

WRIT PETITION NO.9021 OF 2018

Netaji Vishnu Kamat and Anr. ... Petitioners.
V/s.
The State of Maharashtra & Ors. ... Respondents.

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

DATE : 8TH JULY, 2019.

P.C.:

- 1] Heard.
- 2] Rule. Rule made returnable forthwith. With consent of the parties, the petition is taken up for final hearing at the admission stage.
- 3] The petitioners are praying essentially for declaration that property belonging to him out of Survey No.647/1/A prescribed for development of primary school and high school under the Final Development plan prepared for Village Panchayat, Ichalkaranji being Reserved Site No.36 shall be deemed to have been released from reservation by operation of law. It is contention of the petitioners that the aforesaid property admeasuring about 33R is ear-marked in final development of Ichalkaranji Municipal Council for

development of primary and high school. The Municipal Council after publication of final development plan on 5th March, 1999 has not taken steps for acquisition of the property as such the petitioners issued notice within contemplation of section 127 of the MRTP Act on 17th June, 2016. It is contention of the petitioners that inspite of services of notice on the Municipal Council calling upon them to either acquire the property and to pay amount of compensation within time stipulated no steps have been taken resultanty reservation or allotment or designation made in respect of property in the final development plan shall be deemed to have lapsed by operation of law, and the property shall be deemed to be available for development.

4] The petitioners have pointed out that some area out of Reservation Site No.36 has been directed to be released on consideration of Writ Petition No.494 of 2013 presented by one Khangonda Patil decided by the Division Bench of this Court on 21st March, 2013. The petitioners have also invited our attention to the notification issued by the State Government directing release of area admeasuring 800 sq. mtrs. out of Survey No.647/1/B (part) reserved for development of Site No.36. In similar fashion the area to the extent of 1714 sq. mtrs. out of Survey No.650/B/5 (part) reserved for development of Site No.36 in the final development plan has also been directed to be released in view of notification issued by the Urban Development department of the State of Maharashtra on 2nd March, 2015. It thus appears that large chunk of land designated for reservation of Site No.36 has already been released from

reservation and as such it would be difficult for the Municipal Council to carry out development as per final development plan. The Municipal Council has also communicated, accordingly, to the Assistant Director, Town Planning by transmitting the communication on 29th July, 2018.

5] Learned counsel appearing for the Municipal Council, however, submits that an amount of Rs.1 crore has been deposited with the Special Land Acquisition Officer, Kolhapur on 11th October, 2018 by the Planning Authority. The deposit of amount by the Planning Authority is after lapse of two years from the date of service of notice under section 129 of the MRTP Act issued by the petitioner. By operation of the provisions of section 127 of the Act the reservation, allotment or designation in final development plan prepared by the Municipal Council in relation to the property belonging to the petitioners stood lapsed and any step taken after such lapsing is made operative would be of no consequence. Even otherwise, it has not been informed that steps within contemplation of provisions of section 6 of the Act of 1894 or section 19 of the Act of 2013 have been taken by the Acquiring body or the State Government.

6] Thus, considering the mandate laid down in the matter of Girnar Traders reported in (2011) 3 SCC 1 reservation, allotment or designation in final development plan in relation to the property of the petitioners shall stand lapsed and the property shall become available for the petitioners for development as permissible in the case of adjacent land under relevant plan and it is, accordingly, directed. It would be open for the Planning Authority to claim refund of the

amount deposited with the Special Land Acquisition Officer. The respondent shall issue notification declaring lapsing of reservation by the order published in the official gazette within contemplation of sub-section (2) of section 127 as expeditiously as possible and preferably within a period of six months from today.

7] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(N. J. JAMADAR, J.)

(R. M. BORDE, J.)