

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3918 OF 2001

Tapi Parisar Koli Samaj
Shikshan Prasarak Mandal
Dondaicha, Tq-Sindkhed,
Dist-Dhule,
Through its President.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Maharashtra State, Mantralaya,
Mumbai,
- 2) The Collector,
Dhule, Dist-Dhule,
- 3) The Tahsildar, Sindkheda,
Tq-Sindkhed, Dist-Dhule,
- 4) The Chief Officer,
Dondaicha - Varvade,
Municipal Council, Dondaicha,
Dist-Dhule,
- 5) Shri Shivaji Vidya Prasarak
Sanstha, Dondaicha,
C/o-Smt. Parvatibai Bajirao
Bagal Arts and Commerce College,
Dondaicha, Through its President.

...RESPONDENTS

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Mr. S.R. Barlinge Advocate for Petitioner.

Mrs. M.S. Patni, A.G.P. for Respondent

Nos. 1 to 3.

Mr. A.N. Sabnis Advocate h/f. Mr. S.P. Shah

Advocate for Respondent No.4.

Mr. N.B. Suryawanshi Advocate for Respondent

No.5.

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**CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.**

DATE : 10TH APRIL, 2015

ORAL ORDER :

1. Mr. Barlinge, learned counsel for the Petitioner submits that the Petitioner society was allotted 85 R land from Survey No.111/1 situated at Dondaicha, vide allotment order dated 23rd July 1985. The possession of the said land was delivered to the Petitioner on 10th February 1986. Learned counsel submits that Respondent No.5 instituted a suit against the Petitioner in the Court of Civil Judge, Junior Division bearing R.C.S. No.593 of 1987. On 13th January 1987 the trial Court directed the parties to maintain status quo. Said order of status quo was in force

till disposal of the suit on 21st January 1998. In the year 2001 the Petitioner sought permission for construction. Said permission for construction was rejected by the Municipal Council i.e. Respondent No.4 on the ground that State has directed stay to any construction. According to the learned counsel, the said order is without any notice to the Petitioner, nor the Petitioner at any material point of time was heard. Only reason given for refraining the Petitioner from carrying out construction was that the Petitioner did not construct within two years. The Petitioner could not construct within the stipulated period because of the prohibitory orders passed by the Civil Court. According the learned counsel, Respondent No.5 realized that there is no encroachment on the part of the Petitioner and Respondent No.5 has entered into compromise with the Petitioner. Copy of the same is filed on record. According to the learned counsel, Respondent authorities be directed to allow the Petitioner to construct the

property.

2. The learned A.G.P. submits that the Petitioner did not carry out the construction within two years and therefore the terms of the agreement have been violated. The learned A.G.P. further submits that Respondents have every right to resume the property.

3. Mr. Sabnis, the learned counsel for Municipal Council submits that as the State had refrained the Petitioner from carrying out the construction, the Municipal Council could not have granted permission for construction.

4. We have also heard Mr. Suryawanshi, the learned counsel for Respondent No.5. Respondent No.5 has not filed any affidavit controverting the averments made in the Petition.

5. We have considered the submissions

canvassed by the learned counsel for the respective parties. The factum of allotment of land Survey No.111/1 to the extent of 85 R at Dondaicha is not a matter of debate. It is also matter of record that Respondent No.5 had filed Civil Suit against the Petitioner and trial Court has passed order to maintain status quo. Even the Petitioner was directed to maintain status quo. The said suit eventually came to be dismissed in January 1998 and till that date, order of status quo was in force. It is also matter of record that in 2001 application was made by the Petitioner seeking permission to construct on the said land. Said proposal seeking construction permission is returned by the Municipal Council on the ground that Government has granted stay to the construction.

6. The aforesaid factual matrix can be borne out from the record. It would appear that till the year 1998 the Petitioner was prevented from

carrying out any construction due to prohibitory orders passed by the competent Court. Naturally in wake of prohibitory orders, the Petitioner was unable carry out construction. The Petitioner applied for construction permission in the year 2001. It appears that State has not considered that there were prohibitory orders in operation from January 1987 till January 1998. Even the State in the affidavit, nowhere states that the land has been resumed by the State. Construction permission was rejected only on the ground that within two years construction has not been carried out and such terms of agreement are violated.

7. In view of the facts which are culled out, the Petitioner could not carry out the construction. It is not that the Petitioner has not carried out the construction intentionally, but the Petitioner was prevented from carrying out the construction because of the prohibitory orders.

8. In light of above, impugned orders are quashed and set aside. The Petitioner may apply for construction permission afresh, which application shall be considered expeditiously by Respondent Municipal Council. In case the Respondent State seeks to take any action, it shall adhere to the principles of natural justice and shall give notice to the Petitioner. However, State shall consider the factum of prohibitory orders passed by Civil Court in Suit filed by Respondent No.5.

9. Writ Petition accordingly disposed of. Rule accordingly disposed of. No costs.

[A.I.S.CHEEMA, J.]

asb/APR15

[S.V. GANGAPURWALA, J.]