

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

**REVIEW APPLICATION NO.205 OF 2012
IN
WRIT PETITION NO.9486 OF 2011**

(PRAKASH DATTATRAYA SONAWANE AND ANR.
VERSUS
SUNANDA KISAN NARWADE AND ORS.)

Mr.S.V.Natu, Advocate for applicants
Mr.D.P.Palodkar, Advocate for respondent no.1
Mr.A.P.Bhandari, Advocate for respondent no.3

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : OCTOBER 09, 2017

PER COURT

Heard learned Counsel appearing for the parties.

2. Review applicants claim to be plot holders in the lay-out in Survey no.2, situate at Mauje Mustafabad. According to them, under the original lay-out plan, 15% of the lands, pursuant to the Rules, had been sanctioned. While, in Writ Petition bearing No.9486 of 2011 filed in this Court, when the Municipal Corporation had been been reluctant to accord sanction to renew

the lay-out plan, wherein 10% open space was mentioned, this Court had directed that under the new regulations, the Corporation will have to consider and grant lay-out pursuant to the prevailing position.

3. Learned Counsel for the review applicants submits that under the renewed lay-out plan, with 10% open spaces, their plot holdings are getting affected and since the order of this Court has been passed without hearing them, their substantial rights and rights to immovable property would get affected. He further purports to submit that under a decision of this Court, challenge to reduction of open space from 15% to 10% has been sustained and the Writ Petition was allowed. Thus, according to him, the position is that the plot holders will have to show 15% open space in the lay-out. He, therefore, urges to review the order passed in the Writ Petition, directing the Municipal Corporation not to sanction the renewed lay-out plan with 10% open space.

4. Mr.Palodkar, learned Counsel for the petitioner in the erstwhile Writ Petition No.9486 of 2011, submits that the decision referred to by the learned Counsel for the review applicants, is

not an absolute decision and the decision rendered shows that new regulation mentioning 10% open space would not operative retrospectively. He further submits that no final lay-out of the petitioner in the erstwhile Writ Petition had been sanctioned. He further purports to submit that though under the decision, the resolution of 1998 has been set aside, sanction to the lay-out would be according to the Development Control Rules and the Corporation's resolution seldom would affect the sanction to the lay-out according to Development Control Rules.

5. Mr. Palodkar purports to state that the lay-out has not been finally sanctioned.

6. Learned Counsel for respondent no.3 - Corporation is not in a position to give the definitive instructions in this regard. He submits that there had been order of status-quo operating in this review application.

7. It does not appear to be a case, wherein review can legitimately carry forward the case of the review applicants. Lot of questions, which were not involved in the Writ Petition, are now

being sought to be raised in the review application, particularly, with regard to the private and individual rights in immovable properties based on the lay-out while the properties were purchased by the applicants. Further, the questions raised by the plot holders in the lay-out, were not before this Court in the writ petition. Whether a layout can be altered without consent of the plot holder, was not a question in the writ petition. Binding efficacy of change in layout on plot holders was not decided in the writ petition at all. It is open for plot holders to agitate their grievance before appropriate forum. Order in writ petition would not affect rights of plot holder. In the circumstances, it does not appear to be a case for review

8. In the circumstances, we do not deem it appropriate to enter into the controversy raised in the Review Application. The Review Application is not entertained, leaving it open to the review applicants to take appropriate recourse and have their rights, asserted and established as would be available in the facts and circumstances and in law, including that of hearing before the decision making authority *inter-alia* the Municipal Corporation.

9. The Review Application is rejected. All the points are kept open for the parties.

[SANGITRAO S. PATIL, J.]

[SUNIL P. DESHMUKH, J.]

kbp