

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

WRIT PETITION NO. 4508 OF 2022

Smt. Mangala Vijayrao Upase
Aged 59 years, Occ. Service,
R/o Yatra Chowk, Near Shrinivas
Talkies, Akot Tah. Akot Distt. Akola.

..... **PETITIONER**

...V E R S U S...

(1) Municipal Council, Akot through
its Chief Officer, having office at
Municipal Council, Anjangaon Road
Akot, Maharashtra 444101.
Dist. Akola.

(2) Town Planning Officer,
Municipal Council Akot, having
office at Anjangaon Road, Akot,
Maharashtra 444101.
Dist. Akola.

(3) State of Maharashtra, through
Principal Secretary, Urban
Development Department,
Mantralaya, Mumbai – 400032.

..... **RESPONDENTS**

Mr. U. J. Deshpande, Advocate for the petitioner
Mr. M. I. Dhatrak, Advocate for respondent 1
Mr. M. K. Pathan, A.G.P for the State/respondent 3

CORAM : ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 01-03-2023

ORAL JUDGMENT (PER : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally with

consent of learned counsel appearing for the parties.

2. Petitioner is seeking a declaration that the reservation qua Vegetable Market (Reservation 50) in the proposed revised development scheme stands lapsed in view of the deeming fiction of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act).

3. Facts lie in a narrow compass and are, broadly, undisputed.

4. Petitioner is the owner of Survey 548 (subject land). The subject land was owned by Mr. Bhaskarrao Upase, who expired on 1-4-2011. The names of the legal heirs of deceased Mr. Bhaskarrao Upase were mutated vide entry recorded on 30-10-2015. Petitioner is the wife of one of the legal heirs Mr. Vijay Upase, who also expired on 19-11-2015, with the result that the names of the legal heirs including the petitioner of deceased of Mr. Vijay Upase were brought on record vide entry dated 5-1-2016.

5. The petitioner contends that the final development plan for Akot Town came into effect from 20-9-1976. Later on, the development plan for the extended area of Municipal Council, Akot

came into force on 1-7-1985 in which the subject land admeasuring 0.51R was shown reserved for the purpose of 'Library and Play Ground' vide Reservation 54.

6. The development plan was revised with effect from 26-4-1994 in which the subject land was shown reserved again for 'Primary School and Play Ground' vide Reservation 55B.

7. The petitioner submits that no efforts were taken by respondent 1 - Municipal Council, Akot to acquire the reserved land. The then owner, the father-in-law of the petitioner, Mr. Bhaskarrao Upase issued notice to the planning authority under Section 127 of the MRTP Act. However, in the proposed draft development scheme published under Section 26(1) of the MRTP Act on 7-12-2016, the subject land is again shown as reserved for 'Vegetable Market' vide Reservation 50. According to the petitioner, one of the co-owners of the subject land objected to the proposed revised development scheme pointing out to the Town Planning Authority that in view of the purchase notice dated 13-3-2008 issued under Section 127 of the MRTP Act, the reservation stands lapsed. The objection filed on 2-1-2017 was, however, overruled.

8. The petitioner again issued communication-cum-notice dated 14-5-2019 to respondent 1 – Municipal Council calling upon the planning authority to issue necessary order of lapsing of reservation and sanctioning the map submitted by the petitioner.

9. According to the petitioner, the Town Planning Authority heard the stakeholders and then called upon the planning authority to take necessary action for bringing the factum of lapsing to the notice of the Government and to seek deletion of Reservation 50. The Town Planning Authority reiterated the direction on 31-12-2019. Since no decision was taken by the planning authority, the petitioner submitted lay out plan for sanction. In response, the planning authority sought guidance from the Town Planning Authority vide communication dated 4-5-2020. The Town Planning Authority asked the planning authority to take action in accordance with the earlier advice-cum-direction of the Town Planning Authority.

10. The petitioner contends that in as much as the planning authority did not take any step to acquire the subject land, the deeming fiction under Section 127 comes into play.

11. The planning authority has filed affidavit in response

dated 16-2-2023. The stand of the planning authority is that the claim under Section 127(1) is hit by delay. The other contention is that since the objection raised by the co-owner of the subject land to the draft scheme was rejected, and the rejection has assumed finality, the petitioner is estopped from claiming that the reservation has lapsed. The final contention appears to be that since the subject land is again reserved under the new development plan, the prayer is premature and the petitioner is obligated to wait for the statutory period which shall run only after the subject land is shown reserved in the modified plan.

12. We do not see any substance in any of the contentions raised in the affidavit in response filed on behalf of the planning authority. It is not in dispute that the purchase notice was issued and received, that despite of the lapse of statutorily prescribed period, no step is taken to acquire the land and, therefore, the legal fiction has come into play. The question of an estoppel operating just does not arise. We do not find that there is any delay as such. In any event, since the legal fiction stands triggered, there is no option available with the respondents but to issue statutorily prescribed notification of lapsing. We may note that lapsing does not depend on the issuance of notification as such. The moment the legal fiction comes into play,

the petitioner becomes entitled to use the subject land in accordance with the purpose for which the adjoining/adjacent land can be used in accordance with the building rules and regulations.

13. We may note that the reservation of the subject land in the subsequent development plan takes the case of the planning authority no further. The issue is considered by the coordinate Bench in *Vinodkumar s/o Shirvishnu Toshniwal and ors. Vs. State of Maharashtra and others [2023(1) Mh.L.J. 182]*. We respectfully agree with the reasons recorded in the said decision.

14. Learned counsel Mr. Dhattrak did invite our attention to the decision of the Hon'ble Apex Court in *Dr. Abraham Patani of Mumbai and another Vs. State of Maharashtra and others [2022 SCC OnLine SC 1143]*. However, having given due consideration to the factual matrix in the said decision, we are of the considered view that the ratio of the said decision has no bearing on the issue involved.

15. We therefore, allow the petition in terms of prayer clause (a) which reads thus :

(a) issue appropriate writ, order or direction in the nature of writ and hold and declared that, the reservation as against the land owned by the petitioner bearing Survey 548 situated

at Tahsil Akot for the public purpose viz. 'Vegetable Market' which is marked/reserved as Reservation 50 in the proposed revised Development Scheme has been lapsed by operation of law under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 in view of notice dated 13/06/2008 (Annexure-E) and in the light of letter dated 12/12/19 issued by the Joint Director of Town Planning, Amravati Division, Amravati (Annexure-L).

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

wasnik,