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

WRIT PETITION NO. 843 OF 2020

Nilkanth Hills Creations,
a Partnership Firm, duly registered under
the Indian Partnership Act, 1932, having
its registered Office at F-001 Nilkanth Hills,
Upavan, Near Shree Complex, Belavali,
Badlapur (W), Dist. Thane.

.. Petitioner

Versus

1. State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai -32
2. Chief Officer,
Karjat Municipal Council,
Karjat, Dist. Raigad

.. Respondents

-
- Mr. Prashant Kamble i/by Mr. A.S. Rao for the Petitioner
 - Ms. M.P. Thakur, AGP for the State
 - Mr. Amit A. Karande for Respondent No.2
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**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : 21st FEBRUARY, 2022

P. C. :

1. By the present Writ Petition, the Petitioner has prayed for the following reliefs:

"(a) This Hon'ble Court be pleased to hold and declare that the purchase notice dt. 20.8.2015 issued and served by the Petitioner upon the Respondents on 20.8.2017 U/sec. 49(1) of the MRTP Act is deemed to have been confirmed and the reservation on the land of the Petitioner is deemed to have lapsed.

(b) This Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ, order or direction in the like nature under Articles 226 & 227 of Constitution of India, thereby directing the Respondent No.2 Karjat Municipal Council to forthwith consider and sanction the development plan submitted by the Petitioner with respect to the plot of land bearing Survey No.48 Hissa No.1A/2, admeasuring about 2490 sq.mtrs. situated within the municipal limits of Respondent No.2 Karjat Municipal Council as per sanctioned D.C. Regulations."

2. The Petitioner is the owner of land admeasuring 2490 sq.mtrs. bearing Survey No.48 Hissa No.1A/2 situated at village Bhisegaon, Tal. Karjat, District Raigad (for short "**the said land**"). Respondent No.1 is the State of Maharashtra and Respondent No.2 is the Karjat Municipal Council (for short "**Council**").

3. Briefly stated are the facts set out by the Petitioner along with the submissions advanced by the Petitioner :

3.1 As set out hereinabove, the Petitioner is the owner of the said land. The draft development plan of the Karjat Municipal Council was published in the year 1985 and the final development plan was sanctioned in the year 1996.

3.2 After publication of the draft development plan in the year 1985, the Petitioners' Predecessor-in-title filed objections against the reservation of the said land for vegetable market. However while sanctioning the final draft development plan the said land was shown as reserved vide reservation No.59 for "Vegetable Market."

3.3 According to the Petitioner, for more than three decades, Respondent No.2 - Council failed to acquire the said land which was under reservation vide reservation No.59 for vegetable market.

3.4 Petitioner served a purchase notice dated 20th August, 2015 under the provisions of Section 49(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short "**the said Act**") to the Respondent No.1 – State and endorsed a copy of the same to the Respondent No.2 – Karjat Municipal Council.

3.5 All the necessary documents were submitted to the Respondent Nos.1 and 2 alongwith the purchase notice.

3.6 Respondent Nos.1 and 2 failed to take action on the purchase notice served by the Petitioner within 6 months from the date of service of the said notice. The Purchase Notice was therefore, deemed to be confirmed with effect from 20th February, 2016. Though the Petitioner issued a letter dated 14th March 2016 to the Respondent No.1, *inter alia*, requesting the Government to direct Respondent No.2 to initiate acquisition proceedings of the said land in accordance with the provisions of Section 49(7) of the said Act, no steps were taken by the Respondents.

3.7 By letter dated 2nd March 2017, Petitioners called upon the Collector, District Raigad requesting for furnishing a copy of the notification, if any, issued under the provisions of Section 126 of the said Act and/or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as according to the Petitioner the

purchase notice was deemed to be confirmed w.e.f. 20th February 2016.

3.8 Since within one year from the date of the deemed confirmation of the notice, the Appropriate Authority failed to make an Application to acquire the land in respect of which the Purchase Notice had been confirmed as required under Section 126, the reservation of the said land deemed to have lapsed and the said land deemed to be released from the reservation and became available to the owner for the purpose of development provided in Clause 7 of Section 49 of the said Act.

3.9 On 3th May 2017 i.e. much more than a year after the Purchase Notice stood confirmed on 20th February, 2016, Respondent No.2 – Council addressed a letter to the Principal Secretary, Urban Development Department, Government of Maharashtra, *inter alia*, stating that the Municipal Council is unable to pay the compensation in cash and it can compensate only by grant of TDR or the said land can be developed under accommodation reservation and requested the Government that the purchase notice issued by the Petitioner should not be confirmed. This letter lends no assistance to the Respondents.

3.10 Hence, the present Writ Petition for seeking a declaration that the reservation on the said land is deemed to have lapsed.

4. The Chief Officer of Respondent No.2 - Council has filed Affidavit-in-Reply dated 15th November 2019 on behalf of Respondent No.2 stating that the purchase notice nowhere calls for the Respondent No.2 to purchase the said land and instead calls upon the State Government to

purchase the said land and hence the said notice cannot be said to be a purchase notice under the provisions of Section 49 of the said Act. It is further stated that unless the State Government takes cognizance of the purchase notice and acts under Section 49(3) of the said Act and forthwith calls for report and record from the Planning Authority and the Appropriate Authority, the Respondent No.2 - Council cannot proceed under the provisions of Section 49 as the State Government requires the Planning Authority and the Appropriate Authority to purchase the interest in the said land. Therefore, Respondent No.2 can act only when the report and record is called for by the State Government. According to the Respondent No.2 - Council if the State Government forthwith does not call for the report and record from the Planning Authority and the Appropriate Authority then it means that the State Government has not taken cognizance of the said notice and the same is defective and not a purchase notice as per Section 49 of the said Act and therefore the present Writ Petition filed by the Petitioner should be dismissed with costs.

5. The Joint Director of Town Planning, Konkan Division, Navi Mumbai has filed his Affidavit-in-Reply dated 7th September 2021, wherein he has, *inter alia*, stated that the purchase notice in the present case was received by the Government on 20th August 2015; that as per record, Government had not called for any report and record from the Planning Authority as required under Section 49(3) of the said Act; that within a period of 6 months from the date on which the purchase notice was served,

the Government has not passed any order under Section 49(4) of the said Act; that the purchase notice served on 20th August 2015 shall be deemed to have been confirmed at the expiration of the period of 6 months from the receipt of the purchase notice; and as such this Court may pass appropriate order in the Writ Petition after hearing the stand of the Respondent No.2 - Council.

6. The learned Advocate for the Petitioner has taken us through the facts and submissions of the Petitioner as set out in paragraph 3 hereinabove and submitted that the prayers sought in the Writ Petition be granted/allowed. The Advocates for the Respondents have reiterated the submissions made in their respective Affidavits which are set out hereinabove.

7. We have perused the relevant Sections of the Act, considered the submissions advanced by the Learned Advocate appearing for the Petitioner and the learned AGP representing the State, the learned Advocate representing the Council and the case law relied upon by them.

8. Section 49 of the said Act being relevant for deciding the above Writ Petition is reproduced hereunder :

“Section 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.

(emphasis supplied)

(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 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 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.]”
(Emphasis supplied)

9. From a reading of Section 49 of the said Act, it is clear that the scheme of the said Section is to lay down the timelines within which the appropriate authority must make an application to acquire the land in respect of which a purchase notice has been confirmed. Immediately upon the conditions specified in sub-section (1) being met, the owner or person affected may serve on the State Government, within such time and in such manner as is prescribed by regulations, a purchase notice requiring the

Appropriate Authority to purchase the interest in the land in accordance with the provisions of the said Act, accompanied by documents set out in sub-clause (2) of the said Section. Upon receipt of the purchase notice, as per sub-section (3), the State Government is to forthwith call from the planning authority or the appropriate authority such report or records or both, as may be necessary, which the authorities shall then forward to the State Government as soon as possible, but not later than thirty days from the date of their requisition. As provided in sub-section (4), if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, it may either confirm the purchase notice; refuse to confirm the purchase notice; or direct that planning permission be granted with or without conditions. Sub-section (5) provides that if the steps contemplated after service of purchase notice leads to a situation where the State Government does not pass any orders, the notice shall be deemed to have been confirmed at the expiration of that period. Sub-section (6) is deleted. Sub-section (7) of Section 49 provides that if within a period of one year from the date of confirmation of the purchase 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 as otherwise permissible in the case of adjacent land, under the relevant plan.

10. The Supreme Court in its Judgments in the case of *Chabildas V/s. State of Maharashtra and Ors.*¹ has after considering the law on the subject explained the legal position as under :

23. On a conspectus of the above authorities, the following position in law emerges:

23.1 In all section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc. shall be deemed to have lapsed.

23.2 If within the period specified in Section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein the market value shall be the market value of the land as on the date of Section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisition application. In case this is not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

23.3 If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under Section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7).

11. In the light of the above decision and the relevant statutory

¹ (2018) 2 SCC 784

provisions alluded to hereinabove the admitted factual position in the present case reveals as follows:-

- (i) The final revised development plan of Karjat Municipal Council was sanctioned in the year 1996. Petitioner's said land was reserved for the purpose of "vegetable market" under reservation No.59;
- (ii) On 20th August 2015, Petitioner served the purchase notice under the provisions of Section 49(1) of the said Act. The 6 months mandatory period under the aforesaid purchase notice came to an end on 20th February 2016;
- (iii) The reasons given by Respondent No.2 in support of its submission that the purchase notice was defective, are baseless and untenable. Infact, the Affidavit filed by the State Government supports the submissions advanced by the Petitioner and not the submissions advanced by the Respondent No.1.
- (iv) Respondent Nos.1 and 2 failed to take any action on the aforesaid purchase notice within the prescribed period and thus there was deemed confirmation of the purchase notice w.e.f. 20th February 2016;
- (v) Admittedly, Respondent No. 2 i.e the appropriate authority did not make any application to the State Government within one

year from the date of deemed confirmation of the purchase notice as required under sub-clause 7 of Section 49 of the MRTTP Act;

- (vi) Hence, on 20th February 2017, the reservation of the said land for vegetable market was deemed to have lapsed under the provisions of Section 49(7) of the said Act.
- (vii) Only on 3rd May 2017, the Respondent No.2 - Council for the first time addressed a letter to the Respondent No.1 - State that it was not in a position to acquire the said land though the Council was ready for development of the said reservation under the accommodation reservation scheme or to pay the TDR; the said letter does not assist the Respondents in any manner whatsoever.
- (viii) thus, not only the reservation on the said land is deemed to have been lapsed under Section 49(7) of the said Act on 20th February 2017, but the said land has also now become available to the Petitioner to be developed as otherwise permissible.

12. In view of the above discussion and findings, the Petition succeeds and stands allowed in terms of prayer clauses (a) and (b) which are reproduced in paragraph 1 above. However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]