

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

WRIT PETITION NO. 440 OF 2017

M/s. Avenue Supermarts Pvt. Ltd. ... Petitioners

V/s.

Block Development Officer & ors. ... Respondents

Mr. V.A. Thorat, Senior Counsel a/w. Mr. M.S. Lagu i/b. L.D. Shah & co.
the petitioners.

Mr. Ajay S. Patil for respondents 1 to 3.

**CORAM : NARESH H. PATIL AND
M.S. KARNIK, JJ.**

7th March, 2017.

P.C.

The petitioners challenges the order dated 9th January, 2017 passed by the Block Development Officer, Panchayat Samiti, Palghar.

2. On the complaint made by one Chetan Dilip Dhodi, Member of Zilla Parishad, Palghar addressed to Chief Executive Officer on 7th November, 2016, the petitioners were informed to attend the office of Block

Development Officer on 31st December, 2016. The impugned order shows that the petitioners were heard on further date i.e. on 6th January, 2017. It was directed that as petitioners failed to obtain fire brigade permission/certificate, health department permission and MIDC permission for running D-MART Departmental Store, the same be closed down. In case of failure to close down the mall it was directed to lodge criminal case against the petitioners. The Block Development Officer further recommended to cancel Occupancy Certificate granted by the Zilla Parishad for violating conditions of permission.

3. The learned Senior Counsel appearing for petitioners submits that by communication dated 1st October, 2015, the Chief Officer of Zilla Parishad, Palghar granted permission to construct. Consequently, the construction was carried out and by further communication dated 28th March, 2016, the Chief Officer of the Zilla Parishad granted occupancy certificate subject to conditions mentioned therein. After getting Occupancy Certificate, the petitioners started carrying out the business activities in the 'D-Mart' Departmental Store.

4. Learned Counsel submits that impugned order is harsh one. The petitioners had installed fire fighting equipments in mall and in respect of

the permission from Health Department and MIDC department, for the first time, the petitioners were informed by the Block Development Officer to obtain such a permission. If a proper opportunity of hearing is given, the petitioners would be in a position to place their case before the Chief Executive Officer who had granted initial permission.

5. Learned Counsel appearing for Zilla Parishad submits that petitioners are bound to comply with the necessary conditions for running the 'D-Mart' Departmental Store. It is in the interest of persons working in the D-Mart Store and consumers of D-Mart Store, if fire fighting certificate is obtained from the concerned department. The petitioners shall not have any dispute on the same. Learned Counsel submits that the Chief Officer of Zilla Parishad had delegated his power to the Block Development Officer.

6. We have perused the record placed before us. The impugned order was passed on a complaint submitted by the member of Zilla Parishad. In the facts, we are of the view that Chief Executive Officer ought to have dealt with the matter instead of delegating the same to the Block Development Officer. There is no two opinion in respect of the compliances of the necessary conditions of permission of construction or

occupancy certificate. In case the authorities desire that the petitioners would take permissions from other departments, then they should be sounded accordingly and must be heard on such issues. In the facts, therefore, we observe that the Chief Executive Officer would deal with the matter. If the Chief Executive officer desires, they may issue a fresh notice to the petitioners on the issues framed by the Chief Executive Officer and hear the petitioners accordingly. We pass following order:-

ORDER

a) The impugned order/notice dated 9th January, 2017 passed by the Block Development Officer, Panchayat Samiti, Palghar is hereby quashed and set aside.

b) The Chief Executive Officer would deal with the issue, in case it is found necessary that a show-cause notice is required to be issued to the petitioners in respect of subject constructions and/or compliances of the conditions of the Occupancy Certificate or grant of permission for running the D-Mart.

7. All issues on merits are kept open. Writ Petition stands disposed of.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.