



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

WRIT PETITION NO. 3585 OF 2022

- PETITIONERS** : 1. Vivek Shankarrao Mamidwar,
Aged about 52 years, Occu.
Business, R/o Factory Ward,
Umerkhed, Taluka Umerkhed,
District Yavatmal.
2. Bhagwan Shyamrao Shinde,
Aged about 60 years, Occ:-
Farmer, R/o Post Umerkhed,
Taluka Umerkhed, District
Yavatmal, Karodi Road, Ultarwar
Nagar, Umarkhed, Dist:- Yavatmal

//VERSUS//

- RESPONDENTS** : 1. State of Maharashtra, through
Principal Secretary Department
of Urban Development Mantralaya
Mumbai.
2. Assistant Director Town Planning
Yavatmal Administrative Building,
Yavatmal, District Yavatmal
3. Divisional Director,
Regional Town Planning Office
Congress Nagar, Amravati
4. Chief Officer, Nagar- Parishad
Umarkhed, Taluka – Umarkhed,
District Yavatmal
5. District Collector, Collectorate
Office, District Yavatmal

Mr. Amit M. Kukday, Advocate for the petitioners.
Mr A.H. Joshi, AGP for State.
Mr. Kalyan Chiwalkar, Advocate h/f Mr. Anand Parchure, Advocate for respondent No.4.

CORAM : SMT. ANUJA PRABHUDESSAI AND
MRS. VRUSHALI V. JOSHI, J.J.
DATED : NOVEMBER 28, 2023.

ORAL JUDGMENT (PER:-SMT. ANUJA PRABHUDESSAI, J.)

Heard.

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

3. By this petition under Article 226 of the Constitution of India petitioners seek the following relief in the prayer clause (a) and (b) as under:-

“(a) Issue a writ of mandamus or any other appropriate writ or order or direction in the nature of mandamus to declare that the reservation bearing no.33 for shopping complex and stadium over the petitioners land bearing Survey No.4/1/7 (Old 4/1), admeasuring 0.47 Hr, Mouza Umarkhed Khand -1 Taluka

Umarkhed District Yavatmal as deemed to have been lapsed and the said land is released for the reservation;

(b) Issue a writ of mandamus or any other appropriate writ or order or direction and direct the respondents to permit the petitioners to develop the said land as permissible under the law.”

4. The petitioners are the owners of land under Survey No. No.4/1/7 (Old 4/1), admeasuring 0.47 situated at Umarkhed Khand -1 which is reserved under reservation No.33 for shopping centre and stadium. Since the respondents failed to acquire the land within a period of 10 years, the petitioners issued purchase notice dated 25.09.2018 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short M.R.T.P. Act) calling upon the respondents to acquire the land. On receipt of the said notice, the Assistant Director Town Planning, Amravati vide correspondence dated 10.10.2018 informed the Chief Executive Officer, Nagar Parishad, Umarkhed that the land needs to be acquired within a period of 24 months failing which the reservation would lapse. The Chief Executive Officer, Nagar Parishad, Umarkhed by letter dated 11.02.2019 informed the Collector that the Committee has approved acquisition of the said land, which is reserved for shopping complex and stadium. The

Chief Executive Officer, Nagar Parishad Umarkhed also informed the Collector, Yavatmal, that all the relevant documents and the plan were annexed to the purchase notice.

5. The respondents failed to take steps towards acquisition within the time limit of two years. The petitioners, therefore, filed this petition seeking a declaration that the reservation is deemed to have lapsed.

6. The respondents have challenged the validity of purchase notice under Section 127 of the M.R.T.P. Act on the ground that the same was issued by an advocate. The respondents also claimed that the purchase notice was defective inasmuch as it was not accompanied by the relevant title documents.

7. It is pertinent to note that the Division Bench of this Court in Writ Petition No.8031 of 2018 has held that Sections 29 and 32 of the Advocates Act gives authority to an advocate to represent his client in legal proceedings. It is held that the notice under Section 127 of M.R.T.P. Act is one of the steps of the legal proceedings, where an advocate can represent his client. The issue raised by the respondents is, therefore, squarely covered by the

decision of the Co-ordinate Bench of this Court and the said decision is binding on this Court on the principle of judicial comity.

8. As regards the second objection, the internal correspondence dated 11.02.2019 between the Chief Executive Officer, Nagar Parishad, Umarkhed and Collector, Yavatmal clearly indicates that all the relevant documents including the plan were annexed to the purchase notice. In such circumstances, the second objection is also not sustainable.

9. The respondents have failed to acquire the land within 10 years from the date of final development plan came into force. The respondents have also failed to take steps to acquire the land within 24 months from the date of receipt of the purchase notice, leading to lapsing of the reservation.

10. In the result, the petition is allowed in terms of prayer clause (a) and (b). The State Government is directed to notify the lapsing of the reservation by an order to be published in the official gazette as per the requirement of Section 127 (2) of the M.R.T.P. Act within a period of three months from the date of this order.

11. Rule is made absolute in above terms. No costs.

(VRUSHALI V.JOSHI,J.)

(ANUJA PRABHUDESSAI,J)

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