

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12005 OF 2012

Rahul Dilip Katkar.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

None for the Petitioner.

Mrs. M. P. Thakur, AGP for the State.

Mr. S. S. Kulkarni for Respondent No. 2.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **October 4, 2016.**

P. C. :

1. Petition is filed claiming lapsing of reservation under section 127 of the Maharashtra Regional and Town Planning Act, 1966. The petition was placed before the Court for admission on 12th March 2015. On that day, after hearing all concerned, this Court passed following order :

"1. This Petition under Article 226 of the Constitution of India is based on a notice purported to be issued under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). A typed copy of the said notice is annexed at Exhibit D which shows that the same is dated 9th March 2009. In Paragraph 6 of the Petition, the Petitioner has specifically relied upon the said notice under Section 127 of the MRTP Act dated 9th March 2009.

2. There is an affidavit in reply filed by Smt. Sheela Jaysing Patil, the Chief Officer of Saswad Municipal Council. In Paragraph 5 of the said affidavit, there is a specific stand taken that the the notice at ExhibitD has not been served upon the Municipal Council. Paragraph 6 of the said affidavit reads thus:

6. I say that, at 23.3.2009, the Petitioner applied for permission of development of CTS 1711 jointly with Municipal Council. But Municipal Council denied his offer of joint development and it was communicated to the Petitioner by letter of Chief Officer dt. 29.7.2009. In view of this, the petitioner has acquiesced to reservation & waived alleged notice u/s 127 & now estopped from pleading contrary. Hereto annexed and marked as Exhibit"A" is the copy of Petitioner letter dt. 23.3.2009 and Exhibit"B" is the copy letter of Chief Officer dt. 29.7.2009."

3. A copy of the letter dated 16th March 2009 which was delivered to the Municipal Council on 23 rd March 2009 has been annexed to the said affidavit which is marked as ExhibitA. The said letter bears a rubber stamp showing Inward No.11013. It shows that the same was received on 23rd March 2009 on which there is an endorsement of the Chief Officer made on 24 th March 2009. The ExhibitB to the said affidavit in reply is letter dated 29 th July 2009. As the second Respondent denied the service of the notice, on 11 th February 2015, we called upon the learned counsel appearing for the Petitioner to produce an office copy of the notice at ExhibitD to the Petition. Accordingly, a photocopy of the office copy of the said notice was produced. Today we have marked the same as Exhibit "Z" for identification. The said office copy bears a rubber stamp showing Inward No.11013 dated as 23rd March 2009. Therefore, by the order dated 11th February 2015, we

directed the Second Respondent to produce the original Inward Register.

4. Accordingly, original Inward Register is produced for our perusal. On 23rd March 2009, several letters were received by the Second Respondent and only one letter bearing Inward No.11013 was received from the Petitioner. The subject of the said letter tallies with the subject of the letter dated 16 th March 2009 delivered on 23rd March 2009 under Inward No.11013, a copy of which is annexed to the affidavit in reply as ExhibitA. We must note here that when the affidavit dated 25th July 2013 was filed, the Second Respondent was not even aware that it was the case of the Petitioner that the notice at ExhibitD to the Petition was delivered on 23 rd March 2009 under the Inward No.11013 inasmuch as the office copy of the notice was produced for the first time before this Court on 11th February 2015. There is one more aspect which needs to be noted. A photocopy of the office copy of the said notice produced by the Petitioner does not bear any date whereas a typed copy of the notice annexed to the Petition shows that it is dated 9th March 2009. In the Petition and in particular Paragraph 6, the date of service of the notice under Section 127 of the MRTP Act is not mentioned at all. It will be also necessary to make a reference to the letter dated 29 th October 2012 allegedly sent by the Petitioner to the Planning Committee of Saswad Municipal Council. A copy of the said letter is annexed at ExhibitE. The said letter is also in relation to City Survey No.1711. The said letter was written to raise an objection to the reservation in the Revised Development Plan. The said letter also refers to the reservation on the same plot under the earlier Development Plan. What is pertinent to note is that in the said letter, there is not even a

reference to the alleged notice dated 9 th March 2009 issued under Section 127 of the MRTTP Act.

5. Thus, there is an evidence on record to show that the notice (ExhibitD to the Petition) dated 9th March 2009 purportedly issued under Section 127 of the MRTTP Act was never served to the Second Respondent.

6. The Petitioner appearing in person is present. The learned counsel appearing for the Petitioner has shown the Inward Register of the Second Respondent to the Petitioner. The learned counsel appearing for the Petitioner stated that he has pointed out all the factual aspects to the Petitioner. He states that the Petitioner wants time to file a rejoinder for dealing with the aforesaid aspects.

7. While we grant time of two weeks to the Petitioner to file a rejoinder, we make it very clear that if the Petitioner is unable to satisfy the Court as regards the genuineness of the notice at ExhibitD to the Petition, a serious consequence will follow, the learned counsel appearing for the Second Respondent shall place on record a photocopy of the relevant page of the Inward Register. Affidavitinrejoinder to be filed on or before 26th March 2015. Place this Petition high upon board on 27th March 2015. "

2. Perusal of the above order makes it clear that the Petitioner never served on Respondent No.2 the alleged notice dated 9th March 2009 and the Petitioner on the contrary relied upon the forged acknowledgment of the notice annexed to the civil application

in order to contend that the said notice was served on Respondent No.

2.

3. On the aforesaid date, at the instance of the Petitioner, two weeks' time was granted to the Petitioner to file rejoinder. However, till date the Petitioner has not filed any rejoinder. Since last two occasions nobody has appeared for the Petitioner.

4. Mr. Kulkarni, the learned Counsel appearing for the Municipal Council submitted that the subject land is acquired and possession is already taken.

5. In the backdrop of above circumstances, we see no reason to entertain this writ petition and the same is accordingly dismissed.

6. Taking into consideration the observations made by this Court in the order dated 12th March 2015 and considering the fact that the Petitioner has not filed rejoinder and since we are of the *prima facie* view that the acknowledgment attached to the civil application is forged one, we issue notice to the Petitioner why action for contempt of Court should not be initiated against him. Notice of contempt is returnable on 2nd December 2016.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]