

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

WRIT PETITION NO.5565 OF 2014

Shri Irfan Gore and Anr. ... Petitioners
versus
The Mumbai Metropolitan Region
Development Authority and Ors. ... Respondents

Ms.Gauri Godse for the Petitioners.

Ms.Kiran Bagalia for Respondent No.1.

Mr.D.P.Adsule for Respondent No.2.

Mr.A.A.Kumbhkoni-Advocate General
with Mr.P.P.Kakade- Government Pleader
and Mrs.Ashwini A. Purav-AGP for
Respondent No.3.

Mr.Prashant Kamble h/f Mr.A.S.Rao for
Respondent No.4.

**CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.**

DATE :- SEPTEMBER 24, 2019

P.C. :-

1. This writ petition under Article 226 of the Constitution of India seeks a very wide relief in terms of prayer clause (a). It is necessary to reproduce that prayer clause so that we have no problem in understanding the grievance of the parties like the petitioners and the response thereto of the statutory authorities.

“(a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, Order or direction under Article 226 of the Constitution of India for directing the Respondent Nos.1 and 3 to initiate proceedings under section 37 of the said MRTP Act 1966 for minor modification of the sanctioned development plan dated 25th July 2005 for Ambernath, Kulgaon-Badlapur and surrounding notified area for showing the gaathan area adjacent to Survey Nos.1, 17, 22, 23, 120, 121, 129 and 131 as per revenue survey map as congested area and as specifically stated in the report dated 17th March 2011 by Deputy Superintendent Land Records, Ambernath.”

2. The prior order on this petition is based on the intervention of the learned Advocate General.

3. The learned Advocate General had appeared on 20th August, 2019 and we passed the following order.

“1. When this matter was placed today, at our request, the learned Advocate General Mr.Kumbhakoni has agreed to intervene.

2. He requests to place this matter after two weeks within which time the State Government will come out with an acceptable solution to the issue raised in this writ petition.

3. It will go through the record of this case as also that of the planning authority and issue an appropriate direction or take a decision in accordance with law.

4. Mr.Kumbhakoni says that before 18th September, 2019, such a decision would be taken and placed on the file of this petition.

5. At his request, we post this matter on Friday-20th September, 2019. It shall be listed on the “Supplementary Board”.

4. The petitioners' grievance can be summarised by referring to paragraphs 2 and 3 of the writ petition which records as to how the petitioners became entitled to certain property. Then there is a reference to the minor modification of the sanctioned development plan for Ambernath, Kulgaon-Badlapur and surrounding notified area for showing the gaathan area as per revenue survey map as a ‘congested area’. The second respondent also submitted a map showing the existing congested area and the area to be included as congested area. Paragraph 4 of the writ petition refers to a communication of 19th November, 2009 of the second respondent, namely, the Kulgaon-Badlapur Municipal Council through its Chief Officer.

5. The Urban Development Department of the State issued a letter of 16th December, 2009 and requested the Mumbai Metropolitan Region Development Authority (the “**MMRDA**”) to submit a report of the existing situation along with a map. Respondent No.1 informed the Government that as per the

proposal of respondent No.2, whether the proposed area of Mouje Kulgaon and Badlapur is a congested area or not is an issue for the Revenue Department. The first respondent requested the State Government to obtain an appropriate report from the Revenue Department and take further action. The petitioners state that since no further action was taken by the respondents, the petitioners, along with other residents of the gaothan/ congested area, visited the offices of the respondents concerned on various occasions and requested to take action to show the gaothan area as a congested area on the sanctioned development plan by making the required modification. Since there was no response from the respondents, the petitioners, along with other residents, met various political leaders and requested appropriate action be taken.

6. The petitioners' request is to show the gaothan area as a congested area on the sanctioned development plan by making the required modification under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (for short, **“the MRTP Act”**)

7. Paragraphs 8 and 9 of the petition read as under :-

“8. The Petitioners state that pursuant to the request made by Respondent No.2, the Urban Development Department of Respondent No.3 called for a meeting of all concerned departments by issuing letter dated 20th August 2010. True copy of the letter dated 20th August 2010 is annexed hereto and marked as **Exhibit “M”**. The Petitioners state that pursuant to the meeting held on 25th August 2010 in the Urban Development Department of Respondent No.3, Respondent No.2 issued letter dated 24th August 2010 to the Learned District Collector and submitted plan showing congested area as per sanctioned development plan and the actual congested area and thus requested to take further necessary action. The Respondent No.2 by the said letter informed the Learned District Collector that as per village map the area opposite railway station at Mouje Kulgaon as well as Kasbe Badlapur, Temghar, Talimghar within gaathan boundary at Mouje Badlapur is shown as gaathan area in the village map, however in the sanctioned development plan it is not shown as congested area and by mistake it is shown as survey no.2. Respondent No.2 further informed that in such circumstances, though the residents are holding Sanad as well as other required documents, they are deprived of benefits of the congested area for the purpose of permissions under the sanctioned development control regulations, which has caused severe dissatisfaction amongst the residents. Thus Respondent No.2 requested to take necessary action. True copy of the letter dated 24th August 2010 is annexed hereto and marked as **Exhibit “N”**.

9. The Petitioners state that in the meeting held on 25th August 2010 it was decided that (i) Respondent No.2 shall submit appropriate report along with necessary

documents and map showing gaathan area as per revenue survey map, congested area shown on sanctioned development plan and area to be included in sanctioned development plan and (ii) as per required proposal to be submitted by the Respondent No.2, the Urban Development Department shall obtain opinion from the Revenue Department of Respondent No.3 and shall take appropriate action. A true copy of minutes of meeting held on 25th August 2010 is annexed hereto and marked as **Exhibit "O".**

8. It is, therefore, apparent that prayer clause (a) is worded consistent with the paragraphs which we have reproduced and the contents of the subsequent paragraphs.

9. Now, what we are shown is that the MMRDA will comply with Section 37 of the MRTP Act. It will take these steps strictly in accordance with law. There is an affidavit-in-reply filed by respondent No.1, which is at page 66 of the paper-book. It is stated that there has been no compliance with the MMRDA's request made to the Urban Development Department of the Government of Maharashtra. It has not received the revenue maps and the steps can be taken only after these documents are supplied. The requisite paragraphs of the affidavit-in-reply of the MMRDA read as under :-

“5. I further state that a meeting was held by the Guardian Minister District Thane with Inspector, Land Revenue Records and others on 21st June 2011 in which it was decided that after revenue maps are received from the Revenue Department and directions are issued by the Urban Development Department procedure for the modification of the Sanctioned Development Plan under section 37 of MRTP Act 1966 can be initiated.

6. I state that vide its letter dated 24th November 2014, MMRDA brought to the notice of the Urban Development Department that it had not received the revenue map, after maps were received from the Revenue Department and further directions of Urban Development Department on it, procedure under MRTP Act can be initiated.

7. I state that vide its communication dated 9th April 2019, the State Government has forwarded the remarks of the revenue department in respect of the status of the subject land, indicating that the subject land is Gaothan. I state that the said communication was received in the office of MMRDA on 3rd May 2019 and has been forwarded to SRO Thane on 17th May 2019. I state that earlier Ambernath, Kulgaon-Badlapur and Surrounding Notified Areas (AKBSNA) DCR was applicable to subject land. In the said DCR, Gaothan is defined as an area free of assessment and entered as Gaothan in the Revenue Records/Record of rights on the date of publication of the said DCR.

8. I further state that the State Government of Maharashtra sanctioned standardised DCPR for A B and C class Municipal councils which are now applicable for Kulgaon Badlapur Municipal Council. The Development

Plan is prepared under AKBSNA DCR in which Gaothan areas are shown. In view of the same, MMRDA had requested for Revenue Records. I further state that the 2013 DCPR does not provide for Gaothan Area, but provides for 'Congested Area'. However, 'Congested Area' is not identified as such in the Development Plan. The Provisions under AKBSNA DCR for Gaothan are not identical to the provisions of DCPR for 'Congested Area'. In the circumstances, as per Government's letter dated 09.04.2019 MMRDA will look into planning parameters and thereafter submit report to the Government for decision."

10. When we were dictating the order by referring this affidavit of 7th June, 2019, a note is handed in by Ms.Bagalia appearing on behalf of the MMRDA and she says that the contents of this note be referred to so that the grievance of the petitioners is completely redressed.

11. The note reads thus :-

"NOTE ON BEHALF OF R.NO.1-M.M.R.D.A.

In paragraph 2 of the Petition, the Petitioner has stated that the Petition is filed for a relief to initiate action under section 37 to show 'gaothan area' as per Revenue Survey Map as 'congested area'.

In paragraph 3 of the Petition, the Petitioners' have averred their entitlement in respect of CTS No.885, 850,

888 and 887 and have contended that land bearing these CTS nos. are situated in Gaothan Area;

In paragraph 8 of the Petition; the Petitioners' have contended that Kasbe Badlapur, Temghar, Talimghar area though shown as Gaothan in village Map, has been mistakenly shown as Survey No.2 in the Development Plan.

The Respondent No.1 states that the contention in paragraph 8 regarding mistake in the location of Survey No.2 is correct. After comparing the village Map with Development Plan, it is found that Kasbe Badlapur, Temghar, Talimghar Area is wrongly shown as Survey No.2 in the Development Plan. The Respondent No.2 will initiate action for rectification of the mistake under section 37 of the Maharashtra Regional Town Planning Act, 1966.

Vide its communication dated 19th April 2019, it is clarified by the Revenue Department that City Survey Nos.885, 850, 888 and 887 are located in Gaothan Area.

Vide its communication dated 28th August 2019, the Urban Development Department has communicated with Respondent No.1 to treat 'Gaothan Area' as per village map as 'Congested Area' for application of DCPR 2013.

Thus, for construction on the land bearing City Survey Nos.885, 850, 888 and 887 of village Badlapur, DCPR 2013 for 'Congested Area' will be relevant."

12. If the note has redressed the grievance of the writ petitioners before this Court, we have nothing to say about it and

we dispose of the writ petition on the basis of the contents of this note and by accepting each of the statements in that note as undertakings given to this Court.

13. However, since the Court is requested to dispose of this writ petition with reference to the note tendered and because it is taken on record with all its annexures and marked as 'X' for identification, we are clarifying that the larger issue and controversy has not been examined by us. We are keeping open all issues, particularly whether the understanding of the Revenue Authorities of the area styled as 'Gaothan' is on par with that of the Planning Authorities exercising power under the MRTP Act? When a development plan is prepared for a region and that development plan receives sanction from the State Government and when that is operational and functional, whether that should contain designations, proposals and reservations identifying and demarcating areas as 'Gaothan'? Absent such specifications on account of lack of adequate materials from the Revenue Department, can the Planning Authority say that it can resort to Section 37 of the MRTP Act and make the modifications in accordance therewith? The next issue is whether the areas to be demarcated as 'Gaothan' by the Revenue Department can be brought under the purview of the Planning Authorities for

planning purposes in accordance with any directions issued by the State Government under Section 154 of the MRTTP Act or otherwise? We have not addressed all these issues, and our order passed in this writ petition shall not be construed as concluding these issues. These are larger and wider questions which may require interpretation of several statutes or specific provisions thereof.

14. By accepting the note of the MMRDA-the first respondent, which contains some statements not attributable to the deponent of the affidavit-in-reply filed in this writ petition, we dispose of this writ petition.

(S.C.DHARMADHIKARI, J.)

(G.S.PATEL, J.)