

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

957 WRIT PETITION NO.11969 OF 2021

Choriya Builders and Associates, through
its partner Shantilal Devichand Jain,
Age : 58 years, Occupation – Business,
Off. Barahampur Road Raver, Tq. Raver,
Dist. Jalgaon (K)

.. PETITIONER

VERSUS

- 1] The State of Maharashtra through the
Secretary, Urban Development Department,
Mantralaya, Mumbai 32.
- 2] The Director of Town Planning,
State of Maharashtra, Central Building,
Pune – 1.
- 3] The Municipal Council, City of Raver,
Through its Chief Officer, Raver Municipal
Council, Dist. Jalgaon
- 4] The Assistant Director, Town Planner,
Jalgaon, 2nd Floor Old Bhikamchand Jain
(B.J.) Market, Jalgaon (K), Dist. Jalgaon

.. RESPONDENTS

...
Advocate for Petitioner : Mr. G.K. Mundada h/f. Mr. Mantri Parikshit S.
AGP for the respondents nos. 1 and 2 : Mr. A.R. Kale
Advocate for respondent no. 3 : Mr. U.S. Patil
...

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 8 DECEMBER 2022

ORDER (MANGESH S. PATIL, J.) :

Leave granted to correct the prayer clause. Correction to
be made forthwith.

2. Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondents nos. 1 and 2 and Mr. U.S. Patil waives service for respondent no. 3. With the consent of the parties, the petition is heard finally.

3. The petitioner is aggrieved by the fact that in spite of the earlier reservation of its property having been declared as lapsed under section 127 of the Maharashtra Regional and Town Planning Act, 1966 (**MRTP Act**) by this Court in the earlier round of litigation, again in revised development plan, it is once again put under reservation contrary to the decision of this Court and on that count, its application for development preferred under section 45 of that Act has been rejected.

4. After hearing both the sides and perusal of the record, it transpires that there is no dispute on facts. The first development plan for the respondent no. 3 – Municipal Council had come into effect on 09-12-1987. The petitioner's property was reserved as site no. 46. It had issued a notice under section 127 of the MRTP Act. No steps were taken towards acquisition in statutory period of 10 years and, therefore, it had filed writ petition no. 13433 of 2018. By the judgment and order dated 15-04-2019 this Court declared that reservation had lapsed.

5. In the meantime, a revised draft development plan was published under section 38 r/w. Section 26 of the MRTP Act on

13-12-2018, once again putting the petitioner's selfsame property to reservation as site no. 27.

6. Pursuant to the declaration granted by this Court regarding lapsing of the reservation, the petitioner submitted an application under section 45 of the MRTTP Act seeking development permission on 20-07-2019. Even the respondent no. 2 – Director of Town Planning issued a notification under sub-section (2) of section 127 of the MRTTP Act regarding lapsing of the reservation pursuant to the orders of this Court, on 27-11-2020. Respondent no. 3 – Municipal Council has refused the petitioner's application preferred under section 45 on the ground that the revised development plan was pending with the State Government and was still to be finalized.

7. The issue is no more *res integra*. This Court has in several matters addressed the issue *viz*:

i) ***Ashok Shriram Kulkarni Vs. State of Maharashtra; Maharashtra Housing and Area Development Authority; Municipal Council; 2017 LawSuit(Bom) 390;***

ii) ***Nirmala Hiranand Rajwani Vs. The Municipal Commissioner and others;*** (Judgment dated 7 April 2016 in Writ Petition no. 2351 of 2015)

iii) ***Shankar Nagar Co-operative Housing Society Ltd., Vaijapur Vs. The State of Maharashtra and others;*** (Judgment dated 20-09-2022 in Writ Petition no. 6786 of 2019)

8. In-fact, the Supreme Court in the matter of ***Prafulla C. Dave and others Vs. Municipal Commissioner and others;***

2015(11) SCC 90 has held that if the land owner has taken action under section 127 of the MRTP Act, before preparation of revised plan, it will have no effect on the lapsing of the reservation. It is trite that mere publication of revised development plan would not save the lapsing.

9. In view of such trite legal position, the proposed action of putting reservation on the petitioner's property once again is illegal and is liable to be quashed and set aside.

10. Similarly, even the action of the respondents to reject the petitioner's application for development on the sole ground that the revised development plan is still to get approval from the Government is clearly unsustainable.

11. We allow the writ petition and declare that the reservation on the petitioner's property site no. 27 in the revised development plan is *void ab initio*. It is also declared that the rejection order passed by the respondent no. 3 on 02-07-2021 is also illegal and is quashed and set aside. The petitioner's application preferred under section 45 of the MRTP Act shall now be considered on its own merits and by treating that the petitioner's property is free from reservation.

[Y. G. KHOBRAGADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/