

FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.Writ Petition No. 2259 of 2015

(Pramod s/o Madhukar Kulkarni & anr. vs. State of Maharashtra & ors.)

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

**Coram : B.P. Dharmadhikari &
S.B. Shukre, JJ.****Date : 29th April, 2015.**

Order under Section 44 of Maharashtra Land Revenue Code permitting commercial use passed by respondent no. 3 has been questioned by petitioners in Revenue Appeal before respondent no. 2- Additional Collector. On 9.12.2013 respondent no. 2 directed maintenance of status quo. That appeal is pending.

2. Advocate Khapre submits that suppressing these proceedings, respondents 5 to 7 filed a fresh application under Section 44 of Maharashtra Land Revenue Code before respondent no. 2 and obtained a favourable order on 9.6.2014. On the strength of that order they got building permission from respondent no. 4- Municipal Council, Buldana. He submits that said building permission is questioned under Section 308 of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act,

1965 (for short the Act) and the proceedings are inter-related. As later order has been obtained by suppressing earlier proceedings and by playing fraud, this Court should set aside that order. He alternatively submits that Additional Collector did not publish any notice and no objections were invited with the result the petitioners could not get any opportunity.

3. Learned AGP appearing for respondents 1 to 3 is seeking time as instructions are still awaited. Advocate Sambre appearing for respondent no. 4 submits that on the basis of an order dated 9.6.2014, building permission has been given in accordance with law. He accepts that proceedings under Section 308 of the Act in relation thereto are pending.

4. Senior Advocate Shri Bhangde with Advocate Lahoti for respondents 5 to 7 submits that as the respondents later on found that Sub Divisional Officer had no jurisdiction to deal with the lands within the municipal limits, a separate application was filed before the competent authority, namely Additional Collector, on 24.1.2014. In that application, previous proceedings before Sub Divisional Officer were also mentioned. After considering that application, Additional Collector has granted permission on 9.6.2014. He invites attention to the report submitted by Town Planning authority on 27.3.2014 in those proceedings to urge that the land falls in revised development plan of Buldana and its commercial user is legally permissible.

5. He contends that the permission granted in favour of respondents 5 to 7 is already questioned by the petitioners in the proceedings under Section 308 of the Act and in those proceedings

all these questions can be looked into. He contends that filing of those proceedings under Section 308 of the Act has been suppressed from this Court. He also points out that order of Additional Collector dated 9.6.2014 is appealable in terms of Section 247 of Maharashtra Land Revenue Code.

6. After hearing respective counsel, we find that while moving fresh application on 24.1.2014, in paragraph 3, respondents 5 to 7 have given number of the matter which they filed before Sub Divisional Officer for obtaining the necessary permission. They have also pointed out the order dated 30.10.2012 passed by that authority and payment of necessary charges in pursuance thereto. In the last paragraph they have submitted that as they, after obtaining legal advice, found some technical flaw in the order of Sub Divisional Officer, an application came to be filed before the Additional Collector. Additional Collector has considered this application on 9.6.2014. He has referred to the orders of Sub Divisional Officer in opening paragraph. He has recorded that Sub Divisional Officer is not competent to grant said permission. He has also found it necessary to regularize the unauthorised user and accordingly has proceeded to pass said order.

7. The appeal filed by the petitioners is pending before the very same authority. Order of status quo granted on 9.12.2013 has been modified by that authority on 11.2.2014 by mentioning that till the appeal pending before it is decided, user should not be changed. This order dated 11.2.2014 is still in force.

8. In this background, we are not in a position to hold that any fraud has been played by respondents 5 to 7 on respondent no.

2 in the matter.

9. Petitioners have got remedy of filing appeal against the order dated 9.6.2014. In fact, against the earlier such order passed by the Sub Divisional Officer on 30.10.2012 they have already filed such an appeal and that appeal is pending.

10. The Building permission granted to respondent nos. 5 to 7 is after the later order dated 9.6.2014. Technically, that order was not stayed in any appeal by any authority. Municipal Council has granted that permission and that permission is questioned by the petitioners in the proceedings under Section 308 of the Act and those proceedings are also pending. As building permission itself is questioned, it is open to the petitioners to raise all relevant grounds in those proceedings.

11. In this situation, we find that the petitioners have got alternate remedies available in the matter, where all the questions can be appropriately dealt with. Hence, with liberty to petitioners to take recourse to the same, we dispose of the writ petition. No costs.

Judge

Judge

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