

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7680 OF 2015

Shivajirao Vitthalrao Kamble & Anr. ..Petitioners

v/s.

The State of Maharashtra & Ors. ..Respondents

Mr. S.N.Biradar for the Petitioner.

Mrs. M.P.Thakur , AGP for the Respondent nos. 1 to 5 and 7.

Mr.Abhijeet Kulkarni, i/b. DD & Abhijeet Associates for the Respondent No.6.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : AUGUST 22, 2016.**

P.C.

1. Heard learned Counsel for the respective parties. The petition is filed for following reliefs:

- i) Issue appropriate writ, order or direction thereby declaring that CTS No.739/5/34A (1144.56 sq. mtrs) Barshi, District Solapur, Maharashtra is not reserved for any public purpose under Development Plan of Barshi (Second Revised) sanctioned under Notification No. TPS1700/5841/CR28/2000/UD13 of State Government

dated 5.2.2002 and therefore cannot be treated as open space (unavailable for development) by any of the Respondents and in turn issue writ of mandamus directing respondents to grant construction permission/NOC/ Development permission to petitioners for CTS No. 739/5/34A (1144.56 sq. mtrs) Barshi. Districty Solapur, Maharashtra in accordance with law.

ii) Issue appropriate writ, order or direction thereby quashing order dated 19.3.2015 in Appeal No. TPS-1717/CR/48/15/UD-13 u/s. 47 of MRTP Act passed by Appellate Authority-cum-Minister of State, Urban Development Department, Government of Maharashtra and in turn allow the said appeal as prayed for in the interest of justice.

lii) Issue appropriate writ, order or direction thereby declaring that preliminary approval of layout of Gat No.694 and Gat No.700, Barshi, District Solaapur u/s. 45 of the MRTP Act approved by Barshi Municipal Council on 16.8.1978 has lapsed for non-compliance of conditions thereof within one year and therefore open space (1329.64 sq. mtrs.) therein has also lapsed, more particularly in view of certificate of Gunthewari Development Regularization dated 31.3.2006 u/s. 4(3) of Maharashtra Gunthewari Development (Regularization, Up-gradation and Control) Act, 2001 issued by Chief Officer, Barshi Municipal Council.

iv) Issue appropriate writ, order or direction to quash communication/ order/ letter of ADTP, Solapur dated 8.8.2012 and 24.1.2013 (Exhibit N and Exhibit P) order/ letter of DTP, MS dated 15.1.2013 (Exhibit O) , order /letter of CO, Barshi Municipal Council dated 5.2.2013 (Exhibit Q) as being illegal, unconstitutional and violative of Petitioners' Fundamental Rights under Article 14, 19(1) and 21 of the Constitution of India.

v) In the alternate, issue appropriate writ, order or direction to respondents directing them to regularize CTS No.739/5/34A (1144.56 sq. mtr) Barshi, Solapur in terms of certificate of Gunthewari Development Regularization dated 31/3/2006 u/s. 4(3) of Maharashtra Gunthewari Development (Regularization, Upgradation and Control) Act, 2001 issued by Chief Officer, Barshi Municipal Council and consequentially direct respondents to grant construction permission/NOC/Development Permission for the said land to the petitioners in the interest of Justice.”

2. One Mr. Patil was owner of City Survey Gat No. 694 and 700 situated at Barshi. The Barshi Municipal Council approved the lay out on 16.8.2011 and the said land was sub-divided into 42 plots. It seems that the petitioner has purchased Plot No.739/5/34A

admeasuring about 1144.56 sq. meters. The records show that this plot was shown as open space in the said layout plan submitted by Shri Patil. The petitioner could not have purchased the same, despite this the petitioner applied for permission to the Municipal Council for certification of the said place for proposed petrol pump. This permission was rejected by the Municipal Council for by letter dated 15.1.2013, pointing out that the permission for development cannot be granted to the petitioner, as much as the subject plot is shown as open space in the 1978 layout. Be that as it may, the development under the said lay out is already carried out. The other plot owners have constructed their construction. It is not permissible for the petitioner now to challenge the said layout after loss of period of 35 years. The petition is without merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)