

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 745/2020

Sau. Vidyadevi Hemantkumar Vyas

...Petitioner

Versus

State of Maharashtra and ors.

...Respondents

Mr. G.K. Mundhada, Advocate for the Petitioner

Ms. Shamsi Haider, Assistant Government Pleader for Respondent No. 1

Mr. R.D. Dharmadhikari, Advocate for Respondent Nos. 2 and 3

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATED : 20 APRIL 2022

ORAL ORDER : (PER:- NITIN JAMDAR, J.)

Heard learned Counsel for the parties. Taken up for disposal.

2. The Petitioner has challenged the communication issued by the Respondent No. 3 – Assistant Director of Town Planning, Municipal Corporation rejecting the permission given to the Petitioner to develop the property.

3. The Petitioner is the owner of land bearing Survey No. 186/1 admeasuring 31R situated within the limits of Municipal Corporation of Amravati. The First Revised Development Plan of the City of Amravati was sanctioned by the State Government and came into force on 25 February 1993. In the First Revised Development Plan the land was

reserved for primary school under Reservation No. 517A and for playground under Reservation No. 517B. The Petitioner served a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short the “Act of 1966”) on 30 July 2012 calling upon the Respondents to acquire the land within the period as specified under the statute. Since no steps were taken, the Petitioner filed Writ Petition bearing No. 4495/2014 for a declaration that the reservation on the subject land has lapsed under Section 127 of the Act of 1966. The Division Bench of this Court by judgment and order dated 20 April 2015 held that the Respondents did not taken requisite steps within ten years from the date of publication of the Development Plan and not taken steps as envisaged under Section 127 of the Act of 1966. The Writ Petition was accordingly allowed and it was declared that the reservation has lapsed.

4. After the order was passed by this Court, the Petitioner filed an application to the Respondent No. 2 – Municipal Corporation under Section 44 of the Act of 1966 on 09 November 2015 for development of the land. On 26 November 2015, the Respondent No. 3 – Assistant Director of Town Planning granted Commencement Certificate to the Petitioner under Section 45(2) of the Act of 1966. The Petitioner had deposited requisite charges for development of the land. No further order was passed under Section 45 of the Act of 1966. After inviting objections on 28 November 2018 under Second Draft Revised Development Plan, the Petitioner’s property was reserved under Reservation Nos. 49 and 50 for public amenities and playground. Thereafter, communication was sent by the Respondent No. 3 on 24 December 2019 informing the Petitioner

that permission for development cannot be granted as the property is notified/specified as reserved in the proposed Draft Development Plan. Being aggrieved by this communication, the Petitioner has filed the present Writ Petition.

5. Contention raised by the Petitioner is that once the land was declared to have lapsed under Section 127 of the Act of 1966 the same again could not have been shown as reserved in the subsequent development plan and the rights of the Petitioner to development the property without reservation cannot be taken away by notifying it in the subsequent draft development plan. The learned Counsel seeks to rely upon the decision of the Division Bench in Writ Petition No. 2351/2015 (*Nirmala Hiranand Rajwani Vs. The Municipal Commissioner and ors.*) decided on 07 April 2016.

6. The learned Assistant Government Pleader filed Pursis stating that the reply filed by the State in Writ Petition No. 746/2020 be adopted in the present Writ Petition.

7. The Respondent Nos. 2 and 3 filed the reply stating that since the property is shown as reserved for public amenities in the Second Draft Revised Development Plan permission for development cannot be granted. However, the Assistant Director of Town Planning on behalf of the State Government has stated that the action of the Municipal Corporation rejecting the permission of the Petitioner for development of the land is correct.

8. The facts are admitted under the First Revised Development Plan property of the Petitioner was reserved. The Petitioner had served a purchaser's notice under Section 127 of the Act of 1966. By the judgment and order dated 20 April 2015 in Writ Petition No. 4495/2014, the reservation on the said land was declared to have lapsed and thereafter on the ground that in the Second Draft Revised Development Plan reservation is proposed to have been made for public amenities, the permission for development has been rejected.

9. In such fact situation, the Division Bench in the Case of *Nirmala Hiranand Rajwani* (supra) has held that once reservation is declared to have been lapsed, the land stands released from reservation and is available to the owner for development and this right cannot be taken away again reserving land in the Revised/Second Draft Development Plan. The relevant observations of the Division Bench in Writ Petition No. 2351/2015 are thus:-

“10. Hence, now the only question for consideration in this Writ Petition is, 'whether the said land can again be designated as 'reserved' in the Revised Draft Development Plan of Respondent No.1-Municipal Corporation?' The law in this respect is also no more res integra in view of the Judgment of the Apex Court in the case of Godrej & Boyce Manufacturing Company Limited (Supra) relied upon by learned counsel for the Petitioner. The fact situation raised for consideration in the said Civil Appeal No.1086 of 2015 before the Supreme Court was exactly the same as in the present Petition. In that case also, the land reserved earlier in the Development Plan of the year 1991, for laying additional railway tracks between Thane and Kurla, was released from reservation under Section 127 of MRTP Act. However, again

the same land was designated as 'reserved for DP Road' in the Revised Development Plan by issuing Notification under Section 37(1) of MRTP Act on 24th May 2006. When the said Notification was challenged before the Supreme Court, the Supreme Court has, after referring to its earlier decision in Girnar Traders Vs. State of Maharashtra, (2007) 7 SCC 555, held the said Notification as bad in law and liable to be quashed. It was held that, once the purpose for which the land was reserved has not been utilized for that purpose and the valid statutory right is acquired by the land owner, after expiry of ten years from the date of reservation made in the Development Plan and six months notice period is also expired and as the State Government has not commenced the proceedings to acquire the land by following the procedure, as provided under Sections 4 and 6 of the Land Acquisition Act, 1894; therefore, the reservation has lapsed. Then it enures to the benefit of the land owner. Therefore, it is not open for the State Government to issue the impugned Notification proposing to modify the Development Plan, again designating the said land as 'reserved'.

11. *The similar question 'whether on account of the Revised Draft Development Plan, the reservation, which has lapsed under Section 127 of the MRTP Act, can revive, had fallen for consideration before the Division Bench of this Court also in Baburao D. Salokhe Vs. Kolhapur Municipal Corporation, [2003 (5) Bom.C.R. 2321] and this Court in paragraph 17 has made following observations :*

“The legal position as regards MRTP Act on the basis of aforesaid observations made by the Apex Court in Bhawnagar University emerges that by imposition of a statutory obligation under Section 38 on the part of the State or the appropriate authority to revise the development plan the rights of the owners accrued in terms of Section 127 are not taken away. Section 38 of MRTP Act, in our opinion, does not and cannot be read to mean that substantial right conferred upon the owner of the land or the person interested under Section 127

is taken away. In other words, Section 38 does not envisage that despite the fact that in terms of Section 127, the reservation lapsed, only because a draft revised development plan or final revised development plan is made, would automatically result in revival of reservation that had lapsed. If the reservation of the Petitioner's land for the purposes of garden had lapsed and as we found in fact has lapsed on 28-2-1992, because of draft revised plan made in the year 1992 and thereafter final revised development plan sanctioned in the year 1999 would not revive the lapsed reservation."

12. *Therefore, the scenario which emerges is that, the law laid down by the Division Bench of this Court in Baburao D. Salokhe (Supra) will squarely apply to this case.*

"The revision of Development Plan cannot take away the right of the owner in terms of sub-section (2) of Section 127 of the MRTP Act. Section 38 does not envisage that despite the fact that in terms of Section 127, the designation or reservation has lapsed, the same, only because the Draft Revised Development Plan is made, would automatically given rise to revival thereof. Section 38 does not manifest a Legislative Intent to curtail or take away the right acquired by the land-owner under Section 127 of MRTP Act of getting the land de-freezed. The owner is thus entitled to develop his land and the Authorities cannot refuse permission on the ground that the land is again shown as 'reserved' in the Revised Draft Development Plan, after the same has been released under Section 127 of the MRTP Act".

13. *in view of this clear legal position, it has to be held that, as the right has already accrued to the Petitioner on account of the declaration sought by her and granted by this Court in his favour in Writ Petition No.4308 of 2012, that the reservation on his land has lapsed and the land stands released from reservation and thus is available to the Petitioner for*

development, which is permissible in law, that right cannot be taken away by Respondent No.1 by reserving the said land again in the Revised Draft Development Plan. It has to be held that the said land, being already released from reservation, is very much available to the Petitioner for development. Hence, the reliefs, as claimed by the Petitioner, are required to be granted and are granted accordingly.

14. It is hereby declared that the reservation shown on the land of the Petitioner, admeasuring about 1456.3/9 Square Yards described as U. Nos.390 to 394, Sheet No.63, Camp No.2, Ulhasnagar-2 in the Draft Development Plan of 4th April 2013, is invalid and non-operative in law and does not affect the application dated 10th January 2013 preferred by the Petitioner for development of the said land.

15. It is hereby directed that the Petitioner's application for development dated 10th January 2013 be decided on the footing that the Petitioner's land is free from reservation."

Nothing has been shown to us as to why this legal position should not be made applicable to the facts of the Petitioner's case. In the present case also reservation was declared to have been lapsed by the order of this Court and on the ground that it is shown again in the Second Draft Revised Development Plan, the building permission has been refused. The said could not have been done and, therefore, the Petitioner is entitled to succeed.

10. Accordingly, the Writ Petition is allowed in terms of prayer Clause (B). No costs.

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]