

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

WRIT PETITION NO.5334 OF 2017

Dashrath Vasudev Pharkande

... Petitioner

Vs

State of Maharashtra & Anr.

... Respondents

...

Mr. Balasaheb R. Deshmukh for the Petitioner.

Mr. Y.S.Khochare, APP for the Respondent No.1-State.

Mr. S.M.Oak i/by Mr. Sagar Joshi for Respondent No.2.

CORAM : B.P.DHARMADHIKARI &

SANDEEP K. SHINDE JJ.

DATE : AUGUST 29, 2019

P.C. :

Heard respective counsels.

2 Dates of coming in force of final development plan in terms of Section 31(6) of the Maharashtra Regional and Town Planning Act, 1966 (in short 'MRTP Act') and date of service and validity of notice under Section 127(1) of the MRTP Act are not in dispute. Respondent no.2-Planning Authority has not given any reply to the notice. No reply affidavit is filed even before this Court opposing the petition.

3 During the arguments, the learned counsel appearing for the respondent no.2 invited our attention to the orders obtained by the petitioner in Regular Civil Suit No.53 of 2007. It appears that the said suit has been decreed on 11th December, 2019 and the Municipal Council or its agents, servants are restrained from interfering or disturbing possession of the petitioner over the subject property. There is no issue and adjudication on lapse of reservation in the matter. The learned counsel further adds that the notice was issued in the year 2005 and the present Writ Petition has been filed in April, 2017, i.e., during the pendency of the Civil Suit. He submits that thus pendency of the civil suit cannot be an excuse for late filing of the Writ Petition.

4 We find that reservation lapsed after the formalities stipulated in Section 127(1) of the MRTP Act are complied with. Reservation, accordingly, lapsed after expiry of period of six months of service of notice as no steps leading to the acquisition were initiated by the Municipal Council. Petitioner is only seeking declaration of that lapsing now.

5 Allowing the point is concluded by the Hon'ble Supreme Court in the case of **Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher and Ors. (2013) 5 SCC 627**, and **State of Maharashtra v. Bhakti Vedanta Book Trust and Ors. (2013) 4 SCC 676**.

6 In the light of these judgments, it is apparent that reservation on property described in prayer clause (a) of the Writ Petition No.5334 of 2017 has already lapsed and the said land, therefore, can be used for the purpose for which adjacent land can be utilized.

7 Hence, with the said declaration, we allow the Writ Petition and dispose it of.

(SANDEEP K. SHINDE, J.)

(B.P.DHARMADHIKARI, J.)