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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2535 OF 2021

Hayatbi Mohammad Pathan and Ors. .. Petitioners

Versus

Kagal Municipal Council and Ors. .. Respondents

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- Mr. Manoj Patil for the Petitioners.
- Mr. Shrirang Katneshwarkar i/by Mr. Tanaji Mhatugade for Respondent No. 1.
- Mr. R.S. Pawar, AGP for the State.
- Mr. Sandesh Patil a/w. D.P. Singh for Respondent No. 2 and 4.

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

DATE : 24 SEPTEMBER, 2021

P. C. :

1. The Petitioners are owners of land admeasuring 28 R of Survey No.540, Hissa No. 4 situated at village Kagal, Taluka Kagal, District Kolhapur (for short "**the said land**"). Respondent No. 1 is the Kagal Municipal Council (for short "**Council**"); Respondent No. 2 is the Senior Superintendent of Post Office, Kolhapur Division, Kolhapur; Respondent No. 3 is the State of Maharashtra and Respondent No. 4 is the Union of India.

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. 3 through its Urban Development Department, to issue Notification of Lapsation by declaring that the Reservation No. 5 of Kagal Municipal Council reserved for Postal Staff Quarters in its

Development Plan stands lapsed with regard to the Petitioners land admeasuring 28 R of Survey No. 540, Hissa No. 4 situated at Mouje Kagal, Tal.: Kagal, Dist.: Kolhapur.

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. 3 through its department of Urban Development, to issue Notification of Lapsation by declaring that the Reservation No. 5 of Kagal Municipal Council reserved for Postal Staff Quarters into the Development Plan stands lapsed with regard to the land admeasuring 28 R of Survey No. 540, Hissa No. 4 situated at Mouje 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 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 25th October, 1986.

3.2. In the said Development Plan, the said land was shown as reserved vide Reservation No. 5 for "postal staff quarters". The said land is part of a larger area of land admeasuring 1 Hecter 7 R out of Survey No. 540 reserved vide Reservation No. 5 for "postal staff quarters".

3.3. According to the Petitioners, for the past 31 years i.e. from the year 1986 to 2017, the Respondent No. 1 - Kagal Municipal Council failed to

acquire the said land which was kept under Reservation No. 5 for "postal staff quarters". Respondent No. 2 is the postal department i.e. the acquiring body.

3.4. The Petitioners therefore, issued a purchase notice dated 10th November 2017 (served on 30th November 2017) under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "**the said Act**") to the Respondent No. 1 and requested the Municipal Council to take appropriate steps as statutorily contemplated for acquisition of the said land of the Petitioners. The purchase notice was addressed to Respondent No. 2 and also endorsed to the Respondent No. 1. All necessary documents i.e. a copy of 7x12 extract and copy of development plan were submitted alongwith the purchase notice.

3.5. The Petitioners have referred to letter dated 23th July 2010 issued by Respondent No. 1 Council to the Deputy Director of Town Planning Kolhapur Division, Kolhapur pertaining to 42 R land adjacent to the said land out of the same Survey No. 540 which was also reserved for the same public purpose. In respect of the adjacent land, its owners had given purchase notice on 21st August 2009 to Respondent No. 1 Council. In reply to that purchase notice by letter dated 23th July, 2010 the Chief Officer of Respondent No. 1 - Kagal Municipal Council had stated that the land was not required for the said public purpose of "postal staff quarters"; it was surrounded by residential zone and as such the reservation stood cancelled and accordingly the necessary change be made in the development plan. The Petitioners have

relied on this letter dated 23th July, 2010 annexed at Page 31 to the petition.

4. The Assistant Director of Town Planing, Kolhapur on behalf of Respondent No. 3 State has filed his reply dated 5th April 2021 wherein, he has *inter alia*, stated that the validity of the purchase notice served by the Petitioners on 10th November 2017 and subsequent action taken by the Respondent No. 1 Council towards the acquisition of the said land under notice needs to be ascertained from the record of Respondent No. 1 Council and thereafter the Court may pass suitable orders as it may deem fit and proper.

5. The Respondent No. 2 has filed Affidavit-in-Reply dated 9th August 2021, *inter alia*, contending that the purchase notice is not proper and not addressed to the Planning Authority and is addressed to the Respondent No. 2. Respondent No. 2 has contended that it made genuine efforts and entered into correspondence to collect requisite information and also deputed its officers several times to obtain the documents from Municipal Council Kagal and Town Planning Office, however no reply whatsoever was given by the concerned authorities to the Respondent No. 2 and hence Respondent No. 2 was unable to acquire the said land. Save and except the correspondence i.e. addressing letters to Municipal Council Kagal, Tahsildar Kagal and Deputy Director, Town Planning Kolhapur no other steps were admittedly taken by Respondent No. 2 as can be revealed on perusal of the contents of paragraph Nos. 5 to 8 and 16 of the aforesaid reply dated 9th August 2021.

6. The Respondent No. 1 Council has not filed its Affidavit-in-Reply. However in Writ Petition No. 2534 of 2021 Respondent No. 1 has filed its Affidavit-in-Reply dated 7th September 2021 *inter alia*, contending that on 11th November 2017, a fire broke out in the building of Respondent No.1 Council, in which all the record of construction, Health, Storage, Census Registers, Election and NULM departments has been destroyed and as such the necessary documents as sought for by Respondent No. 2 from the Respondent No. 1 were not available with the Council in respect of the purchase notice issued by the Petitioners in that case. Similar submissions have been orally advanced by the Advocate appearing for Respondent No. 1 Council in the present case.

7. The Petitioners have stated that since the said land has not been acquired and no steps have been taken by Respondent Nos. 1 and 2, 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.

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

9. 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.]"

10. It is an admitted fact that the Respondent Nos. 1 and 2 have failed and neglected to take any steps for acquisition of the said land for a period of 31 years from the date of the final notification dated 25th October, 1986 i.e. the day on which the development plan of the Kagal Municipal Council came into force and by Reservation No. 5, the said land of the Petitioners was kept reserved for "postal staff quarters". The only objection raised by Respondent

No. 2 is the correspondence entered into by Respondent No. 2 with the Respondent No. 1 and other concerned authorities for acquisition of the said land.

11. We are therefore, convinced that in the facts of the instant case, the Respondents have not only failed to acquire the land of the Petitioners reserved under the final development plan, which came into force from 25th October 1986, but also failed to take steps as statutorily contemplated towards acquiring the said land within two years from the date of receipt of the purchase notice, resulting in lapsing of the said reservation.

12. 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 10th November 2017, the reservation of "postal staff quarters" in respect of the said land belonging to the Petitioners has lapsed;
- (ii) Respondent No. 3 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.]