

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3533/2017

(SHASHIMOHAN SUGAMCHAND TAPADIYA & OTHERS VERSUS THE STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri G.K. Mundhada, counsel for the petitioners.
 Shri B.M. Lonare, A.G.P. for the R-1, 2, 4 & 5.
 Shri D.M. Kale, counsel for the R-3.

CORAM : SMT. VASANTI A NAIK AND
A.D. UPADHYE, JJ.

DATE : FEBRUARY 16, 2018.

By this writ petition, the petitioners seek a declaration that the reservation of the land of the petitioner in Survey No.123 admeasuring 1 Hectare 80 R in Mouza Khamgaon for Primary School, Garden and Playground has lapsed in view of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act and the petitioners would be free to develop the land as is permissible to the adjacent land, as per the relevant final development plan.

The petitioners claim to be the owners of the land admeasuring 1 Hectare 80 R in Survey No.123 in Mouza Khamgaon that was reserved for Primary School, Garden and Playground as per the revised final development plan that came into force for Khamgaon town on 01.11.1993. Since the land of the petitioners was not acquired by private agreement by the respondents within ten years from the date of publication of the final development plan on 01.11.1993, the petitioners served a purchase notice dated 18.06.2004 on the respondents on 21.06.2004. A proposal was sent by the Municipal Council for the acquisition of the land and the

State Government directed the Municipal Council to deposit a sum of Rs.55,76,000/- towards part of the compensation payable for the acquisition of the land. The Municipal Council did not deposit the said amount and no further steps were taken by the Municipal Council for the acquisition of the land. After the land of the petitioners was deemed to have lapsed under the provisions of Section 127(1) of the Act, the petitioners made an application under Section 44 of the Maharashtra Land Revenue Code for permission to develop the land and the said application was rejected. It appears that an appeal is filed by the petitioners against the said order.

In the admitted set of facts, it is apparent that the reservation of the land of the petitioners has lapsed in view of the provisions of Section 127(1) of the Act as the respondents have not acquired the land within ten years from the date of issuance of the final development plan on 01.11.1993 and effective steps are not taken within twelve months from the date of service of the purchase notice on the Municipal Council on 21.06.2004. Since effective steps were not taken by the respondents for the acquisition of the land and the Section 6 notification was not issued, the reservation of the land of the petitioners is deemed to have lapsed under the provisions of Section 127(1) of the Act. When the petitioners sought for permission under Section 44 of the Act, it was necessary for the authorities to consider this aspect of the matter. It cannot be said that the reservation of the land of the petitioners cannot be said to have lapsed as the petitioners had applied for permission for development of the land under Section 44 of the Maharashtra Land Revenue Code. A permission for development could have been secured even after the lapsing of the reservation.

Hence, for the reasons aforesaid, the writ petition is allowed. It is hereby declared that the reservation of the land of the petitioners in Survey No.123 admeasuring 1 Hectare 80 R of Mouza Khamgaon for Primary School, Garden and Playground has lapsed in view of the provisions of Section 127(1) of the Act and the petitioners would be free to develop the land, as is permissible for the adjacent land as per the relevant final development plan.

Order accordingly. No costs.

JUDGE

JUDGE

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