

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

WRIT PETITION NO. 7938 OF 2019

Rajeev Bhaskarrao Potdar,
aged about 60 years, Occ. Doctor,
R/o Mule Layout, Ward No.11, Kalmeshwar,
Tq. Kalmeshwar, Distt. Nagpur.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through its Secretary, Urban Development,
Mantralaya, Mumbai – 32.
2. The Director,
Town Planning and Assessment Department,
Central Office, Pune.
3. Municipal Council, Kalmeshwar,
through its Chief Officer,
Tq. Kalmeshwar, Distt. Nagpur.

RESPONDENTS

Shri Anand Deshpande, Advocate for the petitioner.
Shri A.S. Fulzele, Additional Government Pleader for respondent Nos. 1 and 2/
State.
Shri R.J. Kankale, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : 18/10/2022

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 the Writ Petition is to the order dated 26/8/2019 passed by respondent No.1 thereby rejecting the notice issued by the petitioner under Section 49 of the Maharashtra Regional and Town

Planning Act, 1966 (for short “the said Act”). The said notice has been rejected on the ground that in the measurement sheet, the land owned by the petitioner has not been clearly indicated.

3. The petitioner is the owner of the land bearing Survey No. 356/2. The said land to the extent of 0.55 R came to be reserved for a Shopping Complex that was proposed by the Municipal Council. The sale deed, standing in favour of the petitioner, is dated 1/3/2001. After purchasing the said land, the petitioner sought to convert the same for non-agricultural use. That request however was rejected by the Sub-Divisional Officer on 6/10/2006. Thereafter, on 25/2/2019, the petitioner issued a notice under Section 49 of the said Act seeking release of the said land from reservation. The Chief Officer on 6/5/2019 referred to the fact that the permission to convert the said land had been rejected. Thereafter, on 10/8/2019, the petitioner informed respondent No.1 that he was not in a position to develop the said land for want of adequate documents. It is thereafter that respondent No.1 proceeded to reject the request for releasing the said land from reservation.

4. We have heard the learned Counsel for the parties and we have perused the documents on record.

5. In the impugned order, a reference is made to the land of the petitioner bearing Survey No. 365/2 (New) and Old Survey No. 423

admeasuring 0.55 R. However, while considering the documents submitted along with the aforesaid notice, respondent No.1 has observed that the location of Survey No. 356/2/B admeasuring 0.55 R could not be located from the measurement map. It is further stated that there is no clear opinion expressed by the Municipal Council on the notice issued by the petitioner. On these counts, respondent No.1 was of the view that in the light of the provisions of Section 49(1)(d)(i) of the said Act, it was not possible to accept the said notice.

6. We have been shown the Draft Development Plan as well as the measurement sheet wherein Survey No. 356/2 admeasuring 0.55 R can be seen. It could not be gathered as to how respondent No.1 has sought to refer to Survey No.356/2/B when that is not the survey number of the petitioner's land. The description of the said land can be found in the notice issued under Section 49 of the said Act as well as in the communication dated 6/5/2019 issued by the Chief Officer to respondent No.1. As per the provisions of Section 49(1)(d)(i) of the said Act, if the land has become incapable of reasonably beneficial use, the affected owner can serve such notice on the Government. It is the specific case of the petitioner that he is unable to develop the said land since it is reserved for shopping complex and that he has no funds to do the same.

7. We find that the only reason for rejection of the aforesaid

notice is the failure to locate Survey No. 356/2/B admeasuring 0.55 R. As stated above, the petitioner is the owner of Survey No. 356/2 which land can be seen from the Draft Development Plan as well as the measurement sheet. In these facts therefore we find that respondent No.1 ought to re-consider the notice issued by the petitioner under Section 49 of the said Act since the only ground on which that notice has not been accepted is failure to locate the subject land.

8. Hence, for the aforesaid reasons, we are inclined to direct respondent No.1 to re-consider the notice served under Section 49 of the said Act in accordance with law. The petitioner as well as the representative of the Municipal Council can be summoned by respondent No.1 if it desires any clarification with regard to the location of the petitioner's land bearing Survey No. 356/2. Necessary decision under Section 49 of the said Act be taken within a period of three months from receiving copy of the judgment.

9. Keeping the points raised in the Writ Petition open, the same is allowed in the aforesaid terms. Rule accordingly. No costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

SUMIT