

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

WRIT PETITION NO. 5251 OF 2015.

Mohd.Faruq (Haji Mohd.)Faruq) s/o Haji Abdul Gaffar and ors.

..VS..

State of Mah. and anr.

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

Court's or Judge's orders

Mr.C.A.Joshi, Advocate for the petitioners.
Mr.A.S.Fulzele, AGP for respondent no.1.
Mr.P.P.Deshmukh, Advocate for resp. no.2.

**CORAM : B.P.DHARMADHIKARI AND
P.N.DESHMUKH, JJ.**

DATE : MARCH 08, 2016.

1. Heard Advocate Shri Joshi for the petitioner, Advocate Shri Deshmukh for respondent no.2 – Municipal Council and learned AGP for respondent no.1.

2. Six petitioners before this Court claim a declaration that reservation on their respective lands has lapsed under Section 127(1) of the Maharashtra Regional Town Planning Act, 1966 (*hereinafter to referred to as 'MRTP Act'*).

3. Respondent no.2 – Municipal Council has, in reply affidavit, while opposing petition, specifically urged that legal notice dated 19th of September, 2014 sent on behalf of the petitioners was not accompanied by documents as envisaged in Section 127(1) of the MRTP Act and therefore cannot result in

bringing into existence the deeming fiction. After this stand in defence, a rejoinder has been filed by the petitioners. In rejoinder paragraph no.1, the petitioners state *“In this regard it is submitted that said notice annexurte no.6 was annexed with the relevant record of right of the property in question, showing that the noticers issuing the notice are the owners of the property in question”*.

4. Advocate Shri Joshi has further submitted that service of otherwise valid notice after expiry of period of ten years and expiry of period of twelve months after service of that notice, is not in dispute. He further adds that within said period respondent no.2 – Municipal Council did not take any steps to acquire the land and hence the reservation has already lapsed. He has relied on the judgment of the Hon'ble Apex Court reported at **2013(4) SCC 676** (*State of Mah. ..vs.. Bhakti Vedant*).

5. Advocate Deshmukh, on the other hand, submits that in view of language of Section 127(1) of the MRTP Act the notice itself must mention the documents annexed. He further points out that in legal notice dated 19th of September, 2014 there is no such mention, even in writ Petition such an assertion is missing. He placed reliance upon Division Bench judgment of this Court reported at **2013(4) Mh.L.J. 161** (*Jaika Vanijya Ltd. ..vs.. State of Mah. & ors.*), particularly paragraph 10 thereof, to hold that this requirement of annexing documents is mandatory.

6. Learned Assistant Government Pleader supports

arguments of Advocate Deshmukh and adds that as notice is not in accordance with law, legal fiction cannot come into existence.

7. Perusal of Division Bench Judgment delivered by this Court in the case of *Jaika Vanijya Ltd. ..vs.. State of Mah. & ors.* (supra) shows that in paragraph no.10 this Court has relied upon an earlier judgment of the Division Bench of this Court and found that this need to supply the documents added in section 127(1) of the Act as a part of notice is mandatory and not directory.

8. The consequence of service of legal notice is, if within one year thereafter no steps to acquire property is taken, reservation upon it lapses. Thus, a deeming fiction has been provided after land owners fulfill the compliances as stipulated therein.

9. In present matter, legal notice dated 19th of September, 2014 does not mention that any document is annexed with it. Even, rejoinder which has been filed by the petitioners and reproduced supra does not show that documents filed as Annexure 1 in Writ Petition was supplied as a part of that notice.

10. Without prejudice to his contention that annexure 1 with Writ Petition is already served upon respondent no.2 – Municipal Council as a part of notice dated 19th of September, 2014, Advocate Joshi has invited our attention to order of Division Bench of this Court dated 10th of September, 2014 in Public Interest Litigation

No.03 of 2014 contending that there respondent no.2 – Municipal Council has admitted ownership of the petitioners. His argument is, the condition of supplying the documents along with notice is only to enable the Municipal Council to find out the title or interest of persons serving notice in the subject land. Here, as that title or interest is admitted, alleged non-service of said documents cannot be held fatal.

11. We are not in position to accept the argument. The deeming fiction has been provided for and, therefore, all technicalities necessary to invoke it must be strictly complied with. Here, compliance thereof is in dispute. Material on record does not show that Annexure 1 was served on 19th of September, 2014 on respondent no.2 – Municipal Council as a part of notice under Section 127(1) of MRTP Act. A disputed question of fact therefore arises.

12. In this view of matter, we are not in position to grant any relief to the petitioners.

13. With liberty to petitioners to take such other steps as are permissible in law, Writ Petition is disposed of.

No costs.

JUDGE

JUDGE

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