

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDCITION

WRIT PETITION NO.8005 OF 2012

Bhaskar Shankar Shetty. ...Petitioner.

vs.

State of Maharashtra and ors. ...Respondents.

Mr.I.M.Khairdi for the Petitioner.

Mr.V.P.Malvankar,AGP. for Respondents 1 and 2.

Mr.A.S.Rao for Respondent No.3.

CORAM : A.S.OKA AND
A.P. BHANGALE, JJ.

DATE : 7th April , 2015

PC:

Notice for final disposal was issued by this Court on 22
August 2013.

2) Heard learned counsel appearing for the petitioner,
learned counsel appearing for 3rd and 4th respondents and the
learned AGP for 1st respondent and 2nd respondent.

3) The subject matter of this petition is the land bearing
Survey No.65 Hissa No.1 at Kalyan. (hereinafter described as “the
said land”). It is pointed out in the petition that the development

plan in accordance with sub Section 1 of Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act") was sanctioned by the State Government by a Notification dated 03 September 2005. 10th October 2005 was the date fixed for coming into force of the said sanctioned development plan. The said land is covered by Reservation No.55 in the sanctioned development plan which is reserved for construction of Court building.

4) A Purchase Notice under Sub Section- 1 of Section 49 of the MRTP Act was issued by the petitioner on 18 October 2007 and the same was served to the Urban Development Department, State of Maharashtra. By communication dated 24 April 2008, the State Government informed the petitioner that the said purchase notice has been confirmed in accordance with sub Section 4 of Section 49 of the MRTP Act. A copy of the said communication dated 24 April 2008 was forwarded by the State Government to the Principal Secretary of the Law and Judiciary Department of the State Government calling upon the said Department to initiate acquisition proceedings within a period of one year. The Law and Judiciary Department was informed that on the failure to initiate acquisition proceedings, the reservation

would lapse.

5) The contention raised by the petitioner in the present petition is that an application for acquisition of the said land in accordance with sub Section 7 of Section 49 of the MRTP Act has not made by the appropriate Authority within a period of one year from the date of confirmation of the notice, the reservation has lapsed.

6) In this petition, the petitioner has impugned the communications dated 29 August 2011 and 1 March 2012 issued by the 4th respondent. By both the communications, the petitioner was informed that the said land is under a reservation covered by Reservation No.55 in the sanctioned development plan. By a communication dated 1st March 2012, the 4th respondent rejected the application for grant of development permission in respect of the said land. The 4th respondent is an Officer of the 3rd respondent Municipal Corporation.

7) We have heard the learned counsel appearing for the petitioner. He invited our attention to the reply filed by Shri.S.B. Nangnure, Dy. Director of Town Planning, Kalyan Division. He

pointed out that the said reply shows that a proposal for acquisition of the said land was submitted by the learned District & Sessions Judge on 2 December 2012. He. therefore, urged that as the said proposal was not submitted within the stipulated period of one year, the reservation has lapsed. Learned counsel representing the 3rd and 4th respondents submitted that Appropriate Authority in this case within the meaning of Clause 3 of Section 2 of the MRTP Act is the Law and Judiciary Department of the State Government. Learned A.G.P relied upon the same affidavit in reply filed by Shri. S. B. Nangnure and submitted that no interference is called for as an application for acquisition has been already made by the learned District Judge.

8) We have carefully considered the submissions. We have perused the annexures to the petition and the reply filed by the State Government. There is a communication dated 24 April 2008 issued by the said Shri. S. B. Nangnure, the Dy. Secretary of Urban Development Department of the State Government addressed to the petitioner and others. It is recorded therein that the purchase notice under sub Section 1 of Section 49 of the MRTP Act dated 18 October 2007 was received on 23 October 2007. It is stated that there was a hearing on the said notice on 4

April 2008 and after considering a report, the notice was confirmed. A copy of the said communication has been forwarded to the Principal Secretary of the Law and Justice Department calling upon the said department to initiate acquisition proceedings within a period of one year.

9) It will be necessary to consider what is stated in the reply of Shri. Nangnure. In the reply, he has accepted that by a letter dated 24 April 2008, the purchase notice served by the petitioner was confirmed. In Paragraph 5 of the reply, it is stated that on 2 December 2010 a proposal for acquisition of the said land has been submitted by the District and Sessions Judge, Thane to the District Collector.

10) Sub Section 7 read with Section 49 of the MRTP Act reads as under:-

“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”.

11) Thus, the admitted position is that within a period of one year from the date of confirmation of the purchase notice i.e. one year dated 24 April 2008 application to acquire the land, subject matter of the purchase notice has not been submitted by the Competent Authority in accordance with Section 126 of the MRTP Act. Therefore, the reservation shall stand lapsed. In the circumstances, the request made by the petitioner for development could not have been rejected on the ground that there was reservation No.55. Though, we have not set aside the communication issued by the 4th respondent, it will be open to the petitioner to make a fresh application for grant of development permission which will have to be decided in accordance with this Judgment and Order.

12) Accordingly, we dispose of the petition by passing the following order:-

- a) The reservation on the said land provided by Reservation No.55 under the sanctioned development plan dated 3 September 2005 has lapsed in accordance with sub section 7 of Section 49 of the MRTP Act and that the said land is available to the owners thereof for the purpose of development otherwise permissible in case of adjacent land under the relevant plan.
- b) It will be open to the petitioner to make a fresh application for grant of development permission under MRTP Act. If such application is made by the petitioner, the same shall be decided by the Planning Authority on its own merits and in accordance with law and this Judgment and order of this Court.
- c) Rule is made absolute in the above terms.

(A.P. BHANGALE, J.)

(A.S. OKA, J.)