



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

WRIT PETITION NO. 833 of 2023

M/s. Ankit Construction, through its Partner
Shri Kishor Kanhere, having its office at 30,
Ankit, Staff Irrigation Society, Trimurti Nagar,
Nagpur-440 022

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra, through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. Nagpur Improvement Trust, through its Chairman,
Station Road, Sadar, Nagpur-440 001.
3. Town Planning Department,
Nagpur Improvement Trust, through its
Assistant Director, Administrative Building No.1,
Civil Lines, Nagpur-Maharashtra-440 001.

..... **RESPONDENTS**

Shri P. V. Bawankule with Shri S. V. Purohit, Advocates for petitioner.
Shri Amit Madiwale, Assistant Government Pleader for respondent no. 1.
Shri K. P. Mahalle, Advocate for respondent nos.2 and 3.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 13th OCTOBER, 2023

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

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

2. The petitioner claims to be the owner of land bearing Survey
No.104/1 admeasuring 1 H 20 R situated at Patwari Halka No.39A at

Mouza - Manewada, Talsil Nagpur (Urban). The said land was shown reserved in the Development Plan of the City of Nagpur for Compost Depot (S-161). On 20.04.2015 the Nagpur Improvement Trust vide Resolution No.10/1146 resolved to exclude the said site from reservation and to include it in the residential zone. The State Government accepted the proposed amendment on 25.01.2016. However portion of the area owned by the petitioner continued to be shown as reserved. Notice dated 13.09.2017 came to be issued by the petitioner calling upon the Nagpur Improvement Trust to initiate the process of acquisition at the earliest or to abolish the reservation on the said land. Since there was no response to this notice, further communication dated 16.09.2018 came to be issued. Thereafter, the petitioner submitted its building plan on 05.10.2021 which came to be rejected on 29.11.2021 for the reason that the portion of the said land was shown to be reserved. It is in this backdrop that the petitioner has filed the present proceedings seeking a declaration that the aforesaid reservation has lapsed.

3. Shri K.P Mahalle, learned counsel for the respondent no.2-Nagpur Improvement Trust submitted that as required by Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, the Act of 1966) the documents indicating the petitioner's interest were not submitted alongwith the notice issued on 13.09.2017. Hence the said notice was not

liable to be accepted and no declaration as sought could be granted. In that regard, he sought to place reliance on the decisions in *Jignesh Amulakh Vora vs. Nashik Municipal Corporation and others* [2015 SCC Online Bom 661] and *Chinmay Gurunath Parale vs. State of Maharashtra*, through the Secretary, Urban Development Department and others [2023 SCC Online Bom 827] .

4. In reply, Shri P. V. Bawankule, learned counsel for the petitioner submits that by subsequent communication dated 30.11.2022 the documents of title were submitted to the Nagpur Improvement Trust. In the light of this communication, time was granted to the learned counsel for the Nagpur Improvement Trust to verify whether said communication dated 30.11.2022 was duly served upon the Nagpur Improvement Trust. On instructions, it is submitted that the said communication was received alongwith the annexures thereto.

5. We find that forwarding of the documents indicating the interest in land after for issuance of notice under Section 127 of the Act of 1966 is permissible in view of the decision of this Court in *Popat Kisan Mhaske and others vs. The Hon'ble Minister for Urban Development, State of Maharashtra and others* [2018 (2) Mh.L.J. 435]. Undisputedly, the statutory period of 24 months from service of notice under Section 127 of the Act of 1966 has elapsed and hence the statutory fiction contemplated therein

would take effect.

6. For aforesaid reason, the following order is passed:

(i) It is declared that the petitioner's land bearing Survey No.104/1 admeasuring 1 H 20 R situated at Patwari Halka No.39A at Mouza-Manewada, Talsil Nagpur (Urban) reserved for Compost Depot (S-161) stands released from reservation since the same has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

(ii) With a period of four weeks of receiving copy of this judgment, the respondent no.1 shall publish notification indicating the lapsing of the aforesaid reservation. In the meanwhile the petitioner is free to develop the said land in accordance with the development permitted at the adjoining land.

(iii) The communication dated 29.11.2021 issued by the Assistant Director, Town Planning, Nagpur Improvement Trust, Nagpur is quashed and set aside. The Nagpur Improvement Trust shall re-consider the petitioner's application dated 05.10.2021 for grant of building permission in accordance with law.

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

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.