

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

WRIT PETITION NO. 6621 OF 2022

(1) Ashabai Ashok Hadole,
 Age- 54 yrs, Occ :- Household work

(2) Jayshriram Shaligram Hadole Deceased
 through his wife Jyoti Jayshriram Hadole
 Age – 53 yrs, Occ :- Household

(3) Nitin Shaligram Hadole
 Age-46 yrs, Occ:-Business

All Petitioner no. 1 to 3 R/o Somwar ves
 Tq. Akot Dist. Akola 444101.

.....**PETITIONERS**

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

(1) The State of Maharashtra
 through the Secretary, Urban
 Development Department,
 Mantralaya, Mumbai. 32

(2) The Director of Town Planning,
 State of Maharashtra,
 Central Building, Pune – 1.

(3) The Municipal Council (M.C.)/
 Nagar Parishad, through its
 Chief Officer, Akot Tq. Akot,
 Dist. Akola.

.....**RESPONDENTS**

 Mr. G. K. Mundhada, Advocate for the petitioners
 Mr. M. K. Pathan, A.G.P for respondents 1 and 2
 Mr. M. I. Dhattrak, Advocate for respondent 3

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

DATE : 18-04-2023

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

Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel appearing for the parties.

2. The petitioners are seeking a declaration that reservation of garden (Reservation 57) in the first revised development plan and Reservation 52 in the second revised draft development plan of Akot City which partially affects the land owned by the petitioners assigned Survey 556/1 and 566/2 admeasuring 0.25 HR and 0.17 HR respectively stand lapsed in view of the legal fiction under Section 127 of the Maharashtra Regional And Town Planning Act, 1966 (MRTP Act).

3. The petitioners claim to be the joint owners and persons interested in development of said Survey 556/1 and 566/2 (subject land). Petitioners submit that the revised development plan of City of Akot was sanctioned by the State

Government and was published under Section 31(6) of the MRTP Act and came into effect on 1-9-1994. In the said development plan, the subject land was shown reserved for the purpose of garden vide Reservation 57.

4. Petitioners claim to have served notice under Section 127 of the MRTP Act on the Planning Authority on 5-1-2016. The petitioners claim that the statutory notice was accompanied by 7/12 extracts, measurement sheets and draft development plan. The petitioners claim that in view of the precarious financial condition of the Planning Authority, no steps were taken in aid of acquisition, within the statutory period, with the result that the deeming fiction under Section 127 of the MRTP Act stood triggered, on 4-1-2018.

5. The petitioners submit that the development plan was revised under Section 38 of the MRTP Act and on 28-12-2016, suggestions and objections were invited. In the draft revised development plan, the subject land was again shown reserved for garden. The petitioners preferred objections

by submitting an application to the Assistant Director of Town Planning, Akola, which went unheeded.

6. Petitioners then refer to an application purportedly preferred under Section 44 of the MRTP Act and submit that the said application was rejected by respondent 3 on 22-3-2018 on the ground that the subject land is reserved for garden. These are broadly the factual averments and the remaining pages of the petition are argumentative, on which we need not dilate.

7. The petitioners are relying on the decision of the Hon'ble Supreme Court in *Prafulla C. Dave and others Vs. Municipal Commissioner and others [(2015) 11 SCC 90]* in support of the submission that notwithstanding the coming into force of the revised development plan under Section 38 of the MRTP Act, in as much as the statutory notice issued under Section 127 of the MRTP Act is anterior to the coming into force of the revised development plan, the deeming fiction is triggered.

8. We are afraid, the decision in ***Prafulla C. Dave*** does not take the case of the petitioner any further. Au contraire, ***Prafulla C. Dave*** clearly enunciates the contrary proposition.

9. We may extract the relevant articulation in ***Prafulla C. Dave***.

“21. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the [Land Acquisition Act](#), 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or proceedings for acquisition are not initiated within ten years from the date on which the final development plan had come into force. After service of notice by the landowner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary, upon

expiry of the said period of ten years, the landowner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by [Section 127](#). What would happen in a situation where the landowner or the person interested remains silent and in the meantime a revised plan under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation, etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the landowner to the authority to acquire the

land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the landowner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the landowner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the landowner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in [Municipal Corporn. of Greater Bombay v. Dr. Hakimwadi Tenants' Association](#) in the following terms : (SCC p. 62, para10)

"10. ... If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under [Section 127](#), there is no question of the land becoming available to the owner for the purpose of development or otherwise."

10. The authoritative enunciation of the Supreme Court is that if the statutory notice under Section 127 of the MRTP Act is not anterior to the preparation of the revised development plan, the statutory fiction resulting in lapsing is not triggered.

11. If the facts are scrutinized on the touchstone of the decision in ***Prafulla C. Dave*** (supra), it is not in dispute that Section 23 declaration was published in the official gazette on 18-9-2014, while the notice under Section 127 is issued on 5-1-2016. Considering the decision of the Hon'ble Supreme Court in ***Prafulla C. Dave***, we do not find any substance in the contention of the petitioners that the statutory fiction under Section 127 comes into play.

12. Mr. Mundhada relies on the decision in ***Ashok Shriram Kulkarni Vs. State of Maharashtra and ors. [2017(3) Bom.C.R. 777]***. We find from the dates culled out in paragraph 12 of the decision that the statutory notice was served on 9-9-1996 whereas the declaration under Section 23(1) was issued on 23-1-2002. In the present matter, the factual situation

is just reverse. The statutory notice is issued after declaration under Section 23(1) of the MRTP Act. We do not find anything in the decision which even remotely supports the submissions of Mr. Mundhada. Indeed, the decision of the coordinate Bench specifically extracts that part of the judgment in ***Prafulla C. Dave*** which we have relied on supra.

13. The petition is dismissed with costs of Rs. 10,000/- (Rupees Ten Thousand) to be deposited with the High Court Legal Services Sub Committee, Nagpur within the next four weeks, failing which, the Registry shall initiate coercive action.

14. Rule is discharged.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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