

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3774 OF 2017.

(Parag Bhausahab Mude & others .vs. The State of Maharashtra & others)

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

Court's or Judge's orders

Mr. G.K. Mundhada, Advocate for petitioners,
Mr. A.S. Fulzele, Acting G.P. for respondent nos. 1,2, 4 & 5.
Mrs. V.N. Chitnavis, Advocate for respondent no.3.

CORAM : B.P. DHARMADHIKARI & ROHIT B. DEO, JJ.

DATED : AUGUST 1, 2017.

Heard respective Counsel.

The learned Counsel is aware of the distinction between scheme of Section 127 and Section 49 of the Maharashtra Regional & Town Planning Act, 1966 ("Act" hereafter). He is trying to rely upon the judgment of Hon'ble Apex Court in the case of **Hasmukhrai V. Mehta .vs. State of Maharashtra reported in (2015) 3 SCC 154.** Facts there show that development plan of Municipal Council was sanctioned on 17.12.1976 and appellant's land was included in residential zone. The Chief Town Planning Officer had granted no objection certificate on 15.7.1991 for its utilization for non-agricultural purposes. The development plan for residential purposes was sanctioned and commencement certificate was also issued on 19.6.1992. On 14.1.1999 effort was made to apply fresh development scheme to that land. As per fresh development plan, appellant's land was reserved for

Agricultural Produce Market Committee.

In the present matter, the petitioner admittedly got the N.A. permission for reservation free land out of same Khasra number on 27.2.2001. 1 Hectare 51 Are land reserved for playground and D.P. road was, however, not permitted to be developed. No steps were taken to raise grievance against this refusal to develop and ultimately, notice dated 15.9.2015 under Section 49 of the Act has been served for this portion.

The contention is the said notice was confirmed by Director of Town Planning on 21.3.2016 and thereafter within stipulated time, purchase has not been effected. It is further pointed out that after expiry of that time, the petitioner sought permission under Section 44 of the Maharashtra Land Revenue Code on 16.5.2017.

Judgment of this Court in the case of **Vijay Ganpat Mogre and others .vs. State of Maharashtra reported in 2015 (4) Mh.L.J. 543** clearly shows that Section 49 of the Act could not have been invoked in this situation.

The above facts show that cause of action, if any, for issuing notice under Section 49 may arise after 16.5.2017.

The petitioner himself has pointed out that before that on 18.3.2017 the Chief Officer of Municipal Council has moved the Collector, Wardha for acquisition.

We, therefore, find that the grievance in the petition is erroneous. The petition is rejected.

Judge

Judge

J.