

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No. 11418 of 2014

Madhukar Prabhakar Korgaonkar (since deceased)

through LR's.

... Petitioners

Versus

State of Maharashtra & Ors.

... Respondents

...

Mr. Chetan Gajanan Patil for the Petitioners.

Mr. A. A. Alaspurkar, AGP for the Respondent Nos. 1 and 3.

Mr. Suresh M. Kamble for the Respondent No.2.

**CORAM : A. S. OKA &
SMT. VIBHA KANKANWADI, J. J.**

DATE ON WHICH THE JUDGMENT IS RESERVED: 26/07/2017

DATE ON WHICH THE JUDGMENT IS PRONOUNCED: 21/08/2017

JUDGMENT (PER: SMT. VIBHA KANKANWADI, J)

1] Heard the learned counsel appearing for the Petitioner, the learned AGP for the 1st and 3rd Respondents and the learned counsel appearing for the 2nd Respondent. The original Petitioner has invoked the Writ Jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a Writ of Mandamus for declaration of lapsing of reservation of his land and to direct 1st Respondent to notify the same after passing an order for publishing it in the Official Gazette as well as for other consequential reliefs.

2] The facts emerging which led to filing the petition are that, the original petitioner and his brother Laxman had purchased a land bearing Survey No. 523, E -Ward, situated at Kolhapur, admeasuring 1543.5 sq. meters on 8th December 1953, from one Sitabai Govindrao Korgaonkar. Land admeasuring 284 sq. meters, out of the said land, was acquired by the South Central Railways in the year 1971. A portion of the said land stands in the name of South Central Railways in the property card. The Petitioner's brother Laxman, bequeathed his half share from the said land in favour of the Petitioner. After the demise of Laxman Korgaonkar, the Petitioner is the sole owner of the land. The said land was reserved under the Development Plan made as per the provisions of Maharashtra Regional and Town Planning Act, 1966 (for short the "MRTP Act"). The Final Development Plan for the city of Kolhapur, came into force some time in the year 1977, wherein, the said land was reserved for the purpose of Rehabilitation of Displaced Shop Keepers. However, the property was neither acquired nor any steps were taken for the acquisition of the said land in pursuance to the Development Plan. The Revised Development Plan for the city of Kolhapur came into force on 18th December 1999 wherein, again the said land was reserved for the purpose of Rehabilitation of Displaced Shop Keepers. Even thereafter also, the said land was neither acquired nor steps were initiated for the acquisition of the land within the stipulated period of 10 years. The Petitioner has therefore, served a notice under Section 127 of the MRTP Act on 26th June 2012 through his Power of Attorney Holder to the 2nd and 3rd Respondents. The said notice was served upon the 2nd Respondent on 27th June 2012. Thereafter, the 3rd Respondent had issued a letter dated 7th July 2012 to the Power of Attorney Holder of the Petitioner to produce documents of title and the

original Measurement Map. The Petitioner was also called upon to submit the said documents before 2nd Respondent. The Petitioner had immediately responded and all the documents called for, were produced before the 3rd Respondent on 31st July 2012. However, the 2nd Respondent called upon the Petitioner again to submit the document of title by his letter dated 5th November, 2012. The Petitioner had again responded immediately by addressing a letter dated 12th November, 2012 and pointing out the compliance of the requirement of the submission of documents. The said letter was received by the 2nd Respondent on 17th November 2012. However, the 2nd Respondent issued letter dated 26th December 2012, reiterating the same contentions. Once again the compliance was made by the Petitioner by giving letter. Thus, the 2nd Respondent had not acquired the said land nor had taken any step for the commencement of acquisition proceeding of the said land within the stipulated period of 12 months from the receipt of notice under Section 127 of the MRTP Act or from the date of furnishing the relevant documents to the 2nd Respondent. Therefore, the reservation on the said land has lapsed as per the statutory provision. The land is now completely free from reservation for Rehabilitation of Displaced Shop Keepers as per the Development Plan of 18th December 1999. The Petitioner therefore, applied under the provision of Sections 44, 45 and 58 and 69 of MRTP Act, read with Section 253 of the Maharashtra Municipal Corporation Act, 1949 for seeking a permission to carry out construction on the said land for the purpose of developing the land. The application was received by the 2nd Respondent on 15th February 2014. However, the said application came to be rejected by the 2nd Respondent vide order dated 5th March 2014. The 2nd Respondent has not acknowledged the lapsing of reservation over the said land. Hence

the petition.

3] An affidavit-in-reply has been filed by Shri Mahadev Gangadhar Phulari, Junior Engineer, Assistant Town Planner, Kolhapur Division, Kolhapur, Municipal Corporation on behalf of the 2nd and 3rd Respondent. He has accepted the position that the land belonging to the Petitioner was reserved in the Town Planning Scheme. It is stated that an application dated 26th June 2017 was filed by one Shri Dinesh Madhukar Korgaonkar, claiming to be the Power of Attorney of the Petitioner. The Power of Attorney was not annexed with the application. The Petitioner had also not annexed relevant documents depicting his right, title or interest in the said land. Therefore, the reply was sent on 7th July 2012 to the Petitioner informing him that the application is incomplete and documents have not been annexed. A reply was sent by the Petitioner annexing photocopies of property card, sale deed, City Survey Map. However, a copy of the Power of Attorney was not annexed. The letter dated 5th November, 2012 was in fact issued because the Petitioner had failed to comply with the earlier letter dated 7th July 2012. The Petitioner was repeatedly called upon to comply with the objections as the application was not disclosing the right, title and interest of the Applicant's Power of Attorney holder. As the application was incomplete, the purchase notice/application was not scrutinized. It is denied that the reservation has lapsed and therefore, the permission to make construction/redevelopment of the land has been rejected. It was incumbent upon the Petitioner to file a valid purchase notice. It has been contended that for want of a valid purchase notice, the action under Section 127 of the MRTP Act is not called for.

4] It will not be out of place to mention here that during the pendency of the petition the original Petitioner has expired and his legal

heirs have been brought on record.

5] It has been submitted on behalf of the Petitioners that there is no dispute as regards fact that the land belonging to the Petitioner was reserved for Rehabilitation of Displaced Shop Keepers in the Development Plan. The Final Development Plan for the City of Kolhapur came into force in 1977 and the Revised Development Plan came into force on 18th December 1999. Neither any steps were taken for acquisition nor the land was actually acquired till 18th December 2009 for the period of 10 years which is stipulated under the Act. Therefore, the notice under Section 127 of the Act was given on 26th June 2012 which was duly received by the 2nd Respondent. The only objection that was raised was that the documents of title and the Measurement Map has not been produced. The said objection has been complied with. The objection appears to be that even the Power of Attorney given by the Original Petitioner to his son ought to have been forwarded. This objection cannot be said to be a legal requirement. The learned counsel appearing for the 2nd Respondent has submitted that since the Power of Attorney was not made available, the right, title and interest of the Petitioner could not be ascertained. He also submitted that since now the Original Petitioner has expired, the legal heirs have been brought on record and therefore, they cannot claim that the reservation over the plot should be declared as lapsed.

6] The fact is not in dispute that the Original Petitioner had purchased the property with his brother by a sale deed dated 8th December, 1953. A photocopy of the sale deed has been produced on record. As per the Petitioner's contention, his brother has bequeathed his half share in favor of the Petitioner by executing a will. The property card extract was sufficient evidence regarding the right of the Petitioner

over the said property. The photocopy of the property register card has also been produced. Only a portion of a land that is 284 sq.mtrs. has been acquired by South Central Railways, the rest of the area is owned by the Petitioner.

7] The 2nd Respondent is not disputing the reservation of the plot for the Rehabilitation of Displaced Shop Keepers in final Development Plan, 1977 and the Revised Development Plan which came into force on 18th December 1999. When the Petitioner noted that the land has not been actually acquired and no action was taken in order to acquire the land, the purchase notice was given. The 2nd Respondent has also not disputed the issuance of the purchase notice. The only objection is that the said notice is incomplete. The Petitioner was called upon to produce documents of title and the map. The Petitioner had forwarded the property card, sale deed, copy of original Measurement Map to the Respondent No. 3 on 31st July 2012. The 2nd and 3rd Respondents are not disputing the fact that they have received the said reply from the Petitioner dated 31st July 2012. The only objection thereafter, appears to be the fact that the Power of Attorney was not produced. Again a letter was issued by the 2nd Respondent on 26th December 2012, calling upon the Petitioner to comply with the said defect but there was no specific mention that petitioner should also send the copy of the Power of Attorney. Unless the thing would have been made clear, it was not possible for the petitioner to comply with the same. The said letter was replied by the Petitioner's Power of Attorney on 8th January 2013. There was no legal impediment to issue notice under Section 127 of the MRTP Act through a Power of Attorney holder. In fact, during the hearing of the present petition, the Power of Attorney holder of the Petitioner was called upon to produce the document of Power of Attorney. Accordingly,

two original Power of Attorneys have been produced, one is a General Power of Attorney executed on 14th August, 2000 and the another is the Special Power of Attorney which was executed on 16th June 2010. In both the Power of Attorneys, there is a specific mention that the Power of Attorney holder can do all others acts and to represent him before the Government, Semi Government, Local Body, Corporations or Companies, etc. on his behalf. It can be therefore said that the Power of Attorney holder i.e. the son of the Petitioner was empowered to give a notice under Section 127 of the MRTP Act on behalf of the Petitioner in respect of the land under reservation. Thus, it can be seen that when the documents of title i.e. property register card was already submitted before the 2nd Respondent along with letter dated 31st July 2012, the 2nd Respondent ought not to have insisted upon the production of Power of Attorney. Even if for the sake of arguments, it is accepted that along with notice dated 27th June 2012, no document of title was forwarded; yet, that defect was cured in the reply dated 31st July 2012. The Revised Development Plant had come into force on 18th December 1999, the further process of acquisition ought to have been started within the stipulated period of 10 years thereafter. Therefore, we do not see any defect in the notice that has been issued by the Petitioner. As no declaration either under sub-section (2) or sub-section 4 of Section 126 of the MRTP Act has admittedly not been issued within the time stipulated in sub-section (1) of Section 127. The inevitable conclusion is that the reservation of the Petitioner's land in question has lapsed and the land is now available to the Petitioner to be developed as permissible in law.

8] We do not agree with the submission on behalf of 2nd Respondent that legal heirs of original Petitioner can not take advantage

of the said notice. In fact, after death of original Petitioner, they have stepped into the shoes of the deceased. They can enjoy the fruits of all the rights which had accrued to the deceased. The Writ Petition, therefore, deserves to be allowed. Hence following order:-

ORDER

- (a) It is hereby declared that the reservation on land bearing CS No. 523, E-Ward, Kolhapur belonging to the original Petitioner has lapsed and the said land is available to the owner for development as otherwise permissible in respect of the adjacent land;
- (b) The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirement of Section 127 (2) of the MRTP Act, which should be done as expeditiously as possible and preferably within a period of 3 months from the date of uploading of this order;
- (c) The order passed by the 2nd Respondent dated 5th March 2014 (Exh.H) is hereby set aside;
- (d) The Petitioners are at liberty to make an application for grant of development permission on the aforesaid land which shall be considered in accordance with law;
- (e) The Writ Petition stands allowed on the above terms.
- (f) No orders as to costs.

(SMT. VIBHA KANKANWADI, J)

(A. S. OKA, J)