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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11542 OF 2015

Shri Ramchandra Shripati Salokhe .. Petitioner

Vs.

The State of Maharashtra and ors. .. Respondents

Mr.Prashant Bhavake, for the Petitioner.

Mr.A.A. Alaspurkar, AGP for State.

Mr.Suresh M. Kamble, for Respondent No.3.

**CORAM : B.R.GAVAI &
M.S.KARNIK, JJ.**

DATE : 23rd AUGUST, 2017

ORDER (PER M.S.KARNIK, J) :

The petitioner by this petition under Article 226 of the Constitution of India seeks a declaration that the reservation in respect of land bearing R.S.No. 1070/1 admeasuring 52.50 Ares situated at 'A' ward, Kasaba Karver, Kolhapur (Reservation No. 327 and 328 hereinafter referred to as the 'said land' for short) in the Second Revised Final Development Plan for Kolhapur city has lapsed in view of section 127(1) of the Maharashtra Regional & Town Planning Act, 1966 (for short 'the said Act'). The petitioner has also prayed for consequential relief of publication of notification in the

official gazette as per section 127(2) of the said Act.

2. The facts in nutshell are as under :

The petitioner claims to be the exclusive owner of the said land and that the same is in his possession. Respondent No.1 – State Government by notification dated 18/12/1999 sanctioned 2nd revised final development plan (for short 'DP') for the Kolhapur city as per section 31(1) of the said Act. The said DP came into force on 01/02/2000. In the said DP, the said land belonging to the petitioner was reserved for primary and secondary school. According to the petitioner, no proposal for acquisition has been sent by respondent No.3 – Kolhapur Municipal Corporation to the appropriate authority for acquisition of the said land. Learned Counsel for the petitioner submits that as final DP came into force on 01/02/2000, the respondents were required to acquire the said land within 10 years from 01/02/2000 in view of section 127 of the said Act. In his submission, since the respondents have been failed to acquire the said land within 10 years from 01/02/2000, the petitioner sent purchase notice dated 18/04/2013 to the respondent No.3 – Corporation calling upon the respondents that if the land is not acquired within one year from the date of communication of the said

notice, the reservation on the said land will lapse and the land will be automatically included in residential zone. The said notice was duly served on respondent No.3 - Planning Authority on 18/04/2013. Respondent No.3 by communication dated 15/05/2013 called upon the petitioner to submit certain documents including 7/12 extract of the said land, copy of the registered power of attorney etc. The documents were submitted by the petitioner to respondent No.3 vide his letter dated 30/05/2013. By communication dated 29/11/2013, respondent No.3 informed the petitioner that as some proceedings under the Urban Land Ceiling Act, 1976 (hereinafter referred to as 'ULC Act' for short) are already going on, the said land cannot be acquired as per the provisions of the said Act.

3. The petitioner pointed out by communication dated 31/01/2014 that though proceedings had initially commenced under the provisions of ULC Act, however, possession of the said land is not taken from the petitioner. The petitioner pointed out that in view of Urban Land Ceiling (Repeal) Act, 1999, aforesaid land cannot be acquired or possession of the said land cannot be taken. By communication dated 19/03/2014, respondent No.3 informed the petitioner that he should not send any further letters/communication

since decision on purchase notice is already taken by way of earlier communication. In the submission of the learned Counsel for the petitioner, the period of 12 months from the date of service of purchase notice as contemplated by section 127 of the said Act expired on 17/04/2014, within which time no steps are taken to acquire the said land as required by provisions of the said Act. The petitioner has prayed for a declaration that reservation in respect of the said land has lapsed and the same is available to him for development as is permissible to the adjacent land owners.

4. Shri Sanjay Shinde - the Competent Authority ULC – Kolhapur has filed affidavit-in-reply on behalf of the State Government in so far as the aspect of ULC Act is concerned.

Paragraph 4 of the affidavit-in-reply states thus :

“However, on 29/11/2007 was repealed. Therefore, the Government of Maharashtra vide letter dated NAJaka 2208/PKra.354/2009/NAJAKADHa-2 Dated 12/05/2010 ordered that the proceedings U/s.10(3) in respect of the excess lands, the physical possession of which is not taken prior to 19/11/2007, stands cancelled. Therefore, the physical possession of the said excess land has not been taken till date.”

5. An affidavit-in-reply has been filed on behalf of

respondent No.3 by one Shri Arunkumar Dattatray Gavali - Junior Engineer, Town Planning - Kolhapur Division, Kolhapur. In the said affidavit-in-reply the stand is taken that as land has been declared as surplus land as per letter given by ULC office dated 05/08/2013 under section 8(4) of the ULC Act, and further in view of publication of the notification under section 10(3) of the ULC Act on 22/11/2007, the land is deemed to have vested with the Government. It is the stand of the respondent – Corporation that as proceedings under ULC Act are already initiated, therefore acquisition proceedings under the said Act need not be initiated. It is for this reason, the purchase notice is rejected. It is the categorical stand of the respondent – Corporation that since acquisition proceedings under two different Acts cannot be undertaken, the question of lapsing of reservation under section 127 of the said Act does not arise.

6. Learned Counsel for respondent No.3 vehemently urged that proceedings under the provisions of ULC Act are already initiated and therefore question of lapsing of reservation under section 127 of the said Act does not arise. In the submission of the learned Counsel for respondent No.3 consequent upon the

publication of the notification under section 10(3) of the ULC Act land vests with the Government and therefore the issuance of the notice by the petitioner under section 127 of the said Act is of no consequence. No other contention has been raised by the respondents as regards validity of the notice issued by the petitioner under section 127 of the said Act.

7. We have heard learned Counsel for the parties at some length. There is no dispute that the DP as regards the said land of respondent No.3 came into force from 01/02/2000. It is further not disputed that the said land was reserved for the purpose of primary and secondary school and the said reservation was numbered as reservation No. 327 and 328. There is also no dispute that the petitioner has served notice dated 18/04/2013 which was duly received by respondent No.3 – Corporation. The notice is admittedly issued after the period of 10 years elapsed as is the requirement of section 127 of the said Act. Even within a period of 12 months from the date of service of the notice dated 18/04/2013 on the respondent No.3 – Corporation, no steps have been initiated to acquire the said land. The law laid down by the Apex Court in the case of *Girnar Traders* (2007) 7 SCC 555 squarely applies to the facts of the

present case. It would be material to reproduce section 127 as it stood prior to 29/08/2015 which reads thus :

“127. [(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twelve months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

[(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.]

8. We may note here that the Land Acquisition Act, 1894 stands repealed by the Right to Fair Compensation and Transparency in Land Acquisition / Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the said Act of 2013). The said Act of 2013 was brought into force with effect from 01/01/2014.

9. Be that as it may, the only ground urged on behalf of the respondent No.3 is that as proceedings under ULC Act are initiated and appropriate Notification has been issued under Section 10(3) and 10(5) of the said Act, there is no question of taking action under the provisions of the said Act and therefore, the notice under Section 127 of the said Act is invalid. The said stand of the respondent No.3 can only be stated to be rejected in the light of the law laid down by this Court in the case of **Voltas Ltd. & Anr. vs. Additional Collector & Competent Authority & Ors. (2008(5) Bom.C.R.746)**. This Court in **Voltas Ltd.** (supra) has clearly held that the purpose of enacting section 3(1)(a) of the Repeal Act is to save or protect vesting of vacant lands in the State Government only if physical possession of the vacant land is taken upon declaration made under sub-section (3) of section 10 of the Principal Act. It is thus held that by necessary implication it follows that vesting of those lands in the State Government under sub-section (3) of section 10 of the Principal Act, the possession of which has not been taken is made ineffective. In other words, therefore, vesting of land in the State Government in relation to those lands of which possession was not taken is wiped out. This Court has clearly held that all further proceedings under the provisions of the Principal Act in relation to those lands in respect of

which a declaration has been made under sub-section (3) of section 10 of the Principal Act lapses and those lands no longer vests in the State Government. In this light of the matter, the issue as regards vesting of the land in the State Government after issuing a declaration under sub-section (3) of section 10 of the ULC Act but the actual physical possession of which is not taken prior to the repeal of the ULC Act is no longer res-integra.

10. The contention of the respondent No.3 that the petitioner's land vested in the State Government upon issuance of the declaration of sub-section (3) of section 10 of the ULC Act and as a result of which the notice issued u/s. 127 of the said Act is invalid is in our view untenable. In the light of the law declared by this Court in the case of **Voltas Ltd.** (supra) the declaration under sub-section (3) of section 10 of the ULC Act lapses as admittedly the physical possession of the excess lands belonging to the petitioner has not been taken. Paragraph 4 of the affidavit filed on behalf of the respondent no.1 by Shri Sanjay Shinde - the Competent Authority ULC – has already been reproduced categorically records that the physical possession of the said land is not taken.

11. As this was the only contention advanced on behalf of respondent No.3 to oppose the petition, the present petition, therefore, deserves to be allowed and is accordingly allowed in terms of prayer clauses (b), (c) and (d) with no order as to costs.

(M.S.KARNIK, J.)

(B.R.GAVAI, J.)