MANALI PRASANNA TILAK
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2377 OF 2007

Gunabai Devram Matale and ors .. Petitioners

Versus

Nashik Municipal Corporation and ors .. Respondents

...

Dr. Virendra Tulzapurkar with Mr.R.D. Soni i/b V.R. Kasle, Ram & Co. for the petitioners.
Mr.Atul Damle, Sr. Advocate with Rupesh Lanjekar for the respondent Nashik Municipal Corporation.
Mrs.Apurva Thipsay, 'B' Panel Counsel for the State.

CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ
DATED : 22nd OCTOBER, 2026

JUDGMENT:- (Per Bharati Dangre, J)

1. The petition having been admitted on 4/12/2007, the Division Bench granted interim relief in favour of the petitioners by recording thus :-

> "2 So far as the question of interim relief is concerned, it prima facie appears that notice under section 127 of the MRTP Act was duly delivered and therefore, it prima facie appears that the land is released from the reservation. The petitioners are willing to develop the land at their own risk and also do not want to claim any equity on the basis of the development at the final hearing.
> 3. The learned counsel appearing on behalf of the Corporation, however, states that the tentative layout plan, that is alleged to have been submitted by the petitioners, has not actually been received.

4. Taking an overall view of the matter, therefore, in our opinion the following interim order will meet the ends of justice.

O R D E R

(i) Within a period of one week from today, the petitioners, without prejudice to their contention that the layout plan was duly submitted to the Corporation, shall submit a layout plan to Mrs. Vaizapurkar, Assistant Director of Town Planning, Nashik Municipal Corporation and, thereafter, that layout plan will be scrutinized in accordance with law. While considering the layout plan, the Corporation shall assume, without prejudice to their rights and contentions in this Petition, that the reservation has lapsed. On the layout plan being sanctioned, the petitioners shall be at liberty to develop the land in accordance with the sanctioned layout plan.

(ii) The sanction to the layout plan shall be subject to the result of this Petition and the Corporation shall be sanctioning the layout plan without prejudice to their rights and contentions in this Petition.

(iii) If any development is carried out during the pendency of this Petition on the land by the Petitioners, the Petitioners shall be doing it at their own risk and shall not be entitled to claim any equities on the basis of the development at the final hearing of this Petition.

(iv) The petitioners shall also not be entitled to create any third party rights in the land or in the development carried on the land without seeking leave of this Court."

2. On completion of the pleadings, we have taken up the petition for hearing.

We have learned senior counsel Dr. Virendra Tulzapurkar for the petitioner and learned senior counsel Mr. Atul Damle for the Corporation, whereas the State is represented by Mrs. Apurva Thipsay, the learned Government Advocate.

3. The petitioners claim to be the owners and therefore, fully entitled to a plot bearing Survey No. 2(p)-5/1 to 16-29/1B/2B, 44/2, 44/6, 44/7, 44/8, 44/9, 45/1 admeasuring about 33500 sq.meters.

On 28/06/1993, the Development Plan (DP) was sanctioned for Nashik City and it came into operation with effect from 16/11/1993. The land of the petitioners, bearing Survey Nos. 29(p), 44(p), 45(p), 2(p) and 5(p) situated at Kamatwada, Nashik, admeasuring 33500 sq.meters was shown to be reserved for "Garden" under designated reservation no.39.

4. In terms of the provision of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act, 1966) if any land reserved or designated for any purpose specified in the plan is not acquired within ten years from the date on which the development plan came into force, and if the proceedings for its acquisition under the Land acquisition Act are not commenced, the owner or any person interested in the land is entitled to serve a notice to the Authority concerned, to the effect that if the land is not acquired and/or no steps are commenced for its acquisition, the reservation shall be deemed to have lapsed.

In furtherance of the same, the petitioner issued purchase notice under Section 127 of MRTP Act, 1966 on 24/03/2004, calling upon the Nashik Municipal Corporation to acquire or purchase the said land for implementation of the reservation. It

is the contention of the petitioners that the Corporation duly received the notice and acknowledged its receipt under Inward No.790 dated 24/03/2024.

Since steps to acquire the said land as stipulated under Section 127 were not initiated by the planning authority or the acquiring body within six months, it is the case of the petitioners that the reservation is deemed to have been lapsed on 20/11/2006.

5. In the wake of the aforesaid development, a layout plan was submitted by the petitioners for sanction to the Corporation in accordance with the provisions of the Development Plan, which was acknowledged by issuing receipt on 20/11/2006. The petitioners also paid the scrutiny fee for the said layout, and a receipt of the said payment is also included as a part of the petition.

6. The present writ petition (Writ Petition No. 2377/2007) is filed by the petitioner on 04/04/2007 as the layout application was not processed by the Corporation, and a writ of mandamus was prayed, directing the Corporation to treat the reservation as 'lapsed' and to consider and sanction the layout proposal, on the basis that the reservation no longer prevail.

7. The petition has received a response from the Nashik Municipal Corporation, through the affidavit in reply filed by Shri Sanjeev Yashwant Pawar, Executive Engineer. The Corporation adopted a specific stand in the said affidavit in opposing the reliefs in the petition by stating thus :-

(i) The notice was not issued to the Commissioner.
(ii) The Corporation did not have any office of the Town Planning Department at Satpur.
(iii) The Corporation did not have the rubber stamp of which the impression was made on the said notice.
(iv) The rubber stamp impression did not bear the signature of the receiving clerk.
(v) The acknowledgment produced by the petitioner was allegedly fabricated and
(vi) The notice issued was invalid, since the same was not issued by the owners or the person interested in the land in question.

8. On 06/7/2007, another affidavit is filed by the Deputy Director, Town Planning, Nashik Division, stating that the provisions of Section 45 of the MRTP Act, as regards deemed sanction would not apply as the Department has adopted a stand that the purchase notice was never received by it.

This was followed by a rejoinder filed by the petitioner no.36 - Rohit Gopal Wavare on 23/07/2007, where the allegations levelled in the affidavit filed on behalf of the Corporation of fabrication through rubber stamp impression is denied. It was specifically reiterated in the affidavit that the purchase notice was inwarded at the main office of the Corporation at Rajiv Gandhi Bhavan, since the property was situated at Kamatwada, which comes under CIDCO, Satpur Division, and the stamp of CIDCO, Satpur Division was affixed when the acknowledgment was passed. The petitioners also annexed other documents showing the identical stamps put to

use by the Corporation, which was now sought to be disputed.

9. A specific affidavit is filed before us, by Shri Shankarrao Punjaji Matale, an Advocate stating that he had sent legal notice under Section 127 of the MRTP Act, 1966 on behalf of the land owner, Gunabai Devram Matale and other 42 persons to the Nashik Municipal Corporation. In the affidavit affirmed on 20/07/2007, he specifically depose thus:

> "I have sent legal notice under Section 127 of MRTP Act 1966 as an advocate for the land owner, Gunabai Devram Matale, and other 42 persons to Nashik Municipal Corporation, Nashik. The said notice has been served by me personally in the office of Nashik Municipal Corporation, Rajiv Gandhi Bhavan Nashik, on 24/03/2004. The said notice has been acknowledged by the concerned Department of Nashik Municipal Corporation at Inward No. 790 on 24/03/2004. The said notice having enclosures in form of all 7/12 extracts, site plan of DP Map, General Power of Attorney (GPA) in favour of Narayan Dhondiram Matale, executed by some of the land owners, alongwith U.L.C map. The said notice has been properly served on Corporation, and the said has been received by Nashik Municipal Corporation Authorities."

10. Controverting the aforesaid contention, affidavits were filed by one Prashant Sawant and Kailas Darade on behalf of the Corporation, deposing that the purchase notice was not received by the Corporation and the signature appearing on the acknowledgment was not genuine.

This resulted in an order passed on 04/12/2007, which we have already reproduced above, when Rule was issued and a *prima facie* finding is recorded that notice under Section 127 was duly served and that the land was released from reservation and a direction was issued to the Corporation to sanction the plan subject to the result of the petition.

11. Being aggrieved by the aforesaid order, the Nashik Municipal Corporation approached the Apex Court by filing Special Leave to Appeal (Civil) No.(s) 5285/2008 and on 9/9/2011, the following order was passed:

> "We have heard Shri Shivaji M. Jadhav, learned counsel appearing for the petitioners and Dr. A.M. Singhvi, learned senior counsel appearing for the respondents and are of the view that the ends of justice will be met by requesting the High Court to make an endeavour to decide the Writ Petition at an early date.
>
> The special leave petition is accordingly disposed of with the request to the High Court to make an effort to decide the Writ Petition as early as possible but latest within six months.
>
> We further direct that till the disposal of the Writ Petition, interim order dated 10.03/2008 passed by this Court shall remain operative."

12. In light of the aforesaid, we have taken up the Petition for consideration, though definitely after a considerable delay.

Learned Senior Advocate Mr.Tulzapurkar representing the petitioners would refer to several subsequent events and this include a communication addressed by the Section Officer of the Urban Development Department to the Commissioner, Nashik Municipal Corporation, requesting for forwarding to the State Government the copy of the representation dated 07/05/2016 preferred by Shri Rohit Gopalrao Wavare and others, along with its report. Since there was no compliance of the direction on 17/5/2016, another letter was addressed to the Deputy Director, Town Planning, Nashik on 23/05/2016, again reiterating the demand of forwarding the report of the Nashik Municipal Corporation in regards to the notices issued

under Section 127(2) and one of the matter was that of the petitioner, Rohit Wavare and 41 others, in respect of Survey No. 29, 44 and 45 at Kamatwada, which was shown under reservation 39-Garden.

The information prepared in a tabular form in relation to the proceedings which were pending before the Urban Development Department, pursuant to the application filed under Section 127(2) since the reserved land was not acquired during the prescribed time, the detailed information was set out, which included the case of Rohit Wavare and 41 others at Item No. 6. In the column setting out the date when the period prescribed for acquisition has come to an end, the date is set out as 23/9/2004 in respect of lands in Survey No.29, 44 and 45 of Kamatwada, which was shown reserved for 'Garden'.

13. In the remarks column, with reference to Writ Petition No. 2377 of 2007 and the direction issued by the High Court on 4/12/2007, it is stated that the applicant filed a layout application on 15/12/2007, but it was neither sanctioned nor refused. From the letter of the Land Acquisition Officer dated 26/05/2016, the applicants were informed, on perusal of the record that no proposal for acquisition of their property was received.

With the aforesaid communications being addressed, the Assistant Director, Town Planning forwarded the communication to the Assistant Director, Town Planning Corporation, requesting for a report to be forwarded, and it is

ultimately on 3/6/2016, the Town Planner, Nashik Municipal Corporation forwarded its report to the Assistant Director of Town Planning, in regards to the proposals which were pending before the State Government under Section 127.

The said report included the case of Reservation No. 39, Kamatwada, and it specifically offered the information that out of the reserved area, TDR in form of 3562.00 square meters and area of 4026.00 for DP Road is granted on 21/3/2007. It is also stated that Smt.Gunabai Devram Matale and 41 others, through Advocate Shri Shankar Rao Matale, had issued a purchase notice under Section 127 on 24/3/2004 for an area admeasuring 10745.00 square meters. The report further record that from the record available with the Land Acquisition Officer, it is evident that no proposal for land acquisition is initiated.

The aforesaid communication is followed by the letter from the Town Planning and Valuation Department, Nashik, dated 20/06/2016, addressed to the Director, Town Planning and Valuation, Maharashtra State, Pune, with reference to Writ Petition No. 2377 of 2007 filed by the petitioners, in respect of Reservation No. 39, and in the wake of it's cancellation, it being reflected 'in the residential zone'.

14. With reference to the representation preferred by Shri Rohit Gopalrao Wavare and others on 17/05/2016, and with reference to the reports that had been forwarded earlier, the report was prepared based on the stand adopted by the Nashik

Municipal Corporation, which reflected that a notice was issued on 24/03/2004 by the land owners, under Section 127 of the MRTP Act, and no steps were taken for acquisition of the said land.

With reference to the order passed by the High Court on 04/12/2007, the necessary information was forwarded as regards the purchase notice and in column No. 9, it is indicated that the said notice u/s.127 of the MRTP Act is received by the Corporation on 24/3/2004. However, the actual area under the said notice is reflected as 29,442 square meters. In column No. 12, as to whether Nashik Municipal Corporation has taken any steps for acquisition of the property in respect of which the notice was issued, the response is in the negative, and it is recorded that there is no proposal forwarded for acquisition of the said land.

15. In column No. 14, titled as "whether the reservation has lapsed", by referring to the provision of Section 127 of the MRTP Act 1966, where a provision is made, that if the purchase notice is issued and within period of 6 months, if the land is not acquired, or if no steps are taken for its acquisition, the reservation is deemed to have been lapsed and the land stands released of the said reservation, which is then available to the owner for the purpose of development, permissible in the case of adjacent land under the relevant plan. It was clearly indicated that in the wake of the purchase notice dated 24/03/2004, survey numbers mentioned therein, covering an

area of 30,000 square metres, the Reservation No. 39, Garden, has lapsed.

16. From the aforesaid documents, which emanates from the Corporation itself being forwarded to the Town Planning Department, Maharashtra State, Pune, on 20/06/2016, Mr. Tulzapurkar is perfectly justified in submitting that the conundrum as to whether 127 notice is received by the Corporation or not, is no longer an issue for consideration, as the Corporation itself has admitted that the purchase notice under Section 127 on behalf of the petitioners was received on 24/03/2004, and since no steps were taken for its acquisition, the Reservation for Garden under Reservation No.39 has already lapsed.

In addition to the aforesaid documents, Dr. Tulzapurkar has placed before us the objection raised by the petitioners before the Competent Authority on 22/07/2015, which resulted in a hearing being conducted where it is noted that 127 notice is received and the reservation stands cancelled.

17. We have perused the compilation of documents placed before us, which include a notice issued by the petitioners by invoking the provision of Section 127 of the MRTP Act, the notice being addressed to the Commissioner, Nashik Municipal Corporation on behalf of 42 petitioners, Smt. Gunabai Devram Matale, being the first name mentioned in the notice.

The notice clearly set out the ingredients of Section 127, qua the property set out therein, admeasuring 30,000 square

meters, which was shown reserved for 'Garden' by Reservation No. 39. The notice indicated that the reservation was declared on 16/11/1993 when the Development Plan came into effect, and a period of more than 10 years has elapsed, since the land was shown to be reserved. The notice was therefore issued under Section 127 of the Act, informing that despite the lapse of a period of 10 years from the Development Plan coming into force, the land under reservation has not been acquired, nor any steps have been taken for its acquisition, and therefore the notice stated that if within a period of 6 months, the land is not acquired or the procedure for acquisition is not initiated, the reservation of DP Road/garden shall lapse, and the land shall then become free of reservation.

The notice has the following stamp endorsed:-

NASHIK MUNICIPAL CORPORATION
Town Planning Dept.
CIDCO/SATPUR Division
Inward No. 790
Date 24/03/2004.

The inward number and date is handwritten, and based on this, the Division Bench *prima facie* expressed that the notice is received by the Corporation, and when the Nashik Municipal Corporation approached the Apex Court, by continuing the interim order dated 10/03/2008, the High Court was directed to decide the Writ Petition.

Between the date when the interim order was passed by this Court on 04/12/2007 and the date on which the order was

passed by the Supreme Court on 09/09/2011 and today's date, when the petition came up for hearing before us, we have taken note of the developments which is reflected through communications/reports submitted by the Town Planning and Valuation Department of the Corporation, clearly indicating that the issue whether the purchase notice under Section 127 was received by the Corporation or not, no longer remains an issue, as it is clearly admitted through the said letters that the notice under Section 127 on behalf of the petitioners was received by the Corporation on 24/03/2004.

Not only this, it is also admitted clearly that no steps were taken for acquisition of the property of the petitioners within a period of 6 months, which was the stipulated period under Section 127 at the relevant time. An inference is also clearly drawn and recorded in the reports that the consequence of not taking any steps within a period of 6 months from the date of receipt of the notice, has resulted into the reservation deemed to have lapsed.

18. Learned senior counsel, Mr. Damle appearing for the Corporation has pressed into service Section 136 of the MRTP Act, which is a provision of service of notice, and according to it, in absence of the said procedure being followed, it cannot be said that the notice was duly served. He feebly attempted to justify the stand adopted by the Corporation, in its affidavit about the fraud being played upon the Corporation by fabricating the stamp reflecting acknowledgment, and he would

rely upon the affidavits filed by the clerks, stating on oath that the purchase notice was never received in the Corporation.

In our view, in light of the clear-cut communication by the Town Planning and Valuation Department, Nashik addressed to the Town Planning and Valuation Department of Maharashtra State, Pune, there is no scope for us to refer to any of such letter/communications, once it is admitted that the purchase notice under Section 127 on behalf of the Petitioners was received, and no steps were taken to acquire the land under the said notice. In such circumstances, the consequences prescribed under Section 127 shall follow, i.e. the land in regards to which the purchase notice was issued shall be deemed to be released from the reservation and it shall become available to the owner for the purpose of development or otherwise, permissible in the case of adjacent land under the relevant plan. Therefore, in our view, the rule issued by this Court on 04/12/2017 deserves to be made absolute, by confirming the *prima facie* finding that the land stands released from the reservation and the petitioners are permitted to develop their land.

19. For the aforesaid reasons, the writ petition is made absolute.

No order as to costs.

(ASHISH S. CHAVAN, J) **(BHARATI DANGRE, J.)**

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