

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7819 OF 2012

Shantilal Tarachand Bothra
Age: 60 years, occu: Agri & Social service,
R/o Main Road, Chopda,
Dist. Jalgaon

Petitioner

Versus

- 1 The State of Maharashtra
through:
- 1.i The Principal Secretary,
Urban Development Department
- 1.ii The Principal Secretary,
Public Works Department.
- 1.iii The Principal Secretary,
Revenue & Forest Department
Mantralaya, Mumbai - 32
- 2 The Collector, Jalgaon.
- 3 The Planning Authority &
Municipal Council, Chopda
tq. Chopda, Dist. Jalgaon
- 4 The Assistant Director,
Town Planning Department,
Jalgaon.

Respondents

Mr.R.R. Mantri advocate for the petitioner

Mr.P.S. Patil Assistant Govt. Pleader for Respondents No.1, 2 & 4

Mr. P.R. Patil advocate for respondent No.3.

**CORAM : R.M. BORDE &
A.I.S. CHEEMA, JJ**

Reserved on 12.1.2016

Pronounced on:2.8.2016

JUDGMENT

(Per: R.M. Borde, J)

1 The petitioner is seeking directions to respondent No.3 Planning Authority, Municipal Council, Chopda, to remove the unauthorised construction of the shopping centre along side Ankaleshwar Burhanpur road in block No.1156 of Chopda, Dist. Jalgaon within specified period. A direction is also sought against the respondent to remove the unauthorised construction raised over the aforesaid property and for restoration of the land to its original position i.e. for agriculture use within specified time frame.

2 The petitioner states that, an agricultural land can only be used for the said purpose and cannot be used for any other purpose, without securing prior permission of the Collector under the provisions of Section 44 of the Maharashtra Land Revenue Code. It is the contention of the petitioner that, the use of the land block No.1156 was prescribed for agriculture purpose.

However, the Collector by order dated 6.8.2001 granted permission for change of use for the purpose of cattle shed and office only. It is the contention of the petitioner that, initially the land to the southern side of high way was reserved under the development plan as site No.87/1 for extension of college. If the property is designated for a particular purpose, it can be used for that purpose and for no other purpose. The petitioner contends that, Agriculture Produce Marketing Committee (APMC) has raised construction of more than 100 shops on the property and the said unauthorised construction needs to be removed. The petitioner further contends that, though the planning authority issued a notice on 15.5.2005, calling upon the APMC to remove the unauthorised development, no steps have been taken. The petitioner as such, seeks a direction against the planning authority for removal of unauthorised construction.

3 In an affidavit-in-reply presented on behalf of respondent Nos.1 and 4, it has been stated that, under the revised development plan, the northern side portion of the land bearing Gut No.1156 is prescribed for the use of APMC and southern portion is reserved for site No.90-A for the purpose of extended use of APMC. According to the concerned respondents, the non-agriculture permission granted by the Collector is for the purpose

of cattle shed and office and not for shopping complex. It is stated in the reply that, it is for the planning authority to take appropriate steps.

4 An-affidavit-in reply has also been presented by the Chief Officer of the Municipal Council, wherein, it has been stated that, on 11.7.2000, the Assistant Director of Town Planning, Jalgaon i.e. respondent No.4 recommended the said land bearing Gut No. 1156 northern part, for construction of cattle shed and office. On 8.6.2001, the Collector, Jalgaon granted non-agriculture (NA) permission and converted the land bearing No.1156 admeasuring 18,800 square meters for commercial purpose. On consideration of the orders passed by the learned Collector, Jalgaon dated 8.6.2001, granting NA permission, the then Chief Officer of Municipal Council, Chopda, vide order dated 6.4.2002 granted necessary permission for construction of shopping complex. It is stated that, the southern part of gut No.1156 is prescribed, under the development plan, for college. However, the Government of Maharashtra vide its notification dated 29.5.2004, deleted the said reservation and changed the purpose in respect of southern portion of the land in gut No.1156, for extension of APMC Chopda. The Chief Officer of the Municipal Council, Chopda granted sanction to the lay out plan of APMC under the provisions of MRTD

Act vide order dated 21.8.2004 for construction of shopping complex on the southern side of gut No.1156. It is further stated that the construction permission granted on 21.8.2004 by the Chief Officer was subject to condition :

- a) That the APMC should not start the construction unless the said suit land has been measured and marked from the competent authority of TILR office.
- b) That the APMC should take appropriate permission from the office of the Public Works Department, Amalner, Collector as well as Director of Marketing.

In view of its order dated 20.3.2010, the Chief Officer called upon the APMC to produce following documents:-

- a) The measurement & marketing sheet of Taluka inspector, Land Records, Chopda.
- b) The no-objection certificate issued by the Public works Department
- c) Appropriate permission from the Collector, Jalgaon as well as the Director of Marketing.

After receipt of the notice, the APMC, Chopda submitted necessary documents except the no-objection certificate issued by PWD. As such, the Chief Officer issued notices under sections 52 and 54 of the Maharashtra Regional Town Planning Act, 1966 on 15.5.2010, irrespective of the fact that, the NA Permission dated 8.6.2001 was already on record, while granting earlier construction permission to the Northern side of the property bearing Gut No.1156. It is further revealed that, APMC submitted no-objection certificate issued by PWD, Amalner on 11.6.2010, showing the post-facto sanction to the construction made by APMC. It is further revealed that, the NA permission granted on 8.6.2001 in respect of gut No.1156 is for 18,800 square meters. Gut No.1156 admeasures 23,000 square meters, out of that 4200 square meters is reserved for road purpose and the rest of the land admeasuring 18,800 square meters can be used for NA purposes in accordance with permission of the Collector. In view of the facts stated above, it was requested by the Chief Officer that no relief as requested by the petitioner need be granted.

5 The petition presented by the petitioner does not require consideration for two reasons. One that the petitioner has not impleaded necessary party i.e. APMC, Chopda, against which the

relief has been sought in respect of demolition of the construction. Even after extending an opportunity to the petitioner to make necessary corrections, the petitioner refused to implead APMC as party-respondent. An application tendered by APMC for intervention, has also been vehemently opposed by the petitioner. In this view of the matter, the petition needs to be rejected solely on the ground of non-impleadment of necessary party i.e. the party against which the substantial relief is sought.

6 The second reason necessitating the dismissal of the petition is that, the petitioner is guilty of suppression of material facts and has not come to the Court with clean hands. The petitioner was Councilor of the Municipal Council during 1985-1990 and also held and occupied the office of the Vice President/President of the Municipal Council. The petitioner deals with property and had purchased various properties and has vested interest in property block No.1156 which was reserved for APMC. This land was purchased by Nitin Raosaheb Shelke, Sudhakar Bhaskar Patil, Rajendra Balvantrao Patil, Shankar Uttamrao Patil, Narendra Ghanshyam Choudhari and Madanabi Pannal Sakle. The petitioner has acted as a Power of Attorney holder for those persons. In fact, APMC made efforts for acquisition of the property and pursued the matter with various

authorities for number of years. However, as a result of position of the petitioner, there were many impediments for APMC to acquire the property. The petitioner, in his capacity as a power of attorney holder, filed a Civil Application No.6834/2003 in Writ Petition No.4235/99, challenging the Award passed under the Land Acquisition Act, acquiring the land for APMC. After dismissal of the Civil Application in the Writ Petition and the Writ Petition, a special leave petition No.3275/2004 was presented by the petitioner to Supreme Court, which was also rejected by order dated 12.4.2004. These facts have been withheld from the Court by the petitioner.

7 On perusal of the order passed by the Collector, Jalgaon on 8.9.2001 granting NA Permission, it is evident that, the permission is granted for commercial use and not for the purpose of cattle shed and office, as contended by the petitioner. APMC tendered a proposal to the Director of Marketing for permission of development of the property on 20.8.2001. The Director of Marketing, Pune granted permission to APMC for development of the land on 6.12.2001. APMC, thereafter tendered an application for permission of the development to the Planning Authority on 28.12.2002. The Municipal Council granted permission for construction of shopping complex on 21.8.2004. It is stated that,

tenders were floated and shopping complex has been constructed after appointment of a contractor. There is open space kept behind the shopping complex for use of cattle shed. The shops are allotted on lease basis by way of a public auction and since 10-12 years, APMC is paying municipal taxes. It is contended by the intervenor that, since the petitioner was unsuccessful in grabbing the land reserved for APMC, he started creating hurdles for APMC through the Municipal Council, where, he was occupying the office either as councilor or the vice President/President of the Municipal Council. APMC was required to challenge the notices issued by the planning authority by presenting Writ Petition No.5639/2010. The High Court granted interim orders on 29.6.2010, staying the notices issued by the Municipal Council. Later-on, the Writ Petition was withdrawn with liberty to avail appropriate remedies permissible in law. The objection raised by the Planning Authority in respect of submission of necessary 'no objection' certificate has been complied by APMC. It is further pointed out that the Government has already cancelled the reservation No.87-A over land gut No.1156 which was for the college and the reservation has been prescribed as site No.90-A for extension of APMC under the Notification dated 29.5.2004.

8 There appears absolutely no illegality in raising construction of the shopping complex. Apart from the fact that the contentions and objections raised in the petition do not bear any substance, the petition does not deserve favourable consideration for two reasons as recorded above i.e. suppression of material facts by the petitioner and failure to implead necessary party to the petition.

9 The petition is devoid of merit and stands rejected.

10 Pending Civil Applications do not survive and stand disposed of.

(A.I.S. CHEEMA, J)

(R.M.BORDE, J)

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