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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9492 OF 2013

Shri Jignesh Amulakh Vora	... Petitioner
Vs.	
Nashik Municipal Corporation and Ors.	... Respondents

**WITH
WRIT PETITION NO.9493 OF 2013**

Shri Amulakh Hatichand Vora and Anr.	... Petitioners
Vs.	
Nashik Municipal Corporation and Ors.	... Respondents

Mr. R.D. Soni i/by M/s. Ram & Co., for the Petitioners.
Mr. M.L. Patil, for the Respondent Nos.1 and 2.
Mrs. M.P. Thakur, AGP, for Respondent Nos.3 and 4.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 8th JANUARY, 2015

ORAL JUDGMENT (Per A.S. Oka, J.) :-

. Notice for final disposal was issued on 4th March, 2014.

Facts of both the Petitions are more or less identical and, therefore, we are making a reference to the facts of the case in Writ Petition No.9492 of 2013. The Petitioner therein is claiming to be the owner of the land bearing Survey No.23/3A of village Dasak, Nashik within the limits of the Nashik Municipal Corporation. The total area of the said survey number is 5377 sq. meters. The development plan for the City of Nashik

was sanctioned on 28th June, 1993 which came into force on 16th November, 1993. As per the said development plan, Survey No.23/3A (for short “the said land”) was reserved under Reservation No.133 for Road, Primary School and Secondary School.

2. A notice dated 25th October, 2010 was served by the Advocate for the Petitioner to the Municipal Corporation purporting to be a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). The Municipal Corporation which is the planning authority was called upon to acquire the said land within six months from the date of service of notice. A copy of 7/12 extract and a copy of the development plan were annexed to the said notice. On 1st December, 2010, the Estate Manager of the Nashik Municipal Corporation called upon the Petitioner to produce 7/12 extract for the current year along with 6D extract. Various other documents such as a return filed under the Urban Land (Ceiling and Regulation) Act, 1976 (for short “the ULC Act”) and a certificate of the Competent Authority under the ULC Act that the said land was outside the limits of the urban agglomeration were also demanded. The Petitioner was also called upon to produce a certified copy of the map drawn by the Taluka Inspector of Land Records. The Petitioner was called upon to produce the sanctioned lay-out, if any. It appears that on

the basis of the said notice, on 8th February, 2011, the Nashik Municipal Corporation submitted a proposal to the District Collector to acquire the said land. Admittedly, within a period of 12 months from the date of service of the aforesaid notice dated 25th October, 2010, the notification/declaration either under Sub-Section (2) or Sub-Section (4) of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 was not issued.

2. There is no dispute before us that if the notice dated 25th October, 2010 is held to be valid and legal notice under Section 127 of the MRTP Act, consequences provided in Sub-Section (1) of Section 127 would follow and the Reservation on the land in question will stand lapsed.

3. The objection to the legality and validity of the said notice by the learned counsel appearing for the Municipal Corporation is that the documents of title were not produced along with the notice. His submission is that an authentic map showing boundaries of the said land was also not produced. His submission is that unless the said map is produced, it is not possible for the Municipal Corporation to establish the identity of the reserved plot. He submits that the notice itself is not legal and valid. It is urged that the notice is required to be strictly

construed considering the drastic consequences provided under Section 127.

4. We have given careful consideration to the said objection.

Sub-section (1) of Section 127 of the MRTP Act reads thus :

“127.Lapsing of Reservation.- (1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force [or, if a declaration under sub-section (2) or (4) of Section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development authority or, as the case may be, the Appropriate Authority to that effect; and if within twelve months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.”

5. Under Sub-Section (1) of Section 127, the owner or any person interested in the land subject matter of reservation is entitled to serve the notice. Requirement of Sub-Section (1) is that the notice must be accompanied with the documents showing title or interest in the said land. The requirement of Sub-Section (1) is not of producing the documents of title but the requirement is of producing documents showing the title or interest of the persons serving the notice. In the present case, it is not disputed that along with the notice dated 25th October, 2010, the Petitioner submitted 7/12 extract and an extract of development plan. As pointed out earlier, by letter dated 1st December, 2010, the Estate Manager of the Nashik Municipal Corporation called upon the Petitioner to produce various documents which we have referred to above including 7/12 extract of the current year. On 15th December, 2010, along with letter of the same date, the Advocate for the Petitioner handed over to the Estate Manager of the Nashik Municipal Corporation, the 7/12 extract of the current year along with 6D extract. Apart from filing a copy of the return under the ULC Act, even a copy of map prepared by the Taluka Inspector of Land Records, Nashik was submitted. The map was a measurement map showing Pot Hissa numbers.

6. The 7/12 extract produced by the Petitioner shows that his name was mutated in the Kabjedar column thereof. The name was

mutated on the basis of the mutation entry No.10278 which records that a permission for purchasing the said land was obtained by the Petitioner and on the basis of the Sale Deed dated 18th February, 2010, the name of the Petitioner was being mutated. As held earlier, the requirement is not of producing documents of title, the requirement is of producing the documents showing title or interest. In the 7/12 extract, the name of the Petitioner has been mutated in the Kabjedar column on the basis of a registered Sale Deed. Therefore, in any event, 7/12 extract can be said to be a document showing interest of the Petitioner in the said land. Admittedly, the said 7/12 extract was produced along with the notice and latest 7/12 extract was produced on 15th December, 2010. Therefore, even assuming that the notice is treated as effective notice from 15th December, 2010, admittedly within a period of 12 months from that date, steps as contemplated by Sub-Section (1) of Section 127 have not been taken. Therefore, in our view, the notice dated 25th October, 2010 is legal and proper and there is no legal infirmity in the notice. Hence, the consequences provided under Sub-Section (1) of Section 127 must follow.

7. Hence, the Petitions must succeed and we pass the following order :-

ORDER

- (i) In both the Petitions, Rule is made absolute in terms of prayer clause (a);
- (ii) We direct the State Government to notify the lapsing of reservation in accordance with Sub-Section (2) of Section 127 of MRTP Act within a period of three months from today.
- (iii) Petitions are allowed on above terms.

(A.K. MENON, J)

(A.S.OKA, J)