

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

WRIT PETITION NO. 2510 OF 2021

Shailendra Shankar Satpute
Age - 46 years., Occ. Business,
Residing at Ward No.17, Plot No.13, 14,
17, 18
Shankar Pushpa Niwas, Kanak Residency,
Ayodhya Colony, Icchalkaranji,
Kolhapur - 416 115.

.. Petitioner

Versus

1. Icchalkaranji Municipal Council,
Municipal Council Office, Icchalkaranji,
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

.....
Mr. A.Y. Sakhare, Senior Advocate a/w. Mr. Joel John Carlos for
the Petitioner.

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

Mr. A.I. Patel, AGP a/w. 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 Petitioner has filed the above Writ Petition for

seeking a declaration that the impugned reservation No.18 for "Garden" on land bearing Revisional Survey No.467/1 plot, admeasuring 1 Hectare 35 R within the limits of Icchalkaranji Municipal Council, Icchalkaranji, District Kolhapur (for short "**the said land**"), vide revised final development plan sanctioned by the State Government on 05.03.1999 and on 03.09.2001 has lapsed.

2. The Petitioner has filed the above petition for seeking the following reliefs:

"a. That this Hon'ble Court by Writ in the nature of mandamus certiorari or any other appropriate Writ direction or order be pleased to call for the records and proceedings of relating to land bearing R.S. No.467/1 pt. admeasuring 1 Hectare 35 R reserved under reservation No.18 for the purpose of garden 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 letter dated 2/11/2018.

b. That this Hon'ble Court be pleased to hold and declare that the reservation for garden on land bearing R.S. No.467/1 pt. 1 Hectare 35 R reserved under reservation No.18 has lapsed and be pleased to issue a Writ of mandamus or certiorari directing the Respondents not to invoke / apply the said reservation on the Petitioners proposal / application for development of the said reserved land."

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

3.1. The Petitioner is the owner of the said land. The said land admeasuring 1 Hectare 34 R is reserved under

reservation No.18 for the public purpose of "garden" in the final development plan of Icchalkaranji town. Petitioner's total land comprises of 2 Hector 14 R, out of which the said land admeasuring 1 Hector 34 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 "garden" at Schedule B, item No.11, mentioned as EP-11. By notification dated 03.09.2001, the modification as proposed by the notification dated 05.03.1999 was sanctioned by the State Government thus reserving the said land for the public purpose of "garden". 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 Petitioner therefore, as contemplated under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "**the said Act**") issued purchase notice dated 02.11.2018 to the Respondent No.1 - Council which is duly received and acknowledged on the same day i.e. on 02.11.2018.

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

3.6. On 24.08.2020, the Respondent No.1 - Council passed a resolution through its planning and development committee to acquire the said land. On 16.09.2020, the General Body of the Respondent No.1 - Council resolved to acquire the said land.

3.7. Prior to that on 06.08.2020 Respondent No.1 - Council informed the Collector about its decision to acquire the said land and called upon the Collector to acquire the said land. However, on 24.08.2020 the Collector replied back to the Council stating that the proposal forwarded by the Respondent No.1 - Council was defective and directed submission of a fresh proposal.

3.8. On 01.10.2020, the Respondent No.1 - Council addressed a fresh proposal to the Collector for acquisition of the said land. On 27.10.2020, the Collector forwarded the said proposal for acquisition of the said land to the Special Land Acquisition Officer - 11, Kolhapur for taking further steps.

3.9. On 27.10.2020, the Special Land Acquisition Officer - 11, Kolhapur addressed a letter to the Respondent No.1 - Council stating that on account of omission and default on the part of the Council to deposit 30% of the total compensation amount and take effective steps thereafter to get the declaration published as required under the provisions of Section 127(1) read with Section 126(4) of the said Act within the prescribed time frame, it was not possible to take the aforementioned effective steps within a period of 5 days and thus the said land could not be acquired and the said proposal was returned to the Council.

3.10. 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, save and except the correspondence referred to hereinabove.

3.11. The Petitioner has therefore, filed the above Writ Petition seeking the above reliefs.

4. Mr. A.Y. Sakhare, learned Senior Advocate appearing for the Petitioner has taken us through the chronology of events and facts narrated hereinabove of which there is no dispute. He submitted that the said land deserved 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 purchase notice. He submitted that mere correspondence cannot be considered as effective steps towards acquisition of the said land and thus the reliefs prayed for in the petition be allowed.

5. Mr. Akshay Shinde, learned Advocate appearing for the Respondent No.1 - Council has referred to the Affidavit-in-Reply dated 26.04.2021 filed by Shri. Sharad Vasantrao Patil, Chief Officer of Icchalkaranji Municipal Council and the additional Affidavit dated 29.07.2021 filed by Dr. Pradip Dagduji Thengal, present incumbent Chief Officer of the

Council and has sought to argue that the purported purchase notice dated 02.11.2018 issued by the Petitioner is defective as it is in the form of an application. He submitted that the Petitioner through his Advocate had served a fresh notice dated 18.06.2020 on the Respondents and thus the original purchase notice cannot be deemed to be a purchase notice. However he fairly submitted that the original purchase notice / application dated 02.11.2018 was indeed received by the Council but was not acted upon as the said application did not come to the notice to the Deputy Chairman / concerned authority. He further submitted that since immediate action on the purchase notice was not taken after its receipt in November 2018, an enquiry was conducted by the Administration calling for explanation for the concerned inward / outward department and the concerned clerk as to why the said notice was not placed before the authority and by an order dated 28.07.2021 one year increment of the concerned clerk was withheld as punishment. He submitted that only on receipt of the second notice (Advocate's notice) dated 18.06.2020, the Respondent No.1 - Council became aware of the aforesaid issue and thereafter took immediate steps by passing the resolutions through its planning and development department as well as the general body and

forwarding the resolutions to the Collector for acquiring the said land through the Special Land Acquisition Officer - 11, Kolhapur. He submitted that the original purchase notice did not have the complete set of documents as required and therefore on that ground also the said notice was defective. On the above grounds the Respondent No.1- Council has prayed for dismissal of the petition.

6. Respondent Nos.2 to 4 have not filed any reply. Mr. Patel, learned AGP appearing for the State has fairly submitted that save and except the correspondence between the Respondent No.1 - Council and the Collector's office no further steps have been taken till date for the 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 Advocate for the Petitioner.

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 22 years from the date of the final notification dated 03.09.2001 i.e. the day on which the development of the Icchalkaranji Municipal Council

came into force and by reservation No.18, the said land of the Petitioner was kept reserved for garden. Though the Petitioner issued a purchase notice on 02.11.2018, the Respondent No.1 - Council failed to take any steps towards commencement of the acquisition, save and except addressing two letters to the Collector's office which are stated hereinabove. The two letters addressed by the Respondent No.1 - Council cannot be deemed to be effective steps as contemplated by the provisions of Section 127 of the said Act as held by this Court in a *catena* of judgments.

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

¹ 2020(3) ALL MR 641 (S.C.)

² 2007 (7) SCC 555

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 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. Therefore, only because the Respondent No.1 - Council upon receipt of a purchase notice proceeds to pass a resolution in its general body and addresses a letter to the Collector for acquisition of the said land, the same would certainly not amount to the Municipal Council having taken steps towards commencement of acquisition. It 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 de-reservation of the acquired land. Not only that, it gives a further time period to either 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 de-reservation. 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 such steps / action / correspondence on the part of the Respondent No.1 - Council are only for the purpose of seeking time and to use it as an excuse to defend the petition filed against them on the ground that the acquisition has lapsed under Section 127 of the said Act. Nothing prevented the Respondent No.1 - Council to act upon the purchase notice which was duly received and acknowledged by the Council. As against the defence of defective public notice, we are not convinced at all after reading the purchase notice. The purchase notice dated 02.11.2018 has been correctly addressed to the Respondent

No.1 - Council and also encloses the requisite documents pertaining to the said land. There is no prescribed form in which a purchase notice under Section 127 of the Act is to be given. Therefore, the concerned authority upon receipt of a purchase notice, is only required to confirm that the same contains the required information qua the subject land and that the required documents are enclosed therewith. Whether the Notice is referred to as an 'Application' or a 'Notice' makes no difference. The manner in which the notice is worded also makes no difference as long as the intent of the person issuing the notice is clear. The Notice dated 2nd November, 2018 contains the required information qua the subject land along with the enclosures and the intent of the Petitioner set out therein, is clear. In view thereof, the Notice dated 2nd November, 2018 is held to be valid and not defective. The second notice (Advocate's notice) dated 18.06.2020 cannot be termed to be a purchase notice. In fact the Petitioner's Advocate has addressed a reminder notice / letter to the Respondents, *inter alia*, referring to the purchase notice dated 02.11.2018 in the body of the said letter and calling upon them to acquire the said land within the prescribed time period. Therefore the defence of Respondent No.1 - Council that the second notice (Advocate's notice)

dated 18.06.2020 is to be construed as a purchase notice is incorrect.

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 Petitioner reserved under the final development plan, which came into force from 03.09.2001, but has also failed to take steps as prescribed under Section 127 of the Act 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 02.11.2018, the reservation in respect of the said land belonging to the Petitioner 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 Petitioner has lapsed;

- iii. The Writ Petition is accordingly disposed of with no order as to costs.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]