



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

WRIT PETITION NO. 2053/2023

Jugalkishore Jagannath Jain, Aged 69 years,
 Occ. Businessman having office at Amardeep
 Cinema, Anaj Bazaar, Itwari, Nagpur – 440 002.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, Department of Town Planning and Urban Development, Mantralaya Annex, Mumbai, through its Secretary.
2. The Nagpur Improvement Trust, Nagpur, through its Chairman.
3. The Agricultural Produce Market Committee, Pandit Jawaharlal Nehru Market Yard, Kalamna, Nagpur, through its Secretary.
4. Punjab National Bank, Branch Office at Gandhibagh, Nagpur, through its Branch Manager.

RESPONDENTS

WITH
WRIT PETITION NO. 2054/2023

Rajesh Maujilal Jain, Aged 56 years,
 Occ. Businessman R/o Paithankar Road,
 Itwari, Nagpur – 440 002.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, Department of Town Planning and Urban Development, Mantralaya Annex, Mumbai, through its Secretary.
2. The Nagpur Improvement Trust, Nagpur, through its Chairman.
3. The Agricultural Produce Market Committee, Pandit Jawaharlal Nehru Market Yard, Kalamna, Nagpur, through its Secretary.
4. Axis Bank, Nagpur, through its Branch Manager, Civil Lines, Nagpur -4.

RESPONDENTS

WITH
WRIT PETITION NO. 2055/2023

Gajanan Bagwe, Aged 69 years, Occ. Businessman having office at Amardeep Cinema, Anaj Bazar, Itwari, Nagpur – 440 002.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, Department of Town Planning and Urban Development, Mantralaya Annex, Mumbai, through its Secretary.
2. The Nagpur Improvement Trust, Nagpur, through its Chairman.
3. The Agricultural Produce Market Committee, Pandit Jawaharlal Nehru Market Yard, Kalamna, Nagpur, through its Secretary.
4. Nagpur Nagarik Sahkari Bank, Branch Office at Kalamna, Nagpur, through its Branch Manager, Nagpur.

RESPONDENTSWITH
WRIT PETITION NO. 2056/2023

Anandkumar Maujilal Jain, Aged 45 years,
Occ. Businessman, R/o Amardeep Cinema, Anaj
Bazar, Itwari, Nagpur – 440 002.

PETITIONER.....VERSUS.....

1. The State of Maharashtra, Department of Town Planning and Urban Development, Mantralaya Annex, Mumbai, through its Secretary.
2. The Nagpur Improvement Trust, Nagpur, through its Chairman.
3. The Agricultural Produce Market Committee, Pandit Jawaharlal Nehru Market Yard, Kalamna, Nagpur, through its Secretary.
4. Axis Bank, Nagpur, through its Branch Manager, Lakadganj Branch, Nagpur.

RESPONDENTSWITH
WRIT PETITION NO. 2057/2023

Naresh Dhanpatrao Agrawal, Aged 59 years, Occ.
Businessman, R/o Wardhaman Nagar, Nagpur.

PETITIONER.....VERSUS.....

1. The State of Maharashtra, Department of Town Planning and Urban Development, Mantralaya Annex, Mumbai, through its Secretary.
2. The Nagpur Improvement Trust, Nagpur, through its Chairman.

3. The Agricultural Produce Market Committee, Pandit Jawaharlal Nehru Market Yard, Kalamna, Nagpur, through its Secretary.
4. Punjab National Bank, Nagpur, through its Branch Manager Lakadganj Branch, Nagpur.

RESPONDENTS

Shri U.S. Dastane, counsel for the petitioner in all the writ petitions.
 Shri N.H. Joshi, Assistant Government Pleader for the respondent-State.
 Shri K.P. Mahalle, counsel for the respondent no.2 in all the writ petitions.
 Shri O.A. Ghare, counsel for the respondent no.3 in Writ Petition Nos.2053/2023, 2054/2023 and 2057/2023.
 Shri N.R. Tiknayat with A.P. Joshi, counsel for the respondent no.3 in Writ Petition Nos.2055/2023 and 2056/2023.
 Shri S.B. Walekar with Shri S.N. Chichbankar, counsel for the respondent no.4 in Writ Petition Nos.2053/2023 and 2057/2023.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : OCTOBER 10, 2023

DATE ON WHICH JUDGMENT IS PRONOUNCED : NOVEMBER 30, 2023

JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties. Since a similar challenge has been raised in these writ petitions, they are being decided together by this common judgment.

2. The lands bearing Plot Nos.150 to 155 from Khasra No.109 Chikhli Deosthan, District Nagpur are owned by the Nagpur Improvement Trust – NIT. About eleven plots from said Khasra No.109 have been shown as reserved under the Head E-44 for extension of the Agriculture Produce Market Committee, Kalamna – APMC in the “Eastern Industrial Area Trade Scheme”. Each petitioner claims to be

a lawfully inducted lessee of the industrial plots and has been conducting industrial activities therein. It is the case of the petitioners that the NIT by its communication dated 08.05.2020 had written to the Administrator – APMC that the aforesaid plots in question had been leased out to eleven lessees. Eight lessees thereon had undertaken construction on the respective plots after obtaining necessary permission. The initial lease for thirty years having expired, renewal of the same was being sought. Since the request was made for extension of the lease, the NIT sought the no objection of the APMC for de-reserving the said lands to enable grant of extension to the lease. The petitioners seek to treat this communication dated 08.05.2020 issued by the NIT as a notice issued under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the Act of 1966'). It is their case that since no steps for acquiring the said lands for the purpose for which they were reserved were taken for a period of more than twenty four months, the said lands stood released from such reservation. The petitioners were thus entitled to renewal of the respective leases.

3. According to the APMC no purchase notice under Section 127 of the Act of 1966 was issued by any of the petitioners. In absence of any such purchase notice the deeming fiction as regards lapse of reservation would not apply. The communication dated 08.05.2020

issued by the NIT merely sought a no objection certification from the APMC. A resolution dated 11.03.2023 had been passed by the APMC opposing de-reservation of the aforesaid lands for the reason that the same was required for development and extension of the market committee.

The NIT has also opposed the claim of the petitioners by stating that it is the Planning Authority and therefore notice dated 08.05.2020 issued by it cannot be treated as a purchase notice. The NIT did not receive any notice from the petitioners under Section 127 of the Act of 1966. It has referred to the communication dated 27.07.2020 wherein information was sought from the APMC in the matter of acquiring the said lands and the steps taken in that regard. It has also opposed the claim made by the petitioners.

4. In the aforesaid backdrop, we have heard Shri U.S. Dastane, learned counsel for the petitioners, Shri K.P. Mahalle, learned counsel for the NIT and Shri O.A. Ghare, counsel for the APMC in Writ Petition Nos.2053/2023, 2054/2023 and 2057/2023 and Shri N.R. Tiknayat, counsel for the APMC in Writ Petition Nos.2055/2023 and 2056/2023, Shri S.B. Walekar with Shri S.N. Chichbankar, counsel for the respondent no.4-Bank in Writ Petition Nos.2053/2023 and 2057/2023 and Shri N.H. Joshi, learned Assistant Government Pleader for the respondent-State.

The learned counsel for the petitioners by relying upon the decision in *Zaheda Abdul Ahad & Others Versus Director of Town Planning Maharashtra State, Central Bldg. Pune & Others* [2005 SCC OnLine Bom 1134] submits that the communication dated 08.05.2020 issued by the NIT amounts to calling upon the APMC to acquire the said lands for the purposes for which it was reserved. Since no steps were taken in that regard and the period of twenty four months had passed the lands stood de-reserved. On the other hand, the learned counsel appearing for the APMC by relying upon the decision of the Full Bench in *Madanlal Zumberlal Nahar & Others Versus Chief Officer, Municipal Council, Beed & Others* [2023(2) Mh.L.J. 618] and *Mandakini Ruprao Khangar & Others Versus State of Maharashtra & Others* [2023(4) BCR 650] submits that in absence of any purchase notice by the NIT which owns the property the claim of the petitioners cannot be accepted.

5. Having given due consideration to the rival submissions we find that no declaration under Section 127 of the Act of 1966 that the subject lands stand de-reserved can be granted in favour of the petitioners. These lands vest with the NIT and the petitioners are the lease holders thereof. The notice under Section 127 of the Act of 1966 is required to be given by the owner or any person interested in the land. The petitioners as lessees of the said land have a limited interest in the said lands being lease-holders thereof. In that capacity they

have not issued any such notice. The NIT in whom the lands vest has not supported the stand of the petitioners – lessees in that regard. In absence of any statutory notice being issued by the owner there would be no question of application of deeming fiction under Section 127 of the Act of 1966. In any event, we find that the communication dated 08.05.2020 cannot be termed to be a purchase notice as required by Section 127 of the Act of 1966. Its perusal indicates that it merely seeks response from the APMC as to whether it has any objection for de-reserving the said lands and if so to issue a no objection certificate in that regard. Except aforesaid, nothing further has been stated in the said communication. We therefore find that on the basis of the communication dated 08.05.2020 no declaration of the reservation having lapsed as sought by the petitioners can be granted.

6. In the reply filed on behalf of the NIT a specific stand has been taken by it that unless the reservation bearing No.E-44 relating to extension of APMC is deleted, it would not be possible to execute lease of the aforesaid plots in favour of the petitioners. In the light of such stand and there being no material on record to hold that the said reservation stands deleted under the Act of 1966, the direction sought by the petitioners in that regard cannot be issued to the NIT. However, it is clarified that it would be open for the petitioners to pursue the matter for renewal of the respective leases with the NIT in accordance with the terms of the lease in accordance with law.

7. With aforesaid liberty, the writ petitions stand dismissed with no order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

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