

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

WRIT PETITION NO.6495/2014

Bhaskar Keshavrao Tompe and others

...Versus...

The State of Maharashtra through the Secretary Urban Development
Department, Mantralaya, Mumbai and 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, Advocate for petitioners
Shri T.R. Kankale, AGP for respondent nos.1 & 4
Shri J.B. Kasat, Advocate for respondent nos.2 & 3

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

DATE : 07.04.2015

By this petition, the petitioners seek a declaration that the Reservation of 80 R of land owned by the petitioners at Mouza Benoda Tq. and District Amravati for extension of burial ground has lapsed in view of the provisions of Section 127 of the Maharashtra Regional & Town Planning Act, 1966 and the petitioners are free to develop the land in the manner permissible to the adjacent land holders as per the development plan.

The petitioners are the owners of 80 R of land in Survey No.10 of Mouza Benoda. The land was reserved in the development plan published for the city of Amravati on 25.2.1993 for extension of burial ground vide Reservation No.244. Since no steps were taken by the respondents for the acquisition of the land, the petitioners served the purchase notice to the respondents on 4.8.2012 under Section 127 of the Act of 1966. According to the petitioners, despite the service of notice

on the respondents, no effective steps were taken for the acquisition of the land. It is stated that the respondents have not issued the notification under Section 6 of the Land Acquisition Act, 1894 within a period of one year from the date of receipt of the notice.

Shri Kasat, the learned Counsel for the respondent nos.2 and 3 states by referring to the affidavit-in-reply filed on behalf of the said respondents that the respondent – Corporation is not desirous of acquiring the land of the petitioners and had therefore passed a resolution to change the reservation of the land from cremation ground to residential purposes. It is stated that in pursuance of the resolution passed by the Municipal Corporation, a proposal for change of reservation is sent to the State Government. It is stated that the State Government has, however, not taken any decision on the proposal of the Corporation. It is fairly admitted on behalf of the respondents that no effective steps have been taken by the respondent – Corporation within a period of one year from the date of issuance of the purchase notice.

On hearing the learned Counsel for the parties, it appears that the prayer made by the petitioners in the instant petition needs to be granted. The respondents have not taken any effective steps under Section 127 of the Act of 1966 for the acquisition of the land that was reserved for the cremation ground. The respondent – Municipal Corporation had passed a resolution in the year 2005 that the land was not required for cremation ground and the same could be reserved for residential purposes. Merely because of the passing of the said resolution or because the proposal in regard to change the reservation is

pending before the State Government, the time to take effective steps from the date of issuance of the notice did not stop running and it was necessary for the Corporation to take effective steps for acquisition of the land within a period of one year from the date of issuance of the notice. It would be necessary to consider the judgment of the Hon'ble Supreme Court in the case of **Godrej & Boyce Manufacturing Co. Ltd...Versus...State of Maharashtra & Ors.**, reported in **2015 (2) ABR 297** in this regard. Since admittedly the respondents have not taken any effective steps within a period of one year from the date of issuance of the notice, a declaration that the land of the petitioners stands dereserved is required to be granted. It is, however, conveyed to this Court by the learned Counsel for the respondent – Corporation that 80 R of land, as claimed by the petitioners is not reserved for the cremation ground and only 0.42 HR of land of the petitioners was reserved. Hence, it would be necessary to give a declaration only in respect of 0.42 HR of land.

Hence, for the reasons aforesaid, the writ petition is allowed. It is hereby declared that the reservation of 0.42 HR of land as per Reservation No.244 in survey No.10 of Mouza Benoda has lapsed under the provisions of Section 127 of the Act of 1966 and the petitioners are free to develop the land owned by them in the manner permissible to the adjacent land owners as per development plan.

Order accordingly. No order as to costs.

JUDGE

JUDGE