



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

WRIT PETITION NO. 4111/2023

Rajendra Purushottam Agrawal,
Age 63 years, Occupation – Business,
R/o Madhuban Society, Dhamangaon
Road, Yavatmal, Tq. & Dist. Yavatmal.

... **PETITIONER**

- 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 petitioner,
Ms. N.P. Mehta, Additional 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.**
DATE : 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 petitioner is seeking a relief of declaration that the land owned by him 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 petitioner is the owner of Plot No.4, Sheet No.44, area admeasuring 10000 square meters 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 plot has been shown to be reserved for a playground vide Resolution No.14.

4. Since then, no step for acquisition of said plot has been initiated by respondent No.3-Council, therefore, on

23-10-2020 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 on 12-11-2020. In pursuance of the said notice, respondent No.3-Council issued a communication dated 10-5-2023 to the petitioner asking him to submit the documents of ownership of the plot. Accordingly, the petitioner 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 petitioner informed respondent No.3-Council that he is not interested in accepting the compensation in the form of TDR and requested to acquire the plot as per the prevailing market value.

5. On 08-6-2023 respondent No.3-Council informed the petitioner that respondent No.3 was unable to purchase the plot due to their weak financial condition and, therefore, the said plot could not be acquired. Despite service of purchase notice dated 23-10-2020 respondent No.3-Council failed to

comply with the same nor acquired the said plot and, therefore, the petitioner has 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 petitioner has 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 petitioner 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 plot 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 petitioner is the owner of the plot, vide notification dated 08-7-1998 the said plot was shown to be reserved for playground vide Resolution No.14. 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 plot. Therefore, the purchase notice dated 23-10-2020 under Section 127 of the MRTP Act was issued by the petitioner seeking a relief of declaration that the plot owned by him 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 plot.

8. The petitioner in support of his contention has 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 petitioner 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 owner can withdraw his request and, therefore, as per Section 127 of the MRTP Act, the petitioner is 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 petitioner is entitled to seek the relief of declaration that the plot owned by him 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.14 affecting land bearing Sheet No.44, Plot No.4, area admeasuring 10000 square meters 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 petitioner is free to develop the land in accordance with the purpose for which the development of the adjoining plot is permissible.

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

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)