

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9125 OF 2017

Sunil Balakrushna Telang.

.. Petitioner

Versus

1.State of Maharashtra.

2.Pimpri Chinchwad Municipal Corporation

3. Sahyadri Devcon

.. Respondents

Mr.Amjith M.A. I/b. Triyama Legal, for the Petitioner.

Mr.M.M. Pabale, AGP for Respondent No.1-State.

Mr.Deepak More with Mr.Nitesh Mohite, for Respondent No.2.

Mr.A.V.Anturkar, Senior Advocate with Mr.S.B.Deshmukh, for Respondent No.3.

**CORAM: NARESH H. PATIL, C.J. &
G. S. KULKARNI, J.****RESERVED ON: October 23, 2018****PRONOUNCED ON: November 1, 2018.****Judgment :(Per G.S.Kulkarni,J.)**

1. Rule returnable forthwith. By consent of the parties and at their request taken up for final hearing.

2. The petitioner is the owner of plot nos.11 and 12 carved out in a private layout in land bearing Survey No.110 Hissa no.01 situated at Village

Ravet, Taluka Haveli situated within the municipal limits of Pimpri Chinchwad Municipal Corporation (for short '**municipal corporation**').

3. In this proceeding under Article 226 of the Constitution, the petitioner is aggrieved by the decision of the Hon'ble Minister for Urban Development Department, Government of Maharashtra, as communicated by a letter dated 28 September 2016 of the Under Secretary of Government of Maharashtra. By the impugned decision, the Hon'ble Minister while rejecting the statutory appeal as filed by respondent no.3-Sahyadri Devcon (for short '**Sahyadri**') against the rejection of his development permission, converted the said appeal into a representation and has issued certain directions which has enabled the municipal corporation to reconsider the rejection of the development proposal of respondent no.3 and grant respondent no.3 a development permission.

4. The substantive prayers as made in the petition read thus:

“D) This Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ, order or direction in the nature of Certiorari and be pleased to quash and set aside the impugned Order/Direction being No.TPS-1816/C No.91/16/NV-13 dated 28.09.2016 issued by the Under Secretary, Urban Development, Government of Maharashtra.

E) This Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ, order or direction in the nature of Certiorari and be pleased to cancel the Sanction, if any, granted by the Respondent No.02 to the Respondent No.03 consequent to and based on the impugned Order/Direction bearing No.TPS-1816/C. No.91/16/NV-13 dated

28.09.2016 issued by the Under Secretary, Urban Development;
Government of Maharashtra.”

5. The impugned decision is taken by the Hon'ble Minister on Sahyadri's appeal filed under Section 47 of the Maharashtra Regional and Town Planning Act (for short '**MRTP Act**'). Sahyadri intended to undertake large development on area which also forms part of Survey No.110. Sahyadri had accordingly submitted plans to the Municipal Corporation. Since under the Development Control Regulation No.10.3 the necessary requirement of the width of road for accessing the plot of land was an access of minimum 12 meters, and as the available existing access was not fulfilling the requirement of the DC Regulations, the municipal corporation rejected Sahyadri's development proposal by its communication dated 24 March 2015. The municipal corporation was of the opinion that the existing road of 3 meters to 4.5 meters wide in the private layout was not sufficient. (The translated version of the said vernacular communication dated 24 March 2015 of the municipal corporation as prescribed by the petitioner reads thus :

“1. The width of the access road for the said plot is not in accordance with the Municipal Corporation Development Control Regulation.

2. It is necessary to give the present access road to the remaining plot holders adjoining to the said plot.

Due to lack of above compliance, no action can be taken in your case. Hence, as per Section 45 of the Maharashtra Regional and Town Planning Act, 1966 your construction permission is

rejected, please take note of this.”

6. In the private lay out in question, different plots of land were formed which were already owned by the petitioner and some other persons, the land of Sahyadri except for the existing road of the width of 3 to 4.5 metres a proper access was not available to the said plot as per the rules. Being confronted with such *fait accompli*, Sahyadri purchased one of the plots in the private layout so that such plot can be utilized as an access to the Sayhadri's plot namely the proposed development site of Sahyadri being part of survey no.110. However, while doing so Sahyadri blocked the existing 3 to 4 meters wide road in the private lay out being urged by the petitioner thereby causing a serious prejudice to the petitioner.

7. Against rejection of the development permission, Sahyadri filed an appeal before the State Government invoking the provisions under Section 47 of the '**MRTD Act**' which was to be heard by the Hon'ble Minister for Urban Development. A copy of the appeal is annexed to the paperbook at page 496.

8. By the impugned communication issued by the Under Secretary, Urban Development Department-Government of Maharashtra, it has been informed to the Commissioner, Pimpri-Chinchwad Municipal Corporation that as Sahyadri's appeal was not within the prescribed limitation and was thus not

a valid appeal and hence was not entertained, it was however informed that the said appeal was converted and considered as a representation and accordingly, the Hon'ble Minister for Urban Development Department held a meeting on 27 January 2016 and on the basis of the record, the Hon'ble Minister has taken the following decision. The translated version of the said communication reads thus:-

In the matter of construction (building), submitted to the Municipal Corporation by Shri. Pratyush Jayprakash Bhartiya, the partner of the applicant Shree Sahyadri Devcon through the Licensed Architect Shri. Paras Netragaonkar in an unauthorised plot of the land bearing S. No. 109 part and S. No. 110 part of Village Ravet, the Municipal Corporation by its letter dated 17/6/2015 has informed for having rejected the Deemed Sanction to the Developer. Against the said decision of the Municipal Corporation the applicant has preferred an appeal to the Government on the date 13/01/2016. As the said appeal was not within a prescribed time limit, the same was not held valid and the same has been taken into account as a application. In pursuance thereof a meeting was held with the Hon'ble Minister of State, Urban Development on the dt. 27.01.2016 and I am directed to inform you in the said matter as mentioned hereinbelow on the basis of the facts of the matter and the available records.

Applicant has sought permission for authorised development. The Municipal Corporation, by proposing 12 meter road widening (Line of Street) showing widening on both sides of the present road in unauthorised layout of Survey No. 109 and 110, has granted building permission on some plots. It appears that the Municipal Corporation has recently granted building permission by its letter dated 24/08/2016 on the plot bearing Survey No. 109/1 by showing 4.8 meter Shifted Plot Boundary towards west of the present (existing) road. From this, it appears that the Municipal Corporation wishes (intends) to make 12 mtrs. widening of the existing road by showing 'Shifted Plot Boundary' to the existing road noted in the subject. As the said thing has been fixed (decided) at the Municipal Corporation level, it would become fair to take action accordingly by the Municipal Corporation even in the matter noted in the subject. Accordingly, appropriate action should be taken in respect of making admissible the building permission subject to other provisions of Development

Control Rules, in respect of the plot noted in the subject.”

9. The petitioner being aggrieved by the above decision of the Hon'ble Minister/Government, prejudicially affected by this communication, is before the Court. When this petition was earlier listed, the Division Bench of this Court (B.R.Gavai & M.S.Karnik, JJ.) passed the following order:-

- “1. Prima facie we find that the procedure adopted by the Honourable Minister is not in consonance with the legal position.
2. On one hand the Honourable Minister states that the Appeal is beyond limitation and therefore cannot be entertained and on the other hand treats it as a request application. By treating the same as an application the order is passed directing the Corporation to reconsider the plan which was rejected on the basis of the complaint filed by the present Petitioner. It was expected from the Honourable Minister to have given a notice to the present Petitioner.
3. In that view of the matter issue notice to Respondents, returnable after 4 weeks. Learned AGP waives service of notice on behalf of Respondent No.1 and Mr. More waives service of notice on behalf of Respondent No.2 Mr. Joshi waives service of notice on behalf of Respondent No.3.
4. There shall be ad-interim relief in terms of prayer clause (g). Stand over to 21st September, 2017.”

10. The municipal corporation has appeared and has filed a reply affidavit. Sahyadri has also filed its reply affidavit. In the reply affidavit something which is very peculiar can be observed. The Municipal Corporation has considered and accepted the contents of paragraph (2) of the impugned communication to be the directions of the State Government and acted upon the same thereby granting development permission to Sahyadri. The relevant averments as can be seen in paragraph 11 of the reply affidavit read thus:-

“11. I say that the said rejection permission as stated above was challenged before the State Government by way of an appeal. However, the said appeal filed beyond the period of limitation, the same was treated as the representation of the petitioner. I say that there after the State Government has passed an order thereby directing the Corporation to grant necessary permission on the basis of the observations made in the said order.

(emphasis supplied)

11. Sahyadri in its affidavit in reply has opposed this petition *interalia* justifying its action of approaching the State Government/Hon'ble Minister and the impugned order and has justified submission of new plans in November,2016 and its sanction by the municipal corporation. The learned Counsel for Sahyadri has argued that the Hon'ble Minister was justified in making the observations in view of the provisions of Section 154 of the MRTTP Act. The learned Counsel for Sahyadri has submitted that in view of purchase of one of the plots in the layout, proper access was made available to the main plot which Sahyadri intended to develop. It is submitted that Sahyadri was entitled to submit a development proposal to the municipal corporation, as access was made available which came to be ultimately accepted by the municipal corporation.

12. On the above background and as raised by the petitioner the only question which falls for our consideration is 'whether the Hon'ble Minister was justified in taking the decision as contained in the impugned communication

dated 28 September 2016, when the statutory appeal of Sahyadri under Section 47 of the MRTP Act was itself dismissed being barred by limitation, and whether it was permissible for the Hon'ble Minister to treat the statutory appeal as a representation and pass orders thereon.

13. We may observe that Section 47 of the MRTP Act provides for a remedy to a person who is aggrieved by an order which may be passed by the planning authority, either granting conditional development permission or refusing permission for development. Section 47 reads thus:-

“47. (1) Any applicant aggrieved by an order granting permission on conditions or refusing permission under section 45 may, within forty days of the date of communication of the order to him, prefer an appeal to the State Government or to an officer appointed by the State Government in this behalf, being an officer not below the rank of a Deputy Secretary to Government ; and such appeal shall be made in such manner and accompanied by such fees (if any) as may be prescribed.

(2) The State Government or the officer so appointed may, after giving a reasonable opportunity to the appellant and the Planning Authority to be heard, by order dismiss the appeal, or allow the appeal by granting permission unconditionally or subject to the conditions as modified.”

On a plain reading of the above provision, it is clear that a person who is aggrieved by an order passed by the planning authority granting permission on conditions or refusing permission under Section 45 of MRTP Act, may prefer an appeal to the State Government within forty days of the date of communication of the order and which shall be accompanied by fees as may

be prescribed. Sub-section (2) of Section 47 provides that the appellate authority under this provision may after giving a reasonable opportunity to the appellant as also the planning authority to be heard, by order dismiss the appeal, or allow the appeal by granting permission unconditionally or subject to the conditions as modified. As noted above the only power as conferred on the appellate authority under Section 47 of the MRTP Act is either to dismiss the appeal or allow the appeal by granting permission unconditionally or subject to the conditions as modified.

14. On a reading of the impugned communication, it is apparent that the Hon'ble Minister rejected the appeal filed by Sahyadri under Section 47 of the MRTP Act which was against the order of the municipal corporation dated 24 March 2015 refusing to grant development permission to Sahyadri. We do not find that any power is vested with the State Government under Section 47 of the MRTP Act to adopt such an approach, namely on one hand to dismiss the appeal and on the other hand treat the appeal as representation and grant some relief to the appellant/Sahyadri. If such powers are to be read in Section 47 of the MRTP Act, it would amount to reading in the provision something which is not provided by the legislature. It is implicit that Section 47 does not create such jurisdiction with the appellate authority. Reading such a

power would be doing violence to the plain language of the said provision. We are therefore of the clear opinion that the State Government had no jurisdiction and authority to firstly convert a statutory appeal in a representation and secondly issue directions of the nature as contained in paragraph 2 of the impugned communication.

15. As regards the submission as urged on behalf of Sahyadri that the State Government has possibly exercised powers under Section 154 of the MRTP Act. In our opinion, the said contention is wholly untenable, firstly for the reason that Section 154 provides for the “control by the State Government” and expressly would not confer such a power as argued on behalf of the petitioner. It would be apposite to extract Section 154 of the MRTP Act which reads thus:-

“154. Control by State Government.

[(1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions.]

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by any Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final.”

16. A reading of Section 154 thus indicates that it is a wider power as conferred on the State Government, notwithstanding the other provisions of the MRTP Act or the Rules or Regulations made thereunder, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of the Act or in the larger public interest. The State Government in this regard in larger public interest is empowered to issue such directions as may be necessary, to a Regional Board, Planning Authority or Development Authority and as and when such directions or instructions are issued, it is provided it shall be the duty of such authorities to carry out such directions or instructions within the time limit such specified. Sub-section (2) of Section 154 also confers a power with the State Government to resolve disputes which may arise between the Regional Board, Planning Authority or Development Authority, and the State Government, arising in exercise of powers and discharge of the functions by any Regional Board, Planning Authority or Development Authority under the Act and the decision of the State Government shall be final.

17. Thus considering the plain and unambiguous language of Section 154 and the purpose and intention behind the provision, we cannot persuade ourselves to allow an interpretation as suggested by Sahyadri that Section 154 confers a power on the State Government to pass an order of the nature

impugned in the petition that too on a statutory appeal under Section 47 of the MRTP Act. The provision also cannot be read to confer any jurisdiction/power on the State Government to convert its appellate jurisdiction under Section 47 of the MRTP Act by treating the appeal as a representation so as to pass an order, alien to Section 47 or any other orders which the State otherwise can legitimately pass under Section 154 of the MRTP Act. Section 47 and Section 154, in our opinion, operate in different fields. It is really astounding as to how considering an appeal under Section 47, the powers under Section 154 of the State Government, could at all and in any manner would be relevant or applicable. The statutory scheme of Chapter IV and Chapter IX would not permit such mixing of powers confer on the State Government under two independent provisions that too falling under different Chapters. Such intention of the legislature by no stretch of imagination can be gathered in the legislative scheme under which the provision stands. The petitioner's contention in regard to the application of Section 154 is neither supported by the State Government nor by the planning authority. Thus the submissions of Sahyadri on the applicability of Section 154 in supporting the impugned order deserves to be outrightly rejected.

18. We may observe that the powers under Section 154 of the Act has fell for consideration of the Court in **Laxminarayan R. Bhattad and others V.**

State of Maharashtra and another¹. In this case the Supreme Court was examining the legality of a communication dated 2 March 1993 of the Government of Maharashtra to the Municipal Corporation in regard to applicability of the sanctioned D.C. Regulations for Greater Bombay to the town planning schemes. The State Government had made certain directions in the said communication. The Supreme Court examined the issue as to whether the State Government would have power to issue such directions under Section 154 of the MRTP Act and held that the directions of the State Government under Section 154 of the MRTP Act cannot supersede the statutory provision either in the main enactment or in statutory regulation. It was held that the State absolutely had no jurisdiction contrary to the statutory provision. The contents of the communication which fell for consideration of the Supreme Court and the observations in that regard can be noted in paragraphs 48, 50 and 51 of the decision which reads thus:

“48. Yet again on or about 2nd March, 1993, the Government of Maharashtra in a letter addressed to the Municipal Commissioner of the Corporation stated :

“Sub :- Applicability of the sanctioned D.C. Regulations for Greater Bombay Town Planning Schemes of Greater Bombay.

Sir,

Please refer to your letter No. Ch./E.OT/2093/TPS Gen. Dated 24th September, 1992 from the Director, Engineering Services & Projects and discussions he had with the Secretary in October, 1992 wherein he has explained difficulties faced by him because of the conflicting provisions of some of the Town Planning Scheme Regulations and the provisions of the sanctioned D.C. Regulations for Greater Bombay, 1991. He feels that there are

1 AIR 2003 Supreme Court 3502

number of areas where D.C. Regulations for Greater Bombay provide for more satisfactory solutions and it would be desirable that the Town Planning Schemes Regulations are forthwith replaced by D.C. Regulations.

2. Government concurs with the view that effect be given to the D.C. Regulations for Greater Bombay, 1991 in the areas of the finally sanctioned Town Planning Schemes without waiting for compliance on the proceedings of variation of the Town Planning Scheme Regulations. I am therefore directed to convey directive under Section 154 of the Maharashtra Regional & Town Planning Act, 1966 as follows:

(i) The development permissions shall be strictly scrutinized in accordance with the sanctioned D.C. Regulations of Greater Bombay, even in the area of the finally sanctioned Town Planning Schemes pending the procedure of variation of the scheme.

(ii) The Special Scheme Regulations which have been designed to give concessions in marginal open spaces, permitting increased height in smaller plots, ensure enjoyment of full development potential of the plots etc., and the special Town Planning Scheme Regulations pertaining to architectures control should, however, not get superseded due making applicability of the D.C. Regulations in Town Planning Scheme areas.

Yours faithfully,

Sd/-

(N.S. Kulkarni)

Under Secretary to Government.”

49.

50. The said instructions were issued keeping in view the new Regulations in respect of the areas where finally sanctioned Town Planning Scheme had come into effect without waiting for compliance in the proceedings of variation of the Town Planning Scheme Regulations. The directive of the State Government issued in terms of Section 154 of the 1966 Act clearly states that the development permission shall be strictly scrutinized in accordance with the sanctioned Development Control Regulations of Greater Bombay even in the area where finally sanctioned Town Planning Scheme pending the procedure of variation of the Scheme.

51. The said Scheme does not refer to grant of any TDR and it will bear repetition to state that the development permission was required to be strictly scrutinized in accordance with the sanctioned Development Control Regulations. A direction of the State Government in terms of Section 154 of the Act cannot supersede the statutory provisions contained either in the main enactment or the statutory regulations. The State of Maharashtra had absolutely no jurisdiction to issue any directive contrary to the statute or the statutory regulations. (emphasis supplied)”

19. The situation in the present case is not different. As seen from the impugned communication as noted above, the State Government has clearly exceeded jurisdiction vested in it as the appellate authority under Section 47 of the Act in taking the decision as contained in the impugned communication dated 28 September 2016. The State Government had no authority, power and/or jurisdiction, under Section 47 of the MRTP Act while dismissing Sahyadri's appeal to convert the same into a representation and make directions thereon. The impugned decision/communication therefore, cannot be sustained. The consequent action of the municipal corporation on the basis of the impugned decision of the State Government also cannot remain valid.

20. Resultantly with certitude, we allow the petition in terms of prayer clause (D) and (E). Ordered accordingly.

21. Rule is made absolute in the above terms. No costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)