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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8209 OF 2013

Shri Sakharam Madhadev JadhavPetitioner.

V/s

State of Maharashtra and Anr. Respondents.

Mr. A.V. Anturkar, Senior Advocate a/w Mr. Tanaji Mhatugade & Mr. Sandeep Phathak, Advocate i/b Mr. S.B. Deshmukh, Advocate for the Petitioner.

Mr. A.A. Alaspurkar, AGP for Respondent No.1.

Mr. D.P. Adsule, Advocate for Respondent No.2.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 19th September, 2017

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard, by consent of parties.

2] The facts, in brief, giving rise to the present Petition are as under:-

3] Petitioner is an owner of the land bearing Survey No.69/1 and

69/2/1 situated within the jurisdiction of Respondent No.2. In the development plan of Respondent No.2, the said property is reserved for Public Offices and Staff Quarter (Reservation No.5) and Truck Terminal (Reservation No.6).

4] It appears that the said property was covered earlier, under the provisions of the Urban Land Ceiling Act. However, it appears that in view of the order passed in Writ Petition No.1698 of 2009, it was held that the land was not covered by the provisions of ULC Act and the name of Government of Maharashtra was directed to be deleted. There were certain other rounds of litigation. However, they would not be relevant for the purpose of present Petition.

5] On 28/08/2012, Petitioner served upon the Respondents, the said purchase notice as provided under section 49 of the said Act. By the impugned order dated 26/02/2013, the purchase notice was rejected by the Respondents – State. Hence, the present Petition.

6] It will be relevant to refer to sub-section (4) of section 49 of the Maharashtra Regional Town Planning Act, 1966 which reads as under:-

“49. Obligation to acquire land on refusal of permission or on grant of permission in certain cases

(1).....

(2).....

(3).....

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5).....

(6).....

(7).....”

7] It could thus be seen that the purchase notice given by the Applicant could be rejected only on the ground mentioned in sub-section (4) of Section 49.

8] Perusal of the impugned order reveals that the reasons given in the impugned order are that, there are several open spaces available and that there is no approach road available to the land in question and, as such, it cannot be said that the Petitioner was deprived from the beneficial user of the said land. We find that the impugned order is not sustainable in law. The reasons given are beyond the scope of Section 49 of the said Act.

9] In that view of the matter, Rule is made absolute in the following terms:-

(i) The impugned order is quashed and set aside.

(ii) The matter is remitted back to the Respondents – State for deciding the issue afresh in accordance with the provisions of sub-section (4) of Section 49 of the said Act. The same shall be done within a period of three months from today.

(iii) No order as to costs.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)