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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11144 OF 2015.

1. Shri. Pravinsinh Jaysingrao Ghatage,
Age 58 years, Occn. Business.
R/o: 249/A/2B, Jay Villa Nagala Park,
Kolhapur.

2. Ms. Madhurika Pravinsinh Ghatage,
age: 29 years, Occn. Business,
R/o: 249/A/2B, Jay Villa Nagala Park,
Kolhapur.

.. Petitioners.

V/s.

1. The State of Maharashtra
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai 400 032.

2. The Director of Town Planning,
Maharashtra State,
Pune 400 001.

3. Kagal Municipal Council,
Kagal, Tal. Kagal,
District: Kolhapur
Through its Chief Officer.

4. The Assistant Director of Town
Planning & Town Planning Officer,
Kolhapur

.... Respondents

Mr. Prashant Bhavake, for the petitioner.
Mrs. M. P. Thakur, AGP, for the Respondent-State.
Mr. Tanaji Mhatugade, for respondent No.3.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 13th APRIL, 2016.

JUDGMENT. : [PER : DR. SHALINI PHANSALKAR-JOSHI, J.]

1. Rule.
2. Rule made returnable forthwith.
3. With the consent of the parties, heard finally at the stage of admission.
4. This petition is preferred under Article 226 of the Constitution of India, for declaration that the entire reservation being Reservation No.22 for Primary School and Playground admeasuring 77 R, and Reservation No.23 for garden admeasuring 1 Hector and 15 R, kept on petitioners' land bearing survey No.255 situate at Kagal, District: Kolhapur, in revised final development plan for Kagal City has been lapsed in view of the provisions of Section 127(2) of the Maharashtra Regional & Town Planning and 1966 (for short called as, "MRTP Act") and to direct the respondents to release the said land to the petitioners, for their own use.

5. Undisputedly, the petitioners are the owners of above said land which was their ancestral property. Final Development Plan of the Kagal Municipal Council came into force on 25th October, 1986. In the said plan, the above said reservations were shown as reservation No.22 and 23. As even after lapse of 10 years from the final development plan coming into force, no proceedings for acquisition were taken up, the petitioners issued purchase notice to respondent No.3 Municipal Council on 18th October, 2012 under the provisions of Section 127(2) of the MRTP Act.

6. In pursuance thereto, respondent No.3 Municipal Council, submitted their proposal to the District Collector, Kolhapur on 11.2.2013, requesting to start acquisition proceedings immediately. However, said proposal was returned with direction to remove deficiencies including the availability of funds and resolution of the General Body of the Municipal Council.

7. The Managing Committee of the Municipal Council, thereafter discussing the subject and taking into consideration the financial crisis of the Municipal Council, vide resolution No.29 dated 13.10.2013, resolved not to take steps to acquire the property of the petitioners and the said fact was communicated to the State of Maharashtra requesting to issue notification for deletion of these reservations. The proposal to that effect

was also submitted by Kagal Municipal Council to the Secretary, Urban Development Department on 27.1.2015.

8. A detail Affidavit bringing all these facts on record is filed on behalf of respondent No.3 Municipal Council by one Shri.Prabhakar Ramchandra Patki, Chief Officer of Municipal Council.

9. In the light of this factual position and in the light of legal position as laid down by the Apex Court in its landmark decision in **Bhavnagar University -vs. Palitana Sugar Mills Pvt. Ltd., 2003 (2) S.C.C. 111** and the said legal position further reaffirmed by our own High Court in **Baburao Dhondiba Salokhe -vs- Kolhapur Municipal Corporation and anr, 2003 (5) Bom C.R.232**, it has to be held that as even after lapse of 10 years from the date of coming into force of the final development plan for Kagal Municipal Council and even after expiry of one year from the receipt of purchase notice issued by the petitioners, no steps are taken by the Municipal Council, for acquisition of petitioners' land, conversely has pleaded it's inability to acquire the said land in view of financial crisis, it has to be held that the petitioners' land has been released from the acquisition. The reservation on the said land has already lapsed in view of provisions of section 127(2) of the MRTP Act.

10. This petition, therefore, stands allowed.

11. It is declared that the entire reservation being Reservation No.22 (for Primary School and Play Ground admeasuring 77 R) and reservation No.23 (for Garden admeasuring 1 Hecter 15 R), kept on petitioners' land bearing Survey No.255 situate at Kagal, in the revised development plan for Kagal City, has been lapsed in view of Section 127(2) of the MRTP Act and the said land has been released to the petitioners for their own use.

12. Rule made absolute in above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]