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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11848 OF 2013

Mayur Murlidhar Dhamale & Ors. ...Petitioners
vs.
The State of Maharashtra
and others ...Respondents

Mr.Amit Borkar i/b Mr.Prasad B. Kulkarni for the
Petitioners
Ms M.P.Thakur, AGP for the respondent No.1
Mr.Abhijit P. Kulkarni for respondent Nos.2 and 3.

CORAM : A.S.OKA, &
 V.L.ACHLIYA, JJ.
DATE : SEPTEMBER 9, 2015

P.C.:

1 Heard the learned counsel appearing for the petitioner, the learned AGP for the respondent No.1 and the learned counsel for the respondent Nos.2 and 3. Considering the narrow controversy involved, forthwith taken up for final disposal. Rule. Respective counsel waive service for the respondents.

2 The petitioner has invited the attention of the Court to the resolution dated 20th July 2007 passed by the Improvement Committee of the Pune Municipal Corporation recommending the General Body of the Municipal Corporation that a reservation for garden should be imposed on the land admeasuring 8000 sq meters in the lay out bearing Survey No.29, Chitainya Nagar, Dhanakawadi, Pune. The resolution

was placed before the General Body of the Pune Municipal Corporation on 22nd November 2007. The General Body approved the resolution passed by the Improvement Committee and observed that if the reservation on garden is imposed, it will help the cause of senior citizens, women and children. The grievance made in this petition under Article 226 of the Constitution of India is that no steps have been taken by the Pune Municipal Corporation on the basis of the resolution dated 22nd November 2007. Reliance has been placed by the petitioner on certain letters addressed by the elected municipal Councilors of the Municipal Corporation.

3 On 31st January 2008, the Municipal Commissioner addressed a letter to the Additional Secretary of the Urban Development Department of the Government of Maharashtra. It records that revised draft development plan has already been submitted by the Municipal Corporation to the State Government. The letter also records that a copy of resolution dated 22nd November 2007 passed by the General Body is not available. The suggestion of the Municipal Commissioner appears to be that the State Government will have to take a decision about incorporating the additional reservation in the draft revised development plan which is already pending.

4 The learned counsel for the Pune Municipal Corporation states that as of today, the resolution dated 22nd November 2007 stands. He states that the entire draft revised development plan has not been

yet approved by the State Government.

5 As the resolution dated 22nd November 2007 proposes that the reservation be imposed on the land in question by amendment of the sanctioned development plan in terms of sub-section (1) of section 37 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the said Act of 1966'), a notice will have to be published by the Municipal Corporation in the Official Gazette inviting the objections and suggestions. After following the procedure under sub-section (1) of section 37, it is ultimately for the State Government to take a decision on the proposal to impose the reservation. At that stage, the State Government will have to consider whether a modification is required to be made in the sanctioned development plan or whether such reservation shall be incorporated in the revised draft development plan. There is no option for the Municipal Corporation but to act upon the resolution dated 22nd November 2007 which has become final. Hence, the writ petition must succeed.

6 Hence, we pass the following order:

(I) We direct the Pune Municipal Corporation to publish a notice in the Official Gazette as well as in such other manner as provided in law as per the provisions of sub-section (1) of section 37 of the Maharashtra Regional and Town Planning Act, 1966;

- (II) Such notice shall be published within a period of three months from today;
- (III) After publication of the notice, further steps shall be taken by the Pune Municipal Corporation on the basis of the said notice in accordance with sub-section (1) of section 37 of the said Act of 1966,
- (IV) We make it clear that the issue whether reservation deserves to be imposed or not will have to be ultimately decided by the State Government;
- (V) Rule is partly made absolute on above terms.

(V.L.ACHLIYA,J.)

(A.S.OKA,J.)

CERTIFICATE

Certified to be true and correct copy of original
signed Judgment/Order.