

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 11361 OF 2014

Vinayak s/o Laxmanrao Hiwale

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. S. S. Thombre, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.
Mr. A. K Tiwari and Mr. V. D. Kadam, advocates for respondent no. 2.
Mr. A. S. Bajaj, advocate for respondent no. 4.

WITH

WRIT PETITION NO. 11101 OF 2014

Dhananjay s/o Kisan Kamble

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. S. S. Thombre, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.
Mr. V. D. Kadam, advocates for respondent no. 3.
Mr. A. S. Bajaj, advocate for respondent no. 4.

WITH

WRIT PETITION NO. 11103 OF 2014

Sheela Vaijnath Bokare

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. S. S. Thombre, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.
Mr. V. D. Kadam, advocates for respondent no. 3.
Mr. A. S. Bajaj, advocate for respondent no. 4.

**WITH
WRIT PETITION NO. 11010 OF 2014**

Sheshrao s/o Lalsing Rathod

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. S. S. Thombre, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.
Mr. V. D. Kadam, advocates for respondent no. 3.
Mr. A. S. Bajaj, advocate for respondent no. 4.

**WITH
WRIT PETITION NO. 11011 OF 2014**

Yamnaji s/o Nanasaheb Tambe

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. S. S. Thombre, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.
Mr. V. D. Kadam, advocates for respondent no. 3.
Mr. A. S. Bajaj, advocate for respondent no. 4.

**WITH
WRIT PETITION NO. 11110 OF 2014**

Athar Saleem s/o Akthar Saleem

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. S. S. Thombre, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.
Mr. V. D. Kadam, advocates for respondent no. 3.
Mr. A. S. Bajaj, advocate for respondent no. 4.

**WITH
WRIT PETITION NO. 11114 OF 2014**

M-Square Buildcon

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. N.R. Shaikh, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.
Mr. V. D. Kadam, advocates for respondent no. 3.
Mr. A. S. Bajaj, advocate for respondent no. 4.

**WITH
WRIT PETITION NO. 11424 OF 2014**

Sharad s/o Gopinath Rathod
& others

.. PETITIONERS

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. U.L. Momale, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.
Mr. V. D. Kadam, advocates for respondent no. 3.
Mr. A. S. Bajaj, advocate for respondent no. 4.

**WITH
WRIT PETITION NO. 11486 OF 2014**

Vitthal s/o Rangnath Ambarwadikar

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. V.D. Hon, Senior Counsel instructed by Mr. A. V. Hon, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.

Mr. V. D. Kadam, advocates for respondent no. 4.
Mr. A. S. Bajaj, advocate for respondent no. 5.

**WITH
WRIT PETITION NO. 11069 OF 2014**

Ramprasad Madanlal jaju
& another

.. PETITIONERS

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. A.P. Bhandari, advocate for petitioner.
Mr. P.P. More, AGP for the State.
Mr. V. D. Kadam, advocates for respondent no. 2.
Mr. A. S. Bajaj, advocate for respondent no. 5.

**AND
WRIT PETITION NO. 11187 OF 2014**

Bhausahab s/o Balasaheb Mhaske
& others

.. PETITIONERS

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. S. D.Kotkar, advocate for petitioner.
Mrs. A. V. Gondhalekar, AGP for the State.
Mr. A. K Tiwari and Mr. V. D. Kadam, advocates for respondent no. 3.

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**CORAM : R.M. BORDE &
P. R. BORA, JJ.
DATE : 20th JANUARY, 2015.**

PER COURT :

1. All the petitioners, majority of whom are the builders and developers, are assailing the notices issued by the Administrator, Satara-Deolai

Municipal Council, Tq. & Dist. Aurangabad, directing them to demolish the unauthorised construction raised by them, within a period of seven days from the date of receipt of notice and, in the event of failure, all the petitioners are warned that the illegal construction would be demolished and the expenses thereof would be recovered from them.

2. Petitioners have raised construction over respective plots owned or possessed by them. It is a common feature that petitioners have utilised floor space index ranging from 2 1/2 to 3 and, in some cases 4, which is surely beyond permissible limits. It is not a matter of dispute that in corporation area floor space index which can be availed for raising construction is one and, in some exceptional cases, some additional limit is permissible. Prima faice, we are convinced that raising of construction by petitioners much beyond permissible limit is violative of provisions of law and the norms in respect of adherence of floor space index have been blatantly violated by all the petitioners. It is also a common feature that petitioners who are builders and developers have created third party interest and have sold out flats in favour of uninformed purchasers who are likely to be ultimate victims of the illegalities committed by petitioners. It is also informed that in some cases, the builders-developers/petitioners have yet to dispose of part of the constructed tenaments and those are lying vacant.

3. Petitioners, in order to substantiate their contentions contend that they have raised construction with due approval and permission from Village Panchayat authorities. Reliance is placed on section 52 of the

Bombay Village Panchayat Act, 1958. It is contended that construction has been raised after securing due permission from Village Panchayat authority. Section 52 of the Bombay Village Panchayat Act, 1958 directs that no person shall erect or re-erect or commence to erect or re-erect within the limits of the village, any building without the previous permission of the Panchayat. So far as raising construction without due permission from Village Panchayat authority is concerned, the same has been prohibited under section 52 of the Act. So far as approval for development and planning aspect of the building is concerned, the provisions of MRTP Act, 1966 are attracted. Under the provisions of MRTP Act, it is the function of the planning authority to accord development permission. Section 44 of the Act provides for application for permission for development which reads as under :

44. Application for permission for development :

(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 any 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 a Special Township Project on any land, may make an application to the State Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be a Special Township Project by notification in the Official Gazette or, reject the application.]

4. On reading provisions quoted above, it is the planning authority with whom application for permission shall have to be tendered and, with due approval of the planning authority to the plan and design of construction, a building can be erected. Planning authority is defined under section 2(19) which means a local authority and includes Special Planning Authority constituted or appointed or deemed to have been appointed under section 40. Local authority is defined under section 2(15) which reads thus :

2(15) "local authority" means -

(a) the 'Bombay Municipal Corporation constituted under the Bombay municipal Corporation Act, or the Nagpur Municipal Corporation constituted under the City of Nagpur Municipal Corporation Act, 1948, or any Municipal Corporation constituted under the Bombay provincial Municipal Corporations Act, 1949,

(b) a Council and a Nagar Panchayat constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965,

(c) (i) a Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

(ii) the Authority constituted under the Maharashtra Housing and Area Development Act, 1976]

(iii) the Nagpur Improvement Trust constituted

under the Nagpur Improvement Trust Act, 1936.]

which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act;

5. In the instant matters, Zilla Parishad constituted under Maharashtra Zilla Parishad and Panchayat Samiti Act 1961 is the local authority. Thus, Zilla Parishad is the planning authority for the purpose of sanctioning building plans as provided under MRTP Act, 1966. It is not a matter of dispute that in all the petitions presented before us, nobody has approached the planning authority / local authority i.e. Zilla Parishad for securing sanction to the plans of construction.

6. It is tried to be contended that so far as Village Panchayats are concerned, there are no norms prescribed in respect of raising construction and the ratio of floor space index has also not been provided. We cannot accept the preposition since under M.R.T.P. Act, 1966, there is a regional plan which applies to area where the petitioners have carried out development.

7. Notices have been issued by the Administrator of the newly constituted Satara-Deolai Municipal Council taking recourse to section 189(8) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965. Notices also make reference to sections 52 to 56 of MRTP Act of 1966. Section 52 of the Act provides for penalty for unauthorised development or for use otherwise than in conformity with the development plan. In the event a developer violates provisions relating to

permission for development, action can be initiated in respect of such violation and penalty can be imposed. We are afraid, provisions of section 52 of MRTP Act are not attracted in the instant case. Section 53 provides that in the event development of land has been carried out as indicated in sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section serve on the owner a notice requiring him, within such period, being not less than one month, as may be specified, therein after the service of the notice, to take such steps as may be, specified in the notice which includes restoration of the land to its condition existing before the said development took place. In the instant matter, notice issued is not within contemplation of section 53 of the Act and as such, provisions of section 53 of the Act are also not attracted. Section 54 is referable to the powers to stop unauthorised development. Sub-section (2) of section 54 provides that any person who continues to carry out development of land, whether for himself or on behalf of the owner or any other person, after such notice has been served shall, on conviction be punished with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both. Reading the notice issued by the Administrator, it is evident that the provisions of section 54 are also not attracted. Section 55 of the MRTP Act is in respect of removal or discontinuation of unauthorised temporary development summarily. It is not the case of anybody that the development carried out by petitioners is of a temporary nature. As such, provisions of section 55 of the Act are also not attracted in the instant matter. Section 56(1) of the Act provides thus

56. Powers to require removal of authorised development or use :-

(1) If it appears to a Planning Authority that it is expedient in the interest of proper planning of its areas (including the interest of amenities) having regard to the Development Plan prepared -

(a) that any use of land should be discontinued, or

(b) that any conditions should be imposed on the continuance thereof, or

(c) that any buildings or works should be altered or removed, the Planning Authority may, by notice served on the owner,

(i) require the discontinuance of that use; or

(ii) impose such conditions as may be specified in the notice on the continuance thereof; or

(iii) require such steps, as may be specified in the notice to be taken for the alteration or removal of any buildings or works, as the case may be;

within such period, being not less than one month, as may be, specified therein, after the service of the notice.

In the instant matter, period prescribed in the notice is seven days and as such, notice is not in conformity with section 56 of the MRTP Act.

8. Thus, it is observed that notice by the Administrator is not in conformity with any of the provisions of MRTP Act nor the Administrator is an authority who can be said to have been invested with the powers under section 189 of Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965. Section 189 of the Act refers to authorisation in favour of the Chief Officer of Municipal Council whereas in

the instant matter, the notices have been issued by the Administrator. For the reasons recorded above, we are of the opinion that notices issued by the Administrator shall not be acted upon. Although we find certain deficiencies in the notices issued by the Administrator, we refrain ourselves from expressing any final opinion in that regard and these observations shall not have any effect on the action already taken or initiated by the Administrator in pursuance to such notices. These observations made in this judgment shall not be construed as basis for maintaining any action against Administrator or Municipal Council.

9. On consideration of pleadings and facts disclosed before us in all the petitions, it is noticed that petitioners have raised excess construction beyond permissible limit and it is evidence on the face of record. Petitioners, admittedly, have not secured any permission from the planning authority before carrying out development since the plans of construction have not been approved by the planning authority. The development that has taken place in all the cases before us, cannot be said to be a development in adherence to law. In these peculiar facts and circumstances, in order to extend an opportunity to petitioners, we deem it appropriate to grant liberty to petitioners to approach the Chief Officer of Municipal Council with appropriate application for seeking development permission or regularisation of the construction already raised, as the case may be. If petitioners approach the Chief Executive Officer within a period of one month from today, the Chief Executive Officer may take appropriate decision within the framework of law, as expeditiously as possible, preferably within

a period of three months from the date of receipt of application/request by petitioners. We direct that respondent Chief Executive Officer or the Administrator shall not act upon the notices and shall not take any adverse action, subject however, to the orders those may be passed by the Chief Executive Officer, after extending an opportunity of hearing to petitioners as recorded above, for a period of six months from today. It would also be open for the petitioners to approach appropriate authorities including the State Government for protection of their interest and the action of demolition of unauthorised structure raised by petitioners shall be dependent upon such decision of the competent authority or by the State Government. It shall not be inferred that this Court has put any stamp of approval or issued any certification as regards such proposed action of the State or the authorities in respect of regularisation of construction and those actions shall be amenable to legal challenge at an appropriate stage.

10. This Court, while directing issuance of notice and granting interim relief, directed petitioners to deposit sum of Rs. 10,00,000/- with the Administrator, Municipal Council. The amount has been directed to be kept in separate account and it is further directed that the said amount shall not be utilised for any other purpose. We maintain the interim directives issued by this Court while granting interim relief. The question of refund of amount deposited by petitioners shall be dependent upon the decision of the Chief Executive Officer in respect of regularisation of their construction or of the State Government granting them any concession. It would also be open for the petitioners to approach this Court in the event of occurrence of

any cause relating to deposit so made. Petitioners are hereby directed not to raise further construction and not to create any third party interest. Petitioners have tendered undertaking to the effect that they would not create third party interest and that they would themselves remove unauthorised construction raised by them in the event the decision of the Chief Executive Officer or any other forum or authority including State Government goes against them. We accept the undertakings furnished by petitioners.

10. With the directions as above, writ petitions stand disposed of.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

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