

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

**WRIT PETITION NO. 14925 OF 2017
WITH
CIVIL APPLICATION NO.7860 OF 2019**

Smt. Kausalyabai Sukhlalji Bajaj
Age : 76 years, Occu. Household,
R/o. Mangalnath Colony, Majalgaon,
District – Beed
Through Power of Attorney Holder
Ashok Sukhlalji Bajaj
Age : 56 years, Occu. Agriculture,
R/o. Mangalnath Colony, Majalgaon,
District – Beed.

... PETITIONER

VERSUS

1. The Chief Officer,
Municipal council, Majalgaon,
Taluka- Majalgaon, District- Beed.
2. The collector, Beed
District – Beed.

... RESPONDENTS

Mr. A.N. Sikchi, Advocate for the petitioner
Mr. S.N. Kendre, AGP for the respondent/State
Mr. S. R. Chaukidar, Advocate for respondent No.1
Mr. S.J. Salunke, Advocate for applicant in civil application no.7860 of 2019.

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

DATED : 09-09-2019

ORAL JUDGMENT (PER :- SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith and heard learned counsel

for the appearing parties finally by consent.

2. Petitioner is before us aggrieved by order dated 29-07-2017 whereunder purportedly sanction to layouts submitted by petitioner dated 12-10-2009 and 16-12-2008 have been suspended and further putting restraint on him in dealing with the property.

3. Learned counsel Mr. Aditya Sikchi submits that petitioner had been owner of land bearing survey no. 383 to the extent of 3 hectare and 70 R. From her said holding, an area of 2 *hectare*, 27 *Are* had been put under development by laying out 99 plots and approval to the same had been duly granted by Municipal Council on 12-10-2004. Subsequently, layout of 1 *hectare* 13 *Are* alongwith land survey No. 382 had been granted approval on 16-12-2008. Thus approval had been for total area of 2 *hectare* and 13 *Are* comprising portions of lands of 382 and 383. From aforesaid layouts petitioner has dealt with as many as 172 plots.

4. Learned counsel draws our attention to that some years down, according to his instructions a local politically oriented worker hoping for illegitimate and unlawful gains from petitioner assuming that petitioner being a lady can be easily influenced and would yield to pressure had been harassing. As a petitioner did not budge, he purportedly had lodged a complaint with the

District Collector alleging that petitioner is showing incorrect area of survey No. 383 under a layout.

5. With reference to the same respondent No.1-Municipal Council purportedly had issued a notice to petitioner on 19-08-2015. Petitioner had, infact, responded to the same by representation dated 09-12-2015, particularly pointing out that the complainant is trying to blackmail her.

6. Learned counsel purports to emphasize that the entire land survey no. 383 had been under ownership of the family members of petitioner and there is no *inter-se* dispute among them. The petitioner had even challenged the complainant and others to prove the allegations and the complaint. While it appeared that the matter stood sorted out over the explanation given under the representation, suddenly order came to be passed two years down on 29-07-2017 impugned in present writ petition referred to hereinabove.

7. Learned counsel Mr. Aditya Sikchi vehemently submits that there is absolutely no case on merits in any way for the so called complainant who is a disguised extortionist and further that impugned orders trample down noble principles of natural justice and petitioner is being condemned without taking into account that petitioner had tendered explanation and representation long

back on 09-12-2015.

8. On the legal side he submits that respondent No.1 has no authority to invoke powers under section 51 of The Maharashtra Regional & Town Planning Act, 1966 (MRTP Act) in the absence of circumstances referred to in the same. He submits that going by purported allegations that, at the best petitioner had shown excess area in her ownership while the excess area if at all it is so, is from her holding of family member and he has no quarrel with the petitioner. The case would not at all fall under section 51 of MRTP Act for the power to be invoked while the complaint and proceedings are bereft of ingredients required therefor. He refers to section 51 of MRTP Act reading thus;

51. Power of revocation and modification of permission to development.

(1) *If it appears to a Planning Authority that it is expedient, having regard to the Development Plan prepared or under preparation that any permission to develop land granted (or deemed to be granted) under this Act or any other law, should be revoked or modified, the Planning Authority may, after giving the person concerned an opportunity of being heard against such revocation or modification, by order, revoke or modify the permission to such extent as appears to it to be necessary:*

Provided that -

(a) *where the development relates to the carrying out of any building or other operation, no such order shall affect such of the operations as have been previously carried out; or shall be passed after these operations have substantially progressed or have been completed;*

(b) *where the development relates to a change of use of land, no such order shall be passed at any time after the change has taken place.*

(2) *Where permission is revoked or modified by an order made under subsection (1) and any owner claims within the time and in the manner prescribed, compensation for the expenditure incurred in carrying out the development in accordance with such permission which has been rendered abortive by the*

revocation or modification, the Planning Authority shall after giving the owner reasonable opportunity of being heard by the Town Planning Officer and after considering his report, assess and offer, subject to the provisions of section 19, such compensation to the owner as it thinks fit.

(3) If the owner does not accept the compensation and gives notice, within such time as may be prescribed, of his refusal to accept, the Planning Authority shall refer the matter for the adjudication of the court; and the decision of the court shall be final and be binding on the owner and Planning Authority.

9. He further goes on to submit that it is not a case at all either of the complainant or for that matter under the impugned order approval for development of land is in breach of development plan. He submits that neither the notices nor the the impugned order can be said to qualify even to give rise to circumstances for invoking the powers. The learned counsel Mr. Sikchi draws attention to a clutch of decisions (1) Smt. Hansa Dattatraya Moodaliar & others Vs. The Pune Municipal Corporation & Others, 1998(3) MHLJ 10, (2) Shree Ambica Developers Vs. State of Maharashtra and Ors. 2012(3) MHLJ 640, (3) Subhadrabai Dattatray Gaykar Vs. Assistant Director of Town Planning, Kalyan Municipal Corporation and Ors, 2004(2) MHLJ 1087, (4) Shree Sai Reality and Ors. Vs. The State of Maharashtra and Ors MANU/MH/2057/2019.

10. Learned counsel Mr. Chaukidar appearing for respondent No.1 contends that it would not be a case that the council has no power to revoke and/or modify the permission or for that matter approval to the layout, if a

case is made out for the same. He submits that there were complaints about excess land being used under approved lay out by petitioner while about 56 *Are* land had been acquired and acquisition compensation had also been paid. He purports to advert to that there was seldom any response given to notices issued one on 19-08-2015 and other on 03-10-2015, to verify the position. It had been incumbent that the petitioner ought to have approached and explained her case.

11. Learned counsel for the intervener submits that while petitioner would be owner of 3 *hectare* and 17 *Are* land from survey no. 383, when about 3 *hectare* and 40 *Are* land has been consumed in the layout, she has got land acquisition compensation for 56 *Are* and as such, she has in the circumstances, approval for 36 *Are* excess land has been taken for the layout. In such a case, the complaint had been filed and has been taken, no doubt, by respondent No.1. It is not the case that the complaint is dismissed and the petitioner has faltered in approaching respondent No.1 after notice.

12. Learned counsel Mr. Sikchi submits that the allegations in the complaint are on absolutely erroneous assumption. It is not the case at all that petitioner had picked up land acquisition compensation for 56 *Are* land acquired from land survey no. 383. He submits that according to her entitlement petitioner has got compensation only in respect of 28 *Are* land and

rest of the 28 *Are* land belonging to her son Ashok and she had not received the amount of compensation of 28 *Are* land of Ashok. In such a case, going by mathematics, petitioner is still having a free hold land of about 2 to 3 *Are* and as such the very edifice of notice and the impugned order, thus, stands razed to the ground.

13. Having regard to submissions, it would transpire that the impugned order suspending the layouts sanctioned way back in 2004 and 2008 in respect of land survey no. 383 of petitioner in respect of 3 *hectare* 40 *Are* land coupled with the assertion that the petitioner has received only 28 *Are* land compensation and not as assumed by the complainant about 56 *Are* land, the very basis of the allegations appears to be dithering. Learned counsel for the petitioner shows with reference to documents already on record and also the ones filed alongwith the additional affidavit do lend credence and substance to the submission on behalf of the petitioner. In such a case while the notices were issued in 2015 explanation/representation had been submitted in very year by petitioner, the sudden eruption of suspension order, in the circumstances is rendered unsustainable. Additionally, it does not appear that any of the aspects referable to section 51 of the Maharashtra Regional & Town Planning Act have been shown to be subsisting during relevant period.

14. In view of aforesaid, we are inclined to allow the writ petition. Impugned order dated 29-07-2017 passed by respondent No. 1- The Chief Officer, Municipal Council, Majalgaon, is set aside. This, of course, would not undermine the authority of Municipal Council, in case occasion arises, to invoke section 51 of MRTP Act. Rule made absolute accordingly.

15. In view of disposal of writ petition civil Application is also disposed of.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]