

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

WRIT PETITION 7488 OF 2018

Smt. Kalpana Ashok Thakre,
aged 55 yrs, occ. House wife,
through her Power of Attorney holder
Shri Prafulla Vinod Gudadhe,
aged 43 yrs, partner of the
Gudadhe Housing Developers
and Promoters, r/o. Jaitala,
Nagpur 440 016

.....PETITIONER

...VERSUS...

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Nagpur

2. Assistant director,
Town Planning Department,
Municipal Corporation, Nagpur

3. The Municipal Commissioner,
Nagpur Municipal Corporation,
Nagpur

....RESPONDENTS

Mr. Rahul Tajne, counsel for petitioner,
Mrs. K.R. Deshpande, AGP for respondent 1/State,
Mr. A.S. Mehadia, counsel for respondents 2 and 3.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 15.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally

with consent of the parties.

3. Prayer clause (a) in the petition reads thus:

(a) Issue suitable writ, order on direction thereby declaring that the reservation upon the land owned by the petitioner bearing survey No. 119-121/1, admeasuring 2.03 Hectare, situated at Mouza – Jaitala, Taluka and District Nagpur within the limits of Nagpur Municipal Corporation, Nagpur as per the Development Plan of Nagpur has lapsed in terms of 127 of the MRTP Act and said land stands released from reservation and is available for the petitioner for development purposes as per the user of adjoining land and further be pleased to direct the respondent No. 1 to issue notification u/s. 127(3) of MRTP Act with respect to De-reservation of land in the interest of justice.

4. We have perused the affidavit in response filed on behalf of Planning Authority and the respondent 1 – The State of Maharashtra.

5. It is not in dispute that in response to the notice received from the petitioner under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (“MRTP Act”), the Planning Authority offered the petitioner Transferable Development Rights

("TDR") which the petitioner refused to accept. The Planning Authority has stated on oath that the Standing Committee considered the issue and directed the respondent 3 to take an appropriate decision. It was decided by respondent 3 that considering that the Planning Authority did not have the funds to acquire the land, the State Government be requested to de-reserve the land, and accordingly, communication dated 30.10.2015 was issued by the Planning Authority.

6. Considering the admitted factual position, we see no difficulty in holding that the reservation MW 46 stands lapsed in view of deeming fiction of Section 127 of the MRTP Act.

7. We allow the petition in terms of prayer clause (a) which is already extracted supra. The consequential publication of the notification shall be done within the next eight weeks.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

belkhede