

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9811 OF 2014

Chandrakant Champalal Gandhi &
Ors.

...Petitioners

Versus

The State of Maharashtra & Anr.

...Respondents

...

Mr. N.V. Bandiwadekar for the Petitioners.

Mr. V.M. Mali, A.G.P. for Respondent No.1-State.

Mr. Akshay Shinde for Respondent No.3.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 27th JULY, 2016.

P. C. :

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

2. By this writ petition, the Petitioners have sought declaration that the reservation Nos.44 and 45 made on their land bearing Survey No.660 admeasuring 1 Hectare 07 R situated at Ichalkaranji, District -Kolhapur, under provisions of M.R.T.P. Act, 1966 has lapsed by operation of law. The Petitioners have also sought directions against Respondent No.1 to issue/ publish a notification in Official Gazette under section 127 [2] of the Maharashtra Regional and Town Planning

Act, 1966, declaring that the reservation Nos.44 and 45 on the land of the Petitioners bearing Survey No.660 admeasuring 1 H 07R situated at Ichalkaranji, District Kolhapur, in the final development plan of the Respondent No.3 Council has lapsed, and accordingly the Respondents be directed to release the said land of the Petitioners for the purpose of development.

3. The Petitioners claim ownership of 2/3 share i.e. 1 H 07 R from Survey No.660 situated within the limits of Ichalkaranji Municipal Council. The final development plan of the Ichalkaranji Municipal Corporation was published in the year 1999. The Petitioners are owners of the land at survey No.660 to the extent of 1 hectare and 07 R. In the said final development plan the said land of the Petitioners is reserved for dispensary, library and shopping center vide reservation Nos.44 and garden, 18 meters and 12 meters D.P. Road vide reservation No.45. The land is not acquired by the Ichalkaranji Municipal Council i.e. the planning authority or no steps were taken by them to acquire the said land, even after expiry of 10 years from the date of publication of the final development plan. The Petitioners served notice dated 21.8.2010 on the Respondent No.3-Ichalkaranji Municipal Council under the provisions of section 127[1] of the M.R.T.P. Act. The

Petitioners had also annexed the revenue records of the said land and requested the authority to acquire the said land. It is the case of the Petitioners that despite service of the said notice, Ichalkaranji Municipal Council has not taken any steps to acquire the land, within the period of one year and therefore, the reservation of the said land has lapsed. Accordingly, this petition is filed for the reliefs stated above.

4. Mr. Bandiwadekar, the learned counsel for the Petitioners submits that the land in question owned by the Petitioners as well as land Survey Nos.661/A and 661/B was also affected by the Reservation Nos.44 and 45. He further submits that owners of land bearing Survey Nos.661/A and 661/B served notice under section 127 of the MRTP Act on the Ichalkaranji Municipal Council and since no steps were taken by them, they approached this Court by filing writ petition. The said writ petition was allowed by the Division Bench of this Court and the subject reservation so far as the owner of the land bearing Survey No.661/A and 661/B is concerned was declared as lapsed. He also submits that the Petitioners' notice complies with the requirement under section 127 of the M.R.T.P. Act and since admittedly no steps as contemplated under section 127 of the Act are taken, the reservation

stands lapsed. Mr. Bandiwadekar also tried to distinguish the judgment in *Perfect Machine Tools Co. Ltd. Vs. State of Maharashtra and Ors. 2008 (2) Mh.L.J. 404* and submits that same is not applicable to the facts and circumstances of the present case.

5. Mr. Shinde, the learned counsel for Respondent No.3 contested the petition. He does not dispute that the said land of the Petitioners was placed under reservation Nos.44 and 45 in the final development plan for Ichalkaranji, which was sanctioned on 5th March, 1999. He has also not disputed that even after expiry of 10 years, this land is not acquired and no steps have been taken as contemplated under section 127 [2] of the M.R.T.P Act, 1966. However, he has opposed the petition on two grounds viz. alleged notice under section 127 (1) of the M.R.T.P given by the Petitioners does not comply with the requirements of section 127[1] of the M.R.T.P Act. and secondly on the ground that proposal for the acquisition was sent to the Special Land Acquisition Officer in 2003 itself. The learned counsel for Respondent No.3 also relied upon the decision of the Division Bench in *Perfect Machine Tools Co. Ltd. Vs. State of Maharashtra and Ors. 2008 (2) Mh.L.J. 404*.

6. Having considered the rival submissions and having gone through the compilation of the writ petition and the judgments cited, we find merit in the petition. In the case of ***Kolte Patil Developes Ltd. Vs. State of Maharashtra 2015 (1) Mh.L.J. (F.B.) 497*** decided by Full Bench of this Court, the doubt surrounding the expression “no steps as aforesaid” used in section 127 of MRTP Act has been cleared by following the majority view of the Hon'ble Apex Court in the case of ***Girnar Traders (2) vs. State of Maharashtra (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. The relevant observations of the Full Bench, as appearing in paragraph 11, read 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.”

7. Having gone through the decision in ***Perfect Machine Tools vs. State of Maharashtra, supra***, we are of the opinion that same is

distinguishable. In the said case notice under section 127 of the MRTTP Act was not served on the planning authority or appropriate authority but the same was served on Chief Engineer. In the light of these facts, it was held that there was no compliance of the statutory provisions under section 127 of the M.R.T.P. Act. In the present case no steps for acquisition of subject land have been initiated within a period of one year from the receipt of notice under section 127 of M.R.T.P. Act by Respondent No.3. It is also not in dispute that the notice in the instant case was served on the Planning Authority i.e. Respondent No.1. In abovesaid facts, the case is fully covered by the decision in ***Kolte Patil Developers Ltd. Vs. State of Maharashtra, supra.***

8. The Petition therefore succeeds. Same is accordingly allowed in terms of prayer clauses (b) and (c). Rule is made absolute in above terms.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)