

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

WRIT PETITION NO. 8031 OF 2018

PETITIONER :- Amravati Land Development Company Ltd. through its Director Upendra Kapadia, Age 86 years, Occup. Business, R/o. Nepean Sea Road, 10, Homi Modi Street, Bombay 400001.

...VERSUS...

RESPONDENTS :-

1. The State of Maharashtra through the Secretary Urban Development Department, Mantralaya, Mumbai.
2. The Municipal Corporation of City of Amravati, Through its Commissioner, Amravati Municipal Corporation, Rajkamal Chowk, Amravati.
3. Assistant Director of Town Planning Municipal corporation, Amravati, Off:- Municipal Corporation, Rajkamal Chowk, Amravati.

Mr. G.K.Mundhada counsel for the petitioner.
Mr. A.M. Deshpande, G.P for respondent No.1
Mr.R.D.Dharmadhikari, counsel for respondent No.2.

CORAM : SUNIL B.SHUKRE &
G.A.SANAP, JJ.

DATE : 15.09.2022.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

- 1) Heard.
- 2) Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.
- 3) There are three objections taken by the learned counsel appearing for the Amravati Municipal Corporation to this petition. These objections are as under: -

(i) Purchase notice issued under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short M.R.T.P. Act) is signed by Advocate on instructions, but is not signed by owner itself.

ii) Measurement map and 7/12 extracts are not supplied along with purchase notice.

iii) Second Revised Draft Development Plan under Section 26 of the M.R.T.P. Act was published in official gazette of Government of Maharashtra for possession and objection on 06.12.2018 and now it has been sent to the Government for its sanction.

4) The learned counsel for the petitioner submits that all these objections are baseless as there is nothing in law which prohibits the owner from being duly represented by his advocate in the action, which it seeks to initiate under Section 127 of the M.R.T.P Act and that the other two objections are already covered by the view taken by this Court in Writ Petition No.3602 of 2018, decided on 18.09.2019, Writ Petition No.7123 of 2018, decided on 28.06.2019 and in the case of **Ashok Shriram Kulkarni Vs. State of Maharashtra, Housing and Area Development Authority; Municipal Council**, reported in **2017 LawSuit(Bom) 390**.

5) Upon taking overall view of the case, wherein, it is not in dispute that purchase notice under Section 127 of the M.R.T.P Act has been issued after lapse of more than 10 years and it was issued at the time, when no steps for acquisition of the land were taken and that within a period of two years after receipt of notice under Section 127 of the M.R.T.P Act, no steps for acquisition were taken by the Corporation, we are of the view that there is a great substance in the argument of the learned counsel for the petitioner and no merit in the objections taken by the learned counsel for the Corporation.

6) Sections 29 and 32 of the Advocates Act gives authority to an advocate to represent his client in legal proceedings and it cannot be denied that the notice under Section 127 of M.R.T.P Act is one of the steps of the legal proceedings, where an advocate can certainly represent his client. There is no dispute in this case that the notice in question was issued by the Advocate under the instructions of the petitioner-the owner of the subject land. Therefore, we find no substance in the first objection taken on behalf of the Municipal Corporation.

7) As regards the remaining two objections, the law is well settled and it indicates that it is enough for the land owner to show his title or interest in the land to assert his right regarding re-vesting of the land, after a lapse of period of 10 years from the date of the reservation provided on the land and further period of two years from the date of receipt of the notice under Section 127 of the M.R.T.P Act has expired. Both these ingredients in this case have already been fulfilled and therefore, the facts of the case are squarely covered by the view taken by this Court in the above referred cases. Even in the case of **Bhavnagar University Vs. Palitana Sugar Mills (p) Ltd., and ors.** reported in (2003) 2 SCC 111, the Hon'ble Supreme Court has held that Section 38 of the M.R.T.P Act does not and cannot be read to mean that substantial right

conferred upon the owner of the land or the person interested under Section 127 is taken away. It has also categorically held that Section 38 of the M.R.T.P. Act does not envisage that despite the fact that in terms of Section 127, the reservation lapsed, only because of a draft revised development plan or final revised development plan is made, it would not automatically result in revival of reservation that had lapsed. In the present case, second draft revised development plan has been submitted not under Section 38 of the M.R.T.P. Act, but under Section 26 of the M.R.T.P. Act, but ultimately the final action, which is required to be taken would be only in terms of Section 38 of the M.R.T.P. Act and therefore, mere submission of draft revised development plan, as held in **Bhavnagar University** (supra) would not by itself take away the right of lapsing of reservation in land created in favour of the land owner. In view of above, we find that this petition deserves to be allowed and is allowed in terms of prayer clauses A and B.

8) The Notification under Section 127(2) of the M.R.T.P. Act be issued within three months from the date of the order.

9) Rule is made absolute in above terms. No costs.

(G.A.SANAP, J)

(SUNIL B. SHUKRE, J)