

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10171 OF 2013

Shailesh K. Bothara ...Petitioner
vs.
The State of Maharashtra
and Others ...Respondents

Mr. R.S. Kohli, for the Petitioner.
Mr. V.S. Gokhale, AGP for Respondent No. 1.
Mr. Rajdeep Khandeparkar, for Respondent No. 2
Mr. R.D. Soni a/w Mr. V.R. Kasle i/b. Ram &
Co., for Respondent No. 3.

CORAM : A.S. OKA & A.P.BHANGALE, JJ
DATE : 24TH MARCH, 2015.

P.C.:

. Heard the learned counsel appearing for
the Petitioner.

2] The Petition proceeds on the footing that the reservation of the plot held by the Petitioner in the sanctioned Final Development Plan has lapsed & accordingly, an order dated

13th September, 2011 has been passed by the State Government.

3] A writ of Mandamus is prayed for directing the State Government to issue a notification under sub Section 2 of Section 127 of Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). Even according to the case of the Petitioner, the reservation lapsed on the basis of a notice dated 12th July, 2005 issued under section 127 of the MRTP Act. Going by the case of the Petitioner, as no steps were taken within a period of six months from 12th July, 2005 to acquire the reserved plot of land, the reservation lapsed in the year 2006.

4] Sub section 2 of Section 127 of the MRTP Act requires the State Government to notify the lapse of the reservation under section 127 of the MRTP Act. Sub-Section (2) of Section

127 of the MRTP Act was brought on the statute book by Maharashtra Act No. 16 of 2009 with effect from 25th June, 2009. By Maharashtra Act No. 16 of 2009, the existing Section 127 of the MRTP Act was amended and sub-Section (2) has been added. Sub section 2 of Section 127 of the MRTP Act will apply when reservation lapses as provided in sub section 1 of Section 127 of the MRTP Act as amended with effect from 25th June, 2009. Therefore, sub section (2) of section 127 of the MRTP Act will have no application in the facts of the case as even according to the case of the Petitioner, the reservation lapsed in the year 2006. Therefore, we are unable to issue a writ as prayed for.

5] The learned counsel appearing for the Petitioner relied upon the decision of Division Bench of this Court in the case of

*"Arun Motiram Nimkar and Others vs. Municipal Corporation of City of Amravati"*¹.

6] On perusal of the said decision, we find that the issue which arises for consideration in this Petition was not canvassed before the Division Bench. The law is well settled that reservation lapses by the operation of section 127 of the MRTP Act and for such automatic lapse of reservation, even a declaration of competent Court is not necessary.

7] Subject to what is observed above, Petition is rejected.

(A.P. BHANGALE, J.)

(A. S. OKA, J.)

1. 2013(5) Bom. C.R.546.