



Judgment

99 wp5437.22

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

WRIT PETITION NO.5437 OF 2022

Tushar s/o Sharad Kothari,
aged about 24 years, occupation business,
r/o plot No.34, Vyankatesh Nagar,
near KDK college, Nandanvan,
Nagpur – 440 009. **Petitioner.**

:: V E R S U S ::

1. State of Maharashtra,
through Secretary, Department of
Urban Development, Government of
Maharashtra, Mantralaya, Mumbai - 400 021.

2. The Chairman of Nagpur
Improvement Trust, residency road,
Sadar, Nagpur. **Respondents.**

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Shri S.S.Sitani, Counsel for the Petitioner.
Shri K.P.Mahalle, Counsel for Respondent No.2.
Shri M.K.Pathan, Assistant Government Pleader for Respondent
No.1.

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CORAM : AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.
CLOSED ON : 29/08/2023
PRONOUNCED ON : 1/09/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard. **Rule.** Rule made returnable forthwith.
Heard finally by consent of learned counsel appearing for parties.

2. The present petition is on the grievance that on
account of inadvertent error, plot No.3 in khasra No.21/1, ward

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2

No.21, P.H.No.34-A, sheet No.555/11, city survey No.9, admeasuring 4450 square feet in the layout of "Samaj Bhushan Sahakari Griha Nirman Sanstha, Nagpur" has not been included in Notification dated 8.6.2018 by which lapsing of reservation No.ME-52 for community centre has been notified.

3. In view of the judgment of this court dated 11.8.2014 in Writ Petition No.6338/2013, the reservation in question has been declared to have been lapsed for the reservation for community centre bearing No.NE-52 and, therefore, the question of the petitioner issuing notice under Section 127 as required under the Maharashtra Regional Town Planning Act, 1966 (the said Act) calling respondent No.2 to take effective steps contemplated under Section 127(2) of the said Act is not required.

4. It is contended that the legal right of the petitioner flows from the fact that the petitioner is legal owner of the above said plot by virtue of registered sale deed and the fact that the land on which the layout of the sanstha is situated, the reservation has lapsed and, therefore, it is prayed for declaration that the petitioner be declared to be free to develop the land

3

owned by him in accordance with the law. The petitioner further seeks direction to respondent No.2 to release Regularization Letter in respect of plot No.3 in khasra No.21/1, ward No.21, PH No.34-A, sheet No.555/11, city survey No.9 of Wathoda, admeasuring 422.70 square meters in the layout of Samaj Bhushan Sahakari Griha Nirman Sanstha, Nagpur in terms of Gunthewari Act and in favour of the petitioner within a specified time.

5. Since no steps were taken for acquiring the aforesaid lands, Writ Petition No.6338/2013 was preferred. On 11.8.2014, this court allowed the said writ petition and declared the aforesaid reservation to the extent of 0.81HR as lapsed. Consequent upon this, respondent No.1 issued notification on 8.6.2018 notifying the same. However, reference to plot no.3 was not made therein. Hence, this writ petition.

6. Learned Assistant Government Pleader Shri M.K.Pathan for respondent No.1 – State and learned counsel Shri K.P.Mahalle for respondent No.2, on instructions submit that on account of inadvertent typographical error, reference to plot No.3 is not found in the notification dated 8.6.2018 though it is not

4

disputed that the plot in question falls in the said reservation entry. Learned counsel Shri Mahalle accepted these facts and submitted that the said error would be rectified by issuing a corrigendum/fresh notification.

7. In view of the aforesaid admitted position, the writ petition is allowed. The respondent No.1 to issue a corrigendum/fresh notification including plot No.3 of mouza Wathoda in view the judgment of this court in Writ Petition No.6338/2013. Such notification would be in continuation of the earlier notification dated 8.6.2018. The necessary steps be taken within a period of six weeks from the date of receipt of writ of this order. The request for regularization of the said plot shall be considered by respondent No.2 thereafter in accordance with law.

The writ petition is allowed. Rule is made absolute in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G.GHAROTE, J.)

!! BrWankhede !!

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