

Anand

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

WRIT PETITION NO. 14162 OF 2018

- | | | | |
|----|------------------------------------|---|--------------|
| 1. | Shri Santosh Ramchandra Patil |) | .Petitioners |
| | Adult, Occu : Service |) | |
| | |) | |
| 2. | Shri Sagar Sudam Patil |) | |
| | Adult, Occu : Service |) | |
| | |) | |
| | Both R/o. Mandar Building, |) | |
| | Tukaram Nagar, Dombivali(E), |) | |
| | Taluka – Kalyan, District – Thane. |) | |

Vs.

- | | | | |
|----|-------------------------------------|---|--------------|
| 1. | The State of Maharashtra |) | .Respondents |
| | Through its Principal Secretary, |) | |
| | Urban Development Department, |) | |
| | Mantralaya, |) | |
| | Mumbai – 400 043. |) | |
| | |) | |
| 2. | The Municipal Commissioner |) | |
| | Municipal Corporation for the City |) | |
| | of Kalyan & Dombivali, |) | |
| | Having office |) | |
| | Shankarrao Chowk, Kalyan (W), |) | |
| | District – Thane. |) | |
| | |) | |
| 3. | Assistant Director of Town Planning |) | |
| | Municipal Corporation for the City |) | |
| | of Kalyan & Dombivali, |) | |
| | Having office |) | |
| | Shankarrao Chowk, Kalyan(W), |) | |
| | District – Thane. |) | |

Mr. I. A. Khairdi, Advocate, for the Petitioners
 Smt. N. M. Mehra, AGP, for the Respondent No. 1 – State
 Mr. A. S. Rao, Advocate, for the Respondent Nos. 2 & 3

CORAM : SUNIL P. DESHMUKH &
G. S. KULKARNI, JJ.

DATE : 25.03.2021

JUDGMENT (Per Sunil P. Deshmukh, J.)

. Petitioners are before the Court seeking writ of mandamus under Article 226 of the Constitution of India directing respondents to consider and sanction plan submitted by petitioners for development of property bearing Survey No. 61, Hissa No. 1 (part) situated at Ahire, Dombivali, Taluka – Kalyan, District – Thane falling within the limits of Kalyan Dombivali Municipal Corporation (for short ‘KDMC’) in view of confirmation of purchase notice by the State under order dated 15.07.2013. Petitioners further pray for quashing and setting aside communication dated 07.07.2018 purportedly refusing to sanction development plan submitted by them.

2. Petitioners state that KDMC has been constituted with effect from 01.10.1983. Notification for development plan for area now within the limits of KDMC had been published in 1996 calling upon citizens to submit their objections and suggestions. Since petitioners’ land was affected by the proposed reservation for road widening and play ground, they had submitted objections. It is being referred to that

their suggestions alongwith others had been accepted by the Town Planning Committee. However, the State while sanctioning development plan had dis-regarded the decision of Town Planning Committee and had retained reservation. The State vide notification dated 04.04.2012 sanctioned development plan of KDMC in part limiting the same to Sectors 3 to 7. The development plan had come into effect from 01.06.2012. Petitioners' land is covered under Sector 5, reserving a portion of their land for road, garden and playground.

3. Petitioners contend that for more than 17-18 years, they were deprived of their rights to develop the property due to reservation over the same. It is contended that the property is prone to encroachment being situated in close proximity to the Dombivali Railway Station and petitioners had to have security arrangements, to preserve their landed property, incurring expenditure. Due to its proximity to Railway Station, although its value is high yet the market rate would be unlikely to be fetched because of reservation.

4. Petitioners state that the land had not been acquired despite reservation over the same and the petitioners were intending to develop the same, as such, issued notice pursuant to section 49 of the Maharashtra Regional Town Planning Act (for short 'MRTP' Act) on

16.01.2013 requesting the Government to purchase / acquire or to release their property from reservation.

5. In response, petitioners received a letter from the Respondent No. 3 – the Assistant Director of Town Planning referring to that out of total area as shown in 7/12 extract of 1590 Sq. mtrs, 262.74 Sq. mtrs area is affected by reservation for road widening and for the same, the Corporation is ready to sanction TDR as per letter dated 15.06.2006 and reservation of play ground over the rest of the area 1327.26 Sq. meters had been requested to be modified to residential, however, the Government of Maharashtra under notice dated 04.04.2012 had rejected suggested modification and had continued reservation for play ground. Under the circumstances, if the petitioners are ready to handover said land to the Corporation, the Corporation is ready to grant TDR to the petitioners. Petitioners had declined the proposal under their letter dated 08.04.2013.

6. The Government / State under its communication dated 19.06.2013 had called upon petitioners and respondents No. 2 & 3 to attend hearing. Petitioners had requested for an adjournment and an application had been sent. However, thereafter, no intimation has been received from the State Government. Subsequently, petitioners had

addressed a letter to the Principal Secretary (UD) referring to that there had been no response to the petitioners' request for adjournment to hearing of the matter, pointing out that notice had been issued under Section 49 of the MRTP Act and a period of six months thereafter lapsed on 06.07.2013 and thus, in view of Section 49(7), the notice of petitioners shall be deemed to have been accepted and there is a deemed confirmation of purchase notice.

7. Subsequently, petitioners wrote to the Deputy Collector, Kalyan as they had learnt that a proposal for acquisition of the property of petitioners was made to the District Collector. In response to aforesaid letter, petitioners received a communication dated 01.05.2014 from the Sub Divisional Officer, Kalyan stating that there was no proposal received by their office. Petitioners have once again communicated to respondents that there has been deemed confirmation of purchase notice in view of the provisions of Section 49(7) of the MRTP Act.

8. It is referred to that for a long time, while KDMC had been sitting tight over above, the petitioners had applied under the Right to Information Act on 19.07.2018 seeking details of their application pursuant to section 49 of the MRTP Act and the decision by the

government, they received a copy of order dated 15.07.2013 stating therein that the Government of Maharashtra had allowed the application of petitioners under Section 49(4) of the MRTP Act accepting request of petitioners confirming the purchase notice. The communication dated 15.07.2013 is also endorsed to the Commissioner, KDMC intimating that from the date of confirmation order dated 15.07.2013 within one year, acquisition proceedings be initiated and in case of failure to initiate proceedings, the responsibility of lapse of reservation over the land would be entirely at Corporation's end.

9. It is under these circumstances, petitioners are seeking aforesaid reliefs.

10. In the Affidavit-in-reply by KDMC – respondents No. 2 & 3, it is contended that the claim of the petitioners about confirmation of their notice under Section 49 of the MRTP Act and failure of acquisition within one year is misconceived. KDMC is not in need of garden / play ground and thus, petitioners were offered compensation by way of TDR in lieu of surrendering their affected land under reservation. It is submitted that the Government of Maharashtra under order dated 15.07.2013 had purportedly confirmed purchase notice

and had informed the KDMC to take necessary steps. In response, a proposal dated 14.07.2014 had been submitted to the Collector, Thane for acquisition of petitioners' land. In turn, the Collector on 18.03.2015 directed the Sub Divisional Officer (for short 'SDO') to process the application of petitioners. There had been communication by SDO on 16.06.2015 to the respondents instructing them to submit a proposal under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The SDO has further communicated on 05.09.2017 to the KDMC instructing to deposit an amount of Rs. 7,91,51,298.21/- . There is no proper follow up on the proposal of land acquisition which is pending in the office of SDO. Though acquisition proceedings were initiated, the same could not be completed due to lack of availability of funds with the KDMC. The KDMC will acquire the land as & when the budgetary provision is made. It is, therefore, being submitted that since there is an application made by the respondents within one year from the date of purchase notice, there is no merit in the petition and the same is liable to be dismissed with costs.

11. Respondent No. 1 has filed affidavit-in-reply referring to that proposal dated 14.07.2014 has been received at their end only on 22.07.2014.

12. Mr. Khairdi, learned counsel for the petitioners vehemently submits the factual aspect as referred to above would show that a purchase notice had been issued by petitioners on 16.01.2013, in response to which hearing had been arranged. Said proceeding culminated into order of the State dated 15.07.2013 confirming the purchase notice directing the KDMC to take steps for acquisition within one year i. e. from 15.07.2013. There has been an Affidavit filed on behalf of the respondent No. 1 stating therein that the same has been received at their end only on 22.07.2014. There is no compliance of provisions of law as claimed by respondents – KDMC about application having been made within one year from the date of purchase notice. It is incorrect and improper.

13. He submits that despite the confirmation of purchase notice by the State, the respondent – Corporation is insisting upon to surrender the land in lieu of TDR. It is being submitted that the Corporation has encroached upon their land constructing road and gutter which is illegal.

14. Mr. Khairdi, learned Counsel for Petitioners submits that in view of confirmation of the purchase notice by the Government of

Maharashtra under its order dated 15.07.2013, it had been mandatory for respondent No. 2 to apply for acquisition of the reserved land within a period of one year and since there has been failure to acquire the land within the stipulated period, their land stands freed from reservation.

15. Learned counsel for KDMC, opposes contending that it would not be a case, wherein it can be said that there is no application made and that proposal in fact had been issued before expiry of one year as required. He submits that as such there is due compliance of provisions, and a proper approach be had looking at surrounding circumstances.

16. As the matter pertains to proceedings ensued upon a notice pursuant to section 49, reference to relevant provisions of Section 49 of the MRTP Act as reproduced hereunder would be pertinent :

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

[1] Where –

- (a) -----
- (b) -----
- (c) -----
- (d) -----

- (i) -----
- (ii) -----
- (e) -----

the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as “the purchase notice”) requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any, in respect of which notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

(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) *If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.*

(6) [* * * * *
* * * * *]

(7) *If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication of restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.”*

17. Pursuant to aforesaid provisions, when purchase notice has been served and is confirmed within the period specified, appropriate authority must make an application to acquire the land within a year from the date of confirmation of notice and if not, reservation would lapse. In the case of ***T. Vijayalakshmi v. Town Planning Member***, reported in ***(2006) 8 SCC 502*** and ***Girnar Traders v. State of Maharashtra***, reported in ***(2007) 7 SCC 355***, it has been

observed to the effect that, since neither steps have been taken by the authorities for acquisition of the land nor is the land of the appellant purchased pursuant to purchase notice nor is allowed to be used for last more than twenty years, the land will have to be released as the person / owner cannot be deprived from utilizing his property for an indefinite period.

18. The factual aspects as referred to above would show that the purchase notice had been issued by petitioners on 16.01.2013, in response to which hearing had been arranged. Said proceeding culminated into order of the State dated 15.07.2013 confirming the purchase notice dated 16.01.2013 directing the KDMC to take steps for acquisition within one year. There has been an Affidavit filed on behalf of the respondent No. 1 referring to that the same has been received at their end only on 22.07.2014, emanating that the application by the appropriate authority for acquisition of petitioners' land had been received after expiry of one year from the date of confirmation of purchase notice. This has not been refuted on behalf of the KDMC nor any credible material has been placed on record to evidence that the proposal had been made before expiry of stipulated period. Although respondents no.2 and 3 – KDMC propose to refer to that there had been certain correspondence in furtherance of the application, yet it

does not appear that any step worth the name has taken place as would be referable to section 126 of the MRTP Act.

19. Having regard to above, since there does not appear to be application by appropriate authority to acquire the land within the time-line as referred to in section 49, Section 49(7) holds sway, entailing statutory consequence that, reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed and thereupon, the land shall be deemed to be released from the reservation, or as the case may be, allotment, indication, restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.

20. However, it would be imperative to consider that the Supreme Court has, in a case of *Municipal Corporation, Greater Bombay V/s. Hiranman Sitaram Deorukhkar in civil appeal No.11258 of 2017 decided on 24.08.2017* had considered that it is in public interest to avoid unnecessary conversion of open spaces to urban uses while the government authorities are bound to preserve them and to take timely steps for its protection. In the case of *Satish P. Vohra and another V/s. Municipal Corporation, Greater Mumbai and others decided on*

02.08.2018 (W.PNo.2093 of 2015), the division bench of this court has observed that after notice if no steps for acquisition are taken within stipulated period under section 127 of MRTP Act, reservation would axiomatically lapse. After taking into account aforesaid judgment of the Apex Court, liberty was given to the planning authority to acquire property within a period of one year. This decision was followed by another Division Bench of this Court in ***M/s. Trimurti Enterprises V/s. State of Maharashtra and others decided on 11.04.2019 (W.PNo.11452 of 2018, Aurangabad Bench)*** observing that consequences of inaction of planning authority to take steps for acquisition of land under reservation in the plan within stipulated after service of notice are axiomatic. The reservation is deemed to have lapsed. The land would be available for the purpose of development as is permissible. In that case as well, while the reservation had been for playground and the garden, the same stood lapsed by operation of law, the Division Bench had considered it appropriate that, the petitioner shall not perform any activity on said ground for a period of one year and the municipal corporation / the planning authority may acquire the land within that period and in case of failure to acquire the land, the land would be available to the petitioner for use as is permissible.

21. Having regard foregoing discussion, provisions and

decisions, the reservation over Petitioners' land by operation of law stands lapsed. The Petition stands allowed setting aside the impugned communication dated 07.07.2018 with a direction to process development plan submitted by the petitioners in respect of their land referred to in the Petition by passing an appropriate order.

22. In the present case also, while the petitioners' land had been reserved for the purpose of playground, garden and road, the petitioners may not carry on any activity over the land for a period of one year and it should be open for the appropriate / planning authority to acquire the land within a period of one year from date of receipt of this order and in case of failure to acquire the land within such a period, the petitioners would be free to use the land in the manner as is permissible according to the provisions of section 49(7).

23. Rule made absolute in aforesaid terms. Petition disposed of.

(G. S. KULKARNI, J.)

(SUNIL P. DESHMUKH, J.)