

CASE NO.:
Appeal (civil) 438 of 2000

PETITIONER:
BALAKRISHNA H.SAWANT AND ORS.

RESPONDENT:
SANGLI, MIRAJ & KUPWAD CITY M.CORPN. & ORS.

DATE OF JUDGMENT: 23/02/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

(With Appl.(s) for permission to submit additional document and urging addl. grounds and with office report)

Date: 23/02/2005 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE B.P. SINGH
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant(s) Dr. N.m. Ghatate, Sr. Adv.
Mr. Shivaji M. Jadhav, Adv.
Mr. Himanshu Gupta, Adv.
Mr. Brij Kishor Sah, Adv.

For Respondent(s) Mr. V.N. Ganpule, Sr. Adv.
Mr. S.S. Shinde, Adv.
Mr. Mukesh K. Giri, Adv.

For R-1 Mr. S.K. Nandy, Adv.

UPON hearing counsel the Court made the following

J U D G M E N T

The appeal is allowed in terms of the signed judgment.
Non-Reportable.

(Sheetal Dhingra)
Court Master

(Vijay Dhawan)
Court Master

[Signed judgment is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.438 OF 2000

BALAKRISHNA H.SAWANT AND ORS.

Appellant (s)

VERSUS

SANGLI, MIRAJ & KUPWAD CITY M. CORPN. & ORS.

Respondent (s)

B.P. SINGH, J.

Heard counsel for the parties.

This appeal by special leave is directed against the judgment and order of the High Court of Judicature at Bombay dated 7th April, 1999 passed in writ petition No.1306/99 where by the petition preferred by the respondent Municipal Corporation was allowed and the reservation recorded against the land belonging to the appellant herein upheld. It appears that the Final Development Plan contained a reservation for a high school and play ground recorded against the land owned by the appellant herein. The grievance of the appellant was that the State had taken no steps to acquire the land within the stipulated statutory period and, therefore, the reservation had lapsed. The State also took a stand supporting the appellant that the reservation had lapsed and further contended that it had power to condone the delay which it had condoned. However, the High Court found that since the Corporation had taken necessary steps to acquire the land in question so as to give effect to the reservation, the reservation cannot be said to have lapsed. It further held that the application of the appellant was barred by limitation.

This Court granted special leave on 18th January, 2000. When we took up this appeal for hearing, it was brought to our notice by counsel appearing on behalf of the respondent Corporation that by its resolution of 20th July, 2002 the Corporation had resolved to the effect that the Corporation does not have sufficient financial resources to construct a high school and play ground on the land in question, and since the matter is pending before this Court the litigation may involve further expenditure. For the aforesaid reasons the Corporation does not need the subject land and for that purpose necessary proceedings at Government level may be initiated. It was also resolved to bring this resolution to the notice of this Court. It appears that subsequently a proposal was sought to be made by the Corporation to recall its resolution of 20th July, 2002. The said proposal is dated 13th May, 2003 but the Government of Maharashtra rejected the proposal and refused to permit the Corporation to revoke the earlier resolution. The communication of the Government of Maharashtra in this regard is dated 18th May, 2004.

Under the Maharashtra Regional and Town Planning Act, 1966 a modification of the Final Development Plan of a minor nature can be made by the planning authority. It also enables the State Government to direct the planning authority to make such modification, and on failure of the planning authority to carry out the direction, the State Government may itself notify the proposed modification inviting objections. It was, therefore, submitted before us that the procedural requirements of the Act are such that they are bound to take time.

Counsel for the Corporation states that the resolution of July 20, 2002 stands and the respondent Corporation is bound by it and holds itself bound even today, meaning thereby that the land shown as reserved in the Development Plan is not required by the Municipal Corporation as it does not have the resources to develop the said land and construct a high school and play ground over it. The stand of the State Government even before the High Court

was that the reservation had lapsed. It is, therefore, apparent that the reservation will serve no purpose except to cause harassment to the appellant without any corresponding benefit to the respondent Corporation. Ultimately, the respondent Corporation may not take any steps to get the land acquired, and in that event, by efflux of time the reservation may again lapse.

With a view to avoid all these delays and complications, we quash the reservation in respect of the land in question owned by the appellant and allow this appeal. The impugned judgment and order of the High Court is accordingly set aside and the writ petition preferred by Respondent Corporation is dismissed.

There will be no orders as to costs.

JUDIS