

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

**REVIEW APPLICATION (CIVIL) NO.178 OF 2019**

**EKTA SAHAKARI GRAHNIRMAN SANSTHA LTD THROUGH ITS CHAIR  
VERSUS  
DEEPAK BHASKAR PATIL AND OTHERS**

Mr. P.G. Godhamgaonkar, Advocate for applicant.  
Mr. D.P. Palodkar, Advocate for respondent No.1.  
Mr. Chaitanya S. Deshmukh, Advocate for respondent No.2.  
Mr. A.P. Bhandari, Advocate for respondent Nos. 3 and 4.  
Mr. A.V. Deshmukh, AGP for respondent No.5.

**CORAM : SUNIL P.DESHMUKH &  
S.M.GAVHANE,JJ.  
DATED : 29.08.2019**

**P.C. :-**

1. Heard Mr. Godhamgaonkar, learned counsel for review applicant, Mr. D.P. Palodkar, learned counsel for respondent No.1, Mr. Chaitanya S. Deshmukh, learned counsel for respondent No.2, Mr. A.P. Bhandari, learned counsel for respondents No.3 and 4 and Mr. A.V. Deshmukh, learned AGP for respondent/State.

2. Learned counsel for review applicant vehemently submits that Maharashtra Land Revenue Code is an enactment which has its roots under entry 18 of list II of 7<sup>th</sup> schedule of the Constitution of India. Accordingly, enactment will have to be viewed. He submits that section 44 thereunder vests the State Government with authority to grant permission to change user of land. In this case, he submits, permission in this regard of the collector was for

conversion of land to use for residential purpose with specific conditions thereunder. His further submission is that there is sufficient material collected, subsequent to decision of this court which could not be made available while petition had been pending, giving indication that there is a sanction to layout submitted with only 26 plots referring to the construction permission by corporation to some persons. Clause no. 4 of construction permission reads thus:

“04. सदर भूखंडास मिळकतीस मा. जिल्हाधिकारी यांचे मार्फत म.ज.म.अधि.1966 चे कलम 44 अन्वये अकृषिक वापराचा आदेश क्र. RB/Desk/II/IND/R/NAP/CR/80/87 17/10/88 नुसार प्राप्त आहे.”

3. Referring to that under order dated 17.10.1988, bearing No. RB/Desk/II/IND/I/NAP/CR/80/87 pursuant to Section 44 of Maharashtra Land Revenue Code, 1966, concerned plot has been allowed to be used for agriculture purpose. He further submits, in such a situation it would not be a case that there had been no sanction to layout as is sought to be submitted on behalf of the respondents with reference to the letter dated 10-03-1989, produced during course of hearing.

4. Thus, according to him, these aspects have been missed out while passing order dated 20-06-2019 in Writ Petition No. 6251 of 2017, as the

material had not been available. He further submits that in view of above, it would not be a case wherein it can be said that, there had been no sanction to layout plan till 2005 as observed in order under review. He, therefore, purports to entreat this court to indulge into request to review the order passed.

5. Countering aforesaid submissions, learned counsel for respondents submit that none of the grounds to have a review of the order passed on merits of the case would be said to be available. It is not a case that construction permissions now being referred to under review application were not subsisting and available while petition had been filed. It is not a material which can be said to be not within the control of applicants which could not have been produced during pendency of the petition.

6. Apart from aforesaid, it is submitted that, an order passed under section 44 of the Maharashtra Land Revenue Code, allowing conversion of user of land would not be said to usurp powers of planning authority to sanction a layout for development of land. It is not the case of applicant that land is being used for any other purpose than allowed under non-agriculture purpose use order. Referring to section 2(7), section 43 and onwards, it is submitted that layout is sanctioned under Maharashtra Regional Town Planning Act. Subsequent planning after permission of conversion of land to non-agriculture use is a province of planning authority pursuant to the enactment. It is, thus,

matter was being proceeded with right from 1988-89 and accordingly application had been moved by land owner to municipal corporation seeking sanction to lay-out. However, sanction pursuant to application had never come through up to 2005.

7. It is referred to by learned counsel for respondents, amendments to development control rules for Aurangabad were sanctioned in 1992, keeping 10% open space in lay-out, whereas standard regulation had earlier on specified 15%. Owners of land had parted with plots with concurrence of owners and transferees of those who had parted with plots, lay-out had been prepared pursuant to prevailing rules after 1992 and had applied for sanction to lay-out and accordingly planning authority had sanctioned same in 2005. Transactions accordingly were taking place since 2005 with reference to sanctioned lay-out of 2005 including transaction under which plot came to be purchased by chairman of petitioner in 2013. Permissions were being given by planning authority for development of plots with reference to sanctioned lay-out of 2005. Petitioner as referred to earlier had come into existence in 2016. In the circumstances, it is submitted that claim of petitioner with reference to standard control rules and cited judgments, which relate to sanctioned lay-out during 1982 to 1992 would be of no avail to review applicant.

8. While decision had been delivered by this court in writ petition,

with a view to have approach against said order, latitude had been given review applicant and during this period it is claimed certain material had come to notice and accordingly review application is preferred.

9. Review applicant has not placed on record any sanctioned lay-out of 1988-89. Documents with reference to which review is preferred would not *per se* be said to be relate to sanctioned lay-out of 1988 as sought to be claimed. Clause-4 of building permission given by planning authority would show that the land had been given non-agricultural use permission. Review applicant has not been in a position to show that same is sanction to lay-out by competent authority. Though certain arguments are advanced with reference to conditions under non-agricultural use permission, yet it is not shown that non-agricultural use order is a sanction to lay-out. Nor such case had been advanced during pendency of writ petition. Moreover, those documents which are sought to be relied upon are not such documents which could not have been available during pendency of petition. Open land is contended to have been vested in the adjoining land-holders and in support of such submission judgment in *Shirur Municipal Council Vs. State of Maharashtra and others, 1997 (1) Mh.L.J.610* would not be said to be advancing case for review applicant as sought by him. *Shirur Municipal Corporation (supra) and C.R. Dalvi and others Vs. Municipal Corporation of Greater Bombay and others, 1987 Mh.L.J.373*, both these citations were cited and considered earlier. Besides there had been no

relinquishment by land-owner about open land under earlier application before application for sanction to lay-out had been made pursuant to which 2005 sanction has been granted. Having regard to these circumstances, though learned counsel has strenuously urged to have review of order, as the circumstances sufficient to let us exercise powers of review, have not been brought forth effectively, we do not deem it appropriate to indulge into request made by review applicant. Review application is, therefore, rejected.

10. Learned counsel for review applicant once again requests to give latitude of six weeks in order to approach against order passed. It is difficult to accede to such repeat request. However, in the interest of justice, we deem it appropriate that order in writ petition shall not be put in operation for a period of six weeks from today. On expiry of such period, this indulgence being given would stand withdrawn and cease to operate.

**[S.M.GAVHANE,J.]**

**[SUNIL P.DESHMUKH,J.]**