

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10002 OF 2019

Shri. Namdeorao Shankarrao Patil and Ors. ... Petitioners

Versus

State of Maharashtra and Anr. ... Respondents

Mr. Manoj A. Patil, for Petitioners.

Mr. A.I.Patel, Addl. GP, for State.

Mr. Tanaji Mhatugade, for Respondent No.2.

CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.
DATE : 13th July, 2021

P.C.:

1. The Petitioners jointly own the land admeasuring 20 R situated at Survey No. 531 situated at Kagal, Taluka Kagal, District Kolhapur (**‘the said land’**).

Respondent No. 1 is the State of Maharashtra and Respondent No. 2 is the Kagal Municipal Council (**‘Council’**).

2. The Petitioners have filed the above Writ Petition inter alia seeking the following reliefs :

“(b) This Hon’ble Court be pleased to issue writ of mandamus or any other appropriate writ, order and or direction and to direct the Respondent No.1 through its Urban Development Department, to issue Notification of Lapsation by declaring that the Reservation No. 39 of Kagal Municipal Council reserved for primary school and for play ground stands lapsed in respect of the land admeasuring 20 R of Survey No. 531 situated at Kagal, Tal.: Kagal, Dist.: Kolhapur owned by the Petitioners;

(c) This Hon’ble Court be pleased to issue writ of mandamus or any other

appropriate writ, order and or direction and to direct the Respondent No.1 through its department of Urban Development to issue Notification of Lapsation by declaring that the Reservation No. 39 of Kagal Municipal Council reserved for primary school and for play ground lapsed in respect of the land admeasuring 20 R of of Survey No. 531 situated at Kagal, Tal.: Kagal, Dist.: Kolhapur, owned by the Petitioners at the earliest and within a period of 8 weeks;"

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

3.1 As set out hereinabove, the Petitioners are the joint owners of the said land. The Development Plan of the Kagal Municipal Council was sanctioned by the Government of Maharashtra vide its Notification No. T.P.S. 2186/402/C.R./84/UD-7 dated 29th August, 1986 which came into force and effect on and from 15th October, 1986.

3.2 In the said Development Plan, the said land was shown as reserved vide Reservation No. 39 for "primary school and playground".

3.3 According to the Petitioners, for the past 27 years i.e. from the year 1986 to 2013, the Respondent No. 2 – Kagal Municipal Council failed to acquire the said land.

3.4 The Petitioners therefore, issued a purchase notice dated 30th March, 2013 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 ('**the said Act**') to the Respondent No. 2 – Kagal Municipal Council with a request to take appropriate steps for acquisition of the said land of the Petitioners. All necessary documents i.e. a copy of the 7/12 extracts and a copy of the development plan, were

submitted to the Kagal Municipal Council along with the purchase notice.

3.5 The Respondent No. 2 – Kagal Municipal Council in its meeting held on 8th August, 2014 vide Resolution No. 101 decided to de-reserve the said land which was kept under reservation vide Reservation No. 39 for primary school and playground. In the said meeting it was also decided that the Council will submit a proposal to the Government of Maharashtra for issuing a Notification for lapsing of Reservation No. 39.

3.6 The Respondent No. 2- Council vide its letter dated 7th October, 2015 requested the Secretary of Urban Development Department, Government of Maharashtra to issue a Notification for lapsing of Reservation No. 39.

3.7 By a letter dated 14th June, 2016, Respondent No. 2 – Kagal Municipal Council on instructions received from the Urban Development Department called upon the Petitioners to submit certain documents set out therein. The Petitioners duly submitted the documents to the Respondent No. 2.

3.8 According to the Petitioners, though the Respondent No. 2 – Kagal Municipal Council vide its Resolution No. 101 dated 8th August, 2014 has already decided to de-reserve the said land, the Respondent No. 1 – State of Maharashtra through its Urban Development Department is not issuing the Notification for lapsing of Reservation No. 39 of the Development Plan of Kagal Municipal Council.

3.9 The Petitioners were therefore, compelled to file the above Writ Petition seeking a declaration that the reservation qua the Petitioners said land has lapsed and

to issue a Notification in the official gazette notifying lapsing of the reservation of the said land.

4. The Assistant Director, Town Planning, Kolhapur, on behalf of Respondent No. 1 has filed his Affidavit dated 8th July, 2021 wherein he has inter alia stated that the validity of the purchase notice dated 30th March, 2013 and the subsequent action taken by the Respondent No. 2 – Council towards the de-reservation of the said land under notice needs to be ascertained from the record of Respondent No. 1 and thereafter, the Court may pass suitable orders as it may deem fit and proper.

5. The Chief Officer of Respondent No. 2 – Kagal Municipal Council, has filed an Affidavit dated 16th November, 2019 on behalf of Respondent No. 2 stating that the Respondent No. 2 has by Resolution No. 101 dated 8th August, 2014 decided to de-reserve the said land which was kept under reservation vide Reservation No. 39 for primary school and playground. The Chief Officer of Respondent No. 2 - Council has in his Affidavit also stated that by its letter dated 7th October, 2015 Respondent No. 2 Council has submitted its proposal to the Respondent No. 1 - State of Maharashtra for issuing a Notification for lapsing of Reservation No. 39.

6. The Chief Officer of Respondent No.2 has in his Affidavit also stated that in reply to the said proposal dated 7th October, 2015 the Secretary, Urban Development Department of the Government of Maharashtra by their letter dated 20th May, 2016 directed to submit a report alongwith certain documents which were duly submitted to the Respondent No. 1 for necessary action / direction.

7. The learned Advocate for the Petitioners took us through the facts in the present Petition which are already set out in paragraph 3 hereinabove. He pointed out that the development plan under which the said land belonging to the Petitioners was reserved, was sanctioned on 29th August, 1986 and the same came into force on and from 15th October, 1986. Since the said land was not acquired within 10 years from the date on which the final development plan came into force, the Petitioners served a statutory notice dated 30th March, 2013 under Section 127(1) of the said Act, to the Respondent No. 2 – Council. Respondent No. 2 admittedly resolved to de-reserve the said land vide its Resolution No. 101 dated 8th August, 2014 on the ground that the Respondent No. 2 – Council was facing financial crisis. In the circumstances, as provided under Section 127 of the Act, the reservation of the said land is deemed to have been lapsed and the said land stood released from the reservation and became available to the owners/Petitioners for the purpose of development. However, the Respondents failed to comply with the mandate provided in sub-Section 2 of Section 127 of the Act i.e. issuing a Notification in the official gazette notifying the lapsing of the reservation of the said land, thereby compelling the Petitioners to file the above Writ Petition seeking the reliefs set out in paragraph 2 above.

8. The learned Advocate appearing for the State of Maharashtra – Respondent No.1 referred to the Affidavit dated 8th July, 2021 filed by the Assistant Director of Town Planning, Kolhapur and submitted that the validity of the purchase notice served by the Petitioners and the subsequent action taken by the Respondent No. 2 –

Council, towards the de-reservation of the said land needs to be ascertained and after taking into consideration the remarks/say of the Respondent No. 2 – Council, this Court may pass suitable orders as it may deem fit and proper.

9. The learned Advocate appearing for Respondent No. 2 – Kagal Municipal Council submitted as follows :

9.1 That after considering the purchase notice served by the Petitioners, Respondent No.2 – Kagal Municipal Council by its Resolution No. 101 dated 8th August, 2014, decided to de-reserve the said land.

9.2 That by their letter dated 7th October, 2015 they submitted the proposal to Respondent No. 1 – the Secretary, Urban Development Department.

9.3 That thereafter, the Respondent No. 1 by their letter dated 20th May, 2016 directed the Respondent No. 2 - Municipal Council to submit a report alongwith certain documents which were duly submitted by the Respondent No. 2 to the Respondent No. 1.

10. We have perused the Writ Petition as well as the affidavits filed by the parties. We have considered the facts of the present case and the submissions made by the learned Advocates for the parties.

11. Chapter VII of the MRTP Act deals with “Land Acquisition”. Section 125 of the MRTP Act deals with “Compulsory acquisition of land needed for purpose of regional plan, development plan or town planning etc.” Section 126 of the MRTP Act deals with “Acquisition of land required for public purposes specified in plans.”

Section 127 of the MRTP Act pertains to “Lapsing of reservations”. Section 127 of the MRTP Act is relevant for deciding 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.]”

12. 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

final notification dated 15th October, 1986 i.e. the day on which the development plan of the Kagal Municipal Council came into force and by reservation No. 39, the said land of the Petitioners was kept reserved for primary school and playground. After the Petitioners issued a purchase notice on 30th March, 2013, the Respondent No. 2 vide Resolution No. 101 dated 8th August, 2014 decided to de-reserve the said land.

13. We are therefore, convinced that in the instant case, the Respondents not only failed to acquire the land of the Petitioners reserved under the final development plan, which came into force from 15th October, 1986, but also failed to take steps towards acquiring the said land 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 the Purchase Notice on 30th March, 2013, the reservation in respect of the said land belonging to the Petitioners has lapsed.

(ii) Respondent No.1 shall 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 off.

(MILIND N. JADHAV, J.)

(S.J.KATHAWALLA, J.)