

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.366 of 2020

Snehal Ramesh Rangari and others

... Petitioners

Versus

The State of Maharashtra,
through the Secretary, Urban Development
Department, Mantralaya,
Mumbai-32 and others

... Respondents

Mr. G.K. Mundhada, Advocate for Petitioners.

Mr. N.S. Rao, Assistant Government Pleader for Respondent
Nos.1, 2 and 4.

Mr. A. Shelat, Advocate for Respondent No.3.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 4 APRIL 2022

P.C.:

Heard the learned Counsel for the parties.

2. The Petitioners are aggrieved by the order passed by the Respondent No.2 on 29 December 2020 refusing to take action on the purchase notice submitted by the Petitioner under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 (“the Act of 1966”).

3. The Petitioners had given notice in respect of the land in question, that is Survey No.88, admeasuring 2.97 hectare at Village Sumthana, Taluka Bhadravati, District Chandrapur to the Respondent No.2 on 23 April 2019 stating that the Petitioners are unable to sell the land except at a lower price than at which they might reasonably have been expected to sell if it were not so designated or allocated in the development plan where the land was reserved for public purpose of the Truck Terminus. The said purchase notice was rejected by the order dated 23 October 2019. Hence, the Petitioners have filed the present Petition.

4. While the Petition was pending, the Petitioners gave another notice dated 23 June 2020 which was rejected by the Respondent No.2 by order dated 29 December 2020. This order is also challenged by amending the present Petition.

5. The foundation of the impugned order is that the Petitioners could not demonstrate that because of the reservation in the development plan in respect of the property in question, the Petitioners were deprived of the use thereof and they were unable to sell it except at a lower price.

6. Section 49 of the Act of 1966 has four contingencies. The Petitioners' land is reserved in the development plan for Truck Terminus. Therefore, there is designation/allocation of the property

in the plan. Section 49(e) of the Act of 1966 reads thus :

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

(1) Where –

(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,”

There is therefore element of factual enquiry as to the inability of the person to sell the land at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated. It is not that because of reservation, the property cannot be sold at all and therefore the authorities must be satisfied that the applicant is unable to sell it except at a lower price. Since this finding is rendered against the Petitioners, we now turn to the notices issued to the Petitioners under Section 49(1) of the Act of 1966 as to whether the Petitioners had laid any factual foundation thereof. These are Advocate's notice. We do not find any such factual assertion in the notices. All that the Petitioners have done is to reproduce the language of Section 49(1)(e) of the Act of 1966. Hence we do not find that we can interfere in the finding that the Petitioners have failed to prove this factual position.

7. The learned counsel for the Petitioners accepts that these facts have not been stated in the first purchase notice, and states that the Petitioners will give a detailed notice. That being the position, instead of closing the doors of the Petitioners totally, we intend to permit the Petitioners to give another notice under Section 49(1)(e) of the Act of 1966 after placing on record the necessary material to come to the conclusion that the Petitioners were unable to sell their land at a lower price.

8. As regards the second purchase notice is concerned, when the first purchase notice is rejected and the Petition is pending, it was not for the Petitioners to issue another purchase notice without getting the first purchase notice set aside. The Respondents have rightly objected to the second notice.

9. The Writ Petition is accordingly disposed of by granting liberty to the Petitioners to submit a fresh notice under Section 49 of the Act of 1966 by giving necessary particulars. If such notice is given, we make it clear that the impugned order passed rejecting the notice under Section 49 of the Act of 1966 will be considered as a prima facie view and upon the notice so given by the Petitioners, the decision be taken as per law on its own merits.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)