



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

CIVIL APPLICATION (W) NO.3060 OF 2023

[Kishor Motiramji Bhagat and Anr. **..V/s..** The State of
Maharashtra and Anr.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
order
and Registrar's orders.*

Court's or Judge's

Mr Mohd. Atteque, Advocate for Petitioners.
Mr N. H. Joshi, AGP for Respondent No.1/State.
Mr M. I. Dhattrak, Advocate for Respondent No.2.

CORAM : A. S. CHANDURKAR AND ABHAY J. MANTRI, JJ.

DATE : 23rd OCTOBER, 2023.

1. Heard the learned counsel and perused the reply.
2. The amendment as prayed for is granted. The same be carried out accordingly.
3. The civil application is disposed of.

WRIT PETITION NO.2119 OF 2023

4. **Rule.** Rule made returnable forthwith and heard learned counsel for the parties.
5. The petitioners claim to be owners of field bearing survey No.397, Mouza Warud, District Amravati admeasuring about 0.52 R. The said land was shown to be reserved for the purpose of parking in the final Development Plan of Warud City that came into force on 16.07.2007. On completion of ten years, the petitioners issued notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, "Act of 1966") on 13.12.2017 calling upon Municipal Council, Amravati to

acquire the said land for the purpose for which it was reserved. There being no response to the aforesaid notice and as no steps were taken for acquiring the said land, the petitioners have approached this Court by filing the present writ petition.

6. We have heard the learned counsel for the parties and we have perused the documents on record. The objection raised by the learned counsel for the Municipal Council to the prayers made in the writ petition are that firstly the notice issued under Section 127 of the Act of 1966 was not accompanied by the documents to indicate the interest of the petitioners in the said land. On this basis it was submitted that the notice was not valid for being acted upon by the Municipal Council. The second objection raised is that the petitioners themselves did not issue the said notice but the same was issued by their learned counsel. Placing reliance on the judgment of the Full Bench in **Madanlal Zumberlal Nahar and Ors. vs. Chief Officer, Municipal Council, Beed and Ors**, reported in **2023(2) Mh.L.J. 618**, it is submitted that in absence of any valid notice being issued, the provisions of Section 127 of the Act of 1966 were not attracted.

7. The learned counsel for the petitioners has invited attention to the judgment of the Division Bench in **Arvindbabu Deshmukh Pratishthan and Anr. vs. State of Maharashtra and Anr. (Writ Petition No.5909 of 2018)** dated 26.07.2019 to contend that merely because documents indicating interest were not annexed to the notice, same would not make it illegal. The Municipal Council itself had proceeded to pass a Resolution on 30.08.2018 and in the said Resolution it was indicated that the matter was being considered in view of such notice. The documents indicating

interest of the petitioners were not demanded by the Municipal Council. Hence the notice issued to the Municipal Council was liable to be accepted.

8. As regards the validity of the notice in question, we find that on behalf of the petitioners the same has been issued by their learned counsel. It has been stated therein that it is based on the instructions as received. It is only the petitioners who can object to the issuance of said notice if the same is issued without their consent. Since it is specifically mentioned therein that the same was issued at the behest of the petitioners, there is no reason to doubt the same.

As regards the absence of the documents of interest along with the said notice, we find that the validity of the notice would have to be considered on the basis of all surrounding circumstances including the steps taken by the Municipal Council. In this regard, when the Resolution dated 30.08.2018 bearing No.76 is perused, it becomes clear that the said issue was taken up in view of the notice received by the Municipal Council. It was resolved that further steps were required to be taken by demanding funds from the State Government. It indicates that the Municipal Council acted on the said notice by treating it as a valid notice. In this regard, reference can be made to the observations in paragraph 18 of the decision in Arvindbabu Deshmukh Pratishthan (supra) :

"18. *It is true that the notice under Section 127 of M.R.T.P. Act is required to be accompanied by documents of title to the land. From the notices shown to us, we do not find such documents annexed thereto to those notices. However, we feel that this lacunae is condoned by the Municipal Council. The reason is simple. Immediately after such notice or after sometime, the Council has taken either of the*

decisions. So we do not find any merit in that objection."

As regards the judgment of the Full Bench in Madanlal Zumberlal Nahar (supra), there can be no quarrel with the proposition that the notice under Section 127 has to be a valid notice. However, the issue as regards its validity will have to be determined on the basis of facts of the case. In the present case we find that the said notice is valid for being acted upon.

9. In view of aforesaid, since the statutory period of twenty-four months has lapsed after service of notice under Section 127 of the Act of 1966, the statutory fiction indicated in Section 127(1) would operate. It is accordingly declared that the reservation of land bearing survey No.397 to the extent of 0.52 R located at Mouza Warud, District Amravati stands lapsed under Section 127(1) of the Act of 1966. We direct the respondent No.1 to issue Notification indicating lapsing of the said reservation within a period of eight weeks from the date of receipt of this order. The petitioners are free to develop the land in accordance with the purpose for which such development is permissible at the adjoining land. Rule is made absolute in above terms.

(ABHAY J. MANTRI, J.) (A. S. CHANDURKAR, J.)