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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3281 OF 2011

Smt. Seema Chandrashekar Sonawane

..Petitioner.

V/s.

State of Maharashtra and Ors.

..Respondents.

Mr.R.B.Paranjape i/b. Mr. M.N.Sandhyanshiv for the petitioner.

Mr.V.S.Gokhale, AGP for respondent Nos.1 and 2.

Mr.Ratnesh Dube i/b. Ms.Rutuja Ambekar for respondent No.3.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 26TH OCTOBER, 2015

P.C. :-

1. Heard the learned counsel for the petitioner and the learned counsel appearing for the third respondent Municipal Corporation. We have also heard the learned AGP for the first and second respondents. In the sanctioned Development Plan of the third respondent - Malegaon Municipal Corporation, the land claimed by the petitioner was shown under reservation for a play ground. A notice under sub-section (1) of section 49 of the Maharashtra Regional and Town Planning Act, 1949 (for short 'the MRTTP Act') was served by the petitioner. By a communication dated 5th November, 2009, the State Government informed the petitioner as well the the Commissioner of the third respondent-Municipal Corporation that the purchase notice has been confirmed in

accordance with sub-section (4) of section 49 of the MRTP Act. The case made out by the third respondent in the affidavit in reply filed of Shri Sayyad Shakil Mohammed Yusuf is that on 5th January, 2010 an application was submitted by the Commissioner of the third respondent to the Collector for acquisition of the land subject matter of the petition in accordance with sub-section (7) of section 49 of the MRTP Act. The contention of the third respondent is that as the compliance was made in terms of sub-section (7) of section 49, the reservation cannot lapse.

2. The submission of the learned counsel appearing for the petitioner is that though the proposal was submitted by the third respondent in January, 2010, the correspondence annexed to the affidavit in reply filed by the third respondent shows that the said proposal was not complete in all respects and, therefore, making such an application which was incomplete is no compliance under sub-section (7) of section 49 of the MRTP Act. He submitted that as application in terms of sub-section 1(a) of section 126 of the MRTP Act is not properly submitted, the reservation on the land held by the petitioner shall be deemed to have been lapsed. He also invited our attention to the affidavit in rejoinder filed by the petitioner and pointed out that the survey could not be carried out for acquisition as proper documents were not submitted by the Municipal Corporation.

3. We have considered the submission. It is not in dispute that on 5th January, 2010, an application was made on behalf of the third respondent-Municipal Corporation to the District Collector for acquisition of the land claimed by the petitioner. Along with the letter dated 5th January, 2010 an application in prescribed format together with annexures thereto were submitted to the Collector.

4. By a communication dated 6th February, 2010, the office of the District Collector called upon the Commissioner of the third respondent-Municipal Corporation to submit certain documents and to make certain compliances. Along with the letter dated 29th June, 2010 the Commissioner of the third respondent submitted certain documents to the District Collector and submitted an explanation in terms of the letter dated 6th October, 2010. On 20th August, 2010 the Collector called upon the Commissioner of the Municipal Corporation to submit three sets of the 7/12 extracts. The said 7/12 extracts were submitted by the Municipal Corporation on 27th December, 2010. The letter dated 23rd May, 2011 records that a request was made by the Deputy Collector (Land Acquisition), Nashik to the Deputy Commissioner of the Land Records to carry out the survey of the said land. The letter dated 30th January, 2013 addressed by the Deputy Collector (Land Acquisition) to the Commissioner of the third respondent records that the petitioner

has objected to the survey.

5. At this stage, the learned counsel appearing for the petitioner relied upon a letter dated 11th April, 2011 addressed by the District Collector to the Commissioner of the third respondent-Municipal Corporation. In this letter, it was stated that unless compliances were made, the proposal for acquisition will be returned.

6. From the letter dated 23rd May, 2011 addressed by the Deputy Collector (Land Acquisition), Nashik to the Deputy Superintendent, Land Record, Malegaon, it appears that not only the proposal for acquisition was accepted, along with a letter dated 20th May, 2011, the Collector forwarded the proposal to the Deputy Collector (Land Acquisition), Nashik for taking further action. Therefore, it is apparent that not only the proposal was not returned by the Collector but it was acted upon by the Collector.

7. It at this stage, it is necessary to note what is provided in sub-section (7) of section 49 of the MRTP Act, which reads thus :-

“ 49. (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."

8. In the present case, the confirmation of notice under sub-section (1) of section 49 of the MRTP Act in accordance with sub-section (4) of section 49 of the MRTP Act is on 5th November, 2009. Admittedly, an application as contemplated by section 126 of the MRTP Act for acquisition of the said land was submitted on behalf of the third respondent to the Collector on 5th January, 2010. The application was never rejected or returned and on the contrary, the same was acted upon.

9. The question of lapsing of reservation will arise only if within one year from the date of confirmation of the notice, the Appropriate Authority which is the third respondent fails to make an application to acquire the land. In the present case, an application was made within the stipulated time to the Collector to acquire the land in respect of which a purchase notice has been confirmed. As such an application is made within the stipulated period of one

year, the consequence of lapse of reservation will not follow. In the circumstances, no relief can be granted to the petitioner in writ petition under Article 226 of the Constitution of India. The application made by the third respondent for acquisition has not been rejected and on the contrary, the same has been acted upon.

10. We make it clear that this order will not prevent the petitioner from taking recourse to section 127 of the MRTP Act in accordance with the law. Subject to what is observed above, the petition is rejected.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)