



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

WRIT PETITION NO. 4002 OF 2023

- 1) Sau. Saroj Rameshrao Yerawar,
Age 74 years, Occupation – Household,
- 2) Rajesh Rameshrao Yerawar,
Age 55 years, Occupation – Business,
- 3) Sanjay Rameshrao Yerawar,
Age 50 years, Occupation – Business,
- 4) Adweta Shekharrao Gundawar,
Age 53 years, Occupation – Household,
- 5) Bharati Dhanajay Nalbalwar,
Age 51 years, Occupation – Household,
- 6) Sandip Rameshrao Yerawar,
Age 48 years, Occupation – Business,

All petitioner Nos. 1 to 6 are
R/o Sai Prasad, SBI Road, Near HP
Petrol Pump, Yavatmal-445001, Tq.
and District Yavatmal.

.... **PETITIONERS**

VERSUS

- 1) The State of Maharashtra,
through the Secretary, Urban
Development Department,
Mantralaya, Mumbai.
- 2) The Director of Town Planning,
State of Maharashtra, Central
Building, Pune.
- 3) The Municipal Council (M.C.)/
Nagar Parishad, Yavatmal, through
its Chief Officer, Yavatmal, District
Yavatmal.

.... **RESPONDENTS**

Mr. G.K. Mundhada, Counsel for the petitioners,
Ms. N.P. Mehta, Addl. G.P. for respondent Nos. 1 and 2,
Mr. P.P. Deshmukh, Counsel for respondent No.3.

CORAM : A.S. CHANDURKAR
& ABHAY J. MANTRI, JJ.
DATED : 23rd OCTOBER, 2023

ORAL JUDGMENT : (PER: Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the parties.

2. By filing this petition, the petitioners are seeking a relief of declaration that the land owned by them shall be deemed to have lapsed under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (referred as to the '*MRTPA Act*').

3. The petitioners are the owners of land Survey No.101/1/A/part, area admeasuring 0.54 HR. and 0.53 HR., total admeasuring 1 H. 07 R. of Mouza-Yavatmal, Tahsil, and District Yavatmal. The Revised Development Plan was sanctioned by the State Government vide notification dated 08-7-1998, which came into force on 04-9-1998. The said land has been shown to be

reserved for a garden vide Resolution No.16.

4. Since then, no step for acquisition of said land has been initiated by respondent No.3-Council, therefore, on 12-11-2020 purchase notice under Section 127 of the MRTP Act was issued to respondent No.3-Council. The said purchase notice was served on respondent No.3-Council. In pursuance of the said notice, respondent No.3-Council issued a communication dated 10-5-2023 to the petitioners asking them to submit the documents of ownership of the land. Accordingly, the petitioners submitted the documents of ownership on 25-5-2023. Thereafter the discussion about compensation in the form of TDR was made by respondent No.3-Council in the meeting dated 25-5-2023. However, vide communication dated 29-5-2023 the petitioners informed respondent No.3-Council that they are not interested in accepting the compensation in the form of TDR and requested to acquire the land as per the prevailing market value.

5. On 08-6-2023 respondent No.3-Council informed the petitioners that respondent No.3 was unable to purchase the land due to their weak financial condition and, therefore, the said land

could not be acquired. Despite service of purchase notice dated 12-11-2020 respondent No.3-Council failed to comply with the same nor acquired the said land and, therefore, the petitioners have preferred this writ petition seeking a declaration as prayed.

6. Respondent No.3-Council has filed his reply thereby raising a preliminary objection and vaguely contending that the petitioners have not approached this Court with clean hands. It is pertinent to note that respondent No.3-Council has not disputed the averments made by the petitioners in the petition regarding the issuance of notice, then about the meeting and other things. But respondent No.3-Council fairly admitted that due to weak financial condition, respondent No.3-Council could not acquire the land in time. However, respondent No.3-Council has prayed for the dismissal of the petition.

7. Having considered the record and documents, at the outset, it seems that the petitioners are the owners of the land, vide notification dated 08-7-1998 the said land was shown to be reserved for a garden vide Resolution No.16. However, as per the provisions of Section 126 of the MRTP Act, respondent No.3-

Council has failed to take steps for acquisition of the said land. Therefore, the purchase notice dated 12-11-2020 under Section 127 of the MRTP Act was issued by the petitioners seeking a relief of declaration that the land owned by them shall be deemed to have lapsed. The said purchase notice was not complied with by respondent No.3-Council within a period of twenty-four months. Per contra, it seems that respondent No.3-Council has admitted the fact that they failed to comply with the purchase notice and stated that due to weak financial condition, they could not acquire the said land.

8. The petitioners in support of their contention have relied on the dictum laid down by the Full Bench of this Court in the case of *Shri Vinayak Builders & Developers v. State of Maharashtra, Nagpur Municipal Corporation, Assistant Director, Urban Town Planning Department* reported in *2022 4 Mh.L.J. 739* “that mere approval of the request of the land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by itself will not always result in a concluded contract and the question would have to be determined in the facts and circumstances of each case and, therefore, the land

owner can withdraw his request and refuse or decline to surrender the land as long as there is not concluded contract between the parties.” In the present petition, the petitioners declined to accept the compensation in the form of TDR. Therefore, as per the dictum laid down by the Full Bench in the case of ***Shri Vinayak Builders & Developers*** (supra), the land owners can withdraw their request and, therefore, as per Section 127 of the MRTP Act, the petitioners are entitled to the relief as prayed.

9. In view of the aforesaid discussion, averments made in the petition, and the dictum laid down by the Full Bench of this Court in the case of ***Shri Vinayak Builders & Developers*** (supra), we are of the opinion that respondent No.3-Council has failed to comply with the provisions of Sections 126 and 127 of the MRTP Act and, therefore, the petitioners are entitled to seek the relief of declaration that the land owned by them shall be deemed to have lapsed under Section 127 of the MRTP Act.

10. Thus, the writ petition is allowed. It is declared that the reservation at Serial No.16 affects land Survey

No.101/1/A/part, area admeasuring 0.54 HR. and 0.53 HR. total area admeasuring 1 H. 07 R. of Mouza-Yavatmal, Tahsil, and District Yavatmal stands lapsed under Section 127 of the MRTP Act. Within a period of eight weeks from today respondent No.2 to issue a notification indicating the lapsing of the reservation. The petitioners are free to develop the land in accordance with the purpose for which the development of the adjoining land is permissible.

11. Rule is made absolute in the above terms with no order as to costs.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)

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