

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

WRIT PETITION NO. 1351 OF 2013

1. Syed Salim S/o Haji Ismail,
Age : 52 Years, Occu. : Agril.,
R/o. : Opp. to Raja-Rani Mangal
Karyalaya, Parbhani
 2. Smt. Rahanabegum W/o Syed Salim,
Age : 44 Years, Occu. : Household,
R/o. Opp. to Raja-Rani Managal
Karyalaya, Parbhani
- .. Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary (1),
Urban Development Department,
Mantralaya, Mumbai-2
 2. The Director of Town Planning MS,
Central Building, Pune
 3. The Collector, Parbhani
 4. The Assistant Director of Town
Planning, Parbhani
 5. The Municipal Corporation,
Parbhani,
(Through its Commissioner)
- .. Respondents

Shri S. B. Talekar, Advocate for Petitioners.
Shri S. G. Karlekar, A. G. P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

CLOSED FOR JUDGMENT ON : 18.02.2016
JUDGMENT PRONOUNCED ON : 23.03.2016

JUDGMENT (Per S. V. Gangapurwala, J.) :-

1. The application filed by the petitioners for sanction of layout has been disposed / filed, aggrieved thereby the present petition.

2. Mr. Talekar, the learned counsel for the petitioners submits that, the petitioners had applied for the sanction of layout plan alongwith necessary documents. On 02nd February, 2011 the Collector, Parbhani sought N. O. C. from the Assistant Director, Parbhani. On 01st March, 2011 the Assistant Director, Town Planning, Parbhani directed the petitioners to pay processing fees for sanction of the layout plan. On 30th June, 2011 the Urban Development Department, Mumbai directed the respondents to follow the stringent provisions under the standardized set of Draft Development Control and Promotion Regulations for Municipal Councils and Nagarpanchayats in Maharashtra. On 26.07.2011 the Deputy Director, Town Planning, Pune issued Circulars directing the Assistant Director, Town Planning of various Municipal Corporations / Councils to apply the stringent provisions under the standardized set of Draft Development Control and Promotion Regulations for Municipal Councils and Nagarpanchayats in Maharashtra. The learned counsel submits that, the said letter of the Deputy Director is stayed by the Division Bench of this Court at Bombay in Writ Petition No. 8092 of 2011 vide order dated 30th March, 2012. According to the learned counsel, on 14.02.2012 the petitioners deposited processing fees as per the letter issued. The directions were given to apply the stringent provisions under the draft building bye laws. On 16.11.2012 the petitioners submitted revised layout plan. The application of the petitioners was not entertained by the Assistant Director, Town Planning, Parbhani nor the Collector.

3. The learned counsel submits that, when the existing approved building bye laws are in force the draft building bye laws cannot override the approved building bye laws. According to the learned counsel the Assistant Director, Town Planning cannot refuse to sanction layout merely on the ground that the draft building bye laws are awaiting approval. According to the learned counsel the building bye laws which are in existence will have to be applied. The provisions of the approved existing bye laws will have to be applied and not the proposed draft bye laws. According to the learned counsel though the proposed draft building bye laws have been subsequently approved the same would not affect the case of the petitioners. The delay on the part of the Authority to sanction the layout as per the approved existing bye laws cannot prejudice the petitioners nor the petitioners can be denied the right to have their layout sanctioned as per the original approved building bye laws on the ground that subsequently draft bye laws are also approved. The learned counsel relies on the judgment of the Apex Court in a case of **Kusheshwar Prasad Singh V/s. State of Bihar and others** reported in **(2007) 11 S.C.C. 447.**

4. The learned counsel further submits that, the draft bye laws cannot be relied by the respondents and the bye laws which are approved and existing as on the date of submission of the application for sanction of layout has to be considered. The learned counsel relies on the judgment of the Apex Court in a case of **National Thermal Power Corporation Ltd. V/s. Madhya Pradesh State Electricity Board and others** reported in **(2011) 15 S.C.C. 580.** So also, the judgment of the Apex Court in a case of **M. P. Steel Corporation** reported in **2016 (1) Mh. L. J. 505.** The learned counsel submits that, the

draft rules are approved during the pendency of the litigation i.e. the present writ petition that should not prejudice the petitioners. The petitioners cannot be made to suffer on account of litigation. The learned counsel relies on the judgment of the Apex Court in a case of **State of Rajasthan and others V/s. Khandaka Jain** reported in **A.I.R. 2008 SC 509**. The learned counsel submits that, the petitioners as such are entitled for sanction of the layout as per the building bye laws and rules prevailing at the time when the petitioners had applied for sanction of layout. The learned counsel submits that, reliance on Section 46 of the Maharashtra Regional and Town Planning Act, 1966 by the respondent is misplaced, as the same deals with development plan and not the sanction of layout.

5. Mr. Karlekar, the learned A. G. P. submits that, the draft building bye laws were already in existence when the petitioners filed the application complete in all respects. The Development Control Regulations required over all changes because of rapid urbanization. As such, the Government thought it fit to modify the existing bye laws. The approved bye laws were in existence. The draft bye laws were also pending for approval. According to the learned A. G. P. the application for permission not in conformity with the development plan under preparation can be rejected. The learned A. G. P. relies on the judgment of the Division Bench of the Bombay High Court in a case of **Digambar Sakharam Tambolkar and another V/s. Pune Municipal Corporation and others** reported in **AIR 1987 Bom. 297**. The learned A. G. P. submits that, the draft development rules is also subsequently approved on 13.02.2013 and the permission can be only granted under the said rules. The reliance of the petitioners on the earlier Development Control Rules would not be permissible.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. It is not disputed that initially the petitioners had applied for sanction of layout on 02nd February, 2011 and the required charges / processing fees was deposited on 14.02.2012 and thereafter revised layout plan was submitted on 16.11.2012. The layout plan which is required to be considered for sanction is the revised plan dated 16.11.2012. The erstwhile Municipal Council, Parbhani was constituted as a Municipal Corporation on 03.11.2011. The draft rules were published on 30th June, 2011 and these draft rules are approved / sanctioned on 13.02.2013. No doubt, when the petitioners revised layout plan was submitted on 16.11.2012 the Draft Standardized Building Bye Laws and Development Control Rules for the Municipal Councils was not sanctioned. The petitioners application was filed / disposed of on the ground that the revised layout plan is not in consonance with the stringent provisions of the draft development control rules. It is also matter of record that the directions of the Government / Deputy Director, Town Planning, Pune thereby directing to stop the stringent provisions under the said rules is stayed by the Division Bench of the Bombay High Court at its Principal Seat vide order dated 30th March, 2012 and the said stay was in force. The respondents certainly could not have insisted upon the applicability of the stringent provisions in that case and ought to have applied the provisions of the bye laws approved and existing as on the said date, more particularly, when the directions to apply the more stringent provisions was stayed by the Division Bench of this Court at its Principal Seat.

8. The said draft bye laws / rules have now been approved i.e. on 13.02.2013. In wake of the said draft rules being approved

and being brought into force from 13.02.2013 whether the respondents can still be directed to consider the application of the petitioners as per the old rules as existing when he had filed the application for revised layout will be required to be considered. No doubt, the petitioners cannot be faulted for non consideration of his application as per the bye laws existing and approved on the date of his revised layout nor the pendency of the litigation can be prejudicial to the interest of the petitioners as is held by the Apex Court in the judgments referred supra.

9. However one thing which will have to be considered is that the regional existing building bye laws and development control regulations are modified. The respondents will have to sanction layout now. Considering the need of the hour because of the rapid urbanization and other concepts for supporting development like generation of parking areas, eco friendly building, provisions of proper infrastructure etc. directing the respondents to ignore the said requirements under the existing rules and to grant approval on the basis of bye laws and the rules which are now no longer in force but were existing when the application for revised layout plan was submitted would be inappropriate and not in tune with the object of modifying and replacing the earlier bye laws and the rules. If, that is done it would be negating the purport and the object of the new rules and the bye laws which are in existence since 13.02.2013.

10. In light of the above, no relief can be granted to the petitioners as prayed. In light of the above, the writ petition is disposed of. No costs.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]

sam/Mar.16