

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15391 OF 2017

Nandkishor s/o Babulal Agrawal ... **Petitioner**
Age 76 years, Occu: Business,
R/o 152/2, Plot No.4,
Agrawal Nagar, Near Desara Maidan,
Dhule.

VERSUS

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| 1. | The State of Maharashtra,
(Through the Secretary of Urban
Development Department, Mantralaya,
Mumbai 400 032 | |
| 2. | The Dhule Municipal Corporation, Dhule,
Through its Commissioner, | |
| 3. | The Deputy Director
Town Planning 2nd Revised Development
Plan, Dhule | ... Respondents |
| 4. | The Town Planning Officer
Dhule Municipal Corporation, Dhule. | |

Mr. C. R. Deshpande, Advocate for the petitioner,
Mr. A. S. Shinde, AGP for respondent Nos. 1 and 3
Mr. Amol Sawant, Advocate for respondent Nos. 2 and 4

**CORAM : SMT. VIBHA KANKANWADI &
Y. G. KHOBRAGADE, JJ.**

DATE : 9th NOVEMBER, 2022

JUDGMENT (Per Y. G. Khobragade, J.):

1. Rule, made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. By the present petition under Article 226 and 227 of the Constitution of India, the petitioner, who is owner of land Survey No. 505/04 situated at Dhule , Tq. & Dist.Dhule, prayed for quash and set aside reservation on land admeasuring 67 R which has been made vide Entry No. 178 under the second revised development plan of the Dhule Municipal Corporation under section 26(1) of the Maharashtra Regional & Town Planing Act, 1966 (hereinafter referred to as' the Act').

3. Mr. C. R. Deshpande, learned counsel appearing for the petitioner submitted that, the petitioner is owner of land survey No. 505/04 admeasuring 1.07 H. R and out of said land 67 R land reserved under second revised development plan. The respondent No.2 published second revised development plan on 09.09.2005 and shown 67 R land of the petitioner reserved for transport and truck terminus in second revised development plan. But prior to that, on 01.02.2005, the respondent No.2 published Notice under section 23 of the Act in the Government Gazette. Thereafter, on 23.12.2010, the respondents published Notice under section 26(1) of the Act in the official gazette and Notice under section 31 of the Act published on 28.12.2012. However, in the meantime, on 24.03.2006, petitioner applied for sanction of layout in respect of Survey No.505/4 at Dhule which has been sanctioned by the competent authority, but after the application, inspection report was prepared and area of layout shown 1 H 07 R,

which has been endorsed by the competent authority on 18.04.2006 which reveals that, the said property is adjacent to Bombay Agra Highway and at some distance building boundaries are shown, however, after re-submission of plan on 20.04.2006, the competent authority made endorsement dated 21.04.2006 about no objection for sanction of the layout subject to correction in respect of road widening. Thereafter on 08.09.2006, no objection was issued, wherein it has been specified that some land has been acquired from the petitioner's land for the purpose of road widening for which the petitioner raised no objection but while making endorsement, it was made clear that, behind the land under layout which was under consideration, there is reservation for truck terminus. The respondent No.2 proposed said reservation for road from the truck terminus to the highway. Accordingly respondent No.2 proposed 12 meters width for widening of proposed road which directly connect the truck terminus to the Highway. However, on 04.04.2006, respondent No.3 Deputy Director of Town Planning, Dhule informed the respondent No.2 about sanctioning layout plan of the petitioner in respect of survey No. 505/4 subject to conditions prescribed therein. Subsequently Respondent No.2 passed resolution No. 162 dated 09.09.2005 for revising second development plan in view of section 38 read with section 23(1) of the Act and appointed the respondent No.3 as Town

Planning officer under section 24 of the Act for drafting second revised development plan of Dhule city. Accordingly the same was prepared and published vide resolution No. 148 dated 27.04.2010 and objections under sections 26(1) of the Act were invited by publication of notice in English Marathi News papers on 27.11.2020.

4. The learned counsel appearing for the petitioner further submitted that, the concerned authority already granted conversion of land to non agricultural purpose and sanctioned layout. Therefore the petitioner proceeded further and deposited requisite fees for non agricultural assessment and layout. Thereafter, petitioner applied with the respondent No.2 for permission to raise construction over the plot out of survey No. 505/04. The respondent no.3 recommended to accord permission in favour of the petitioner for raising construction as per industrial building plan dated 05.02.2007 (Exh. F).

5. The learned counsel appearing for the petitioner further canvassed that, under letter No. 1721 dated 16.10.2006, 12 meters wide road shown in the development plan for giving direct access from truck terminus to the Highway from land of the petitioner, however, under second draft development plan, the development authorities shown reservation on 67 R land of the petitioner though the competent authority already sanctioned a layout plan of the petitioner in respect of 69 R portion of land and after obtaining

permission, the petitioner raised construction of the building as per the sanctioned plan.

6. Therefore, on 01.02.2011, the petitioner submitted objection vide Exh.- H with respondent No.2 and contended that notice under section 26(1) of the Act barred by limitation of 2 years but the objection of the petition left unconsidered. Therefore, second revised development plan reserving land of the petitioner admeasuring 67 R out of Survey No. 505/4 vide Entry No. 178 is liable to be quashed and set aside and the reservation on the petitioner's land is liable to be deserved.

7. The learned counsel appearing for the petitioner further canvassed that, notification dated 28.12.2012 published in official gazette reveals that, notice under section 26(1) of the Act was published on 23.12.2010 and in the meantime, the layout plan submitted by the petitioner sanctioned on 16.10.2006 i.e. much after accord of approval dated 04.04.2006, by the Deputy Director of Town Planning under section 24 of the Act. Thereafter the petitioner raised construction as per sanctioned plan dated 05.02.2007 over the portion of land 69 R which is shown under reservation under the second development plan. Therefore, if the said reservation is maintained, irreparable loss would be caused to the petitioner. Therefore, prayed

for quash and set aside the reservation made on his land under the second revised development plan.

8. Mr. A. S. Shinde, the learned AGP appearing for respondent Nos. 1 and 3 -State submitted that, in the year 1987, development plan of Dhule City was published and thereafter, respondent No. 2 initiated proceedings for preparation of second revised development plan. The property of the petitioner is situated under industrial zone. On 09.09.2005, respondent No.2 passed resolution No. 162 and declared intention for preparation of the second revised development plan as per section 23(1) read with section 38(1) of the Act in "Daily Sakal" newspaper. Thereafter, on 01.12.2005, as per section 24 of the Act, the Deputy Director of Town Planning came to be appointed as a Town Planning officer for preparation of the development plan. Thereafter, notice under section 26(1) of the Act came to be published on 27.11.2010 in Daily Lokmant newspaper inviting objection to the development plan. In the said notice, land of the petitioner shown under reservation for extension of transport and central truck terminus. Accordingly, on 01.02.2011, the petitioner submitted objection vide Exh. H and the Town planning committee considered the objection raised by the petitioner and rejected the same because of increase of number of vehicles within corporation area and there is necessity of extension of truck terminus and confirmed reservation on the land of

the petitioner. Thereafter the respondent No.2 Corporation made certain modification in the draft development plan and submitted the same with the Government on 30.12.2011 for approval under section 30(1) of the Act which has been approved by the Government on 28.12.2012 and maintained the reservation in respect of land of the petitioner. The Government sanctioned the draft development plan under section 31 of the Act as proposed by the planning authority after following due procedure. The sanction of the development plan with modification is well within the framework of law and therefore question to release petitioner's land from the reservation does not arise, hence, prayed for dismissal of the petition.

9. Mr. Sawant, the learned counsel appearing for respondent No. 2- Dhule Municipal Corporation vehemently submitted that, by the present petition, the petitioner prayed for deletion/quashing of reservation at Site No. 178 in respect of Survey No. 505/4, situated at Dhule, however, reservation under the development plan can lapse either by issuing notice under section 127 of the Act or as per the notice under section 49 of the Act and if any modification is required in respect reservation of the land in the final development plan, then in that circumstance, procedure prescribed under section 37 of the Act is required to be followed. Therefore, if the petitioner desires for de-reservation of his land, in that circumstance, the petitioner is

required to take appropriate recourse under the provisions of the Act, but the said recourse not availed by the petitioner, hence, prayed for dismissal of the petition.

10. The learned counsel for the respondent No.2 further canvassed that the revised development plan already published under section 26(1) of the Act and land of the petitioner shown under reservation. Thereafter, by publication of notice in the newspapers objections were invited and in response to said notice, the petitioner submitted his objection on 01.02.2011 (Exh.H) which have been turned down by the planning committee. On 29.12.2011, modified draft development plan came to be published under section 28(4) of the Act. The State Government sanctioned approval to the revised development plan and maintained the reservation on the land of the petitioner and therefore, at this stage, the petitioner's land which has been reserved under the second development plan cannot be de-reserved and revised development plan cannot be set aside. So also, the contention which has been raised by the present petitioner already been considered and rejected by the planning committee, however, the petitioner has not challenged said order before any other competent authority and after lapse of 7 years, the petitioner approached this Court. Therefore, the present petition suffers from delay and laches and devoid of any merit,

hence the learned counsel for the respondent No.2 Corporation prayed for dismissal of the petition.

11. Having considered the extensive submissions on behalf of both sides, we have gone through record.

12. On face of record, it appears that in the year 1987, Development plan in respect of Dhule duly published and thereafter, the respondent-Corporation initiated proceeding for preparation of second revised plan. It is an admitted fact that, the property i.e. survey No. 504 of the petitioner is situated under Industrial Zone and on 09.09.2005 the respondent No. 2 passed resolution No. 162 and intended to prepare second revised development plan under section 23(1) r/w section 38(1) of the Act and published in newspaper. Objections were invited from the public at large. As per second revised plan, 15 meter D.P road was shown in survey No. 505/4 for passing of road to the truck terminus. No doubt, the notice of declaration of intention was published the in Government Gazette and respondent No.3 Town Planning Officer was appointed under section 24 of the Act for preparation of development plan and after revised development plan was prepared, notice under section 26(1) of the Act came to be published on 27.11.2010 after inviting objections and suggestions. The petitioner, himself stated that, on 01.02.2011, he

submitted his objection with respondent No.2 and raised all the contentions which have been raised in the present petition.

13. It is not in dispute that, on 01.02.2011, the planning committee passed an order and rejected the objections of the petitioner on the ground that considering increase of vehicle in the city and considering reservation near octroi naka, there is necessity of truck terminus and therefore confirmed reservation in respect of petitioner's land. The petitioner is well within knowledge of order passed by the town planning committee but the petitioner has not challenged said order passed by the town planning committee before the competent authority at any time before. It appears on the face of record that, after decision on petitioner's objection, the competent authority submitted final revised development plan under section 30(1) of the Act on 30.12.2011 with the Government for approval and on 28.12.2012, the State Government sanctioned the said second revised development plan under section 31(1) of the Act. The petitioner approached this Court after lapse of 7 years and slept over his right for years together. Therefore, the present petition deserves to be dismissed on this ground alone.

14. Though the petitioner contended that, on 24.03.2006, he submitted application for sanction of his layout plan in respect of survey No. 505/04 and competent authority sanctioned said layout plan

on 16.10.2006 and subsequently on 05.02.2007, the competent authority permitted him to raise construction, however, on perusal of sanction order dated 16.10.2006 it reveals that, the competent authority had sanctioned the layout plan on temporary basis with certain conditions at Sr. Nos. 1 to 20 for a period of one year. As per condition No.3 petitioner was required to obtain final approval within a period of one year and as per condition Nos. 12 and 13. Unless the petitioner would have obtained final approval to the layout, the construction on the land would not be approved, so also unless the petitioner obtained final approval, there would not have sale of any plot from the layout and no construction would be raised on the plots without permission of the planning committee. However, the petitioner has not brought any substantial material on record to show that, he obtained final approval/sanction from the competent authority after sanction of layout on 16.10.2006 vide Exh.B. Therefore, in our considered view, contention of the petitioner does not appear bonafide and substantial.

15. The petitioner specifically prayed for quash and set aside second revised development plan after it has been approved and sanctioned by the Government vide notification dated 28.12.2012 only on ground that the competent authority sanctioned the layout on 16.10.2006 and subsequently, under second revised development plan, land of the

petitioner shown under reservation. Therefore, the ground set out by the petitioner does not appear bonafide and substantial as grievance of the petitioner already been considered by the planning committee.

16. Nonetheless, even if it is presumed that the petitioner prays for de-reservation of reservation on his land, however, section 127 of the At provides for lapsing of reservation, if any land reserved for any specified purpose in any plan is not acquired by agreement within ten years from the date on which final regional plan or final development plan comes into force.

17. Reference can be made to the following decisions:-

i. Appaso Bapu Patil & ors. Vs. State of Maharashtra & ors. 2009 (3) Mh.L.J. 107, wherein it has been observed that- "a piece of land was reserved for garden in development plan sanctioned in the year 1985 under the MRTP Act. the petitioners therein gave notice under section 127 of the MRTP Act either to de-reserve the land or acquire the said land within six months. the lands were neither acquired nor de-reserved. The Municipal corporation filed an affidavit stating that the General Body meeting was held and a Resolution was passed that the Corporation had taken a decision and rejected the proposal for acquisition of the said land on the ground that the said land is like a trench and, hence the purpose of corporation will not be served. Notice that the corporation, for whose benefit the land was to be acquired, does not need the land, this court observed that the mandate of section 127 of the MRTP Act requires that the land should be de-reserved".

ii. State of Maharashtra Vs. Bhakti Vedanta Book Trust & ors., 2013 (4) SCC 676, wherein it is held that "if any land is shown as reserved in the Development plan, the same can be acquired within 10 years either by agreement or by following the

procedure prescribed under the 1984 Act and if proceedings for the acquisition of the land are not commenced within that period and a further period of six months from the date of service of notice under section 127 of the 1966 Act, reservation will be deemed to have lapsed and the land will be available for development by the owner".

iii. Prakash Rewadmal Gupta Vs. Lonavala Municipal Council & Ors., 2002 (1) All MR 993, wherein it is held that "One of the contention urged was that the reservation had lapsed as no steps were taken after receipt of notice under section 127 of the Act by the Planning Authority. The learned Bench did not accept the said contentions. The court noted that the lapsing of the reservation in respect of final development under section 127 cannot prejudice the authorities from determining, while the plan is revised in pursuance of the independent statutory power conferred by Section 38 as to whether the public purpose continues to subsist or whether the land ought to be reserved in the revised plan for the same or any other public purpose."

18. In the case in hand, it is not the contention of the petitioner that after reservation of the land, the competent authority did not issue a notice for acquisition of land or the land which has been reserved for public purpose in the development plan is not acquired by the respondents within the period of 10 years from the date on which final regional plan or final development plan came into force. The case in hand, substantially proves that, on 09.09.2005, respondent No.2 passed resolution for preparation of second revised development plan under section 23 (1) of the Act and respondent No.3 came to be appointed as Town Planning Officer. So also, respondent No.3 prepared development plan which has been published under section 26 of the Act on

27.11.2010 and notice under section 26 already published in the Government Gazette on 23.12.2010 in which the petitioner's property was shown under reservation for extension to transport and Central Truck Terminus. The objection filed by the petitioner on 01.12.2011 (Exh. H) already rejected by the planning committee, however, the petitioner did not challenge said order. Ultimately, on 30.12.2011, respondent No.2 submitted plan for approval to the State Government which came to be approved on 28.12.2012 by publication in Government Gazette. Therefore, to our conscious view, contention of the petitioner does not appear bonafide and substantial, hence, present petition deserves to be dismissed. Accordingly we proceed to pass following order:

ORDER

- 1) Writ petition is dismissed. No order as to costs.
- 2) Rule is accordingly discharged.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan