

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 2599 OF 2014

1. Madanlal Lalchand Jain
age 55 years, occ. agriculture,
r/o Vibhare Building,
Station Road, Nandurbar
Dist. Nandurbar.
2. Anjana Shantilal Jain
age 49 years, occ. agriculture
r/o Vrundavan Society,
Nalva Road, Nandurbar,
Dist. Nandurbar.
3. Shatrughna Jiyaldas Balani
age 50 years, occ. business & agriculture
r/o Opp. Neheru Statue, Station Road,
Nandurbar, Dist. Nandurbar.
4. Bhavesh Madanlal Jain
age 27 years, occ. agriculture,
r/o Vibhare Building, Station Road,
Nandurbar, Dist. Nandurbar.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through the Director of
Town Planning and Valuation Department,
Maharashtra State, Pune.
2. The Collector,
Nandurbar
Dist. Nandurbar.
3. Nandurbar Municipal Council
Nandurbar
Through its Chief Officer

.. RESPONDENTS

Mr. J.R. Shah, advocate for petitioners.
Mr. S.K. Kadam, AGP for the State.
Mr. D.S. Bagul, advocate for respondent no. 3.

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**CORAM : R.M. BORDE &
A.I.S. CHEEMA, JJ.
DATE : 10th FEBRUARY, 2016.**

ORAL JUDGMNET : (PER R. M. BORDE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.
3. Petitioners are praying for issuance of directions to respondent no. 3 to issue commencement certificate and to collect development charges as per Government Resolution dated 01.03.2011 for the purpose of according development permission which was applied for on 17.04.2012. The land belonging to petitioners was earmarked for public purpose in the final development plan prepared for Municipal Council, Nandurbar. Petitioners tendered appeal to the Director, Municipal Administration, Maharashtra State, under section 49 r/w section 127 of the M.R.T.P. Act and, requested for directing deletion of reservation. On consideration of the contentions raised by the parties, the Director, Municipal Administration, has issued order declaring that the reservation provided under the final development plan in respect of the property belonging to petitioners, shall be deemed to have lapsed. It was also further directed to the Municipal Council to accord development permission in observance of the procedure prescribed in that behalf. Inspite of issuance of order by the Director, the Municipal Council

has refused to take further steps and has not accorded development permission and, as such, petitioners have approached this Court.

4. In pursuance to the notice issued to the Municipal Council, affidavit-in-reply has been presented controverting the contentions raised in the petition. It is contended in paragraph no. 9 of the affidavit-in-reply that since second revised development plan was introduced in the year 2007 with effect from 2010 and, the property belonging to petitioners is earmarked for primary school, permission has not been accorded to petitioners. It is further stated that unless and until notification for deletion is published by the State Government, development permission cannot be issued. The stand taken by the Municipal Council is contrary to the law laid down by this court in the matter of Arun Motiram Nimkar Vs. Municipal Corporation of City of Amravati and others reported in 2013(4) Mh.L.J. 714. The Division Bench of this Court in paragraph no. 8 of the judgment has observed thus :

8. Insofar as sub-section (2) of section 127 is concerned, same requires the Government to notify the lapsing of reservation by publishing the same in the Official Gazette. Notifying such lapsing is required to be done for the purposes of indicating that the reservation on the particular land has ceased to exist. The act of notifying such lapsing has got nothing to do with releasing of such land from reservation as a consequence of operation of section 127(1) of the said Act. This is further clear from the latter part of the provisions of section 127(1) of the said Act which state that on the reservation having been deemed to have lapsed, the land shall be deemed to be released from such reservation and shall become available to the owner for the purpose of development. The object behind notifying such lapsing appears to

be to bring to the notice of public at large that a particular reservation has lapsed. Section 127(2) of the said Act operates after lapsing of reservation and development of said land is not dependant on such lapsing being notified in the Official Gazette.

5. In the instant matter, the Director of Municipal Council has already passed order directing deletion of reservation prescribed under the final development plan prepared for Municipal Council, Nandurbar. Once lapsing of reservation is declared, the land shall be deemed to be released from reservation and shall become available to the owner for the purpose of development. The object of issuance of notification is merely to bring to the notice of the public at large the factum of lapsing of reservation. It is not necessary for the Municipal Council to wait till publication of notification in the official gazette. It is also not permissible for the Municipal Council to contend that since the land has been earmarked in the revised development plan, which has become effective since 2010, petitioners cannot be granted development permission. It is to be noted that the Director of Municipal Administration has passed an order declaring lapsing of reservation in the year 2013 and as such, the stand taken by the Municipal Council appears to be contrary to the order issued by the Director which very much binds the Chief Officer of the Municipal Council. We are surprised as to how the Chief Officer of Municipal Council take stand contrary to the orders issued by his superior.

6. In view of above, respondent no. 3 is directed to take steps in regard to the proposal and application tendered by petitioners seeking development

permission in accordance with the provisions of law, and pass order as expeditiously as possible, preferably within a period of eight weeks from today. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

(A.I.S. CHEEMA)
JUDGE

(R. M. BORDE)
JUDGE

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