

BDPPS

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

WRIT PETITION NO. 9844 OF 2013

Satish Ratanlal Harlalka)
Age: 42 years, Occ: Business/Agri)
R/o. T-5, Royal Retreat, Mahadik)
Vasahat, Kolhapur)Petitioner.

V/s

1] Assistant Director)
Town Planning Department,)
Kolhapur)
2] The Tahsildar Karveer,)
District : Kolhapur)
3] The State of Maharashtra)Respondents.

Mr. Amit B. Borkar for the Petitioner.
Mr. V.N. Sagare, AGP for Respondent Nos. 1 to 3.

**CORAM: R.M. BORDE &
A.S. GADKARI, JJ.**

DATE: 4th January, 2017

ORAL JUDGMENT: (Per R.M. Borde, J.)

1] Heard.

2] Rule. Rule is made returnable forthwith. Respondents waive

service. By consent of parties, Petition is taken up for final hearing.

3] The Petitioner is objecting to the communication dated 27.8.2013 issued by the Assistant Director, Town Planning, Kolhapur to the Sub-Divisional Officer recommending him to cancel the construction permission accorded in favour of the Petitioner and withdraw the earlier no objection issued by the Office of the Assistant Director, Town Planning, Kolaphur on 20.4.2013.

4] The Petitioner acquired ownership over the disputed property by virtue of Sale Deed got executed by him from the erstwhile owner in the year 2011. The predecessor in title of the Petitioner initiated proceedings for regularization of lay out under the provisions of Maharashtra Gunthewari Development (Regularization & Control) Act, 2001. On consideration of the application made by predecessor in title of the Petitioner, order of regularization of gunthewari development was accorded by the competent authority. The Petitioner intended to utilize the property purchased by him for residential purpose and, as such, tendered an application seeking construction permission to the Sub-Divisional Officer, Kolhapur. As a pre-requisite for securing construction permission, the Petitioner was required to secure no objection from the Assistant Director, Town Planning, Kolhapur which was requested for by the Petitioner and on consideration of the request of the Petitioner the concerned authority i.e. Assistant Director, Town Planning, Kolhapur on 20.4.2013 issued no objection for user of the

property for residential purpose, subject to certain terms and conditions. Upon receipt of the no objection from the Assistant Director, Town Planning, Sub-Divisional Officer proceeded to accord construction permission in favour of the Petitioner as requested by him. The construction permission accorded by the Sub-Divisional Officer on 13.5.2013 is subject to fulfillment of certain conditions.

5] It is not demonstrated that the Petitioner has breached any of the conditions recorded in the permission letter issued by the Sub-Divisional Officer. The Assistant Director, however, issued communication on 27.8.2013 informing that no objection issued by the Office of the Assistant Director on 20.4.2013 shall stand withdrawn. The Assistant Director has issued such communication on account of failure of the Tahsildar to tender information to the Office of Assistant Director as to whether the property in dispute is located within the catchment area of Kalamba Lake. It does appear that before issuing the impugned communication, the Assistant Director, Town Planning, Kolhapur sought information from the Office of Tahsildar, Kolhapur as to whether property in dispute is located within the catchment area of the Lake.

6] An affidavit-in-reply is tendered on behalf of Respondent No.1 i.e. Assistant Director, Town Planning wherein it has been stated that the concerned authority is entrusted with the function of conducting technical scrutiny of the proposals in observance of the Development

Control Regulations. The Assistant Director, Town Planning is not the sanctioning/competent authority. The Assistant Director in the instant matter transmitted communication on 7.6.2013 and 28.6.2013 to the Sub-Divisional Officer, Karveer Division, Kolhapur inquiring as to whether the suit property is located within the catchment area of Kalamba Lake. However, since no information was received from the Office of Sub-Divisional Officer, he directed to cancel the previous recommendation letter issued on 20.4.2013. It is contended that since no cause of action has occurred for the Petitioner to approach this Court, Petition deserves to be rejected

7] As stated by the Assistant Director, Town Planning, Kolhapur himself in his affidavit-in-reply, he is neither the sanctioning authority nor competent authority entrusted with the function to deal with construction permission applications. The procedural requirement for grant of construction permission stipulates submission of no objection letter from the Assistant Director, Town Planning which requirement was fulfilled by the Petitioner before construction permission was accorded by the Sub-Divisional Officer. Merely because Tahsildar or Sub-Divisional Officer failed to furnish necessary information as sought by the Assistant Director cannot furnish any cause for the Assistant Director to withdraw the earlier no objection letter. Even otherwise, Assistant Director is not concerned with the inquiry as to whether the property comes within the catchment area of the lake or not. If at all, there is any restriction in respect of development of the

property located within the catchment area of the lake, it is for the competent authority or sanctioning authority to look into the matter and to take appropriate steps. In fact, there was no occasion for the Assistant Director, Town Planning, to take suo moto steps and withdraw the earlier communication whereunder no objection has been issued by the concerned official. There was neither any complaint received by the Office of the Assistant Director nor it has been demonstrated that the Petitioner is instrumental in securing no objection by misleading the authorities or by playing fraud. The inquiry as to whether the property is located within the catchment area of the Lake also does not fall within the authority exercisable by the concerned official i.e. Assistant Director. The concerned sanctioning/competent authority, however, has liberty to pass appropriate orders in observance of the procedure prescribed in that behalf.

8] The impugned order/communication issued by the Assistant Director, Town Planning, Kolhapur on 27.8.2013 withdrawing the no objection issued earlier on 20.4.2013 deserves to be quashed and set aside and the same is accordingly quashed and set aside. It would be open for the Collector or his subordinates, if deemed necessary, to conduct an inquiry as to whether the property in respect of which development permission was sought and accorded falls within the catchment area nor not and on making such inquiry if it is deemed necessary, the concerned sanctioning/competent authority may have

liberty to take appropriate steps in observance of the procedure laid down and, of course, after extending an opportunity of hearing to the Petitioner.

9] In view of the above, Writ Petition is disposed of. Rule is made absolute to the extent as specified above. There shall be no order as to costs.

(A.S. GADKARI, J.)

(R. M. BORDE, J.)