitioners have put-forth prayer clauses [B] and [C] as under:

“[B] The Hon’ble High Court may kindly be pleased to issue appropriate writ, order or direction in the nature of writ, and thereby declare that the land Gat No.27/3 admeasuring 2 H 06 R situated at Khedi Budruk, Taluka & District Jalgaon, is free from any encumbrance of reservation more particularly from reservation no. 223 (Play Ground) as reserved in final development plan of Jalgaon (Additional Area).

[C] The Hon’ble High Court may kindly be pleased to issue appropriate writ, order or direction in the nature of writ, and direct the respondents to notify the lapsing of reservation by publishing notification in Official Gazette under section 127(2) of MRTP Act, forthwith.”

3. The learned Counsel appearing for the Petitioners canvassed that, Respondent No.5 published the development plan on 10.08.2004, which came into force w.e.f. 01.10.2004. Under the development plan, the Petitioners’ land is shown under reservation No. 223 for play ground and 18 meter D. P. Road. However, even after lapse of more than 14 years, Respondent No.5 Municipal Corporation

failed to acquire said land. Therefore, on 17.03.2018, the Petitioners were issued purchase notice under Section 127 of the Maharashtra Regional and Town Planning (MRTP) Act, which was duly served upon Respondent no. 5, but no land has been acquired within period of two years from the service of notice. Therefore, reservation lapsed.

4. On the other hand, the learned Counsel appearing for Respondent No.5 vehemently canvassed that presently Respondent No.5 Municipal Corporation is facing financial crises and due to paucity of fund, no compensation for acquisition of the reserved land can be paid. However, the learned Counsel appearing for Respondent No.5 submits that, the land show under reservation is required, hence, prayed for grant of one year time for the acquisition of the same. In support of these submission the learned counsel for the petitioner relied on the case of ***Municipal Corporation of Greater Mumbai Vs. Hiranman Sitaram Deorukhar – (2019) 14 SCC 411.***

5. Having considered the strenuous submissions of both sides, we have gone through the record. Though the Respondents have been granted opportunity, they failed to file a reply. On the face of the record, the following dates and events are undisputed :

- a) The development plan of the Jalgaon Municipal Corporation was sanctioned on 10-08-2004 and the same came into force on 01-10-2004.
- b) Vide reservation no. 223, the Petitioner's land bearing Gat No. 27/3 ad-measuring 2 H 06 R situated at Khedi Budruk, Taluka and District Jalgaon, was reserved for a Play Ground.
- c) No steps for acquisition were taken within a period of more than ten years.
- d) The Petitioner issued a purchase notice under Section 127 of the MRTP Act on 17.03.2018 along with copy of 7/12 extract of the land, which has duly served upon Respondent no. 5 Municipal Corporation, Jalgaon, but no steps for acquisition of land have been initiated.

6. It is obvious that the Respondent No. 5 Municipal Corporation has not initiated specific steps for acquisition of the said land as is required under Section 126(2). The law laid down by the Hon'ble Supreme Court in *Girnar Traders V/s. State of Maharashtra; 2007 7 SCC 555* and by this Court in *Santu Sukhdeo Jaibhave and Others V/s. Nashik Municipal Corporation; 2023 (2) Bom. C.R. 469*, is squarely applicable.

7. Needless to say that, Respondent no. 5 contended that it requires further period of one year to complete acquisition proceeding of reserved land and to pay compensation due to its poor financial condition.

8. On perusal of facts the case of ***Laxmikant and Others Vs. State of Maharashtra and others, 2022 SCC OnLine 349***, it appears that vide order dated 6.8.2021 passed this court had granted one year time to acquire land once reserved by relying upon the judgment of the Supreme Court in case of *Municipal Corporation of Greater Mumbai v/s Hiranman Sitaram Deorukhar, (2019) 14 SCC 411*. However , in para 7 , the Hon'ble Supreme Court observed as under:

“7. This Court in Municipal Corporation of Greater Mumbai held that the authorities have been given a duty to act as a cestui que trust (beneficiary of the trust) with respect to public park and had thus directed to acquire land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of six months. Such direction was given under Article 142 of the Constitution of India keeping in view the facts of the case. Such direction and period for acquisition of land is not a law declared by this Court which is to be treated as binding precedent for this Court and the subordinate courts subordinate in terms of Article 141 read with Article 144 of the Constitution. Therefore, once the Act does not contemplate any further period for acquisition, the Court cannot grant additional period for acquisition of land. The land was reserved for a

public purpose way back in 2002. By such reservation, the land owner could not use the land for any other purpose for ten years. After the expiry of ten years, the land owner had served a notice calling upon the respondents to acquire the land but still the land was not acquired. The land owner cannot be deprived of the use of the land for years together. Once an embargo has been put on a land owner not to use the land in a particular manner, the said restriction cannot be kept open-ended for indefinite period. The Statute has provided a period of ten years to acquire the land under Section 126 of the Act. Additional one year is granted to the land owner to serve a notice for acquisition prior to the amendment by Maharashtra Act No. 42 of 2015. Such time line is sacrosanct and has to be adhered to by the State or by the Authorities under the State.”

9. Therefore, once a legal embargo is put on the reserved land u/s 126 of the MRTP Act, no further period can be extended beyond the period stipulated under the statute. Therefore, additional one year can not be granted for acquisition of the reserved land once lapsed due to failure within the stipulated period.

10. In view of the above, **this Writ Petition is allowed.** The reservation is declared to have lapsed. Accordingly, the Municipal Corporation shall communicate to Respondent No.1, within 30 days. Within 45 days thereafter, Respondent No.1 shall issue a notification under Section 127 (2) of the MRTP Act, declaring that the reservation has been lapsed.

11. Rule is made absolute in the above terms.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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