



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

WRIT PETITION NO. 2808 OF 2018

1. ~~Smt. Sushilaben Wd/o Shanabhai Patel,~~
~~Aged about 78 years, (Dead. Deleted)~~Petitioners

2. Sunil S/o Shanabhai Patel,
Aged about 57 Years,

3. Rakesh S/o Shanabhai Patel,
Aged about 53 years,

4. Atul S/o Shanabhai Patel,
Aged about 47 years,

Petitioner nos.1, 2 and 4 through their
Constituted attorney – Petitioner no.3 –
Rakesh S/o Shanabhai Patel,

5. Smt. Jayashree Wd/o Sudhir Patel,
Aged about 64 years,

6. Smt. Hansa Wd/o Pankaj Patel,
Aged about 44 years,

7. Ms. Mahi Daughter of Pankaj Patel,
aged about 16 years,

8. Ms. Dhun D/o Pankaj Patel,
Aged about 14 years,

Petitioner nos. 7 and 8 thru. their natural
guardian mother petitioner no.6 – Smt.
Hansa Pankaj Patel.

9. Jinesh S/o Sudhir Patel,
Aged about 43 years, thru. their constituted
attorney – petitioner no.3 – Rakesh
Shanabhai Patel.

10. Ms. Rachana D/o Sudheer Patel,
Aged about 40 years, through her constituted
attorney Petitioner no.5 Smt. Jayshree Wd/o
Sudheer Patel
11. Smt. Taraben Wd/o Maganbhai Patel,
Aged about 78 years,
12. Nikul S/o Maganbhai Patel,
Aged about 57 years,
13. Paresh S/o Maganbhai Patel,
Aged about 59 years,

Petitioner nos.11 to 13 through their
constituted attorney – Rakesh Shanabhai
Patel
14. Ms. Ketki D/o Maganbhai Patel,
Aged about 55 years,
15. Ms. Leena D/o Maganbhai Patel,
Aged about 53 years,
16. Smt. Tara Wd/o Madhukarrao Bhadbhade,
Aged about 81 years, through her Constituted
attorney – Nikul Maganbhai Patel- Petitioner
no.12.
17. Jay S/o Rakesh Patel,
Aged about 22 years, through his constituted
attorney – petitioner no.3 – Rakesh
Shanabhai Patel,

All by Occupation – Business and cultivation
and residents of Babupeth, Chandrapur,
Tq. & Dist. Chandrapur.

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032.

....Respondents

2. The Municipal Corporation of
City of Chandrapur,
through its Commissioner/Planning Authority
Chandrapur, Tq. & Dist. Chandrapur.

Mr. Vishwajeet P. Sawant, Senior Advocate assisted by Mr. M.P. Khajanchi, Advocate for the petitioners.

Mr. Ambarish M. Joshi, A.G.P for respondent no.1

Mr. M. I. Dhattrak, Advocate for respondent no.2

**CORAM : SMT. ANUJA PRABHUDESSAI, AND
MRS. VRUSHALI V. JOSHI, JJ.
DATED : 19th DECEMBER, 2023.**

JUDGMENT : (PER: Mrs.Anuja Prabhudessai, J)

A pursis is filed stating that petitioner no.1 has expired. The name of the petitioner no.1 be deleted. Cause title be amended forthwith.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the respective parties.

3. Though, the petitioners have filed this petition seeking various reliefs, they have restricted the relief to prayer clause (a), wherein they have sought a declaration that reservation of land under survey Nos. 107/1 *cha*, 107/1 *chha*, 107/1 *ja*, 91, 26, 27, 107/60 A^a

and 107/60F^a2 of mouza Dewai Govindpur Raiyatwari, Tq. & Dist. Chandrapur, (hereinafter referred to as ‘the subject land’) has lapsed in view of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the MRTP Act”).

4. The petitioners claim to be the holders of the subject land, which is part of designated gaothan area of Chandrapur as per Sanctioned Notification, published by Chief Commissioner of Central Provinces and Berar vide Notification dated 17.09.1873. In the final Development Plan of Chandrapur, published under the Maharashtra Government Gazette dated 04.12.1997 and which came into force from 15.08.1997, different parts of the subject land were shown as reserved for different development purposes. The subject lands were neither acquired nor acquisition proceedings commenced within ten years from the date of final Development Plan came into force. Hence, the petitioners served purchase notices dated 07.04.2008 under Section 127 of the MRTP Act. The respondents did not take steps for acquisition within the statutory period of six months. Hence, the present petition for the relief as stated above.

5. The respondents claim that the petitioners, who claim to be the holders of the respective land, had not substantiated their contention by filing necessary documents. It is stated that on receipt of purchase notices under Section 127 of the MRTP Act, the respondents vide communication dated 19.04.2008 had called upon the petitioners to produce documentary evidence about ownership/ title as well as maps in respect of the said properties. The respondents claim that the petitioners have not identified their land, which is affected by reservation. It is further stated that 7/12 extracts indicate that the subject land is owned by Water Supply Department of Chandrapur and hence, the petitioners cannot claim lapsing of reservation.

6. Mr. V. P. Sawant, learned Senior counsel for the petitioners submits that the notice under Section 127 of the MRTP Act was issued prior to 2009 amendment and as such the petitioners were not required to annex the documents along with the notice. He further submits that there is no dispute about identity of the land affected by reservation. He submits that the respondents having failed to take effective steps towards acquisition, the reservation is deemed to have

lapsed. He has relied upon the decision of the Apex Court in *Municipal Council of Greater Bombay .vs. Dr. Hakimwadi Tenants' Association and others*, reported at *1988 Supp SCC 55* and the decisions of the Division Bench of this Court in *Hirabai W/o Shrikrishna Chiddarwar .vs. State of Maharashtra and another*, reported at *2016 (4) Mh.L.J. 283*, *Hasina Kudbuddin Shaikh and others .vs. Karad Municipal Council and others*, reported at *2019(1) Mh.L.J. 126* and *Chinmay Gurunath Parale .vs. State of Maharashtra*, reported at *2023(5) Mh.L.J. 656*.

7. Per contra, learned counsel for the respondent-Corporation submits that the petitioners have failed to produce the documents to substantiate that they have right, title or interest in the subject lands. He submits that the survey records reveal that the subject lands are recorded in the name of Water Supply Department of Chandrapur. He further contends that the petitioners have no right to issue notice under Section 127 of the MRTP Act and/or claim lapsing of reservation.

8. We have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. The challenge to the prayers in writ petition is essentially on the ground that the petitioners had not furnished the documents along with the notice and had not submitted a plan to identify the land affected by reservation. It is pertinent to note that the notice under Section 127 of the MRTP Act was issued prior to the amendment published on 25.06.2009. Hence, it would be relevant to consider the provision of Section 127(1) of the MRTP Act as it then existed on Statute Book prior to the amendment. The said section reads thus -

"127. (1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development or otherwise, permissible in the case of adjacent land under the relevant plan."

10. In terms of Section 127(1) of MRTP Act, as it stood prior to the amendment, the owner or a person interested in the land was required to serve a notice on the Planning Authority or the Appropriate Authority, if the land is not acquired within ten years from the date on which the Regional development plan or the final Development plan had come into force and in the event the Planning or the Appropriate Authority does not take any step for acquisition of the land, the reservation, allotment or designation of the land shall be deemed to have lapsed. Section 127(1) as it stood prior to the amendment, the owner or a person interested in the said land was not required to furnish the documents showing their title or interest in respect of the land under reservation.

11. In *Municipal Council of Greater Bombay .vs. Dr. Hakimwadi Tenants' Association (supra)*, the Corporation had asked for information regarding the ownership of the land under the particulars of the tenants thereof. The letters stated that the relevant date under Section 127 of the MRTP Act would be the date upon which the said information was received. The Apex Court observed that the condition pre-requisite for the running of time under Section

127 of the MRTP Act is the service of a valid purchase notice. It is further observed that the Corporation must be satisfied that the notice served was by the owner of the affected land or any other person interested in the land. But, at the same time, Section 127 of the MRTP Act does not contemplate an investigation into the title by the officers of the Planning Authority, nor can the officers prevent the running of time, if there is a valid notice. The Apex Court has held that the Corporation was not justified in seeking information regarding the title and ownership as it had requisite information in their records and had access to all land records including the records of cadastral survey. It was observed that seeking such information/documents was only an attempt to prevent the running of time and was of little or no consequence.

12. The Division Bench of this Court in *Hiralal Chiddarwar* (supra) has also observed that the unamended provisions of Section 127(1) of the MRTP Act did not require the owner or person interested in the land to serve a notice along with the documents. Similar view is taken in *Chinmay Gurunath Parale* (supra), wherein it is reiterated that not furnishing the requisite documents together with purchase notice does not render the purchase notice invalid.

13. In the instant case, the petitioners, who claimed to be the holders of the subject lands, had issued purchase notice giving details of the property affected by reservation. The respondent Corporation, who has access to revenue records, has raised a dispute regarding the title solely on the ground that part of the subject land is recorded in the Survey records in the name of Water Supply Department of Chandrapur and Sarvodaya Shikshan Mandal, Chandrapur. Learned counsel for the respondent-Corporation fairly concedes that the land acquired by Water Supply Department and/or the land recorded in the Survey records in the name of Water Supply Department of Chandrapur and Sarvodaya Shikshan Mandal, Chandrapur, is not affected by reservation. Furthermore, a perusal of the reply filed by the respondent-Corporation also reveals that there was no dispute regarding identity of the land, which is affected by reservation. In such circumstances, non-production of the plan or not submitting the documents would not render the purchase notice invalid.

14. The affidavit-in-reply filed by respondent no.1 reveals that pursuant to the receipt of the purchase notice, the State Government vide letter dated 28.04.2018 had called upon the respondent no.2

Corporation as well as Director of Town Planning, Maharashtra, Pune and Chandrapur to submit the report. It is stated that no such report was furnished by the said authorities. It is also not in dispute that no effective steps were taken within a period of six months for acquisition of land affected by reservation. This being the position, by virtue of provision of Section 127 of the MRTP Act, the reservation of the land shall be deemed to have lapsed and as held by the Apex Court in *Dr. Hakimwadi Tenants' Association* (supra), the delay in filing the petition would make no difference.

15. Under the circumstances and in view of the reasons stated above, the petition is allowed in terms of prayer clause (a).

It is held that the reservation of the subject land has lapsed and the said land stands released from reservation and is available to the petitioners for development as it is permissible in case of the adjacent land as per the Development Plan.

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

[MRS.VRUSHALI V. JOSHI, J.] [SMT. ANUJA PRABHUDESSAI J.]