

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3414/2011

(DILIPSINGH SARDARSINGH BAGGA & ANOTHER **VERSUS** THE STATE OF MAH.& OTHERS)

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

Court's or Judge's orders

Shri G.K. Mundhada, counsel for the petitioners.
 Shri T.R. Kankale, A.G.P. for the R-1 & 4.
 Shri J.B. Kasat, counsel for the R-2 & 3.

CORAM : SMT. VASANTI A. NAIK AND
A.M. BADAR, JJ.

DATE : APRIL 1, 2015.

By this petition, the petitioners seek a declaration that the land owned by the petitioners in Survey No.163/1 admeasuring 2 Hectare 11 R of village Badnera and reserved for Garden has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 and the petitioners are free to develop the land owned by them in the manner permissible to the adjoining land holder as per the development plan.

The petitioner no.1 was the owner of the land admeasuring 2 Hectare 11 R in Survey No.163/1 and the said land was sold by the petitioner no.1 to the petitioner no.2 on 24.08.2010. Before the petitioner no.1 sold the said land to the petitioner no.2 by a registered sale-deed, the petitioner no.1 had issued a purchase notice to the respondent nos.2 and 3 under Section 127 of the Act of 1966, on 08.01.2010. Since the respondent no.2 has not taken any steps for the purchase of the land within a period of one year from the issuance of the notice dated 08.01.2010, the present petition seeking the aforesaid declaration is filed.

Shri Kasat, the learned counsel for the respondent nos.2 and 3, states that there are two reservations in respect of land

Survey No.163/1, admeasuring 2 Hectare 11 R. It is stated that reservation site no.329 for Garden is only in respect of 1.525 Hectares of land and reservation no.328 is for a Post Office and for that purpose, land admeasuring 0.125 Hectares is earmarked. It is stated that the petitioners have not issued any notice to the Post and Telegraph Department under Section 127 of the Act of 1966. It is stated that the Post and Telegraph Department is also not a party to the present petition. It is stated that though the Municipal Corporation had informed the postal department in regard to the notice dated 08.01.2010, the Municipal Corporation has not received any communication from the Postal Department whether the land is required by them for the purpose of Post Office or not. It is stated that in this background, in the absence of any notice to the Post and Telegraph Department under Section 127 of the Act of 1966, the reservation of 2 Hectare 11 R of land, as claimed by the petitioners cannot lapse though no effective steps have been taken by the Corporation in respect of land admeasuring 1.525 Hectares, reserved for Garden. It is stated that all the conditions prescribed under Section 127 of the Act of 1966 are not complied in respect of reservation of site no.328 for Post Office. It is, however, fairly admitted that in respect of land admeasuring 1.525 Hectares reserved for Garden, the Municipal Corporation has not taken any effective steps and has not issued notification under Section 6 of the Land Acquisition Act.

On hearing the learned counsel for the parties, it appears that the declaration sought by the petitioner in regard to lapsing of reservation of 2 Hectare 11 R of land under Section 127 of the Act of 1966 cannot be granted though a declaration in respect of 1.525 Hectares of land reserved for Garden as per reservation no.329 could be granted. Admittedly, the respondent no.2 has not issued a notification under Section 6 of the Land Acquisition Act within a period of one year from the issuance of the notice dated 08.01.2010. No steps as contemplated by the

provisions of Section 127 of the Act of 1966 are taken by the respondent no.2 within a period of one year from the issuance of the purchase notice dated 08.01.2010. In this background, it would be necessary to declare that the reservation of 1.525 Hectares of land for garden as per reservation no.329 has lapsed under Section 127 of the Act of 1966. In view of the facts narrated hereinabove, in regard to the absence of purchase notice in respect of 0.125 Hectares of land to the Post and Telegraph Department and in the absence of any communication from the Post and Telegraph Department that the land is not required by them, the reservation in regard to 0.125 Hectares of land, reserved for Post Office cannot be said to have been lapsed.

Hence, for the reasons aforesaid, the writ petition is partly allowed. It is hereby declared that the reservation in respect of the land admeasuring 1.525 Hectares owned by the petitioner no.2 and reserved for Garden as per reservation no.329 has lapsed under Section 127 of the Act of 1966 and the petitioner no.2 is free to develop the land owned by him in the manner permissible to the adjoining land holder as per the development plan.

Order accordingly. No costs.

JUDGE

JUDGE

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