

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

WRIT PETITION NO. 8376/2019

1. Vinodkumar S/o Shirvishnu Toshniwal,
aged about 57 years, Occ:Business.
2. Shrikant S/o Shirvishnu Toshniwal,
age about 50 years, Occ:Business.
3. Vijay S/o Shirvishnu Toshniwal,
aged about 48 years, Occ:Business.

All R/o Murtizapur Road, Akola, Tq. and District: Akola.

PETITIONERS

-VERSUS-

1. The State of Maharashtra,
Through Department of Urban Development,
Mantralaya, Mumbai, through its Secretary.
2. Director, Town Planning,
Tq. and District: Pune.
3. District Collector, Akola,
Tq. and District: Akola.
4. Municipal Corporation, Akola,
Tq. and District: Akola, through its Commissioner.

RESPONDENTS

Shri Z.Z. Haq, counsel for the petitioners.
Ms N.P. Mehta, Assistant Government Pleader for the respondent nos.1 to 3.
Shri S.V. Sohoni, counsel for the respondent no.4.

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

DATE ON WHICH ARGUMENTS WERE HEARD : 04TH JULY, 2022.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 13TH JULY, 2022.

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

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

2. The question that arises for consideration in this writ petition filed under Article 226 of the Constitution of India is whether a reservation pursuant to a Draft Development Plan as published having deemed to have lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the Act of 1966') could be revived while publishing the Final Development Plan despite the deeming fiction as contemplated by Section 127 of the Act of 1966.

3. The facts relevant for considering the answer to the aforesaid question are that the petitioners claim to be the owners of Field Survey No.5 admeasuring 6 Hectare 77 R, Field Survey No.15 admeasuring 6 Hectare 05 R and Field Survey No.16 admeasuring 4 Hectare. In the Development Plan of the city of Akola that came into force on 01.04.1977, Field Survey No.5 was shown to be reserved for 'Playground' *vide* Reservation No.93. Since no steps were taken to acquire the said land in the light of the reservation as proposed, the petitioners on 06.05.1991 issued a notice under Section 127 of the Act of 1966 and called upon the Municipal Council, Akola (as it was then) through its Planning Authority to acquire Survey No.5. This notice was received by the Planning Authority on 07.05.1991 but no further steps in that regard were taken. On the contrary, on 07.12.1991, the Standing Committee of the Municipal Council passed a resolution stating therein that since no steps were taken to acquire the said land, Reservation No.93 was being

cancelled and conversion of that land for residential use was recommended. Pursuant thereto on 29.11.1995, the Collector granted permission for conversion of the aforesaid three lands for non-agricultural use. The petitioners thereafter gave another notice on 02.08.1995 with regard to Survey No.16 that had been shown as reserved for housing of displaced persons *vide* Reservation No.99A. On the same day, another purchase notice under Section 127 of the Act of 1966 was also issued for Survey Nos.5 and 16. These notices were received by the Planning Authority on 02.08.1995. On 26.10.2004, the Urban Development Department of the State Government revised the development plan and issued a notification by which the reservation for Site No.141 which was reserved for playground was proposed to be deleted *vide* Excluded Part No.19 and the land was proposed to be included in the residential zone. The reservation for Site No.142 being reserved for a Cultural Centre was also proposed to be deleted *vide* Excluded Part No.20 for being included in the residential zone.

4. On 12.03.2015 another notification was published by the Urban Development Department of the State Government under Section 31(1) of the Act of 1966. It was stated that in view of the Final Development Plan the reservation at Site Nos.141 and 142 was retained for 'Playground' and 'Cultural Centre' respectively. According to the petitioners, in the meanwhile the development of those lands under the

Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001 (for short, 'the Act of 2001') was approved. Thereafter on 10.10.2018, the Commissioner of Akola Municipal Corporation after its conversion as such informed the Urban Development Department that though the photocopies of the notice under Section 127 of the Act of 1966 were available the Inward Register with that entry was not available in the Office of the Municipal Corporation. It was informed that as per the Final Development Plan dated 12.03.2015 the lands had been subjected to Reservation Nos.141 and 142. It is in this backdrop that the petitioners sought a declaration that since the reservation for the aforesaid lands as shown in the Draft Development Plan had lapsed pursuant to the notice issued under Section 127 of the Act of 1966 it was not permissible for the respondents to revive such reservation that had lapsed so as to deny permission to the petitioners to develop those lands in accordance with law.

5. Reply has been filed on behalf of the Urban Development Department as well as the Director of Town Planning and it has been stated therein that the Development Plan of the City of Akola came into force on 01.04.1977 and the lands in question were subjected to Reservation Nos.93 and 99A. It is further stated that after obtaining the opinion from the Deputy Director of Town Planning, a recommendation was made by the Assistant Director of Town Planning on 01.11.1995 for

the proposed layout. The lands were then converted for the non-agricultural use on 15.10.2005. While sanctioning the modifications in the Development Plan on 12.03.2015 the requirement of public amenities was considered and hence it was decided to retain the reservation for the 'playground' *vide* Site No.141 and 'Cultural Centre' *vide* Site No.142.

6. The Municipal Corporation has also filed its reply and has relied upon the Final Development plan of the year 2015 to contend that the period of ten years as contemplated under the Act of 1966 was yet to expire and therefore the declaration as sought by the petitioners was premature. It has been stated that though the lands were under reservation the proposal given by the petitioners for development under the Act of 2001 came to be accepted. The Authorities ought to have stayed their hands in the light of the prevailing reservation. On these counts it was stated that on 06.06.2015 the sub-division of the land that was permitted on 13.05.2015 came to be cancelled.

7. The learned counsel for the petitioners submitted that the notice under Section 127 of the Act of 1966 having been issued on 01.08.1995 and no steps towards acquisition of lands bearing Survey Nos.5 and 16 having been taken within the stipulated period, the said lands were deemed to have been released from reservation. By publishing the Final Development Plan on 12.05.2015 it was not permissible for the

respondents to again place those lands under reservation. Since by operation of the provisions of Section 127 of the Act of 1966 the reservation in question had lapsed and the lands became available for development to the petitioners, they were rightly granted permission to convert those lands for non-agricultural use and thereafter by sanctioning the residential layout. It was not permissible for the respondents to revive the reservation that had already lapsed. In that regard the learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in *Bhavnagar University Versus Palitana Sugar Mill (P) Ltd. & Others* [2003(2) SCC 111] wherein it was held that a right conferred upon the land owner by one provision of the statute cannot be taken away by another provision of that statute. He submitted that said decision has been followed by this Court in *Baburao Dhondiba Salokhe Versus Kolhapur Municipal Corporation, Kolhapur & Another* [2003(3) Mh.L.J. 820], *Kishor Gopalrao Bapat & Others Versus State of Maharashtra & Another* [2005(4) Mh.L.J. 466], *Kishor Siddheshwar Wadotkar (Dr.) Versus Director of Town Planning & Others* [2007(3) Mh.L.J. 399] and *Madanlal Nathmal Navandhar & Others Versus Sangli, Miraj & Kupwad Municipal Corporation & Others* [2016 SCC Online Bom 4976] to urge that the petitioners are entitled for the declaration as sought.

8. The learned Assistant Government Pleader for the respondent nos.1 to 3 submitted that the lands in question were initially shown to be reserved in the Development Plan dated 01.04.1977. Though notice under Section 127 of the Act of 1966 was issued the lands were again subjected to reservation under the Final Development Plan by restoring such reservation. These reservations were restored keeping in mind probable development in the future. The Final Development Plan having been published on 12.05.2015 it was not permissible for the petitioners to contend that by virtue of their earlier notice the reservation had lapsed.

The learned counsel for the Municipal Corporation also opposed the prayers made in the writ petition. It was submitted that in light of Section 31(5) of the Act of 1966 the lands had been subjected to reservation under the Final Development plan. The period of ten years from 12.05.2015 was yet to expire. He invited attention to the communication dated 10.10.2018 to urge that the Inward Register with regard to receipt of the notice issued under Section 127 of the Act of 1966 was not available. He also submitted on noticing the reservation of the lands in question the proposal for development under the Act of 2001 ought to have been rejected. The Municipal Corporation had decided to revoke the permission granted on 30.04.2014 by invoking the power under Section 51 of the Act of 1966. Similarly on 06.06.2015 the order granting sub-division also had been cancelled. It was thus submitted that the petitioners were not entitled for the reliefs as prayed for.

9. We have heard the learned counsel for the parties at length and we have perused the documents on record. It is seen that in the Development Plan of City of Akola the lands in question were subjected to reservation *vide* Site Nos.93 and 99A. This reservation affected part of Survey Nos.5 and 16 as is evident from the notices dated 01.08.1995 issued by the petitioners under Section 127 of the Act of 1966. As regards Survey No.16 of Mouza Umarkhed, Tahsil and District Akola the petitioners have stated that under reservation Site No.99A, land admeasuring about 1 Hectare had been affected. In the other notice also dated 01.08.1995 with regard to Survey Nos.5 and 16 it has been stated that land admeasuring 16700 Square Meters has been shown in the 'Pink Zone' as earmarked for public and semi-public zone. The petitioners by these notices issued under Section 127 of the said Act called upon the Municipal Council to purchase the said lands for being used for the purpose of reservation. It is also to be noted that prior to these notices the petitioners on 07.05.1991 had issued a similar notice under Section 127 of the Act of 1966 with regard to land bearing Survey No.5 of Mouza Umarkhed, Tahsil and District Akola. It was stated that the said land was shown in the Development Plan as reserved Site No.93. This notice has been received by the Office of the Municipal Council (as it then was) on 07.05.1991. The Standing Committee of the Municipal Council on 07.12.1991 noted that despite the purchase notice issued under Section 127 of the Act of 1966 that land had not been acquired and hence the

reservation had lapsed. It was recommended that permission to convert the said land for residential use could be granted. On 29.11.1995 the Collector did grant permission to convert Field Survey Nos.5, 15 and 16 for non-agricultural use.

10. From the aforesaid it is clear that insofar as Survey No.5 is concerned, notices dated 06.05.1991 and 01.08.1995 had been issued under Section 127 of the Act of 1966. Insofar as Survey No.16 is concerned, similar notice was issued on 01.08.1995. These notices bear the endorsement and stamp of the Municipal Council of having received the same on 07.05.1991 and 02.08.1995 respectively. In the reply filed by the Municipal Corporation, there is no denial of the fact that such notices were indeed served on the Municipal Council. No doubt the Commissioner of the Municipal Corporation on 10.10.2018 issued a communication of the Urban Development Department that though photocopies of the notices under Section 127 of the Act of 1966 were found, the Inward Register of the year 1995 was not available. In absence of any specific assertion by the Municipal Corporation that such notices under Section 127 of the said Act were not received in the Office of the Municipal Council as it then was, there is no basis to disbelieve the photocopies of the said notices dated 06.05.1991 and 01.08.1995 alongwith endorsements thereon that are placed on record. On the contrary, the resolution of the Standing Committee dated 07.12.1991

referring to the purchase notice dated 06.05.1991 fortifies the stand of the petitioners. It is thus held that the petitioners did serve notices under Section 127 of the Act of 1966.

11. Having found that the petitioners had issued notice under Section 127 of the Act of 1966 the deeming fiction as contemplated by Section 127(1) of the Act of 1966 on the expiry of period of six months as the provision then stood would operate. Insofar as the notice dated 06.05.1991 relating to Survey No.5 is concerned the deeming fiction would operate on expiry of six months from the service of that notice on the Municipal Council. The notice was served on 07.05.1991. Similar is the case with regard to Survey Nos.5 and 16 and said reservation would lapse on expiry of period of six months from 02.08.1995 when the said notices were served on the Municipal Council. By virtue of the said deeming fiction as contemplated by Section 127(1) of the Act of 1966 the lands stood released from reservation and became available for development as otherwise permissible in the case of adjoining land under the Development Plan. On such legal fiction operating the aspect to be considered is whether the Planning Authority could have again shown the said lands to be reserved under the Revised Development Plan. We find that the Division Bench of this Court in *Baburao Dhondiba Salokhe* (supra) has considered this issue and after referring to the judgment of the Hon'ble Supreme Court in *Bhavnagar University* (supra) has held that

the provisions of Section 38 of the Act of 1966 cannot be read to mean that a substantial right conferred upon the owner of the land of the person interested under Section 127 of the Act of 1966 could be taken away. Section 38 did not envisage that despite the reservation having lapsed under Section 127 of the Act of 1966 the same would automatically revive on publication of a Revised Draft Development Plan published thereafter. In that case the land reserved for the purpose of Garden had lapsed in the year 1992 and it was held that such reservation would not revive after the Revised Final Development Plan was sanctioned in the year 1999. This decision has been thereafter consistently followed in *Kishor Gopalrao Bapat & Others*, *Kishor Siddheshwar Wadotkar* and *Madanlal Nathmal Navandhar & Others* (supra). It is thus clear that when the land reserved in the Development Plan is not acquired for a period of more than ten years from that plan coming into force and notice under Section 127 having been issued, the reservation would lapse on the expiry of the period prescribed and any subsequent revision of the Development Plan would not revive or extend such reservation that has already lapsed.

12. The learned counsel for the Municipal Corporation sought to rely upon the decision in *Prakash Rewadmal Gupta Versus Lonavala Municipal Council & Others* [2002(1) All MR 993] to urge that lapsing of reservation under Section 127 of the Act of 1966 cannot preclude the

Authorities while reviving the plan and exercising power under Section 38 of the Act of 1966 to reserve the same for the same or any other public purpose. Though the said decision does support the stand of the Municipal Corporation it is to be noted that the Hon'ble Supreme Court in *Prakash R. Gupta Versus Lonanvala Municipal Council* [2009(3) Mh.L.J. 1 (SC)] has reversed the said decision of this Court referred to by the learned counsel. It is thus obvious that the legal position in that regard now stands crystallized and it would not be possible to accept the contention raised by the learned counsel for the Municipal Corporation that it was permissible for the Planning Authority to reserve the very same lands in the Final Development Plan ignoring the lapsing of the reservation under Section 127(1) of the Act of 1966.

13. We may note that the learned counsel for the Municipal Corporation urged that the petitioners failed to obtain a declaration as regards lapsing of the reservation pursuant to the notices dated 06.05.1991 and 01.08.1995. Though it is true that the petitioners did not seek any declaration of the lands having been de-reserved by virtue of the deemed fiction, it cannot be ignored that Section 127(1) of the Act of 1966 contemplates a deeming legal fiction. On failure on the part of the Planning Authority or the concerned Authority of acquiring such lands or failing to take steps for commencement of acquisition, the lands in question are deemed to be released from such reservation. If the deeming

fiction is statutorily contemplated and recognized coupled with a duty being cast on the Government to notify such lapsing, it would not befit the Planning Authority to insist upon such land owner to seek a declaration in that regard. For what is contemplated by the Statute ought to be complied with in accordance with that Statute. This is clear from the fact that under Section 127(2) of the Act of 1966 it is the duty of the State Government to notify such lapsing of reservation by having an order published in the official gazette. Section 127(2) of the Act of 1966 reads as under:-

“127. (1)

(2) *On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in Official Gazette.*”

On a plain reading of this provision it is more than clear that the consequence of operation of the deemed fiction resulting in release of the land from reservation, allotment or designation is required to be notified by the State Government by publishing such order in the official gazette. Section 127(2) of the Act of 1966 thus makes it more than clear that on the reservation having deemed to have lapsed, the statute itself requires the Government to notify the same. Many a times on failure of the State Government to notify such lapsing that the land owners are required to approach the Court of law. Once the deeming fiction contemplated under Section 127(1) of the Act of 1966 on service of a valid notice and expiry

of the statutory period prescribed operates, the Statute itself requires the Government to notify lapsing of such reservation under Section 127(2) of the Act of 1966. At least such contention cannot be permitted to be raised by the Planning Authority on account of whose inaction the reservation has lapsed.

14. This conclusion as recorded is fortified by two decisions of the Hon'ble Supreme Court to which reference can be made. In *Godrej and Boyce Manufacturing Company Limited Versus State of Maharashtra & Others* [(2015) 11 SCC 554], the land in question was reserved under sanctioned development plan in 1991 for laying down additional railway tracks. On completion of period of ten years the land owner issued a purchase notice under Section 127 of the Act of 1966 on 04.09.2002. On expiry of the period of six months as was then prescribed the reservation of the said land was deemed to be released. Thereafter the Urban Development Department of the State Government issued a notification on 24.05.2006 under Section 37(1) of the Act of 1966 and proposed modification to the development plan by deleting 'railway reservation' and adding 'reservation for D.P road'. This notification was challenged by the land owner and while considering the same the Hon'ble Supreme Court held that it was not open for the State Government to delete the earlier reservation from railway use and modify it for reservation for D.P road especially after the expiry of the initial

period of ten years and thereafter the notice period of six months under Section 127 of the Act of 1966. This was for the reason that the land owner had acquired a valuable statutory right upon the land as the reservation for the same had lapsed long back. On such lapsing, the same would enure to the benefit of the land owner and it would not be open for the State Government to propose modification of the development plan.

Recently, in *Kolhapur Municipal Corporation & Others Versus Vasant Mahadev Patil (Dead) through legal representatives & Others* [(2022) 5 SCC 758] the Hon'ble Supreme Court held that when by operation of law the reservation is deemed to have lapsed under Section 127(1) of the Act of 1966 the reservation lapses for all purposes and for all times to come. In the said decision, the Hon'ble Supreme Court was further pleased to observe that on the deemed lapsing of such reservation under Section 127(1) of the said Act no writ of mandamus can be issued by the High Court to direct acquisition of that land and pay compensation to the land owners as on the lapse of such reservation the land becomes free and the land owners can use the land as if there was no reservation but subject to the provisions of the Act of 1966.

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.

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

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE