

Arjun

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

SECOND APPEAL NO.426 OF 2015

Nagarpalika Sawantwadi, ...Appellant
Through : The Chief Officer,
Sawantwadi Nagarpalika

V/s.

Dinanath Rajaram Ballal & Ors. ...Respondents

Mr. S. M. Railkar, for the Appellant.

Mr. A. S. Khandeparkar i/b Khandeparkar & Associates,
for Respondent No.1.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 19th DECEMBER, 2022**

P.C.:

1. Heard Mr. Railkar, learned counsel appearing for the Appellant and Mr. A. S. Khandeparkar, learned counsel appearing for Respondent No.1.

2. Mr. Railkar, learned counsel submitted that following substantial question of law is involved in this Second Appeal:

i) Whether in view of Section 149 of the MRTP Act, suit filed by the Respondents is maintainable?

3. To appreciate the substantial question of law raised by learned counsel appearing for the Appellant, it is necessary to set out certain factual aspects. The suit land i.e. Survey No.132, Hissa No.1 situated in Municipal area of Sawantwadi is reserved for the purpose of public garden since 1989 and the same was not acquired till the year 2007. The original owner issued notice dated 27th August, 2007 to the Defendant Nos. 1 to 3 i.e. Nagarpalika Sawantwadi, Town Planning Officer, and The District Collector, Sindhudurg under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as, the 'MRTP Act') and the said notice was received by Defendant Nos. 1 to 3 on 28th August, 2007. Thereafter, the Defendant No. 1 submitted proposal for acquisition of suit land to the Defendant No. 3- The Collector, Sindhudurg dated 16th February, 2008. However, notification under Section 4 or under Section 6 of the Land Acquisition Act have been not issued by Defendant No. 3, till the filing of the suit.

4. Respondent No. 1 filed suit on 24th February, 2012 inter alia seeking declaration and injunction. The Respondent No. 1 sought declaration that, the suit property is released from

the reservation and that Respondent No. 1 is entitled to use the suit property as absolute owner and develop the same in legal manner.

5. The suit was decreed by learned Civil Judge, Senior Division, Sindhudurg – Oros on 1st April, 2014. The Appeal is also dismissed by the learned Principal District Judge, Sindhudurg - Oros by judgment and decree dated 27th October, 2014.

6. In the above background, it is necessary to consider Section 149 of the MRTP Act. The same reads as under:

“149. Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings.”

7. It is very clear that, by Section 149 finality is given to the order passed or direction issued by the State Government or order passed or notice issued by Regional Board, Planning Authority or Development Authority under the MRTP Act and it is further provided that, such order

shall not be questioned in any suit or other legal proceedings.

8. In the present case, lapsing of reservation as provided under Section 127 of the MRTP Act has taken place. There is no dispute that, requirements of Section 127 have been complied with and, therefore, the suit land has been deemed to have lapsed. It is significant to note that, lapsing of reservations takes place in the circumstances which have been set out in Section 127 of the MRTP Act and, therefore, there is no order or direction is required to be issued by the authorities which are contemplated under Section 149 of the MRTP Act and, therefore, bar under Section 149 will not apply to the present case.

9. In view of this, there is no substance in the substantial question of law raised by Mr. Railkar.

10. The Second Appeal is dismissed with no order as to costs.

(MADHAV J. JAMDAR, J.)