



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

WRIT PETITION NO.6116/2023

1. Nitin Rameshchandra Didwania,
age 48 Yrs., Occ. Business &
Agriculturist, “Shri Balaji” Near
Abhishekh Banglow, Lions
Dyanpith Road, Khamgaon,
Tq. Khamgaon, Distt. Buldhana.
2. Dipti Umesh Baraliaya,
age 54 Yrs., Occ. Business &
Agriculturist, R/o Deshmukh Plot,
Khamgaon, Tq. Khamgaon,
Distt. Buldhana.

... Petitioners

- Versus -

1. The State of Maharashtra,
through the Secretary Urban
Development Department,
Mantralaya, Mumbai.
2. The State of Maharashtra,
through the Director of Town
Planning, Central Building,
Pune.
3. Assistant Director of Town
Planer Buldhana, Government
Administrative Building, in front
of Bus Stand, Buldhana.
4. The Municipal Council, City of
Nandura, through its Chief

Officer, Nandura Municipal
Council, Nandura.

... Respondents

Mr. G.K. Mundhada, Advocate for the petitioners.
Mr. H.D. Marathe, Assistant Government Pleader for respondent
Nos.1 to 3.
Mr. Dheeraj I. Jain, Advocate for respondent No.4.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 27.2.2025.

JUDGMENT (Per Mrs. Vrushali Joshi, J.)

Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned Advocates for the parties.

2. The petitioners are seeking the relief of declaration
that the reservation of the land owned by them stands lapsed
under Section 127 of the Maharashtra Regional Town Planning
Act, 1966 (for short “Act of 1966”).

3. The petitioners are the joint owners of Survey
Nos.13/1 and 2, total area admeasuring 0.72 H.R. of Moujaj

Ahmadpur, Taluka Nandura, District Buldhana. The revised development plan of the city of Nandura was sanctioned and prepared by the State Government as per the Government Notification No.TPV-6/8697 dated 31.12.1988 and it came into force w.e.f. 1.4.1989. In this revised development plan, the said land has been reserved for garden vide Reservation No.45 by the respondents. Though the above said land had been reserved by the respondents no steps for acquisition has been taken by the respondents although as per sub-section (5) of Section 31 it was obligatory on the part of the planning authority to commence acquisition procedure in respect of the properties reserved under reservation within 10 years from the date on which the development plan comes into force. More than 24 years have passed since the revised development plan of Nandura came into force but no steps have been taken for acquisition of the said land by the respondents.

4. The erstwhile owners of land Survey No.13/1 were Smt. Aruna Anil Ingale and Anil Tulshiram Ingale while Rajesh

Tukaram Jaybhaye and Tukaram Appaji Jaybhaye were the owners of land Survey No.13/2. They made a representation being interested in the said land before the Ministry In-charge of Urban Development, State Government of Maharashtra on 30.12.2003 and requested to release the said land from the above stated reservation and include the same in the residential zone. In response to the said representation hearing was allowed before the Minister on 13.1.2004 but there was no response hence the previous owners served the notice under Section 127 of the Act of 1966 personally in the office of respondent No.4 on 14.10.2004. By the said notice previous owners called upon the respondent No.4 to purchase the said land as per the prevailing market value and take steps as required under Section 127 of the Act of 1966. Said notice was discussed in the General Body Meeting. It was resolved that due to weak financial condition they cannot purchase the said land.

5. On 20.4.2005 petitioner No.1 on behalf of the previous owners issued a letter to respondent No.4 by referring the notice under Section 127 of Act of 1966 dated 14.10.2004 and Resolution No.12 dated 18.1.2005 informing that as respondent No.4 had not acquired the said land after receipt of notice under Section 127 of the Act of 1966 within the statutory period, hence the reservation on the said land stand lapsed and owners of the said land are free to develop the said land and also requested the respondent No.4 to sanction the layout map of the said land. The previous owners of Survey No.13/1 were in need of money hence they sold the land owned by them to petitioner Nos.1, 2 and Lavkesh Sitaram Soni by registered sale deed dated 29.7.2006 and previous owners Rajesh Jaybhaye and Tukaram Jaybhaye sold land bearing Survey No.13/2 to the petitioner Nos.1, 2 and Lavkesh Soni on 1.12.2006 by executing the sale deed in their favour.

6. On 30.8.2022 respondent No.1 published in official gazette the Second Revised Draft Plan of Nandura City under Section 26(1) of Act of 1966. In the said revised draft plan of Nandura City the land owned by the petitioners was again reserved vide Reservation No.5 for garden. The petitioners have raised an objection under Section 30 before respondent No.2 stating grievance that the said act of proposing re-reservation of the said property under Section 26 is not sustainable in the eyes of law in terms of the judgment of this Court in the matter of Ashok Sitaram Kulkarni V/s. State of Maharashtra reported in 2017 (3) Bom. C.R. 777.

7. Respondent Nos.1, 2 and 3 filed their reply and opposed the claim of petitioners stating that as per the provisions of Section 127 of the Act of 1966 only the owner or any person interested in the land may serve the notice on the planning authority. The petitioners, in this petition, were neither owners of the land in question nor did they possess any legal interest on the

said land *qua* the notice was served by the original owners on 14.10.2004 and 13.4.2005 when the statutory period of six months as prevalent at that point of time expired. The petitioners have not served any notice under Section 127 of the said Act on respondent No.4, therefore, the petitioners are deprived of the benefit of the said Act and Land Acquisition Act of 2013. The petitioners became the owners of the land after 18.2.2006 i.e. after execution of the different sale deeds. Hence prayed to dismiss the petition.

8. The petitioners have relied on the order of this Court in Writ Petition No.1107/2014 (Vyankatesh Reality, Amravati V/s. State of Maharashtra and others) delivered on 1.4.2015.

9. Learned Advocates for the parties took us through the record.

10. On perusal of the judgment cited by the petitioners in case of Vyankatesh Reality, Amravati (supra) it appears that this Court has relied on the judgment in case of Satish Soma Bhole V/s. State of Maharashtra and others reported in **2011 (1) BCR 293**. The objection was raised on behalf of respondent Nos.1, 2 and 3 that the petitioners are not entitled as at the time of issuing notice they were not the owners of the property in question. This Court has held, in the above said petition, that a person who has not issued a notice would not be entitled to the relief under Section 127 of the Act of 1966. It is further held that once a notice is issued under Section 127 of the Act of 1966 the time would not stop running upon the sale of the property by the owner of the property as there is no bar for a person to sell his interest in the land which is reserved. It appears from the judgment hereinabove that at the time of purchase of the property by the concerned respondent or planning authority is not extended merely by the sale of the property after the issuance of notice under Section 127 of the Act of 1966. The objection

raised on behalf of respondent Nos.1, 2 and 3 to the tenability of the writ petition is devoid of merit and is rejected.

11. In the instant case, undisputedly, the notice was issued by the erstwhile owners of the property. They have also issued representation on 3.12.2003 to the Minister of Urban Development of Maharashtra and served the notice under Section 127 of the Act of 1966 on 14.10.2004. The General Body Meeting has resolved that on 18.1.2005 that due to weak financial condition of the Municipal Corporation, Nandura said land cannot be purchased. The respondents admittedly have not issued notification under Section 6 of the Land Acquisition Act within a period of one year from the date of notice. If it is not so issued, the provisions of Section 127 of the Act of 1966 would come into play and the reservation of the property mentioned hereinabove for the garden would lapse.

12. For the aforesaid reasons, the writ petition is allowed. It is hereby declared that the reservation of the land i.e Survey

Nos.13/1 and 13/2 admeasuring 0.72 H.R. of Mouje Ahmadpur, Tq. Nandura, Distt. Buldhana has lapsed and the petitioners are free to develop the land owned by them in the manner as per law.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)