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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11148 OF 2015

Shri. Virendrasing Pravinsinh Ghatage,]
age 24 years, Occupation: Business,]
r/o 249/A/2B, Jay Villa Nagala Park,]
Kolhapur.] .. Petitioner.

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. |] | Respondents |
| |] | |
| 3. Murgud Municipal Council, |] | |
| at & PO Murgud, Tal. Kagal, |] | |
| District: Kolhapur |] | |
| Through its Chief Officer. |] | |
| |] | |
| 4. The Assistant Director of Town |] | |
| Planning & Town Planning Officer, |] | |
| Kolhapur |] | |

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. By petition filed under Article 226 of the Constitution of India, petitioner seeks declaration that reservation on his lands being Reservation No.20 has been lapsed in view of the provisions of Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966 (for short called as, "MRTP Act"), and the said lands be declared free for his use.
5. Brief facts of the petition are to the effect that the Development Plan of the Murgud Municipal Council, Tal. Kagal, District: Kolhapur, had come into force on 1st March, 1988. In the said plan, the lands belonging to the petitioner bearing R.S. No.2/1/6, 2/1/16, 2/1/18, 2/1/19, 2/1/20, 2/2/9, 2/2/10, 2/2/11, 2/2/12, 2/2/13, 2/2/15, 2/2/16, 2/2/17, 2/3/1, 2/3/2, 2/3/3, 2/3/4 and 2/3/6, situate at Murgud, Tal. Kagal, District: Kolahpur, bearing reservation No.20, were kept as reserved for cattle market. As even after lapse of 10 years from the date when said plan came into force, respondents did not take any action for acquisition of

those lands, The petitioner served purchase notice upon respondent No.3 Municipal Council on 23.10.2012. Respondent No.3, however, did not take any steps for acquisition of said lands within one year from the date of service of purchase notice. Hence according to petitioner, in view of the provisions of section 127(2) of MRTP Act, the reservation on his lands is deemed to have been lapsed. The petitioner, therefore, requested respondent No.2 to issue Notification in that regard in the official gazettee. The State Government, however, failed to do so.

6. In the mean time, respondent No.1 vide Notification dated 16.3.2015, sanctioned draft development plan and in the said plan 70% of the petitioner's lands are re-reserved for the cattle market. According to petitioner, once his lands are free from reservation in view of the provisions of section 127(2) of the MRTP Act, the said lands again cannot be re-reserved thereby depriving him of his right to enjoy his own property. This action on the part of respondents is illegal and hence liable to be quashed and set aside.

7. This petition came to be resisted by respondent No.3 Municipal Council by filing affidavit of its Chief Officer, Shri. Balnath Jagtap, contending inter alia that respondent No.3 being Municipal Council and also Town Planning Authority is entitled to reserve and acquire the lands as may be necessary, for the purpose of development.

The Municipal Council of Murgud, in its General Body Meeting dated 2nd January, 2013, had passed resolution No.101 and made modifications in respect of reservations taking into consideration the position of the cattle market and the need of the land for the cattle market. As per the said resolution land admeasuring 48 gunthas from reservation No.9B is decided to be acquired. The proposal to that effect is submitted to the Director, Urban Development Department, State of Maharashtra on 9th October, 2013. In view of these facts it is urged that the declaration as sought by the petitioner in respect of re-reservation on plot of land admeasuring 48 gunthas, cannot be granted.

8. Having heard learned counsel for the petitioner, learned AGP for the State and learned counsel for respondent No.3, we are, however, of the opinion that this petition needs to be allowed.

9. Undisputedly, the petitioner is the owner of the above said lands which were initially reserved in the development plan for Murgud City. The said plan came into force w.e.f. 1st March, 1998. However, even after lapse of 10 years from the said date, no proceedings were taken for acquisition of the said lands. As a result, petitioner served the purchase notice dated 23.10.2012. Thereafter also within one year, neither the lands of the petitioner were acquired nor any steps were taken for its acquisition. In view thereof, in accordance with the provisions of Section

127(2) of the MRTP Act, it has to be held that the petitioner's lands shall be deemed to be released from such reservation/allotment/designation and became available to him for the purpose of development as otherwise permissible. The provisions of Section 127(2) of the MRTP Act, are unequivocal to that effect.

10. The only contention raised by learned counsel for respondent No.3 is that some portion of the land of the petitioner, admeasuring 48 gunthas is again reserved in the Draft Development Plan submitted to the Government in pursuance to the decision of the Planning Committee, in General Body Meeting held on 22.12.2013. According to learned counsel for respondent No.3, except for this portion of 48 gunthas, remainder land of the petitioner is already released from the reservation.

11. However, in our considered opinion, even this 48 gunthas of the land also which is shown as re-reserved in the Draft Development Plan, needs to be released, considering the legal position. The rights and interests which stood accrued to the petitioner on account of lapse of reservation due to passage of time, cannot be taken away by re-reserving the said portion of land.

12. In the case of **Bhavnagar University -vs. Palitana Sugar Mills Pvt. Ltd. 2003 (2) S.C.C. 111** when the similar issue was raised for consideration it was held by the Apex Court that the statutory obligation

cast on the State or appropriate authority u/s 38 of the MRTP Act, to revise Development Plan cannot be read to mean that substantial right conferred on the owner of the land or the person interested under Section 127(2) of the MRTP Act, is taken away. Section 38 does not envisage that despite the fact that in terms of section 127(2), reservation has lapsed, only because of Draft Revised Development Plan, automatically, the said reservation will revise.

13. This legal position is further confirmed by our High Court in **Baburao Dhondiba Salokhe -vs- Kolhapur Municipal Corporation and anr, 2003 (5) Bom C.R.232**, by holding that once reservation on the land is lapsed due to passage of statutory period during which land was to be acquired, the said right of the owner of the land cannot be taken away indirectly by re-reservation in revised or final development plan. This legal position squarely applies to the facts of the present case and hence it has been held that the petitioner is entitled for the declaration as sought by him.

14. The petition is accordingly allowed.

15. It is hereby declared that the entire reservation for cattle market kept on petitioner's lands bearing R.S. No.2/1/6, 2/1/16, 2/1/18, 2/1/19, 2/1/20, 2/2/9, 2/2/10, 2/2/11, 2/2/12, 2/2/13, 2/2/15, 2/2/16, 2/2/17, 2/3/1, 2/3/2, 2/3/3, 2/3/4 and 2/3/6, situate at Murgud, Tal. Kagal, District:

Kolahpur, being reservation No.20, has been lapsed in view of section 127(2) of the MRTP Act and the entire lands of the petitioner have been released from reservations and available to the petitioner for his own use.

16. Rule made absolute in above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]