

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2708 OF 2009

SHRIRAM ANANDRAO SHINDE
VERSUS
AURANGABAD MUNICIPAL CORPORATION AURANGABAD AND ORS

...

Advocate for Petitioners : Mr. Kishor C. Sant
Advocate for Respondent No.2: Mrs. M.A. Deshpande.
AGP for respondent No.3 : Mrs. S.S. Raut.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 13TH JUNE , 2016.

PER COURT:

1] Mr. Sant, learned counsel for the petitioner submits that the plot held by the petitioner was regularized under Gunthewari in the year 2002. A certificate to that effect is also issued alongwith the map. According to learned counsel, plot of the petitioner is shown under reservation of the D.P. Road. The petitioner issued notice under Section 127 of the MRTD Act. As no steps were taken for acquisition of the land for a period of one year from the date of service of notice, as such the reservation stood lapsed.

2] Mrs. Deshpande, learned counsel for the respondent Corporation submits that the petitioner's plot was regularized under the Gunthewari as it was not from sanctioned layout and was an illegal plot. Provisions of Gunthewari Development Act, 2001 are applicable. As per the said Act, it is a pre condition that the plot holder has to surrender open marginal space to achieve road width of 9 meters or required as per the development.

3] We have considered the submissions. Facts narrated above are not disputed. Development plan has been sanctioned in the year 1991. Plot

of the petitioner was regularized under Gunthewari in the year 2002. Petitioner served notice under Section 127 of the MRTP Act on 16.1.2008.

4] The respondent Municipal Corporation has filed an affidavit, relevant portion of which reads under as under :-

“3. I say that, it is true that the petitioner had issued purchase notice to the answering respondent on 16.01.2008 U/S. 127 of the MRTP Act, 1966 and the answering respondent after scrutinizing the same, found that, there were certain deficiencies in the same, had informed the petitioner to remove the same vide its communication dated 8.2.2008 at Exh.'E'. I say that, after the necessary documents were submitted by the petitioner, it transpired that, the plot of the petitioner having been formed by sub-dividing privately owned land and not from the sanctioned layout; but is on illegal plot and fell within the 'Gunthewari development', and also was regularized under the Gunthewari Development Act, 2001. Therefore, the provisions of the said enactment were applicable to the said plot. Therefore, in view of Clause (b) of sub-section 2 of Section 3 of the Gunthewari Development Act, 2001 it is a precondition that a plot owner has to surrender open marginal spaces to achieve the road width of nine meters or required as per the development plan, and the regularization is subject to the said condition. Hence in view of the said provision the notice purchase issued by the petitioner is not at all tenable, and has no validity.

4. I say that, so far as the petitioner is concerned his regularization is done by deleting the area affected by the D.P. Road, therefore, the notice of the petitioner issued U/S. 127 of the M.R.T.P. Act is not valid and devoid of any substance, resultantly the petition filed by the petitioner deserves to be dismissed being devoid of any substance”

5] As per the averments in the affidavit in reply, it appears that the plot of the petitioner was regularized excluding the area affected by portion of proposed road from the development plan. Naturally, the petitioner will have a right in respect of the area which is regularized and not the area which is not regularized.

6] As it has been stated on affidavit by the respondent Corporation that the land of the petitioner is regularized by deleting the area affected in the DP Road. Naturally, the area which is regularized is not affected in the DP Road. However, the petitioner will have to abide by the pre-condition as per the Gunthewari Development Act, 2001 to surrender open marginal spaces to achieve the road width. As the area regularized is beyond the area affected by the DP Road, there was no purpose in issuing notice under Section 127 of the MRTTP Act.

7] With these observations, Writ petition is disposed of. No costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-