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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2083 OF 1996

Pesi Keki Sidhwa

...Petitioner

vs.

The State of Maharashtra & Anr.

...Respondents

Mr.Surel Shah i/b Mr.N.K.Mudnay for the Petitioner
Mr.Abhay Patki, Addl. G.P. for the respondent No.1
Ms Kejali Mastakar for respondent No.2

CORAM : A.S.OKA, &
SMT.VIBHA KANKANWADI,JJ.
DATE : JULY 6, 2017

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

1 Call out for final hearing. The learned counsel for the petitioner on instructions states that the petitioner is pressing this petition only on the basis of the notice dated 8th March 1996 issued by their Architect under sub-section 1 of section 49 of the Maharashtra Regional and Town Planning Act,1966 (for short "MRTP Act").

2 In this petition under Article 226 of the Constitution of India, we are concerned with the lands described in paragraph 3 of the petition. It is not in dispute that the said lands described in paragraph 3 were reserved under the development plan sanctioned under section 31 of the MRTP Act for Dhobi Ghat and play ground.

3 As stated earlier, the notice dated 8th March

1996 under sub-section 1 of section 49 was served by the Architect of the petitioner. Notice was served to the State Government through the Urban Development Department. It appears to us that on 25th July 1996 the petitioner was heard by the State Government. On the basis of what transpired in hearing, the petitioner's Architect addressed a letter dated 1st August 1996 to the State Government submitting additional documents. It appears from the letter dated 23rd August 1996 that the second hearing was also given on the basis of the said notice. By the impugned communication dated 31st August 1996, the State Government purported to reject the notice under sub-section 1 of section 49 of the MRTP Act.

4 The learned counsel for the petitioner invited our attention to the assertions made in the purchase notice and the documents which were produced along with the purchase notice. He pointed out that an application was made by the petitioner to the Mumbai Municipal Corporation for re-location of the reservation for Dhobi Ghat. The response of the Corporation to the said application was that the same can be considered only after the petitioner produces consent of the owners of the adjacent plot. He submitted that this condition is not capable of being implemented or complied by the petitioner. His submission is that therefore, by the impugned order a notice under section 49 could not have been rejected on the ground that the applicant can develop the land reserved for the Dhobi Ghat.

Reliance was also placed on the relevant provisions of the Mumbai Municipal Corporation Act, 1888 to show that the developing Dhobi Ghat and providing play ground are the functions of the Mumbai Municipal Corporation.

5 The learned Additional Government Pleader supported the impugned order by submitting that the petitioner has not satisfied that the said lands are incapable of a reasonable beneficial use in its existing state and therefore, notice is rightly rejected by the State Government. The learned counsel for the Mumbai Municipal Corporation submitted that after notice under section 127 is rejected, no recourse cannot be taken to section 49 and therefore, the impugned order is justified.

6 We have considered the submissions. Firstly, we may note that section 127 and section 49 operate in two different fields, though the end result may be the release of property from reservation.

7 Exhibit-C to the petition is the application made by the petitioner's Architect to the Mumbai Municipal Corporation which contains a request in terms of the D.C.Regulation of 1991. The prayer in the application was for alteration/modification of the reservation so as to develop the reservation as well as to erect the building for residential/commercial purpose. By a communication dated 7th January 1993, the Mumbai Municipal Corporation informed the petitioner that the consent of the

owners of the adjacent property should be produced recording their agreement for alteration of reservation and for shifting the entire designation of Dhobi Ghat on their property. We may note that the application made by the petitioner's Architect was for developing the reservation as well as for alteration of reservation to enable the petitioner to construct a residential cum commercial building. The condition imposed in the letter dated 7th January 1993 that the consent of the owners/holders of the properties bearing C.T.S.no.729 and 734 shall be obtained before issue of relocation letter. Under the impugned order, the State Government has merely observed that the petitioner can develop reservation of Dhobi Ghat and therefore, it cannot be said that the petitioner is deprived from the reasonable use of the said land on account of reservation. This is the second reason given for rejecting the notice. The first reason is that there is a road to and fro for the site. Under sub-section 4 of section 49, it is the duty of the State Government to consider whether the conditions specified under sub-section 1 of section 49 are fulfilled. In such a case, the Government may confirm the purchase notice.

8 Thus, the State Government was required to apply its mind with a view to ascertain whether any of the grounds in clauses (a) to (e) of sub-section 1 of section 49 exist. Perusal of the impugned order dated 31st August 1996 shows that there is a complete non-application of mind. The impugned order does not show that the State Government was

conscious of sub-section 4 of section 49.

9 As there is non-application of mind, the impugned order deserves to be set aside. The impugned order was made within stipulated period of six months as provided under section 49. Though we are setting aside the impugned order and directing the State Government to re-consider the notice, it is obvious that as the impugned order was passed within stipulated period of six months, sub-section 5 of section 49 will not apply.

10 Accordingly, we dispose of the petition by passing the following order:

(I) The impugned orders dated 11th July 1994 and 31st August 1996 are quashed and set aside;

(II) We direct the State Government to consider the issue of confirmation of notice under sub-section 4 of section 49 of the MRTP Act by giving them a fresh opportunity of being heard to the petitioner. Appropriate order shall be passed by the State Government on or before expiry of period of six weeks from the date on which this order is uploaded;

(III) All contentions of the parties on the issue of the confirmation of notice are kept open;

(IV) The decision taken by the State Government in terms of sub-section 4 of section 49 shall be communicated to the petitioners or to their Architect;

(V) We record that the petitioners have not pressed the relief on the basis of service of notice under

section 127 of the MRTP Act;

(VI) Rule is made partly absolute on above terms;

(VII) Chamber Summons Nos.363 and 365 of 2009 does not survive and the same is disposed of;

(VIII) Needless to add that the decision in accordance with sub-section 4 of section 49 shall be taken by the State Government uninfluenced by the orders which are impugned in Writ Petition No.1722 of 2000.

(VIBHA KANKANWADI,J.)

(A.S.OKA,J.)