

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

WRIT PETITION NO. 5286 OF 2013

Sheshrao S/o Dyanoba Gaikwad
and another

.. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri S. B. Talekar, Advocate for Petitioners.

Smt. S. S. Raut, A. G. P. for Respondent Nos. 1 to 6.

Shri Upendra B. Bilolikar, Advocate for the Respondent No. 7.

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

DATE : 29TH FEBRUARY, 2016.

PER COURT :-

1. Mr. Talekar, the learned counsel for the petitioners submits that, petitioner No. 1 and husband of petitioner No. 2 have purchased the property bearing plot No. 18 and 21 from survey No. 246/3 situated behind Saraswati College, Kinwat on 18.08.1994 and 25.11.1997 respectively vide registered Sale Deeds. The names of the petitioners were mutated in relevant revenue records. The petitioner No. 1 applied for construction permission and was sanctioned commencement certificate on 21.11.1996. Up to plinth level the construction was done by the petitioner No. 1, however, the said construction permission was stayed on 20th November, 1997 and subsequently vide order dated 24.06.2013 the construction permission is negatived. The learned counsel submits that the development plan road towards the south of the petitioners plot existed, however, subsequently the respondent / Municipal Council changed the alignment of the said D. P. Road and has shown the said D. P. Road over the plot of the present petitioners. The earlier sanctioned lay out shows the D. P. Road towards the south of plot of petitioners and no part of the plot of the petitioners is affected by the

D. P. Road but the subsequent map depicts the major portion of the plot of the petitioners being affected in the said D. P. Road. The other plot owners have already constructed their houses. If the alignment as is shown in the map as per the measurement from 22.12.2000 to 03.01.2001 (Page 123) is seen the alignment of the said D. P. Road is nowhere near to the one shown in the plan which was in existence at the time of sanction of construction permission. The impugned order is illegal. The petitioners are the retired persons. From their retiral benefits they have purchased the property and started construction. The learned counsel submits that, this is a third round of litigation. The construction permission which is sanctioned in 1996 was stayed in 1997. The said stay was continued till the impugned order is passed.

2. Mr. Bilolikar, the learned counsel for respondent / Municipal Council submits that, the petitioners should blame their predecessor in title. Initially the lay out is sanctioned on 07.03.1993. Second lay out is submitted by the original owner wherein the plot numbers are shown to have changed. The second lay out is not sanctioned. The alignment of road has not been changed. The D. P. Road remains 12 meter in width, however, the petitioners have purchased the property which is on the D. P. Road.

3. We have considered the submissions.

4. The respondents are relying upon the report of the Project Officer who according to the respondent has conducted the inquiry.

5. There appears to be inconsistency in the maps produced before this Court with regard to the alignment of the 12 meter wide D. P. Road. In the impugned order also the Chief Officer has not come to any conclusive finding, however, has asked the petitioners to submit the documents of the lay out and the other relevant documents so that it will be possible for the Municipal Council to

consider the application of the petitioners for grant of construction permission. The petitioners it seems have purchased the property i.e. plot numbers as appearing pursuant to the second lay out plan submitted. It is submitted that, even in the second lay out plan only the plot numbers have undergone change, however, area remains the same. The said aspect also will be required to be considered. It would be appropriate for the parties to go for measurement so as to resolve the dispute. In the earlier map the site for Primary School is shown admeasuring 1100 sq. meter, whereas in subsequent map (Page 123) the said site for Primary School is shown admeasuring 690.08 sq. meter. It is also submitted by the petitioners that earlier the shape of the site for Primary School was triangular and in the map at page 118 and 119, it is shown square and in development plan (Page 119) the D. P. Road is shown as 15 meter.

6. The Authorities shall consider the original record. The Authorities shall also go in for measurement and then decide about the application of the petitioners for construction permission afresh. The Assistant Director of Town Planning shall also consider the existence and location of the D. P. Road. The Assistant Director of Town Planning shall also give its report with regard to the existence of the D. P. Road so as to enable the Chief Officer, Municipal Council to take appropriate decision on the construction permission of the petitioners. The said exercise be done expeditiously and preferably within six (6) months. The impugned order would not come in the way for deciding the application of the petitioners for construction permission.

7. The writ petition is accordingly disposed of with aforesaid observations and directions. No costs.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]

sam/Feb.16