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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

915 WRIT PETITION NO. 628 OF 2024

**VINOD RAMNARAYAN AGRAWAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
SECRETARY AND OTHERS**

....

Mr A. P. Bhandari, Advocate for Petitioners

Mr P. K. Lakhotiya, A.G.P. for Respondent Nos.1 to 4

Mr V. D. Gunale, Advocate for Respondent No.6

CORAM : RAVINDRA V. GHUGE

AND

Y. G. KHOBRADE, JJ.

DATE : 16th August, 2024

PER COURT:

1. We have heard the learned Advocates for the respective sides. With their assistance, we have gone through the Petition paper book.

2. The facts emerge from the record and especially from the judgment delivered by the Co-ordinate Bench of this Court, dated 24/04/2023 in Writ Petition No.9610/2019, which was filed by the present Petitioners. The conclusions of the Court are found in paragraph Nos. 10 to 21, which read as under :-

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“10. Mrs. Deshpande would further submit that the development control regulations which are applicable to the 'D' class Municipal Corporations in Maharashtra have been sanctioned by the State Government vide notification No. TPS-1812/CR-112/12/DCR-D-Class/UD-13 dated 20.09.2016 which is applicable to the respondent No. 5-Municipal Corporation. She would submit that as per Rule No. 40.3 in cases where layout has already been sanctioned and layout roads are incorporated as development plan roads prior to coming into force of these regulations are not eligible for grant of transfer of development rights (TDR). She would, therefore, submit that there is no necessity to resort to acquisition as a strip of land from the sanctioned layout is being incorporated into a development plan road and even the petitioners are not entitled to the TDR.

11. Learned advocate Mr. Gunale would adopt the arguments of Mrs. Deshpande.

12. We have carefully considered the rival submission and perused the papers. There is not much of a dispute as far as the facts are concerned. The petitioners proposal for layout was sanctioned in which inter alia a 12 meter wide strip of the eastern side was approved to be kept as a layout road. In the sanctioned development plan of the respondent No. 5-Municipal Corporation, a development plan road has been shown wherein this strip of 12 meter wide eastern side from the petitioners' property from the sanctioned layout has been integrated. The fact that this portion of the petitioners' property is to the extent of 1421.75 square meters has not been controverted by the respondents.

13. Even there is no dispute regarding issuance of notice under Section 127(1) of the M.R.T.P. Act on 07.09.2017 and

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that it was responded by way of rejection. It is not the case of the respondents about any steps having ever been initiated towards the acquisition of the petitioners property to the extent of the portion affected by the development plan road by issuing any notification under Section 126 of the M.R.T.P. Act and declaration under Section 6 of the Land Acquisition Act, 1894 or Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within 10 years from the development plan coming into force. There cannot also be dispute that the petition has been filed on 04.07.2019.

14. At the outset it is necessary to note that irrespective of the other aspects touching the merits of the petitioners' claim, even on the facts which stand admitted on record, the notice contemplated under Section 127(1) of the M.R.T.P. Act was served on the respondents on 07.09.2017. By reply dated 09.10.2017 the respondent No. 6 called upon the petitioners to submit the documents which were duly tendered and in response, by another reply dated 16.11.2018, by the impugned communication the respondent No. 6 rejected the notice. It is apparent that all the documents demanded in reply to the notice dated 09.10.2017 namely 7/12 extract of the revenue record, map, N.A. permission and attested copy of the sanctioned layout were already annexed to the notice dated 07.09.2017. Therefore, it cannot be said that the notice was deficient in any respect. To this extent the submission of the learned advocate Mr. Bhandari deserves to be accepted.

15. However, the notice under Section 127(1) was issued on 07.09.2017 and the petition has been filed on 04.07.2019 that is within 24 months of the date of notice. By virtue of

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the amendment in Section 127 which came into effect from 29.08.2015 vide Section 7 of the Maharashtra Act 42 of 2015 a period of 24 months from the date of service of the notice has been kept as a window for the planning authority to take steps towards acquisition. It is trite that this statutory period is mandatory and the decisions are in plenty.

16. In the matter of Prafulla C. Dave (supra) which has been referred to and relied upon by a full bench of this Court in the matter of Madanlal Zumberlal Nahar and others Vs. The Chief Officer Municipal Council Beed and others, in Writ Petition 2260/2010 with WP 4232/2008 decided on 13.03.2023, though in a little different context, this period has been held to be mandatory.

17. Pertinently, in the matter of Hasmukhrai (supra), the period that was consumed by way of pendency of the petition was held to be entitled to be considered by way of tagging to this statutory period. However, in the matter of Chhabildas (supra), it has been emphatically held that the decision in the matter of Hasmukhrai and even a similar view taken by the Supreme Court in the matter of Chhabildas was in exercise of the powers under Article 142 of the Constitution which powers the High Court does not have. Therefore, when the petition has been filed on 04.07.2019, even before expiry of 24 months of service of notice under Section 127 on 07.09.2017 as is appearing on acknowledgment in the copy of the notice (Exh. 'D'), we are afraid, the petitioners are not entitled to seek any declaration regarding lapsing of reservation.

18. In view of these observations the matter is liable to be dismissed. However, we are recording the observations even

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on merits just to avoid any possible remand, in case the Supreme Court takes a different view than what we are taking consequent to the aforementioned facts and circumstances.

19. The decision in the matter of Pt. Chet Ram Vashist (supra) in our considered view seals the fate of the matter. Merely because the portion from the sanctioned layout of the petitioners' land has been earmarked as a layout road, that does not automatically vest with the respondent No. 5-Municipal Corporation. In view of the above mentioned decisions mentioned in para 6 (supra) cited on behalf of the petitioners, some of which in turn have been rendered by following the ratio laid down in the matter of Pt. Chet Ram Vashist, this strip of 12 meter wide land admeasuring 1421.75 square meter will not vest in the respondent No. 5-Municipal Corporation. As has been laid down in the matters of Girnar Traders, Prafulla C. Dave (supra), there is no alternative for the respondent No. 5-Municipal Corporation but to resort to its acquisition. However, no steps as contemplated under Section 126 of the M.R.T.P. Act read with the relevant provision of the land acquisition law having been taken within 10 years of the development plan coming into force, the consequences would be inevitable, but for the fact that the petition has been filed without waiting for 24 months of service of notice under Section 127(1) on the respondent No. 5-Municipal Corporation.

20. We need not even go into the aspect as to if the petitioners are entitled to claim transfer of development rights in lieu of the monetary compensation. Once it is held that the petitioners land to the extent of the portion affected by the development plan road will not automatically vest in the respondent No. 5-Corporation, irrespective of the

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approved regulations regulating a TDR, once the respondent No. 5-Municipal Corporation decides to earmark the portion of the petitioners' property for a development plan road, either it will have to resort to acquisition or may have to offer TDR to them.

21. Be that as it may, since the petitioners notice issued under Section 127(1) of the M.R.T.P. Act though valid, the petition having been filed within 24 months of service of that notice it would not culminate into creation of any right in the petitioners on the date of the petition. It is clearly a premature petition.”

3. It is thus obvious from the above reproduced paragraph of the judgment dated 24/04/2023, that this Court concluded that the reservation has lapsed. However, since the Writ Petition was filed by these Petitioners on 04/07/2019, prior to the expiry of 24 months after service of the purchase notice dated 07/09/2017, that the Co-ordinate Bench of this Court disposed off the Writ Petition. It is, therefore, after completion of the 24 months, that this Writ Petition has been filed on 02/01/2024. Now, in this Writ Petition, there are no disputed facts before us.

4. In view of the above, **this Writ Petition is allowed**, with the declaration that the reservation has lapsed. The

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Municipal Corporation, Jalgaon shall forward a communication to Respondent No.1/Ministry of Urban Development, indicating that the reservation has lapsed in relation to the development plan road from land bearing Survey No.466/2+3/D.P. Road of village Mehrun, Tq. And Dist. Jalgaon, within a period of 45 days from today. Thereafter, Respondent No.1 would issue the Notification under Section 127(2) of the MRTP Act within a period of 60 days.

5. If the Model Code of Conduct is introduced, that would not be an impediment for Respondent No.1 to comply with this order.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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