



(3) Khushbir Singh Basant Sing & Ors. Vs. The State of Maharashtra & Ors. in Writ Petition No.4091 of 2017.

(4) State of Himachal Pradesh and Others Vs. Satpal Saini reported in 2017 AIR (SC) 810.

7. Mr. P. R. Patil, learned counsel for Municipal Corporation submits that plot nos.7 to 10 were under reservation as per the sanctioned development plan for children's play ground. The Municipal Council, Jalgaon had given lay out permission to Mr. Vinay Shah of Survey No.478/1B on 31.01.1985. In the sanctioned lay out of said plot, open space of area 1415 sq. meter is reserved and reservation is shown. The said lay out was cancelled by the Municipal Council on request of land owner Mr. Vinay Shah on 13.04.1987. After the said land was sold in four parts, the owners of said four parts submitted proposal for lay out sanction and thereafter, the Municipal Council as per the then existing Bye Laws sanctioned lay outs of all four parts. In the lay out sanctioned of Survey No.478/1B/3, plot nos.7 to 10 were shown under reservation for play ground. In the year 1993, the revised development plan of Jalgaon Municipal Council was sanctioned and under the same the writ land was shown for the purpose of children's park, site no.162. The notice under Section 127 of M.R.T.P. Act was issued on 17.04.2008. However, the Corporation could not acquire the land. The same was de-reserved under



the order of this Court in Writ Petition No.9685 of 2016. Thereafter, on 12.10.2017, notification was issued by the State Government in tune with the judgment of this Court in writ petition no.9685 of 2016. On 08.03.2018, construction permission was granted to the owners of the said plot nos.7 to 10.

8. The learned A.G.P. submits that after the land stood de-reserved under order of this Court, necessary notification has been issued. The Planning Authority did not take any steps for acquisition.

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

10. The scope of the writ petition is limited to the extent of seeking directions against the State Government and the Planning Authority to place reservation on plot nos.7 to 10 of Survey No.478/1B/3.

11. The petitioners in memo of petition have averred that the plot nos.7 to 10 of Survey No.478/1B/3 were reserved for children's play ground in the development plan published in the year 1993. The respondents have not disputed the same and have accepted that these plots were reserved in the development plan of year 1993 for children's play ground and prior to that in the development plan of year 1983, the same were reserved for play ground.



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12. It is not a matter of dispute that the Planning Authority did not take steps to acquire the reserved land nor to develop it. The erstwhile owners issued notices under Section 127 of the M.R.T.P. Act. In spite of service of notice under Section 127 of the M.R.T.P. Act, the Planning Authority nor the State Government took any steps to acquire the land. Thereafter, the owners of the property at the relevant time filed a writ petition bearing no.9685 of 2016 seeking declaration that the plot nos.7 to 10 of Survey No.478/1B/3 is free from reservation. The Division Bench of this Court allowed the said writ petition under its judgment and order dated 25.04.2017 declaring that the reservation on the said plot nos.7 to 10 stands lapsed. Pursuant to the judgment of this Court, the necessary notification is also issued.

13. It is pertinent to observe that the judgment in writ petition no.9685/2016 dated 25.04.2017 is not subject matter of challenge in the present writ petition. The said judgment has attained finality. Once the said land stand de-reserved and the same is declared so by this Court, then the said land becomes available to the owner for development. As observed supra, the lands have stood de-reserved and after the judgment of this Court necessary notification has also been issued regarding its de-reservation. The land has become available for development. Unless the judgment of this Court is interfered with, the

relief as prayed by the petitioners cannot be granted by this Court.

14. The major plank of the argument of the learned counsel for the petitioners is about the open spaces not being provided and the lay outs dated 29.03.1987 has not been validly granted. The lay out it appears is sanctioned on 29.03.1987. If the sale deed of the petitioner no.1 as filed on record is perused, he has purchased the plot on the basis of the same lay out sanctioned in the year 1987. The petitioners cannot approbate and reprobate. On one hand relying upon lay out sanctioned in the year 1987 the petitioners have purchased the property and at the same time while alleging against respondents they contend the said lay out is not validly sanctioned. The petitioners cannot be allowed to blow hot and cold. If it is accepted that lay out of the year 1987 is not validly sanctioned, then purchase of the property of the petitioners on the basis of the same lay out also would not be legal. Be that as it may, we need not go into the said aspect after the lapse of 30 years. However, if any enquiry has been initiated with regard to the same, it is not for this Court to observe anything in that regard. It is for the competent authorities to proceed in accordance with law as may be permissible.

15. There cannot be any dispute that the open spaces, children's play ground are the lungs of

the city and the amenities have to be provided for. At the same time the lands of the private individuals in the development plan cannot be perpetually and perennially kept under reservation without any development activity. On that count it is said that Section 127 of the M.R.T.P. Act is a fetter on the power of eminent domain. Atleast since 1983, these writ lands were under reservation. No steps were taken for all the years and the owners issued the notice under Section 127 of the M.R.T.P. Act. No steps for acquisition were initiated as contemplated under law viz. no declaration under Section 126 of M.R.T.P. Act read with Section 6 of Land Acquisition Act, 1894 was issued. In view of the judgment of the Apex Court in a case of *M/s. Girnar Traders Vs. State of Maharashtra & Ors.* reported in (2011) 3 SCC 1, the reservation stands lapsed. This Court considering the said aspects has declared the reservation on the said land to have lapsed in writ petition no.9685 of 2016 under order dated 25.04.2017. As observed supra, the judgment of this Court is not under challenge in the present writ petition nor the same has been challenged by either of the parties before the Apex Court.

16. As far as the complaints against one Mr. Dheeraj Soni and others are concerned, the same is not a subject matter of the present writ petition nor any prayer is made to that effect. If the complaints are filed, the law will take its own