

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 9685 OF 2016

1. Rajesh Anantrai Doshi  
Age 52 years, occ. Agril & business  
r/o 329, Navi Peth, Jalgaon  
Tq. & Dist. Jalgaon

2. Ramchandra Laxminarayan Soni  
age 66 years, occ. Agril & business  
r/o 213, Navi Peth, Jalgaon  
Tq. & Dist. Jalgaon

3. Hemant Krishnachandra Depura  
age 48 years, occ. Business  
r/o 201, Balaji Peth, Jalgaon  
Tq. & Dist. Jalgaon

Petitioners

Versus

1. The State of Maharashtra  
Through Secretary  
Urban Development Department,  
Mantralaya, Mumbai

2. Collector,  
Jalgaon, Tq. & Dist. Jalgaon

3. Assistant Director,  
Town Planning Department,  
Jalgaon Municipal Corporation,  
Jalgaon.

4. Jalgaon Municipal Corporation  
Through its Commissioner,  
At post Jalgaon  
Tq. & Dist. Jalgaon

Respondents

Mr. S.P. Brahme, advocate holding for Mr. S.H. Tripathi, advocate  
for the petitioners.

Mr. V.M. Kangne, A.G.P. for Respondents 1 and 2.  
Mr. P.R. Patil, advocate for respondents 3 and 4.

**CORAM : R.M.BORDE &  
K.L. WADANE, JJ.  
DATE : 25<sup>th</sup> APRIL, 2017**

**ORAL JUDGMENT : ( PER R. M. BORDE, J. )**

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel for the respective parties.
3. Petitioners are the purchasers of the property from original owner and, the purchase is effected on 27.07.2016. The erstwhile owner of the property issued a notice within contemplation of section 127 of the Maharashtra Regional Town Planning Act, 1956 on 17.04.2008 calling upon the Municipal Corporation to purchase the property referred under the final development plan for public purpose. It is further clarified in the notice that in the event of failure of the Municipal Corporation to purchase the property, the reservation/allotment/designation provided in the development plan in respect of the property shall stand lapsed.
4. It is not a matter of dispute that site no. 162 was earlier reserved under the final development plan prepared in the year 1983 for play ground and, in the revised development plan, published on 15.03.1993, the said property has been earmarked

for children's park. Since the Municipal Corporation did not take steps even on receipt of notice issued under section 127 of MRTP Act, the petitioners who have stepped into the shoes of original owner, have presented the instant petition seeking declaration that the reservation/allotment/designation in respect of the property which is referred in the final development plan prepared for Jalgaon Municipal Corporation shall stand lapsed.

5. Learned counsel for respondents contends that the notice has been issued by the erstwhile owner and as such, the same shall not be construed as valid. It is also contended that the document showing title of the erstwhile owner was not submitted alongwith the notice and as such, the notice issued by the erstwhile owner is not within contemplation of section 127 of the Act.

6. Section 127 of the MRTP Act contemplates issuance of notice by the owner or any other person interested in the property. It is not a matter of dispute that the petitioners have purchased the property and as such have stepped into the shoes of owner and thus presented the instant petition. So far as the objection as regards tendering of document of title together with notice is concerned, the requirement has been first time introduced by way of amendment enforced since 25.06.2009 whereas the impugned notice has been issued on 17.04.2008. The requirement mandated under the amended provisions which has been enforced since 25.06.2009 shall not operate retrospectively and, on that count, the notice issued 17.04.2008 cannot be said to be invalid. The step to be taken within contemplation of section 127 of MRTP Act in

view of judgment of the Supreme Court in the matter of M/s. Girnar Traders vs. State of Maharashtra reported in **2011(3) SCC 1** is issuance of notification under section 6 of the Act. Admittedly, the Municipal Corporation has not taken the step as has been laid down by the Supreme Court in the judgment referred to above. Consequently, the reservation/allotment/designation in respect of the property belonging to petitioners and earmarked in the final development plan for public purpose shall be deemed to have been lapsed. It would be open for the petitioner to develop the property for the purpose as contemplated in case of the adjacent land prescribed in the development plan. Notification within contemplation of section 127(2) of the MRTP Act shall be issued as expeditiously as possible, preferably within a period of six months from today. Rule is accordingly made absolute. No costs.

**( K. L. WADANE )**  
**JUDGE**

**( R.M.BORDE )**  
**JUDGE**

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