

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9779 OF 2014**

Kishor Khushalchand Shah & Anr.	...Petitioners
<i>Versus</i>	
The Competent Authority & Deputy Collector & Ors.	...Respondents

Mr. Kuldeep S. Patil, for the Petitioners.
Mr. A.B. Vagyani, Government Pleader, with Mrs. M.P. Thakur,
AGP for Respondent Nos. 1 & 3.
Mr. G.H. Keluskar, for Respondent No. 2

**CORAM: A.S. OKA & G.S. PATEL, JJ.
DATED: 1st December 2015**

PC:-

1. On the last date, we had put the parties to notice that the Petition will be taken up for final hearing at the admission stage.

2. Reference to few facts will be necessary with a view to appreciate the submissions canvassed by the learned counsel representing the parties. The Petitioners are claiming to be the owners of 17 plots bearing Plot Nos. 3 to 12 out of the land bearing Survey No. 403 and Plot Nos. 1 to 7 out of the land bearing Survey no. 404 at Sangli, Taluka Miraj, District Sangli. Out of said plots, in relation the 9 plots, certificates of regularization have been issued by the Competent Authority under the provisions of Section 3 of

the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001 (for short “the said Act of 2001”). The Petitioners are relying upon the Gunthewari Certificates in relation to the 9 plots. The true copies of the Certificates of Regularisation issued under sub-section 3 of Section 4 of the said Act are annexed at Exhibit “N” (collectively) to the Petition.

3. The challenge in this Petition is to the order dated 21st August 2014 passed by the Deputy Collector by which applications made by the Petitioners for grant of permission to convert the said 17 plots for non-residential use have been rejected. The reason set out by the Deputy Collector is that as required by the provisions of the said Act of 2001, 10% of the area is not left open by the Petitioners.

4. The submission of the learned counsel appearing for the Petitioners is based on Section 5 of the said Act of 2001. Sub-section (1) of Section 5 of the said Act of 2001 reads thus:

“(1) Notwithstanding anything contained in any other law for the time being in force, on being regularised, the *Gunthewari* development shall be deemed to have been exempted under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 from the provisions of Chapter III of the said Act and converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966, subject to the payment of non-agricultural assessment and the other terms and conditions of such conversion, and the provisions of the Development Plan or the Regional Plan, as the case may be, shall, so far as such

development is concerned, stand modified or relaxed, as may be required.”

5. The contention of the learned counsel appearing for the Petitioners is that by a legal fiction, once there is a Certificate of Regularisation issued under the said Act of 2001, the land subject matter of the Gunthewari Certificate stands converted for non-residential purposes in accordance with the provisions of the Maharashtra Land Revenue Code, 1866 subject to payment of non-agricultural assessment and compliance with other terms and conditions.

6. The submission of the learned counsel for the Petitioners is that in relation to the said 9 plots in respect of which Certificates of Regularisation have been issued, the permission for non-agricultural could not have been denied as the Petitioners are entitled to use the lands as a matter of right for non-agricultural use subject to payment of necessary charges and compliance with the requisite terms and conditions. He submitted that even in case of other 8 plots in respect of which Certificate of Regularisation under the said Act of 2001 is yet not granted, the Petitioners will be entitled to use the said plots for non-agricultural purposes after the Certificates of Regularisation under the said Act are granted.

7. The learned Government Pleader has relied on the Affidavit of Mr. Amardip Tanaji Wakade, Tahsildar (General) in Collector's Office, District Sangli. The said Affidavit is tendered across the bar. He invited our attention to Clause A of sub-section (2) of Section 3 of the said Act, which provides that 10% of the area of regularised plots vests in the Planning Authority. He pointed out that the

Municipal Corporation of Cities of Sangli, Miraj and Kupwad (for short “the said Corporation”) ignored this vital aspect and granted Regularisation Certificates without insisting on the surrender of the requisite area free of costs to the said Corporation. He pointed out that this aspect has been brought to the notice of the State Government by the Municipal Corporation and, therefore, the Municipal Corporation intends to take steps for revocation of the Certificates of Regularisation granted under the said Act of 2001. The learned counsel appearing for the Municipal Corporation supported the submissions made by the learned Government Pleader.

8. We have carefully considered the submissions. We have already quoted sub-section (1) of Section 5 of the said Act. It is not in dispute that in relation to the 9 plots, the Certificates of Regularisation under the said Act of 2001 have been issued, the copies of which have been annexed as Exhibit “N” (collectively) to this Petition. As of today, the Certificates of Regularisation have not been revoked. So long as the certificates are not revoked, in view of sub-section (1) of Section 5 of the said Act of 2001, the Petitioners are entitled to use the said 9 plots for non-agricultural use subject to what is provided in sub-section (1) of Section 5 of the said Act of 2001.

9. In these circumstances, the rejection of the applications for grant of permission to convert the 9 plots for non-agricultural use is completely illegal and, therefore, to the extent of the said 9 plots, the impugned order/communication dated 21st August 2014 will have to be set aside. As far as the rest of the 8 plots are concerned,

the question of invoking sub-section (1) of Section 5 of the said Act of 2001 will arise only after the said plots are regularised in accordance with the provisions of the said Act of 2001. After the Certificates of Regularisation are issued in relation to the other 8 plots, the Petitioners can always invoke sub-section (1) of Section 5 of the said Act of 2001.

10. Thus, the Petition must succeed to the extent of the said 9 plots. However, we make it clear that this order will not preclude the State Government and the Municipal Corporation from adopting appropriate proceedings in accordance with law for revocation of Regularisation Certificates issued under the said Act of 2001 in respect of the said 9 plots.

11. We direct the Deputy Collector, Sangli to re-consider the case of the Petitioners in relation to the said 9 plots (in respect of which Certificates of Regularisation under the said Act of 2001 have been issued) in the light of sub-section (1) of Section 5 of the said Act of 2001.

12. We direct the Deputy Collector to pass appropriate order in accordance with law after taking into consideration the provisions of sub-section (1) of Section 5 of the said Act of 2001 as regards the grant of permission for non-agricultural user.

13. We make it clear that so long as the Regularisation Certificates continue to be valid and subsisting, the prayer made by the Petitioners in relation to the 9 plots cannot be rejected on the

grounds set out in the impugned communication dated 21st August 2014.

14. Appropriate order shall be passed by the Deputy Collector, Sangli within a period of one month from the date on which an authenticated copy of this order is produced by the Petitioners before him.

15. As regards the other 8 plots subject matter of the impugned communication dated 21st August 2014, as and when Regularisation Certificates are issued in respect of the said plots, it will be open for the Petitioners to apply for conversion for non-agricultural use in accordance with sub-section (1) of Section 5 of the said Act of 2001.

16. We make it clear that this order will not prevent either the State Government or the Municipal Corporation from initiating appropriate action in accordance with law for cancellation/ revocation of the Gunthewari Certificates in relation to the 9 plots.

17. The Petition is partly made absolute in above terms.

18. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)

(A.S. OKA, J.)