

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7082 OF 2015

Sunil s/o Vitthal Kolhe, Age 51 **Petitioner**
Years, Occupation Agriculture and
Business, R/o. 31, Dureshwari,
Pratapnagar, Ring Road, Taluka and
District Jalgaon

V E R S U S

- 1 The State of Maharashtra, Through **Respondents**
its Secretary, Urban Development
Department, Mantralaya, Mumbai
- 2 The Director of Town Planning,
Maharashtra State, Pune
- 3 The Joint Director of Town Planning,
Nasik Division, Nasik
- 4 The District Town Planning Officer,
Jalgaon
- 5 The Jalgaon Municipal Corporation,
Through its Commissioner, Jalgaon
Municipal Corporation, Jalgaon

Mr. S.P. Bramhe, Advocate, holding for
Mr. S.H. Tripathi, Advocate for the
petitioner

Mr. M.B. Bharaswadkar, A.G.P. for respondent
Nos.1 to 3

Mr. P.R. Patil, Advocate for respondent No.5

**CORAM : S.V.GANGAPURWALA AND
K.L. WADANE, JJ.**

DATE : 22nd FEBRUARY, 2017

ORAL JUDGMENT (Per : S.V. GANGAPURWALA, J.) :

1. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.

2. Learned counsel for the petitioner states that the development plan came into effect for the Jalgaon city area w.e.f. 07.04.2002. The land of the petitioner Survey No.417/1A/1, situated at Jalgaon, admeasuring to the extent of 97 R is reserved for playground and D.P. road. The learned counsel submits that the petitioner issued Notice under Section 127 of the Maharashtra Regional Town Planning Act, 1966. The said notice was served on the respondent no.5-Municipal Corporation. For the period of one year after service of purchase notice, the respondents did not take any steps for acquisition of land. The learned counsel submits that the said area is required to be released from the reservation.

3. Mr. Patil, learned counsel for respondent No.5-Corporation submits that the respondent No.5-Corporation is under financial constraint. The respondents are ready to offer T.D.R. to the petitioner. The playground is necessary to be maintained in the City.

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. The factual matrix as narrated above is not in dispute. The land of the petitioner is shown under reservation for the purpose of playground and D.P. Road in the development plan w.e.f. 07.02.2002. The Notice under Section 127 of the Maharashtra Regional Town Planning Act, 1966 has been issued on 18.05.2012. The same has been served on the respondent No.5-Corporation is not disputed.

6. Till date, Notification under Section 6 of the Land Acquisition Act read with Section 126 of the M.R.T.P. Act has not been issued. The same is admitted

by the respondent No.5. In view of that, there is no impediment to conclude that the respondent No.5 has not taken any step for acquisition of the said land within a period of one year from the date of service of notice.

7. Section 127 of the Maharashtra Regional Town Planning Act, 1966 acts as fetters on the power of eminent domain. If within the stipulated period, the land is not acquired or no steps are commenced for its acquisition, the same shall be deemed to be lapsed. As such, in the present case, the respondent No.5 has not taken any steps for acquisition, therefore, the reservation stands lapsed.

8. In the light of above, the land bearing Survey No. 417/1A/1, situated at Jalgaon, admeasuring to the extent of 97 R shown in the reservation as playground and D.P. Road stands released from the reservation. The respondents shall take further steps for issuance of Notificaton to that effect preferably within six months.

9. As far as the land affected in D.P. Road is concerned, the respondent has offered T.D.R. Mr. Bramhe, learned Advocate for the petitioner, on the instructions of the petitioner, accepts the said offer. In view of above, it is hereby directed that the respondents shall offer T.D.R. as admissible in respect of the land of the petitioner affected by the D.P. Road and the petitioner shall accept the said T.D.R. in respect of D.P. Road. The petitioner is entitled to use the land which was reserved for play ground for the purpose adjacent land is used.

10. Rule is made absolute in the above terms. No costs.

(**K.L. WADANE, J.**)

(**S.V. GANGAPURWALA, J.**)

SRM/22/2/17

