



Judgment

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

WRIT PETITION No. 5606 OF 2023.

Sughosh Pandurang Maheshkar,
Age 66 years, Occupation
Retired, resident of Balaji Ward,
Ballarpur, Taluq Ballarpur, District
Chandrapur, through Power of
Attorney holder Shamali Shrihari Anchuri,
Age 35 years, Occupation – Household,
resident of Balaji Ward, Ballarpur,
Taluq Ballarpur, District Chandrapur. ... **PETITIONER.**

VERSUS

1.The State of Maharashtra,
through the Director of Town Planning,
State of Maharashtra, Central Building,
Pune.

2.The Municipal Council, (M.C.)/
Nagar Parishad, through its
Chief Officer at Ballarpur, Taluq
Ballarpur, District Chandrapur.

3.Assistant Town Planner, Chandrapur,
Town Planning and Valuation Office,
Chandrapur, 2nd Floor, Room No.23,
Branch Office, Prashaskiya Building,
Chandrapur. ... **RESPONDENTS.**

Rgd.

Mr. G.K. Mundhada, Advocate for the Petitioner.
Ms T. Khan, A.G.P. for Respondent Nos. 1 and 3.
Mr. M.V. Bute, Advocate for Respondent No.2.

CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.

DATE : JULY 22, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and with consent of the learned Counsel present for the parties, the matter is taken up for final disposal.

2. The petitioner is owner of a piece of land bearing Survey No.31/60, ad-measuring 1.62 H.R. of Mouza Ballarpur, Taluq Ballarpur, District Chandrapur. The final development plan for Ballarpur City was published in terms of Section 31[1] of the Maharashtra Regional and Town Planning Act, 1966 (1966 Act) vide notification No.TPS-2202/1260/CR-2B/2004/UD-9, dated 16.08.2005 and came into force on 01.10.2005. In the said

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notification the area ad-measuring 0.75 H.R. out of petitioner's land was affected by reservation for Garden vide reservation No.60.

3. It is submitted that for a period of 10 years, no steps were taken to acquire the said land under the Land Acquisition Act of 1966 Act. After lapsing of 10 years, petitioner has issued a purchase notice on 15.10.2020, under Section 127 of the 1966 Act. The petitioner has also tendered documents of ownership and reservation details in the notice, which as duly served. Despite receipt of the notice, no positive steps for acquisition of land were taken within a period of two years, and therefore, the petitioner seeks a declaration of lapsing of reservation.

4. Respondent no.2 Municipal Council has filed reply-affidavit admitting the reservation as well as receipt of purchase notice. However, it is contended that there was illegal encroachment on the land, hence, there is every possibility that the petitioner might have sold the land to encroachers. Secondly, it is contended that due to pandemic period and financial weakness of respondent no.2, no proposal for acquisition was forwarded to the Collector.

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5. So far as the alleged encroachment and sale is concern, no documents have been produced on record. Moreover we do not see any illegal position which precludes or extends time after receipt of purchase notice. Respondent no.2 has admitted that they have not taken any steps in view of its unsound financial capacity. In the circumstances, as no positive steps were taken within the stipulated period, it has automatically effect of lapsing of reservation. We therefore, declare that the reservation of Garden vide reservation no.60 affecting the land of the petitioner to the extent of 0.75 HR of village Ballarpur, District Chandrapur, stood lapsed, and the petitioner is free to develop the said land in the manner permissible in law. We direct respondent no.2 to issue necessary gazette notification under Section 127[2] of the 1966 Act within a period of 12 weeks from today.

6. Writ Petition is accordingly allowed. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE

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