

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

WRIT PETITION NO.11527 OF 2016

M/s. Mahadev Corp

.. Petitioner

Vs

State of Maharashtra & Ors.

.. Respondents

...

Mr. Sumit S. Kothari a/w Mr. Kaustubh Thipsay for the Petitioner.

Ms. Nisha M. Mehra, AGP for Respondent Nos. 1 & 3.

Mr. Prashant Kamble i/b. Mr. A. S. Rao for Respondent No. 2.

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

DATE : 05/07/2017.

ORAL JUDGMENT (PER A. S. OKA, J.) :

1] Rule.

2] The learned AGP waive service for 1st to 3rd Respondents.

The learned counsel appearing for the 2nd Respondent waives service.

Considering the narrow controversy involved in the petition, forthwith taken up for final disposal.

3] Land bearing Survey No. 81 Hissa No. 5 (Part) situated at Kalyan within the limits of 2nd Respondent - Municipal Corporation has been shown reserved in the Sanctioned Development Plan under the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). The reservation is bearing No. 60 for primary school. The

Petitioners served a notice under sub-section 1 of Section 49 of the MRTP Act. By the impugned communication dated 20th April 2016, the State Government refused to confirm the said notice in accordance with sub-section 4 of Section 49.

4] On the earlier date, we pointed out to the learned AGP that while considering the issue of confirmation of the notice in accordance with sub-section 4 of Section 49, the State Government ought to have considered whether conditions specified in sub-section 1 of Section 49 have been duly fulfilled by the Petitioner. But the impugned communication shows that there is non-application of mind as regards the fulfillment of conditions prescribed by sub-section 1 of Section 49. Faced with this difficulty, the learned AGP on instruction states that the issue of confirmation of notice served by the Petitioner in accordance with the sub-section 4 of Section 49 will be reconsidered by the State Government and an appropriate decision will be taken within a period of three months from today.

5] The learned counsel appearing for the Petitioners on instructions states that the Petitioners have no objection for adopting the said course. He states that the Petitioner will not invoke the deeming fiction in the sub-section 5 of section 49. We accept the said statement made by the learned counsel appearing for the Petitioner on instructions

of the petitioner. Accordingly, we pass the following order:-

ORDER

- a) The impugned communication dated 28th April 2016 (Exh. F to the petition) is hereby quashed and set aside;
- b) We direct the State Government to take appropriate decision on the issue of confirmation of the purchase notice served by the Petitioner under sub-section 1 of Section 49 of the MRTP Act in accordance with the sub-section 4 of Section 49 thereof. The State Government will have to consider whether the conditions specified in sub-section 1 of Section 49 have been fulfilled. Appropriate decision shall be taken by the State Government within a period of three months from today;
- c) We accept the statement of the petitioner that a recourse will not be taken to sub-section 5 of Section 49 of the MRTP Act;
- d) All contentions on merits of the purchase notice served by the Petitioner are kept open;

- e) Rules is made partly absolute in the aforesaid terms.

(SMT. VIBHA KANKANWADI, J.)

(A. S. OKA, J.)