

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5658 OF 2015

Shri. Nandkishor Ramnath Khandelwal
and Ors.

... Petitioners

Vs.

The Lonavala Municipal Council & Ors.

... Respondents

.....

Mr. G. S. Godbole i/b. Ms. Shruti Tulpule for the Petitioners.

Mr. Aniruddha A. Garge for Respondent No.1.

Mr. Manish M. Pabale, AGP for Respondent Nos. 2 and 3.

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**CORAM : A. S. OKA &
 SMT. VIBHA KANKANWADI, JJ.**

DATE : AUGUST 02, 2017.

P.C. :

1. Rule.
2. The learned counsel appearing for the 1st respondent waives service. The learned AGP waives service for the 2nd and 3rd respondents. Taken up for hearing.
3. The petitioners are claiming to be the owners of the property- subject matter of this petition. The subject land is partly reserved for garden as per reservation no. 27 in the Second Revised Sanctioned Development Plan under the Maharashtra

Regional and Town Planning Act, 1966 (for short, “MRTP Act”). A strip of land admeasuring 3 meters in width and about 140 meters in length is reserved for road widening. The petitioners made an application to the 1st respondent, which is the planning authority within the meaning of the MRTP Act seeking permission to construct a compound wall around the said land.

4. According to the case of the petitioners, on 4th January, 2010, the 1st respondent granted development permission to them to erect a compound wall around the boundary of the said land as there were encroachments and unauthorized constructions. The petitioners could not carry out work of construction of compound wall, and therefore, the development permission lapsed. According to the case of the petitioners, after removing the encroachments, they constructed a temporary barbed wire fencing around the said land. The 1st respondent issued a notice calling upon the petitioners to remove the barbed wire fencing.

5. An application was made by the petitioners for grant of development permission by invoking Section 44 of the MRTP Act. On 26th June, 2014, on the basis of the said application, the

development permission was granted and Commencement Certificate is issued with the condition of excluding the strip of land reserved for road widening while constructing the compound wall. Being aggrieved by the said order, an appeal was preferred by the petitioners under Section 47 of the MRTP Act. According to the case of the petitioners, without giving proper opportunity of being heard, on 11th March, 2015, the said appeal was dismissed.

6. The challenge in this Petition under Article 226 of the Constitution of India is to the said order of the appellate authority and to the action of the 1st respondent of refusing to grant permission to enclose the area reserved for road widening by constructing a compound wall.

7. The submission of the learned counsel for the petitioners is that the petitioners had made it very clear to the 1st respondent as well as the appellate authority that they desire to construct a compound wall enclosing the area reserved for road widening at their own cost without claiming an equity or without making any monetary demand in the event the wall is required to be demolished. It is submitted that in the past, encroachments had

been carried out. The petitioners intend to protect the reserved portion of the land from encroachment. The learned counsel has tendered an undertaking of the 4th and the 5th petitioner affirmed today. The undertaking states that even the other petitioners have consented for filing similar undertakings.

8. The learned counsel appearing for the 1st respondent submitted that in view of Section 46 of the MRTTP Act, a development permission cannot be granted which will affect the reservations provided in the sanctioned or draft development plan, and therefore, the petitioners cannot be allowed to erect the fencing enclosing the land reserved for road widening. He submitted that no fault can be found with the order of the appellate authority. The learned AGP has also supported the order of the appellate authority.

9. Today, learned counsel appearing for the 1st respondent states that for acquisition of the land reserved for garden, the Special Land Acquisition Officer No.14, Pune, has called upon the 1st respondent to deposit a sum of Rs.6,54,30,665/-. He states that after approval is granted by the general body, the said amount will

be deposited.

10. It is not necessary for us to go into the first contention raised in the Petition that in the earlier development permission/ commencement certificate granted on 4th January, 2010, such a condition of excluding the reserved land was not incorporated.

11. Perhaps, the condition imposed of excluding the reserved land is in the light of the provisions of Section 46 of the MRTP Act which reads thus:

“46. Provisions of Development Plan to be considered before granting permission

The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan or proposal published by means of notice submitted or sanctioned under this Act.”

12. The mandate of Section 46 is that when the planning authority considers the application for grant of development permission, it must give due regard to the provisions of any draft or final plan. The object of the said provision seems to be that no development permission should be granted which will obstruct

implementation of the draft or final plan. The provision is enacted basically to ensure that the planning authority is able to give effect to the provisions of the draft or final plan. In the present case, if the reservation of the said land continues, the 1st respondent will have to acquire the reserved land in accordance with law. If a permission is granted to the petitioners to construct a compound wall along the boundary of the entire said land enclosing the reserved portion subject to compliance with the undertaking given by the petitioners, in fact, the same will assist the 1st respondent in implementation or the reservation provided in the sanctioned revised development plan as the reserved land will remain protected against the encroachments. Therefore, in the facts of the case, Section 46 could not have come in the way of the Municipal Corporation for granting permission to construct a compound wall as prayed by the petitioners.

13. Therefore, to that extent, the Petition must succeed and we pass the following order:

ORDER

- I. We direct the 1st, 2nd, 3rd and the 6th petitioner to file undertakings on oath in terms of the undertaking given by the 4th and the 5th petitioner dated 2nd August, 2017 tendered on record (Pages 91 and 92).
- II. We accept the undertakings of the 4th and the 5th petitioner as the undertakings on behalf of the other petitioners.
- III. The impugned order of the appellate authority dated 11th March, 2015 is hereby quashed.
- IV. In the light of the findings recorded by this Court in this order, we direct the 1st respondent to consider the case of the petitioners for grant of permission to construct a compound wall enclosing the entire said land including the land which is reserved for road widening/setback area. We hold that Section 46 of the MRTP Act will not be an impediment in the way of the 1st respondent to consider the said request.
- V. Appropriate decision shall be taken by the 1st respondent in the light of the observations made in this order as expeditiously as possible and in any event, within a period of one month from the date on which an authenticated copy of this order is produced in the office of the Chief Officer of the 1st respondent.

VI. Needless to add that if the development permission is accordingly granted by the 1st respondent, it will be subject to approval by the Committee appointed by this Court.

VII. Rule is made partly absolute in the above terms without any order as to costs. All contentions are kept open.

(SMT. VIBHA KANKANWADI, J.)

(A. S. OKA, J.)