

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

WRIT PETITION NO. 3366/2016

(RADHABAI KISANJI KHAVAS & ANOTHER **VERSUS** UNION OF INDIA & OTHERS)

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

Court's or Judge's orders

Shri A.S. Ambatkar, counsel for the petitioners.
 Shri D. Lambat h/f Shri N.P. Lambat, counsel for the R-1 & 2.
 Shri S.M. Puranik, counsel for the R-3.
 Shri A.M. Quazi, counsel for the R-4.
 Shri I.J. Damle, A.G.P. for the R-5.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : NOVEMBER 23, 2016.

By this writ petition, the petitioners seek a declaration that the reservation of the land of the petitioners for the railways has lapsed and the petitioners are entitled to use the land for the purpose as is permissible for the adjoining land.

Shri Quazi, the learned counsel for the respondent no.4, seriously opposes the prayer made in the writ petition. It is stated that the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 on which the petitioners have relied for seeking a declaration in respect of lapsing of the reservation provides that a person interested in the land would be required to serve a notice on the appropriate authority. It is stated that the petitioners have not served any notice on the respondent no.4-Nagpur Municipal Corporation/Appropriate Authority. It is stated that the petitioners had served a notice only on the Nagpur Improvement Trust and had only forwarded a copy of the notice that was issued to the Nagpur Improvement Trust to

the Nagpur Municipal Corporation. It is stated that an identical issue, like the one involved in this case, came up for consideration in Writ Petition No.5899 of 2015 and this court has held that forwarding a copy of the notice, addressed to the Nagpur Improvement Trust to the Nagpur Municipal Corporation does not tantamount to service of notice under Section 127 of the Act of 1966 on the Nagpur Municipal Corporation. It is stated that it is held by this court in the order dated 20.06.2016, in Writ Petition No.186 of 2016 that when a notice is not served on the appropriate authority, it cannot be said that the appropriate authority is put to notice that it would be required to take effective steps to acquire the land within the stipulated time or else the land would be deemed to have released from reservation.

We uphold the objection raised on behalf of the respondents. Admittedly, the notice is not addressed to the respondent no.4-Nagpur Municipal Corporation and the same is addressed to the Nagpur Improvement Trust. Since the Nagpur Improvement Trust was asked by the petitioners to take effective steps in the matter of acquisition of land within the time stipulated by the provisions of Section 127 of the Act of 1966, it cannot be said that the Nagpur Municipal Corporation was put to notice that it would be required to take effective steps for the acquisition of the land within the time stipulated by the provisions of Section 127 of the Act. It is held by this Court in the orders dated 16.03.2016 and 20.06.2016 in Writ Petition Nos.5899 of 2015 and 186 of 2016 respectively, that mere forwarding a copy of the legal notice meant for one authority to another authority would not be deemed to be a service of the notice on the authority to

which it is not addressed. The issue involved in this case and the decided cases is identical. Before a declaration in respect of the lapsing of reservation is granted, it would be necessary to ensure that each of the conditions that are required to be satisfied before granting the declaration stand satisfied. Since in this case, the Nagpur Municipal Corporation was not served with a notice as required by the provisions of section 127(1) of the Act, the petition is liable to be dismissed.

Hence, for the reasons recorded hereinabove and for the reasons recorded in the orders dated 16.03.2016 and 20.06.2016 in Writ Petition No.5899 of 015 and 186 of 2016 respectively, we dismiss this writ petition with no order as to costs.

JUDGE

JUDGE

APTE