

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.11553 of 2016

* Kesaranand Buildcon Pvt. Ltd.
Bramhane, Taluka Shindkheda,
District Dhule
Through its Managing Director,
Mr. Dnyaneshwar Ananda Bhamre,
Age 55 years,
Occupation: Agriculture and
Business, R/o Daul,
Taluka Shindkheda,
District Dhule. .. **Petitioner.**

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.
- 2) The Deputy Director,
Town Planning Department,
Nashik Division, Nashik.
- 3) The Town Planner, Dhule,
Taluka and District Dhule.
- 4) The Chief Officer,
Dondaicha Varwade Municipal
Council, Taluka Shindkheda,
District Dhule. .. **Respondents.**

Shri. Amol S. Sawant, Advocate, for petitioner.

Shri. A.R. Kale, Assistant Government Pleader,
for respondent Nos.1 to 3.

Shri. Milind Patil, Advocate, for respondent No.4

**Coram: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.**

Date: 15 February 2017

ORAL JUDGMENT :

1) Rule, rule made returnable forthwith. By consent, heard both sides for final disposal.

2) The petition is filed for giving direction to the respondents to take a decision on the application made for grant of approval to the lay out plan submitted by the petitioner in respect of the property of the petitioner. It is the case of the petitioner that his application is dated 15-7-2016 but the respondents are avoiding to consider the matter and it is informed that unless and until lapsing of the reservation is notified in official gazette under the provisions of the Maharashtra Regional and Town Planing Act further action like approval of the development pan cannot be taken.

3) Learned counsel for the petitioner has produced a copy of the decision of this Court dated 25 February 2016 in Writ Petition No.8978 of 2015 (Kesaranand Ginning and Pressing Factory Pvt. Ltd. Bramhane v. The State of Maharashtra & Others). By the said decision this Court declared that the reservation had lapsed. This Court holds that due to this decision of this Court it needs to be presumed that the reservation has lapsed.

4) So far as the aforesaid contention made by the respondent is concerned, learned counsel for the petitioner placed reliance also on the observations made by this Court in the case reported as **2013(4) Mh.L.J. 714 (Arun vs. Municipal Corporation, Amravati)**. Similar objection was taken by the authority and this objection was mentioned in paragraph 3 of the judgment which is as under.

"On the Court pronouncing under section 127 of the Maharashtra Regional and Town Planning Act, 1966 that the reservation has lapsed, whether such lapsing cannot come into force till publication of Gazette Notification as contemplated by section 127(2) of the said Act"

This Court held that when Court gives decision there is no necessity of publication of the lapsing of reservation in the official gazette and this observation can be found at paragraph 10 and it is as under :-

"10. We, therefore, hold that after the Court has pronounced under section 127 of the said Act that the reservation in question has lapsed, such lapsing comes into force immediately and the land owner cannot be asked to wait publication of such lapsing in the Official Gazette under the provisions of section 127(2) of the said Act to enable him to develop his land in accordance with law."

4) In view of the aforesaid position of law the respondents cannot deny the consideration of the proposal made for development of the property. The respondents cannot insist for publication of lapsing of the reservation in the official gazette. This Court holds that the proposal needs to be considered by the respondents and so following order is made.

5) The writ petition is allowed. The respondents are directed to consider the proposal

given by the petitioner and take a decision on the proposal within four months from today. The aforesaid observations are to be kept in mind. Rule made absolute in aforesaid terms.

Sd/-
(SANGITRAO S. PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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