

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 16064 OF 2024

MANSI
DHANANJAY
SHELKE

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Devi Construction LLP

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

Adv. Dormaan Dalal a/w Adv. Shirley Mody for the Petitioner.

**Ms. Kavita Solunke, Adl. GP a/w Ms. Vaishali Nimbalkar, AGP for
Respondent/State.**

CORAM: R.I CHAGLA &

FIRDOSH P. POONIWALLA, JJ.

RESERVED ON: 1st SEPTEMBER, 2026

PRONOUNCED ON : 23rd SEPTEMBER, 2026

ORAL JUDGEMENT (PER FIRDOSH P. POONIWALLA J.)

1. Rule. Rule made returnable forthwith and heard finally by consent of parties.

2. This Writ Petition seeks quashing and setting aside of the Order dated 9th September, 2024 passed by Respondent No.3, Director of Town Planning, and after quashing and setting aside the same confirming and accepting the Petitioner's Purchase Notice dated 15th March, 2024.

FACTS

3. The subject matter of this Petition is a property bearing Bhumapan No. 107/B of Village Vadgaon, admeasuring 2.10 Hectares (21000 sq. mtrs) (hereinafter referred to as “**the said property**”) owned by the Petitioner.
4. On 28th February, 2024, Respondent No.4, the Vadgaon Nagar Panchayat, who is the Planning Authority under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “**the MRTP Act**”) published a Draft Development Plan under Section 26 of the MRTP Act. As per the Draft Development Plan, a portion of the said property admeasuring 12,290 sq. mtrs. was reserved by the Planning Authority for a Garden, being Reservation No. 40 ‘Garden’.
5. The Petitioner addressed a letter dated 12th March, 2024 to Respondent No.5, the Chief Officer of Respondent No.4, objecting to the Garden Reservation.
6. A Purchase Notice dated 15th March, 2024 was issued by the Petitioner under Section 49 of the MRTP Act, and more particularly also under Section 49(1)(a) and Section 49 (1)(e). This Purchase Notice was addressed to Respondent No.2, being the Principal Secretary of Urban Development Department. Under Section 151 of the MRTP Act, the State Government has delegated its powers to pass Orders under Section 49(4) of the MRTP Act to

Respondent No.3 Director of Town Planning, vide Notification dated 1st December, 2016.

7. By an Order dated 9th September, 2024, Respondent No.3 rejected the Purchase Notice of the Petitioner. This Order dated 9th September, 2024 is impugned in the present Petition.

8. On 16th October, 2024, the present Petition was filed.

9. An Affidavit-in-Reply dated 5th November, 2025 was filed by one Abhijit Ketkar, Assistant Director of Town Planning, on behalf of Respondent Nos. 1 to 3. Although, Respondent Nos. 4 and 5 have been served in the matter, they have chosen not to appear in the matter.

SUBMISSIONS OF THE PETITIONER

10. Mr. Dormaan Dalal, the learned Advocate appearing on behalf of the Petitioner, submitted that Respondent No.3 had, by the impugned Order dated 9th September, 2024, rejected the request of the Petitioner under Section 49 of the MRTP Act on the purported ground that sub-section (2) of Section 49 contemplates that the Purchase Notice under Section 49 (1) has to be accompanied by a copy of an application made by the Applicant to the Planning Authority and an Order or decision of the Authority and of the State Government, if any. Mr. Dalal submitted that Respondent No.3 has completely misread Section 49 (1) & (2) of the MRTP Act. Mr. Dalal

submitted that a copy of an application made to the Planning Authority is to be accompanied along with a Purchase Notice only when the Applicant makes an application under Section 49 (1)(d) which contemplates refusal of permission for development of land or permission subject to conditions. Mr. Dalal submitted that, in the present case, the Petitioner has made the application under Section 49(1)(a) and (e). In fact, the Petitioner had specifically stated in the Purchase Notice that it is unable to sell the said property except at a lower price, which squarely falls under Section 49 (1)(e), and had raised an objection to the reservation vide letter dated 12th March, 2024. Mr. Dalal submitted that, in such cases, the law does not contemplate making any separate application to the Planning Authority in addition to the Purchase Notice.

11. Mr. Dalal submitted that Respondent No.3 had failed to appreciate the contention of the Petitioner that Section 49(1)(a),(b),(c),(d) and (e) are mutually exclusive of each other. Further, Mr. Dalal submitted that what must be considered by Respondent No.3 is the form and substance of the application and not the Section under which it is made.

12. Mr. Dalal submitted that the very purpose of Section 49 was to ensure that the owner of the property should not be deprived of the right to enjoy and use his/her property, which is a constitutional right under Article 300-A of the Constitution of India. Mr. Dalal, therefore, submitted that such

technical objections of Respondent No.3 come in the way of the Petitioner enjoying the benefits and value attached to its property which is lost because of the reservation put in place by the Respondents.

13. In support of his submissions, Mr. Dalal relied upon the following Judgements :

- a) *Aone Land Developers Vs. State of Maharashtra and Ors. 2019 SCC OnLine Bom 9845.*
- b) *Gopal Kashinath Lad Vs. State of Maharashtra and Ors. (Order dated 1st July, 2022 in Writ Petition No. 4661 of 2021).*
- c) *Chhabildas Vs. State of Maharashtra and Ors. (2018) 2 SCC 784*
- d) *Dinkar Anna Patil and Anr. Vs. State of Maharashtra and Ors. (1999) 1 SCC 354.*
- e) *State of Jammu and Kashmir and Anr. Vs. Shubam Sangra (2022) 20 SCC 1.*

SUBMISSIONS OF RESPONDENT NOS. 1 TO 3.

14. Respondent Nos. 1 to 3 have filed an Affidavit-in-Reply dated 5th November, 2025 of one Abhijit Ketkar, working as Assistant Director of Town Planning, Pune. Relying upon the said Affidavit, Ms. Kavita Solunke, the learned AGP, submitted that the Purchase Notice under Section 49(1) has

to be accompanied by a copy of an application made to the planning authority under the provisions of Section 49(2) of the MRTP Act and a copy of any Order or decision of the Authority and of the State Government, in respect of which a Notice has been given. Ms. Solunke submitted that, in the present case, the Petitioner has failed to annex a copy of the application made to the Planning Authority alongwith the Purchase Notice and, therefore, the Purchase Notice has been rightly rejected by Respondent No. 3.

15. Ms. Solunke further submitted that it is mandatory for the Petitioner to file a claim with the Municipal Council regarding not getting a reasonable price and submitting a copy of it along with the Purchase Notice. However, as per the said Purchase Notice given by the Petitioner, it does not appear that the Petitioner has filed a claim with the Municipal Council. Therefore, since a copy of such claim has not been submitted along with the Purchase Notice, the Petitioner has not complied with the provisions of Section 49(2) of the MRTP Act, and the Petitioner's Purchase Notice has been rightly rejected.

ANALYSIS AND FINDINGS

16. Section 49 of the MRTP Act reads as under :

“49. Obligation to acquire land on refusal of permission or on grant of permission in certain cases

(1) Where

(a) any land is designated by a plan as subject to compulsory acquisition, or

(b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

[(d) any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in clauses (a), (b) (c) or (d) claims-

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) (where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or]

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated, the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as "the purchase notice") requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any, in respect of which the notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as

soon as possible but not later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(6) [* *]*

(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.”

17. The issue involved in the present Petition is whether the Petitioner’s Purchase Notice could have been rejected on the ground that the Petitioner had not made an application under Section 49(2) of the MRTTP Act.

18. In our view, this issue is no longer *res integra*. In ***Aone Developers (supra)***, an Order dated 5th April, 2017 was passed by the Urban Development

Department, by which a Purchase Notice of the Petitioner therein came to be rejected on the ground that the Petitioner had not submitted any development proposal to the Planning Authority in respect of the land in question and, since, the land was situated in the residential zone, it was always open for the Petitioner to construct upon the remaining portion of the land by using the FSI/TDR of the reserved DP road. This Order dated 5th April, 2017 was assailed by filing a Writ Petition. In the said Judgement, a Division Bench of this Court held that sub-section (2) of Section 49 is unambiguous and it simply conveys that the Purchase Notice shall be accompanied by a copy of an application made by the Applicant to the Planning Authority and of any Order or decision of that Authority and of the State Government on such application, if any, in respect of which Notice is given. Sub-section (2) thus intends to cover only that contingency where any application was preferred to the Planning Authority and which has resulted into any order or decision of that Authority and of the State Government. Sub-section (2) cannot be read to be applicable to each of the contingencies in sub-section (1) but it will have to relate itself only where any application has been preferred to the Planning Authority and any order or decision on the same is made. The Judgement further holds that the indication is to be found in sub-section (3), which provides that on receipt of the Purchase

Notice, the State Government shall forthwith call from the Planning Authority and the appropriate Authority such records as may be necessary.

19. Further, in *Aone Developers (supra)*, this Court held that a perusal of Section 49 contemplates several contingencies resulting into an obligation to acquire the land. The contingencies enumerated are independent of each other, and one of the contingencies contemplated is whether the permission for development is sought and the same is refused or is granted subject to such conditions, and in such a contingency, the owner of the land may claim that the land has become incapable of reasonable beneficial use in its existing state, or that it cannot be rendered capable of reasonably beneficial use by carrying out the permitted development where the permission is granted subject to some conditions. Clause (e) of sub-section (1) of Section 49 contemplates an independent contingency where the owner of the land, because of its designation or allocation in the plan, claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell, if it were not so designated or allocated. The Purchase Notice which is served in the backdrop of the contingency contemplated in clause (d) of sub-section (1) of Section 49 can be related and connected to sub-section (2) of Section 49, where the Purchase Notice shall be accompanied by a copy of an application made and an order or decision of that Authority, if at all there is any. However, this would not be so in the case

of a Purchase Notice served on the Appropriate Authority, to purchase the interest in the land owned by taking aid of Clause (e) of Sub-Section (1) of Section 49.

20. Paragraphs 10, 11, 12, 15 (part) and 16 of the said Judgement are relevant and are set out hereunder :

“10. The said provision is carved out by the legislature as an obligation to acquire land on refusal of permission or grant of permission in certain cases, as can be discerned from the marginal note of the said section. Sub-section (1) of Section 49 contemplates several situations where the owner of the land or the 'person affected' may serve on the State Government a notice referred to as 'the Purchase Notice' requiring appropriate authority to purchase the interest in the land in accordance with the provisions of the Act. The contingencies contemplated when such a notice can be served are mutually exclusive/independent of each other and are contained in clauses(a), (b), (c), (d) and (e). Any owner of the land referred to in the aforesaid clause or the person affected by staking his claim as contemplated in clause (i) and (ii) i.e. the land has become incapable of reasonably beneficial use in its existing state or (ii) where the planning permission is given (subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions, it is this owner who falls within any of the category (a), (b), (c), (d) (e) may serve a Purchase Notice.

11. Sub-section (1) of Section 49 on its plain reading is indicative of the several contingencies pertaining to the land of an owner and all the contingencies are carved out as independent exigencies and this can very well be inferred since the word "or" is indicative that each contingency/situation is to be read disjunctively. The attempt of Shri Pethe is to read the said provision to convey and interpret it by restricting clauses (i) and (ii) to clause (a) of sub-section (1).

12. The said submission needs to be tested. The State Government has rejected the Purchase Notice on the ground that the petitioner has not preferred any application for development of the remaining plot of land unaffected by the reservation to the

Corporation. According to Shri Pethe, it is only when the permission for development is refused or granted subject to conditions the claim can be staked to the effect contemplating under clause (i) or (ii) or clause (e), where the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it expect at a lower price than that at which he might have been reasonably expected to sell, if it is not so designated. Emphasis of Shri Pethe is on sub-section (2) of Section 49 which make it imperative for the Purchase Notice to be accompanied by a copy of the application made by the applicant to the planning authority and any order or decision of that authority. We are unable to accede ourselves to the submission of Shri Pethe. The effort while interpreting a statute should be to read it as it is if the reading creates an ambiguity, apply the rules of interpretation. Sub-section (2) is unambiguous and it simply conveys that the Purchase Notice shall be accompanied by a copy of any application made by the applicant to the planning authority and of any order or decision of that authority and of the State Government on such application, if any, in respect of which notice is given. Sub-section (2) thus intends to cover only that contingency where any application was preferred to the planning authority and which has resulted into any order or decision of that authority and of the State Government. Sub-section (2) however cannot be read to be applicable to each of the contingencies in sub-section (1) but it will have to relate itself only where any application has been preferred to the planning authority and any order or decision on the same. The indication is to be found in sub-section (3) which provides that on receipt of the purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records as may be necessary. Sub-section (4) further stipulates that on receipt of such reports or records if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled and that the order or decision for permission was not duly made or subject to such conditions on the ground that the applicant did not comply with the provisions of the Act or Rules or Regulations, it may confirm the purchase notice or direct that the planning permission may be granted without condition as will make the land capable of reasonably beneficial use. Sub-section (7) contemplates that if within one year from the date of confirmation of the notice, there is failure on the part of the appropriate authority to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under Section 126, the reservation, designation,

allotment or the restriction imposed on the development of the land shall be deemed to have lapses and thereupon the land stands released from the said reservation/designation or restriction and becomes available to the owner.

15.Perusal of Section 49 contemplates several contingencies resulting into an obligation to acquire the land. The contingencies enumerated are independent of each other and one of the contingency contemplated is whether the permission for development is sought and the same is refused or is granted subject to such conditions and in such a contingency, the owner of the land may claim that the land has become incapable of reasonable beneficial use in its existing state or that it cannot be rendered capable of reasonably beneficial use by carrying out the permitted development where the permission is granted subject to some conditions. However, clause (e) of sub-section (1) of Section 49 contemplates an independent contingency where the owner of land because of its designation or allocation in the plan claims that he is unable to sell it except at a lower price, then, that at which he might reasonably have been expected to sell, if it were not so designated or allocated. The purchase notice which is served in the backdrop of contingency contemplated in clause (d) of sub-section (1) of Section 49 can be related and connected to sub-section (2) of Section 49 where the purchase notice shall be accompanied by a copy of an application made and an order or decision of that authority, if at all there is any.....

16. Since the petitioner has pleaded his case put in the purchase notice by him on 17th November 2016 and has required the appropriate authority to purchase the interest in the land owned by him, by taking aid of clause (e) of sub-section (1) of Section 49 and has made it clear that since he is invoking the said clause, the notice is not accompanied with any application for development permission filed before the Planning Authority or any order passed by the said authority as contemplated in subsection (2) of Section 49. When he specifically rests his case on clause (e) of sub-section (1) of Section 49 which according to us, is an independent contingency, not depending on clause (d) of sub-section (1), the net result as is derived at by the impugned order or the one which is sought to be put forth before us by the learned counsel for the Corporation would defeat the very purpose underlying Section 49. We are not inclined to constrict

the operation of Section 49 merely to a factum where an application for permission for development is made and it is refused or is granted subject to the conditions. The provision contained in the legislature has to be read as it is and if there is no ambiguity in the same, it is not permissible for the Court to interpret it, when the interpretation is uncalled for. A plain reading of Section 49 in its entirety take us to an irresistible conclusion which prompt us to quash and set aside the impugned order passed by the State Government.”

21. In ***Gopal Lad (supra)***, the Aurangabad Bench of this Court, by following ***Aone Developers (supra)***, has taken the same view. In that case, due to a reservation, the Petitioner therein was unable to sell his land except at a lower price than the market price. Accordingly, on the said ground the Petitioner served a Purchase Notice under Section 49 of the MRTP Act upon the Secretary of Urban Development Department, Government of Maharashtra. However, by the impugned order dated 24th December, 2020, the Respondents therein rejected the said Purchase Notice dated 17th June, 2020 on the ground that the same was not accompanied with any application for development permission made before any Planning Authority. This Court, by relying upon the Judgement in ***Aone Developers (supra)***, held that, in the said Judgement, this Court had observed that clause (e) of sub-section 49(1) contemplates an independent contingency where the owner of the land because of its designation or allocation or any plan claims that he is unable to sell it except at a lower price than at which it might have been reasonably excepted to sell, if it were not so designated or allocated. This Court further

went on to hold that, from the observations made by this Court in ***Aone Developers (supra)***, it was clear that contingency mentioned in clause (e) of sub-section (1) of Section 49 of the MRTP Act and in sub-section (2) of Section 49 of the MRTP Act are independent of each other. If no such application is there on part of Petitioner or affected person made before the Authority and there is no decision taken by the Authority then there is no question of annexing the same with the Purchase Notice. Therefore, when the Purchase Notice of the Petitioner is only on the ground as contemplated in clause (e) of sub-section (1) of Section 49, then asking for such an application as contemplated in sub-section (2) of Section 49 of the MRTP Act is not at all necessary and therefore the rejection on that ground appeared highly erroneous.

22. Paragraphs 10 and 11 of the said Judgement are relevant and are set out hereunder :

*“10. So far as the second reason of rejection of purchase notice is concerned, the respondents have claimed that the purchase notice was not accompanied by a copy of an application made by the applicant to the planning Authority or any order or decision of that Authority, as contemplated in sub-section (2) of Section 49 of the MRTP Act. However, this Court (Coram: Ranjit V. More and Bharati Dangre, JJ.) at the Principal Seat of Bombay, in Writ Petition No. 9587 of 2017 in the case of **Aone Land Developers vs. State of Maharashtra and others**, has observed that, clause (e) of sub-section 49 contemplates an independent contingency where the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might have been reasonably expected to sell, if it were not so designated or allocated. On the contrary, sub-section (2) of Section 49 of the*

MRTP Act provides for annexing an application made and an order or decision of that Authority if at all there is any. It has been observed in the aforesaid judgment as below:

"The sequitor of the purchase notice culminates in sub-section(4) where the State Government is satisfied that the contingencies contemplated in clauses (a), (b), (c), (d) and (e) of sub-section (1) are fulfilled and that the order or decision for permission was not duly made on the ground that there was no compliance of certain provisions of the Act or Rules and it may confirm the purchase notice or it may direct the Planning Authority to grant permission subject to such conditions so as to enable the owner to make use of the land in a reasonably beneficial manner. However, where there is a refusal to confirm purchase notice, it contemplates an opportunity of hearing being afforded to the person serving a notice".

11. From the aforesaid observation, it is already made clear that the contingencies mentioned in clause (e) of sub-section (1) of Section 49 of the MRTP Act and in sub-section (2) of Section 49 of the MRTP Act are independent of each other. If no such application is there on the part of the petitioner or affected person made before the Authority and any decision taken thereof by the Authority, then there is no question of annexing the same with the purchase notice. Therefore, when the purchase notice of the petitioner is only on the ground as contemplated in clause (e) of sub-section (1) of Section 49, then asking for such application as contemplated in sub-section (2) of Section 49 of the MRTP Act, is not at all necessary, and therefore, rejection on that ground appears highly erroneous."

23. Applying the ratio of these decisions to the present case, since, the Petitioner has given a Purchase Notice under both Section 49(1)(a) and 49(1) (e), the same is not required to be accompanied by an application as referred to under Section 49(2) of the MRTP Act. Section 49 (1)(a) provides for giving

Purchase Notice where any land is designated by a plan as subject to compulsory acquisition. Section 49 (1)(e) provides for giving a Purchase Notice when the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it accept at a lower price than that at which he might reasonably accepted to sell if it were not so designated or allocated. In our view, both these situations do not warrant any application being made by the Petitioner to the Planning Authority or of any order or decision of that Authority and of the State Government on the said application. For these reasons, in our view, the Purchase Notice dated 15th March, 2024 given by the Petitioner was not required to be accompanied by an application as provided under Section 49(2). The Purchase Notice having been given under Section 49(1)(a) and (e), to that extent, it must be considered.

24. The Order dated 9th September, 2024 rejects the Purchase Notice on the ground that it is not accompanied by an application referred to in Section 49(2). For all the reasons set out herein above, the said reason is incorrect and hence Order dated 9th September, 2024 is required to be quashed and set aside.

25. Further, Respondent No.3 would have to be directed to decide the Purchase Notice dated 15th March, 2024 of the Petitioner under Section 49(1) (a) and (e), without insisting for an application under Section 49(2) of the

MRTTP Act, on its own merits, within a period of six weeks from the date of uploading of this Order.

ORDER

26. In the light of the aforesaid discussion and for all the reasons stated herein above :

- a) The Order dated 9th September, 2024 passed by Respondent No.3 is hereby quashed and set aside.
- b) Respondent No.3 is directed to decide the Purchase Notice dated 15th March, 2024 of the Petitioner under Section 49(1)(a) and (e) without insisting upon an application under Section 49(2) of the MRTTP Act, and on its own merits, within a period of six weeks from the date of uploading of this Order.
- c) Rule is made absolute in the aforesaid terms.
- d) In the facts and circumstances of the case, there will be no order as to costs.

[FIRDOSH P. POONTIWALLA, J.]

[R. I. CHAGLA, J.]