

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

CIVIL APPLICATION (W) NO. 1706/2022 IN WRIT PETITION NO. 8376/2019 (D)

(VINODKUMAR SHIRVISHNU TOSHNIWAL & OTHERS **VERSUS** STATE OF MAHARASHTRA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Z.Z. Haq, counsel for the petitioners/applicant.
 Mrs. T.H. Khan, Assistant Government Pleader for the R-1 to 3.
 Shri S.V. Sohoni, counsel for the R-4.

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

DATE : SEPTEMBER 20, 2022.

By this application the applicants-original petitioners have sought to bring to notice of the Court the aspect that reference to Site No.93 and Site No.99A in paragraph 15 of the judgment dated 13.07.2022 be replaced by referring to reservation at Site Nos.141 and 142 in the final development plan.

We have perused the application. Though time was granted to the respondent no.4 to respond to the prayer as made in the application no reply has been filed within the time that was granted. We have accordingly considered the said application.

In paragraph 11 of the judgment it has been held that on the deeming fiction as contemplated by Section 127 of the Maharashtra Regional and Town Planning Act, 1966 having come into effect the same would result in lapsing of the reservation and any subsequent revision of the development plan would not revive such reservation that has lapsed. It has also been held that pursuant to the notices dated 01.08.1995 the reservation with regard to Survey Nos.5 and 16 for land to the extent of 16700 Square Meters as well as Survey No.16 for land admeasuring 1 Hectare was deemed to have lapsed. In the final development plan dated 12.03.2015 these very lands were subjected to reservation at Site Nos.141 and 142 for playground and cultural centre respectively. Hence the reference made to the earlier reservation *vide* Site No.93 and 99A is required to be clarified in paragraph 15 of the judgment. Accordingly paragraph 15 of the said judgment shall read as under after being corrected:-

“15. In the light of what has been held hereinabove, we find that the petitioners are entitled for the relief of a direction to permit them to develop that part of the land that was subjected to reservation and notice under Section 127(1) of the Act of 1966 was issued. Accordingly, it is held that in terms of notice dated 01.08.1995 issued with regard to Survey Nos.5 and 16 being affected to the extent of 16700 Square Meters that was shown reserved for public and semi-public zone, the reservation is deemed to have lapsed. Similarly, in terms of the notice dated 01.08.1995 issued with regard to Survey No.16 for land admeasuring about 1 Hectare, the reservation is deemed to have lapsed. It is declared that the lands of the petitioners to the extent they were affected by reservation shown in pink zone which had been earmarked as public and semi public zone in the development plan which came into force on 01.04.1977 and later was reserved as Site Nos.141 and 142 in the final development plan of Akola city notified on 12.03.2015 which came into force on 12.04.2015 stand de-reserved. The Municipal Corporation as well as the Planning Authority shall indicate the exact area from Survey Nos.5 and 16 that was subjected to reservation as Site Nos.141 and 142 in the final development plan of Akola city which came into force on 12.04.2015 and that area shall be de-reserved on account of lapsing of the reservation. On furnishing such information to the Urban Development Department within a period of eight weeks from today, the Urban Development Department shall issue notification in that regard as required by Section 127(2) of the Act of 1966 within a period of eight weeks of receipt of such intimation from the Municipal Corporation. Consequentially, the Final Development Plan of the year 2015 shall not preclude the aforesaid exercise and it would continue to operate with regard to other lands excluding EP-19 and EP-20.”

The judgment be corrected accordingly and the corrected copy be uploaded. The civil application is disposed of in above terms.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

APTE