

1IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 684 OF 2022

1. Anilkumar S/o. Madhavdas Mohata,
Aged about 54 years,
Occ.: Business and Agriculturist,
R/o. B.L. Mohta Ram Mandir Ward,
Hinganghat, Tahsil Hinganghat,
Dist. Wardha.
2. Anupkumar S/o. Madhavdas Mohta,
Aged about 50 years,
Occ.; Business and Agriculturist,
R/o. B.L. Mohta Ram Mandir Ward,
Hinganghat, Tahsil Hinganghat,
Dist. Wardha.
3. Shrikumar S/o. Krushnakumar Mohta,
Aged about 50 years,
Occ.: Business and Agriculturist,
R/o. B.L. Mohta Ram Mandir Ward,
Hinganghat, Tahsil Hinganghat,
Dist. Wardha.
4. Sanjay S/o. Krushnakumar Mohta,
Aged about 48 years,
Occupation : Business and Agriculturist,
R/o. B.L. Mohta Ram Mandir Ward,
Hinganghat, Tahsil Hinganghat,
Dist. Wardha.

....PETITIONERS

...VERSUS...

1. The State of Maharashtra, through its
Secretary of Urban Development
Department, Mantralaya, Mumbai.
2. District Collector, Wardha.
3. Sub Divisional Officer, Wardha,
Tah. & Dist. Wardha.

4. Municipal Council, Wardha through its Chief Officer, Wardha, Tq. and Dist. Wardha.

....RESPONDENTS

Mr. A. M. Ghare, Advocate for Petitioners.
Mr. N. S. Rao, A.G.P for Respondents 1 to 3/State.
Mr. M. I. Dhatrak, Advocate for Respondent 4.

CORAM: **ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.**
DATE: **23.03.2023**

JUDGMENT : (PER ROHIT B. DEO, J.)

1. Heard. **Rule.** Rule made returnable forthwith by consent of the learned counsels for the parties.

2. Petitioners are seeking a declaration that reservation 34, 35A and 35B as regards the land admeasuring 4.10 HR forming part of portion of Survey 24 of mouza Palakwadi, Wardha stands lapsed in view of the deeming fiction of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act).

3. At the very outset, we may note that the notice dated 22.03.2017 is restricted to reservations 35A and 35B, and there is no reference to reservation 34. In this view of the matter, the learned Counsel for the Wardha Municipal Council Mr. Dhatrak is justified in the submission that the consideration must be

restricted to reservation 35A and 35B (subject reservations).

4. The subject reservations pertain to Town Center/Hall in the development plan of the city of Wardha which came into force on 25.02.2004.

5. The petitioners contend that the subject land was originally owned by Mr. Sakharam Patil and Mr. Sitaram Patil. The subject land was allotted to one Moffusil Company under patta registered on 02.04.1875 and the said company set up Ginning and Pressing Factory and constructed residential bungalows. The petitioners contend that permanent lease dated 20.11.1902 was executed in favour of the predecessor-in-title of the petitioners Mr. Raisaheb Mohta by the original owners. It is averred in the petition that the part of the subject land is occupied by the tenants, and part is sold to certain persons.

6. The petitioners contend that inasmuch as respondent 4 – Wardha Municipal Council (Council) failed to acquire the land within 10 years from the coming into force of the development plan, their predecessors served upon the Council notice dated 22.03.2017, under the provisions of the Section 127 of the MRTP Act.

7. The Council responded by letter dated 28.06.2017 and offered the predecessors-in-title of the petitioners TDR as consideration for acquisition of the land, and called upon the owners to convey their willingness. The predecessors of the petitioners addressed communication dated 20.07.2017 conveying their unwillingness to accept TDR as compensation to the acquisition of land.

8. The Council then called upon the petitioners vide letter dated 25.07.2017 to furnish documents of title. The predecessors of the petitioners, vide communication dated 16.08.2017 and 15.04.2019 submitted the requisite documents. The petitioners also requested the office of the Naib Tahsildar, Wardha, vide communication dated 10.01.2019, to supply certified copies of the record of praecipe and were informed by the said officers that although field Survey 26/1C is held in Bumiswami Rights, certified copies cannot be supplied as the original document is in torn condition. The petitioners preferred an application dated 07.12.2021 in response to which the Council informed that as per the revised development plan, reservation 34 is for Garden and reservation 35A and 35B is for Town Center.

9. It is broadly on such averments, that the petitioners are seeking the relief which is claimed in the petition.

10. The Council has filed affidavit in response dated 29.01.2023. While generally denying the averments in the petition, and admitting the receipt of the notice dated 22.03.2017, the Council asserts that the notice was served by Mr. Madhavdas Jankidas Mohata claiming authority on behalf of Narsingdas Jankidas Mohata, and as Karta of Hindu Undivided Family. The Council admits that along with the notice photo copy of the 7/12 extract of the land was enclosed along with the revenue map and the part development plan.

The Council contends that while the notice is issued by Madhavdas Jankidas Mohata, in the 7/12 extract of Gut 24, the name of Jankidas Narsingdas Mohata is recorded and in any event, no authority letter is produced. The Council contends that Narsingdas Jankidas Mohata is not either the owner or person interested in Gut 24, and axiomatically, the mandate of Section 127(1) of the MRTP Act, which is that the notice must be served by a person interested, is not fulfilled.

11. The Council then contends that inasmuch as the

statutory period of 24 months was over on 21.03.2019 and the petition is filed on 09.01.2022 there is inordinate delay which disentitles the petitioners to relief.

12. The petitioners have filed an affidavit in rejoinder dated 04.02.2023 and we may extract the relevant portion of the affidavit in rejoinder, which reads thus,

“2. It is submitted that the name of the HUF of the Petitioners is registered in the name of Jankidas Narsingdas Mohota, and the said name is present on the PAN Card of the HUF and therefore also reflected in the 7/12 extract as is contended in Paragraph 4(a) of the reply. It is further submitted that Shri. Madhavdas Jankidas Mohota was the Karta of the HUF till 23.04.2020. It is submitted that the names of the units of the HUF in Wardha were in the name of Narsingdas Janakidas Mohota, and therefore all the communication related to Wardha were in the name of Narsingdas Jankidas Mohota. It is submitted that it is admitted by the Respondent no.4 as well that the tax receipts in Wardha of the HUF are in the name of Narsingdas Jankidas Mohota. It is further pertinent to note that the reply by the Respondent no.4, to the notice u/s 127 of the act, for granting TDR, was issued in the name of Madhavdas Jankidas Mohota. It is submitted that the notice u/s 127 of the Act was also issued by Madhavdas Jankidas Mohota. It is therefore irrational for the Respondent no.4 to now submit that the notice 127 is not issued by the rightful person, when it was duly replied to by them, offering TDR instead. Therefore, it is submitted that the defense raised by the Respondent No.4 in the present petition is frivolous and misleading.”

13. The petitioners have then filed an additional affidavit dated 12.03.2022, and paragraphs 2 and 3 of the additional affidavit dated 12.03.2023, read thus,

“2. The Petitioners submit that Narsingdas Mohata is the common predecessor of the Petitioners, and all the interested persons in the land are already before this Hon’ble Court in the present petition. The Petitioners submit that Late Shri Narsingdas Mohata was succeeded by Lata Shri Jankidas Mohata, who in turn was succeeded by :-

- i) Late Shri. Madhavdas Mohata*
- ii) Late Shri. Krishnakumar Mohata*
- iii) Smt. Tarabai Wd/o Ratanlalji Bhattar*
- iv) Smt. Kamlabai Wd/o. Vishweshwarlal Daga*
- v) Smt. Vimalabai Wd/o Madanlal Jhawar.*

*The Petitioners submit that the issue regarding the ownership of the properties of the HUF named Narsingdas Mohta, was finally decided by way of a compromise entered in R.C.A. 75/2016 before the District Judge, Wardha, wherein above parties no (iii), (iv) and (v) relinquished their share in favour of the party no (i) and (ii) and their legal heirs. The shares of the properties, therefore, at the time fell in favour of the Petitioners No.1 to 4 and Smt. Shrikumari @ Kusumdevi Wd/o. Krishnakumar Mohota, who was the now deceased mother of Petitioners No.3 and 4. A copy of the application for compromise, compromise decree and order of compromise dated 26.10.2016 is hereby collectively annexed as **DOCUMENT No-I.***

3. The Petitioners submit that Petitioners No.1 and 2 are the successors of Late Shri. Madhavdas Mohata and Petitioners No.3 and 4 are the legal heirs of Late Shri. Krishnakumar Mohata, in whose favour and the favour of the legal heirs of such parties, the property

of HUF came to share of, by way of the compromise. The Petitioners therefore submit that all possible interested persons in the writ land are already before this Hon'ble Court seeking a declaration of lapse of reservation."

14. We did enquire from the learned Counsel Mr. Dhattrak whether the Council is desirous of rebutting the averments in the additional affidavit dated 12.03.2023, and in response, we were told that a rebuttal may not be necessary and the Council shall address us on the basis of the averments in the additional affidavit dated 12.03.2023.

15. The learned Counsel Mr. Dhattrak invites our attention to the schedule of property annexed with the deed of compromise on the basis of which Regular Civil Appeal 75/2016 came to be decreed on 27.10.2016, and in particular to the paragraphs 7(i) and (ii), we may reproduce paragraph 7 of the compromise decree verbatim :

*"7] Land bearing No.3037 Sheet No.19-A and B admeasuring about **4.10 Hectres** at Wardha on Wardha – Nagpur Road, Tah. & Dist. : Wardha. Out of the said land certain portion was already partitioned and thereafter certain portion was sold. The details of land already partitioned in 1974 and gone to the share of Smt. Kusumdevi alias Smt. Shreekumari Mohota are Municipal house No.217, 217/1 to 6, 221, 221/1 to 3, 219/3 and 219/4. Properties gone to the share of Shreekumar are Municipal house No.213,*

213/1 to 4, 309 (old No.), 216/1 to 7 and 210 and properties gone to the share of Sanjay are Municipal house Nos. 209 & 209/1 to 12, 212 & 212/1 to 5, 215 & 215/1-2 and 222 and hence now the remaining property is admeasuring about 6 acres only (and not 9 acres as described in item No.7 of schedule of the plaint). On the said land there is Ginning and Pressing Factory having 24 gins and one press, office, godown and residential house. The said property f 4.10 Hectre is bounded:

On West by Bachelor Road

On East by Wardha Anji Road

On North by Wardha Town

On South by Old Cotton Market (Presently Sabji Market)

(i) *In above property shop bearing Municipal House No.218, 219, 219/1 to 219/2 belong to Smt. Shreekumari alias Smt. Kusumdevi Mohota. However the same is in dispute for which appeal is pending in Wardha court against Sanjay Kumar. Said property will go to the party as per court decision.*

(ii) *In above property shop-cum-godown bearing Municipal House No.208, 301 (Old No.) belong to Shrikumar Mohota. However the same is in dispute for which appeal is pending in Wardha Court against Sanjaykumar Mohota. Said property will go to the party as per court decision."*

16. Having heard the learned Counsel Mr. Ghare and the learned Counsel Mr. Dhatrak, we have no hesitation in holding, that inasmuch as admittedly no step to acquire the subject land was taken by the Municipal Council within the statutory period, the deeming fiction under Section 127 of the MRTP Act is

triggered and comes into play, and the argument that the petition is delayed deserves to be noted only for rejection. If the deeming fiction of law is triggered, the inevitable consequence must follow. The notification then is reduced to a ministerial act, and the question of delay in such situation, just does not arise.

17. As regards, the submission of Mr. Dhattrak that the notice issued under Section 127 is vulnerable, and that the petitioners do not have share or interest in the subject land, we may note that such an objection appears to have been raised for the first time in the High Court. The Municipal Council responded to the statutory notice issued by offering TDR. Needless to observe, that the fact that the Municipal Council offered TDR presupposes, in the absence of any material to suggest the contrary, that the Council was satisfied that the persons issuing the notice did have interest in the subject land.

18. Even de hors the aspect supra, we are more than satisfied that the petitioners are persons interested. We have already noted that there is no rebuttal to the averments in the additional affidavit which traces the title of the petitioners. We further note that Clause 7 of the compromise decree on which Mr. Dhattrak placed reliance, does not refer to the entire land

which admeasurs 4.10 HR and the dispute *inter se* between one of the co-owners of the property and strangers appears to be qua some constructed portion sold as shop/s.

19. Mr. Dhattrak would invite our attention to the decision of the Coordinate Bench in the ***Writ Petition 6395/2012 (Smt. Sudha wd/o. Pawankuar Saraiya Vs. The State of Maharashtra and Ors.)*** and connected petitions and in particular to paragraphs 21 and 22 of the judgment which we may extract thus,

“21] Advocate Kale appearing for Municipal Council, Khamgaon has pointed out that an application under Section 37 of the MRTP Act 1966 for minor modification moved by petitioner on 17.05.2006 has been considered by General Body and on 30th May 2007 proposal has been sent to State Government through proper channel. They have also pointed out that in the meanwhile there was complaint by one Dadarao Barge about the ownership of said land. Municipal Council has pointed out that Dadarao Barge claimed title from Sarlabai Varangaonkar, whose heirs have served notice upon Municipal Council on 30th July 2012 under Section 127 of the MRTP Act 1966. The Municipal Council has stated that petitioner should have got revenue records corrected, and then issued notice under Section 127.

22] These facts show that there is some title dispute in relation to survey no.34/1. Notice under Section 127 can be given by a person who is either owner or interested in land. If such notice is given by person, whose title is in any way in dispute, it is obvious that grant of permission by the Municipal Council may create further complication. In any case, declaration

of de-reservation cannot take effect unless and until such notice is given by true owner or correct person. In this situation, no cognizance can be taken in the grievance made in Writ Petition no.4657/2013 at this stage. Said petition is accordingly liable to be rejected and is dismissed with no order as to costs.”

20. The decision cited takes the case of the Municipal Council no further. The observations which are extracted supra must be understood in the context of the fact that if the pending disputes were to be decided against the persons issuing the notice, the very title of the person issuing the notice would have been obliterated and as a sequitur he would have lost the status of “person interested”. In the present facts, we do not find that there is any dispute as regards the title of the petitioners, much less the existence of such dispute as would obliterate the status of petitioners as persons interested.

21. We do not see any impediment in holding that the deeming fiction under Section 127 of the MRTP Act stands triggered.

22. We allow the petition partly, and hold that the reservations 35A and 35B as regards Town Center/Hall stands lapsed.

23. We direct the State Government to issue an appropriate notification of lapsing of reservation in the official gazette within the next eight weeks.

24. The petition is allowed in the aforestated terms.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

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