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

**WRIT PETITION NO.1700 OF 2009
WITH
CIVIL APPLICATION NO.417 OF 2015**

Shri. George Fredrick Fernandes
Age : 85 years, Occ.- Agriculturist
R/at. E-Ward, C.T.S. No.35-A,
Sadar Bazar, Kolhapur

... Petitioner/Applicant

Vs.

- 1] State of Maharashtra and Anr.
Through Secretary
Department of Urban Dvelopment
Mantralaya, Mumbai
- 2] The Commissioner
The Kolhapur Municipal Corporation
Kolhapur 416 002.

... Respondents

Mr. Sanjay Kshirsagar, for the Petitioner/ Applicant.
Mr. V.S. Gokhale, AGP, for the Respondent No.1.
Mr. S.S. Patwardhan, for the Respondent No.2.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 3rd MARCH, 2015

ORAL JUDGMENT (Per A.S. Oka, J.) :-

. On 17th February, 2011, this Court directed that priority should be given to the final hearing of this Petition considering the age of the Petitioner. By filing Civil Application No.417 of 2015, it was pointed out by the Petitioner that his present age is 91 years. That is the reason why the Petition is taken up for final hearing.

2. The Petitioner is claiming to be the owner of the land more particularly described in paragraph 1 of the Petition. The revised development plan for the City of Kolhapur was sanctioned by the State Government on 19th December, 1999 which came into force with effect from 1st January, 2000. The Petitioner issued a purchase notice under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). By order dated 19th December, 2005, in exercise of powers under Sub-Section (4) of Section 49 of the MRTP Act, the State Government confirmed the purchase notice. Within one year from the date of confirmation of the said notice, the Appropriate Authority i.e. Kolhapur Municipal Corporation did not make any application to acquire the land in accordance with Sub-Section 1(c) of 126 of the MRTP Act. Therefore, the contention raised in the Petition is that the reservation shall be deemed to have lapsed.

3. The learned counsel appearing for the Petitioner submitted that even going by the reply filed by the second Respondent Shri Maruti Dagadu Rathod, the Assistant Director of Town Planning, an application as contemplated under Sub-Section (7) of Section 49 was not made by the Municipal Corporation of the City of Kolhapur. It is not disputed that the said land described in paragraph 1 of the Petition was partly affected by a reservation for garden and partly by a reservation for

playground for which the Kolhapur Municipal Corporation is the Appropriate Authority within the meaning of the MRTP Act. The learned counsel appearing for the second Respondent relied upon the affidavit of Shri Maruti Dagadu Rathod.

4. We have given careful consideration to the submissions.

Sub-Section (7) of Section 49 which reads thus :-

“(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.”

5. In the facts of the case, by the order dated 19th December, 2005, by exercising powers under Sub-Section (4) of Section 49 of the MRTP Act, the State Government confirmed purchase notice dated 10th June, 2005. On 12th January, 2006, a proposal was submitted by the Municipal Administration for placing the same before the General Body. The proposal was regarding commencing the acquisition proceedings. The specific averment made in the Petition is that an application for acquisition was never made by the Municipal Corporation within a

period of one year from 19th December, 2005. This fact is not disputed in the reply filed by Shri Maruti Dagadu Rathod. In fact, Agenda of the General Body meeting of the Kolhapur Municipal Corporation scheduled to be held on 20th August, 2009 shows that a proposal on the basis of the order of the Government dated 19th December, 2005 was placed before the General Body meeting. Hence, Sub-Section (7) of Section 49 will squarely apply.

6. In this Petition, there is also a challenge to the order dated 18th July, 2008 passed by the Respondent No.2. By the said order, the application made by the Petitioner for sanction of lay-out was rejected. As the reservation has lapsed, we propose to grant permission to the Petitioner to make a fresh application for sanction of lay-out.

7. Accordingly, we pass the following order:-

ORDER

- (i) Rule is made absolute in terms of prayer clause (A). We make it clear that the land shall become available to the owner thereof for the purposes of development otherwise permissible in the case of adjacent lands under the development plan;

- (ii) We grant liberty to the Petitioner to make a fresh application for sanction of lay-out/for grant of development permission. If such application is made, the second Respondent shall deal with and decide the said application in the light of this judgment and order. Such application shall be disposed of expeditiously.
- (iii) Rule is made absolute on above terms with no order as to costs;
- (iv) Civil Application No.417 of 2015 does not survive and the same is disposed of.

(A.K. MENON, J)

(A.S. OKA, J)