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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7939 OF 2016

1. Shri Popat Kisan Mhaske

Age 67 Yrs. Occu. Agriculture, Residing at
Plot No. 48, Mhaske Mala, Samangaon
Road, Chehedi (Budruk), Nashik Road,
District Nashik

2. Rajubai Kisan Kapse

Age 69 Yrs., Occu. Housewife, Residing at
Plot No.48, Mhaske Mala, Samangaon
Road, Chehedi (Budruk), Nashik Road,
District Nashik

...Petitioners

Versus

**1. The Hon'ble Minister for Urban
Development**

State of Maharashtra, Mantralaya, Mumbai

2. The Principal Secretary

Department of Urban Development
Mantralaya, Mumbai.

**3. The Collector Nashik, Collector
Office,**

Old Agra Road, Nashik.

**4. The Commissioner, Nashik Municipal
Corporation, Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik**

5. Executive Engineer, Nashik Municipal

Corporation, Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.

**6. Assistant Director of Town Planning
Dept.**

Nashik Municipal Corporation, Rajiv
Gandhi Bhavan, Sharanpur Road, Nashik.

7. The Municipal Secretary,

Nashik Municipal Corporation, Rajiv
Gandhi Bhavan, Sharanpur Road, Nashik.

...Respondents

Ms. Smita R. Gaidhani, for the Petitioners.
Mr. Vishwajeet Sagare, AGP for Respondent Nos. 1 to 3.
Mr. Murlidhar L. Patil, for Respondent No.4.

**CORAM: SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.
DATED : 29TH NOVEMBER 2017**

ORAL JUDGMENT :- (Per Riyaz I. Chagla J.)

1. Rule. Rule made returnable forthwith. Heard by consent.
2. The Petitioner by this Writ Petition is seeking an order and direction from this Court, directing the Respondent to notify by order published in Official Gazette as per Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966 (for short "**the said Act**") that the reservation, allocation or designation of the Petitioners land viz. Survey No. 7A (Part), Hissa No. 1+2+3/2A of Chehedi village in Nashik Municipal Corporation limits (for short

“the said land”) has lapsed. The Petitioners are further seeking the quashing and setting aside of the order / letter dated 27th May 2015 issued by Respondent No.6 and the Refusal Certificate dated 28th May 2015 / 1st June 2015 issued by Respondent No.5 thereby refusing building permission to the Petitioners. The Petitioners have also sought the deletion of the Petitioners land from reservation as shown in Draft Development Plan published in May 2015.

The brief background of facts is necessary

3. The Petitioners are the co-owners of the said land in village Chehedhi in Nashik Municipal Corporation (for short **“NMC”**) limits. The said land of the Petitioners is their ancestral property and has been in their possession, occupation and use since their forefathers. The said land of the Petitioners was reserved in the sanctioned development plan of Nashik city of 1993, for the purpose of “High School and Primary School”. However, despite a lapse of more than 18 years, the said land of the Petitioners was not acquired by the NMC for using it for the reserved public purpose.

4. The Petitioners required the said land for development. As more than 10 years had lapsed from the date of sanction of the final development plan and the land had not been acquired, the Petitioners issued purchase notice dated 3rd March 2014 to the Respondents under Section 127 of the said Act. The Petitioners called upon the Respondents to acquire the said land within the period stipulated under Section 127 of the said Act. The notice was delivered on the same day to the addresses of the Respondents. By letter dated 2nd April 2014, the NMC informed the Petitioners that if the Petitioners were ready to handover the reserved plot of land to the NMC, then the Petitioners would be granted TDR after entering into an agreement to that effect. The Petitioners by their letter dated 11th April 2014 informed NMC that they were not desirous of taking the TDR and that the Respondents should initiate proceedings under the Land Acquisition Act, within the stipulated period. The Petitioners by letter dated 21st April 2014 addressed to NMC forwarded the documents as required. The Petitioners had reminded the Respondents that the time stipulated under Section 127 of the said Act run from the date of purchase notice. The Petitioners also pointed out the errors in the reservation and requested the Respondents to initiate action to correct the said mistake.

5. The Respondents had neither acquired nor taken any steps contemplated under Section 127 of the said Act for acquisition of the said land within the stipulated period of 12 months from the date of service of the purchase notice. Hence, the reservation deemed to have lapsed and the Government ought to have been published a notification as per Section 127(2) of the said Act, in Official Gazette de-reserving the said land. The Petitioners accordingly gave an intimation to the Respondents about the deemed de-reservation vide their letter dated 3rd March 2015 as the reservation of the said land had lapsed on 2nd March 2015. However, despite receiving the said letter, and much after the deemed de-reservation of the said land on 3rd March 2015, a letter dated 19th March 2015 was received by the Petitioners from the Estate Officer, NMC, whereby it was stated that the proposal for acquisition was forwarded by the said office to the District Collector on 22nd December 2014. The Petitioners vide their letter dated 25th March 2015 addressed to the Commissioner, NMC, reiterated that since the land was not acquired within the stipulated period of 12 months from the receipt of the notice, the reservation, allotment or designation with respect to the land has lapsed with effect from 3rd March 2015 and thereupon the said land is deemed to be released from reservation and became

available to the Petitioners for the purpose of development, as permissible in the case of adjacent land under the relevant Development Plan. The Petitioners upon not hearing from the Respondents, made an application dated 16th April 2015 by which a Building Plan was submitted for development along with relevant documents. The receipt of the said Building Plan was acknowledged by the Respondents through the Town Planning Department vide inward Number C-G/225/22 dated 16th April 2015. However, as no action was taken by the Respondents under the said Act, the Petitioners sent a reminder vide letter dated 7th May 2015 to the Principal Secretary, UDD, Mantralaya regarding publication of notification in the Government Gazette about the deletion of reservation of the said land from the sanctioned development plan of Nashik City. The Petitioners were informed by letter dated 27th May 2015 addressed by the Assistant Director, Town Planning, NMC that the proposal for acquisition had been forwarded to the District Collector on 22nd December 2015 and since the Government Gazette notification as provided under Section 127 (2) of the said Act had not been published, the Petitioners demand for de-reservation was rejected.

6. The Petitioners Architect was served with a Refusal Certificate dated 20th May 2015 / 1st June 2015 issued by the Executive Engineer, NMC refusing permission for the Building Plan, on the ground that the documents had not been submitted along with the Building Plan. It is the Petitioners case that the Refusal Certificate was served on the Petitioners Architect on 22nd June 2015 i.e. after a lapse of 60 days from the date of application for building permission. The Petitioners have preferred an Appeal to the Hon'ble Minister of UDD, Government of Maharashtra, under Section 47 of the said Act on 17th July 2015. The Petitioners Appeal has not been heard by Respondent. Hence this Petition.

7. Smt. Gaidhani, the learned counsel for the Petitioners has submitted that the purchase notice under Section 127 of the said Act was duly served upon the Respondents and received by them on 3rd March 2014. There was no acquisition proceedings initiated by the Respondents within 12 months from the service of the purchase notice as stipulated under Section 127 of the said Act and hence, the said land was deemed to be released from reservation, allotment or designation with effect from 3rd March 2015. Thereafter the said land had become available to the

Petitioners as owners of the said land for the purpose of development. She has submitted that there is no question of Respondents rejecting the Petitioners application for de-reservation after the lapse of 12 months. Such rejection was contrary to the provisions of Section 127 of the said Act and hence the letter of rejection dated 27th May 2015 issued by Respondent No.6 ought to be quashed and set aside. She has submitted that it was incumbent upon Respondent Nos. 1 and 7 to notify in the Official Gazette as per Section 127(2) of the said Act, that the reservation, allocation or designation of the Petitioners land under reservation had lapsed. She has submitted that the purchase notice had been followed up with the submissions of all necessary documents showing the Petitioners interest / ownership in the said land and which was duly received by the Respondents and acted upon by them. She has submitted that the Building Plan had been submitted by the Petitioners on 16th April 2015 i.e. much after said land was deemed to have been de-reserved. She has submitted that the Respondents had not intimated the Petitioners about any discrepancy in the application for building permission within 60 days from the date of submission of the building permission and hence the Respondents are deemed to have granted permission to the Petitioners. She has submitted that the Respondents had

deliberately, intentionally and *malafidely* served back dated Refusal Certificate on the Petitioners Architect only on 22nd June 2015. This was much beyond the stipulated period of 60 days and hence the Refusal Certificate being dated 28th May, 2015 / 1st June 2015 is illegal, bad in law and ought to be quashed and set aside. She has submitted that the Respondents have erred in not appreciating the documents on record as well as the legal provisions in issuing the impugned order / letter and Refusal Certificate. She has submitted that the Petition filed by the Petitioners ought to be allowed.

8. Shri Sagare, the learned Assistant Government Pleader appearing for Respondent Nos. 1 to 3 and Shri Patil, the learned counsel appearing for Respondent No.4 have opposed the Petition and supported the impugned action of the Respondents.

9. Shri Patil has submitted that the purchase notice served on the NMC had not enclosed the relevant documents in respect of the Petitioners claim to be owners of the said land. The documents of title were necessary to be issued along with the purchase notice under Section 127 of the said Act and absent that the said purchase notice was illegal and hence it cannot be

submitted that the reservation had lapsed. He has relied upon the judgment of the Supreme Court in the case of ***Atul Singh & Ors. Vs. Sunil Kumar Singh & Ors.***¹. The said decision related to the Arbitration and Conciliation Act and it was held that under sub-section (2) of Section 8 of the Arbitration and Conciliation Act, 1996, it was necessary for the party to have filed the original agreement or duly certified copy along with the Petition filed, which he failed to do and hence, no order for referring the dispute to arbitration could have been passed in the Suit filed. He has submitted that the reservation has continued in the revised Development Plan. He has submitted that the Petitioners had filed an Appeal before the Hon'ble Minister, UDD, Government of Maharashtra, Mantralaya, Mumbai under Section 47 of the said Act challenging the rejection of the Petitioner's demand for de-reservation and the refusal by the Respondent – Corporation of permission for the Building Plan. He has submitted that in the light of the said Appeal which is pending, the Writ Petition is not maintainable and ought to be dismissed.

10. We have considered the submissions made on behalf of the parties. We are of the view that the purchase notice has been

1 (2008) 2 Supreme Court Cases 602.

validly issued and served upon the Respondent Corporation under Section 127 of the said Act. We find that the documents, *albeit* submitted after the purchase notice was served under Section 127 of the said Act, had been acted upon by the Respondents and this is apparent from the correspondence issued thereafter as well as the Respondents comments on the various documents issued by the Petitioners evidencing their title to the said land. We are of the view that the non issuance of the requisite documents together with the purchase notice cannot invalidate the purchase notice. We find that the Petitioners had submitted the requisite documents after issuance of the purchase notice, and these documents were accepted by the Respondents. We are of the view that the judgment of the Supreme Court in ***Atul Singh (Supra)*** relied upon by the Respondents is in a totally different context as it relates to the provisions of the Arbitration and Conciliation Act, 1996 and is irrelevant for determining the issue in the present case. We are of the view when the said land under reservation is not acquired within the stipulated period under Section 127 of the said Act, i.e. 12 months in the present case from the date of receipt of the purchase notice then the said land is deemed to be de-reserved. We are of the view that there can be no rejection of the Petitioners application for de-reservation

by the Respondents after the lapsing of reservation under Section 127 of the said Act. We find that the Petitioners have submitted the Building Plan much after the said land is deemed to have been de-reserved and that no intimation had been received from the Respondents regarding any discrepancy in the Building Plan. Hence, it was obligatory for the Respondents to decide the Petitioners application for building permission in accordance with law. We are, therefore, of the view that the impugned order / letter dated 27th May 2015 issued by the Respondent No.6 rejecting the de-reservation of the said land and the impugned Refusal Certificate dated 28th May 2015 / 1st June 2015 issued by the Respondent No.5 refusing building permission to the Petitioners are illegal, bad in law and liable to be quashed and set aside. We are of the view that the mere filing of an Appeal by the Petitioners under Section 47 of the said Act before the Hon'ble Minister, UDD, Mantralaya, would not prevent this Court from holding that the reservation of the said land under Section 127 of the said Act has lapsed and that it is necessary for the Respondent No.5 to decide the Petitioners application for building permission in accordance with law by taking into consideration that the reservation of the Petitioners land has lapsed. We are also of the view that a

subsequent reservation in the Development Plan cannot automatically revive the lapsed reservation.

11. We accordingly pass the following order:-

- (a) We order and direct the Respondents to notify by order published in the Official Gazette as per Section 127 (2) of the M.R.T.P. Act 1996, that the reservation, allocation or designation of the Petitioners land viz. Survey No. 7A (Part), Hissa No. 1+2+3/2A of Chehedi village in Nashik Municipal Corporation limits has lapsed.
- (b) The order / letter dated 27th May 2015 issued by Respondent No.6 and the Refusal Certificate dated 28th May 2015 and 1st June 2015 issued by Respondent No.5 are quashed and set aside.
- (c) We direct the Respondents to delete the Petitioners land from the reservation as shown in Draft Development Plan published in May 2015.
- (d) We order and direct the Respondent No.5 to decide the Petitioners application for building permission at the earliest and in accordance with law, by taking into consideration the reservation of the Petitioners land

has lapsed.

- (e) Rule is made absolute in the above terms with no order as to costs.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A NAIK, J.)