

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5759 OF 2021

Sanyogitaraje Ajitsinh Ghatge and Anr.

.. Petitioners

Versus

The State of Maharashtra and Anr.

.. Respondents

-
- Mr. Manoj Patil, for the Petitioners.
 - Mr. S.S. Panchpor, Addl. G.P. for the State.
 - Mr. Shrirang Katneshwarkar i/by Mr. Tanaji Mhatugade, for Respondent No.2.

.....

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

DATE : DECEMBER 08, 2021.

P.C.:

1. By the above Writ Petition, the Petitioners have contended that the reservation No.18 for the purpose of nursery school on the lands belonging to the Petitioners has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "**M.R.T.P. Act**") and the Government ought to have notified the lapsation of Reservation No.18 for nursery school in the development plan of Kagal Municipal Council.

2. The Petitioners are the owners of the lands bearing Survey No.250/1/B and Survey No.250/2 and admesuring 21 R situated at Kagal, Tal. Kagal, District Kolhapur (for short "**the said**

land"). The revised development plan of Kagal Municipal Council came into force on 25th October, 1986. The Government of Maharashtra vide Government Resolution No.T.P.S. 2186/402/C.R./84-86 dated 25.10.1986 sanctioned the revised development plan for Kagal Municipal Council. The Kagal Municipal Council is the planning / appropriate authority for Reservation No.18 reserved over the said lands for the purpose of Nursery School.

3. Since the Respondent No.2 - Kagal Municipal Council failed to acquire the said land of Reservation No.18 for the purpose of Nursery School for approximately 27 years, the Petitioner No.1 on 30th March, 2013 served a "Purchase Notice" to the Respondent No.2 along with the necessary documents. Admittedly, no action is taken thereafter.

4. We have perused the Petition as well as the affidavits filed by the parties. 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 Petitioners.

5. Chapter VII of the M.R.T.P. Act deals with "Land Acquisition". Section 125 of the M.R.T.P. Act deals with "Compulsory acquisition of land needed for purpose of regional plan, development

plan or town planning etc.” Section 126 of the M.R.T.P. Act deals with “Acquisition of land required for public purposes specified in plans.” Section 127 of the M.R.T.P. Act pertains to “Lapsing of reservations”. Section 127 of the M.R.T.P. 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.]”

6. It is an admitted fact that the Respondent No.2 failed and neglected to take any steps for acquisition of the said land for a period of 27 years from the date of the sanctioned revised development plan i.e. 25th October, 1986 i.e. the day on which the development plan of the Kagal Municipal Council came into force and by Reservation

No.18, the said land of the Petitioners was kept reserved for Nursery School playground. Though the Petitioners issued a purchase notice on 30th March, 2013, the Respondent No.2 failed to take any steps towards commencement of the acquisition.

7. The Supreme Court in a decision in the case of **Mohandas vs. State of Maharashtra**¹ has referred to and discussed several Judgments which have interpreted /analyzed Section 127 of the M.R.T.P. Act. Referring to the question posed in the Judgment of the Supreme Court in the case of Girnar Traders vs. State of Maharashtra and others² 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 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 paragraphs of the Judgment in the case of Mohandas (supra) 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

1 2020(3) All MR 641 (SC)

2 2007(7) SCC 555

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 utilization 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.”

8. In fact, in the Affidavit-in-reply dated 22nd September, 2021 filed by Mr. Pandit Khandu Patil, Chief Officer of Kagal Municipal Council, he has submitted that the Municipal Council in its meeting dated 29.08.2016 passed a Resolution being Resolution No.107-A and resolved not to acquire the said lands and decided to send the proposal to the Secretary, Urban Development Department, State of Maharashtra, requesting to issue a Notification of lapsing of Reservation No18 in respect of the Petitioners' property.

9. An Affidavit-in-reply is also filed by Mr. Prasad Sonaba Gaikwad, Assistant Director of Town Planning, Kolhapur, dated 06.12.2021 stating that the State Government has not received any proposal for lapsing of Reservation No18 under the development plan of Kagal Municipal Council. It is further stated that validity of the purchase notice served by the Petitioners in respect of the said reservation under Section 127 of the M.R.T.P. Act given to Kagal Municipal Council and subsequent action taken by the Council after receipt of the said notice needs to be ascertained from the official records of the Council.

10. In view of the above facts, it is clear beyond any doubt that Kagal Municipal Council which is the appropriate planning and acquiring authority for Reservation No. 18 is not interested in the said lands belonging to the Petitioners and have accordingly passed a Resolution as stated herein above. Hence, we pass the following order:-

- (i) Upon expiry of the period of two years from the date of service of the purchase notice dated 30.03.2013, the Reservation No. 18 made by the Respondent No. 2 Council for the purpose of Nursery school in respect of the Petitioners' said land is declared to have been lapsed;
- (ii) The Respondent - State shall within a period of 8 weeks from the date 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.

11. The Writ Petition is accordingly disposed of in the above terms with no order as to costs.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2021.12.21
16:50:37
+0530