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

WRIT PETITION NO. 1661 OF 2022

Kishori Prakash Awade

.. Petitioner

Versus

State of Maharashtra and Ors.

.. Respondents

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- Mr. P.M. Arjunwadkar, Advocate for the Petitioner.
 - Ms. S.D. Vyas, 'B' Panel Counsel for the State.
 - Mr. Akshay Shinde, Advocate for the Respondent Nos.3 and 5.
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**CORAM : S. J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : 04 MARCH, 2022.

P.C.:

. The Petitioner has filed the above Writ Petition seeking a declaration that the impugned Reservation No.21 for "Primary School" and "Play Ground" on the portion admeasuring 0H14.32R i.e. 1432 (square meters) out of Revisional Survey No.474/3 situated within the limits of Ichalkaranji Municipal Council, Ichalkaranji, Taluka: Hatkanangale, District: Kolhapur, vide part revision of development plan sanctioned on 05th March, 1999 has lapsed and that the aforesaid area under the reservation is now available to the Petitioner for development entirely free from any reservation.

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

2.1. The Petitioner is the owner of land admeasuring 0H14.32R out of Revisional Survey No.474/3 situated at Ichalkaranji (the "**said property**"). The 7/12 extract of Revisional Survey No.474/3 shows the ownership and possession of the Petitioner.

2.2. The Respondent No.3 - Ichalkaranji Council, reserved the said property for "Primary School" and "Play Ground" vide Reservation No.21 (the impugned reservation) in the development plan on 05th March, 1999. The State of Maharashtra, Urban Development Department - Respondent No.1 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 "**MRTP Act, 1966**") vide Notification dated 5th March, 1999, which came into effect from 7th May, 1999.

2.3. Despite the said property being reserved for almost 23 years, the Respondents have not initiated the process of acquisition of the said property.

2.4. The Petitioner therefore, as contemplated under Section 127 of the MRTP Act, 1966 issued purchase Notice dated 22nd January, 2020 to the Respondent No.3 which is duly received and

acknowledged on 29th January, 2020 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 property as contemplated under the MRTP Act, 1966 are undertaken by the Respondent No.1 within the prescribed period of 24 months.

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

3. The learned Advocate for Respondent No.3, Ichalkaranji Municipal Council has filed Affidavit-in-Reply dated 3rd March, 2022 of Dr. Pradip Dagduji Thengal, Chief Officer of the Council acknowledging receipt of the Purchase Notice dated 22nd January, 2020 served upon the Council. It is stated in the Affidavit that on 16th September, 2020, the Council in its meeting unanimously resolved to acquire the said property and on 15th October, 2020 a proposal for acquisition was forwarded to the Respondent No.2, Collector, Kolhapur; thereafter the proposal has remained pending till date. It is further stated that no notification for acquisition is issued under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Section 126 of the MRTP Act, 1966. 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 MRTP Act, 1966.

4. In the above circumstances, the impugned reservation has lapsed and the said property ought to be made available to the Petitioner for development. The Writ Petition is therefore, allowed in terms of prayer clauses (a) and (b) which are reproduced hereunder:

"a) This Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ or direction in the nature of Writ of Mandamus and be further pleased to hold and declare that the reservation in respect of the land bearing R.S.No.474 Hissa No.3 adm.H.0.50R out of it, the land owned by Petitioner adm.H.0.23.04R and out of it a land adm.H.0.14.32R (1432 sq. mtrs.) situated within the limits of Ichalkaranji Municipal Council, Ichalkaranji, Taluka: Hatkanangale, District: Kolhapur for the purposes of Primary school and playground is hereby lapsed;

b) This Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ or direction in the nature of Writ of Mandamus and be further pleased to direct the Respondent Nos.1 and 2 to publish a Notification within a stipulated period in the Official Gazette under Section 127(2) of the Maharashtra Regional Town Planning Act, 1966 declaring lapsing of reservation and further deleting land of the Petitioner bearing R.S.No.474 Hissa No.3 adm.H.0.50R out of it the land owned by Petitioner adm.H.0.23.04R and out of it a land adm.H.0.14.32R (1432 sq. mtrs.) situated within the limits of Ichalkaranji Municipal Council, Ichalkaranji, Taluka: Hatkanangale, District: Kolhapur from reservation."

5. The Notification under Section 127(2) of the MRTP Act, 1966 shall be issued within six weeks from the date of uploading of this order.

6. The Writ Petition is accordingly disposed of.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]

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