

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8890 OF 2014

Neela Balkrishna Dharap and Ors. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

Mr. Mandar Limaye for the petitioners.

Mr. Shashank Mangle for respondent no. 3.

Ms. K.N. Solunke, AGP for respondent nos. 1, 2 and 5.

CORAM : B.P. DHARMADHIKARI &
SANDEEP KASHINATH SHINDE, JJ.
DATE : AUGUST 30, 2019

P.C.:

Learned counsel for the petitioners before addressing the Court on merits informed that on last date of hearing before the other Bench, the Acquiring Agency namely respondent no.3 APMC had made an offer that for the subject lands the consideration amount of Rs. 10 Crores would be paid to the petitioners and the lands would be acquired by the AMPC.

2. The APMC has filed reply affidavit dated 26/6/2019 stating therein that APMC would be required to raise the amount of Rs.4,25,00,000/- from either State Government or from the Maharashtra State Agricultural Marketing Board.

3. Counsel for the petitioners in this backdrop submits that the reservation has already lapsed and the petition should be allowed.

4. There is no appearance for respondent no. 4 Municipal Council. However, the land is earmarked for respondent no. 3 APMC and reply affidavit filed by respondent no. 3 has been looked into by us.

5. Learned counsel for respondent no.3 initially sought an adjournment. Then requested the Court to keep back the matter. After the counsel for the petitioners pointed out the relevant dates to show compliance with section 49 of MRTP Act and also pointed out the judgment of the Hon'ble Apex Court in the case of Chhabildas Vs. State of Maharashtra and Ors.: (2018) 2 Supreme Court Cases 784 on section 49 as also on section 127 of the MRTP Act, the counsel for respondent no. 3 APMC again repeated the request for adjournment and at this juncture submitted that his case papers are not with him. Matter is pending for admission since 2014. We reject the request for adjournment.

6. The only contention of APMC appears to be the petitioners

should have waited for the period of 10 years and then should have issued notice under section 127(1) of MRTP Act.

7. The facts at hand show that the notification of development scheme was published in the official gazette on 14/7/1999 in which reservation for the extension of APMC is fastened upon the subject lands. It appears that this scheme has been finalized in the year 2004.

8. Petitioners through their advocate have served the notice dated 16/8/2012 on respondent no. 1 State and the Assistant Director of Town Planning under section 49. Their case is as the entire land is earmarked for the APMC, it cannot be sold in open market and it cannot be developed. Petitioners therefore, invoked section 49(1)(e) of MRTP Act.

9. This notice is confirmed in terms of section 49(7) by the State Government on 03/01/2013.

10. The planning authority namely Municipal Council or then the respondent no.3 for whose benefit the land is earmarked have not taken any steps to complete the purchase within one year thereafter. All these facts are not in dispute.

11. In this situation, the deeming fiction contained in section 49(7) operates and the reservation on land at Survey No. 89, Hissa No. 1B, admeasuring 1-21-7 H and 0.03.7 Ares situated at mauze Mahad i.e. reservation no. 25 has lapsed and the land stood released from the reservation. It is therefore, available to the owners for the purpose of development as otherwise permissible in case of adjacent lands.

12. Accordingly with this declaration, we dispose of the writ petition.

(SANDEEP KASHINATH SHINDE, J.) (B.P. DHARMADHIKARI, J.)