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

WRIT PETITION NO.1700 OF 2019

Petitioners :

1. Mandakini Ruprao Khangar,
   Aged 53 years, Occupation – Service,
   R/o Wanadongri, Tahsil Hingna, District Nagpur.

2. Sharad s/o Kisanrao Chandekar,
   Aged 48 years, Occupation – Private,
   R/o Wanadongri, Tahsil Hingna, District Nagpur.

3. Hrudayshree Ruprao Khangar,
   Aged 22 years, Occupation – Student,
   R/o Wanadongri, Tahsil Hingna, District Nagpur.

– Versus –

Respondents :

1. The State of Maharashtra, through its Secretary,
   Town Planning & Urban Development Department
   Mantralaya, Mumbai

2. The Hon'ble Collector, Nagpur,
   Collector Office, Civil Lines, Nagpur.

3. Chief Officer, Municipal Council,
   Nagar Parishad Mohapa,
   Tahsil Kalmeshwar, District Nagpur.

4. Municipal Council, Mohpa, Tahsil Kalmeshwar,
   District Nagpur.

Amended as per Hon'ble Court's Order dated 24/09/2021.

=-=

Mr. S.S. Deshpande, Advocate for the Petitioners.
Mr. A.A. Madiwale, A.G.P. for Respondent Nos.1 & 2.
Mr. M.I. Dhatrak, Advocate for Respondent Nos.3 & 4.

=-=

CORAM : A.S. CHANDURKAR AND M.W. CHANDWANI, JJ.
RESERVED ON : 26th APRIL, 2023.
PRONOUNCED ON : 4th MAY, 2023.

J U D G M E N T : *(Per M.W. Chandwani, J.)*

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

02] Whether the legal fiction of lapsing of reservation provided under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'the Act' for short) would apply in a case where a purchase notice under Section 127 of the Act is given after statutory period of ten years from the final development plan, but before expiry of ten years from the date of revised development plan, is a question raised in this petition.

03] The petitioners are the owners of field bearing Survey Nos. 500, 501, 502 (Old Survey No.297) at Mouza Mohpa, Tahsil Kalmeshwar, District Nagpur (hereinafter referred to as "the said land" for short). In development plan for Mohpa, Tahsil Kalmeshwar, District Nagpur, published on 20/09/1973, the said land was reserved for weekly market and shops vide reservation No.TPS-2469/61163-W-II, Mohpa. No steps were taken by respondent No.4 to acquire the said land under the provisions of the Act. Vide notification dated 31/03/2012, the revised development plan for Mohpa was published under Section 38 of the Act. Even in the said revised development

plan, reservation on the said land was kept intact. Since no steps were taken for acquisition of the said land, the petitioners on 30/12/2015 issued purchase notice to the respondents under Section 127 of the Act. Even after expiry of statutory period of twenty four months provided under Section 127 of the Act, no steps have been taken by respondent no.4 to acquire the said land. Rather, respondent No.4 passed a resolution resolving that the said land is not required for weekly market and shops as there is sufficient alternate place. In spite of that no step is taken by either of the respondents for deletion of said reservation. Hence, the present petition came to be filed for invoking legal fiction of deemed lapsing of reservation under Section 127 of the Act.

04] In reply, respondent No.3 contended that the final development plan was under revisions. It was revised u/s 38 of the Act and published on 31/03/2012. In revised development plan, the reservation over the said land is kept continue for market and shopping complex. The period of ten years after revised development plan came into force, is yet to be expired. In view of the provisions of Section 127 of the Act, the purchase notice dated 30/12/2015 is premature. Initially, respondent No.4 had passed the resolution not to acquire the said land, the said resolution is reviewed and now respondent No.4 is going to develop the said land as shopping complex.

05] Learned Counsel Mr. S.S. Deshpande for the petitioners would submit that the said land is reserved for weekly market and shops since 1973 and the respondents having failed to take any steps almost for more than 40 years, cannot deprive the petitioners from getting the said land de-reserved from the reservation under the development plan of respondent No.4. No acquisition proceedings have been initiated by the respondents for a considerable period of 40 years. The purchase notice has been issued to respondent No.3 on 30/12/2015. According to him, if they fail to take any step for acquisition of the said land within 24 months from the date of service of purchase notice, the consequences would be, the said land shall be deemed to be released from such reservation and will be available to the owner for the purpose of development as permissible in the case of adjacent land under the relevant plan.

06] The learned Counsel appearing for the petitioners vehemently submits that more than ten years have been expired since 1973 when final development plan was published by respondent No.4 for the city of Mohpa. According to him, the right to property is a constitutional right under Article 300A of the Constitution of India. The respondents cannot withheld the property of the petitioners under the garb of reservation. On one hand, the respondents do not require the said land and on another hand, they are

objecting to the lapsing of reservation under Section 127 of the Act. Though the revised development plan was published on 31/03/2012, it will not invalidate the purchase notice issued on 31/12/2015. It is vehemently contented that as per Section 127 of the Act the period of ten years is to be counted from date of publication of Final Development plan and not from the date of revised development plan. Therefore, the period of ten years has to be counted from the date of final development plan and not from the date of revised development plant. The purchase notice issued by the petitioners is a valid notice. Therefore, the said land shall be deemed to be released from such reservation under Section 127 of the Act.

07] Learned Counsel Mr. M.I. Dhatrak appearing on behalf of respondent Nos.3 and 4 submitted that the purchase notice has been issued three years after the draft development plan was prepared. The period of ten years as provided under Section 127 of the Act has not been lapsed after issuance of the draft development plan. The period of ten years is to be reckoned from 31/03/2012 on which final revised plan under Section 38 of the Act came into operation and not from the date of earlier final development plan. It is contended that the petitioners themselves were inactive since they have not taken any action from 1983 when a period of ten years was over to first development plan. Notice post revised development plan before lapsing

of a period of ten years from the date of revised development plan is premature notice and will not invalidate the reservation that has been made and is continued in the revised development plan. It is also contended that in recent past, respondent No.4 has shown its intention to develop the said land as per the reservation made under the revised development plan of respondent No.4. He submits that the petition is devoid of merits, hence, it be dismissed.

08] Having heard the learned Counsel appearing for the parties, let us briefly notice Section 127 of the Act, which deals with lapsing of reservation and being at a core in controversy arising in the present case, which reads as under:

> *"127. Lapsing of reservation -*
>
> *(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten 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 notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twenty four months from the*

> *date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.*
>
> *(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette."*

As per Section 127 of the Act, the owner or any person interested in the land can issue purchase notice after a period of ten years from the date of publication of final development plan.

09] The crucial question, which arose before us is whether the development plan mentioned in Section 127 of the Act includes revised development plan issued under Section 38 of the Act. To answer the aforesaid question, a brief summary of the provisions regarding preparation of a development plan under the Act is necessary.

10] Section 2 of the MRTP Act contains the definition clause. A "development plan" is defined by sub-section (9) of Section 2 to mean -

> *"a plan for the development or redevelopment of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a Special Planning Authority for development of land within its jurisdiction".*

11] As per definition, the development plan includes a revised development plan. Chapter III of the Act, *inter alia*, deals with preparation, submission and sanction of development plan. This chapter contains the provisions for survey, preparation for existing land use map provisions, regulation for use of land and reservation of the land, sanction and publication of plan.

12] Section 21 provides that not later than three years after commencement of the Act, every Planning Authority has to prepare a draft development plan. Section 22 of the Act contemplates that the plan shall provide the provisional designation/reservation of land for public purpose. For preparing the draft plan, the Authority shall carry out a survey, prepare an existing land use map and prepare a draft development plan for the area within its jurisdiction under Section 25 of the Act. After following the prescribed procedure, including considering of the bona fide objections under Section 28 of the Act, a draft plan is prepared in terms of Section 21, on

receiving sanction of State Government under Section 31(4) of the Act, it will come into operation. During the lifetime of the development plan, it is open to the Planning Authority or the State Government to carry out modification in the final development plan to the extent it will not change the character of such development plan.

13] Section 38 of the Act contemplates a revision of final development plan, which was already in operation. On expiry of 20 years from the date of coming into operation of the development plan, such revision is contemplated. Section 38 of the Act being bone of controversy in the present case, the same may be extracted below.

> *"38. Revision of Development Plan -*
>
> *At least once in twenty years from the date on which a Development plan has come into operation, and where a Development plan is sanctioned in parts, then at least once in twenty years from the date on which the last part has come into operation, a Planning Authority may and shall at any time when so directed by the State Government, revise the Development Plan either wholly, or the parts separately after carrying out, if necessary, a fresh survey and preparing an existing land-use map of the area within its jurisdiction, and the provisions of Sections 22, 23, 24, 25, 26, 27, 28, 30 and 31 shall, so far as they can be made applicable, apply in respect of such revision of the Development plan."*

14] From above provision it is clear that the Planning Authority may revise the development plan, either wholly or partly. Such revision may involve exercise, which is required for initial draft development plan, of fresh survey and preparation of existing-land-use map. Section 38 of the Act also makes it clear that Sections 22 to 28 and 30 to 31 so far as they can be made applicable to initial draft development plan, shall apply to revised draft development plan. Thus, the sections of the Act, which are applicable to initial draft development plan, are applicable while preparing revised development plan.

15] This takes us to Section 31(6) of the Act, which reads thus:

> *"(6) A Development plan which has come into operation shall be called the "final Development plan" and shall, subject to the provisions of this Act, be binding on the Planning Authority."*

Thus, a revised development plan, which will come into operation under Section 31(4) by notification, also becomes the final development plan as per Section 31(6) of the Act. Therefore, a development plan, whether has been initiated under Section 21 of the Act or revised under Section 38 of the Act, by virtue of Section 31(6) of the Act, the plan has initially notified as a final development plan and the expression 'final development plan' in Section 127 has to be read in that context.

16] The Act also contemplates continuation of reservation made for public purpose while considering the revised development plan by retaining the same. This also finds support from what contained in Section 22 of the Act which also attracts to a draft revised development plan. It provides at the time of drafting a development plan, the Planning Authority has to consider, the proposals for designation/reservation of land for public purpose and while doing so, the Planning Authority's finding that a public purpose subsists or the land is required for same purpose or for some other public purpose, it may continue the reservation or provide for a different reservation to serve the public purpose.

17] Just because the Planning Authority did not acquire the land under reservation for 40 years, the land does not automatically released from the reservation unless the valid notice is issued under Section 27 of the Act. In this regard, it will be useful to refer the recent decision of the Full Bench of this Court in ***Madanlal Zumberlal Nahar and others vs. Chief Officer, Municipal Council, Beed and others – 2023(2)Mh.L.J. 618,*** wherein the question referred to it is answered as under:

> *"14. For the aforesaid reasons, we answer the question in following terms:*
>
> *In absence of valid notice under Section 127 of the Maharashtra*

> *Regional and Town Planning Act, 1966, High Court cannot lawfully declare lands reserved for public purpose under the Maharashtra Regional and Town Planning Act, 1966 for inordinate long period of time, free from reservation."*

18] Thus, after ten years of publication of final development plan, if the owner does not issue purchase notice provided under Section 127 of the Act to get the land de-reserved if not acquired by the Planning Authority, during the life time of the earlier plan and before the new revised development plan has been published, the Planning Authority cannot be blamed. Once the revised development plan is published, it becomes final plan as contemplated under Section 127 of the Act. A fresh period of ten years will start from the date of publication of the revised development plan. To deny such consequence would amount to render the entire provisions with regard to preparation and publication of revised plan nugatory. Thus, the issuance of purchase notice under Section 127 of the Act must be anterior in point of time to preparation of revised development plan.

19] In ***Bhavnagari University*** *(supra)* relied by the petitioners, the Supreme Court has considered the provisions of Gujrat Town Planning Act, wherein there was no opportunity available for the owner of land reserved under the development plan to issue purchase notice provided under the

provision of the Gujrat Act and in that contingency the supreme court has held that Section 21 of the Gujarat Act, in their opinion, does not and cannot mean that the substantive right conferred upon the owner of the land or the person interested therein shall be taken away and it is not and cannot be the intention of the Legislature that which is given by one hand should be taken away by the other.

20] The decision of the Supreme Court in ***Bhavnagari University*** *(supra)* relied by the petitioners has been considered in the decision of this Court in ***Prafulla C. Dave v. Municipal Commissioner, Pune***, 2007 (2008) 3 Mah LJ 120 and while dealing with the same issue which arose in the present case, this Court distinguished the decision in ***Bhavnagari University*** *(supra)* and this Court has held in paragraph 14 as under:

> *"14. In Bhavnagar University vs. Palitna Sugar Mill Pvt. Ltd., reported in (2003) 2 SCC 111 : AIR 2003 SC 511 the question which arose for consideration was whether by reason of inaction on the part of the State and its authorities under the Town Planning Act to acquire the lands for a period of more than 10 years, in terms of the provisions of Land Acquisition Act, 1894 despite service of notice, the same stood dereserved/de-designated in view of issuance of draft revised plan under Section 21 thereof or the term of 10 years stood extended? The Supreme Court was pleased to hold that after the period of 10 years as*

required under the Gujarat Act had expired and if the land had not been acquired in the manner contemplated merely because the draft revised plan was issued would not automatically extend the period of reservation. Considering Section 21 of the Gujarat Act, the Court held that Section 21 of the Act, in their opinion, does not and cannot mean that the substantive right conferred upon the owner of the land or the person interested therein shall be taken away and it is not and cannot be the intention of the Legislature that which is given by one hand should be taken away by the other. This was in the context that the Planning Authority was bound to revise the plan on the expiry of ten years from the notification of the sanctioned draft plan and the notice to acquire could ordinarily be given and on the expiry of ten years from the notification of the sanctioned plan. In other words, the owners would have no opportunity of serving the notice if in the draft revised plan a further extension of reservation was provided for. This Judgment does not answer the issue which has been raised by the petitioners herein."

Ultimately, this Court in paragraphs 22 and 23 of the decision in ***Pravfulla C. Dave*** *(supra),* this Court has held -

"22. *The owners may take no steps to get the land deserved if not acquired during the life time of the plan as notified. At the time the new plan was under consideration, the Planning Authority finding the land not developed and considering what is contained in Section 22 finds that a public purpose subsists or land is required for some other public purpose continues the reservation or provides for a different reservation to serve public purpose*

after hearing the objections filed or not taken by the land owner. The Planning Authority, development authority or appropriate authority as the case may be would have no time to take steps to acquire the land if the period to be counted is not the date of notification of the revised development plan but the plan as first notified after the Act came into force. The time cannot be read from the point of nature of reservation whether continued or not. What happens if the reservation is different or the reservation is for a different authority as specified in Section 127, will the notice commence from the date of the first notified plan or the subsequent revised plan. A section cannot be read differently in the absence of express or implied language. It will have to be given one harmonious construction. In this context, we may reproduce the observation of the Supreme Court in K.L. Gupta (supra). This is what the Supreme Court observed and we quote from para 35:—

> *"…No one can be heard to say that the local authority after making up its mind to acquire land for a public purpose must do so within as short a period of time as possible. It would not be reasonable to place such a restriction on the power of the local authority which is out to create better living conditions for millions of people in a vast area. The finances of a local authority are not unlimited nor have they the power to execute all schemes of proper utilization of land set apart for public purposes as expeditiously as one would like. They can only do this by proceeding with their scheme gradually, by improving portions of the area at a time, obtaining money from persons whose lands had been improved*

> *and augmenting the same with their own resources so as to be able to take up the improvement work with regard to another area marked out for development. The period of ten years fixed at first cannot therefore be taken to be the ultimate length of time within which they had to complete their work. The legislature fixed upon this period as being reasonable one in the circumstance obtaining at the time when the statute was enacted. We cannot further overlook the fact that modifications to the final development plan were not beyond the range of possibility. We cannot therefore hold that the limit of time fixed under Section 4 read with Section 11(3) forms an unreasonable restriction on the rights of a person to hold his property."*
>
> ***23.*** *Legislature advisably has chosen to provide a time limit within which the steps have to be taken for acquisition. The same cannot be defeated by reading the plan notified under Section 38 as not a final development plan. We are of the opinion that the plan notified under Section 38 is also a final development plan as all the procedure for preparation and notification have to be taken de novo. The period, therefore, under Section 127 would commence from the date of the notification of the revised plan prepared under Section 38 and as notified under Section 31(6). Considering the above, the notice is premature."*

21] The above decision of this Court was assailed before the Supreme Court ***(Prafulla C. Dave and others vs. Municipal Commissioner and others -***

(2015) 11 SCC 90). After distinguishing the case of ***Bhavnagar University***, the Supreme Court upheld the decision of this Court. In paragraph 21 of the decision, the Supreme Court has held as under:

> *"21. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or provisions for acquisition is not initiated within ten years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary upon expiry of the said period of ten years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority*

to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation where the land owner or the person interested remains silent and in the meantime a revised plan under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the

> *contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants' Association & Ors.[2] in the following terms :*
>
> > *"10..... If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise." (underlined by us)*

22] Thus, in the wake of the decisions of this Court and of the Supreme Court in ***Prafulla C. Dave*** *(supra)* which are squarely applicable to the case in hand, the decision in ***Bhavnagari University*** *(supra)* will not helpful to the petitioners. The petitioners also relied on the following cases of this Court:

i. *Kishor Gopalrao Bapat & Ors. vs. State of Maharashtra & Anr. - 2006(1) ALL MR 232.*

ii. *Balkrishna Jagannath Lad vs. Indian Postal Department, Mumbai and others – 2015(5) Mh.L.J. 899.*

iii. *Kolte Patil Developers Ltd. vs. State of Maharashtra and others – 2015(1) Mh.L.J. 497.*

iv. *Ashok Shriram Kulkarni vs. State of Maharashtra and another – 2017(4) Mh.L.J. 382.*

v. *Hirabai w/o Shrikrishna Chiddarwar and others vs. State of Maharashtra and another – 2016(4) Mh.L.J. 283.*

vi. *Baburao Dhondiba Salokhe vs. Kolhapur Municipal Corporation, Kolhapur and another – 2003(3) Mh.L.J. 820.*

vii. *Godrej & Boyce Manufacturing Co. Ltd. vs. State of Maharashtra & ors. - 2015(1) SCALE 578.*

23] In all these cases the revised development plan came into operation after service of purchase notice issued by the owner, in that contingency, this court has held that once the reservation is lapsed after statutory period of notice is over, it can not be revived by revised development plan under Section 38 of the Act. In the present case, no purchase notice under Section 127 of the Act was issued by the petitioners to respondent No.4 on 30/12/2015 after the publication of revised development plan on 31/03/2012. Therefore these authorities will not be helpful to the petitioners.

24] The upshot of above discussion is that the revised development plan published under Section 38 of the Act being final development plan by virtue of Section 31(6) of the Act. The expression 'final development plan' used in Section 127 has to be read in that context and in that case, purchase notice issued under Section 127 before expiry of period of ten years of revised development plan would be premature notice. Indisputably, the purchase notice under Section 127 of the Act by the petitioners was issued only three years after the final revised development plan under Section 38 came into operation on 31/03/2012 and, therefore, the provisions for reservation made under the revised development plan cannot be invalidated by such notice. Therefore, the petition has no merit. Accordingly it fails.

25] It is to be noted that during the pendency of the petition, on 16/04/2022, the petitioners issued another purchase notice after completion of statutory period of ten years to the revised development plan of the respondent no.4. Needless to mention that the petitioners are at liberty to rely on the subsequent notice, if need arises.

26] Rule is discharged with no order as to costs.

(M.W. CHANDWANI, J.) (A.S. CHANDURKAR, J.)

*sandesh