

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

WRIT PETITION NO.6776 OF 2019

PETITIONERS : 1. Manoj Murlimanohar Khandelwal,
Age 36 years, Occupation Business

2. Manish Murlimanohar Khandelwal,
Age 31 years, Occupation Business

1 and 2, R/o-Akot road, Gandhinagar
Banosa, Daryapur, Tq. Daryapur, Dist.
Amravati.

..VERSUS..

RESPONDENTS : 1. State of Maharashtra,
through the Secretary Urban
Development Department,
Mantralaya, Mumbai

2. The Director of Town Planning, State
of Maharashtra, Central Building,
Pune-1.

Amendment carried out
as per Court's order
dated 23.02.2021.

3. Municipal Council/Nagar Parishad
through the Chief Officer, Daryapur,
Dist. Amravati.

Mr G. K. Mundhada, Advocate for the Petitioners.
Ms H. N. Jaipurkar, AGP for the Respondents No.1 and 2.
Mr N. S. Bhelkar, Advocate for the Respondent No.3.

CORAM : **SANDEEP K. SHINDE AND**
MRS. VRUSHALI V. JOSHI, J.J.

DATE : **2nd DECEMBER, 2022.**

ORAL JUDGMENT : (PER : SANDEEP K. SHINDE, J.)

. Rule. Rule made returnable forthwith. By consent of parties, taken up for hearing forthwith.

2. Ms Jaipurkar, learned Assistant Government Pleader, waives service for Respondents No.1 and 2.

Relevant Facts of the Case:

3. Revised Development Plan of Daryapur City, came into force on 29.04.2013, wherein Survey No.106/2 of Village Daryapur, area Admeasuring 0.55 H.R. was reserved for Primary School and Play ground, vide reservation No.16 and area admeasuring 0.30 H.R. was reserved for Hospital and Maternity Home, vide Reservation No.17. Petitioners are owner of 0.20 H.R. of land Survey No.106/2 ("said land" for short).

4. The development permission for use of the said land was refused by the Chief Officer, Municipal Council, Daryapur, on 07.04.2014, reason being, the said land was affected by above stated reservation in the development plan.

Petitioners' case is, on account of Reservation, the land became incapable of being reasonably use in its existing State. Thus, he was compelled to issue purchase notice under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act" for short). As such, purchase notice was served on 01.03.2019 at the Office of Director, Town Planning, Pune, alongwith 7/12 extract, measurement sheet and part plan.

5. In reference to the purchase notice, the Chief Officer, Municipal Council, Daryapur and Assistant Director of Town Planning, Amravati, Division Amravati, submitted report on 16.03.2019, 11.06.2019 and 22.07.2019 to the Director of Town Planning. Whereafter, Petitioners were heard by the Director of town Planning, who and vide order dated 23.08.2019, rejected the purchase notice only on the ground that, "specific location of the said land owned by the Petitioners being not demarcated, it could be found, it is affected by which reservation".

6. Feeling aggrieved, the order passed by the Director of Town Planning, this petition is preferred.

7. Heard Mr Mundhada, learned Counsel for the Petitioners and Ms Jaipurkar, learned Assistant Government for the Respondents No.1 and 2.

8. In the case of *M/s. Mahadev Corp ..V/s.. State of Maharashtra and others*, vide decision dated 05.07.2017, this Court has held, that while considering the issue of confirmation of the notice in accordance with sub-section 4 of Section 49, the State Government ought to have considered whether conditions specified in Sub-section 1 of Section 49 have been duly fulfilled or not. In the case at hand, although development permission of the said land was refused, because of its designation in the plan, Petitioners' case was squarely covered by Clause (d) and (e) of sub-section 1 of Section 49 of the MRTP Act, yet, the Respondents for the reason best known and/or unknown to them, ignored the mandate of Sub-section (4) of Section 49 of the MRTP Act

and rejected the purchase notice, on the ground, that the Petitioners did not submit the part plan of area of the said land and measurement sheet. Thus held, that for want of these two documents, actual/specific location of land admeasuring 0.20 H.R. owned by the Petitioners, could not be identified. To be precise, the purchase notice was rejected by the Director of Town Planning stating, that “As specific location of the land admesuring 0.20 H.R. owned by the Applicant is not demarcated, it could not be found that which reservation is there on the said land. Also there is no clarity about the approached road towards 0.20 H.R. land owned by the Applicant.” In our view, ground of rejection falls beyond the scope of Sub-section (4) of Section 49 of the MRTP Act. However, we do not wish to dwell on this issue, since the Respondents in their reply submitted that the Respondents shall reconsider the Petitioners’ case (Emphasis supplied), if the Petitioners submit the documents; (i) showing the ownership of the land admeasuring 0.20 H.R. out of 1.70 H.R. reserved land, with proper demarcation and; (ii)

demarcation and measurement of the land in respect of which, the purchase notice has been issued.

9. We find the approach of the Respondents is wholly erroneous and contrary to the scheme Section 49 of the MRTP Act. That to say, sub-section 4 of Section 49 of the MRTP Act, mandates, that on receiving record and reports, if the State Government is satisfied that conditions specified in sub-section (1) are fulfilled, which has rendered the land incapable of reasonably beneficial use, the purchase notice shall be confirmed. In the case at hand, the development permission was refused by the Chief Officer, Municipal Council, Daryapur, on 07.04.2014, which itself shows, that Petitioners' case was squarely covered, by Clause (d) and (e) of sub-section 1 of Section 49 of MRTP Act.

10. In that view of the matter, the impugned order is quashed and set aside. For the reasons stated above, we direct the State Government to take the appropriate decision, on confirmation of 'purchase notice', in accordance with sub-

section (4) of Section 49 of the MRTP Act, within a period of three months from today. Rule is made partly absolute in aforesaid terms. Petition is disposed of.

(MRS. VRUSHALI V. JOSHI, J.) (SANDEEP K. SHINDE, J.)

TAMBE