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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11041 OF 2016

M/s. Mahaveer Infrastructure Pvt. Ltd. & Anr. … Petitioners
Versus
The State of Maharashtra & Ors. …Respondents

Mr. R.S. Apte, Senior Advocate, with Mr. Girish J. Paryani for the Petitioners.
Mr. A.P. Vanarase, AGP for Respondent No.1.
Mr. A.s. Rao, for Respondent Nos. 3 & 4.

CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.
DATED: 6TH NOVEMBER 2017

PC:-

Rule. Rule made returnable forthwith. The writ petition is heard finally at the stage of admission with the consent of the learned counsel for the parties.

By this writ petition, the petitioners seek a declaration that the reservation of the land of the petitioners bearing survey no.15/4/k of village Gandhare, Taluka Kalyan has lapsed in view of the provisions of Section 49 of the Maharashtra Regional Town Planning. The petitioners seek a direction against the respondents to sanction the development proposal in respect of the aforesaid land.

The land of the petitioners was reserved for a secondary school in the final development plan published in the year 1996. The plan was modified on 4th April 2012. On 1st December 2012, the petitioners served a notice on the state government and the respondent corporation under the provisions of Section 49 of the MRTP Act. A hearing was conducted on the application made by the petitioners on 23rd April 2013 and the state government vide order dated 13th May 2013 confirmed the notice under the provisions of Section 49 (4) of the MRTP Act. Though the period of one year from the date of confirmation of the purchase notice of the state government had expired on 13th May 2014, the corporation did not take any steps for the acquisition of the land and failed to make an application to acquire land, as required by section 49(7) of the Act. Since the corporation had failed to make an application under section 49(7) of the Act for the acquisition of the land and the land of the petitioners was deemed to have been released from reservation, the petitioners submitted the plans for the development of the land on 10th November 2014. The plans submitted by the petitioners were however, rejected by the respondent – corporation by the order dated 15th December 2014 on the ground that the land of the petitioners was still under reservation under the last final development plan and a notification in respect of the de-reservation of the land was not issued.

In the aforesaid state of facts, it is submitted on behalf of the petitioners that since the state government had confirmed the purchase notice of the petitioners vide order dated 13th May 2013 and since the respondent corporation had not made an application for acquiring the land in respect of which the purchase notice was confirmed within one year from 13th May 2013, in view of the provisions of Section 49(7) of the Act the reservation of the land of the petitioners was deemed to have been lapsed and the land has deemed to have been released from the reservation. It is submitted that on a reading of the provisions of Section 49 of the Act, it is clear that the corporation would be liable to sanction the plans submitted by the petitioners in view of the deemed lapsing of reservation and the deemed release of the land of the petitioners from reservation.

The learned counsel for the respondent corporation fairly admitted by referring to the affidavit in reply filed on behalf of the respondent corporation and specially paragraph 5 thereof that though the purchase notice was confirmed by the state government the corporation had not made an application for acquisition of the land within the prescribed time i.e. within one year from the confirmation of the purchase notice on 13th May 2013. It is stated that the corporation sought the opinion of the state government as the land of the petitioners is still shown in the final development plan as reserved for the secondary school.

On a reading of the provisions of Section 49 of the Act and on considering the undisputed facts involved in this case, it is apparent that the reservation of the land of the petitioners for the secondary school had lapsed in view of the provisions of Section 49(7) of the Act as the corporation had failed to make an appropriate application for the acquisition of the land on or before 13th May 2014 despite the confirmation of the purchase notice by the state government on 13th May 2013. We have perused the order of the state government dated 13th May 2013 confirming the purchase notice served by the petitioners on the state government under the provisions of section 49 (1) of the Act. In view of the provisions of Section 49 (7) of the Act, the reservation of the land of the petitioners was deemed to have lapsed in view of the failure on part of the respondent – corporation to make an application for acquiring the land, in spite of the fact that the purchase notice was confirmed. In the circumstances of the case, instead of seeking the opinion of the state government, the corporation ought to have considered the sanctioning of the plans submitted by the petitioners on 13th November 2014 for the development of the land. Since in view of the deemed lapsing of reservation, the land of the petitioners became available to the petitioners for the development, as permissible to the adjacent land, it would be necessary to direct the corporation to decide the application filed by the petitioners for sanctioning of the plans within a time frame.

Hence, for the reasons aforesaid the writ petition is allowed. The impugned communication dated 15th December 2014 is quashed and set aside. It is hereby declared that the reservation of the land of the petitioners, specifically described in the petition, has lapsed in view of the provisions of Section 49 of the Act and the petitioners would be entitled to develop the land as is permissible in the case of the adjacent land. As a consequence of the declaration made hereinabove, it would be necessary for the corporation to process the application made by the petitioners for sanctioning the plans as early as possible.

Rule is made absolute in the aforesaid terms with no order as to costs.

(RIYAZ I. CHAGLA J.) **(SMT. VASANTI A. NAIK, J.)**