

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

**WRIT PETITION NO.594 OF 2007
WITH
CIVIL APPLICATION NO.2430 OF 2017
IN
WRIT PETITION NO.594 OF 2007**

Pune Municipal Corporation and Anr.

..Petitioners

vs.

Shri Madhukar Namdeo Raut and Ors.

...Respondents

Mr. Abhijit P. Kulkarni a/w Mr. Manoj M. Badgujar for the Petitioner.
Mr. G.S. Godbole i/b Mr. T. D. Deshmukh for the Respondent Nos.3 to 6.
Mr. Manish M. Pabale, AGP for the State/Respondent.

CORAM : A.S. OKA & P. N. DESHMUKH, JJ.

DATE : 22nd JANUARY, 2018

P.C.:

. In view of the administrative order dated 28th December 2017 passed by the Hon'ble the Acting Chief Justice this Petition was directed to be heard by this Bench.

2. The impugned order dated 8th April 2004 has been passed by the then Hon'ble Minister of State of the Department of the Urban Development in the appeal preferred by the Respondent Nos.3 to 6.

3. Mr. Godbole, the learned counsel appearing for the Respondent Nos. 3 to 6 on instructions of the Respondent Nos.5 and 6, who are personally present in the Court states that the said Respondents themselves and on behalf of Respondent Nos.3 and 4 seek liberty to apply for revival of the Writ Petition No.6426 of 1999. They have no objection for setting aside the impugned order dated 8th April 2004. He also states that a clarification may be issued that all steps taken on the basis of the order

dated 26th March 2015 passed in Civil Application No.747 of 2015 in this Writ Petition will not be affected by setting aside of the impugned order. The Learned counsel appearing for the Respondent Nos.3 to 6 states that the said Respondents have no objection for setting aside the impugned order, as the appeal purported preferred by them under sub section (3) of section 90 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") was not maintainable.

4. The learned counsel appearing for the Respondent Nos. 3 to 6 states that photo copies of identification documents of the Respondent Nos.3 and 4 will be placed on record by the advocate for the Respondent Nos.3 to 6 during the course of the day which may be taken on record. We accordingly direct the Court Sheristedar to take the documents on record, if tendered today.

5. We have heard the learned counsel for the Writ Petitioners and the learned AGP for the State. The only challenge in this writ Petition is to the aforesaid order dated 8th April 2004 passed by the then Hon'ble Minister. The learned counsel appearing for the Respondent Nos.3 to 6 states that on the basis of the impugned order, the said Respondents have withdrawn Writ Petition No.6426 of 1999. As the said Respondents have agreed for setting aside the impugned order, in our view, a liberty deserves to be granted to the Respondents to apply for restoration and revival of the said Petition.

6. We have perused the order dated 26th March 2015 passed in Civil Application No.747 of 2014. As per the said order, the Principal Secretary of the Urban Development Department was ordered to take appropriate decision on the proposal dated 15th July 2008 submitted by the Respondent Nos.3 to 6. If the State Government has passed an order on

the said proposal, it is obvious that the said action will remain unaffected notwithstanding setting aside the impugned order with a rider that the issue of legality of the order passed on the proposal and specific steps taken on the basis of the said order will remain open.

7. Accordingly, we pass the following order:-

ORDER

i) The impugned order dated 8th April 2004 passed by the then Hon'ble Minister of State of the Department of the Urban Development is hereby quashed and set aside and the appeal preferred by the Respondent Nos.3 to 6 under sub-section (3) of Section 90 of the MRTP Act stands disposed of;

ii) As a consequence of setting aside of the impugned order, it will be open for the Respondent Nos.3 to 6 to apply for restoration and revival of Writ Petition No.6426 of 1999 filed by them;

iii) We make it clear that notwithstanding setting aside of the impugned order, decision taken on the proposal dated 15th July 2008 by the State Government and the subsequent actions, if any, taken on the basis of the decision of the State Government shall remain unaffected by an order passed in this writ Petition;

iv) We further make it clear that we had made no adjudication on the issue of legality and validity of the decision taken by the State Government on the proposal dated 15th July 2008 and the subsequent actions taken by the Pune Municipal Corporation on the basis of the said decision taken on the proposal dated 15th July 2008;

v) Rule is made partly absolute on the above terms with no orders as to costs. Civil Application No.2430/2017 does not survive and the same is disposed of.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)