

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

WRIT PETITION NO. 11932 OF 2016

Majidkhan S/o. Haji Nisarkhan

.... Petitioner

Versus

The State of Maharashtra & Ors.

.... Respondents

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Shri. V. J. Dixit, Sr. Advocate i/b Shri. Bashiruddin Shaikh, Advocate
for the petitioner

Smt. Geeta L. Deshpande, Advocate for respondents No. 1 to 5/State
Shri. B. A. Darakh, Advocate for respondent No. 7

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 12TH FEBRUARY, 2019

ORAL ORDER:

. The land of the petitioner is reserved in the Development Plan of the year 2002 for Sports Complex as Sight No. 33 as per the notification dt. 31.10.2005 w.e.f. 15.12.2005. The petitioner claims to be the owner and purchaser of the land ad-measuring 1H. 1R. in Gut No. 267 at Kinwat, Dist. Nanded. The petitioner served a notice u/s 49(7) of the Maharashtra Regional Planning Act, 1966 on 11.12.2014. The said notice is confirmed by the respondents on 16.04.2015.

2. Shri. V. J. Dixit, the learned Senior Counsel for the petitioner submits that, in spite of confirmation of the purchase notice, no steps are taken within one year for acquisition and as such the reservation stands lapsed and the petitioner is entitled to develop the land. The resolution is also passed by the respondent/Municipal Council to the effect that, they are not in a position to acquire/purchase the land.

3. We have also heard Shri. B. A. Darakh, the learned counsel for respondent No. 7, on the last date.

4. The Apex Court in a case of Chhabildas v. State of Maharashtra and Ors. (Civil Appeal No. 1607 of 2018, decided by the Supreme Court on 06.02.2018), has held as under:

31. *In the present case, 15 years have passed since the date of publication of the development plan, and over 10 years have passed since the date of the purchase notice issued under Section 49. Considering the fact that there has been no stay at any stage by any Court, it is clear that an inordinately long period of time has elapsed, both since the date of publication of the development plan, as well as the date of the purchase notice served under Section 49. No doubt, the letter of 26.9.2008 shows that an application was made within the requisite time period to acquire the aforesaid land. However, on the facts of this case, since after the aforesaid letter nothing has been done to acquire the appellant's property, we are of the view that the reservation contained in the development plan as well as acquisition proposal have lapsed.*

We make it clear that we hold this in order to do complete justice between the parties under Article 142 of the Constitution of India. However, in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed, i.e. that after 10 years have elapsed from the date of 30 publication of the relevant plan, a second purchase notice must be served in accordance with the provisions of Section 127, in order that lapsing can take place under the aforesaid section. With these observations, the appeal is disposed of.

5. After the purchase notice was confirmed by the State on 16.04.2015, within one year the Municipal Council made an application/requisition to the Government on 19.03.2016 for acquisition of the land.

6. In view of the judgment of the Apex Court in the case of Chhabildas (supra), if the acquisition is not concluded, the petitioners are required to issue a notice u/s 127 of the Maharashtra Regional Town Planning Act. The petitioner in the present matter has not issued notice u/s 127 of the Maharashtra Regional Town Planning Act. In view of that, the case of the petitioner for release of the land cannot be considered.

7. In case the respondent-Municipal Council is not in need of the property, the petitioner & Municipal Council may take such steps for release as may be permissible in law.

8. The Writ Petition is accordingly disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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