

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

WRIT PETITION (WP) NO. 3417/2019

1. Piyush s/o Pradeep Sejpai,
Aged about 31 years, Occu. - Business,
2. Ankit s/o Ashok Sejpai,
Aged about 34 years, Occu. - Business,
3. Rounak s/o Pradeep Sejpai,
Aged about 34 years, Occu. - Business,
4. Samir s/o Ashok Sejpai,
Aged about 37 years, Occu. Business,

All nos. 1 to 4 R/o Santoshi Mata Road,
Behind HDFC Bank, Kalyan (West),
Dist. Thane.

..... PETITIONER(S)

// VERSUS //

1. State of Maharashtra,
Through Secretary,
Ministry of Urban Development,
Mantralaya, Mumbai.
2. Director of Town Planning,
Maharashtra State, Pune.
3. Municipal Council, Khamgaon
Through its Chief Officer
4. Chief Officer,
Municipal Council, Khamgaon.

.... RESPONDENT(S)

Shri M.G. Sarda, Advocate for the petitioners
Shri T.A. Mirza, AGP for respondent nos. 1 and 2/State
Shri D.M. Kale, Advocate for respondent no. 3

CORAM : A.S. CHANDURKAR AND G.A. SANAP J.J.

DATED : 14/02/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

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

2 The petitioners claim to be the owners of land bearing Gat No. 117/1 admeasuring 1 Hectare 62 Are situated at Khamgaon. This land was subjected to Reservation No. 3 for a park to the extent of 1 Hectare 40 Are. Part of that land was also subjected to Reservation No. 32 for shopping complex of the Municipal Council to the extent of 0.50 Are. The final development plan of the city of Khamgaon was published on 30.04.1992. Since no steps were taken for acquisition of the aforesaid land for the purpose for which it was reserved, the petitioners' on 24.12.2015 issued a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short the "Act of 1966"). In the said notice, it was stated that the land in question be purchased within a period of 12 months from the date of the notice. By virtue of amendment by Maharashtra Act No. 42 of 2015, the period of 12 months in Section 127(1) of the Act of 1966 was substituted with a period of 24 months. The petitioners on 19.01.2017 issued a fresh notice to the Municipal Council again calling upon the Municipal Council to purchase

the land within a period of 24 months of the notice. Alongwith the said notice a copy of sale deed dated 25.03.2015 was also furnished to the Municipal Council. The petitioners' thereafter on 16.02.2018 issued a reminder to the Municipal Council calling upon it to purchase the land in terms of the earlier notice as issued. Since no steps for acquisition were taken by the Municipal Council, the petitioners' have filed this writ petition seeking a declaration that the reservation in question has lapsed by virtue of provisions of Section 127 of the Act of 1966.

3. Municipal Council, Khamgaon has filed its reply in which service of the notice dated 19.01.2017 has been admitted. It has been further stated that Reservation No. 3 and Reservation No. 32 pertain to land admeasuring 1 Hectare 90 Are while the petitioners' claim to be owners of area admeasuring 1 Hectare 62 Are. In this regard, it is submitted that the petitioners' ought to have furnished a measurement sheet with regard to land Gat No. 117/1. Since such measurement sheet was not submitted alongwith the notice issued on 19.01.2017, it could not be accepted as a valid notice. It is further submitted by the learned Counsel for the respondent no. 3 that the Director of Town Planning is the competent authority as per Government Notification dated 01.12.2016 pursuant to such delegation under Section 151 of the Act of 1966 and the petitioners had moved that authority under Section 127

(2) of the Act of 1966. On that count, it is submitted that the petitioners are not entitled for any relief.

The learned Assistant Government Pleader for respondent nos. 1 and 2 submitted that the notice dated 16.02.2018 after its receipt was forwarded to the Director of Town Planning and the Director of Town Planning thereafter on 06.03.2019 had called for a report from the Municipal Council in that regard.

In reply to the aforesaid, the learned Counsel for the petitioners' submits that the petitioners' are concerned only with the land owned by them which is admeasuring 1 Hectare 62 Are as per the Sale Deed dated 25.03.2015. If any larger area has been reserved, the same was not the concern of the petitioners and they were interested only in the land to which they had title. In that regard reliance has placed on the decision in *Popat Vs. Hon'ble Minister* [(2018) 2 Mh.LJ. 435].

4. We have heard the learned Counsel for the parties. We have perused the documents on record. It is not in dispute that initially the petitioners on 24.12.2015 had issued a notice under Section 127 of the Act of 1966 calling upon the Municipal Council to purchase the subject land within a period of 12 months. In view of Maharashtra Act No. 42 of 2015, the provisions of Section 127 of the Act of 1966 were amended and the notice period was extended to 24 months. Another notice dated

19.01.2017 was issued by the petitioners. It is not in dispute that the period mentioned therein for purchasing the land is 24 months. This notice has been received by the Municipal Council on 19.01.2017 itself. Copy of the petitioners' Sale Deed dated 25.03.2015 has also been supplied alongwith the said notice. As per that Sale Deed, the petitioners are the owner of land admeasuring 1 Hectare 62 Are. According to the Municipal Council, since Reservation Nos. 3 and 32 totally admeasure 1 Hectare 90 Are and the petitioners have not submitted any measurement sheet, the notice in question cannot be acted upon. This contention cannot be accepted for the reason that even if area under Reservation Nos. 3 and 32 exceeds the land owned by the petitioners, the petitioners would be entitled to a declaration of lapsing of reservation only with regard to land owned by them which is 1 Hectare 62 Are. The boundaries of the petitioners' land having been mentioned in the notice under Section 127 of the Act of 1966 and the copy of the Sale Deed alongwith boundaries also being part of the material supplied to the Municipal Council, there is no reason for not accepting the notice as issued to be valid. It is further an admitted position on record that no steps for acquisition of the petitioners' land have been taken within a period of 24 months after such notice under Section 127 of the Act of 1966. Except for making a request to the State Government to acquire that land nothing further has been done. In that view of the matter, it is

found that the requirements of Section 127 of the Act of 1966 stand duly complied with and in the absence of any steps being taken for acquiring the land in question the reservation would lapse.

5. In view of the aforesaid, it is held that Reservation Nos. 3 and 32 to the extent of land owned by the petitioners as per Sale Deed dated 25.03.2015 pertaining to Gat No. 117/1 admeasuring 1 Hectare 62 Are stands lapsed under Section 127(1) of the Act of 1966. The respondent no. 2 shall issue Notification indicating lapsing of aforesaid reservation within a period of 12 weeks from today. The petitioners are free to develop their land in Gat No. 117/1, Khamgaon in accordance with the development which is permissible for the adjacent land.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

SANDIP
MAHADEV
GATE
Digitally
signed by
SANDIP
MAHADEV
GATE
Date:
2022.02.15
18:29:21
+0530