



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

WRIT PETITION NO.6779 OF 2019

Aparna Gopalrao Deshmukh

.Vs.

State of Maharashtra thr. the Secretary, Urban Development Department and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. G.K. Mundhada, Advocate for the petitioner.

Mr. S.M. Ghodeswar, AGP for respondent No.1/State.

Mr. Vinay Dahat, Advocate h/f Mr. J.B. Kasat, Advocate for respondent No.2.

CORAM : NITIN W. SAMBRE AND

MRS. VRUSHALI V. JOSHI, JJ.

DATE : 08.04.2025

1. It is the contention of learned counsel for the petitioner Mr. G.K. Mundhada, that the provisions of Section 49 of the Maharashtra Regional Town Planning Act, 1966 (for short, 'MRTP') particularly sub-section 1 of Section 49 of the MRTP Act are not duly adhered to by the respondent No.1 while passing the impugned order. In such an eventuality his contentions are that, the order passed by the respondent No.1 is not sustainable and the issue is required to be re-considered by the respondent No.1 in the light of the observations made by this Court in Writ Petition No.7810/2019 (*Reena Dhanraj Khandelwal and another vs. The State of Maharashtra and*

another) decided on 07.01.2022 and the order passed at Principal Seat in Writ Petition No.11527 of 2016 (*M/s. Mahadev Corp Vs. State of Maharashtra and ors.*) on 05.07.2017. The relevant paragraph of the aforesaid judgment in *Reena Dhanraj Khandelwal and another (supra)* reads as under:-

“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 Cor (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.

The relevant paragraph of the judgment in ***M/s. Mahadev Corp (supra)*** also reads as under:

4. *On the earlier date, we pointed out to the learned AGP 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 by the petitioner. But the impugned communication shows that there is non-application of mind as regards the fulfillment of conditions prescribed by sub-section 1 of Section 49. Faced with this difficulty, the learned AGP on instruction states that the issue of confirmation of notice served by the Petitioner in accordance with the sub-section 4 of Section 49 will be reconsidered by the State Government and an*

appropriate decision will be taken within a period of three months from today.”

2. As against the above, the respective counsel for the respondents submit that though the decision is in tune with the provisions of Section 49 of the MRTP Act, however, the Court may pass an appropriate order in the matter.

3. In the aforesaid background what is required to be noticed is that the Authority while passing the order dated 28.01.2021 ought to have dealt with the issue as regards the satisfaction required under Section 49 of the MRTP Act.

4. Let there be a fresh order to that effect dealing with the contentions of the petitioner in the backdrop of the provisions under Section 49 of the MRTP Act particularly sub-section (1) of Section 49.

5. That being so, the impugned orders dated 28.08.2019 and 28.01.2021 are hereby quashed and set aside.

6. The respondents are directed to re-consider the purchase notice dated 15.04.2019 and pass fresh order in accordance with the provisions of Section 49 of the MRTP Act in the backdrop of the observations made by the Division Bench in the cases of *Reena Dhanraj Khandelwal and another (supra)* and *M/s. Mahadev Corp (supra)*.

7. The writ petition as such stands partly allowed and disposed of. No costs.

(MRS. VRUSHALI V. JOSHI, J)

(NITIN W. SAMBRE, J.)

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