

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

Digitally signed by
VASANT ANANDRAO
IDHOL
Date: 2023.08.07
20:04:51 +0530

WRIT PETITION NO.8245 OF 2022

Liyakat M. Gaiban & Ors.

...Petitioners

V/s.

The Chief Officer,

Ichalkaranji Municipal Council, Ichalkaranji & Ors.

...Respondents

Mr.Manoj M. Badgujar for the Petitioners.

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

Ms.M.P. Thakur, AGP for Respondent No.3 – State.

CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.
DATE : 3RD AUGUST, 2023.

P.C. :-

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.
2. Learned counsel for the Petitioners submits that the purchase notice was issued under Section 127 of the Maharashtra Regional & Town Planning Act, 1966 (for short "MRTP Act") in respect of the subject property affected by reservation of the shopping complex was duly served by the Petitioners upon the then Municipal Council of Ichalkaranji on 31st May, 2016 and proper acknowledgment of receipt of the purchase notice was obtained by

the Petitioners. In support, he invites our attention to the purchase notice at page 16 and acknowledgment appearing thereon at page 17. He submits that having regard to the acknowledgment of receipt of notice duly issued by the then Ichalkaranji Municipal Council, now it does not lie in the mouth of the Municipal Council to deny the receipt of the notice. He also submits that a false statement has been made by the Corporation in its affidavit regarding relevant entries made in the inward register to be in different handwriting and being affected by some overwriting. He further submits that since no steps for acquisition of the land have been taken in spite of passing of a period of more than one year, the Petitioners have become entitled to seek a declaration from this Court regarding the deemed lapsing of the subject land with further declaration about they being free to develop the land in accordance with law.

3. Learned counsel for the Corporation, which is appropriate authority in the matter, submits that there are doubtful entries in the inward register and that is the reason why the Corporation has denied the receipt of the purchase notice. He also submits that the purchase notice has not been served upon the Town Planner of the Council and is thus defective. But, he fairly concedes that so far no steps whatsoever for acquisition of the land have been taken by the erstwhile Municipal Council, which is today a Municipal Corporation.

4. Learned AGP submits that unless and until a proposal for acquisition of the land is received from Respondent Nos.1 and 2, the State Government cannot proceed further in the matter.

5. The issue raised by the Corporation regarding receipt of the purchase notice appears to be only in the nature of storm in the cup of tea. While the Corporation (erstwhile Municipal Council) says that relevant entry which is entry No.7174 in the inward register appears in different handwriting and is therefore, of doubtful origin, the Corporation does not say that this entry has not been made by a Clerk, who was in-charge of the inward register on the relevant date. In fact, as can be seen from the paper book of this case, there is no enquiry whatsoever made by the Corporation about what it says to be doubtful entry in the inward register. No FIR as regards the doubtful entry has been so far filed by the Corporation. Therefore, just because entry No.7174 appears in handwriting which is different than the handwriting in which the earlier and subsequent entries appear, it cannot be said that the entry was the result of forgery or some manipulation of the official record of the Corporation. The contention of the Corporation is, therefore rejected.

6. As regards the submission made on oath in the reply of the Corporation that there is overwriting on entry No.7174 in another page of inward register, we must say that the statement is false

statement. As rightly submitted by learned counsel for the Petitioners, statement has been made on oath by the officer, who has solemnly affirmed the reply and whose name is Shri Ranjit Netaji Kore. Ordinary we would have issued a direction for taking coercive action against Shri Ranjit Netaji Kore, Town Planner of Ichalkaranji Municipal Council but, considering the fact that the mistake has been committed by him for the first time, we do not propose to take any coercive action against him. But, by this order, we place on record our caution to him and we direct him to be careful in making statements on oath in future.

7. In view of above, we find that there is no merit in the contention that the entry No.7174 appearing in the inward register is doubtful and therefore, it cannot be said with any amount of certainty that the purchase notice under Section 127 of the MRTP Act was indeed received by the Corporation or not. We further find that purchase notice was indeed received by the Corporation.

8. Once it is found that the purchase notice issued under Section 127 of the MRTP Act has been duly received by the Corporation, the only thing that is required to be examined by this Court is as to whether or not any steps for acquisition of the subject land have been taken by the Corporation. Of course, we must say it here that it is not necessary for this Court to also examine the

incidental question of the purchase notice under Section 127 of the MRTP Act being compliant with other requirements of Section 127 of the MRTP Act, as there is no dispute raised by the Corporation about the notice not being so compliant in respect of the other requirements.

9. As noted earlier, learned counsel for the Corporation has fairly conceded that no steps whatsoever for acquisition of the subject land have been taken by the Municipal Corporation. If that is so, we find that the Petitioners are entitled for a declaration from this Court that the reservation in question on the subject land is deemed to have been lapsed and that the Petitioners are free to use and develop the subject land in accordance with law.

10. In the result, we allow the Petition in terms of prayer clause (a), which reads as under :-

“a). By grant of appropriate writ, order or direction, this Hon'ble Court may be pleased to hold and declare that the impugned reservation bearing Reservation No.28 for 'Shopping Complex' on the portion admeasuring O H. 29 R. from Survey No.426/1 and O H. 14.21 R. from Survey No.426/2, situated within limits of Ichalkaranji Municipal Council, Ichalkaranji, vide development plan sanctioned on 05.03.1999 and 03.09.2001, is lapsed and that the area under the impugned reservations is now available to the petitioners for development

entirely free from any reservation ;”

11. We further direct Respondent No.3 to issue a notification as contemplated under Section 127 (2) of the MRTP Act, 1966 within a period of six months from the date of the order. Rule is made absolute in above terms. No costs.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)