



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

WRIT PETITION NO.6239 OF 2024

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| 1. Sawan Nandkumar Bhatewara, Age 39 years,<br>Occup. Business, R/o 1101, Court Royal<br>Khare Town, Behind Batukbhai Jewellers,<br>Dharampeth, Nagpur-440010 | <b>Petitioner</b> |
| 2. Pravin Shri. Premjibhai Thakkar, Age 46<br>years, Occup.Business, R/o Hariom Villa,<br>Near KDK College, Nandanvan, Wathoda,<br>Nagpur-440008.             |                   |

-Versus-

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| 1. The State of Maharashtra through the<br>Secretary Urban Development Department,<br>Mantralaya, Mumbai.                             |                    |
| 2. The Nagpur Municipal Corporation City of<br>Nagpur, through its Commissioner, Nagpur<br>Municipal Corporation, Civil Line, Nagpur. |                    |
| 3. The Nagpur Improvement Trust, Through its<br>Chairman, Opp. NIT Swimming Pool, North<br>Ambazari Road, Nagpur.                     | <b>Respondents</b> |

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Mr.Harish Dangre a/w Mr.G.K.Mundada, Adv for the Petitioner.  
Mr.Ş.M.Ghodeswar, AGP for respondent No.1  
Mr. Kuldip Mahallae, Adv. for respondent No.2.

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CORAM : NITIN W. SAMBRE AND  
MRS. VRUSHALI V. JOSHI, JJ.  
DATE : 07/05/2025.

ORAL JUDGMENT (Per: Vrushali V. Joshi, J.)

1) Heard.

- 2) **Rule.** Rule made returnable forthwith. By consent of the learned Counsel for the parties, the Writ Petition is heard finally.
- 3) The petitioners are seeking relief of declaration that the land owned by them stands lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short MRTP Act”).
- 4) The petitioners are owners and persons interested in land bearing Survey No/Khasra No.16/1 of Mouza Wathoda area admeasuring 1.26 Hectares (12,600 sq.mts.), Occupancy Class-1 rights, Patwari Halka No.34/A, City Survey No.213, Sheet No.585/26, Tq.Nagpur Dist.Nagpur.(hereinafter referred to as the said land). The petitioners purchased the said land from one Shobha Ashok Balpande, on 21/05/2019 by registered sale deed. The Revised Final Development Plan of Excluded Part of Nagpur City was sanctioned by the State Government of Maharashtra and came into force vide notification No.TPS-2400-1628-CR-200-2000UD-9 in which the said land was kept reserved for the purpose of Park vide reservation No. EP-101(ME-59). The said land is forming part of Green Belt Control Scheme and in the GR-2002 Green Belt Control Scheme it is enlisted under the excluded seven schemes. The respondent No.3 is an appropriate authority responsible for acquisition and development of said reservation under the Excluded Plan.

5) The petitioners issued purchase notice under Section 127 of the MRTP Act to the respondents on 16/09/2022. By the said notice they called upon the respondents to purchase the said land within the statutory period of twenty four months. Said notice was served along with the documents such as Sale Deed, Correction Deed, 7/12 Extract, Measurement Sheet, and Part Plan of Development Plan. In reply to the said notice, under Section 127 of the MRTP Act, respondent No.2 issued a letter on 27/09/2022 and informed the petitioners that for the said reservation respondent No.3 i.e. NIT is the appropriate authority. The petitioner has issued the copy of the said notice to the respondent No.3 also. In response to the notice under Section 127, the respondent No.3 issued a letter to the petitioners offering Transferable Development Rights (for short TDR). The petitioners issued reply to the said notice on 28/01/2023 and rejected the offer of TDR and requested for the monetary compensation of said land.

6) Respondent No.3 on 24/01/2024 issued a letter to City Survey Officer, informing that Chairman, NIT that they have given temporary sanction for the TDR proposal for the said land. Respondent No.3 further directed City Survey Officer to submit the measurement sheet of the said land in the office of respondent No.3 and directed the Divisional Officer to take possession of the said land and

submit the possession receipt in the office of respondent No.3.

7) The statutory period of twenty four months for the notice under Section 127 of the MRTP Act had lapsed on 15/09/2024. On 27/09/2024, petitioners issued a letter to respondent No.3 and informed that on 28/01/2023, the petitioners through their counsel already rejected the TDR compensation offer for the said land owned by them. The petitioners by the said letter withdraw the willingness for the TDR compensation and requested to initiate appropriate proceedings as per Section 127 of MRTP Act.

8) The learned counsel appearing for the petitioners has stated that according to Section 127 of the MRTP Act, “if any land reserved allotted or designated for any purpose specified in any plan under this act is not acquired by agreement within 10 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 the notice”. This provision of Section 127 of MRTP Act has been interpreted by the Hon’ble Apex Court to mean that within the aforesaid period of twenty-four months, declaration u/s 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“Act

of 2013” for short) is required to be issued and published in order to take steps or for acquisition to commence. In the present matter notice under Section 127 was received on 16/09/2022 and the statutory period of the twenty four months came to an end on 15/09/2024. Although the respondent no.3 is an appropriate authority as per the Table of Reservation Details and as per the GR of 2021, however, as per Section 26 of MRTP act, for this Respondent No.3 is the planning authority and Respondent No.3 had not acted as per the statutory requirements of MRTP Act.

9) By the end of the statutory time even till the date of filing of the petition, no notification under Section 126 (2) and (4) of the MRTP Act r/w Section 19 of the Act of 2013 has been issued or published. Thus, it is clear that no steps for acquisition of the land owned by the petitioners have been taken within the statutory period of twenty four months and thus the reservation has lapsed. The petitioners have therefore, filed this writ petition under Section 127 of the MRTP Act.

10) The respondent No.3 has filed the reply and denied the contents in the petition. The respondent has specifically submitted that the petitioners have accepted the offer to accept the compensation in the form of TDR vide their earlier communication and the respondent has also granted temporary sanction for grant of TDR subject to condition

that the measurement sheet shall be procured from the City Survey Department. However, the petitioners have changed their stand and have refused to accept the compensation of the land in the form of TDR. In this backdrop, the respondents pressed to dismiss the petition.

11) Heard the learned counsel appearing for the respective parties and the learned Assistant Government Pleader for the State.

12) We have gone through the submissions made by both the parties. On perusal of the section 127(1) of MRTP Act, it is clear that petitioners have satisfied the condition of serving of notice on the respondents along with documents showing their title or interest in the said land as the land was not acquired by agreement within ten years from the date on which final development plan came into force. The respondents ought to have acquired the land or taken steps towards acquisition within 24 months i.e. before 15/09/2024.

13) The petitioners have relied on the judgment of this Court in *Writ Petition No. 4535 of 2019 ( Pagariya Realtors V. State of Maharashtra) decided on 09/05/2024*, wherein this Court has relied on the judgment of the Apex Court in the case of *Chhabildas V. State of Maharashtra and ors. [(2018)2 SCC 784: (AIR 2018 SC (supp)6]* and *Mohandas and ors. Vs.State of Maharashtra and ors [2020 SCC OnLine SC 97*. In the aforesaid judgment, the Apex Court at length discussed

the steps towards the acquisitions and the same view has been reiterated in all the subsequent judgments of the Apex Court. It is also clearly stated that merely offering TDR would not be in compliance of Section 127 of the Act of 1966 and it is not obligatory on the petitioners to accept the TDR in lieu of the compensation.

14) The Full Bench judgment of this Court in ***Vinayak Builders and developers, Nagpur Vs.State of Maharashtra and ors [2022(4) Mh.L.J. 739:(AIR Online 2022 Bom. 435)]*** relied by the petitioners has held that mere grant of approval or passing of the resolution by the Authorities concerned, for grant of TDR/FSI in lieu of monetary compensation is not a step towards the acquisition of land and the land owner cannot be compelled to accept the same. The full Bench has also considered the issue of what constitutes a step commencing the acquisition proceeding elaborately.

15) As a consequence of above discussion, we deem it appropriate to allow the present writ petition. It is hereby declared that the reservation of the lands of the petitioners bearing Survey No/Khasra No.16/1 of Mouza Wathoda area ad-measuring 1.26 Hectares (12,600 sq.mts.), Occupancy Class-1 rights, Patwari Halka No.34/A, City Survey No.213, Sheet No.585/26, Tq.Nagpur Dist.Nagpur has lapsed and the lands are free for the purpose of development as is otherwise

permissible to the adjacent land under the development plan. The respondent No.1 is directed to notify the lapsing of the reservation on the aforesaid lands by notifying the same by an order published in the official gazette as per section 127(2) of the Act of 1966 within eight weeks from the date of producing the copy of this judgment.

16) Rule is made absolute in the aforesaid terms. No costs.

(MRS.VRUSHALI V. JOSHI, J)      (NITIN W. SAMBRE, J)