



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

WRIT PETITION NO. 949 OF 2024

1. Shrikant Gajanan Buradkar, age 54 yrs.
2. Rajendra Gajananrao Buradkar, age 52 yrs
3. Sanjay Gajananrao Buradkar, (deceased through his legal heirs)
- (A) Suwarna Sanjay Buradkar, age 49 years
Occupation – Household
- (B) Shraddha Sanjay Buradkar, age 26 years,
Occupation – Household
- (C) Neha Sanjay Buradkar, age 24 years,
Occupation – Household
- (D) Prathmesh Sanjay Buradkar, age 20 years,
Occupation – Student

All residents of R/o Balveer ward, Near Rajkumar Talkies, Chandrapur Tq. and District Chandrapur

.. Petitioners

Versus

1. The State of Maharashtra through the Secretary, Urban Development Department, State of Maharashtra, Mantralaya, Mumbai
2. The Maharashtra Housing and Area Development Authority (MHADA), through its Chief Officer, Civil Line, Temple Road, Raja-Rani Chowk, Near Aamdar Nivas, Nagpur

.. Respondents

Mr. G.K.Mundhada, Advocate for Petitioners.

Mr. A.M.Kadukar, Assistant Government Pleader for respondent No.1.

Mr. A.R.Fule, Advocate for respondent No.2.

CORAM : **NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

RESERVED ON : **22/08/2024**

PRONOUNCED ON : **09/09/2024**

JUDGMENT (Per : Abhay J. Mantri, J.)

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

(2) The petitioners are seeking relief of declaration of lapsing of reservation No.95 affecting their land bearing Survey No.308/1, admeasuring 0.68 HR of Village Datada Tq. and District Chandrapur (hereinafter referred to as '*said land*'), and they are free to develop the land in the manner permissible to the adjacent land as per the Regional Development Plan of Chandrapur.

(3) The respondent No.1 vide notification No.TPS-2294/471/CR-159/UD-9 dated 30/06/1998 has reserved the land for playground vide reservation No.95, which came into force after its sanction on 01/09/1998. Despite said notification, respondent No.2 failed to acquire the land till November 2020. Therefore, petitioners on 31/12/2020, issued a purchase notice under Section 127 of the Maharashtra

Regional and Town Planning Act, 1966 (hereinafter referred to as the "M.R.T.P. Act") to respondent No.2, thereby called upon them to acquire the land which is affected by the reservation No.95 within the statutory period of two years from the date of service of the notice. In spite of the service of the said notice, respondent No.2 failed to comply with the said notice or acquire the land in question within the statutory period of two years. Hence, this petition.

(4) Respondent No.2, by filing a reply, has not disputed the facts stated by the petitioners. However, it averred that it could not initiate the acquisition process due to the non-receipt of the funds for acquisition. Hence, it urges for the dismissal of the petition.

(5) Mr. Mundhada, learned Counsel for the petitioners, vehemently contended that despite service of the purchase notice, respondent No.2 has not acquired the land in question within the statutory period of two years, which was completed on 30/12/2022. He has drawn our attention to the averment in the reply, which depicts that due to the non-receipt of the funds for acquisition, it was unable to acquire the said land. Hence, he urged to allow the petition.

(6) As against above, Mr. Kadukar, the learned Assistant Government Pleader, submitted that MHADA could not respond to the

petitioners' notice within the statutory period due to the non-receipt of funds from the Government. The said act was neither deliberate nor willful negligence but was due to financial constraints. Therefore, the petitioner is not entitled to the relief as claimed. Hence, he urged for the dismissal of the petition.

(7) We have appreciated the rival submissions of the parties and perused the record.

(8) It is apparent that petitioners are the landowners. Vide notification dated 30/06/1998, respondent No.2 sanctioned and reserved the said land for playground vide reservation No.95. However, till November 2020, respondent No.2 failed to acquire the said land. Therefore, the petitioners issued a purchase notice to respondent No.2 on 31/12/2020, which was served on them on the same day. Despite service of the said notice, respondent No.2 failed to comply with the same nor acquire the land in question. It is pertinent to note that respondent No.2 has not disputed the above facts. However, respondent No.2 averred that due to the non-receipt of funds from the government, MHADA could not acquire the land, or it was unable to initiate the acquisition proceedings within the statutory period. The averment shows that respondent No.2 failed to comply with the notice.

(9) Thus, considering the above discussion, it is evident that despite the service of purchase notice under Section 127 of the M.R.T.P. Act, the respondents failed to comply with or acquire the land in question. On the contrary, it seems that they are unable to initiate the acquisition proceedings due to financial constraints. Hence, in our opinion, the petitioners are entitled to the relief as claimed.

(10) As such, the petition is allowed in terms of prayer clauses (A) and (B).

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]

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