

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4366 OF 2022
WITH
INTERIM APPLICATION (L) NO. 10298 OF 2022

Manmohan Ranbirsan Mehra } ...Petitioner

V/s.

1. Municipal Corporation of Greater }
Mumbai, Mahapalika Marg, Mumbai- }
400 001. }

2. Assistant Commissioner }
K-Ward, Municipal Corporation of }
Greater Mumbai, Azad Road, Andheri }
(East), Mumbai-400 059. }

3. State of Maharashtra }
through the office of Government }
Pleader, High Court, Bombay. }

...Respondents

Mr. K.P. Shah for petitioner.

Mr. S.B. Gore-AGP.

Mr. Bhavak Manek a/w. Ms. Vandana Mahadik for BMC.

CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, J.J.

DATE : 9th AUGUST 2023.

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J)

1. Rule. Rule made returnable forthwith. Heard finally by

consent of learned counsel for the respective parties.

2. We find that even though the purchase notice dated 20th July 2017 was replied by the Corporation saying that in the opinion of the legal department, the notice was improper and bad in law, the Corporation, in giving such a reply did not clarify as to on what grounds the notice would be termed improper and bad in law. Therefore, we have carefully perused the purchase notice issued under section 127 of the Maharashtra Regional Town Planning Act, 1966, just to know, if it is really improper and bad in law.

3. We find that the notice fulfills all the essential requirements of Section 127 of the MRTP Act. So, the next question that would arise is as to whether or not the Corporation/the appropriate authority has taken steps for acquisition of the land within the stipulated period of 24 months from the receipt of notice under section 127 of the MRTP Act, which we would consider in the following paragraphs.

4. From the reply of the Corporation, it is clear that no steps whatsoever for acquisition of the subject land affected by the reservation of recreation ground have been taken by the Corporation. Of course, even if it is the contention of learned counsel for the Corporation that the subject land is encroached upon by several

(hutments) and has been declared to be a slum area by 1979 notification, the fact remains that the land itself is affected by DP reservation of recreation ground for the purposes of the Corporation. If it is so, the Corporation would also be the appropriate authority and ought to have taken steps for acquisition of the land within the stipulated period but it has not taken such steps. Infact, the reply filed by the Corporation impliedly suggests that the land could be declared to be de-reserved by deeming fiction when the Corporation has suggested that the land could be developed in terms of the provisions of Regulation 33 (10) of DCPR 2023.

5. If this is so, we find no impediment in allowing the petition insofar concerned the declaration regarding de-reservation of the land. As regards proposal of the Corporation for development of the land in terms of Regulation 33 (10) of the DCPR, 2023, it can be appropriately considered by the Corporation as and when permission is sought by the petitioner for development of this land.

6. At this stage learned counsel for the Corporation submits that in a P.I.L which was also concerned with the subject land, the Corporation had filed a reply in which the Corporation had stated that it was willing to acquire the land. This statement of the Corporation is

also indicative of the fact that so far no steps whatsoever for acquisition have been taken by the Corporation.

7. Learned counsel for the Corporation has invited our attention to the averments of the Corporation made in Paragraph nos. 10 and 11 of its reply and has made a request to us to consider the same. Accordingly we perused those paragraph nos. 10 and 11 of the said reply. It appears that averments made in therein relate to relief claimed by the petitioner seeking a direction against the Corporation for demolition of illegal and unauthorised construction of the property. This relief, according to the Corporation, has been sought by the petitioner in another petition which is pending before another bench.

8. As for this relief we must say, it having been made in another petition, this Court need not go into that aspect of the matter, and this Court would have to confine itself to the main prayer made in the petition which is about giving a declaration that the subject land has become free from reservation and the petitioner is free to develop the land. The alternate relief claimed in this petition is about direction to the Corporation to acquire the subject land. The Corporation, however, has only stated that it can consider giving development permission in terms of Regulation 33 (10) of DCPR 2023 and it has not

said anything specifically about its intention to acquire the land.

9. In these circumstances, it would not be possible for this Court to consider the prayer regarding giving of directions to the Corporation to acquire the land. However, the main prayer being about de-reservation of the subject land can be considered which, in fact, we have already considered as could be seen from the discussion made hereinabove. At the cost of repetition, we would say that we have already found that all the requirements of section 127 of MRTP Act notice have been fulfilled in the present case. Inasmuch as no steps for the acquisition of the land within the stipulated time have been taken by the Corporation and all this would have an effect of deemed lapsing of reservation of the subject land. In the result, we partly allow the petition and declare that the agricultural land bearing old survey no. 78 Part-I and survey No. 79 Part, New Plot bearing CTS No. 525-C situated at village Kondivate, Taluka South Salsette, Mahakali Caves Road, Andheri (East), Mumbai has become free from reservation of recreation ground and now the petitioner is free to develop the land, in accordance with law after notification under section 127 (2) of the MRTP Act is issued by the State Government.

10. Learned counsel for the respondent also prays for staying

the effect and operation of this order. However, considering the grounds on which this petition is allowed and also the fact that section 127 (2) of MRTP notification is yet to be issued by the State Government, we do not think that the prayer can be granted and accordingly, it is rejected.

11. We, however, grant liberty to the Corporation to negotiate with the petitioner for acquisition of the subject land by grant of TDR/FSI or by granting benefit of Regulation 33(10) of DCPR, 2023.

12 Rule is made absolute in the above terms.

13. Writ Petition is disposed of.

14. Interim application is also disposed of in terms of final order.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)