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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2075 OF 2021

Gajanan Trimbak Wankhede

.. Petitioner

Versus

The District Collector for Nashik District & Ors.

.. Respondents

.....

- Mr. Tejas Dande a/w. Mr. Bharat Gadhavi i/by Tejas Dande & Associates for the Petitioner.
- Mr. A. I. Patel, Addl. G.P. for the State.

.....

**CORAM : S. J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : AUGUST 03, 2021.

P.C.:

1. The affidavit of the Assistant Director of Town Planning, Nashik filed on behalf of the Respondent No. 3 - State is taken on record.

2. By the above Writ Petition, the Petitioner seeks the following reliefs:-

"a) Record in respect of Development Plan for the city of Malegaon and District Nasik published on 01.04.1986 and 15.09.2006 may kindly be called for;

b) After considering the legality, validity and proprietary of the same, writ of mandamus or any other writ, order, or direction in the like nature may kindly be issued thereby directing the Respondent State to publish a Gazette Notification in respect of the land bearing Survey No.37/2/3 admeasuring 1360 sq. mtrs. out of total land admeasuring 48 Are situated in Malegaon Camp,

Malegaon, Taluka Malegaon, District Nasik, thereby declaring that the Reservation No.61 in Development Plan dated 15.09.2006 is deemed to have been lapsed, and the said land is now available to its owner for appropriate and lawful development."

3. The facts which have led to the filing of the above Writ Petition are as follows:-

- (i) On 01.04.1986 the development plan for Malegaon City was published and as per the said development plan, land bearing Survey No.37/2/3 admeasuring 1360 sq. mtrs. was reserved for quarters / residences of Government Officers.
- (ii) In the revised development plan dated 15.09.2006, the land was reserved bearing Reservation No.61 for Government offices and quarters / residences of Government Officers.
- (iii) The land being under reservation since the last 31 years and further since no steps for acquisition of the land were taken, the Petitioner by a notice dated 18.02.2017 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the "**MRTPA Act**") called upon the Respondents to take steps for acquisition of the said land.
- (iv) Despite receipt of the said notice, the Respondents neither replied / respond to the said notice nor did any steps they

take to acquire the property of the Petitioner.

- (v) In view thereof, on 11.03.2019 the Petitioner again made a representation to the Respondents and pointed out that after declaration of the last development plan, i.e. after 15.09.2006, the Respondents did not acquire the said land for the next 10 years. The Petitioner recorded that since two years have already passed, the statutory notice was served under Section 127 of the MRTP Act on the Respondents who have failed to take any steps thereafter, the reservation is deemed to have lapsed.
- (vi) On 11.03.2019, Respondent No. 3 acknowledged the receipt of the said representation dated 11.03.2019 and called for a detailed report on the said aspect from various authorities.

4. Our attention is drawn to letter dated 09.12.2020 addressed by the Deputy Collector (land acquisition), Nashik to the Urban Development Department, Mantralaya annexed at page 216 of the Writ Petition which states that no acquisition proceedings are pending in respect of the Petitioner's land for acquisition of the said land for Government Officers / staff quarters. Further in the Affidavit-in-Reply dated 03.08.2021 filed on behalf of the Respondent No. 3 - State in paragraph No.8 it is stated as under:-

"8. With reference to para no.10, 11, 13, 14, 16 & 17, I say and submit that, it is true that, upon receiving the presentation dated 11/03/2019 from the petitioner, the State Government has sought the report from all concerned offices vide its Marathi letter No. fVih,l-3519/675/iz-dz- / 123/2020 / ufo-9 dated 20/03/2019. The Assistant Town Planning, Nashik had sought the land acquisition status from Collector i.e. Respondent No. 1, in respect of S.No.37/2/3, Site No. 61 "Government Offices & Staff Quarters" i.e. land in question, in order to submit the report to Government. Deputy Collector (Acquisition) Nashik, by their letter addressed to Assistant Director of Town Planning, Nashik dated 11/07/2019 had informed that, as per the records available in their office, no land acquisition proposal for the suit land is in process as on date however, this procedure needs to be carried out by the Revenue department of the Nashik Collector....."

5. Admittedly, no steps are taken by the concerned Respondents, despite more than two years having passed from the date of receipt of the notice under Section 127 of the MRTP Act. Consequently, the said reservation has lapsed. In view thereof the Respondents are directed to publish a Gazette Notification under Section 127(2) of the MRTP Act notifying the said lapsing in respect of the land bearing Survey No. 37/2/3 admeasuring 48 Are situated in Malegaon Camp, Malegaon, Taluka Malegaon, District Nasik.

6. The Writ Petition is accordingly disposed of.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]