

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.337 OF 2022**

|                                    |                  |
|------------------------------------|------------------|
| 1. Babanrao Dattu @ Dattoba Dangat | ]                |
| 2. Sakharam Dattu @ Dattoba Dangat | ]                |
| 3. Jaysingh Dattu @ Dattoba Dangat | ]                |
| 4. Balu Dattu @ Dattoba Dangat     | ]                |
| 5. Laxmibai Murlidhar Chinchwade   | ] .. Petitioners |

Vs.

|                                                                                                 |                  |
|-------------------------------------------------------------------------------------------------|------------------|
| 1. State of Maharashtra                                                                         | ]                |
| 2. Secretary, Urban Development Department,<br>State of Maharashtra                             | ]                |
| 3. Pune Municipal Corporation, Pune                                                             | ]                |
| 4. Deputy Commissioner,<br>Pune Municipal Corporation, Pune                                     | ]                |
| 5. Deputy Engineer,<br>Construction Development Department,<br>Pune Municipal Corporation, Pune | ] .. Respondents |

Mr. Prathamesh Bhargude, with Mr. Sumit Sonare and Mr. Sharad Dhore, for the Petitioners.

Ms. M.P. Thakur, AGP for Respondent Nos.1 and 2–State.

Mr. R.S. Khadapkar for Respondent Nos.3 to 5–Municipal Corporation.

**CORAM : SUNIL B. SHUKRE & RAJESH S. PATIL, JJ**

**DATE : 2<sup>ND</sup> AUGUST, 2023.**

**ORAL JUDGMENT : { Per Sunil B. Shukre, J. }**

1. RULE. Rule is made returnable forthwith. Heard finally, by consent of learned counsel for the respective parties.

2. The only issue involved in this petition is whether the Purchase Notice issued by the petitioners, under Section 127(1) of the Maharashtra Regional and Town Planning Act, 1966, of 16<sup>th</sup> September 2013 is valid or not. The incidental question arising from the main question is that if purchase notice is considered to be valid, would it lead to deemed de-reservation of the land in question in view of the provisions made in Section 127 of the Maharashtra Regional and Town Planning Act, 1966, (*"MRTP Act", for short*), or would it be affected by the sanction of revised development plan subsequent to issuance of the purchase notice.

3. According to learned counsel for the petitioners, even though the Purchase Notice dated 16<sup>th</sup> September 2013 was issued after publication of draft revised development plan on 28<sup>th</sup> March 2013, the purchase notice was valid and as no steps for acquisition of the land within the prescribed period of one year were taken by the respondent-Municipal Corporation, there was de-reservation of the land in question by deeming fiction. He relies upon the view taken in this regard in the recent judgment delivered in the case of *Santu Sukhdeo Jaibhave and Ors. Vs. Nashik Municipal Corporation and Ors, along with connected matters*<sup>1</sup>. He also relies upon the case of *Balkrishna Jagannath Lad Vs. Indian Postal Department, Mumbai and Ors.*<sup>2</sup>.

4. The learned counsel for the respondent-Municipal Corporation submits that since the purchase notice in the present case was issued after publication of

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1 2022 SCC OnLine Bom 5273

2 2015(5) Mh.L.J. 899

a draft revised development plan and as publication of draft revised development plan shows the intention of the Municipal Corporation to continue the public purpose, it would have to be said that the petitioners never acquired any indefeasible right of de-reservation by application of deeming fiction. He places reliance upon the law laid down by a Coordinate Bench of this court in the case of *Ranjan Manubhai Doctor Vs. State of Maharashtra and Ors.*<sup>3</sup>.

5. In our view, the law in this regard is well settled inasmuch as the provisions contained in Section 127 of the MRTP Act are also clear and unambiguous. Under Section 127 of the MRTP Act, a land owner gets a right of de-reservation of his land by application of deeming fiction if he issues a notice calling upon the Planning Authority or the Development Authority or the Appropriate Authority to purchase the land in terms of the provisions of Section 126 of the MRTP Act and the Planning Authority or the Development Authority or the Appropriate Authority fails to take steps for acquisition of the land in question within the period prescribed in Section 127 of the MRTP Act, presently the period prescribed is of two years and in case of the purchase notice in question involved in this petition, this period was of one year. In such a case, owner of the land gets right of seeking declaration about de-reservation of his land by deeming fiction. Of course, the notice to be sent under Section 127 of the MRTP Act can be issued only after lapsing of period of ten years from the date of coming into force of the final regional plan or final development plan. It

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3 2005(1) Mh.L.J. 718

may be noted here that Section 127 clearly speaks of final regional plan or final development plan and it does not refer to any draft regional plan or draft development plan and, therefore, what is relevant for the purpose of deciding the question of deemed de-reservation is final regional plan or final development plan, which is in force, and since revised plan includes regional plan or development plan, a revised plan in the context of Section 127 of the MRTTP Act is a sanctioned or final revised plan, and not a draft revised plan.

6. In the case of *Balkrishna Jagannath Lad (Supra)*, a Coordinate Bench of this court, of which one of us was part, has taken a view, relying upon the case of *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and Ors.*<sup>4</sup>, that once the reservation gets lapsed in terms of Section 127 of the MRTTP Act, just because a revised development plan or final revised development plan is made, the lapsing of reservation would not get automatically revived.

7. In the case of *Santu Sukhdeo Jaibhave (Supra)*, a Coordinate Bench of this court has taken a view that in a case involving question of deemed lapsing of reservation, the draft revised development plan has no legal sanctity and it cannot be considered as final. In other words, the Division Bench has taken a view that the question of deemed lapsing of reservation can be examined only in the context of final revised development plan and not in the context of draft revised development plan and if purchase notice has been issued after draft revised development plan is published but before it has received sanction so as

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4 (2003) 2 SCC 111

to become a final revised development plan, the right shall accrue to the land owner to seek benefit of deemed lapsing of reservation, if other conditions of Section 127 of the MRTTP Act are fulfilled.

8. The view taken by the Division Bench in the above case of *Santu Sukhdeo Jaibhave (Supra)* has attained finality after the Apex Court dismissed the Petition for Special Leave to Appeal No.13060/2023 by its order dated 3<sup>rd</sup> July 2023.

9. The above referred cases, together with the requirements of Section 127 of the MRTTP Act, as discussed earlier, would show that in the present case, an indefeasible right has accrued to the petitioners to seek benefit of deemed lapsing of reservation over the land in question for the reason that the purchase notice was issued by them after expiry of the period of ten years from the first final development plan and before the draft revised plan came to be sanctioned and that even though period of one year had expired after receipt of the purchase notice by the respondent-Municipal Corporation, admittedly, no steps for acquisition of the land in question have been initiated by the Municipal Corporation. In other words, the purchase notice issued by the petitioners is valid and it has led to deemed de-reservation of the land in question. Questions are answered accordingly.

10. In the case of *Ranjan Manubhai Doctor (Supra)*, the Division Bench of this court has, on a conjoint reading of Section 127 and Section 38 of the MRTTP Act, held that where owner of the land had not applied for development

after de-reservation and in the meantime, a draft revised plan is notified, the owner cannot take the benefit of the deemed reservation after the draft reservation plan is notified as the sanctioned development plan. The view so taken by the Division Bench, we must say, was in the context of the facts peculiar to that case, as rightly submitted by learned counsel for the petitioners. In that case, purchase notice was issued after publication of the draft revised development plan, but thereafter, the land owner filed his objection to the draft revised development plan, as a result of which part of the land came to be de-reserved. It was against the background of these facts that the Division Bench has observed that the land owner could not take advantage of deemed de-reservation. Therefore, in our respectful submissions, the case of *Ranjan Manubhai Doctor (Supra)* has no application to the facts of the present case.

11. In the result, this petition deserves to be allowed and it is allowed accordingly in terms of prayer clauses [A], [B] and [C], which read as follows :-

“[A]. That this Honourable Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, holding and declaring that the petitioner’s land designated specified / reserved under the Development Plan for P.M.T. Depot / P.M.P.L. reservation as M10 in Development Plan No.TPS-188/162/CR-7/89/UD-13 dated 9<sup>th</sup> November 1992 for

an area admeasuring 8,748 sq.mtrs. situated at Survey No.29/2/1 and Survey No.29/2/2/2, Sutarwadi, Pashan, CTS No.842, Pune has lapsed as per the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 and the said property is released from the reservation and allotment, designation and has become available to the petitioner for the purpose of development, as permissible.

[B]. That this Honourable Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, direction and order under Article 226 of the Constitution of India, 1950, directing the respondent-Government to forthwith notify the lapsing of reservation of the suit property by an order published in the Official Gazette, as required by the provisions of Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966.

[C]. That this Honourable Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, direction and order under Article 226 of the Constitution of India, 1950, quashing and setting aside the reservation on petitioner's land

designated specified / reserved under the Development Plan for P.M.P.L. reservation in Development Plan No.TPS-1815/209/CR-69/15/D.P. Pune/E.P. Sanctioned/UD-13 dated 17<sup>th</sup> February 2018 bearing EP-140 (P.M.P.L. 10) for an area admeasuring 8,748 sq.mtrs. situated at Survey No.29/2/1 and Survey No.29/2/2/2, Sutarwadi, Pashan, CTS No.842.”

12. Rule is made absolute in the above terms. Petition is disposed of.

[ RAJESH S. PATIL, J. ]

[ SUNIL B. SHUKRE, J. ]