

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

WRIT PETITION NO. 587 OF 2021

M/s. Devisons Estate Private Limited,
 Through its Director,
 Shri Omprakash Gokuldas Bajaj,
 Aged about 51 years,
 Plot No.155, Bank Colony,
 Jaripatka, S.O. Nagpur-440014.

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Petitioner

.. Versus ..

1. The State of Maharashtra,
 through its Principal Secretary-1,
 Urban Development Department,
 Mantralaya, Mumbai-32.
2. The Chairman,
 Nagpur Improvement Trust,
 Nagpur.
3. The Commissioner,
 Nagpur Municipal Corporation,
 Nagpur.
4. Assistant Director,
 Town Planning Department,
 Nagpur Municipal Corporation,
 Nagpur.

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Respondents

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Shri Gopal G. Mishra, Advocate for the petitioner,
 Ms. H.N. Jaipurkar, AGP for respondent no.1/State,
 Shri G.A. Kunte, Advocate for respondent nos.2 to 4.

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CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.
DATED : 07.03.2022.

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

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The petitioner-company is the owner of the land Survey No.32/1 and 32/2 ad-measuring 0.73 H.R, and 0.81 H.R. respectively. The said land is situated at mouza-Gorewada, Tahsil and District-Nagpur. The revised development plan of Nagpur was sanctioned by the State Government on 10.9.2001 and survey no.32 is shown to be included in the “Green Belt Control Scheme” of the Nagpur Improvement Trust. The said land has been shown as reserved for the purpose of “Cattle Stable and Dairy Farm (NW-129) under EP-2”. Since no steps were being taken by the Nagpur Improvement Trust which is the Planning Authority for acquisition of the land in question, the petitioner on 8.5.2018 issued a purchase notice to the respondents under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 (for short ‘the said Act’). On completion of the period of 12 months, the aforesaid purchase notice was confirmed by the State Government on 10.7.2018. The petitioner thus seeks to rely upon the deeming fiction as contemplated under Section 49 (7) of the said Act.

Hence, this petition.

3. After notice was issued in the writ petition, reply has been filed on behalf of the respondent nos.3 and 4. It is stated that the Nagpur Improvement Trust has now been appointed as the Planning Authority while the Nagpur Municipal Corporation is the Appropriate Authority. Thereafter, in paragraph 8, it has been stated that for want of necessary funds, the process of acquisition of the aforesaid land could not be undertaken. The reference is further made to a communication dated 21.8.2019 issued by the Urban Development Department stating therein that it was for the Appropriate Authority to take necessary steps in the matter. In para 11 it has been stated that as per the provisions of Section 49, the reservation in question stands lapsed.

4. After hearing the learned counsel for the parties and after perusing the documents on record, it is undisputed that the petitioner served the purchase notice dated 8.5.2018 on the Planning Authority as well as the Appropriate Authority. Despite lapse of period of 12 months, no steps have been taken towards the acquisition of the land in question. As a consequence, the provisions of Section 49 (7) of the said Act would come into operation. As per the deeming fiction, for failure to take steps for acquisition, the reservation of the aforesaid land would stand lapsed. The petitioners are therefore entitled to a declaration in

that regard.

5. Accordingly, for the aforesaid reasons, it is declared that the reservation over the petitioner's land bearing Survey No.32/1 and 32/2 of Mouza-Gorewada, Reserved for "Green Belt Control Scheme" a "Cattle Stable and Dairy Farm (NW-129) under EP-2" is deemed to have lapsed and the land is released from the said reservation, as per Section 49 (7) of the Maharashtra Regional and Town Planning Act, 1966. The petitioner is free to develop the land as permissible under law.

Rule is made absolute in aforesaid terms. No costs.

[SMT. M.S. JAWALKAR, J.]

[A.S. CHANDURKAR, J.]

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