

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**915 REVIEW APPLICATION (CIVIL) NO.34 OF 2021
IN WP/2824/2016**

PATHARDI MUNICIPAL COUNCIL THROUGH ITS CHIEF OFFICER
AHMEDNAGAR AND ANOTHER
VERSUS
RAMESH RAMNATH MANTRI DIED LRS LATA RAMESH MANTRI
AND OTHERS

...
Advocate for Applicants : Mr. Naiknavare Ramesh V.
AGP for Respondent Nos.4 & 5 : Mr. S.G. Sangle
Advocate for Respondent Nos.1A to 1D, 2 & 3 : Mr. G.A. Kulkarni
...

**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 24th NOVEMBER, 2021

PER COURT:-

1. We have extensively heard the learned advocates for the respective sides on 23.11.2021 and today.

2. This review application has been filed pursuant to the liberty granted to the petitioner to do so by the Hon'ble Apex Court vide order dated 31.03.2017. Four weeks time was granted for filing this review application. The applicant has entered this application on 01.05.2017.

3. We find from the order of the Hon'ble Apex Court that the petitioner submitted that "*the High Court has fallen into error in not taking note of the decision in Prafulla C. Dave and Ors. Vs. Municipal Commissioner and Ors. [AIR 2015 SC 426]*". The Hon'ble Apex Court held "*On a perusal of the order, we find that the said decision was not*

cited before the High Court.

In view of the aforesaid, we permit the petitioner to file an application for review within four weeks hence. On such an application being filed, the same shall be disposed of on merits. Be it noted, we have not expressed any opinion on the merits of the case. In case the petitioner does not succeed in review, liberty is granted to the petitioner to challenge the main order as well as the order passed in review”.

4. Considering the above, we have perused Section 38 of the Maharashtra Regional and Town Planning Act, 1966 which reads as under:

“38. At least once in [twenty years] from the date on which a Development plan has come into operation, and where a Development plan is sanctioned in parts, then at least once in [twenty years] from the date on which the last part has come into operation, a Planning Authority may [and shall at any time when so directed by the State Government], revise the Development plan [(either wholly, or the parts separately)] after carrying out, if necessary, fresh survey and preparing an existing-land-use map of the area within its jurisdiction, and the provisions of section * * * 22, 23, 24, 25, 26, 27, 28, ** 30 and 31 shall, so far as they can be made applicable, apply in respect of such revision of the Development plan.”

5. It is thus obvious that the development plan can be revised at least once in twenty years and in the event such a plan is sanctioned in parts, at least once in twenty years from the date on which the last part has come into operation, the planning authority may and shall at

any time when so directed by the State Government, revise the development plan either wholly, or the parts separately after carrying out, if necessary, fresh survey.

6. The petitioner has relied upon paragraph no.11 to 13 of the review petition in which it is stated as under:

“11. The answering respondent no.3 say and submit that, though it is true that, the notice dated 3.11.2015 served on the respondent no.4 by the petitioners, but thereafter, the Municipal Councils Pathardi prepared revised Draft Development Plan of Pathardi and passed resolution no.69 dated 26.10.2015 as required u/s. 26(1) of the Maharashtra Regional Town Planning Act, 1966. On 29.10.2015 published the notice calling upon the objections, suggestions, if any. Therefore, since the intention to revision of the development plan published in Government notification the land under revised plan is not come within the preview of the provisions of section 127 of the M.R.T.P Act, 1966 and the limitation of 10 years would be start from the date of finalization of revised Development plan by the Government.

12. The answering respondent no.3 say and submit that, according to the provisions of section 27 to 38 of the M.R.T.P Act, 1966 the due process has been followed by constituting the Committee under the Chairmanship of the Town Planner. The petitioners also submitted say for revisions of Development Plan on 4.3.2016.

13. The answering respondent no.3 say and submit that, since 1993 till 2011 according to the Development plan several sites were developed by the Municipal Council, However, due to time limit the some reserved sites were not developed and again the under the provisions of M.R.T.P Act, 1966 section 38 the revision has been initiated by the Planning Authority. Therefore, mere serving the notice dated 30.1.2015 the purpose of the Development Plan cannot be vitiated.”

7. Though this application is pending before the Court since 2017, the purported resolution no.69 dated 26.10.2015 has not been placed before the Court. It is conceded that there has been no direction from the State Government to revise the plan. The law laid down in *Prafulla Dave* (supra) indicates that if there is a revised plan prepared under Section 38 on the expiry of a period of 20 years from the date of coming into force of the approved plan under Section 31, the statute would contemplate the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. In paragraph no.19, the Hon'ble Apex Court has specifically concluded in *Prafulla Dave* (supra) as under:

“19. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the [Land Acquisition Act](#), 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or provisions for acquisition is not initiated within ten years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the

contrary upon expiry of the said period of ten years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by [Section 127](#). What would happen in a situation where the land owner or the person interested remains silent and in the meantime a revised plan under [Section 38](#) comes into effect is not very difficult to fathom. Obviously, the period of ten years under [Section 127](#) has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of [Section 38](#) and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under [Section 38](#) a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under [Section 31](#) whereas [Section 127](#) contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by [Section 127](#) i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under [Section 127](#) can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation

of revised plan under [Section 38](#) will have full play. Action on the part of the land owner or the person interested as required under [Section 127](#) must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in [Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants' Association & Ors.](#)[2] in the following terms :

"If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under [Section 127](#), there is no question of the land becoming available to the owner for the purpose of development or otherwise."

8. It is thus clear that after service of notice by the land owner or the person interested, a mandatory period of six months is provided within which time the authority can still initiate necessary action. Section 127 of the MRTP Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land, included in any development plan, on the expiry of ten years. On the contrary, upon expiry of the said period of ten years, the land owner or the person interested is mandated by the statute to take certain positive steps to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127.

9. It is an admitted position that notice dated 03.06.2014 under Section 127 has not been received by the municipal council in view of there being no record acknowledging the receipt of such notice. The notice dated 30.01.2015 under Section 127 of the MRTP Act, as per the record, has been received by the municipal council on 03.11.2015. The Resolution 69, purportedly passed by the municipal council, which is not placed before us despite the pendency of this review application for four years, is purportedly dated 26.10.2015 which is prior to receiving the notice under Section 127 on 03.11.2015. In this regard, the Hon'ble Apex Court has held in paragraph no.19 that *"If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants' Association and Ors, (AIR 1988 SC 233), "If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section*

127, there is no question of the land becoming available to the owner for the purpose of development or otherwise."

10. The learned advocate for the land owner/original petitioner submits that he is aware of the resolution no.69 passed by the municipal council. However, that has been done on 26.10.2015 when twenty years have lapsed on 10.06.2013. The judgment delivered by the learned Division Bench of this Court (Coram: R.M. Borde and K.L. Wadane, JJ.) dated 16.06.2016 clearly indicates that the petitioner had issued a notice under Section 127. The record placed before us indicates that the original petitioner had served a notice under Section 127 upon the municipal council on 03.11.2015. This action on the part of the land owner as required under Section 127 was anterior in point of time to the preparation of the revised plan. As held in *Prafulla Dave* (supra) action on the part of the land owner as required under Section 127 must be anterior in point of time to the preparation of the revised plan. It is further held that delayed action on the part of the land owner, i.e. under Section 127, after the revised plan has been finalised and published, will not invalidate the reservation and such reservation would be continued in the revised plan. This has not been done by the municipal council. In short, the revised plan is not yet finalised and published.

11. The petitioner has resorted to Section 127 prior to the municipal council exercising its right under Section 38 of the MRTTP Act. In fact, the municipal council woke up from its deep slumber after

22 years from the date of the reservation only upon receiving the notice dated 30.01.2015 on 03.11.2015 and published it's intention to act under Section 38 in the Government Gazette on 05.11.2015. As such, as held by the Hon'ble Apex Court in paragraph no.19 in *Prafulla Dave* (supra), the continuance of the development plan would get interdicted only upon the happening of the events contemplated by Section 127 i.e. a notice being served by the land owner on the authority. It is further held that *"it is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section"*.

12. We are informed by the learned counsel for the municipal council that though the municipal council merely published it's intention to revise the development plan on 05.11.2015, a proposed revised plan dated 22.01.2019 was served upon the Director Town Planning and since then the entire matter is in cold storage, on the ground that the government did not have the time to look into that aspect due to the Covid-19 pandemic.

13. The Hon'ble Apex Court has referred to *Bhavnagar University (AIR 2003 SC 511)*, specifically paragraph no.34 which reads thus:

"The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the

authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse."

14. The Hon'ble Apex Court finally concluded in paragraph no.21 in *Prafulla Dave* (supra) that the land owner had issued notice under Section 127 two years after the final revised plan under Section 38 had come into operation. On this ground, the Hon'ble Apex Court dismissed the appeal of the land owner. In the instant case, it was the land owner who issued the notice under Section 127 dated 30.01.2015 which was served on the municipal council on 03.11.2015. A resolution was passed by the municipal council on 26.10.2015. However, the intention to revise the development plan was published in the government gazette on 05.11.2015, which is after the notice under Section 127. This indicates that the municipal council has not initiated any steps for acquisition of the land after receiving the notice from the land owner under Section 127 of the MRTP Act.

15. In view of the above, we do not find that the municipal council has succeeded in pointing out any error apparent on the face of the judgment dated 16.06.2016 delivered by this Court. The review, therefore, is without merit and is rejected.

(S.G. MEHARE. J.)

(RAVINDRA V. GHUGE, J.)