



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1405 OF 2024

SOW RAKHI W/O SANJAY BHARUKA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. S. S. Agrawal, Advocate for the petitioner
Mr. A. P. Bhandari, Advocate for respondent Nos.2 and 3
Ms. M. N. Ghanekar, AGP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 7th MAY, 2025

PER COURT :-

1. Issue involved in this petition is as to whether appeal filed by the petitioner, who is not an applicant under Section 44 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act') is maintainable under Section 47 of the MRTP Act.

2. The facts which are necessary for the sake of appreciation of the rival contentions are reproduced herein below.

(i) Petitioner is the purchaser of one of the plots from Gut No. 14. Her predecessor had purchased the plot along with 52 other persons under the sale deed. The plot owners were joint owners of Gut No. 14. Some of the plot owners moved an application under Section 44 of the MRTP Act for sanction of the layout in Gut No. 14. In respect of the sanctioned of the said layout four other owners raised objection. The

objection came to be overruled and layout was sanctioned excepting for land under reservation. Admittedly neither petitioner nor her predecessor is an applicant who sought sanction of layout under Section 44 of the MRTTP Act.

(ii) Petitioner filed civil suit bearing R.C.S. No. 628/2012 against the owner of the adjoining plot seeking injunction. Petitioner also preferred writ Petition bearing No. 3408/2015 against the sanction of the layout on Gut No. 14. This petition came to be disposed of by the Division Bench of this Court by passing following order;

"Keeping the option of the petitioner to avail of the Appellate remedy available in law, open. Writ Petition stands disposed of."

(iii) Pursuant to the said order, petitioner filed appeal before the State Government being Appeal No. TPS/3015/825/P.K.301/2015/NAVI-30. The Additional Chief Secretary, Town Planning rejected the said appeal by passing impugned order 08/06/2023. Hence, this petition.

3. Learned counsel for the petitioner submits that admittedly the petitioner is one of the joint owners of Gut No. 14 and it is his submission that in view of the relevant provisions of the Act and Rules framed thereunder, there could not have been any application entertained by the Planning Authority for sanction of layout unless the same has been made by all plots owners. By referring to the report

submitted to the Appellate Authority it is pointed out that on application out of 53 plot owners no signatures of the owners of plot No. 43 and 47 are found. It is also argued that the predecessor of the petitioner has also not signed the said application. It is his submission that it is open for the planning authority to cause review of the order of sanction of layout since it is open for planning authority to revoke/ modify permission to development and as such application was moved by the petitioner. Since the same has been rejected by Corporation, it is open open for the petitioner to challenge the said order so also the order of sanction of layout by filing appeal under Section 47 of the MRTP Act. He submits that since the Division Bench of this Court has granted leave to the petitioner to file appeal, an appeal filed under Section 47 of the Act ought to have been entertained and decided on merits by the authority.

4. Learned counsel for the Municipal Corporation opposed the said submission by contending that once admittedly the petitioner was not applicant for sanction of the layout under Section 44 of the MRTP Act the petitioner has no right to prefer any appeal under Section 47 of the MRTP Act. To support his submission he placed reliance on the judgment of the Co-ordinate Bench of this Court in case of ***Siddheshwar s/o Panchappa Hawa Vs. State of Maharashtra and Ors., 2020(3) All MR 535.***

5. There is no dispute about the fact that neither the petitioner

nor her predecessor was one of the applicants who have moved an application for sanction of the layout in Gut No. 14. It is further not denied that the predecessor of the petitioner at the relevant time did not raise objection for sanction of the layout and but it was raised by other four plot owners. The said objection was duly rejected by the Corporation and a communication to that effect was issued on 13/05/2009. The said order reads thus:-

“विषय:- गट क्रमोक १४ कांचनवाडी, औरंगाबाद येथील रेखांकनास मान्यता देणेबाबत...

संदर्भ :- आपला आक्षेप दिनांक ०५/०२/२५००९.

वरील विषयासंकिंत रेखांकनास मान्यता देण्यासाठी आपण संदर्भित आक्षेप दाखल केला आहे. त्या अनुषंगाने आपणास कळविण्यात येते की, आपण आक्षेपांत उल्लेख केलेल्या खरेदीखताचे अवलोकन केले असता याच खरेदीखताचा भाग म्हणून जो नकाशा जोडला आहे त्यातील भूखंडनिहाय अनुक्रमाने सर्व ५३ जणांची मालकी असल्याचा त्यात उल्लेख आहे. त्यामुळे आरक्षणाने बाधित क्षेत्र वगळता इतर ज्या भूखंडधारकांनी रेखांकन प्रस्ताव दाखल केला आहे त्याचा विचार करण्यात येत असून आपला हस्तक्षेप निकाली काढण्यात येत आहे.

इतःपर आपणास मालकी हक्काचे अनुषंगाने आपला काही वाद असल्यास आपण तो सक्षम कार्यालय/न्यायालय यांचेमार्फत सोडवावा.”

. This order therefore is not passed on any application/ objection of petitioner or her predecessor.

6. At this stage it would be relevant to take note of provisions of Sections 44 to 47 of the Act which reads thus:-

"44. Application for permission for development.

1[(1)] Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed :

[Provided that, save as otherwise provided in any law, or any rules, regulations or

by-laws made under any law for the time being in force, no such permission shall be necessary for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board or the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976.]

[(2) Without prejudice to the provisions of sub-section (1) or any other provisions of this Act, any person intending to execute 3[an Integrated Township Project] on any land, may make an application to the State Government, and on receipt of such application he State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be 1[an Integrated Township Project] by notification in the Official Gazette or, reject the application.]

45. Grant of refusal of permission

(1) On receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing —

(i) grant the permission, unconditionally ;

(ii) grant the permission, subject to such general or special conditions as it may

impose with the previous approval of the State Government ; or

(iii) refuse the permission.

(2) Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form.

(3) Every order granting permission subject to

conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(4) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days :

[Provided that, the development proposal, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act :

Provided further that, any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorised development for the purposes of sections 52 to 57.

(6) The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or development plans to the Collector concerned.]

46. Provisions of Development plan to be considered before granting permission.

The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan [or proposal] [published by means of notice] [submitted] or sanctioned under this Act. [Provided that, if the Development Control Regulations for an area over which a Planning Authority has been

appointed or constituted, are yet to be sanctioned, then in considering application for permission referred to in sub-section (1), such Planning Authority shall have due regard to the provisions of the draft or sanctioned Regional plan, till the Development Control Regulations for such area are sanctioned:

Provided further that, if such area dose not have draft or sanctioned Regional plan, then Development Control Regulations applicable to the area under any Planning Authority, as specified by the Government by a notification in the Official Gazette, shall apply till the Development Control Regulations for such area are sanctioned.]

47. Appeal

47. (1) Any applicant aggrieved by an order granting permission on conditions or refusing permission under section 45 may, within forty days of the date of communication of the order to him, prefer an appeal to the State Government or to an officer appointed by the State Government in this behalf, being an officer not below the rank of a Deputy Secretary to Government ; and such appeal shall be made in such manner and accompanied by such fees (if any) as may be prescribed.

(2) The State Government or the officer so appointed may, after giving a reasonable opportunity to the appellant and the Planning Authority to be heard, by order dismiss the appeal, or allow the appeal by granting permission unconditionally or subject to the conditions as modified."

7. Chapter IV of the Act, is a complete Code. It makes provision regarding control of development and use of land included in development plans. Section 44 of the Act deals with restriction on development of land. According to Section 45 of the Act any person intending to carry out development is mandatorily required to make an application in writing to Planning Authority. Such application would be

entertained by the authority in accordance with relevant rules. Under Section 45 of the Act, it is open for the Planning Authority to grant or refuse permission. The grant of permission could be conditional too. Section 46 of the Act mandates provisions of development plan to be considered before granting permission.

8. In the instant case, respondent Municipal Corporation is Planning Authority. The owners of Gut No. 14 being interested in development of land applied for sanction of layout. This application is granted by Planning Authority to the extent of land except affected by reservation. The statute provides for an appeal under Section 47 of the Act against conditional grant of development permission i.e. sanction of layout. The phraseology used in Section 47 of the Act makes abundantly clear that there would be right to file an appeal created in favour of an applicant who wishes to take exception to the conditions imposed for grant of / sanction of layout or rejecting thereof. These words are so clear and unambiguous to indicate that it is only to the applicant who is the vested with the statutory right of the appeal under Section 47 of the Act and none else.

9. It is settled position of the law that the appeal is a statutory remedy and unless provided in the statute no right vests in any person to file appeal. Pertinently Section 47 of the Act only refers to the

applicant and not the aggrieved person and therefore petitioner cannot be allowed to claim herself as aggrieved by grant of conditional layout or rejection thereof. Since the petitioner or the predecessor of the petitioner is not an applicant, the petitioner would not get any right to prefer an appeal against the sanction of the layout under Sections 44 to 46 of the Act. In case of ***Siddheshwar s/o Panchappa Hawa Vs. State of Maharashtra and Ors.*** (supra) Coordinate Bench of this Court has taken similar view that there is no right of appeal conferred on third party under Section 47 of the Act and as such appeal would not be tenable.

10. Now question arises as to whether the order passed by the Division Bench of this Court could be construed as vesting of the right of the appeal in the petitioner under Section 47 of the Act. The order passed by the Division Bench of this Court as recorded above only kept right of petitioner open to avail appellate remedy available in law. This however does not confers any right of the petitioner to prefer an appeal under Section 47 of the Act more particularly when no such right is vested with the petitioner in view of the said provision. The order passed by the Division Bench therefore would not come to the aid of the petitioner in any manner to maintain an appeal filed Section 47 of the Act.

11. The Additional Chief Secretary, Town Planning has rightly

taken into consideration the provisions of Section 47 of the Act and has held that the appeal not been maintainable. Pertinently the authority has considered the issue raised to be a grievance and issued direction to the Municipal Corporation to consider the objections raised by the petitioner in respect of the sanction of the layout and to take further action in accordance with the rules. The impugned order therefore takes care of the grievance of the petitioner and as such on both counts it does not deserve any interference. The petition sans merits and hence stands dismissed.

12. Learned counsel for the petitioner submits that it be clarified that the dismissal of the petition would not come in way of the petitioner to avail appropriate remedy against the action of the Corporation in accordance with law. It is always open for the petitioner to adopt appropriate remedy as provided under the law against the action of the Municipal Corporation and it is clarified that dismissal of this petition would not come in the way of the petitioner in any manner whatsoever.

(R. M. JOSHI, J.)

ssp