

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
18 WRIT PETITION NO. 10679 OF 2016**

BALASAHEB RAMLING SHINDE AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. B. N. Patil, Advocate for the Petitioners.
Mr. S. B. Pulkundwar, AGP for Respondent-State.
Mr. Vivekanand B. Deshmukh, Advocate for the
Respondent No.2.

...
**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.
DATED : 31st OCTOBER, 2018.**

PER COURT:-

1. Mr. Patil, learned counsel for petitioners submitted that on 06.12.2012, petitioners submitted an application for sanction of lay out for pieces of lands owned and possessed by them out of Survey Nos.674 and 681. No communication was made by respondents. As per Section 45(5) of the Maharashtra Regional and Town Planning Act, 1966 it is deemed that the permission has been granted. By legal fiction the permission is deemed to have been granted on the lapse of 60 days.

2. The learned counsel submits that the proposal was strictly in conformity with the requirements. The subsequent act of the respondents in placing the property in the green zone would not affect the deemed permission under Section 45(5) of the M.R.T.P. Act. It is only

because the petitioners belongs to the rival political group, the respondents have deliberately not forwarded the proposal of the petitioners for sanction of lay out nor the respondents at any point of time within a period of 60 days communicated the petitioners that the petitioners are required to deposit some amount. In August 2014, the respondents communicated the petitioners to deposit the amount. Immediately the petitioners deposited the required fees. There is no flaw in the proposal submitted by the petitioners for sanction of lay out. The learned counsel submits that even after deposit of the necessary fees in August 2014, the respondents did not communicate anything for a period of 60 days and so even if, the period of 60 days is counted from August 2014, the petitioners are entitled for a deemed permission under 45 (5) of the M.R.T.P. Act.

3. We have heard the learned counsel for respondents.

4. It appears that the petitioners had given application for sanction of lay out for pieces of lands owned and possessed by them out of Survey Nos.674 and 681 on 06.12.2012.

5. Section 45 (5) of the M.R.T.P. Act will have to be read alongwith proviso to Sub-section 5. The deeming fiction would operate only if the development proposal for which the permission is applied for is strictly in conformity with

requirements of all the relevant development control regulations framed under this Act or bylaws or regulations framed in this behalf and the same in no way violates either the provisions of any draft or final plan or proposal published by means of notice, submitted for the sanction.

6. It appears that for processing the application, the petitioners were required to deposit some fees. The fees was deposited in August 2014.

7. On affidavit it has been said by respondent no.1 that on 23.07.2014 the draft development plan is published wherein the property of petitioners for which the lay out is submitted is shown in no development zone (Green Zone).

8. The petitioners application was complete in all respects in August 2014. Prior to that the draft development plan was already published showing the property of petitioners in the green zone. If it is presumed that the application of petitioners for sanction of lay out was complete in all respects in August 2014, then in view of the first proviso to Section 45(5), the petitioners would not be entitled for deemed permission, as the same would violate the draft development plan already published. In view of that, the petitioners would not be entitled for the benefit of Section 45(5) of the M.R.T.P. Act.

9. In case the petitioners are aggrieved on declaration of their property in the no development (Green Zone), the petitioners may take appropriate steps in that regard.

10. With these observations, writ petition stands disposed of. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/October-18

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Kale

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