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

WRIT PETITION NO.12687 OF 2016

1. Rajkumar Chhada	)	
2. Avatar Singh P. Rainu	)	.. Petitioners
Vs.		
1. Municipal Corporation of Ulhasnagar	)	
2. The Municipal Commissioner,	)	
Municipal Corporation of Ulhasnagar	)	
3. The State of Maharashtra	)	..Respondents

Mr.S.P. Kanuga i/b. Ms.Sapna Nath for Petitioners.

Mr.P.P. Kakade, AGP for State.

Ms.Prabha Badadare i/b. R.S. Desai for Respondent No.1.

**CORAM : NARESH H. PATIL, ACTING C.J. AND
G.S. KULKARNI, J.**

DATE : 28th SEPTEMBER 2018

Judgment: Per G.S. Kulkarni, J.

Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties and at their request, taken up for final hearing.

2 The petitioners who state to be the owners of land bearing U. No.31 (Part), Sheet No.82, Camp No.1, Ulhasnagar, have filed this petition, principally seeking the following reliefs:

“(a) That it be declared that the reservation on Plot U. No. 31 (Part), Sheet No. 82, Camp No.1, Ulhasnagar having lapsed by order dated 3rd March, 2008, the Petitioners are entitled to develop the land as per adjacent land irrespective of whether the Government finalized the draft plan dated 4th April, 2013 forwarded to the Government under Section 30 of the MRTP Act;

(b) That this Hon'ble Court be pleased to issue writ of mandamus or appropriate writ order or direction in the nature of mandamus, directing the Respondents to pass the building plans submitted on 21st April, 2008 within a period of eight weeks from the date of issue of writ upon them.”

3. The case of the petitioners is that the Urban Development Department of the Government of Maharashtra had sanctioned the development plan for the erstwhile Ulhasnagar Municipal Council vide notification dated 28th May, 1974 which was brought into effect from 1st July 1974. In this development plan, the petitioners' land was shown as reserved for public purpose as “green zone”. Though the development plan was brought into force in the year 1974, the erstwhile planning authority and subsequently the succeeding planning authority respondent No.1/Municipal Corporation of Ulhasnagar (for short, “Municipal Corporation”) did not acquire the said land within a period of 10 years in a manner as provided under Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (for short, “MRTP Act”).

4. The petitioners accordingly had served a purchase notice dated

15th May 2002, which was received by the municipal Corporation. However, even after receipt of the notice, municipal Corporation did not take any steps for acquisition of the land. The petitioners therefore approached this Court in Writ Petition No.8443 of 2003 for a declaration that the reservation of the petitioners' land in the development plan has lapsed on failure of the municipal Corporation to acquire the land even on receipt of purchase notice within the prescribed period as stipulated. This writ petition was decided by a Division Bench by an order dated 3rd May 2008 in the following terms:-

“In case the petitioners submit a building plan for construction of a building on the suit land, the respondent no.1 Corporation shall process that plan and shall make order thereon in accordance with law considering that reservation in the final development plan of 1974 lapsed in view of the notice issued by the petitioners under Section 127 of the Maharashtra Regional and Town Planning Act.”

5. In view of the above directions of this Court, the petitioners on 21st April 2008 through their Architect filed an application for development/construction to be undertaken on the land under Section 44 of the MRTP Act. The petitioners' proposal was kept pending on the ground that the State Government was required to issue a formal notification under Section 127 of the Act. For a substantial period, the petitioners pursued the matter with the authorities. On 4th April 2013, the municipal corporation informed the petitioners that under the

provisions of Section 39 of the MRTP Act, a revised draft plan has been published and by mistake the reservation of the petitioners' land has been repeated, although the said reservation had lapsed by reason of the order passed by this Court. The petitioners were also informed that the municipal corporation on 2nd July 2014 had forwarded the draft development plan to the State Government as required under Section 30 of the MRTP Act for its consideration and approval and was awaiting sanction of the plan under Section 31 of the MRTP Act.

6. The petitioners contend that the action on the part of the municipal corporation in re-reserving the land under the draft amendment plan is totally illegal. It is contended that the reservation had already lapsed. There was also an order passed in Writ Petition No.8443 of 2003 declaring that the reservation has lapsed. The petitioners were therefore free to undertake development of the land. It is thus submitted that in view of the clear position in law as laid down in the decisions of (i) **Godrej Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra & Ors.**¹, (ii) **Shri Baburao Dhondiba Salokhe vs. Kolhapur Municipal Corporation**², (iii) **Ashok Shivram Kulkarni vs. State of Maharashtra**³, the petition is required to be allowed.

1 2015(11) SCC 553

2 2003(5) Bom CR 2321

3 2017(4) Mh.L.J. 382

7. The Municipal Corporation has placed on record a reply affidavit. In paragraph 2 of the reply affidavit, the Municipal Corporation has stated that “the petitioners' plot was again 'inadvertently' shown as garden site no.44, in the Draft Development plan notified on 4.4.2013 and the plan was accorded sanction by the State Government on 21.04.2017 and therefore, the Municipal Corporation is unable to sanction the plans.” It is further averred that in view of the various judgments, the Court may issue appropriate directions to the Municipal Corporation.

8. We have heard the learned Counsel for the parties. We have perused the record.

9. It is not in dispute that the petitioners are the owners of the land and in the earlier development plan of the year 1974, the petitioners' land was reserved for public purpose namely green zone. As the petitioners' land was not acquired for public purpose within 10 years of notifying the reservation, the petitioners had served a purchase notice to the municipal corporation under Section 127 of the MRTP Act. Despite the purchase notice, the land was not acquired. The petitioners

had therefore approached this Court in Writ Petition No.8443 of 2003 which came to be allowed by an order dated 3rd March 2008 passed by this Court whereby it was declared that the reservation of the petitioners' land in the final development plan of 1974 has lapsed. The petitioners thereafter had approached the municipal corporation with a proposal to develop the land, however, on which the petitioners were finally informed of its non-approval in view of the continuation of the reservation in the draft development plan which was notified on 4th April 2013 and submitted to the State Government for its approval. The said development plan was sanctioned by the State Government on 21st April 2017, in which the petitioners' land again is re-reserved for the same public purpose.

10. On the above backdrop, the only question required to be decided is whether the petitioners' land again can be re-designated to be under reservation in the revised development plan of the municipal corporation.

11. The law in this regard is no more res-integra in view of the decision of the Apex Court in case of **Godrej Boyce Manufacturing Co.**

Ltd. Vs. State of Maharashtra & Ors. (supra) and other decisions which followed the said decision and as noted by us above.

12. We may observe that already there was adjudication on this very issue on the first round of litigation where the Division Bench of this Court by an order dated 3rd March 2008 declared that the reservation of the petitioners' land had lapsed. The mandate of the said judgment was not effected and erroneously the reservation came to be continued even under the draft development plan. On this ground alone, applying the doctrine of public policy the subsequent reservation of the land in the draft development plan, at the threshold was rendered illegal.

13. In otherwise, the law in this context is well settled. The Supreme Court in case of **Godrej Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra & Ors.** (supra) has held that the land reserved in an earlier development plan in the said case which was reserved for laying additional railway tracks between Thane and Kurla, having being released from reservation under Section 127 of the MRTP Act, again reservation of the land shown as 'reserved for D.P. Road' in the revised development plan by issuing Notification under Section 37(1) of the

MRTP Act on 24th May 2006 was not permissible. The Supreme Court referring to the decision in **Girnar Traders Vs. State of Maharashtra**⁴ declared the notification as bad in law observing that once the land was not utilized for the purpose for which it was reserved and the reservation had lapsed in a manner known to law as per Section 127 of the MRTP Act, legal rights are created in the owner to possess the land free of reservation. It was held that the land accordingly enured to the benefit of the land owner and it was not open for the State Government to again re-reserve the land for public purpose.

14. In **Baburao D. Salokhe vs. Kolhapur Municipal Corporation** (supra) the Division Bench of this Court held that once the reservation had lapsed in terms of the stipulation under Section 127 of the MRTP Act and the rights were accrued to the land owners, the said rights cannot be taken away by re-reserving the land in the subsequent development plan at the hands of the planning authority. It was held that Section 38 of the MRTP Act does not contemplate inclusion of such land for which the reservation had lapsed so as to revive the reservation.

4 (2007) 7 SCC 555

15. In a recent decision of **Ashok Shivram Kulkarni vs. State of Maharashtra** (supra) of the Division Bench of this Court to which one of us (Shri Naresh H. Patil, Acting Chief Justice) is a member, referring to the decision of Hon'ble Supreme Court in case of **Praful C. Dave and ors. vs. Municipal Commissioner and ors.**⁵ in similar circumstances, held that the reservation has lapsed and the land had become available to the petitioner therein, for the development.

16. In the present case also, the Corporation is not disputing that the reservation on the petitioners' land was inadvertently included in the draft development plan. However, in view of the sanction of the draft development plan by the State Government on 21st April 2017, it appears that the Corporation had become helpless to sanction the petitioners' development proposal.

17. In view of the above discussion, we are certain that the reservation of the petitioners' land had already lapsed and in the facts of the case the continuation of reservation itself was an act which was illegal and void ab initio. We accordingly pass the following order:-

5 (2015) 11 SCC 90

- (a) It is hereby declared that the reservation of the petitioners' land under the revised development plan as approved by the State Government on 13th April 2017 stands lapsed.
- (b) The land of the petitioners is available to the petitioners to be developed in accordance with law.
- (c) The respondent No.1-Corporation shall consider the building plans of the petitioners for development in accordance with law.
- (d) The petition is allowed in the aforesaid terms. No costs.

G.S. KULKARNI

ACTING CHIEF JUSTICE