

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

Writ Petition No. 06591 of 2017

District : Latur

1. Shivkrupa s/o. Hanmant Puri,
Age : 42 years,
Occupation : Agriculture,
R/o. Jajnur,
Taluka Nilanga,
District Latur.

2. Sudhir s/o. Madhav Puri,
Age : 55 years,
Occupation : Agriculture,
R/o. Jajnur,
Taluka Nilanga,
District Latur.

.. Petitioners.

versus

1. The State of Maharashtra,
Through District Collector,
Latur, District Latur.

2. The Chief Executive Officer,
Zilla Parishad, Latur.

3. The Tahsildar,
Tahsil Office, Nilanga,
District Latur.

4. Block Development Officer,
Panchayat Samiti, Nilanga,
Taluka Nilanga,
District Latur.

5. The Police Inspector,
Police Station, Nilanga,
District Latur.

6. Grampanchayat,
Through Gramsevak,
Jajnur, Taluka Nilanga,
District Latur.

7. The Sarpanch,
Grampanchayat Office,
Jajnur, Taluka Nilanga,
District Latur.

.. Respondents.

.....

Mr. Umakant P. Giri, Advocate, for petitioners.

*Mr. S.B. Joshi, Asst. Government Pleader for
respondents no.01, 03 and 05.*

.....

**CORAM : R.M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 25TH SEPTEMBER 2017

ORAL ORDER *(Per R.M. Borde, J.):*

01. Heard learned Counsel for petitioners and learned Asst. Government Pleader for respondents no.01, 03 and 05.

02. Petitioners have approached this court making complaint of failure of the Village Panchayat to accord permission for re-construction of the residential premise owned by the petitioner.

03. Sub-Sections 1 and 1A of Section 52 of the Maharashtra Village Panchayats Act, 1958 [**For short, "Act of 1958"**] reads as under :-

"(1) In the village, for which a draft Regional plan or final Regional plan has been published under the provisions of the Maharashtra Regional and Town Planning Act, 1966, no person shall erect or re-erect or commence to erect or re-erect any building,-

(i) in the *gaathan* area of the village, within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966, without obtaining the previous permission of the panchayat, in the prescribed manner;

(ii) in other areas of the village, without obtaining the previous permission of the Collector or any other officer, not below the rank of Tahsildar to whom the powers of the Collector are delegated.

(1A) In the village for which a draft Regional plan or final Regional plan has not been published, no person shall erect or re-erect or commence to erect or re-erect any building, without obtaining the previous permission of the panchayat in the prescribed manner. "

Sub-section 2B of Section 52 of the Act of 1958 reads as under :-

" Any applicant aggrieved by an order granting permission on conditions or for refusing permission under sub-section (1) or (1A), as the case may be, may within forty days from the date of communication of the order to him, prefer an appeal to the District Head of the Town Planning Department posted at the Zilla Parishad. The appeal shall be in such form and shall bear such court-fees as may be prescribed. Such District Head, after giving an Appellant a reasonable opportunity of being heard, may by order, passed within a period of ninety days from the date of receipt of appeal, either allow the appeal unconditionally or subject to such conditions, as he may deem fit, or reject the appeal. The decision of the District Head on such appeal shall be final and binding on all concerned. "

04. It has not been demonstrated before us, as to whether the village comes within the area wherein a draft regional plan or final regional plan has been published under the provisions of the Maharashtra Regional and Town Planning Act, 1966 and as to whether the procedure as prescribed under Section 52 of the Act of 1958 has been followed while tendering

an application. Even otherwise, if the Village Panchayat refuses to accord sanction or does not pass any order, Sub-Section 2A of Section 52 applies or in other eventuality, it would be open for the petitioner to treat the inaction of the Village Panchayat as refusal and tender appeal prescribed under Sub-section 2B of Section 52 of the Act of 1958. In the instant petition, petitioners have not provided any details. No interference is called for in exercise of extraordinary jurisdiction of this court under Article 226 of the Constitution of India.

05. Keeping option of the petitioners open to avail alternate remedies as permissible in law, the writ petition is rejected.

(Smt. Vibha Kankanwadi)
JUDGE

(R.M. Borde)
JUDGE

.....