

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 2014 OF 2014

PETITIONERS :- 1. Shoukat Allabaksh Bagwan, Since deceased
through heirs and legal representatives
1a. Smt. Shahanaj Shoukat Bagwan
1b. Shri Arish Shoukat Bagwan
1c. Shri Kaish Shoukat Bagwan
All R/o 9/96, Sangli Road, Ichalkaranji
Taluka-Hatkanangale, Dist. Kolhapur.
1d. Sau. Anjum Javed Tamboli
R/o Budhawar Peth, Satara,
Taluka and Dist. Satara
2. Sau. Shahanaj Shoukat Bagwan
3. Arish Shoukat Bagwan
4. Kaish Shoukat Bagwan
all major and occupation : Business.
All r/o 9/96, Sangli Road, Ichalkaranji,
Tq. Hatkanangale, Distt. Kolhapur.

...VERSUS...

RESPONDENTS :- (1) The State of Maharashtra
through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
(2) The Deputy Director (Town Planning)
Division, having its office
at Survey No. 74/2, Sahakar Nagar,
Pune.
(3) The Assistant Director (Town Planning)
Division, having its office
at Bindu Chowk, Kolhapur.
(4) The Collector, Kolhapur.
having its office at Tarabai Park, Kolhapur.

(5) The Chief Officer,
Ichalkaranji Municipal Council,
Ichalkaranji.

Mr. S. G. Karandikar a/w Mr. P.M. Arjunwadkar Advocate for the Petitioners.
Mr. Vikas Mali, A.G.P., for Respondents 1 to 4.
Mr. Akshay P. Shinde Advocate for Respdt. no. 5.

CORAM : Naresh H. Patil and S.B. Shukre, JJ.
Dated : 13.08.2015.

JUDGMENT (Per S.B. Shukre, J.) :

Heard. Rule. Rule made returnable forthwith. Heard finally.

2. By this writ petition, the petitioners have sought a declaration that the reservations made over their two lands under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as MRTP Act for short) have lapsed by operation of law and the petitioners are entitled to utilize the lands as free hold lands.

3. The petitioners are the owners of two lands bearing survey No. 661/A and 661/B situated within the limits of Municipal Council Ichalkaranji. Both these lands are reserved for the purposes of dispensary, library and shopping centre/vegetable

market and garden under the sanctioned development plan for the city of Ichalkaranji, which came into force with effect from 7.5.1999.

4. The petitioners have submitted that for a period of 10 years after coming into force of the development plan providing for reservation, the lands were not acquired nor any steps were initiated for acquisition of the lands. Therefore, the petitioners issued a purchase notice dated 30.10.2012 as per Section 127 of the MRTP Act to the respondents-authorities, which was duly received by them. By this notice, the petitioners called upon the respondents-authorities to acquire the lands as per law. However, neither the lands were acquired nor any steps for their acquisition were taken within a period of 12 months from the date of receipt of notice. The petitioners, therefore, have submitted that the reservation over the subject lands have now been lapsed by virtue of Section 127 of MRTP Act and the lands have become free hold lands.

5. The claim in the petition is mainly contested by respondent no.5- Municipal Council, Ichalkaranji. According to respondent no. 5, although the notice dated 30.10.2012 issued under Section 127 of MRTP Act was received by it, the notice did not comply with the requirements of Section 127, as the documents showing title or interest in the lands were not sent along with the notice and, therefore, the question of accrual of any right in favour of the petitioners under Section 127 MRTP Act would not

arise. It is also submitted by respondent no. 5 that even a proposal for acquisition of the land was sent to the Special Land Acquisition Officer and as it was incomplete in some respects, it was sent back to respondent no. 5. Now, respondent no. 5 is working on the said proposal. On these grounds, respondent no. 5 is opposing the petition.

6. We have heard learned counsel for the petitioner, learned A.G.P. for respondent nos. 1 to 4 and learned counsel for respondent no.5. We have carefully gone through the case papers with the assistance of respective learned counsel.

7. The submission that the notice received by respondent no.5, Municipal Council, was not accompanied by the documents showing ownership or interest of the petitioners in the subject lands and, therefore, the notice dated 30.10.2012 could not be considered as a notice issued under Section 127 of MRTP Act is, however, without any basis. It is not in dispute that this notice was duly received by respondent no.5. The ownership of petitioners over the lands in question is also not in dispute. Notice dated 30.10.2012 clearly makes a mention of the fact that copy of 7/12 extract showing ownership or interest of petitioners in the lands is enclosed therewith. Respondent no. 5 does not say that copy of 7/12 extract was not received by it. All these facts together would make the submission that notice was incomplete or invalid as baseless and is rejected as such.

8. As regards the acquisition of subject lands, we must say that there is no dispute at all that no steps for acquisition of the lands were initiated in the sense that notifications under Section 6 of the Land Acquisition Act, 1894, were not issued. In the case of **Kolte Patil Developers Ltd. vs. State of Maharashtra** reported in **2015(1) Mh.L.J. 497**, decided by the Full Bench of this Court, to which one of us was a party, the doubt surrounding the expression “no steps as aforesaid” used in Section 127 of MRTP Act (paras 10 and 11) has been cleared by following the majority view of the Hon'ble Apex Court taken in the case of *Girnar Traders (2) vs. State of Maharashtra* reported in (2007) 7 SCC 555. It was held that steps towards acquisition would really commence when the State Government would take active steps for acquisition of the land leading to publication of declaration under Section 6 of the Land Acquisition Act. Relevant observations of the Full Bench, as appearing in paragraph 11, are reproduced as under :

“While dealing with interpretation of section 126(1) (c) and section 127, the Apex Court observed that the steps towards acquisition would really commence when the State Government takes active steps for acquisition of land leading to publication of declaration under section 6 of the Land Acquisition Act. Any other interpretation of the scheme would make the provisions only unworkable.”

10. It is obvious that the present case is fully covered by the decision rendered in the case of Kolte Patil Developers, *supra*. Admittedly no steps for acquisition of the subject lands by issuance of notification under Section 6 of the Land Acquisition Act have been initiated in the present case within a period of 12 months from the date of receipt of notice under Section 127 by respondent no. 5. The petition, therefore, deserves to be allowed by granting prayer clauses (a) and (b).

9. Learned counsel for the petitioners has not pressed prayer clause (d) relating to petitioners claim for compensation for keeping the subject lands reserved without taking any steps for their acquisition.

10. Writ petition is allowed in terms of prayer clause (a) and (b). Rule is made absolute in above terms.

(S.B.Shukre, J.)

(Naresh H. Patil, J.)