

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 972 OF 2018

Shri Uttam Ganpati Devkare ..Petitioner
Versus
The State of Maharashtra and anr. ..Respondents

Mr. Manoj Patil, advocate for the petitioner.
Mrs. M. P. Thakur, AGP for the State.
Mr. Tanaji Mhatugade, advocate for the respondent No.2.

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

DATE : 8th FEBRUARY, 2018.

P. C. :

Rule. Rule is made returnable forthwith and by consent, the petition is heard finally at the stage of admission.

2. Heard Mr. Patil, learned counsel for the petitioner, Ms. Thakur, learned AGP for the State and Mr. Mhatugade, learned counsel for the respondent No.2.

2. This petition is preferred under Article 226 of the Constitution of India seeking direction to the respondent No.1 to issue notification under Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act") declaring that the reservation of the land admeasuring 20 R from Survey No.524/2 situated at Kagal stands lapsed. Undisputedly, the petitioner is the owner of the

said land. In the development plan of the Kagal Municipal Council, the above referred land was shown as reserved for Dispensary and Maternity Home under Reservation No.29. As no steps were taken by the Kagal Municipal Council for the period of 27 years from the approval of revised Development Plan, the petitioner issued purchase notice to the Municipal Council on 30th March, 2013, under the provisions of Section 127 of the MRTP Act. It is the case of the petitioner that till today, the respondent No.2-Council has not taken any steps to acquire the said land and, therefore the present petition is filed for the relief stated hereinabove.

3. On behalf of the respondent No.2, Mr. Rajandra Baswani, Chief Officer of Municipal Council, Kagal, has filed an affidavit dated 19th January, 2018. In paragraphs 4 and 5, following averments are made :

“4. I state and submit that, thereafter petitioner issued purchase notice to the Municipal Council on 30th March 2013 under the provision of Section 127 of the Maharashtra Regional and Town Planning Act, 1966. I state and submit that, in view of the said notice, the Managing Committee of the Municipal Council after discussing the said subject and after taking into consideration the financial crises of the Municipal Council, vide Resolution No.98 dated 8/8/2014, resolved not to take steps to acquire the said property of the Petitioner by giving

compensation, in the present situation of the Municipal Council. The copy of the said Resolution No.98 is already enclosed to the memo of writ petition by the Petitioner and is marked as "EXHIBIT-B" [page 17].

5. I state and submit that, accordingly the proposal dated 17/8/2015 is submitted by the Kagal Municipal Council to the Secretary, Urban Development Department, of the Government of Maharashtra requesting to issue the notification of lapsing of Reservation No.29 in respect of petitioners property. The copy of said proposal dated 17/8/2015, is already enclosed to the memo of writ petition by the Petitioner and is marked as 'EXHIBIT-C [page 19]."

Perusal of the above averments makes it clear that the respondent No.2-Council does not want to acquire the subject land and resolution to that effect is also passed. The respondent No.2-Council has also made representation to the Government to issue notification under Section 127(2) of the MRTP Act.

4. In the light of this factual position and the legal position 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 the reservation in respect of the subject land has lapsed.

5. Rule is, accordingly, made absolute in terms of prayer clause (a). The respondent No.1 is directed to issue notification under Section 127 (2) of the MRTP Act within a period of eight weeks from the date of receipt of this order.

6. The writ petition stands disposed of.

[SMT.ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]