

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

WRIT PETITION NO. 3507/2020

M/s Peak Realty, a partnership firm duly registered under the provisions of the Partnership Act, 1932 and having office at :- 109, Steel Chambers Building, Wardhaman Nagar, Nagpur – 440008 Through its Partner Harsh S/o Omprakash Agrawal, aged about 43 years, Occ.:- Business, R/o:-283, Geeta Sadan, Wardhaman Nagar, Nagpur – 440008.

PETITIONER

.....VERSUS.....

1. Nagpur Municipal Corporation,
through its Municipal Commissioner,
Having office at Civil Lines, Nagpur-440001.
2. Assistant Director, Town Planning,
Nagpur Municipal Corporation,
Having office at Civil Lines, Nagpur-440001.
3. Nagpur Improvement Trust,
through its Chairman, having Office at
Station Road, Sadar, Nagpur – 440001.
4. State of Maharashtra,
Urban Development Department, through its
Principal Secretary, having Office at:
Mantralaya, Mumbai – 400032.

RESPONDENTS

Shri H.R. Gadhia, counsel for the petitioner.
Shri R.O. Chhabra, counsel for the respondent nos.1 and 2.
Ms S.S. Jachak, counsel for the respondent no.3.
Mrs. K.R. Deshpande, Assistant Government Pleader for the respondent no.4.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : 15TH JUNE, 2022.

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

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

2. The petitioner-Firm claims to be the owner of land bearing Survey No.99/1 admeasuring about 0.77 R having purchased the same by a registered sale-deed on 21.11.2015. The said land was subjected to reservation in the final development plan dated 10.09.2001. The reservation was for the purposes of 30 meter wide road. Even after expiry of period of ten years, no steps were taken for acquisition of the land in question. Hence on 25.11.2018 the petitioner served purchase notice on the Planning Authority – Nagpur Improvement Trust under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, ‘the said Act’). On receipt of such notice, the Nagpur Improvement Trust on 10.01.2019 issued a communication to the petitioner and sought certain documents including legible copies of documents of title. The petitioner supplied the said documents by communication dated 04.07.2019. Prior thereto on 06.06.2019, the petitioner was offered Transferable Development Rights but that offer was not accepted by the petitioner. Since no steps towards acquisition of aforesaid land was taken within the period of twenty four months, the petitioner has approached this Court seeking a declaration that the reservation in respect of the aforesaid land stands lapsed.

3. Shri H.R. Gadhia, learned counsel for the petitioner submits that as required by the provisions of Section 127 of the said Act, purchase notice alongwith documents of title/documents showing interest was

issued on 21.11.2018 and the same was received by the Planning Authority on the next day. The offer of Transferable Development Rights was not accepted by the petitioner and the documents of title demanded were supplied by the petitioner vide communication dated 04.07.2019. Since a period of more than twenty four months has since lapsed and no steps for acquiring the aforesaid land have been taken, the reservation is deemed to have lapsed. Pursuant to the notice dated 27.08.2019 the Nagpur Improvement Trust was designated as Planning Authority and that Authority also did not pursue the matter for acquiring the land. The petitioner is therefore entitled for the relief as prayed for.

4. Ms S.S. Jachak, learned counsel for the Nagpur Improvement Trust opposed the aforesaid submissions by relying upon the affidavit-in-reply. She pointed out that a civil suit was filed concerning the subject land and on 25.11.2019 the trial Court had restrained the present petitioner from obstructing the use of thirty meter wide D.P. Reservation Road. She further submitted that Transferable Development Rights were offered to the petitioner and therefore steps in the matter had been taken as required by Section 127 of the said Act.

Shri R.O. Chhabra, learned counsel appearing for the Nagpur Municipal Corporation submitted that for a short period from 27.08.2019 till 09.04.2021 Nagpur Municipal Corporation was the Planning

Authority. Thereafter the Nagpur Improvement Trust has again been designated as Planning Authority. The Corporation did not take any steps for acquisition of the said land.

5. In the aforesaid undisputed facts, on hearing the learned counsel for the petitioner and the respondents we find that the deeming fiction provided by Section 127 of the said Act stands attracted to the facts of the present case. The purchase notice alongwith the documents showing interest was issued on 21.11.2018 and served on the Nagpur Improvement Trust on 22.11.2018. Till 27.08.2019 when the Trust was the Planning Authority and even during the subsequent period no steps were taken for acquiring the land in question. Similarly no steps were also taken by the Nagpur Municipal Corporation. It may be noted that the purchase notice was issued to both the Planning Authorities. On expiry of the period of twenty four months therefore the deeming fiction contemplated by Section 127 of the said Act would come into play. Filing of the civil suit involving the subject land would not be much relevant for the reason that the same is a dispute between the present petitioner and another private party. The Planning Authorities were not restrained from acquiring the land in question in accordance with law. These aspects have been considered in a recent decision in **Writ Petition No.3024 of 2021** [*Jawahar Hiralal Mehta Versus The State of Maharashtra &*

Another] decided on 24.02.2022 at the Principal Seat and we are satisfied that the petitioner is entitled for similar relief.

6. In view of aforesaid, the following order is passed:
- (I) It is declared that the reservation for the thirty meter wide road with regard to Survey No.99/1 admeasuring 0.77 R has lapsed in view of the provisions of Section 127(1) of the said Act.
- (II) The respondent no.4 shall take necessary steps to issue the notification for being published in the official gazette indicating lapse of the reservation of the aforesaid land within a period of six weeks from the date of receipt of this judgment.
- (III) Needless to observe that the petitioner is at liberty to develop the land in question as is permissible for the adjoining land.
7. Rule is made absolute in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE