

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8611 OF 2021**

Bapuso Niranjan Magdum and others ... Petitioners

Versus

The Chief Officer and another ... Respondents

.....

Mr. Manoj Badgujar for the Petitioners.

Ms. M.P. Thakur, AGP for the State.

Mr. Akshay Shinde for Respondent Nos.1 and 2.

.....

CORAM : S.J. KATHAWALLA AND**MILIND N. JADHAV, JJ.****DATED : DECEMBER 7, 2021.****P.C. :-**

1. The Petitioners have filed the above Writ Petition seeking a declaration that the impugned reservation bearing Reservation No.38 for "Garden" of the area admeasuring 0 H 38.5 R out of Revisional Survey No.678A, Hissa No.1A, the area admeasuring 0 H. 38.5 R out of Revisional Survey No.678A, Hissa No.1B and the area admeasuring 0 H. 48.33 R out of Revisional Survey No.678A, Hissa No.1C situated within the limits of Ichalkaranji Municipal Council, Ichalkaranji (hereinafter referred to as the "**said lands**"), vide part revision of development plan sanctioned on 5th March, 1999, has lapsed and that the said lands under the reservation are now available to the Petitioners for development entirely, free from any reservation.

2. The facts in the matter are briefly set out hereunder :

2.1 The Petitioners are the owners of the said lands. The 7/12 extracts of Survey Nos.678A show the ownership and possession of the Petitioners respectively.

2.2 The Respondent No.1 – Ichalkaranji Municipal Council, reserved the said lands for ‘Garden’ vide Reservation No.38 (the impugned reservation) in the development plan of 5th March, 1999. The State of Maharashtra, Urban Development Department – Respondent No.3 accorded its sanction to the development plan of Ichalkaranji – Part revision under Section 31(1) of the Maharashtra Regional and Town Planning Act, 1996 (the "**said Act**") vide Notification dated 5th March, 1999, which came into effect from 7th May, 1999.

2.3 Despite the said lands being reserved for almost 20 years, the Respondents have not initiated the process of acquisition of the said lands.

2.4 The Petitioners therefore issued a purchase Notice dated 31st May, 2016 along with all necessary documents to the Respondent No.1 under Section 127 of the said Act which is duly received and acknowledged on the same day i.e. on 31st May, 2016 by the Respondent No.1.

2.5 Despite receipt of the said Notice along with the relevant documents, no steps for acquisition of the said lands as contemplated under the said Act, are undertaken by the Respondent No.1 within the prescribed period of 24 months.

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

3. The learned Advocate appearing for Respondent Nos.1 and 2 has submitted written instructions dated 6th December, 2021 received by him from the Chief Officer, Ichaklaranji Municipal Council, wherein it is interalia stated that the Ichalkaranji Municipal Council has not passed any resolution pertaining to the acquisition of the said lands, nor have they submitted any recommendation to the Collector, Kolhapur, for acquisition of the said lands. In other words, no steps have been taken by the Respondents even after the expiry of two years from the date of receipt of the purchase Notice under Section 127 of the said Act. The said Letter dated 6th December, 2021 is taken on record and marked 'X' for identification. In the above circumstances, the impugned reservation has lapsed and the said lands ought to be made available to the Petitioners for development. The Writ Petition is therefore, allowed in terms of prayer clauses (a) and (b) which are reproduced hereunder :

“(a) By grant of appropriate writ, order or direction, this Hon’ble Court may be pleased to hold and declare that the impugned reservations

bearing Reservation No.38 for 'Garden' on the portion admeasuring 0 H. 44.00 R from Revisional Survey No.678A- Hissa A admeasuring 0 H. 38.5 R, Revisional Survey No.678A – Hissa B admeasuring 0 H. 38.5 R, Revisional Survey No.678A – Hissa C admeasuring 0 H. 48.33 R situated within limits of Ichalkaranji Municipal Council, Ichalkaranji, vide Part revision of development plan sanctioned on 05.03.1999, is lapsed and that the area under the impugned reservations is now available to the Petitioners for development entirely free from any reservation;

(b) By grant of appropriate writ, order or direction, this Hon'ble Court may be pleased to direct the Respondent No.3 to issue Notification as contemplated under Section 127(2) of the MR & TP Act, 1966 within a period of one month;"

4. The Notification under Section 127(2) of the MRTP Act, shall be issued within six weeks from the date of uploading of this order.

5. The Writ Petition is accordingly disposed off.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)