

Ajay

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

WRIT PETITION NO. 3333 OF 2021

1. Ajit Ramchandra Pawar,
Age - 60, Occupation - Business,
Residing at 9/71/31, Tara Niwas,
Aamrai Road, Teacher Colony,
Icchalkaranji, Kolhapur.
2. Mohan Ramchandra Pawar,
Age 64, Occupation - Business,
Residing at Recreation Hall,
Mangalwar Peth, Icchalkaranji,
Kolhapur.
3. Vijay Ramchandra Pawar,
Age 68, Occupation - Business,
Residing at Nehru Society,
Icchalkaranji,
Kolhapur.
4. Yashoda Ashok Pawar,
Age 78, Occupation none.
5. Rahul Ashok Pawar,
Age 40, Occupation - Business.
6. Avdhoot Ashok Pawar,
Age 38, Occupation - Business.
7. Rajendra Ramchandra Pawar,
Age 62, Occupation - Business.
8. Nanda Rajendra Pawar,
Age 56, Occupation - Business.
9. Yuvraj Rajendra Pawar,
Age 36, Occupation - Business.
10. Amol Rajendra Pawar,
Age 34, Occupation - Business.
11. Amrut Rajendra Pawar,
Age 32, Occupation - Business.

Petitioners

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All of the Petitioners No.4 to 11 are
Residing at 3/955 Aamrai Road, Pawar
Mala,
Ichalkaranji, Kolhapur.

Versus

1. Ichalkaranji Municipal Council,
Municipal Council Office, Ichalkaranji,
Kolhapur - 416 115.
2. The Assistant Director of Town
Planning,
Branch Office, Bindu Chowk, Kolhapur.
3. District Collector, Kolhapur.
Swaraj Bhavan, Tarabai Park, Kolhapur.
4. The State of Maharashtra,
Through its Urban Development
Ministry,
Mantralaya, Mumbai.

.. Respondents

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Mr. A.Y. Sakhare, Senior Advocate a/w. Mr. Rohan S. Mirpury for
the Petitioners.

Mr. Akshay P. Shinde, Advocate for Respondent No.1.

Mr. S.B. Kalel, AGP for the Respondent - State.

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**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : 12 AUGUST, 2021

**ORDER (PER : S.J. KATHAWALLA & MILIND N. JADHAV,
JJ.)**

. The Petitioners have filed the above Writ Petition
for seeking a declaration that the impugned reservation
No.52 for "Municipal Store and Work Shop" on land bearing
Revisional Survey No.28/2 part, admeasuring 3 Hectare 5 R
within the limits of Ichalkaranji Municipal Council,
Ichalkaranji, District Kolhapur (for short "**the said land**"),

vide revised development plan sanctioned by the State Government on 05.03.1999 has lapsed.

2. The Petitioners have filed the above petition for seeking the following reliefs:

"a. That this Hon'ble Court be pleased to issue a Writ in the nature of mandamus, certiorari or any other appropriate Writ, direction or order and be pleased to call for the records and proceedings of relating to land bearing R.S. No.28/2 pt. admeasuring 3 Hectare 58 R out of which 3 Acre 5 R is reserved under reservation No.52 for the purposes of "Municipal Store & Work Shop" and after examining the legality and validity of the same be pleased to declare that the said reservation has lapsed in terms of the Petitioner's Purchase Notice dated 15/01/2019.

b. That this Hon'ble Court be pleased to hold and declare that the reservation for Municipal Store & Work Shop on land bearing R.S. No.28/2 pt. admeasuring 3 Hectare 58 R out of which 3 Acre 5 R is reserved under reservation No.52 has lapsed and be pleased to issue a Writ of mandamus directing the Respondents not to invoke / apply the said reservation on the Petitioner proposal / application for development of the said reserved land.

c. That this Hon'ble Court be pleased to issue a writ in the nature of Mandamus or any other appropriate writ, order or direction, thereby calling for the records and proceedings pertaining to the letters issued by the Respondent No. 1 to the Petitioner dated 12/03/2021 (annexed at Exhibit E to the present petition) and after examining the legality and validity of the same, this Hon'ble Court be pleased to quash and set aside the letters / notices dated 12/03/2021 issued by the Respondent No. 1 to the Petitioners."

3. The facts and circumstances giving rise to the present Writ Petition are briefly set out hereunder :

3.1. The Petitioners are the owners of the said land. The said land admeasuring 3 Hectare 5 R is reserved under reservation No.52 for the public purpose of "Municipal Store and Work Shop" in the final development plan of Icchalkaranji town. Petitioner's total land comprises of 3 Hectare 58 R, out of which the said land admeasuring 3 Hectare 5 R is affected by reservation.

3.2. Respondent No.1 - Icchalkaranji Municipal Council (for short "**Council**") prepared and published the revised draft development plan on 30.11.1990, after considering the suggestions and objections and thereafter forwarded the same to the State Government for seeking its sanction on 04.02.1994. In the draft development plan, the said land was not reserved for any public purpose.

3.3. On 05.03.1999, the State Government notified the draft development plan with a modification by reserving the said land for the public purpose of "Municipal Store and Work Shop". Despite the said land being reserved for almost 22 years, the Respondents have not initiated the process of acquisition of the said land.

3.4. The Petitioners therefore, as contemplated under

Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "**the said Act**") issued purchase notice dated 15.01.2019 to the Respondent No.1 - Council which is duly received and acknowledged on 17.01.2019.

3.5. The Petitioners also furnished the relevant documents of the said land to the Respondent No.1 - Council along with the purchase notice.

3.6. On 24.03.2021, the Respondent No.1 - Council addressed a letter to the Petitioners clarifying that no steps have been taken for acquisition of the said land.

3.7. Despite receipt of the purchase notice along with the relevant documents, no effective steps as contemplated under the said Act for acquisition of the said land are undertaken by the Respondent No.1 - Council within the prescribed time period of 24 months.

3.8. The Petitioners have therefore, filed the above Writ Petition seeking the above reliefs.

4. Mr. A.Y. Sakhare, learned Senior Advocate appearing for the Petitioners has taken us through the

chronology of events and facts narrated hereinabove of which there is no dispute. He submitted that the said land deserves to be released as the said reservation has lapsed in view of the omission and inaction on the part of the Respondent No.1 - Council to acquire the said land within the prescribed time period of 24 months from the date of the purchase notice and thus the reliefs prayed for in the petition be allowed.

5. Mr. Akshay Shinde, learned counsel appearing for the Respondent No.1 - Council has referred to the Affidavit-in-Reply dated 06.08.2021 filed by Dr. Pradip Dagduji Thengal, Chief Officer of the Council. Paragraph No.7 of the said Affidavit reads thus:

"7. I say that the land in issue falls in Ward No.3 and the work of the said Ward is assigned to Shri. Baban Khot. However, Shri. Baban Khot is suffering from COVID-19 virus and therefore it could not be ascertained as what steps he has taken after receipt of said notice by the Town Planning Department."

5.1. Respondent No. 1 has not been able to show to us whether any steps have been taken by the Council.

5.2. From the above it is deduced that admittedly no steps have been taken by the Respondent No.1 - Council towards acquisition of the said land.

6. Respondent Nos.2 to 4 have not filed any reply. Mr. A.B. Kalel, learned AGP appearing for the State has fairly submitted that from the record it appears that no steps have been taken till date for acquisition of the said land.

7. We have perused the Writ Petition as well as the Affidavit filed by the Respondent No.1 - Council. We have considered the facts of the present case, the submissions made by the learned Advocates for the parties and the case law relied upon by the Senior Advocate for the Petitioners.

8. Chapter VII of the said Act deals with "Land Acquisition". Section 125 of the said Act deals with "Compulsory acquisition of land needed for purpose of regional plan, development plan or town planning etc." Section 126 of the said Act deals with "Acquisition of land required for public purposes specified in plans." Section 127 of the said Act pertains to "Lapsing of reservations". Section 127 of the said Act is relevant for deciding the issues raised in the present Writ Petition and is therefore reproduced hereunder :

"127. Lapsing of reservations
[(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development Plan comes into force [or if a declaration under sub- section (2)

or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twelve months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.]”

9. It is an admitted fact that the Respondent No.1 - Council has failed and neglected to take any steps for acquisition of the said land for a period for 24 years from the date of the final notification dated 05.03.1999 i.e. the day on which the development of the Icchalkaranji Municipal Council came into force and by reservation No.52, the said land of the Petitioners was kept reserved for "Municipal Store and Work Shop". Though the Petitioners issued a purchase notice on 15.01.2019, the Respondent No.1 - Council failed to take any steps towards commencement of the acquisition. Thus no effective steps as contemplated by the provisions of Section 127 of the said Act have been taken towards acquisition of the said land.

10. In its recent Judgment in the case of *Mohandas vs. State of Maharashtra and Ors.*¹, the Supreme Court has referred to and discussed several Judgments which have interpreted/analysed Section 127 of the said Act. Referring to the question posed in the Judgment of the Supreme Court in the case of *Girnar Traders and Anr. vs. State of Maharashtra and others*², as to what is required to be done by the Authority on receipt of a notice under Section 127 of the said Act from the owner of the land, the Supreme Court (majority view) has concluded that the steps towards acquisition would really commence when the State Government permits acquisition, and as a result thereof, publishes the declaration under Section 6 of the Act. The relevant paragraph Nos.16 and 17 of the Judgment in the Mohandas case are reproduced hereunder :

"16. In ***Girnar Traders v. State of Maharashtra and others, (2007) 7 SCC 555 ; [2007 ALL SCR 2232]***, the majority view was that a literal interpretation of Section 127 of the Act would result in injustice. The question, which was posed, actually was what is required to be done by the Authority on receipt of a notice under Section 127 of the Act from the owner of land subjected to restrictions by way of a Development Plan, *inter alia*. The dissenting Judge, P.K. Balasubramaniam, J., took the view that all that is required to be done when a notice is issued under Section 127 of the Act was that the Authority under the Act was to make an application for acquisition under the

¹ 2020(3) ALL MR 641 (S.C.)

² 2007 (7) SCC 555

Land Acquisition Act and nothing more. The learned Judge went on to hold that the Authority cannot set in motion proceeding under the Land Acquisition Act while acting under Section 126(1) of the Act. The majority view, however, was that resorting to the plain meaning of the words would cause palpable injustice. The Court took the view as follows:

“54. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

(Emphasis supplied)

17. Thus, it was concluded that the steps towards acquisition would really commence when the State Government permits acquisition,

and as a result thereof, publishes the
declaration under Section 6 of the
Act.”

11. In the present case, admittedly no steps have been taken by the Respondent No.1 - Council. The letter dated 24.03.2021 at "Exhibit F" to the petition issued by the Public Information Officer of the Respondent No.1 - Council to the Petitioner No.5 states that no steps have been taken by the Respondent No.1 - Council towards acquisition of the said land between 2017 to 17.03.2021. Its needs to be emphasized that the provisions of Section 127 of the said Act permit inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the acquired land. Not only that, it gives a further time period for either to acquire the land or to take steps for acquisition of the land within a prescribed period from the date of service of purchase notice by the land owner for dereservation. As observed by the Apex Court, if the acquisition is left for times immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land, then the authority would simply move such an application and wait endlessly for the notification to be issued by the State Government and until then no declaration could be made under Section 127 of the said Act as regards lapsing of

reservation and release of such land to the land owner for his utilization as permitted under Section 127 of the said Act. The decision in the case of *Girnar Traders v. State of Maharashtra* (supra) squarely covers the facts and circumstances of the present case.

12. We are therefore satisfied that no steps / action has been taken on the part of the Respondent No.1 - Council. Nothing prevented the Respondent No.1 - Council to act upon the purchase notice which was duly received and acknowledged by the Council. The purchase notice dated 15.01.2019 has been correctly addressed to the Respondent No.1 - Council and also encloses the requisite documents pertaining to the said land.

13. We are therefore, convinced that in the instant case, the Respondent No.1 - Council not only failed to acquire the said land of the Petitioners reserved under the final development plan, which came into force from 05.03.1999, but has also failed to take steps towards commencement of the acquisition within two years from the date of receipt of the purchase notice, resulting in lapsing of the said reservation.

- 14.** For the above reasons, we hold as follows:
- i. Upon expiry of the period of two years from the date of service of purchase notice on 15.01.2019, the reservation in respect of the said land belonging to the Petitioners is declared to have been lapsed;
 - ii. Respondent No.4 shall within a period of eight weeks from the date of uploading of this order, issue a necessary Notification by publishing an order in the official gazette notifying that the reservation in respect of the said land of the Petitioners has lapsed;
 - iii. The Writ Petition is accordingly disposed of with no order as to costs.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]