

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

WRIT PETITION NO.12659 OF 2022

Mozamkhan Ajmal khan Hakim and] ... Petitioners
Ors.]

Vs.

State of Maharashtra and Anr.] ... Respondents

...

Mr. Drupad S. Patil, for the petitioners.

Mrs. Ashwini A. Purav, AGP for respondent No.1 – State.

Mr. Abhijit M. Adagule, for respondent No.2.

...

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.**

DATED : 21ST OCTOBER, 2022.

P.C.:-

1. Rule.

2. Learned AGP waives service for respondent No.1. Learned counsel waives service for respondent No.2. Rule is made

returnable forthwith.

3. By this petition filed under Article 226 of the Constitution of India. Petitioner seeks declaration that the land admeasuring 0H 19 R, bearing CTS No.2389 (Old Survey No.2), situated at D ward, Kolhapur is available to the Petitioner for the purpose of development, otherwise permissible in the case of adjacent land, under the sanctioned Development Plan of the Kolhapur City and for other reliefs. The writ land was reserved for public purpose in the Development Plan for Kolhapur, which was approved on 18th December 1999. In the said Development Plan the said land alongwith the adjoining lands were reserved for the public purpose of 'Garden' as Reservation No.11. The petitioners were issued a notice under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act") on 13th December 2017. The Municipal Corporation showed willingness to acquire the said land by granting T.D.R. on 8th August 2019. The petitioners refused to accept the T.D.R. and requested for monetary compensation. On 20th November 2019, Municipal Corporation disposed the notice issued by the petitioner under Section 127 of the MRTP Act, on the ground that the said land is not fit for development. The petitioners accordingly requested the State Government for publication of notification in Official Gazette as contemplated by Section 127 (2) of the MRTP Act.

4. Mr. Patil, learned counsel for the petitioner invited our attention to the documents annexed to the petition including the order dated 20th November 2019 issued by the Municipal Corporation to the petitioner stating the the Municipal Corporation is unable to develop the said land which was the subject matter of notice under Section 127 (2) of the MRTP Act. Learned counsel for respondent No.2 – Corporation confirmed this position by making statement before this Court today. Statement made in the said letter dated 20th November 2019 made across the bar are accepted. In view of the statement made by the Municipal Corporation and since no steps were taken by the Municipal Corporation even otherwise within the time prescribed, the reservation of the plot of the petitioners in the Development Plan has lapsed. We accordingly pass the following order

ORDER

(a) The land of the petitioners shall be available to the petitioner for the purpose of development under the sanctioned Development Plan of the Kolhapur city subject to the other compliances. The land of the petitioners be released from the reservation and also in terms of prayer clause (b). The notification shall be published within three months from today.

(b) If any application for development is made by the

petitioner, the same shall be considered by the Municipal Corporation in accordance with law and on compliance with the conditions prescribed in the provisions of Mumbai Municipal Corporation Act, 1888 and Development Control Rules.

5. Rule is made absolute in aforesaid terms.
6. No order as to costs.
7. Parties to act on the authenticated copy of this order.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]