



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2182 OF 2024

HEMANT BHAGWAT KOLHE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. S. H. Tripathi, Advocate for the Petitioners
Mr. A. B. Girase, GP for Respondent Nos.1 to 3/State
Mr. S. B. Munde, Advocate for Respondent Nos. 4 and 5

CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.

DATE : 19th MARCH, 2024

ORDER (PER - R. M. JOSHI, J.) :-

1. Invoking Article 226 of the Constitution of India, the Petitioners seek declaration that land Survey No. 438/1/A/2 admeasuring 0 H 72.50 R situated at Jalgaon, Taluka and District Jalgaon, is free from any encumbrance of reservation more particularly from reservation No. 17 (play ground) as reserved in final development plan of Jalgaon (Additional area).

2. The Petitioners are owners and possessor of aforestated land situated within the Municipal limits of Jalgaon city Municipal Corporation. The land was purchased by them from erstwhile owner Shantaram Khadke under registered sale deed dated 8th June, 2022. It is the case of the Petitioners that on 19th December, 2013 the erstwhile owner had filed

an Application to Respondent No.4 seeking details about the reservation on subject land. By communication dated 19th December, 2013 Respondent No.4 forwarded the details to him, wherein it is stated that the development plan of Jalgaon city (Additional area) notified on 11th February, 2002 and as per the said plan the part of the subject land is reserved vide reservation No.17 for playground and 15 Mt. Development plan road. By notification No. TPS-3599/799/738/CR-142/ UD-9 dated 11th February, 2002 Final Development Plan of Jalgaon (Additional Area) was sanctioned by the State Government. The same has come into force from 7th April, 2002 and as per the said plan the part of land Survey No. 438/1/A/2 is shown under reservation. It is further case of the Petitioners that almost even after 12 years have lapsed from the coming into force of the Final Development Plan of Jalgaon city, then Municipal Council and now Municipal Corporation has failed to take any effective steps towards acquisition of the said land. Since no such steps were taken by the Respondents, erstwhile owner called upon the Respondents to acquire the subject land by issuing purchase notice dated 11th July, 2014 under Section 127 of Maharashtra Regional Town Planning Act, 1999 (for short 'MRTP Act'). In response to the said communication, Respondent No.4, by its letter dated 15th July, 2014 has asked the owner to supply the certified copy of 7/12 extract and sale deed, measurement map, partial development plan and evidence about proposed rate of

subject land. Those documents were supplied by the owner along with letter dated 21st July, 2014. In spite of furnishing the requisite information and document no steps are taken by Respondent No.4 under the provisions of MRTP Act. The Petitioners claim that in view of provisions of Section 127 of the Act, the reservation on the Petitioners' land stands lapsed as in the period of two years after the service of notice steps are not taken by the Municipal Corporation towards the acquisition of the land. With these averments, Petition is filed seeking declaration that the land in question is free from encumbrance of reservation and further direction is sought to the Respondents to notify the lapsing of reservation by public notification in official gazette under Section 127(2) of MRTP Act. The learned Advocate for the Petitioners place reliance on the judgment of this Court in case of ***Jaika Vanijya Ltd., Nagpur and another Vs. State of Maharashtra and others, 2013(4) Mh.L.J. 161.***

3. Though Respondent No.5 did not file any reply, however, learned Advocate for Respondent No.5 vehemently opposed the Petition.

4. There is no dispute about the fact that on 11th February, 2002, development plan of Jalgaon city (Additional area) was notified and final development plan came into force w.e.f 7th April, 2002. A portion of subject property is reserved for playground. Provisions of

MRTP Act governs the issue. A detailed procedure has been laid down with regard to steps required to be taken by the Authority pursuant to notification of development plan. Within 10 years of such notification, action is required to be initiated for the acquisition of land. Section 127 of MRTP Act provides for eventuality of non initiation of such action within stipulated period. If no such steps are taken, it is open for the owner of land, so reserved, to issue notice to the Authority for purchase of the said land. Perusal of Section 127 of the MRTP Act indicates that a notice is contemplated thereunder is required to be served on the planning authority, development authority or as the case may be, the appropriate authority. The Petitioners are expected to give at least 12 months (12 months upto 28-08-2015 and 24 months w.e.f. 29-08-2015) time to these authorities to acquire the land. If the proceeding of acquisition is not initiated within the said period, the reservation of land is deemed to have lapsed. After lapsing of such reservation the land stands released from reservation and become available to the owner for the purpose of the development or otherwise as permissible.

5. Provision of Section 2(3) of the MRTP Act defines appropriate authority which means any public authority on whose behalf the land is designated for public purpose in any plan or scheme and which it is authorized to acquire. Section 2(15) of the MRTP Act defines local

authority and for the purpose of city of Jalgaon, Jalgaon Municipal Corporation is the local authority.

6. Since no steps are taken by the Municipal Corporation for acquisition of the said land for the period of 12 years, from finalisation of development plan; in compliance of Section 127 of MRTP Act erstwhile owner Shantaram Khadke issued purchase notice dated 11th July, 2014 which was duly received by Municipal Corporation. By communication dated 15th July, 2014 Respondent No.4 had asked the erstwhile owner to supply certain documents which requisition is complied by him by letter dated 21st July, 2014. Thereafter till date i.e. almost for a period of 10 years no steps are taken by the authority for acquisition of the land of the Petitioners.

7. Law on the point of lapsing of reservation is settled by now to say that if the authority concerned is under obligation to take effective steps within a period of two years from the date of receipt of purchase notice under Section 127 of MRTP Act from the owner of the land and in failure thereto reservation of the land is deemed to have lapsed. Failure on the part of Respondent Nos. 4 and 5 herein to take steps with regard to the acquisition of the land after the receipt of the purchase notice leads to attract the deeming provision.

8. Hence, **this Writ Petition is allowed** in terms of prayer clauses 'B' and 'C'. Respondent Nos. 4 and 5 are directed to send the proposal to the State Government within a period of 30 days from today. The State Government shall issue the notification indicating the lapsing of reservation within 45 days thereafter.

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

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