

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

WRIT PETITION NO.2396 of 2023

Shyamkumar Gokuldas Rathi, and two others.

..PETITIONERS

vs.

The State of Maharashtra, through the Secretary Urban Development Department,
Mantralaya, Mumbai and three others.

..RESPONDENTS

Shri G.K.Mundhada, Advocate for petitioners.

Ms S.S.Jachak, Assitant Government Pleader for respondent nos. 1 to 3.

Shri Atul Pathak, Advocate for respondent no.4.

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

DATE :- 13th JUNE, 2023

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

2. The petitioner no.1 is the owner of land bearing Survey No.171 admeasuring 3 H 45 R of Mouza-Malkapur, Tq. Malkapur, District Buldhana. In the revised development plan of the City of Malkapur the aforesaid land was shown as reserved for Garden vide Reservation No.41, Playground vide Reservation No.45, Primary School and Playground vide Reservation No.49 as well as thirty meter DP Road. Since the aforesaid land was not acquired for the purpose for which it was reserved in the development plan, the petitioner no.1 on 21.12.2020 issued notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, the Act of 1966). Despite expiry of period of twenty four months, no steps were taken by the Planning Authority to acquire the aforesaid land. Thereafter on 16.02.2023 the petitioner no.1 sold land admeasuring 1 H 09 R to the petitioner no.2 and land admeasuring 1 H 10 R to the petitioner no.3.

In the aforesaid backdrop the petitioners seek a declaration that the reservation of the aforesaid land has lapsed under Section 127 of the Act of 1966.

3. In the affidavit in reply filed by the respondent no.4 receipt of the notice under Section 127 of the Act of 1966 has been admitted. It

has been further stated that the financial position of the Municipal Council is not sound and hence the requisite amount for acquiring the said land was not deposited with the State Government.

4. After hearing the learned counsel for the parties and after perusing the documents on record, it is clear that the notice issued under Section 127 dated 21.12.2020 was received by the Municipal Council on 23.12.2020. Within a period of twenty four months, no steps towards acquisition of the said land were taken by the Municipal Council. As a result, the deeming fiction under Section 127 of the Act of 1966 would operate.

5. Insofar as sale of land by the petitioner no.1 in favour of the petitioner nos 2 and 3 is concerned, it is clear that the petitioner nos. 2 and 3 would step into the shoes of the petitioner no.1 and can maintain the present proceedings. In absence of any steps being taken towards acquisition of the land in question, the provisions of Section 127 of the Act of 1966 would operate.

6. In view of aforesaid, the following order is passed:

(i) It is declared that reservation of land bearing Survey No.171 admeasuring 3 H 45 R of Mouza-Malkapur, Tq. Malkapur, District Buldhana stands lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

(ii) The respondent no.2 shall within a period of eight weeks issue notification intimating lapsing of the aforesaid reservation.

(iii) The petitioner nos. 2 and 3 are free to develop the land in question in the manner permissible for the adjacent land as per the development plan.

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