



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

WRIT PETITION NO. 3316 OF 2024

1. SHAIKH MOHIYODDIN SHAIKH SANDU,
Age : 75 years, Occu : Nil,
R/o Iqbal Chowk, Kazipura, Shahada,
Taluka Shahada, Dist. Nandurbar.
2. Iqbal Alimoddin Shaikh,
Age : 48 years, Occu : Business,
R/o Iqbal Chowk, Kazipura, Shahada,
Taluka Shahada, Dist. Nandurbar.
3. Rafiq Ahmed Beldar,
Age : 49 years, Occu : Business,
R/o Iqbal Chowk, Kazipura, Shahada,
Taluka Shahada, Dist. Nandurbar.

...PETITIONERS

VERSUS

1. THE STATE OF MAHARASHTRA,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. Shahada Municipal Council,
Shahada,
Dist. Nandurbar.
Through the Chief Officer.

...RESPONDENTS

...
Shri Subodh P. Shah, Advocate for the Petitioners.
Shri S.R. Yadav Lonikar, AGP for Respondent No.1/State.
Shri Jayant R. Shah, Advocate for Respondent No.2.

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 24th June, 2024

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioners have put forth prayer clauses A, B and C, as under:-

“A] The Hon'ble High Court may be pleased to issue an appropriate writ, order or direction in the nature of writ and thereby hold and declare that reservations (Site No. 43) imposed on land Gat No.18 under final development plan dated 25.07.2006 stood lapsed.

B] The Hon'ble High Court may be pleased to issue an appropriate writ, order or direction in the nature of writ and thereby hold and declare that the land Gat No. 18 totally admeasuring 1H-20R situated at Kukdel, Taluka - Shahada, District - Nandurbar, is free from reservations (Site No.43) imposed on land Gat No.18 under final development plan dated 25.07.2006.

C] The Hon'ble High Court may be pleased to direct the Respondent No.1 State of Maharashtra to issue a notification under Section 127 (2) of the MRTP Act, to the effect that the reservations (Site No.43) imposed on land Gat No.18 under final development plan

dated 25.07.2006 stood lapsed.”

3. Dates and sequence of events in this matter are relevant and the same are as under:-

(a) The Petitioners, along with 11 other family members, claim to jointly own Gut No.18 admeasuring 1 Hector 20 R at Kukdel, Taluka Shahada, District Nandurbar. The said land is included within the municipal limits of Shahada Municipal Council.

(b) On 25.07.2006, the final development plan for Shahada city was sanctioned by the State Government and site No.43 was reserved for playground.

(c) Site No.43 comprises of lands from Gut No.17 (part), Gut No.18 (part) and Gut No.19 (part).

(d) On 16.12.2021, the Petitioners along with 11 joint owners, issued the purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, “the MRTP Act”). The Municipal Council has admittedly received the notice on 17.12.2021.

(e) On 26.07.2022, the Municipal Council addressed a letter to the Petitioners asking for the original copy of the 7/12

extract and the measurement map.

(f) On 01.08.2022, the Petitioners supplied the certified true copies of the 7/12 extracts and the copy of the measurement map.

(g) 11 joint owners executed a registered Relinquishment Deed in favour of the present three Petitioners on 03.05.2023 and Mutation Entry Nos.9803 and 9156 were effected on 02.12.2023.

4. The controversy between the Petitioners and the Municipal Council falls in a narrow compass. The learned Advocate for the Municipal Council relies on the Affidavit in Reply dated 15.04.2024, filed through the Chief Officer of the Municipal Council and submits that the impugned notice is to be considered as being effective from 01.08.2022, since the Petitioners have complied with the demand of the Municipal Council for documents, vide letter dated 26.07.2022. As the documents were supplied on 01.08.2022, the two years period would expire on 31.07.2024 and this petition is prematurely filed.

5. The learned Advocate for the Petitioners submits that the notice is issued on behalf of the these Petitioners by a Lawyer. A detailed narration (4 pages) is set out in the said notice and it is specifically mentioned that copy of the relevant 7/12 extract with regard to the land Survey No. 18 admeasuring 01 Hector 20 R, has been enclosed to the said notice. Notwithstanding that the Petitioners tendered the certified copy of 7/12 extract later on, the fact remains that the document to indicate the title of the Petitioners was annexed to the notice. He further submits that the Municipal Council is not disputing that the Petitioners are title holders and have an interest in the property.

6. The learned Advocate for the Municipal Council relies upon a reference made to non-furnishing of documents in ***Jaika Vanijya Ltd., Nagpur vs. State of Maharashtra and others, 2013 (4) Mh.L.J. 161***, to support his contention that as the documents were tendered after the Municipal Council demanded them, the notice would become effective from the date of submission of such documents.

7. Section 127 of the MRTP Act reads as under:-

“127. *Lapsing of reservations*

(1) *If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twelve months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.*

(2) *On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.”*

8. It is obvious that an owner or a person interested in the land has to serve a notice along with the documents showing his title or interest in the land. We have perused the notice issued by the Petitioners, dated 16.12.2021, in which it is specifically

stated in the last paragraph that the copy of the 7/12 extract alongwith the measurement map, were enclosed for perusal of the Municipal Council. After more than eight months, the Municipal Council has written to the Petitioners that the documents are necessary under Section 127(1) and the Petitioners should tender the original 7/12 extract and the original measurement map issued by the Deputy Superintendent of Land Records, Nandurbar. It is in response to this communication that the Petitioners tendered the certified copies of the documents.

9. We are of the view that when the Petitioners have specifically stated in their notice that the copy of the 7/12 extract has been enclosed, unless the said statement is denied by the Municipal Council, it has a presumptive value. The letter of the Municipal Council dated 26.07.2022, makes a general observation that such notice must be accompanied with documents. The Chief Officer of the Municipal Council does not state in the said communication that besides a bare notice, the Petitioners have not enclosed a single document or any document. The Chief Officer only demands originals of the 7/12

extract and the measurement map. There is no denial that the Petitioners have enclosed the documents. Moreover, in response to the said letter, the Petitioners have tendered the certified copies of the documents which can only be said to be in addition to the documents enclosed to the notice and which notice has been signed by the Lawyer, who has served it on the Municipal Council.

10. In such circumstances, we do not find that the conclusion on facts in ***Jaika Vanijya Ltd. (supra)*** , wherein, not a single document was enclosed by the land owners and, therefore, they submitted the documents consequently, would adversely affect the present case.

11. It is further visible that in the two years from the date of receipt of the notice on 17.12.2021, the Municipal Council has not taken any steps for acquisition of the said land. Even in the Affidavit in Reply, it is nowhere stated that the Municipal Council desires to acquire the land. There are no averments on this issue.

12. In view of the above, this **Writ Petition is allowed** in terms of prayer clauses A, B and C, reproduced above.

13. The Municipal Council shall issue a communication to Respondent No.1/ State of Maharashtra, within 30 (thirty) days from today. The State Government would issue a notification under Section 127(2) within 60 (sixty) days thereafter. If any Code of Conduct is declared by the Election Commission, that would not be an impediment for issuance of such notification.

14. Rule is made absolute in the above terms.

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)