

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

WRIT PETITION NO. 7810/2019

1. Reena Dhanraj Khandelwal,
Age 40 years, Occupation : Household,
2. Rashmi Dhanraj Khandelwal,
Age 40 years, Occupation : Household.

1 & 2 through power of attorney holder
Dhanraj Harichand Khandelwal, Age 61 years,
Occupation Busines,
R/o C/o Khandelwal Jewelers, Laxmibhavan Chowk,
Nagpur-440 010. **PETITIONERS**

...VERSUS...

- 1] The State of Maharashtra, through the
Secretary, Urban Development Department
Mantralaya, Mumbai-32.
- 2] The Municipal Cooperation City of Amravati.
Through its Commissioner, Rajkamal Chowk,
Amravati – 440 606 **RESPONDENTS**

Shri G.K.Mundhada, Advocate for petitioners.
Ms N. P. Mehta, Assistant Government Pleader for respondent no. 1.
Shri J.B.Kasat, Advocate for respondent no.2.

CORAM :- A.S.CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ
DATED :- JANUARY 07, 2022.

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

Rule. Rule made returnable forthwith. Heard the learned counsel
for the parties.

2. The challenge raised in this writ petition is to the order dated 03.10.2019 passed by the respondent no.1 thereby not accepting the notice issued by the petitioners under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the said Act'). Land admeasuring 2 H 22 A bearing Survey No.88/2/A of Village- Rahatgaon, Taluka and District Amravati is owned by the petitioners. The same has been reserved at Serial No.31 for the purpose of 'Amusement Park' as per 2nd Revised Draft Development Plan of the City. The petitioners moved an application under Section 44 of the said Act on 30.04.2019 seeking permission to have the layout sanctioned. This request was rejected on 21.05.2019 by the Assistant Director of Town Planning. Thereafter on 22.05.2019 the petitioners issued a notice under Section 49 of the said Act praying that necessary steps be taken for acquisition of the aforesaid land. On 03.10.2019 the State Government did not accept the request made by the petitioners under Section 49 of the said Act by observing that it was not shown that the owners of the land were deprived of beneficial use of the said land.

3] The learned counsel for the petitioners submits that in the purchase notice issued under Section 49 of the said Act a reference was made to the order dated 21.05.2019 passed by the Assistant Director of Town Planning refusing to grant permission for development. In view of that order the petitioners were deprived of beneficial use of that land and hence the case of the petitioners was covered by the provisions of Section 49(1)(b) and (e) of the said Act. This aspect was not taken into consideration while passing the impugned order and the purchase

notice was liable to be confirmed. The learned counsel has referred to the decision in Writ Petition No.11527/2016 (*M/s. Mahadev Corp vs. State of Maharashtra and ors.*, decided on 05.07.2017 at Principal Seat, Mumbai) to urge that the order passed by the Authority under Section 49 ought to indicate proper application of mind to all requirements thereof. It is therefore submitted that the impugned order is liable to be set aside and the notice under Section 49 of the said Act ought to be accepted.

4. The learned Assistant Government Pleader appearing for the respondent no.1 has relied upon the affidavit in reply and submitted that after considering all relevant aspects the impugned order refusing to confirm the purchase notice has been passed. Since it was not shown that the land owners were incapable of beneficial use of that land, the purchase notice was not confirmed. It is also submitted that since the land in question was an open land and there was no approach road available coupled with the fact that there was meagre development in the vicinity, the impugned order did not call for any interference as all relevant aspects had been considered by the respondent no.1.

5. We have perused the documents placed on record. It can be seen that initially the petitioners on 30.04.2019 had sought permission to develop the property which permission was refused on 21.05.2019 by the Assistant Director of Town Planning. In the notice under Section 49 of the said Act that was issued on the next date, a reference is made to the order dated 21.05.2019 passed by the Assistant Director of Town Planning that was one of the reasons for seeking confirmation of the aforesaid notice. This Court in *M/s. Mahadev Corp* (supra) has held that it was

necessary to consider as to whether the conditions specified in Section 49 (1) of the said Act have been duly fulfilled by the land owners while considering the aspect of confirmation of notice issued under Section 49 of the said Act. If the same was not considered, the decision in question would reflect non-application of mind. Perusal of the order dated 03.10.2019 does not indicate consideration of the effect of the order dated 21.05.2019 that was passed by the Assistant Director of Town Planning refusing to grant permission to develop the land in question. Since the land owners contend that they have been deprived of beneficial use of that land, the said aspect in the light of Section 49(1)(b) and (e) of the said Act ought to have been considered. It is thereafter that the other reasons given in the impugned order could be taken into consideration. We find that since the order dated 21.05.2019 refusing to grant permission to develop the property would have some material bearing on the question of acceptance or otherwise of the purchase notice, a fresh decision on that purchase notice is warranted. The order dated 03.10.2019 is liable to be set aside for non-consideration of the aforesaid relevant aspect.

6. In view of aforesaid the following order is passed:

- 1] The order dated 03.10.2019 passed by the respondent no.1 refusing to confirm the purchase notice dated 22.05.2019 is set aside.
- 2] The respondent no.1 shall re-consider the said notice in accordance with the provisions of the said Act and take appropriate decision in accordance with law after giving due opportunity of hearing to the petitioners.

Such exercise be completed within a period of four months from the production of the copy of this order before it.

A statement is made on behalf of the petitioners that recourse would not be taken to the provisions of Section 49(5) of the said Act is accepted. All points on merits are kept open.

Rule is made absolute in the aforesaid terms with no order as to costs.

(PUSHPA V. GANEDIWALA J.)

(A.S.CHANDURKAR, J.)

Andurkar..