

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8164 OF 2015

Bhushan Gandhi	...	Petitioner
Vs.		
Kolhapur Municipal Corporation, Through Commissioner, Dist. Kolhapur & Ors.	...	Respondents

ALONG WITH

WRIT PETITION NO.8165 OF 2015

Mumtaj Begum Shahbuddin @ Shahbaz Khan Jamadar & Ors.	...	Petitioners
Vs.		
Kolhapur Municipal Corporation, Through Commissioner, Dist. Kolhapur & Anr.	...	Respondents

Mr. Amit Borkar for the Petitioners in both the Petitions.

Mr. Manoj A. Patil for Respondent Nos.2 to 11 in WP/8164/2015.

Mr. S.M. Kamble for Respondent No.1-Municipal Corporation in both the Petitions.

Ms. R.A. Salunkhe, A.G.P., for the Respondent-State in both the Petitions.

CORAM : NARESH H. PATIL &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 3RD APRIL 2017.

P.C. :

1. Heard learned counsels for the respective parties.

2. Petitioners in Writ Petition No.8165 of 2015 challenged the order dated 16th May 2015 passed by the Commissioner of Respondent No.1-Municipal Corporation, thereby rejecting sanctioned Layout submitted by the Petitioners with Respondent No.1-Municipal Corporation. The Petitioners claim to be the owners and in possession of the lands bearing Survey No.623A/4 and part of Survey No.624/2, situated in "B" Ward, Taluka Karveer, District Kolhapur. It is submitted that the Layout was sanctioned on 18th July 2014.

3. It is submitted by learned counsel for the Petitioners that, a notarized affidavit was submitted by the Petitioners, giving undertaking therein to demolish certain structures situated on the subject premises. Respondent No.1-Municipal Corporation expected the Petitioners to remove those illegal structures; however, for non-removal of the said structures, an order of revocation of sanctioned Layout came to be passed. The learned counsel for the Petitioners submits that those illegal structures, situated on the proposed D.P. Road, belong to Respondent Nos.3 to 13 in Writ Petition No.8164 of 2015 and it is the responsibility and duty of Respondent No.1-Municipal Corporation to take appropriate steps to demolish those illegal structures. The learned

counsel for the Petitioners submits that, an independent Petition, bearing Writ Petition No.8164 of 2015, has been filed in this Court claiming the said relief, which is connected to the present Petition.

4. The learned counsel appearing for Respondent No.1-Municipal Corporation submits that, as per the undertaking, the Petitioners were to comply two things;

- (i) To conduct a joint survey of the subject property;
- (ii) To demolish the subject structures.

5. As none of these conditions were complied with, Respondent No.1-Municipal Corporation had to pass the order of revocation of the sanctioned Layout. The learned counsel for Respondent No.1-Municipal Corporation submits that, if Petitioners satisfy those conditions, Respondent No.1-Municipal Corporation would reconsider the proposal of the Petitioners on its own merits.

6. The learned counsel appearing for Respondent Nos.3 to 13 disputed the allegations made by the Petitioners that Respondent Nos.3 to 13 are encroachers on the D.P. Road. It is submitted that the

Petitioners had approached Civil Court by filing an application for temporary injunction. However, the said application came to be rejected. Learned counsel for Respondent Nos.3 to 13 submits that the Suit is still pending.

7. In the facts of the case, we are not addressing the issue as to the ownership or possession of the subject encroachments made on the proposed D.P. Road. That is a different and independent issue to be taken care of by the Planning Authority i.e. Respondent No.1-Municipal Corporation.

8. It is not known as to whether the Development Plan was thereafter revised or not.

9. Coming back to the issue raised in Writ Petition No.8165 of 2015 regarding revocation of the order sanctioning Layout, we are of the opinion that, this issue needs to be remanded back to Respondent No.1-Commissioner, Kolhapur Municipal Corporation for a fresh consideration.

10. It is contended by the Petitioners that it is not their responsibility

to demolish illegal structures on the proposed D.P. Road. Those structures are not situated on the lands owned and possessed by them and even if they had undertaken to demolish the subject structures, the same needs to be ignored.

11. We may not address the questions on facts, which are disputed by the contesting parties. It is for Respondent No.1-Municipal Corporation to take appropriate view in respect of these rival contentions of the parties. Respondent No.1-Municipal Corporation will have to take into account the statutory duties and obligations conferred on it and taking into consideration the facts, circumstances and statutory provisions, these issues shall be considered afresh.

12. In the facts of the case, we are inclined to remand this matter back to Respondent No.1-Commissioner, Kolhapur Municipal Corporation. In view of the aforesaid observations, the impugned order dated 16th May 2015, passed by the Commissioner of Respondent No.1-Municipal Corporation, thereby rejecting sanctioned Layout, is quashed and set aside.

13. The matter is remanded back to Respondent No.1-

Commissioner, Kolhapur Municipal Corporation. The Commissioner, Kolhapur Municipal Corporation, is directed to look into the entire record, hear the necessary parties and, by taking appropriate view, pass orders accordingly on its own merits. This exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

14. Respondent No.1-Commissioner, Kolhapur Municipal Corporation, would also take appropriate decision in respect of the plea raised by the Petitioners that certain structures situated on the D.P. Road need to be demolished. We do not express our opinion on this issue.

15. Both the Writ Petitions are disposed of accordingly.

16. Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [NARESH H. PATIL, J.]