

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2736 OF 2016

Subodh Motichand Bundelkhandi

Age: 44 years, occu: business,

R/o Sadar Bazar, Chalisgaon,

Tq. Chalisgaon, Dist. Jalgaon.

Petitioner

Versus

- 1 The State of Maharashtra,
 Through The Director of Town Planning,
 Pune, Dist. Pune
- 2 The Collector, Jalgaon
 District Jalgaon
- 3 Assistant Director of Town Planning,
 IInd floor, Bhikamchand Jain Market,
 Jalgaon
- 4 The Chalisgaon Municipal council
 through its Chief Officer,
 Chalisgaon
- 5 The Planning Officer,
 Municipal Council,
 Chalisgaon

Respondents

Mr. A.S. Bajaj h/f Mr. G.L. Gujjar advocate for the petitioner
Mr. A.S. Shinde Assistant Government Pleader for Respondent No.1 & 3
Mr. P.S. Dhige h/f Mr. V.R. Dhorde advocate for respondent No.4
Respondent No.5 served.

CORAM : **R.M. BORDE &
K.L. WADANE, JJ**

(Date : 17th APRIL, 2017.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With consent of the parties, petition is taken up for final disposal at admission stage.

3 The petitioner is praying for declaration that, the reservation in respect of land survey No.308/1 admeasuring 1 H, 65 R situate at Chalisgaon, being reservation No.40 provided under the Final Development Plan of Chalisgaon, prepared in 1990 shall stand lapsed in view of provisions of section 127 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act, 1966).

4 The land belonging to the petitioner, as described above, is earmarked for public purpose under the Final Development Plan prepared for Chalisgaon town on 1.3.1990. It is the contention of

the petitioner that, even after lapse of 17 years from the date of enforcement of the Plan, no steps were taken and as such, the petitioner issued a Notice to the Planning Authority under section 127 of the MRTP Act on 2.4.2007, requesting to take steps as provided under the Act. It has been further informed by the petitioner that, in the event of failure of the respondent-Municipal Council to take steps, reservation in respect of the property shall stand lapsed and the land would be available to the petitioner for development, as in case of adjacent land provided under the relevant plan. The petitioner tendered an application, seeking sanction of the layout on 25.3.2009. However, the application was not considered favourably. The petitioner approached this Court earlier by presenting Writ Petition No.7295 of 2013, seeking declaration in respect of survey No.308/1 to the effect that, the reservation stood lapsed in view of operation of provisions of section 127 of the MRTP Act. The Municipal Council presented reply and contended specifically that, the notice dated 2.4.2007 under section 127 is not received by the Municipal Council and as such there arises no question of lapsing of reservation. The petitioner again issued a purchase notice within contemplation of section 127 of the MRTP Act on 15.12.2014, which has been duly received by the Municipal Council. In spite of issuance of notice,

no steps within contemplation of section 127 were taken by the Planning Authority. As such, according to the petitioner, reservation, designation or allotment under the relevant Development Plan shall stand lapsed.

5 It is not a matter of dispute that, the land acquisition proceedings have not been initiated and Notification under section 6 has not been issued. In view of ratio laid down in **Girnar Traders V/s State of Maharashtra and others (2007) 7 SCC 555**, taking of step within meaning of provisions of section 127(1) of the Act is issuance of a Notification under section 6 of the Land Acquisition Act which has not been taken by the planning authority or the acquiring body or the land acquisition authority and as such, by operation of provisions of law, the reservation, allotment or designation under the relevant final development plan in relation to the property of the petitioner shall stand lapsed.

6 Counsel appearing for respondent states that, the provisions of section 127(1) has undergone amendment and two years period is provided for planning authority to take steps. The amended provisions came into effect on 29.8.2015 and the notice issued by the petitioner is dated 15.12.2014 i.e. before the date

of enforcement of amended provisions of the Act. In view of Judgment delivered by the Division Bench of this Court in the matter of **Vishnuvasant Developers, Digras and others Versus State of Maharashtra (2017 (2) Mh.L.J. 284)** the amended provisions of Section 127(1) of the Act in respect of extended period for taking effective steps, of 24 months as against 12 months as provided by unamended provisions would not be applicable to the matter, where owner or any person interested in the land, has served a notice on the planning or the appropriate authority, as the case may be, before the amended provisions came in to effect on 29.8.2015.

7 The contention raised by the respondent Municipal Council that provisions of amended Section shall apply, is, therefore devoid of substance.

8 For the reasons as aforesaid, the writ petition deserves to be allowed and it is accordingly allowed. It is hereby declared that the reservation, allotment and designation under the Final Development Plan prepared for Chalisgaon Municipal Council in relation to the property shall stand lapsed and the land shall be available for petitioner for development as is permissible in case of adjacent land under the relevant development plan. The

declaration in respect of lapsing of reservation shall be published in the official gazette, as provided in sub-section 2 of Section 127 of the MRTP Act, within a period of six months from today.

9 Rule is made absolute accordingly.

10 There shall be no order as to costs.

(K.L. WADANE, J)

(R.M. BORDE, J)

vbd