

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

WRIT PETITION NO.1791 OF 2012

1. Rasiklal Jamnadas Shah,
Age 72 years, Occu. Retired
r/o Shilp Bungalow,
Opp. Rawal Bhakt Hospital,
Jalgaon.
2. Hasmukh Jamnadas Shah,
Age 68 years, Occu. Retired
r/o A-71, Kaveri Building,
Plot No.63, Sec. 17, Vashi,
Navi Mumbai 400 705
3. Chandrakant Jamnadas Shah
Age 67 years, Occu. Service,
R/o. 601/B, Damodar Park
LBS Marg, Ghatkopar (West)
Mumbai 400 086
4. Mukesh Jamnadas Shah
Age 60 years, Occu. Business,
r/o. 71, Kaveri Building,
Sector-17, Washi,
Mumbai.
5. Satish Jamnadas Shah,
Age 58 years, Occu. Business,
r/o Shah Compound,
Mahavir Marg, Taloda Road,
Nandurbar 425 412
6. Lataben Lalitkumar Shah
Age 67 years, Occu. Housewife,
r/o 705, Mitha Tower,
Sec-17, Vashi,
Navi Mumbai.

7. Rajendra Lalitkumar Shah
Age 49 years, Occu. Housewife,
r/o. 706, Mitha Tower,
Sec-17, Vashi,
Navi Mumbai.
8. Manish Lalitkumar Shah
Age 45 years, Occu. Housewife,
r/o. 707, Mitha Tower,
Sec-17, Vashi,
Navi Mumbai.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through the Director of Town Planning.
2. The Collector, Nandurbar
District Nandurbar.
3. The Nandurbar Municipal Council
Through its Chief Officer,
Nandurbar.
4. The Planning Officer,
Municipal Council,
Nandurbar.

...RESPONDENTS

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Mr. S.P.Shah, Advocate for petitioner.
Smt. A.V.Gondhalekar, AGP for respondent nos. 1
and 2.
Mr. A.B.Girase, Advocate for respondent no.3.

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CORAM: R.M.BORDE

AND

P.R.BORA, JJ.

DATE : March 9th, 2015

Date of reserving
the judgment: 9.2.2015
Date of pronouncing
the judgment: 9.3.2015
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JUDGMENT: (Per P.R.Bora, J.)

1. Heard. Rule. Rule made returnable forthwith.
With the consent of learned Counsel for the parties, the petition is taken up for final disposal at admission stage.

2. The petitioners are seeking declaration that the reservation, allotment, designation made in relation to the lands which are subject matter of the present petition, in the final development plan prepared by respondent no.3 Municipal Council shall stand lapsed since no steps for acquisition of the said lands are initiated by the Council even after (35) years of preparation of the development plan and within six months of the notice served by the petitioners under the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

3. The petitioners are owners of two adjoining lands bearing survey No.225/2 and survey No.229, situated at

Nandurbar. On 19.3.1979, the final development plan for the city of Nandurbar came into force. Initially, the portion of survey No.225/2 was reserved for shopping center as reservation no.22 and land survey No.229 was reserved for garden as reservation No.23. Presently, the reservation on survey No.225/2 is shown as reservation No.46 for shopping center and vegetable market and reservation on survey no.229 is shown as reservation no.47 for playground. Since no steps have been taken by the planning authority for acquisition of the land so reserved, though more than 30 years are lapsed, the petitioners issued a notice to the planning authority i.e. Nandurbar Municipal Council under Section 127 of the M.R.T.P. Act on 2nd August, 1999. The petitioners had also sought information whether any proposal was pending for acquisition of aforesaid lands whereupon they were informed that no such proposal was pending for acquisition. Subsequently, the petitioners served upon the respondents second notice on 30.10.2000 for purchase of land under Section 127 of the M.R.T.P.Act. However, the respondents did not take any effective step towards acquisition of the said land. In the meanwhile, petitioners applied for sanction to the lay out assuming that the reservation on both the survey numbers had lapsed as per the provisions of Section 127 of the M.R.T.P.Act.

However, the Collector, Nandurbar, refused to grant sanction to the lay out contending that the lands survey No.225/2 and 229 are still under reservations. The petitioners have, therefore, filed the present writ petition seeking declaration that the reservation on the aforesaid lands belonging to them has lapsed in view of the provisions of Section 127 of the M.R.T.P.Act.

4. The contentions raised in the petition are opposed by respondent nos. 3 and 4 by presenting affidavit in reply sworn by the Chief Officer of respondent no.3 Municipal Council. It is the contention of the respondent nos. 3 and 4 that the reservation prescribed in earlier development plan of the year 1979 published by the planning authority in so far as lands in question are concerned, has been maintained in the development plan published in the official gazette on 5.4.2007 and 7.12.2009. It is further stated that, in the said development plan, survey No.225/2 has been reserved as site No.46 for shopping center and vegetable market and survey No.229 has been kept reserved as site No.47 for playground. It is further contended that since the reservation is reinstated in 2007, and period of ten years has not yet lapsed, no relief as claimed by the petitioners can be granted. It is the further contention of these respondents that immediately after receipt

of the notice, the Municipal Council has filed proposal for acquisition of the lands in question vide proposal dated 25.4.2001. It is further contended that considering the necessity for shopping center and garden in Nandurbar city and taking into account the financial condition of Nandurbar Municipal Council, the Council had passed resolution in the General Body meeting requesting the State Government to grant financial aid for acquisition of the subject lands. The said resolution is stated to have been passed in the General Body meeting held on 5.2.2011. It is further contended that the Deputy Director of Town Planning, Nashik Division, Nashik, vide his letter dated 19.1.2012 had recommended the State Government to consider the request of the Municipal Council to grant financial aid for acquisition of the said lands. On the grounds raised in the affidavit in reply, respondent nos. 3 and 4 have prayed for dismissal of the petition.

5. We have heard arguments advanced by learned Counsel appearing for the respective parties. The basic fact that the subject properties are designated for public purposes in final development plan prepared for Nandurbar Municipal Council has not been disputed. Though it is the contention of respondent nos. 3 and 4 that notice dated 2nd of August, 1999,

alleged to have been issued by the present petitioners under Section 127 of the M.R.T.P.Act, was not received to them, and is not found on record of the Municipal Council, respondent nos. 3 and 4 have admitted receipt of the notice dated 30.10.2000 subsequently issued by the petitioner for purchase of subject lands under Section 127 of the M.R.T.P.Act. Further, it is also not in dispute that no steps for acquisition of the property in question have been taken by the respondents within the period stipulated under Section 127 of the M.R.T.P.Act from the date of the notice. It is the contention of the respondent Nos. 3 & 4 that after receipt of the aforesaid notice under Section 127 of the M.R.T.P.Act, the Municipal Council had sent proposal to the State Government for acquisition of the lands in question vide proposal dated 25.4.2001, there is nothing on record to show that any further steps were taken in pursuance of the said proposal. Mere sending a proposal cannot be said to be an effective step towards acquisition of the land. It is, thus, evident that no steps for acquisition of the subject properties have been taken within the period stipulated under Section 127 of the M.R.T.P.Act from the date of receipt of the notice by the respondents.

6. The further contention raised for opposing the relief claimed in the petition is that there is revision of final development plan in the year 2007 and earlier reservation in respect of the subject lands has been reinstated and ten years period has not yet lapsed from the publication of the said revised development plan, whereby designation / reservation made in the original plan has been reinstated. The objection raised by the respondents deserves no consideration since the issue stands settled in view of the law laid down by the Honourable Apex Court in the matter of **Bhavnagar University vs. Palitana Sugar Mill Private Limited and others reported in A.I.R. 2003 S.C. 511**, which has been followed by the Division Bench of this Court in the matter of **Baburao Dhondiba Salokhe vs. Kolhapur Municipal Corporation, Kolhapur and another reported in 2003(3) Mh.L.J. 820** as well as in an another Division Bench judgment in the matter of **Vijaykumar s/o Motilal Hirakhanwala vs. State of Maharashtra and others (Writ Petition No.11759 of 2010 decided on 17th February, 2011)**. In view of the law laid down in the aforesaid judgments, the reservation will not get revived merely because the reservation is reinstated in the revised development plan.

7. In case of **Bhavnagar University** (supra), it has been observed by the Supreme Court that section 21 of the Gujrat Act (which is analogous to section 38 of the Maharashtra Regional and Town Planning Act) which imposes statutory obligation on the part of State and on the appropriate authority to revise the development plan, does not take away the right of the owner in terms of sub section 2 of Section 20 (which is pari materia to section 127 of the M.R.T.P. Act). It can thus safely be concluded that section 38 does not envisage that despite the fact that the designation or reservation has lapsed in view of section 127 of the Act, same gets revived merely because a draft revised plan or revision in final development plan is approved. The rights accrued to the land owner in view of the mandate of section 127 of the Act is not liable to be taken away merely on the ground that reservation has been reinstated in revised development plan.

8. For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. It is declared that the reservation, designation or allotment provided under final development plan prepared for Nandurbar city in respect of subject lands i.e. survey No.225/2 and survey No.229 situated at Nandurbar, stands lapsed and the said

lands are released for development by the land owners as per the user permissible in respect of adjacent land as per the development plan. State Government is hereby directed to take steps and notify lapsing of reservation in Official Gazette, as expeditiously as possible and preferably within six months from today.

Rule is accordingly made absolute. No costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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