

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12016 OF 2016**

Shri Damu Vaman Mogal
since deceased through his Legal Heirs

1A. Parvatabai Damu Mogal
Age: 75 years, Occ. Nil,

1B. Pandharinath Damu Mogal
Since deceased through Legal Heirs.

(i) Pushpa Pandharinath Mogal
Age : 43 yrs. Occ. Housewife.

(ii) Bapu Pandharinath Mogal
Age 27 yrs. Occ. Agriculture

(iii) Govind Pandharinath Mogal.
Age 25 yrs. Occ. Agriculture.

1C. Bajirao Damu Mogal
Age 56 yrs. Occ. Service,

1D. Sanjay Damu Mogal
Age 48 years, Occ. Agriculture
All R/o near Mhaske Lawns, Chehedi
(Budruk), Nashik Road.

...Petitioners.

V/s.

1. The Hon'ble Minister for
Urban Development
State of Maharashtra,
Mantralaya, Mumbai.
2. The Principal Secretary,
Department of Urban Development
Mantralaya, Mumbai.
3. The Collector Nashik,
Collector Office, Old Agra Road,
Nashik.
4. The Commissioner, Nashik

Municipal Corporation,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.

5. Executive Engineer,
Nashik Municipal Corporation,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.
6. Assistant Director of
Town Planning Department,
Nashik Municipal Corporation,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.
7. The Municipal Secretary,
Nashik Municipal Corporation,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.

...Respondents.

**WITH
WRIT PETITION NO. 13585 OF 2016.**

1. Smt. Satyabhama Ramdas Rasal.
Age: 66 years, Occ. Nil,
2. Shri Uttam Ramdas Rasal
Age : 44 yrs. Occ. Agriculture.
3. Shri Kailas Ramdas Rasal.
Age : 42 yrs. Occ. Agriculture.

All R/o near Mhaske Lawns,
Chehedi (Budruk), Nashik Road,
Dist. Nashik-422 101.

4. Sau Mangala Mohan Borse
Age : 40 yrs. Occ. Housewife.
R/o Meherdham, Near RTO office,
Nashik 422003.

...Petitioners.

V/s.

1. The Hon'ble Minister for
Urban Development
State of Maharashtra,
Mantralaya, Mumbai.
 2. The Principal Secretary,
Department of Urban Development
Mantralaya, Mumbai.
 3. The Collector Nashik,
Collector Office, Old Agra Road,
Nashik.
 4. The Commissioner, Nashik
Municipal Corporation,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.
 5. Executive Engineer,
Nashik Municipal Corporation,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.
 6. Assistant Director of
Town Planning Department,
Nashik Municipal Corporation,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.
 7. The Municipal Secretary,
Nashik Municipal Corporation,
Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik.
- ...Respondents.

Ms. Smita R. Gaidhani and Mr. Kedar Purav, for petitioners in both the Petitions.

Mr. Murlidhar L. Patil, for respondent Nos. 4 to 7 in both the Petitions.

Mr. A.I. Patel, Addl. G.P. a/w. Mr. A.A. Purav, AGP for Respondent

Nos. 1 to 3-State in both the Petitions.

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATED : OCTOBER 10, 2022**

P.C. :

1. Writ Petition No. 13585 of 2016 is not on board. Upon mentioning, it is taken on board and heard alongwith the present Petition.

2. We have heard the learned Counsel for the Petitioners and the learned Counsel for the Respondents. Rule. Rule made returnable forthwith.

3. By these two Petitions filed under Article 226 of the Constitution of India, the Petitioners have prayed for a Writ of Certiorari to quash and set aside the Order/letter dated 27th May, 2015 issued by the Assistant Director of Town Planning, Nashik Municipal Corporation and also the Refusal Certificate dated 28.6.2015/1.6.2015 issued by the Executive Engineer, Nashik Municipal Corporation. The Petitioners have also prayed for a direction to the Respondents to delete the land of the Petitioner bearing Survey No. 7A(Part), Hissa

No. 1+2+3/1 of Chehedi Village in Nashik Municipal Corporation Limits from the reservation as shown in the Draft Development Plan published in May 2015. The Petitioners further seek to direct the Respondents to notify by an Order published in the Official Gazette as per section 127(2) of the MRTP Act, 1966, that the reservation, allocation or designation of the Petitioner's land bearing Survey No. 7A(Part), Hissa No. 1+2+3/1 of Chehedi Village in Nashik Municipal Corporation Limits has lapsed.

4. By consent of the learned Counsel for the parties, the Petitions are heard finally.

5. The learned Counsel for the Petitioners has invited our attention to the impugned decision dated 10th April, 2015 annexed at page 44 of the Writ Petition in respect of the four parties who had given similar notices under section 127 of the MRTP Act, relating to the same reservation, allocation or designation of the Petitioner's land bearing Survey No. 7A(Part), Hissa No. 1+2+3/1 of Chehedi Village in Nashik Municipal Corporation Limits. The other parties i.e. Shri Popat Kisan Mhaske and others had filed Writ Petition No. 7939 of

2016 before this Court. By Judgment dated 29/11/2017, this Court has allowed the Writ Petition and set aside the Order dated 27th May, 2015 and the Refusal Certificate dated 28th May, 2015 and 1st June, 2015 and has directed the respondents to notify by an order published in the Official Gazette as per Section 127(2) of the M.R.T.P. Act, 1996 that the reservation, allocation or designation of the Petitioners land viz. Survey No. 7A(Part), Hissa No. 1+2+3/2A of Chehedi Village in Nashik Municipal Corporation Limits has lapsed.

6. The Special Leave Petition filed by the Commissioner, Nashik Municipal Corporation against the the Judgment and Order passed by this Court is admittedly rejected by the Hon'ble Supreme Court on 20/7/2018.

7. The learned Counsel for the Petitioner states that the facts and issues involved in these two matters are identical to the facts before this Court in Writ Petition No. 7939 of 2016. It is submitted that in these two cases also no steps were taken either by the Municipal Corporation or the State of Maharashtra within 12 months from the service of the Purchase Notice as stipulated under section 127 of the

MRTP Act for the purchase of the property.

8. Mr. Patil, learned Counsel for the Municipal Corporation could not distinguish the Judgment of this Court in respect of **Shri Popat Kisan Mhaske & ors. v/s. The Hon'ble Minister for Urban Development & ors.(Writ Petition No. 7930 of 2016 dated 29th November, 2017).**

9. There is no dispute that the facts before this Court in these two petitions and the facts and issues involved in the Writ Petition No. 7939 of 2016 are identical. Common correspondence were exchanged between the other parties in respect of the same land having different Hissa numbers. In our view, the Judgment in Writ Petition No. 7939 of 2016 in case of **Shri Popat Kisan Mhaske & ors. v/s. The Hon'ble Minister for Urban Development & ors.(Supra)** dated 29th November, 2017 would apply to the facts of this case. We are bound by the said judgment.

10. We accordingly, pass following order:

ORDER

(i) The Writ Petitions are allowed in terms of prayer clause

(c) to (e) for both the Petitions. The Rule is made absolute accordingly.

(ii) No order as to cost.

(iii) The parties to act on the authenticated copy of this order.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J)