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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9564 OF 2015**

Rizwan Abdul Kadar Dhole ... Petitioner
Versus
Bhiwandi Nizampur City Municipal ... Respondents
Corporation & Ors.

Mr. Amol P. Mhatre for the Petitioners.
Mr. N.R. Bubna, for Respondent Nos. 1 and 2.
Mr. A.P. Vanarase, AGP for Respondent Nos. 3 & 4.

**CORAM: SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.
DATED: 4th OCTOBER 2017**

JUDGMENT (Per Smt. Vasanti A Naik, J.)

Rule. Rule made returnable forthwith. The writ petition is heard finally at the stage of admission with the consent of the learned counsel for the parties.

By this writ petition, the petitioner seeks a direction against the respondent – Corporation to decide the application of the petitioner dated 29th April 2011 for grant of development permission. The petitioners have sought a direction against the respondent to carry out the necessary corrections in the development plan so as to show that the land of the petitioner is de-reserved. The petitioners have also challenged the communication of the respondent Municipal Corporation dated 15th January 2015, rejecting the proposal of the petitioner by referring to the provisions of Section 127 (2) of the Maharashtra

Regional and Town Planning Act.

Few facts that give rise to the petition are stated thus:

The petitioner is the owner of land in Bhiwandi that was reserved in the final development plan for Bhiwandi the year 1976 for school. Since the Bhiwandi Municipal Corporation did not take any steps for the acquisition of the land for a period of 10 years from the issuance of the final development plan in the year 1976, the petitioners served a notice on the Bhiwandi Municipal Corporation under Section 127 of the MRTP Act on 21st January 1987. Since effective steps were not taken by the Corporation within a period of six months for the acquisition of the land and the notification under Section 6 of the Land Acquisition Act was not issued, the petitioner filed a writ petition bearing no. 6024 of 2000 for a declaration that, the reservation of the land of the petitioner's for the purpose of school, lapsed under the provisions of Section 127 of the Act. The writ petition was allowed by this court by the judgment dated 8th June 2004 and it was declared that the land of the petitioner was deemed to have been de-reserved. Despite the judgment dated 8th June 2004, the necessary notification under Section 127(2) of the MRTP Act, deleting the land from reservation was not issued. The petitioner applied for the development of the plot and since the Corporation did not decide the application of the petitioner within reasonable time, the petitioner was required to file another writ petition bearing writ petition no. 1134 of 2013. The said writ petition was allowed and this court directed the respondent Municipal Corporation to decide the application of the petitioner for permission to develop the land within a time frame. The application of the petitioner for permission to develop the land is not decided though the petitioner sent reminders by referring to

the judgment dated 15th September 2014. By the impugned communication of the respondent no.1 Corporation, that is addressed to the Town Planning Department of the State Government, dated 15th January 2015, the Corporation has conveyed to the concerned department of the State Government that though by the judgment dated 8th June 2004, in writ petition no. 6024 of 2000, the High Court has declared that the land of the petitioners stood de-reserved in view of the provisions under Section 127 (1) of the Act, since a formal notification under Section 127(2) of the Act is not issued the land of the petitioner cannot be said to be free from reservation. The action on the part of the Corporation of not deciding the application of the petitioner as also the order / communication of the Corporation that the land of the petitioner would be still under reservation, is challenged by the petitioner in the instant petition.

Mr. Mhatre, the learned counsel for the petitioner submitted that the action on the part of the respondent Corporation to consider that the land of the petitioner is not free from reservation is high handed and in violative of the directions in the judgment dated 8th June 2004 in writ petition no. 6024 of 2000. It is submitted that once this court had granted the declaration that there was a deemed lapsing of reservation under Section 127 of the MRTP Act, the State Government had ought to have issued the notification under Section 127(2) of the Act. It is stated that it would be the duty of the government to notify the de-reservation and if the State Government has failed to perform the ministerial act, it cannot be considered that the land of the petitioner would be still under reservation.

Mr. Bubna, the learned counsel for the Corporation has supported the action of the Corporation. It is submitted that the communication addressed by the Corporation to the State Government is an internal communication though a copy of the same was supplied to the petitioners. It is submitted that since the notification under Section 127(2) of the MRTP Act was not issued by the State Government in respect of the land of the petitioners, the Corporation was under an impression that the land was not free from reservation. It is submitted that the petitioner had carried out some construction without permission and that was also noted by the Corporation in the impugned communication.

In the circumstances of the case, the Corporation could not have declined to grant development permission to the petitioner by considering that the land of the petitioner is not free from reservation. Merely because the State Government had failed to issue the notification under Section 127 (2) of the MRTP Act after this court had granted the declaration by the judgment dated 8th June 2004 that the land of the petitioner stood de-reserved as there was deemed lapsing of reservation, the Corporation could not have proceeded to decide the application of the petitioner for development on the basis that the land was still under reservation. It was necessary for the State Government to issue a notification under Section 127 (2) of the MRTP Act after this court allowed the writ petition filed by the petitioner vide judgment dated 8th June 2004. The application for permission to develop the land is made by the petitioner in the year 2011. Due to lethargy of the Corporation in taking steps to decide the application of the petitioner, the petitioner was required to file writ petition no. 1134 of 2013. Despite the issuance of specific directions to the

Corporation in the said writ petition to decide the application of the petitioner within a time frame, the application of the petitioner is not decided and the impugned communication was addressed by the Corporation to the State Government, stating therein that the petitioner was not entitled to development permission as the land of the petitioner was still under reservation and was not de-reserved. It is conspicuous to note that the land of the petitioner was reserved under the final development plan for the school and the petitioners were running the school on the said land. Since same redevelopment is required, the petitioner had applied for development permission in the year 2011 but till date, the application of the petitioner is not decided on merits and the same is sought to be rejected solely on the ground that the land of the petitioners is still not free from reservation. In the circumstances of the case, it would be necessary for the Corporation to decide the application of the petitioner in a time frame.

Hence for the reasons aforesaid, the writ petition is allowed. The impugned communication is hereby quashed and set aside. The State Government is directed to issue the notification in respect of the land of the petitioner under Section 127 (2) of the MRTP Act, within one month. The respondent no.1 – Municipal Corporation is directed to decide the application of the petitioner for development within two months. Rule is made absolute in the aforesaid terms with no order as costs.

(RIYAZ I. CHAGLA J.) (SMT. VASANTI A NAIK, J.)