

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 908 OF 2016

1. Arvind Chidanand Kurbitte
Age : 55 yrs., Occu. Agricultural and
Business
2. Smt. Vijaya Chidanand Kurbitte
Age : 72 yrs., Occu. Agricultural and
Business
3. Ms. Sujata Vispi Edibam
Age : 45 yrs. Occu. Medical Practice,
R/o. Amrai Mala, Ichalkaranji,
Tal. Hatkanangale, Dist. Kolhapur.
4. Prakash Thabanna Kurbitte
Age : 62 yrs., Occu.: Agricultural and
Business, R/o. Plot No.14, Mahalaxmi
Nagar, Sangli Road, Ichalkaranji,
Tal. Hatkanangale, Dist. Kolhapur
5. Smt. Champabai Thabanna Kurbitte
since decesaed through legal heirs
- 5A Ms. Madhubala Thabanna Kurbitte
Age : Major, Occu. Agricultural and
Business, R/o. Plot No.14, Mahalaxmi
Nagar, Sangli Road, Ichalkaranji,
Tal. Hatkanangale, Dist. Kolhapur

...Petitioners

Versus

1. The State of Maharashtra
Through the Principal Secretary,
Urban Development Department,
Having office at Mantralaya, Mumbai –
400 032.
2. The Deputy Director (Town Planning)
Divn. Having office at Survey No.74/2,
Shahakar Nagar, Pune.
3. The Assistant Director (Town
Planning) Division, having office at
Bindu Chowk, Kolhapur.
4. The Collector, Kolhapur
Having office at Tarabai Park,
Kolhapur

5. The Chief Officer,
Ichalkaranji Municipal Council,
Ichalkaranji (copy of Respondent
nos.1 to 4 may be served on Govt.
Pleader, High Court (AS), Bombay).

...Respondents

Mr. P. M. Arjunwadkar, for the Petitioners.

Dr. Mrs. K. R. Kulkarni, AGP for the State/Respondent nos.1
to 4..

Mr. Akshay P. Shinde, for Respondent no.5.

**CORAM: R. M. BORDE &
N. J. JAMADAR, JJ**

DATED: 24th JULY, 2019

Oral Judgment :- (Per : R. M. Borde, J.)

1. Heard the learned Counsels for the parties.
2. Rule. Rule made returnable forthwith and with the consent of the learned Counsels for the parties, heard finally at the admission stage.
3. The Petitioners are the owner of the property bearing Survey Nos.646/1 and 646/2, which have been reserved for establishment of a dispensary bearing reservation Site No.39 and for the purpose of library bearing reservation Site No.40 under the Final Development Plan prepared for Municipal Council, Ichalkaranji, in the year 1999. The reservation Site No.41 refers to prescription for development of a school and playground out of Survey Nos.649 and 646 by a private institution. The Petitioners issued a composite notice to the Municipal Counsel on 30th October, 2012, within

contemplation of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act"), calling upon the Municipal Council/Planning Authority to take steps for acquisition of the property under reservation or in the event of failure, it is informed that, the prescription of reservation, allotment or designation provided under the final development plan prepared for Ichalkaranji Municipal Council area shall stand lapsed.

4. The General Body of Municipal Council after receipt of the notice belatedly adopted a resolution of 11th February, 2014, authorising the Municipal Council to take steps for acquisition of area for development of Site Nos.39 and 40. It is the contention of the Municipal Council that so far as the development of Site No.49 is concerned the prescription of reservation is for the private institution and since the private institution is an appropriate authority and the notice within contemplation of Section 127 of the MRTP Act having not been served on the said appropriate authority, the consequences as provided under Section 127 of the Act, in the event of failure by the concerned authority to take steps, will not follow.

5. It is not a matter of controversy that despite issuance of notice within contemplation of Section 127 no steps have

been taken by the Planning Authority for acquisition of area for development of Site Nos.39 and 40 prescribed under the Final Development Plan for the Municipal Council and on account of failure of the Municipal Council to take steps within the period prescribed under Section 127, the reservation, allotment or designation in respect of Site Nos.39 and 40 provided under the final development plan prepared for Ichalkaranji Municipal area shall stand lapsed. In this regard reliance can be placed on the judgment in the matter of ***M/s. Girnar Traders vs. State of Maharashtra & ors.***¹

6. For the reasons recorded above, the writ petition deserves to be allowed and the same is accordingly allowed.

7. The reservation, allotment or designation provided under the final development plan in respect of Site Nos.39 and 40, as adopted to Survey Nos.646/1 and 646/2 for Ichalkaranji Municipal Council area shall stand lapsed and the land shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

8. In view of lapsing of reservation, allotment or designation by operation of law, the State Government is directed to notify the same by an order published in official

1 2011 (Vol-II) BCR 655.

gazette, as expeditiously as possible, preferably within six months from today.

9. So far as the reservation Site No.41 is concerned, it would be open for the Petitioners to take steps as permissible in law.

10. Rule is made absolute to the extent as specified above. There shall be no order as to costs.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]