

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

WRIT PETITION NO. 1747/2021

- 1] Meeta Yuvraj Bakde,
Age 45 years, Occupation -Housewife,
'Amey"Opp. Balaji Dal Mill,
Near Dr.Marothi Hospital, Shastri Ward,
Hinganghat, District Wardha-442 301.
- 2] Mrs. Sulbha Danraj Kumbhare,
Age 58 years, Occupation -Housewife,
Plot No.30 LIC Colony, Post Vivekanand Nagar,
Ajni, Nagpur-440 015

..... **PETITIONERS**

...V E R S U S...

- 1] The State of Maharashtra,
through the Director of Town Planning,
State of Maharashtra, Central Building,
Pune-1.
- 2] The Municipal Council (MC)/ Nagar Parishad
through its Chief Officer at Hinganghat,
Tq.Hinganghat, District Wardha.
- 3] Town Planner Wardha,
Town Planning & Valuation Office, Wardha.
Ambedkar Chowk, Sawangi Road,
Near Stadium, Wardha.

..... **RESPONDENTS**

 Shri Girish Mundhada, Advocate for petitioners.
 Ms Mayuri Deshmukh, Assistant Government Pleader for respondent nos. 1 & 3.
 Shri Anand S. Deshpande, Advocate for respondent no.2.

CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.
DATE : 11th MARCH, 2022.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 28.01.2021 passed by the Director, Town Planning in proceedings under Section 49(4) of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the said Act'). By that order the purchase notice dated 24.07.2020 issued on behalf of the petitioners has not been confirmed. It is not necessary to enter into greater details, except for noting that, according to the petitioners they are joint owners of lands in Survey No.132/6/1 and 2 as well as Survey No.158/1/C/1 and C/3. These lands were shown as reserved for playground as per Reservation Site No.17. This was pursuant to the revised development plan of Hinganghat City dated 15.06.2006. According to the petitioners, in view of such reservation they are not in a position to have any beneficial use of these lands and they were also not able to sell the same at the prevailing market value. Hence purchase notice under Section 49(1)(e) of the said Act was issued to the respondents. By the impugned order dated 28.01.2021 the purchase notice was rejected on the ground that there was no compliance with the requirements of Section 49(1)(d) and 49(2) of the said Act.

3. The learned counsel for the petitioners by placing reliance on the decision in *Aone Land Developers vs. The State of Maharashtra and ors.* (Writ Petition

No.9587/2017 decided on 20.11.2019 at Principal Seat Mumbai) submitted that various contingencies provided under Section 49(1)(a) to (e) were independent of each other and it was only if the purchase notice was given in the context of the contingencies mentioned in Section 49(1)(d) of the said Act, that compliance with the provisions of Section 49 (2) of the said Act was required. Since the petitioners had issued notice under Section 49(1)(e) of the said Act, there was no question of seeking compliance of provisions of Section 49(2) of the said Act. According to him, paragraph 8 of the purchase notice clearly indicates the fact that the petitioners had invoked Section 49 (1)(e) of the said Act. Hence the respondent no.1 was not justified in rejecting the purchase notice.

4. The learned Assistant Government Pleader for the respondent nos. 1 and 3 and Shri Anand S. Deshpande, learned counsel for the respondent no.2 supported the impugned order. According to them, the compliance was required to be made by the petitioners as stated in the impugned order and the same was sufficient to dismiss the claim of the petitioners.

5. On hearing the learned counsel for the parties and after perusal of the material documents, we find that in paragraph 8 of the purchase notice dated 24.07.2020 the petitioners have stated that as the land in question was reserved for playground, it became incapable of reasonable beneficial use. The petitioners were not in a position to sell the same at the market rate and therefore had issued the said

purchase notice. Since the petitioners had invoked the provision of Section 49(1)(e) of the said Act, it was not necessary for them to comply with the requirements of Section 49(2) of the said Act which position is clear from the judgment in *Aone Land Developers* (supra). The respondent no.1 while passing the impugned order misdirected itself by proceeding on the basis that the petitioners had invoked the provision of Section 49(1)(d) of the said Act. Paragraph 8 of the purchase notice ought to have been considered by the respondent no.1. Since the respondent no.1 has failed to consider the purchase notice in its proper perspective and in the light of the law laid down in *Aone Land Developers* (supra), the impugned order is liable to be set aside. The purchase notice deserves to be considered afresh.

6. Accordingly, the impugned order dated 28.01.2021 passed by the respondent no.1 is set aside. The respondent no.1 shall re-consider the purchase notice dated 24.07.2020 in the light of the observations made hereinabove and the law laid down in *Aone Land Developers* (supra). It is open for the petitioners to place on record additional documents, if any, in support of their request. The decision be taken on its own merits and in accordance with law within a period of three months from the production of this order.

Rule is made absolute in aforesaid terms. No costs.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)