

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

WRIT PETITION NO. 2849 OF 2018

SYED ASAD KADRI SYED ISAK AND ANOTHER
VERSUS
THE MUNICIPAL COUNCIL PATHRI THROUGH C.O. AND
ANOTHER

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Advocate for Petitioners	: Shri P. S. Paranjape
Advocate for Respondents	: Shri V. D. Sapkal h/f. Shri M. P. Tripathi.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 19th March, 2018.**

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PER COURT :-

1] Respondent No. 2 in this matter is the son of petitioner No. 1 and the real brother of petitioner No. 2, and it is informed that he was not available to sign the petition when this petition was filed. He is not contesting respondent in this matter. Hence, leave to delete respondent No. 2 is granted. Amendment shall be carried out forthwith.

2] The petitioners are aggrieved by the judgment and order dated 07/03/2018 delivered by the Appellate Court by which, Miscellaneous Civil Appeal No. 44/2017 filed by the Municipal Council, Pathri through its Chief Officer, has been

allowed and the temporary injunction granted by the Trial Court in Regular Civil Suit No. 37/2017 has been set aside.

3] I have considered the strenuous submissions of the learned advocate for the petitioners and the learned advocate on behalf of respondent/Municipal Council. I have gone through the record available. With their assistance, I have gone through the order dated 01/09/2017, passed by the Trial Court allowing application Exhibit 5 under Order 39 Rule 1 and 2 of the Code of Civil Procedure in Regular Civil Suit No. 37/2017 and the impugned order.

4] Since the suit is pending, I am not advertng to all the contentions of the litigating sides as the observations of this Court in this order are likely to have an impact on the suit preferred by the petitioners.

5] There is no dispute that Section 3 and especially Section 3(2) (a) to (d) and Section 3(4)(2) (a) to (c) of the Maharashtra Gunthewari Developments (Regularization, Upgradation and Control) Act, 2001 are applicable.

6] Section 3(2) provides for the regularization of any gunthewari development which is subject to the general

conditions enumerated in it. Clause (a) mandates that 10 per cent of the plots in the lay out would vest in the planning authority free of costs if such plots are unsold and unbuilt. Clause (b) requires that 9 meters width road would be layed by the authorities after open marginal spaces are surrendered. Clause 3(4) provides for the procedure which is adopted for regularization of gunthewari development.

7] It is stated that the plaintiffs had moved an application through Sayyad Arshad Kadri s/o Sayyed Asad who is plaintiff No. 1 and son of Sayyad Asad Kadri for gunthewari regularization under Section 3 of the said Act. The sketch of the land in the lay out was also placed on record. The Architect's Certificate was also placed on record. The plan for construction of the house in plot No. 8 was also placed on record. It was specifically mentioned by him that 10 percent of the open space is made available. The expanse of the road is also mentioned in the said application.

8] Based on the same, he was granted building permission and was informed that the said construction should be 3 meters away from the 9 meters road and 1.5 meters of

land on either side of the road would be left open. After having obtained the said permission, the plaintiffs have constructed the house as per the specifications. The lay out plan tendered while seeking permission and under the signature of Sayyad Asad Mahammad Isaq Kadri was also placed on record indicating that the said land is no longer an agricultural field as is contended in the plaint. The 9 meters road is also indicated.

9] The suit has been preferred by the plaintiffs on the ground that the Municipal Council has encroached upon the land by attempting to use a bulldozer and a JCB Machine. The plaintiffs are operating a brick-kiln and hence the interference of the Municipal Council was required to be controlled by issuance of injunction. The Trial Court has granted the injunction on the ground that the whole land belongs to the plaintiffs and the Municipal Council does not have a development plan.

10] The Appellate Court has interfered with the order of the Trial Court on the ground that the permission to construct the house as per Section 4(3) of the Act was not

considered by the Trial Court. The documents tendered by the plaintiffs under Section 3 of the Act were also not considered. The map of the architect and the lay out plan submitted by Sayyad Asad was also not gone into. The Appellate Court has also concluded that the plaintiffs had created a false picture before the Trial Court that the entire land is an agricultural land and have suppressed that the lay out plan submitted while seeking the building permission indicates that it was no longer an agricultural land.

11] It requires no debate that if any litigant suppresses material information from the Court for the purpose of seeking favourable orders, would dis-entitle such a litigant from relief even if he has a good case on merits. The judgment delivered by the Honourable Apex Court in the matter of *Kishor Samrite Vs. State of U.P. and others (2013) 2 SCC 398* and *Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others AIR 2013 SC 523* has crystallized the law that suppression of material information or facts would dis-entitle a litigant from claiming any relief. I am not going into this issue at this stage and I am keeping the said issue open for the Trial Court to consider since the suit is still

pending.

12] Considering the application for seeking building permission which was submitted by the plaintiffs, being the owners of the said land, indicates that the lay out is drawn up by the plaintiffs and a 9 meters width road is shown. The Municipal Council can construct/lay the road as a part of extending public amenities.

13] The Honourable Apex Court in the matter of *(1) Mahadeo Savlaram Shelke and others Vs. Pune Municipal Corporation and another (1995) 3 Supreme Court Cases 33,*

(2) Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and others (1993) 3 Supreme Court Cases 161.

(3) Dalpat Kumar and another Vs. Prahlad Singh and others (1992) 1 Supreme Court Cases 719 has concluded that when it comes to any public project or public activity as a part of extending amenities to the citizens, injunctions granted by the Trial Court should not become obstructions to public utilities. The record reveals that the Municipal Council is not preventing the plaintiffs from constructing their house. In fact

the Municipal Council would be laying a road as per the lay out plan and that would not be to the detriment of the plaintiffs.

14] When it comes to considering the comparative hardships being faced by the litigating sides, if the Municipal Corporation is interfering in the construction of the house of the plaintiffs, they could have been injuncted. When the house of the plaintiffs has already been constructed as per the lay out plan submitted by them, I do not find that the impugned judgment and the conclusions drawn by the Appellate Court can be termed as being perverse or erroneous.

15] Considering the above, this petition, being devoid of merit, is therefore, dismissed.

16] It is made clear that the observations of the Appellate Court are at a prima-facie stage and are in relation to the prayer for temporary injunction put forth by the plaintiffs. The suit which is pending would therefore be adjudicated upon by the Trial Court on its own merits after considering the oral and documentary evidence that would be brought on record as well as the issue of suppression of facts.

17] The injunctory order granted in the meanwhile stands vacated.

(RAVINDRA V. GHUGE, J.)

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