

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3456/2013

(Bhaskar Keshawrao Tompe and others vs. The State of Maharashtra and
others)

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

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Mr.R.J. Mirza, Advocate for petitioners
Mr.S.M.Bhagde, Assistant Government Pleader for respondents 1 & 3
Mr. M.I. Dhattrak, Advocate for respondent no.2.

**CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.**

DATED : 29th April, 2015.

Heard.

By this petition, the petitioners seek a declaration that the reservation of 35R of land in Survey No. 76/3 of Mouza: Chandur Bazar, for the purpose of garden, has lapsed, under the provisions of the Section 127 of the Maharashtra Regional and Town Planning Act, 1966 and the petitioners are entitled to develop the land, as is permissible to the adjacent land owners.

The petitioners have purchased the land from the erstwhile land-holder by a registered sale deed, dated 9.11.2012. Earlier, when an agreement of sale was executed by the land-owner in favour of the petitioner no.1, the petitioner no.1 had issued a purchase notice to the Planning Authority, that is, the respondent nos. 2 and 3 on 22.2.2012.

A second purchase notice was issued by all the petitioners who purchased the property, of which the declaration is sought from the erstwhile land-owner, on 28.1.2013. Since no steps were initiated by the respondent nos.2 and 3 for the acquisition of the property, the present Petition is filed seeking the aforesaid declaration.

It is submitted on behalf of the petitioners that the petitioners are entitled to the declaration as sought, as no steps whatsoever are initiated by the respondent nos. 2 and 3 for the acquisition of the land within a period of one year, either from the first purchase notice dated 22.2.2012 or the second purchase notice, dated 28.1.2013. It is stated that the petitioners are entitled to the declaration as sought, in view of the settled position of law, under Section 127 of the Act of 1966.

Shri M.I.Dhatrak, the learned counsel for the respondent no.2 submitted that the first purchase notice, dated 22.2.2012, is liable to be ignored as the petitioner no.1 had not purchased the property at the relevant time. It is, however, fairly admitted that after passing the resolution on the receipt of the notice dated 28.1.2013, nothing was done in the matter by the respondent no.2 for the acquisition of the land and Section 6 notification under the Land Acquisition Act, 1894 was not issued.

It appears on hearing the learned counsel for the parties that the petitioners are entitled to the declaration, as sought. Even assuming that the petitioner no.1 was not entitled to serve the purchase notice on the respondent nos. 2

and 3 on 22.2.2012, on the basis of the agreement of sale executed by the erstwhile owner in his favour, the respondent nos. 2 and 3 ought to have taken effective steps for the acquisition of the land admeasuring 35R, reserved for the purpose of garden within the period of one year from the notice dated 28.1.2013, as the said notice was admittedly received by the respondents. It is now well-settled that mere passing of a resolution for acquisition of the land is not an effective step for the acquisition of the land and it would be necessary for the Planning Authority to issue a notification under Section 6 of the Land Acquisition Act. Admittedly, since a notification under Section 6 of the Land Acquisition Act was not issued in this case, the reservation of 35R of land, for the purpose of garden, is deemed to have lapsed.

Hence, for the reasons aforesaid, the Writ Petition is partly allowed. It is hereby declared that the reservation of 35R of land of the petitioners in Survey No. 76/3 of Mouza: Chandur Bazar, District Amravati, for the purpose of garden, has lapsed and the petitioners are free to develop the land, as is permissible to the adjacent land-holders.

Order accordingly. No costs.

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