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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2009 of 2015

1. M/s Sanjay Bajpai Builders Pvt. Ltd., a Private Company Registered under the relevant provisions of law, having its registered office at Krishna Complex, 2nd Floor, Kutcheri Chowk, Raipur, Through its Director Sarita Bajpai, W/o Late Sanjay Bajpai, aged about 47 years, R/o Exotica, Shankar Nagar, Post & P.S. Shankar Nagar, Raipur (C.G.)
2. Smt. Sarita Bajpai, widow of Late Sanjay Bajpai, aged about 45 years, Director - M/s Sanjay Bajpai Builders Pvt. Ltd., Raipur and resident of Exotica, Shankar Nagar, Post & PS Shankar Nagar, Raipur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Housing & Environment, Mahanadi Bhawan, Mantralaya, Naya Raipur.
2. The Director, Directorate of Town & Country Planning Department, Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Tahsildar, Raipur (C.G.)

---- Respondents

AND

Writ Petition (C) No.2010 of 2015

Sarita Bajpai, wife of Late Sanjay Bajpai, aged about 40 years, Managing Director M/s Sanjay Bajpai Builders Pvt. Ltd., Raipur and resident of Exotica, Shankar Nagar. Post & P.S. Shankar Nagar, Raipur (C.G.), Civil & Revenue District Raipur

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Housing & Environment, Mahanadi Bhawan, Mantralaya, Naya Raipur.
2. The Director, Directorate of Town & Country Planning Department, Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Tahsildar, Raipur (C.G.)

---- Respondents

For Petitioners: Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.

For State/Respondents:

Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/09/2017

1. Since common question of law and fact is involved in these two writ petitions, both the writ petitions were clubbed together and they were heard together and are being disposed of by this common order.
2. Invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner – M/s. Sanjay Bajpai Builders Private Limited has filed these writ petitions calling in question the order dated 10-12-2014 as well as the orders dated 17-7-2015 and 22-8-2015 by which the eight layout permissions for development of colony have been revoked.
3. The aforesaid challenge has been made in the following factual background: -
 - 3.1) The petitioner is a developer and builder. There were five sanctioned layouts for development of colony at Village Dunda where permission was granted on 2-5-2008, 22-7-2008, 10-12-2008, 20-5-2009 and 30-6-2009, respectively, whereas for Village Boriyakala, there were two sanctioned layouts for which permission was granted on 22-5-2010 and 4-6-2011, and for Village Sejbahar, there was only one sanctioned layout for which permission was

granted on 12-6-2012. On account of some complaint, enquiry was conducted by the State Government with the help and assistance of the Joint Director, Town and Country Planning and by order dated 26-9-2013, the eight approved layout permissions mentioned herein-above for development of colony were revoked. Feeling aggrieved against the order dated 26-9-2013, the petitioners preferred W.P.(C)Nos.1857/2013 and 1858/2013 before this Court and this Court by order dated 10-12-2014, quashed the order dated 26-9-2013 and directed the Directorate of Town & Country Planning to hear the petitioners and take fresh decision in the matter after giving reasonable opportunity of hearing to the petitioners. It is the case of the State Government that thereafter, opportunity of hearing was granted to the petitioners and thereafter, order dated 17-7-2015 has been passed. Dissatisfied with the said order, the petitioners preferred a review petition before the Director, Town and Country Planning Department stating that they have not been given reasonable opportunity of hearing to which the Director did not find any favour and ultimately, by order dated 22-8-2015, the review has been dismissed. Thereafter, questioning legality, validity and correctness of the order dated 17-7-2015 and the review order dated 22-8-2015, these two writ petitions have been preferred.

3.2) These writ petitions have been primarily preferred on the ground that there is no misrepresentation on the part of the petitioners and no false statement made by the petitioners while making application for sanction of layout for development of colony

and further that there is huge delay in revoking the development plans as in between third party rights have already been created and therefore there is no reason to interfere with the order sanctioning the layout for the development of the colony that has been named as "Swagat Vihar" and "New Swagat Vihar". Therefore, the order revoking the layout of the development plans be quashed and the writ petitions be allowed.

3.3) Return has been filed vehemently opposing the writ petitions stating inter alia that the lands in question were reserved for agricultural purposes and land earmarked for construction of road which have been included while making application for approving the layout in Villages Dunda and Boriyakala. The title deeds were not produced by the petitioners as there is gross difference in the area included in the sale deeds and the area mentioned in the Khasra B-1 and there is overlapping of EWS lands in P.L.Nos.5/2011 and 33/2010. It was further pleaded that for Village Sejbahar, the petitioners did not submit any title documents for which area of land the layout permission is required. Therefore, the learned Director, Town & Country Planning has rightly revoked the approved development sanction plan for development of the colony as submitted by the petitioners and there is no jurisdictional error requiring interference, as such, the writ petitions deserve to be dismissed.

4. Mr. B.P. Sharma, learned counsel appearing for the petitioners, would submit as under: -

1. The petitioners sanctioned layout permissions have been revoked in exercise of Rule 25 of the Chhattisgarh Bhumi Vikas Rules, 1984, but no such finding has been recorded by the Director, Town & Country Planning that the petitioners have made any false statement or misrepresented any material facts in the application on which the permission was based. So far as Village Dunda is concerned, sanction was granted and layout was approved way back on 2-5-2008, 22-7-2008, 10-12-2008, 20-5-2009 and 30-6-2009, and for the first time, the layout sanctions were revoked by order dated 26-9-2013, whereas the layout sanction was approved for a period of three years and, therefore, lapsed permission cannot be revoked. Even otherwise, there is inordinate delay in revoking the development plans and in between, third party rights have been created and the entire development has been done and huge investment has already been made by the petitioners as well as by the land allottees investing crores of rupees as such, there is no ground in revoking the sanctioned layout permission(s) invoking the power under Rule 25 of the Chhattisgarh Bhumi Vikas Rules, 1984 (for short, 'the Rules, 1984').
2. The delay in revoking the sanctioned plan itself is sufficient to quash the order revoking the layout permission.
3. If ignoring the land use mentioned in the master plan, layout permission was granted, that could have been rectified in exercise of power conferred under Section 23-A of the

Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short, 'the Adhiniyam, 1973'), as it is the fault of the State authority itself and that could have been done in the public interest and for public purpose, as the delay itself is sufficient to quash the order of revocation of layout permission and creation of third party interest itself is a factor to be considered for invoking Section 23-A of the Adhiniyam, 1973. Likewise, for Village Boriyakala, permission was granted on 22-5-2010 and 4-6-2011 and for Village Sejbahar, permission was granted on 12-6-2012 much prior to its revocation creating third party right and they have made huge investment.

5. Mr. Arun Sao, learned State counsel, would oppose the submissions advanced on behalf of learned counsel for the petitioners and would submit that as far as Village Dunda is concerned, the petitioners have suppressed the fact that most of the land was earmarked for agricultural purposes and for construction of land and suppressing that fact the application for layout permission was got sanctioned, therefore, for Village Dunda, the layout permission has rightly been revoked. With regard to Village Boriyakala, learned State counsel would submit that two separate permissions were granted being P.L.Nos.5/2011 and 33/2010, but EWS land was overlapping in these PL numbers as such, separate lands would be required to be earmarked for EWS in both these PLs, separately. The petitioners did not produce documents showing their title and the entire lands for which

permission was granted and layout was sanctioned. So far as Village Sejbahar is concerned, learned State counsel would also submit that the petitioners failed to produce title deeds with regard to the entire land for which layout permission was granted. Therefore, the impugned order passed by the Director, Town and Country Planning deserves to be maintained and the writ petitions deserve to be dismissed.

6. In rejoinder submission, Mr. Sharma relying upon a judgment of the Supreme Court in the matter of Dipak Babaria and another v. State of Gujarat and others¹ followed in the matter of T.P. Senkumar, IPS v. Union of India and others², would submit that the respondents cannot add reasons and grounds which have not been mentioned in the impugned order.
7. I have heard learned counsel for the parties and considered their rival submissions made herein-above.
8. The question is whether the layout permission granted under Section 30 of the Adhiniyam, 1973 read with Rule 27 of the Rules, 1984 permitting development has rightly been revoked in exercise of power under Rule 25 of the Rules, 1984.
9. Rule 25 of the Rules, 1984 provides as under: -

“25. Revocation of Permission.—The Authority may revoke any permission issued under the provisions of these rules wherever there has been any false statement or any misrepresentation of any material fact in the application on which the permission was based.”

10. A focused glance of the aforesaid Rule would show that permission

1 (2014) 3 SCC 502

2 (2017) 6 SCC 801

granted can be revoked where false statement or misrepresentation of any material fact in the application on which the permission was based, was made and that has been relied upon while granting permission.

11. The word 'misrepresentation' has been defined in Black's Law Dictionary as under: -

“Misrepresentation. 1. The act of making a false or misleading statement about something, usu. with the intent to deceive. 2. The statement so made; an assertion that does not accord with the facts.—Also termed *false representation*; (redundantly) *false misrepresentation*. (Black, 7th Edn., 1999)”

12. Likewise, Restatement (Second) of Contracts defines misrepresentation as under: -

“A misrepresentation, being a false assertion of fact, commonly takes the form of spoken or written words. Whether a statement is false depends on the meaning of the words in all the circumstances, including what may fairly be inferred from them. An assertion may also be inferred from conduct other than words. Concealment or even non-disclosure may have the effect of a misrepresentation. ... An assertion need not be fraudulent to be a misrepresentation. Thus a statement intended to be truthful may be a misrepresentation because of ignorance or carelessness, as when the word 'not' is inadvertently omitted or when inaccurate language is used. But a misrepresentation that is not fraudulent has no consequences ... unless it is material.”

13. Section 18 of the Indian Contract Act, 1872 defines misrepresentation as under: -

“MISREPRESENTATION” means and includes—(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing

it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.”

14. In the matter of **Satyam Infoway Ltd. v. Siffynet Solutions (P)**

Ltd.³, it has been held that the word 'misrepresentation', if it is intentional, might lead to an inference that the reputation of the plaintiff is such that it is worth the defendant's while to cash on it. It does not require that the plaintiff has to prove any *mala fide* intention on the part of the defendant. There must be likelihood of confusion in the minds of customers that the goods or services offered by the defendant are the goods or the services of the plaintiff.

15. In view of the aforesaid definition of misrepresentation, misrepresentation pertains to those facts which would have disentitled the petitioners to obtain an order in their favour for permission of layout. Therefore, layout permission can be revoked only when a false statement is made by the applicant or misrepresentation of any material fact is made while applying for layout permission and which has been made basis for such permission.

16. Having thus, noticed the ground on which the layout permission granted can be revoked, now I would turn to the facts of the case.

17. In the present case, permission granted for developing the layout of three villages namely Dunda, Boriyakala and Sejbahar has been

3 (2004) 6 SCC 145

revoked. Now, I shall deal with the revocation of layout permission one by one. First, I will take-up the revocation of layout permission in Village Dunda. Particulars of layouts sanctioned at Village Dunda are as under: -

S.No.	Name of village	Layout Case No.	Grant of permission Case No. & Date	Expiry of permission
1.	Dunda	PL 79/08	2574/2-5-2008	1-5-2011
2.	Dunda	PL 162/08	4286/22-7-2008	21-7-2011
3.	Dunda	PL 296/08	7097/10-12-2008	9-12-2011
4.	Dunda	PL 110/09	3639/20-5-2009	19-5-2012
5.	Dunda	PL 118/09	4760/30-6-2009	29-6-2012

18. A careful perusal of the aforesaid chart would show that for Village Dunda, permission was granted for development plans for approved layouts which pertains to the period from 2-5-2008 to 29-6-2009, whereas for the first time, the said approved development plan has been revoked on 26-9-2013. First plan is of 2-5-2008 and the validity period for the said permission was for three years from the date of its sanction i.e. 2-5-2008 which stood expired on 1-5-2011 and this has been revoked on 26-9-2013. So revocation of permission was admittedly after the period of three years from the time of its grant. Likewise, for P.L.No.162/2008, permission was granted on 22-7-2008 again, it was for a period of three years. Thus, so far as Village Dunda is concerned, validity of layout has expired after three years i.e. 29-6-2012, thereafter only on 26-9-2013, approved layout plan has been revoked under Section 25 of the Rules, 1984, though permission so granted was extendable for

a further period of two years, but it should not exceed total five years. Thus, the State Government slept over the matter and did not take steps for rectifying the defects, if any, and did not revoke the layout permission within the period prescribed therein under the development plan and allowed creation of third party interest and further allowed the third party to invest their hard-earned money and only after the period of three years that has been revoked which was wholly impermissible in law, as the same is after the expiry of life of layout permission granted to the petitioners and creation of third party interest.

19. It is appropriate to mention here that after the grant of layout permission for development of colony with effect from 2-5-2008, third party right has been created. It is stated at the Bar that the petitioners had sold about 1400 plots measuring 23,49,000 sq.ft. to several persons and the said allottees have invested ₹ 84 crores and most of them had taken loans from their respective bankers and interest is running against them. Therefore, the State Government ought to have acted diligently while revoking the layout permission, when third party right has been created investing crores of rupees. There is huge delay on the part of the State Government to revisit the matter particularly revisiting the development permission granted to the petitioners permitting them to develop lands.
20. Now, coming to the grounds mentioned in the order of the learned Director, Town & Country Planning, it has been held that at Village Dunda, five plans have been sanctioned to the land ad-measuring

89.25 acres out of which only 62.43 acres is earmarked for residential purpose in the master plan on which rightly permission has been granted, but 32.49 acres of land is reserved for agricultural purpose and 4.80 acres for road, therefore, layout permission could not have been granted and is liable to be revoked and it has been revoked.

21. It appears from the record that no false statement has been made by the petitioners and there is no finding that the petitioners have misrepresented while making application for grant of layout except stating that in respect of lands reserved for agricultural purpose and road, layout has been got sanctioned. The Joint Director / Director, Town & Country Planning is the custodian of the master plan. So while granting layout permission all documents including master plan indicating land use and public interest was required to be adverted to by the said authority while considering and granting layout permission. Therefore, the petitioners cannot be held liable that they have misrepresented the fact and persuaded the authority to grant layout permission contrary to land use. If the authorities have committed lapse in not looking into the master plan and granting layout permission contrary to land use earmarked in the master plan, they cannot be allowed to say later-on that the petitioners have either made false statement or misrepresented for grant of layout permission within the meaning of Rule 25 of the Rules, 1984.

22. As it has already been held, it was not open to the State

Government / Director, Town & Country Planning, to revoke the permission after the period of three years which has expired from the date of granting permission in view of deliberate delay on the part of the State Government. In the meanwhile, third party rights had been created and about 1400 investors had already invested their money by purchasing plots with a hope that they will have a beautiful dream home on the said lands.

23. Since third party rights had been created and about 1400 plots have been sold by the petitioners and the investors / allottees / purchasers have incurred ₹ 84 crores in purchasing plots, as stated at the Bar, in the opinion of the Court, the State Government can take-up the matter under Section 23 read with Section 23-A and other relevant provisions of the Adhiniyam, 1973 considering the public interest involved therein.
24. Section 23-A of the Adhiniyam, 1973 provides that the State Government, on its own motion or on the request of Development Authority, make modification in the Development Plan for urgent public purpose. The modification so made in the Development Plan shall be an integrated part of the revised Development Plan.
25. At this stage, two decisions of the Supreme Court may be noticed herein. First one is **Binabai Bhate v. State of Madhya Pradesh and others**⁴ in which the Supreme Court has held that power of review and modification of development plan as provided in Sections 23 and 23-A of the Adhiniyam, 1973 is exclusively vested with the State Government to be exercised in an appropriate case,

4 (2011) 13 SCC 32

the State Government is empowered to exercise such power as and when deemed proper.

26. Likewise, in the matter of **Mangal Amusement Park Private Limited and another v. State of Madhya Pradesh and others**⁵, the Supreme Court has again held that Section 23-A of the Adhiniyam, 1973 permits modification of development plan by following due procedure laid down therein.
27. In the instant case, since about 1400 plots have already been sold after the layout permission was duly sanctioned and before revocation of development plan i.e. after a period of three years and huge money is invested which is said to be ₹ 84 crores, in the opinion of the Court, it is the urgent public purpose which requires regularisation / modification of the scheme and the State Government may consider to exercise the power under Section 23-A of the Adhiniyam, 1973 and relevant provisions of the Rules, 1984 for changing the land use for the reasons mentioned herein-above in the public interest for urgent public purpose.
28. 'Public purpose' includes any purpose in which even a fraction of the community may be interested or by which it may be benefited.
(See **Somawanti v. State of Punjab**⁶.)
29. The term "public purpose" has been defined in Black's Law Dictionary (5th Edition) as under: -

"A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as, for example, a State, the

5 (2012) 11 SCC 713

6 AIR 1963 SC 151

sovereign powers of which are exercised to promote such public purpose of public business. (See *Daulat Singh Surana v. First Land Acquisition Collector*⁷.)

30. Be that as it may, taking into consideration the fact that development permission was granted from 2008-09 (Village Dunda) i.e. from 2-5-2008 to 29-6-2012 and the State Government did not notice the fact that there is change of land use and in fact, while granting application the Director, Town & Country Planning or the Joint Director, Town & Country Planning, as the case may be, failed to notice the change of land use, it is directed that the State Government shall consider the proposal for change of land use under Section 23-A of the Adhiniyam, 1973, for the aforesaid 32.49 acres of land in accordance with law keeping in view the observations made herein-above, within a period of two months from the date of production of a copy of this order. It is also brought to the notice of this Court that the petitioners have made huge investment by making construction of roads and drains and some other development has also taken place. However, while considering the proposal for change of land use, the land earmarked for road and the Government land, if any, included in the development plan, shall not be considered and appropriate consideration would be made by the competent authority in that regard. It is made clear that the land so earmarked for road shall be utilised only for construction of road.
31. Now, this will bring to the development permission granted to Village Boriyakala. Particulars of layouts sanctioned at Village

⁷ AIR 2007 SC 471

Boriyakala are as under: -

S.No.	Name of village	Layout Case No.	Grant of permission Case No. & Date	Expiry of permission
1.	Boriyakala	PL 33/10	2963/22-5-2010	21-5-2013
2.	Boriyakala	PL 05/11	3241/4-6-2011	3-6-2011

32. So far as Village Boriyakala is concerned, permission has been granted on 22-5-2010 and 4-6-2011 the validity period of which was again up to 21-5-2013 and 3-6-2014, respectively, i.e. for three years, whereas the impugned order of revocation was passed on 26-9-2013. Again there is inordinate delay in taking action on the part of the State Government. By the impugned order, the only reason assigned for revoking layout permission is that in Village Boriyakala, permission was granted for 112.55 acres of land, but it has not been recorded in the revenue records. However, the registration papers are with regard to 98.41 acres of land. For EWS, 7.5 acres of land has been left-out and that is overlapping in P.L.Nos.33/2010 and 5/2011. In this regard, it is directed that the petitioners will earmark 7.5 acres of land separately in both the PLs or if not permissible, the petitioners will deposit the cost of 7.5 acres of land as calculated by the Director, Town & Country Planning, as per rules, if permissible, keeping in view as stated at the Bar that the petitioners have approximately sold 1200 plots and these allottees have invested ₹ 130 crores after taking loans from bank.

33. It is well settled law that revenue records do not confer title as they are not the documents of title and it would not create any right, title

and interest in the property, it is only for the purpose of collecting revenue / tax. It is also well settled law that mutation entries are only for the purpose of enabling the State to collect land revenue from person in possession and it does not confer any title to the land whose name is recorded in the records. In the matter of **State of U.P. v. Amar Singh etc.**⁸, Their Lordships of the Supreme Court have held as under: -

“It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per Stamp Act and registered under Registration Act. The alienees being sons and daughters-in-law, the tenure-holder remained to be the owner and holder of the land.”

(Also see **Balwant Singh and another v. Daulat Singh (dead) by LRs and others**⁹, **Calcutta Municipal Corporation and others v. Shrey Mercantile Pvt. Ltd. and others**¹⁰, **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and another**¹¹ and **Union of India and others v. Vasavi Cooperative Housing Society Limited and others**¹².)

34. The petitioners shall also produce title deeds of entire 112.55 acres of land and satisfy the authority that they own the entire land.
35. Now, the question is of Village Sejbahar. Particulars of layout sanctioned at Village Sejbahar are as under: -

8 AIR 1997 SC 1534

9 AIR 1997 SC 2719

10 AIR 2005 SC 1879

11 AIR 2003 SC 4548

12 (2014) 2 SCC 269

S.No.	Name of village	Layout Case No.	Grant of permission Case No. & Date	Expiry of permission
1.	Sejbahar	PL 01/12	4045/12-6-2012	11-6-2015

36. Only one application has been sanctioned on 12-6-2012. In this village, 700 persons had invested their hardened money, some of them had taken loans and interest is running and some of them have been given possession also. Rs.145 crores is said to have been invested therein. So far as Village Sejbahar is concerned, P.L.No.1/2012 has been granted on 12-6-2012 and the validity period was for three years and the lay out sanction is for 51.94 acres, whereas according to B-1, 29.74 acres of land has been recorded in the name of the petitioners and according to the registration papers, 40.77 acres of land is owned by the petitioners.
37. Be that as it may, since third party rights had been created and the only reason assigned for revocation is the dispute of ownership of land, the petitioners are directed to submit their documents to the Director, Town & Country Planning satisfying that they own the entire 51.94 acres of land. If the petitioners are not found owners of some land, same would be excluded while considering their case of regularisation.
38. No other point has been urged.
39. For the foregoing reasons, the impugned order passed by the Director, Town & Country Planning dated 17-7-2015 and 22-8-2015 and consequential review orders are hereby quashed. The writ petitions are allowed subject to the following directions: -

1. So far as Village Dunda is concerned, the petitioners' case with regard to change of land use will be considered in accordance with Section 23-A of the Adhiniyam, 1973, and the Rules, 1984, keeping in view the observations made herein-above and as per other applicable provisions within a period of two months from the date of production of a certified copy of this order and thereafter, application for layout permission will be considered accordingly.
 2. So far as Villages Boriyakala and Sejbahar are concerned, entire exercise of considering the layout permission application will be completed afresh within a period of 45 days from the date of production of a certified copy of this order. The petitioners will file all necessary documents / title deeds to satisfy the competent authority.
40. Parties shall bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge