

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9092 OF 2016

SHARDABAI RAMESH KANADE (LAGADE) AND OTHERS

VERSUS

THE DHULE MUNICIPAL CORPORATION DHULE THRO ITS COMMISSIONER AND
ANOTHER

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Advocate for Petitioners : Mr. J.R. Shah
AGP for Respondents: Mr. N.N. Desale, Advocate for respondent Nos. 1 and 2.

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**CORAM : R.M. BORDE &
K.K. SONAWANE, JJ.**

DATE : 30TH SEPTEMBER, 2016.

PER COURT:

1] Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2] The petitioner is praying for issuance of directions to the respondents to consider the application tendered by the petitioner for grant of development permission in furtherance of the judgment delivered by this Court in W.P. No. 10020 of 2015. This Court dealing with the aforesaid petition has declared lapsing of reservation provided under the development plan prepared by the Planning Authority for Dhule town in view of the provisions of Section 49(7) MRTD Act. The petitioner submits that the application tendered by the petitioner is not considered under the pretext that the factum of lapsing under Section 49(7) of the MRTD Act has not been published in a Government notification.

3] The objection raised by the Planning Authority is devoid of merits, for the reason that Section 49(7) of the MRTP Act, does not contemplate publication of factum of reservation in the official gazette. Such publication is contemplated in view of sub-section (2) of Section 127 of the MRTP Act. 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. 715 has taken a view that the planning authority need not wait for publication of notification in the official gazette in view of sub-section (2) of Section 127 and the declaration of such lapsing of reservation in the notification is merely a formality. The observations made by the Division Bench in the aforesaid matter in para.8 are narrated below :-

“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 purpose 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 the said land is not dependant on such lapsing being notified in the Official Gazette”.

4] In the instant matter, firstly, there is no requirement of publication of notification in the official gazette declaring lapsing of

reservation. Secondly, even if assuming that such lapsing is required to be notified, it shall not be construed as a pre-condition for grant of development permission, in view of the judgment referred to above.

5] For the reasons recorded hereinabove, writ petition deserves to be allowed and same is accordingly allowed. Respondents are directed to grant development permission, in accordance with the provisions of law, as expeditiously as possible and preferably within 8 weeks from today and it is accordingly directed.

6] Rule is made absolute in above terms. There shall be no orders as to costs.

[K.K.SONAWANE]
JUDGE

[R.M. BORDE]
JUDGE

grt/-