

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

WRIT PETITION NO. 3230 OF 2017

Pandit Tukaram Bhosale

....Petitioner

Versus

The State of Maharashtra & Ors.

....Respondents

Mr. Chetan G. Patil for the petitioner.

Mrs. M.P. Thakur – AGP for the State.

Mr. D.S. Patil for Respondent No.3.

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

DATE : 21st FEBRUARY, 2018

P.C. :

1. Heard Mr. Chetan Patil, learned counsel for the petitioner, Mrs. M.P. Thakur, learned AGP and Mr. Drupad Patil, learned counsel for respondent no.3.

2. The petition is filed seeking direction to the Respondent No.1 – State of Maharashtra to cancel the reservation on petitioner's land bearing C.S.No.604 admeasuring 0.02 H situated at Panhala, Taluka Panhala, District Kolhapur. The direction is also sought against the Respondent No.1 that the said land of the petitioner is free from all reservation and further restraining them from reserving the said land under the provisions of Maharashtra Regional and Town Planning Act (for short 'MRTP Act').

3. There is no doubt that the Development Plan of the Panhala

Municipal Council came into force from 01st June, 1986 in which the said land belonging to the petitioner was reserved for servant quarters of the Municipal employees. After lapsing the period of 10 years i.e., on 22nd December, 2003, the petitioner gave notice under section 127 of the MRTP Act to the Planning Authority which was also an appropriate authority requesting them to acquire the said land. The Respondent No.3 – Panhala Municipal Council admittedly have not taken any steps to acquire the said land. Resolution also came to be passed on 17th June, 2004 in the General Body Meeting expressing that the Planning Authority did not need the said land and therefore, they did not propose to acquire the said land.

4. The revised Draft Development Plan was published on 21st January, 2010 by the Panhala Municipal Council. The said land of the petitioner was shown to be reserved for hawkers zone. The petitioner promptly filed a petition. The petition was considered by the Panhala Municipal Council and thereafter, passed Resolution dated 09th September, 2011 thereby deleting the reservation of the hawkers zone on the said land. The revised draft was thereafter sent to the Government for approval. At the time of approval, however, the Government re-instated the reservation of hawkers zone on the said land and therefore, the petitioner filed this petition.

5. Mr. D.S. Patil, learned counsel for Respondent No.3 – PMC does not dispute the fact that the Council had passed earlier Resolution in 2004 expressing that they did not need the said land for servant

quarters of Municipal employees. He also does not dispute the Resolution which was passed on 09th April, 2011 cancelling the deletion of the said land reserved for Hawkers Zone. He, however, opposes the petition on the ground that the State Government had filed a revised Draft Development Plan.

6. Mrs. M.P. Thakur, learned AGP places on record the original file of the relevant resolution of the said land. Perusal of the file makes it clear that the State Level Scrutiny Committee had recommended deletion of the reservation of the hawkers zone on the said land. However, the learned Minister, without any reason, insisted on re-instatement of the same and therefore, reservation came to be re-instated.

7. The issue raised in the petition squarely covered by the decision of the Division Bench of this Court in ***Kishor s/o Siddheshwar Wadotkar (Dr.) v/s. Director of Town Planning and Ors. 2007(3) Mh.L.J. 399.*** The Division Bench made following observation in paragraph 8 :-

“ 8 . In view of settled legal position, it is evident that right accrued to the' petitioner to get the land released from the reservation under Section 127 of the MRTP Act cannot be taken away merely because land in question is again shown to be reserved in the revised development plan. On the other hand, plain reading of provisions of Section 127 of the MRTP Act demonstrate that after lapsing of period of ten years, if the concerned Authority fails to take steps in respect of acquisition of land or does not acquire the land within a period of six months from the date of service of notice as contemplated under Section 127, reservation shall be deemed to have lapsed and land shall be deemed to be released from such

reservation. As per the scheme prescribed under Section 127 of the MRTP Act, it is implicitly clear that once the period of ten years is lapsed and the Planning Authority has not taken steps to acquire the land within a period of six months from the date of service of notice, by virtue of deeming fiction, reservation shall be deemed to have been lapsed and land shall be deemed to have been released from such reservation. Similarly, right which is accrued to the owner of the land after lapsing of reservation cannot be taken away by the Planning Authority by exercising power under Section 38 of the MRTP Act, by again reserving the land for the public purpose in the revised development plan. The issue is answered accordingly. ”

8. In the light of the above, it is no longer open either to the Planning Authority or the State Government to take away the right of the ownership of land of the petitioner by reserving the same after a lapse of 10 years under section 127 of the MRTP Act. Hence, the petition must succeed. Accordingly, we pass the following order :-

(i) The Writ Petition is allowed in terms of prayer clauses (a), (b) and (c). The reservation for hawkers zone on the petitioner's land bearing C.S.No. 604 admeasuring 0.02H situated at Panhala, Taluka Panhala, District Kolhapur is accordingly set aside and the said land shall be available to the petitioner.

(ii) We direct the Respondent No.1 – State of Maharashtra to issue notification to that regard under section 127(2) of the MRTP Act which must be done as expeditiously as possible and in any case within a period of three months from the date of receipt of copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)