

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 1681 OF 2020**

M/s. Sanghvi Erectors Private Limited)
A private limited company incorporated)
under the provisions of Indian Companies)
Act, 1956 having its registered office at)
401, Sai Capital, 4th Floor, Senapati Bapat)
Road, Pune 411 016)
Through its Authorized Signatory :-)
Shri Anilkumar Sanghavi)
Age 64 Years adult, Occ. Business,)
R/o. 62, Koregaon Park, Lane Number 3,)
Pune – 411 001) **Petitioner**

VERSUS

1. The State of Maharashtra,)
Through Secretary,)
Urban Development Department,)
Having office at Mantralaya,)
Mumbai 400 032)

2. The Pune Municipal Corporation,)
Having its office at Shivaji Nagar, Pune)
through its Municipal Commissioner) **Respondents**

Mr.Drupad S.Patil, i/b. Mr.Dheeraj Patil for the Petitioner.

Mr.A.A.Alaspurkar, A.G.P. for the State – Respondent no.1.

Mr.Vishwanath Patil, a/w. Mr.Kewal Ahuja and Mr.Kewal Ahya for the Respondent for the Respondent no.2.

CORAM: R. D. DHANUKA AND
KAMAL KHATA, JJ.

DATE : 13TH SEPTEMBER, 2022

ORAL JUDGMENT (PER R.D.DHANUKA, J.) :-

Rule. Mr.Alaspurkar, learned A.G.P. waives service for the respondent no.1. Mr.Patil, waives service for the respondent no.2. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a declaration that the reservation, designation, allotment, indication or restriction on the development of the land admeasuring 3032 sq.mtrs. has lapsed and the said land is available to the petitioner for the purpose of development, otherwise permissible in the case of adjacent land, under the sanctioned Development Plan of Pune City.

3. The petitioner also seeks a writ of mandamus against the respondent no.1 to issue appropriate declaration and notify the same in the Government Gazette as provided in section 127(2) of the Maharashtra Regional and Town Planning Act, 1966. Some of the relevant facts for the purpose of deciding this petition are as under :-

4. The petitioner is the owner of the writ land which was shown to

have been reserved in the sanctioned Development Plan of Pune City for 'municipal purpose' under reservation no. MP 17. On 11th July, 2017, the petitioner issued notice under section 49(7) of the MRTP Act to the State Government to purchase the said land. The petitioner also requested for a personal hearing.

5. On 17th January, 2018, the State Government confirmed the purchase notice and directed the Municipal Corporation to take requisite steps for acquisition of the said land within a period of one year. On 16th January, 2019, one year period as prescribed under section 49(7) of the MPRT Act expired. It is the case of the petitioner that the respondent no.2 however did not take any steps. The petitioner issued a notice on 10th April, 2019 to the State Government as well as the Municipal Corporation contending that as provided under section 49(7) of the MRTP Act, the reservation imposed on the land of the petitioner had lapsed and requested for issuance of the appropriate declaration and notify the same in the Government Gazette as provided in section 127(2) of the MPRT Act, 1966.

6. The State Government addressed a letter dated 17th January, 2018

to the respondent no.2 Corporation to take appropriate steps in compliance with the notice issued by the petitioner. On 30th May, 2018, the Municipal Commissioner addressed a communication to the Secretary of the Pune Municipal Corporation stating that the Corporation is required to take steps expeditiously in compliance with the provisions under section 49(7) of the MRTP Act. Since no steps were taken, the petitioner filed this writ petition.

7. Mr.D.S.Patil, learned counsel for the petitioner invited our attention to the purchase notice issued by his client and also other correspondence annexed to the petition. He states that in response to the said purchase notice issued by the petitioner, the State Government by letter/order dated 17th January, 2018 confirmed the said purchase notice. He states that one year thereafter expired on 16th January, 2019, however the respondent Corporation did not take any steps for acquiring the said land. He also relied upon internal communication dated 30th May, 2018 from the Commissioner of the Corporation to the Secretary of the Pune Municipal Corporation admitting that the requisite steps were to be taken within the time contemplated under section 49(7) of the MRTP Act.

8. He submitted that since no steps were taken admittedly within one year from the date of order confirming the purchase notice by the respondent no.1, the reservation of the plot of the petitioner stood lapsed under section 49(7) of the MRTP Act.

9. Learned counsel invited our attention to various averments in the affidavit in reply filed by the State of Maharashtra and more particularly in paragraphs 2 to 4. He states that the State Government has admitted that under section 49(7) of the MRTP Act the purchase notice has been confirmed by the State on 17th January, 2018. The respondent no.2 however did not take any steps to acquire the said land within the period of one year from the date of the communication of the confirmation of purchase notice by the Government.

10. Learned counsel invited our attention to the averments made by the respondent no.2 in the affidavit in reply and more particularly in paragraphs 4 and 6 and submits that the only contention raised in the affidavit in reply is that the State Government has not passed any order confirming the purchase notice pursuant to the hearing on 5th January, 2018 and 15th January, 2018 nor any such order has been served upon

the Municipal Corporation save and except the letter dated 17th January, 2018.

11. Mr. Alaspurkar, learned A.G.P. for the State Government relied upon the averments made by the Assistant Director of the Town Planning, Pune Branch, Pune in the affidavit in reply notarized on 2nd July, 2020 and submits that it is the case of the State Government that the purchase notice has been confirmed by the Government on 17th January, 2018 after holding two meetings.

12. Mr. Vishwanath Patil, learned counsel for the Municipal Corporation on the other hand vehemently urged that the said communication dated 17th January, 2018 addressed by the respondent no.1 to the respondent no.2 is not an order confirming the purchase notice. He submits that the hearing was held on 5th January, 2018 and 15th January, 2018 and thus the respondent no.1 ought to have passed a reasoned order if the purchase notice issued by the petitioner was to be confirmed as contemplated under section 49(7) of the MRTP Act. He submits that the said communication dated 17th January, 2018 can never be considered as an order confirming the purchase notice.

13. In his rejoinder argument, Mr.D.S. Patil, learned counsel for the petitioner placed reliance on section 49(3) to 49(7) of the MRTP Act and submits that the State Government has confirmed the purchase notice by the said communication/order dated 17th January, 2018. The Municipal Corporation has not challenged the said order till date and thus cannot be allowed to urge that there was no order confirming said purchase notice issued by the petitioner.

REASONS AND CONCLUSIONS :

14. It is not in dispute that the land of the petitioner was reserved for a public purpose. The petitioner had issued a notice under section 49(1) to the State Government calling upon the State Government to purchase the land of the petitioner. Under section 49(3) of the MRTP Act, the State Government thereafter called for hearing. The respondent no.2 does not dispute that such hearing was held as the same is apparent from the averments made in the affidavit in reply. After two hearings rendered by the State Government, on 17th January, 2018, the State Government confirmed the said purchase notice. Learned A.G.P. confirmed this position. A copy of the said order was served upon the respondent no.2 Corporation. The respondent no.2

Corporation did not challenge the said order.

15. The petitioner had thereafter issued notice on 10th April, 2019 not only to the respondent no.1 but also to the respondent no.2. There was no response to the issuance of the said notice by the respondent no.2. On the contrary, office of the Municipal Commissioner by letter dated 30th May, 2018 to the Secretary of the Municipal Corporation confirmed that the steps were required to be taken within the time contemplated under the provisions of the MRTP Act.

16. Insofar as the issue raised by the respondent no.2 that the State Government having rendered two hearings, ought to have passed a reasoned order for confirming the purchase notice issued by the petitioner is concerned, a perusal of sections 49(3) and (4) indicates that on receipt of the purchase notice, the State Government has to call from the Planning Authority a report or record or both as may be necessary which shall be forwarded by the Planning Authority to the State Government. On receipt of such record, the State Government if satisfied, would confirm the purchase notice or direct that the planning permission be granted without condition or subject to such conditions

as will make the land capable of reasonably beneficial use.

17. In this case, the State Government had called the respondent no.2 Corporation for hearing with record. Only after granting such personal hearing and discussion in the meeting with the respondent no.2 Corporation, the State Government having been satisfied, that the case was made out by the petitioner for confirmation of the purchase notice, the State Government confirmed the said purchase notice by order dated 17th January, 2018. The said provisions do not contemplate any detailed reasons which can be recorded like a judgment. It is not the case of the respondent no.2, that the respondent no.2 challenged the said order on the ground that the same was not reasoned and thus would not be binding on the respondent no.2. In our view the stand taken by the respondent no.2 Corporation in the affidavit in reply and across the bar is contrary to sections 49(3) and (4) of the MRTP Act and is untenable.

18. In our view since the State Government had already confirmed the purchase notice by order dated 17th January, 2018 and no steps were taken by the Municipal Corporation within one year from the date of

the order passed by the State Government confirming purchase notice under section 49(4) read with section 49(7), the reservation on the plot for the specified public purpose has lapsed. The State Government is under an obligation to issue a notification in that regard under section 127(2) of the MRTP Act.

19. We accordingly pass the following order :-

- (a) Writ Petition No. 1681 of 2020 is allowed in terms of prayer clauses (a) and (b).
- (b) Rule is made absolute in the aforesaid terms.
- (c) The State Government is directed to issue a notification in the Government Gazette within eight weeks from today.
- (d) The parties to act on the authenticated copy of this order.
- (e) No order as to costs.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]