

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4661 OF 2021

Gopal Kashinath Lad (Kele)
Age : 68 years, occ : agri., & business
R/o “Matoshri”, Survey No.74/1 B,
Plot No.1, Behind Gajanan Maharaj
Temple, Deopur, Dhule.

Petitioners

Versus

1. The State of Maharashtra
Through it's Secretary,
Urban Development Dept.
Mantralaya, Mumbai.
2. The Collector,
Dhule, District Dhule.
3. Assistant Director,
Town Planning Department,
Dhule Municipal Corporation,
Dhule.
4. Dhule Municipal Corporation,
Through it's Commissioner,
Dhule Municipal Corporation,
Dhule.

Respondents

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Mr. S.P. Shah, Advocate for the petitioner.
Smt. M.A. Deshpande, A.G.P. for respondent Nos.1 and 2.
Mr. N.N. Desale, Advocate for respondent No.3.

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CORAM : RAVINDRA V. GHUGE AND
SANDIPKUMAR C. MORE, JJ.

JUDGMENT RESERVED ON : 9 JUNE 2022
JUDGMENT PRONOUNCED ON : 1JULY 2022

JUDGMENT (PER SANDIPKUMAR C. MORE, J.) :

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at the stage of admission.

2. The petitioner, under this petition, is seeking quashing of an order dated 24.12.2020 passed by the Director, Urban Development Department, whereby his purchase notice under Section 49 of the Maharashtra Regional Town Planning Act, 1966 ("MRTP Act", for short) in respect of land admeasuring 925.20 sq. meters out of Survey No. 75/2/2 situated at Mouje Walwadi, Dhule, has been rejected. The petitioner has also sought direction to the respondents to confirm his purchase notice dated 17.06.2020. In the alternative, the petitioner has sought direction to respondent No. 1 to consider his aforesaid purchase notice afresh.

3. According to the petitioner, he is owner of the land mentioned herein-above, situated at Mouje Walwadi, Dhule. A final development plan of Dhule city was sanctioned by the State Government, which came into force from 01.01.1987. According to the said development plan, the petitioner's land was shown

under reservation for a High School, but respondent No.4 i.e. Dhule Municipal Corporation, miserably failed to take steps towards the acquisition of the petitioner's land. Then, second revised development plan of Dhule city was published which came into force from 23.06.2013. However, in the said plan the petitioner's land was again shown under reservation for play ground. Due to such reservation, the petitioner is unable to sell the said land except at lower price than the market rate. Accordingly, on the said ground the petitioner served purchase notice under Section 49 of the MRTP Act upon the Secretary of Urban Development Department, Government of Maharashtra. However, under the impugned order dated 24.12.2020, the respondents rejected the said purchase notice dated 17.06.2020 on the grounds that the same was not accompanied with any application for development permission made before any Planning Authority and that the petitioner's land could not be ascertained as regards its actual location from the entire land admeasuring 4300 sq. metres. under reservation.

4. On the contrary, the respondents have come out with a case that Dhule Municipal Corporation, vide its Resolution

No.131 dated 27.08.2018, has already granted permission to start acquisition of land of the petitioner and accordingly forwarded a proposal to the second respondent. As such, it is claimed by the respondents that when the procedure for acquisition of the petitioner's land is already undertaken, there is no need to confirm the purchase notice.

5. We have carefully gone through the entire documents on record filed by the petitioner and also the affidavits-in-reply filed by the respective respondents with the able assistance of the learned Counsel for the rival parties.

6. From the affidavits-in-reply of the respondents, it appears that they have rejected the purchase notice mainly on the two grounds viz: (1) the location of the petitioner's land could not be ascertained out of the total area under reservation and (2) the purchase notice of the petitioner was not accompanied by a copy of any application made by the petitioner to the Planning Authority in respect of which the said notice was given as contemplated under Section 49 (2) of the MRTP Act. It is not disputed that as per the revised sanctioned development plan, which came into force w.e.f. 23.06.2013, the land admeasuring

4300 sq. mtrs out of land Survey No. 75 (P) is shown reserved for a garden. It is also not in dispute that the land of the petitioner bearing Survey No. 75/2/2/ (part) admeasuring 925.20 sq. mtrs. is also included in the aforesaid entire area.

7. It is to be noted here that the petitioner in his purchase notice had specifically mentioned that since his land has been shown under reservation since 1986, he was unable to develop the said land and also unable sell it as per the market rate. Thus, it can be seen that the petitioner has issued the aforesaid purchase notice on the said ground ground.

8. The issue in the present writ petition is in respect of Section 49 of the MRTP Act, and therefore, we would like to reproduce the said section, as under :

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

1) Where

(a) any land is designated by a plan as subject to compulsory acquisition, or

(b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such. Government, authority or body, or

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

[(d) any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in clause (a), (b), (c) or (d) claims—

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) (where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or]

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated, 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 the 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 maybe 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 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, 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”.

9. On going through the aforesaid section, it is evident that sub-section (1) of Section 49 of the MRTP Act has provided several contingencies where a owner may serve a notice on the State Government as a purchase notice requiring the appropriate

Authority to purchase the land under reservation. The contingencies can be categorised as per clauses (a), (b), (c), (d) and (e). In the instant matter, it appears that the petitioner has given purchase notice since he is unable to sell the land under reservation except at a lower price than the market price. He is also unable to develop the said land due to long standing reservation. It is to be noted here that the Authority has refused to confirm the purchase notice since they are unable to carve out the land of the petitioner out of the total land under reservation. However, at the same time, the Authority is contending that they have already sent a proposal for acquisition by making an appropriate resolution. It is extremely important to note that once they have decided to acquire the land of the petitioner, then they can very well ascertain its location by doing necessary measurement. Therefore, the rejection on the said ground definitely appears erroneous on the part of the respondents.

10. So far as the second reason of rejection of purchase notice is concerned, the respondents have claimed that the purchase notice was not accompanied by a copy of an application made by the applicant to the planning Authority or any order or

decision of that Authority, as contemplated in sub-section (2) of Section 49 of the MRTP Act. However, this Court (Coram : Ranjit V. More and Bharati Dangre, JJ.) at the Principal Seat of Bombay, in Writ Petition No. 9587 of 2017 in the case of ***Aone Land Developers vs. State of Maharashtra and others***, has observed that, clause (e) of sub-section 49 contemplates an independent contingency where the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might have been reasonably expected to sell, if it were not so designated or allocated. On the contrary, sub-section (2) of Section 49 of the MRTP Act provides for annexing an application made and an order or decision of that Authority if at all there is any. It has been observed in the aforesaid judgment as below :

“The sequitor of the purchase notice culminates in sub-section(4) where the State Government is satisfied that the contingencies contemplated in clauses (a), (b), (c), (d) and (e) of sub-section(1) are fulfilled and that the order or decision for permission was not duly made on the ground that there was no compliance of certain provisions of the Act or Rules and it may confirm the purchase notice or it may direct the Planning Authority to grant permission subject to such conditions so as to enable the owner to make use of the land in a reasonably beneficial manner. However, where there is a refusal to confirm purchase notice, it contemplates an opportunity of hearing being afforded to the person serving a notice”.

11. From the aforesaid observation, it is already made clear that the contingencies mentioned in clause (e) of sub-section (1) of Section 49 of the MRTP Act and in sub-section (2) of Section 49 of the MRTP Act are independent of each other. If no such application is there on the part of the petitioner or affected person made before the Authority and any decision taken thereof by the Authority, then there is no question of annexing the same with the purchase notice. Therefore, when the purchase notice of the petitioner is only on the ground as contemplated in clause (e) of sub-section (1) of Section 49, then asking for such application as contemplated in sub-section (2) of Section 49 of the MRTP Act, is not at all necessary, and therefore, rejection on that ground appears highly erroneous.

12. Further, it is important to note that when the respondents have already forwarded a proposal for acquisition of the petitioner's land, then there was no propriety in refusing the said purchase notice since after taking the decision of acquiring the land, the appropriate Authority is duty bound to acquire the land in respect of which the purchase notice has been given, within one year as per sub-section (7) of Section 49 of the MRTP Act. Thus,

it appears that on one hand the respondents have erroneously refused confirmation of purchase notice given by the petitioner and at the same time they have started the acquisition proceedings by making a resolution to that effect. These actions on the part of the respondents are contradictory to each other. If the Authority decides to acquire the land, then it has to confirm the purchase notice first and then to proceed for such acquisition. Therefore, the action of rejecting the confirmation of purchase notice by the respondents, is definitely an illegal act contrary to the provisions of Section 49 of the MRTP Act.

13. It is important to note that though the respondents have asserted that the acquisition proceedings in respect of the petitioner's land is already undertaken, then they ought not to have rejected the confirmation of purchase notice. Be that as it may, the petitioner has sought direction to respondent No.1 in the alternative to consider his aforesaid purchase notice afresh, besides his main prayer of quashing of the impugned order dated 24.12.2020 whereby his purchase notice has been rejected. We have already come to the conclusion that the action of such rejection on the part of the respondents is illegal, and therefore,

the purchase notice dated 17.06.2020 is required to be considered afresh by respondent No. 1. Therefore, we pass the following order.

ORDER

- (i) The Writ Petition is hereby partly allowed.
- (ii) The impugned order dated 24.12.2020 rejecting the purchase notice of the petitioner in respect of his land under reservation, is hereby quashed and set aside.
- (iii) Respondent No.1 is directed to decide the purchase notice dated 17.06.2020 of the petitioner in respect of his land under reservation, afresh and on its own merits and preferably within six weeks from today, in view of our above discussion and in the light of the applicable provisions of the MRTP Act.
- (iv) Rule is made absolute in the aforesaid terms.

[SANDIPKUMAR C. MORE]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE