

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2231 OF 2019

Petitioner : Shree Vinayak Builders & Developers,
a proprietary firm having its Registered Office at
O.G. House, Opp. To Wazalwar Lawns,
Bhagwaghar Layout, Dharampeth, Nagpur,
through its partner Shri Deepak s/o Sureshrao
Gadge.

– Versus –

Respondents : 1. The State of Maharashtra,
through the Principal Secretary,
Urban Development Department, Mantralaya,
Mumbai – 32.
2. The Nagpur Municipal Corporation, Nagpur,
through its Commissioner.
3. Assistant Director,
Urban Town Planning Department, Nagpur,
Municipal Corporation, Nagpur.

Mr. V.G. Palshikar, Advocate for the Petitioner.
Mrs. S.S. Jachak, Assistant Government Pleader for Respondent No.1.
Mr. S.M. Puranik, Advocate for Respondent Nos.2 & 3.

CORAM: **A.S. CHANDURKAR AND M.W. CHANDWANI, JJ.**
DATE : **13th OCTOBER, 2022.**

ORAL JUDGMENT : *(Per A.S. Chandurkar, J.)*

Rule. Rule made returnable forthwith. Heard finally by the consent
of learned Counsel for the parties.

02] The petitioner is the owner of the land bearing Kh. No.282/2 and 270/1 situated at Mouza Chinchbhuwan, Tahsil and District Nagpur admeasuring 21100 square metres. A portion of that land was shown in the development plan of the city for Nagpur in the year 2000. Since no steps to acquire 6377.12 square metres of said land were taken by respondent Nos.2 and 3, the petitioner issued a notice under Section 127 of the Maharashtra Regional and Land Town Planning Act, 1966 on 27/07/2016. The petitioner made a request for acquiring the said land and granting transferable development rights as compensation. The Assistant Director of Town Planning informed the petitioner that the petitioner would be entitled to such rights by the communication dated 16/09/2016. The petitioner made an application in that regard on 18/11/2016. The petitioner was then informed by the Assistant Director of the Town Planning that it's application for transferring development rights had been approved by the Municipal Commissioner. On 31/07/2018, the petitioner informed the Assistant Director of Town Planning that it was desirous to withdraw its application for grant of transferable development rights. It instead sought monetary compensation towards acquisition. After expiry of the period of 24 months, since no further steps were taken in the matter, the present writ petition came to be filed seeking a declaration that the reservation in question had lapsed.

03] While hearing the writ petition, the Division Bench vide its order dated 27/01/2022 referred three questions for being considered by the Full Bench. The said questions read as under:

- I) Whether the modes of acquisition provided under Section 126(1)(a) and (b) of the Maharashtra Regional and Town Planning Act, 1966 are at the choice of either of the parties or only of the acquiring authority?
- II) If the planning authority has approved the request of the land owner for grant of monetary compensation or grant of TDS/FSI in lieu of compensation, can the land-owner withdraw his request and thereby refuse or decline to surrender the land?
- III) Can the grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation be treated as a step for acquisition of land and thereby commencing the proceedings for the acquisition of land?

04] By the judgment dated 25/07/2022, the Larger Bench answered the reference in the following manner:

Question (1) – This Court holds that the acquisition under Section 126(1)(a) and (b) of the Maharashtra Regional and Town Planning Act, 1966 has to be by consensus between both the parties and not only at the option of the Acquiring Authority.

Question (2) – Mere approval of the request of the land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by itself will not always result in a concluded contract and the question would have to be determined in the facts and circumstances of each case. Therefore, the land owner can withdraw his request and refuse or decline to surrender the land as long as there is no concluded contract between the parties.

Question (3) – Mere grant of approval or passing of resolution by the authorities concerned for grant of TDR/FSI in lieu of monetary compensation is not a step for acquisition of land, thereby commencing the proceedings for the acquisition of land, unless it concludes the contract between the parties.

05] We have heard the learned Counsel for the parties and they do not dispute that in view of the answers given by the aforesaid three questions

and in the absence of any agreement to transfer the development rights in favour of the petitioner, the purchase notice issued by the petitioner on 27/07/2016 is liable to be accepted and made absolute.

06] In view of the aforesaid, it is declared that for want of any steps for acquiring 6377.12 square metres of land from Khasra No.282/2 and 270/1, City Survey Nos.443 and 444 of Mouza Chinchbhuwan, Tahsil and District Nagpur, the said reservation has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966. The State Government shall within a period of six weeks issue notification declaring such reservation to have lapsed. The petitioner is free to develop the land in the manner permissible for the adjoining land as per the development plan.

07] The petition is allowed. Rule made absolute in the above terms with no orders as to costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

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