

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14275 OF 2016

Prakash Maniklal Agarwal & Ors.

.. Petitioners

Vs.

Malegaon Municipal Corporation & Ors.

.. Respondents

- Mr. Shriram S. Kulkarni, for the Petitioners.
- Mr. Shriniwas S. Patwardhan, for Respondent Nos.1 & 2–Corporation.
- Ms. M.P. Thakur, AGP for Respondent Nos.3 to 5–State.

**CORAM : A. S. CHANDURKAR &
M.W. CHANDWANI, JJ.**

DATE : 16th FEBRUARY, 2023.

P.C. :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for the respective parties.
3. The petitioners are the owners of Plot Nos.53 and 75 that are located within the limits of Malgegaon Municipal Corporation. Insofar as Plot No.53 is concerned, it was shown to be reserved for garden as per Site No.18 in the Part Development Plan for the year 2006. Insofar as Plot

No.75 is concerned, area admeasuring 5162 sq.mtrs., was shown to be reserved for Primary School and Playground as per Site No.19. Non-agricultural permission came to be granted by the Collector for portion of the aforesaid lands, after which the layout came to be sanctioned for Survey No.73 at Malegaon Camp. The reservation of the aforesaid sites continued in the Sanctioned Development Plan of the city of Malegaon. On 07.08.2014, the petitioners issued a notice under Section 49 of the Maharashtra Regional & Town Planning Act, 1966 ("the Act 1966") calling upon the State Government to purchase the aforesaid lands for the purpose of which they were shown to be reserved. This notice was received by the Town Planning Department of Nashik on 11.08.2014. On 13.08.2014, the Joint Director Town Planning Department, Nashik submitted his report to the Commissioner of Malegaon Municipal Corporation as required. The petitioners were issued a notice on 23.01.2015 by the Urban Development Department, in which they were informed that the hearing of the proceedings pertaining to their purchase notice would be conducted on 29.01.2015.

4. It is the case of the petitioners that despite attending the said hearing, no order was passed in the said proceedings for the period of

more than six months. Within a further period of one year from expiry of that period, the Municipal Corporation failed to take further steps for acquiring the said lands and hence by this Writ Petition, a declaration is sought that the reservation in question has lapsed and the petitioners are entitled to develop those lands in accordance with law.

5. Shri. S.S. Kulkarni, learned counsel for the petitioners submitted that in view of the provisions of Section 49(5) of the Act of 1966, the State Government ought to have passed a final order on the purchase notice dated 07.08.2014 issued by the petitioners. Though notice of hearing was given and hearing was conducted on 29.01.2015, the State Government failed to pass any final order on the said purchase notice. As a result, the notice was deemed to have been confirmed on the expiry of the period of six months. He further submitted that under Section 49(7) of the Act of 1966, the appropriate authority was required to make an application for acquiring the land, for which the purchase notice had been confirmed. Though period of one year from the deemed confirmation of the purchase notice had expired, there was no application made to acquire the said land by the appropriate authority. He invited attention to the communication dated 28.08.2014 issued by the Commissioner, Malegaon Municipal

Corporation, in which it was stated that the purchase notice was liable to be confirmed. However, in the affidavit-in-reply filed by the respondents, it had been admitted that no such steps had been taken to acquire the said land. In view of the aforesaid provisions, it was clear that the reservation in question had lapsed for failure to comply with the mandatory provisions of Section 49 of the Act of 1966. It was thus prayed that the Writ Petition be allowed.

6. Shri. S.S. Patwardhan, learned counsel for Respondent Nos.1 and 2-Corporation did not dispute the factual aspects available on record. The issuance of the purchase notice dated 07.08.2014 under Section 49 of the Act of 1966, its receipt as well as the conduct of hearings before the State Government on 29.01.2015 was an admitted fact. According to him, there was no material on record to indicate that within a period of one year from the date of confirmation of the notice dated 07.08.2014 any application was made to acquire the land in respect of which such notice had been given. He referred to the statements made in affidavit-in-reply filed on behalf of Respondent Nos.3 to 5 in that regard.

Ms. M.P. Thakur, learned AGP for Respondent Nos.3 to 5-State submitted that though hearing was conducted on 29.01.2015, no final

order was passed in the said proceedings by the State Government. She also referred to the affidavit-in-reply filed on behalf of Respondent Nos.3 to 5.

7. We have heard learned counsel for the respective parties at length and with their assistance we have also perused the documents on record. In the light of the undisputed position on record, we find that the petitioners would be entitled for a declaration that the reservation in question stands lapsed in view of the provisions of Section 49(5) read with Section 49(7) of the Act of 1966. It is seen from the record that land from Plot No.53 was reserved for garden as per Site No.18 in the Part Development Plan of the city of Malegaon. Plot No.75 was shown to be reserved for Primary School and Playground as per Site No.19. The layout in question was thereafter sanctioned and the reservation of the aforesaid sites continued in the sanctioned Development Plan. The purchase notice dated 07.08.2014 issued by the petitioners was duly served. On 13.08.2014 the Joint Director of the Town Planning Department submitted his report to the Municipal Commissioner. The Urban Development Department conducted hearing of the proceedings on 29.01.2015 as required by Section 49(4) of the Act of 1966. However,

within a period of six months from the service of the purchase notice, the State Government did not pass any final order on the said notice. As a result, the deeming fiction contemplated by Section 49(5) of the Act of 1966 operated. The purchase notice dated 07.08.2014 was thus deemed to have been confirmed on the expiry of the period of six months. It is not the case of the Municipal Corporation that within a period of one year from the date of confirmation of the notice, it had made an application to acquire the land as required under Section 126 of the Act of 1966. As a result, the reservation for the aforesaid lands would be deemed to have lapsed and the lands would be released from reservation under Section 49(7) of the Act of 1966.

8. In the light of the aforesaid discussion, it becomes clear that the mandatory requirements of Sections 49(5) and 49(7) stand satisfied inasmuch as the State Government failed to pass a final order on the purchase notice within a period of six months on receipt of the same. Similarly, the Municipal Corporation failed to take steps within a period of one year of confirmation of the purchase notice. The consequences as provided in the aforesaid provisions would therefore operate.

9. The petitioners' application seeking sanction to the plan submitted

came to be rejected on the ground that the said lands had been shown to be reserved. Since that reservation has now lapsed, it would be necessary for the Municipal Corporation to re-consider the petitioners' application afresh in accordance with law.

10. Accordingly, it is declared that the reservation for Site No.18 as well as Site No.19 has lapsed in view of the provisions of Section 49(5) read with Section 49(7) of the Act of 1966. Similarly, the communication issued by the Municipal Corporation on 18.05.2016 refusing to sanction the plans submitted by the petitioners is also set aside. It is directed that the petitioners' application dated 11.02.2016 seeking development of the aforesaid lands shall be re-considered by the Municipal Corporation in accordance with law.

11. With these directions, the Writ Petition is allowed. Rule is made absolute with no order as to costs.

12. Parties to act on an authenticated copy of this order.

[M.W. CHANDWANI, J.]

[A. S. CHANDURKAR, J.]