

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

WRIT PETITION NO.1548 OF 2021

1. Anirudh Mahadevrao Shewalkar
Age 47 years, Occ. Business,
R/o Nehru Ward, Hinganghat,
Dist Wardha
2. Ranjana w/o Sharadrao Nandekar
Age 55 years, Occ. Household,
R/o Akhada Ward, Pardharkawda
Dist. Yavatmal
3. Archana w/o Sanjay Loutawar,
Age 46 years, R/o Sharda Square,
Katol, Dist. Nagpur
4. Amita W/o Anilrao Shete,
Age 57 years, R/o Sawarkar Nagar,
Nagpur

All petitioners 2 to 4 through Their
Power of Attorney holder Anirudh
Mahadevrao Shewalkar Age 47 years,
Occ. Business, R/o Nehru Ward,
Hinganghat, Dist. Wardha

5. Shrawan Palasram More
Age 62 years, Occ. Agriculturist,
R/o Yashwant Nagar Ward,
Hinganghat, Dist Wardha 442301
6. Darshan Subhash Balapure,
Age 38 years, R/o Maroti Ward,
Hinganghat, Dist. Wardha 442301

... Petitioners

-vs-

1. The State of Maharashtra
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai
2. The Director of Town Planning,

State of Maharashtra, Central
Building, Pune -1

3. The Municipal Council (M.C)/
Nagar Parishad Hinganghat, through
its Chief Officer, Tq. Hinganghat,
Dist. Wardha

4. Assistant Director, Town Planning, Wardha,
Town Planning & Valuation office Wardha,
Ambedkar Chowk, Sawangi Road,
Near Stadium, Wardha

... Respondents

Shri G. K. Mundhada, Advocate for petitioners.

Smt Kalyani R. Deshpande, Assistant Government Pleader for respondent Nos.1,2
and 3.

Shri Anand Deshpande, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND SMT M. S. JAWALKAR JJ.

DATE : February 26, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

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

The petitioners claim to be joint owners of land admeasuring 1113
square meters from Survey No.173/1A of Mouza Nandgaon (Borgaon) Tq.
Hinganght, District Wardha. The revised development plan of the city of
Hinganghat was sanctioned on 15/06/2006 by the State Government. The
same was published under Section 31(1) of the Maharashtra Regional and
Town Planning Act, 1966 (for short, the said Act). The said land was shown
as reserved for primary school as per Reservation No.20 and for garden as
per Reservation No.21. The petitioners obtained necessary permission for
converting the land as non-agricultural land. On 28/09/2013 notice under

Section 49 of the said Act was issued by the petitioners offering the said land to the State Government as well as Municipal Council for being purchased. This notice under Section 49 was confirmed by the Director of Town Planning on 20/03/2014. In the order of confirmation it was stated that as per provisions of Section 49(7) of the said Act within a period of one year it was necessary for the Municipal Council to submit a proposal for acquisition of that land failing which reservation of the said land would stand lapsed. After expiry of period of one year the petitioners had on 08/05/2018 submitted an application under Section 44 of the said Act seeking permission to develop the same. On 07/01/2020 the Chief Officer of the Municipal Council opined that in view of provisions of Section 49(7) of the said Act in absence of any steps being taken for acquisition, the reservation had lapsed. Guidance was sought from the Town Planning Department as to whether permission under Section 44 of the said Act could be granted. The Town Planning Department had on 31/07/2020 informed the Chief Officer that such permission could not be granted and it was open for the petitioners to file appeal under Section 47 of the said Act. On 16/10/2020 the application seeking permission to develop the property came to be rejected. Being aggrieved the aforesaid orders have been challenged in this writ petition and a declaration is sought that the reservation in question had lapsed in view of the legal fiction contemplated by Section 49(7) of the said Act.

2. It is submitted by Shri G. K. Mundhada, the learned counsel for the petitioners that it was undisputed that after the purchase notice dated 28/09/2013 was confirmed on 20/03/2014, no steps were taken towards acquisition of the said land for the purposes for which it was reserved. On account of that inaction, provisions of Section 49(7) of the said Act would apply. The Municipal Council was not justified in stating that the petitioners should challenge the order refusing permission to develop the property by filing appeal under Section 47 of the said Act. According to the learned counsel since the reservation in question had lapsed, such permission was liable to be considered in accordance with the existing by-laws. Reliance was placed on the decision in *Popat Kisan Mhaske and anr. vs. Honourable Minister for Urban Development, Mumbai and ors. 2018 (2) MhLJ 435* to urge that filing of such appeal under Section 47 of the said Act would not preclude this Court from examining the prayer for a declaration that the reservation has lapsed. It was thus submitted that the prayers made in the petition were liable to be granted.

3. Shri Anand Deshpande, learned counsel for the Municipal Council at the outset raised an objection that remedy under Section 47 of the said Act was available to the petitioner for challenging the order dated 15/10/2020. Since such statutory remedy was available, the writ petition was not liable to be entertained. On merits it was submitted that the notice issued under

Section 49 of the said Act had been confirmed by the Director of Town Planning on 20/03/2014. The other communications on record were not disputed.

4. We have heard the learned counsel for the parties and we have perused the documents on record. As regards the objection to the availability of the remedy of appeal under Section 47 of the said Act is concerned, it may be stated that the prayer sought in the writ petition is for a declaration that the reservation in question has lapsed in view of Section 49(7) of the said Act. This declaration cannot be obtained in proceedings under Section 47 of the said Act. That prayer would have to be considered irrespective of such remedy being available to the petitioners. If the reservation is found to have lapsed under Section 49(7) of the said Act, it would not be necessary to prefer an appeal against the order dated 16/07/2020. This aspect has been considered in the decision in ***Popat Kishan Mhaske and anr.*** (supra). The writ petition is therefore liable to be entertained on merits.

5. It is undisputed that the land of the petitioners was subjected to Reservation Nos.20 and 21 in the development plan. The purchase notice issued by the petitioners on 28/09/2013 was confirmed by the Director of Town Planning on 20/03/2014. The Municipal Council therefore within a

period of one year as contemplated by Section 49(7) of the said Act was required to take steps for acquisition of the aforesaid land. As no steps towards acquisition of the land had been taken which fact is also clear from the communication dated 07/01/2020 issued by the Chief Officer, the consequences contemplated under Section 49(7) of the said Act would stand attracted. Consequently the aforesaid reservation would stand lapsed.

6. In the light of aforesaid discussion, the following order is passed :

The orders dated 31/07/2020 and 16/10/2020 passed by the respondent Nos.4 and 3 respectively are quashed and set aside.

It is declared that Reservation No.20 for primary school and Reservation No.21 for garden with regard to land admeasuring 1113 square meters from Survey No.173/1A of Mouza Nandgaon (Borgaon) Tq. Hinganght, District Wardha is declared to have lapsed under Section 49(7) of the Maharashtra Regional and Town Planning Act, 1966. Consequently the petitioners are free to develop their land in accordance to the manner permissible for the adjacent land as per the development plan.

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

(Smt M. S. Jawalkar, J.)

(A. S. Chandurkar, J.)