

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

WRIT PETITION NO. 5865 OF 2022

- 1) Smt. Jaibai w/o Late Shri Vilas
Karkade, Aged 62 years,
Occupation – Homemaker,
R/o Subhash Nagar, Nagpur Road,
Infront of Union Bank, Mul,
Taluka – Mul, District – Chandrapur.
- 2) Smt. Bharti w/o Sudhir Sahare,
Aged 43 years, Occupation – Business,
R/o Subhash Nagar, Nagpur Road,
Infront of Union Bank, Mul,
Taluka – Mul, District – Chandrapur.
- 3) Sachin s/o Late Shri Vilas Karkade,
Aged 42 years, Occupation – Service,
R/o Subhash Nagar, Nagpur Road,
Infront of Union Bank, Mul,
Taluka – Mul, District – Chandrapur.
- 4) Smt. Rupa w/o Sudhakar Madhai,
Aged 39 years,
Occupation – Homemaker,
Pramukh Vihar-Bliss, Flat No.502,
Ultan Faliya Road, Silvassa,
Dadra & Nagar Haveli – 396230.

.... **PETITIONERS**

VERSUS

- 1) State of Maharashtra,
Department of Urban Development,
Mantralaya, Mumbai, through its
Secretary.

2) Assistant Director of Town Planning,
Nagar Rachna Prashaskiya Bhavan,
Second Floor, Room No.24,
Near Bus Stand, Chandrapur,
Email – tp_chandrapur@rediffmail.com

3) Municipal Council,
Mul, District – Chandrapur,
through its Chief Officer,
Email – mcmul220356@gmail.com

.... **RESPONDENTS**

Mr. Avinash Y. Kapgate, Counsel for the petitioners,
Mrs. Kalyani Deshpande, AGP for respondents 1 and 2,
Mr. M.V. Bute, Counsel for respondent 3.

CORAM : ROHIT B. DEO & MR. ANIL L. PANSARE, JJ.
DATED : 26th JULY, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. The petitioners are seeking a declaration that the reservation as regards the land assigned Survey 84, admeasuring 91 R. situated at Mouza-Rampur (Tukum), Mul, Taluka-Mul, District-Chandrapur has lapsed in view of the deeming fiction under Section 127 of the Maharashtra Regional & Town Planning

Act, 1966 (MRTP Act).

3. The petitioners claim to be the owner of the land described supra (subject land). Vide Resolution 19, the subject land and some additional lands were reserved for constructing garden. The petitioners requested the respondents that the reservation be deleted. In the meanwhile, the development plan for Mul was sanctioned with effect from 15-12-2001 in which the subject land was again shown reserve for garden vide Resolution 19.

4. It would not be necessary to refer to the exchange of various communications between the petitioners and the respondents. Suffice it to note that the petitioners issued notice dated 11-11-2012 under section 127(2) of the MRTP Act which did not evoke any response in the sense that no step was taken towards acquisition of the subject land. While in the affidavit filed on behalf of Municipal Council, there is an averment in paragraph 4 that the petitioners did not issue notice under Section 127 of the MRTP Act, we find from perusal of the communication dated 24-6-2016 addressed by the Chief Officer of the Municipal

Council to the Principal Secretary, Urban Development that the Municipal Council did receive notice dated 11-11-2012 which was issued by the petitioner. Indeed, paragraph 2 of the communication specifically refers to the notice dated 11-11-2012 issued under Section 127 of the MRTP Act. It is further admitted by the Chief Officer that the land is not acquired and that the reservation stands lapsed in view of the deeming fiction which is triggered.

5. In view of the incontrovertible position on record that the petitioner did issue valid notice under Section 127 of the MRTP Act and till date no steps have been taken to acquire property in the subject land, the petition must succeed.

6. We allow the petition in terms of prayer clause (i), which reads thus :

“(i) declare that the reservation on the land of the petitioners, land Survey No.84, admeasuring 91 R., situated at Mouza-Rampur (Tukum), Mul, Taluka–Mul, District–Chandrapur has lapsed under the provisions of the Maharashtra Regional and Town Planning Act, 1966.”

7. The State Government shall publish the notification in the Official Gazette within the next four weeks.

8. The petition is disposed of in the afore-stated terms.

(Mr. Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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