

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

WRIT PETITION NO.12025 OF 2015

Rajendra Madhukar Bhamre & Ors. Petitioners
versus
Malegaon Municipal Corporation & Ors. Respondents
.....

- Mr. Anilkumar K. Patil, Advocate for Petitioner.
- Mr. S. S. Patwardhan a/w Mr. B. R. Mandlik and Ms. Mrinal A. Shelar, Advocate for Respondent No.1/Corporation.
- Mr. A. I. Patel, Addl. G.P a/w Mr. A. A. Alaspurkar, AGP for the State/Respondent Nos.2 to 4.

**CORAM : R. D. DHANUKA &
M. G. SEWLIKAR, JJ.
DATE : 07th JULY, 2022.**

P.C. :

1. By this Petition filed under Articles 226 and 227 of the Constitution of India, the Petitioner seeks writ of certiorari for declaring the notification dated 21/08/2009 and part of consequent Sanction Development Plan dated 24/12/2014 as null and void and bad in law.

2. The Petitioner also seeks an order or direction to Respondent No.1 to declare the property bearing City Survey

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No.51/2 situated at Malegaon Camp as de-reserved and same be dropped from the notification dated 21/08/2009 and part of consequent Sanction Development Plan dated 24/12/2014.

3. Sometime in the year 1970, the erstwhile Municipal Council of the city of Malegaon proposed to acquire the land bearing Survey No.51/2 for the purpose of playground as per proposed development plan. It is the case of Petitioner that since 1970, the erstwhile Municipal Council neither acquired the property nor released the said property from reservation. The erstwhile owners Gopaldas Ramdayal Kabra and Natwarlal Ramdayal Kabra, the predecessor of the Petitioners, preferred Writ Petition No.3587 of 1989 in this Court. By an order dated 15/10/2001 a the Division Bench of this Court, disposed off the Writ Petition No.2843 of 2001. Having regard to the fact that the land was under acquisition since 1970, this Court directed the Municipal Council/State of Maharashtra to commence acquisition proceedings within six months from the date of the said order. This Court noticed the grievance of the Petitioners in

the said order that though land had been under reservation since 1970 under development plan, the Municipal Council had neither acquired the said land nor released the said land from acquisition.

4. Mr. Patil, learned counsel for the Petitioner states that his clients have purchased the said property from the erstwhile land owners. He invited our attention to the said order passed by the Division Bench and also to the averments made by the State Government in the affidavit filed by the Assistant Director of Town Planning, Nashik, affirmed on 13/01/2017. He submits that it is admitted by the Assistant Director of Town Planning, Nashik, that the Writ land was not a part of development plan sanctioned by the Government vide notification dated 21/08/2009 and 14/01/2015. The submission is that it is well indicated that there is no reservation on the said part of development plan.

5. The next submission of learned counsel is that some of the owners of the land having been already granted permission

to carry out construction would indicate that the ownership of the such persons have not been disputed in the said land.

6. Learned counsel placed reliance of the judgment of this Court in case of *Kishor Gopalrao Bapat & Ors. Vs. State of Maharashtra & Anr., reported in 2005 (5) Bom. C.R. 682*. It is submitted that in the year 2006, the State Government could not have de-reserved the writ land for the public purpose once the State Government has not even acquired the said land after expiry of 10 years as per the date of reservation.

7. Learned AGP reiterated the stand taken by the State Government in the affidavit of Assistant Director of Town Planning, Nashik.

8. Mr. S. S. Patwardhan, learned counsel for the Respondent No.1/Corporation on the other hand submits that the permission to carry out construction was granted only in favour of those parties whose lands were not reserved for any public purpose and not granted to the owners whose lands were

reserved under development plan. The final development plan was only sanctioned w.e.f. 01/11/2006. Some portion was however excluded while sanctioning the said development in the year 2006. Even in Development Plan of 2006, the land in question was reserved for public service. He invited our attention to some of the averments made by Assistant Director of Town Planning and submits that those averments would support the case of the Respondent No.1 and not the Petitioner. He invited our attention to the order dated 15/10/2001 passed by Division Bench of this Court in the Writ Petition No.2843 of 2001 filed by the erstwhile owners of the land and submitted that erstwhile land had prayed for writ of mandamus to acquire the writ land whereas the Petitioners who claim to be successors of the said land, have now prayed for de-reservation of the land contrary to the stand taken by the predecessors of the Petitioner.

9. It is submitted that on 14/02/2002 the sanctioned plan has already been notified. The State of Maharashtra has already sanctioned the second revised development plan in the year

2006 u/s 31 of the MRTP Act. The Petitioners have not issued notice u/s 127 of the MRTP Act after 10 years having been expired in the year 2016 from the date of sanction of the second revised development plan by the State Government. Learned counsel for the Petitioner distinguished the judgment of this Court in case of Kishor Bapat (Supra).

10. It is submitted by learned counsel for the Petitioner that in the facts of that case, notice u/s 127 of MRTP Act was issued since the land continued to be reserved after expiry of 10 years. The said notice u/s 127 was made absolute. After the land was free from all encumbrances in view of the said notice issued u/s 127 of the MRTP Act, the said land was de-reserved for another public purpose. He submitted that the said judgment is distinguishable on facts.

11. It is not in dispute that the Petitioners have purchased the land from Gopaldas Ramdayal Kabra and Natwarlal Ramdayal Kabra. The erstwhile owners had filed a Writ Petition

before this Court for various reliefs. Perusal of the order passed by the Division Bench of this Court indicates that this Court had considered the averments made by the erstwhile owners that the land was neither acquired nor released. At some point of time, the Municipal Council had lack of funds. This fact was also noticed in the said judgment. This Court thereafter noticed that the budgetary provision had been made for acquisition of the land in question and very soon the process under the Land Acquisition Act would be commenced. This Court accordingly granted six months time to the Municipal Council/State of Maharashtra to commence acquisition proceedings.

12. It is a common ground that though the said order was passed as on 15/10/2001 granting six months time to commence acquisition proceedings, no steps are taken till date. It is also a common ground that in the year 2006, several other lands including the writ land were again reserved for public purpose.

13. In our view merely because the Municipal Council or the State of Maharashtra has not commenced the acquisition proceedings within the time prescribed in the said order dated 15/10/2001, the said land would not cease to be de-reserved automatically. The fact remains that the neither Municipal Council nor State of Maharashtra took any steps to acquire the said land. In the year 2006 the said writ land has been again reserved for public purpose. If the Petitioner was desirous to apply for de-reservation, the Petitioner ought to have followed the procedure u/s 127 of the Act. Admittedly in this case no such notice is issued by the Petitioner. The Petitioner thus cannot seek relief as prayed in the Writ Petition at this stage.

14. In so far as judgment of this Court in Kishor Bapat (Supra) is concerned, the facts of the case clearly indicate that the owner had issued notice u/s 127 of the Act in the said matter which was made absolute. After such notice was issued, there was no agreement executed between the owner and the acquiring body. The property was thus ceased to be de-reserved.

The said property was reserved again for the development plan for the second time. The said reservation for the second time of the same property was the subject matter of the said Petition in the case of Kishor Bapat (Supra). In the facts of that case, this Court accordingly held that right accrued to the land owner, cannot be taken away by exercising power u/s 38 of the Act by reserving the same land for second time. In our view said judgment in the case of Kishor Bapat (Supra) is distinguishable on facts and would not advance case of the Petitioner.

15. There is no merit in the Writ Petition and is accordingly dismissed. There shall be no order as to costs.

(M. G. SEWLIKAR, J.)

(R. D. DHANUKA , J.)