

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2106 OF 2019

1. Sunil Janardan Pote,
Age : 60 years, Occupation : ---,
Residing at Kapataru,
Mahatma Gandhi Road, Pen, Taluka
Pen, District – Raigad.
2. Smt. Rekha Ratilal Sonttake,
Age : 64 years, Occupation : ---
Residing at Sivananda Building, Room
No.701, 7th Floor, Teen Hath Naka,
Thane.
3. Anil Janardan Pote,
Age : 58 years, Occupation : ---
Residing at Kalpataru, Mahatma Gandhi
Road, Pen, Taluka Pen, District Raigad
4. Santosh Janardan Pote
Age : 52 years, Occupation : ---
Residing at Kalpataru, Mahatma Gandhi
Road, Pen, Taluka Pen, District Raigad
5. Dharmendra Janardan Pote
Age : 50 years, Occupation : ---
Residing at : Kalpataru, Mahatma
Gandhi Road, Pen, Taluka Pen, District
Raigad
6. Miss. Sayali Rajendra Pote
Age : 28 years, Occupation : ---
Residing at : Kalpataru, Mahatma
Gandhi Road, Pen, Taluka Pen, District
Raigad
7. Smt. Rasika Rajendra Pote
Age : 49 years, Occupation : ---
Residing at : Kalpataru, Mahatma
Gandhi Road, Pen, Taluka Pen, District
Raigad
8. Miss. Shriya Rajendra Pote
Age : 22 years, Occupation : ---
Residing at : Kalpataru, Mahatma
Gandhi Road, Pen, Taluka Pen, District
Raigad

9. Satwik Rajendra Pote
Age : 17 years, Occupation : Nil
Through natural guardian mother i.e.
Petitioner no.7, herein
Residing at : Kalpataru, Mahatma
Gandhi Road, Pen, Taluka Pen, District
Raigad

...Petitioners

Versus

1. M/s. Vishesh Developers,
A proprietorship concern through
Proprietor Mr. Vishesh Anil Shah
Dhanraj Restaurant and Bar Link
corner building, near V. N. Jewellers,
behind show room, 231, Link road,
Bandra (W).
2. Vishesh Anil Shah
Dhanraj Restaurant and Bar Link
corner building, near V. N. Jewellers,
behind show room, 231, Link road,
Bandra (W), Mumbai 50.
3. The District Collector, Raigad, At Alibag
Pin – 402 201.

...Respondents

Mr. Rohit D. Joshi, for the Petitioners.
Mr. Pradeep J. Thorat, a/w Mr. Soura Ghosh & Mr. Anirban
Sen, I/b Hariani & Co., for Respondent nos.1 and 2.
Mr. C. D. Mali, AGP, for the State/Respondent no.3.

CORAM: N. J. JAMADAR, J.

DATED: 3rd April, 2019

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the Counsels for the parties heard finally.
2. This petition takes exception to the orders passed by the Government in RTS Appeal No.2816/P.K.89/J-4A, dated

20th March, 2018, whereby the Revisional authority dismissed the Revision Petition preferred by the Petitioner herein challenging the order passed by the Additional Commissioner, Konkan Division, Mumbai, in RTS Appeal No.667 of 2013, by which the order passed by the Collector, Raigad at Alibag, dated 17th October, 2013 revoking the non-agricultural permission granted on 5th January, 1996, was set aside.

3. The petition arises in the backdrop of the following facts:

(a) Laxman Bhaisheth Wani alias Shetye was the original owner of the land bearing Survey No.120, Hissa No.7, admeasuring 5 R., situated at village Pale Budruk, Taluka Panvel, District Raigad. Laxman died in the year 1981, leaving behind his widow Bhagirathi, three sons, namely, Vasant, Chandrakant and Ashok and a daughter Pramila alias Pramodini Janardan Pote, the mother of the Petitioners. In the year 1996, an application came to be preferred by Respondent no.1 herein for permission for conversion of the use of the land for non-agricultural purposes under Section 44(2) of the Maharashtra Land Revenue Code, 1996 (hereinafter referred to as 'the Code', for short) in respect of multiple survey numbers, including the land in question. The said application was made on the basis of the Power of Attornies executed by the owners of

those agricultural lands, including the Power of Attorney executed by Ashok, in respect of the subject land. By order dated 5th January, 1996, the Collector granted permission for use of the lands for non-agricultural purposes.

(b) It is the case of the Petitioners that after the death of their mother Pramila, it was revealed that her brothers had executed certain conveyances representing the deceased Pramila as well. The Petitioner, thus, preferred an application before the Collector, Raigad, pointing out the fact that Bhagirathi, the widow of Laxman had already expired, and Ashok had misrepresented the authorities that he had the power to execute the documents on behalf of all the heirs of Laxman. The Collector, Raigad vide order dated 17th October, 2013 revoked the permission granted for non-agricultural use, on the premise that there was breach of the conditions of the said order dated 5th January, 1996 as the lands were not used for non-agricultural purposes.

4. Being aggrieved, Respondent no.1 herein preferred an appeal before the Commissioner, Konkan Division. The Additional Commissioner, Konkan Division, by judgment and order dated 27th August, 2014 allowed the appeal holding, *inter alia*, that the lands which were the subject matter of the said

order dated 5th January, 1996 were, in fact, divided into 160 plots, out of which 37 plots were sold in the year 1998 and, thus, third party interests were created. The Additional Commissioner also noted that the non-agricultural use permission was granted prior to 16 years and since then the non-agricultural cess was collected. The Petitioners herein assailed the said order by preferring the revision before the Government under Section 257 of the Code. The Revisional authority by impugned order, dismissed the revision on the grounds which found favour with the Appellate authority.

5. Mr. Joshi, the learned Counsel for the Petitioners urged that the very first order of granting permission for non-agricultural use was vitiated as one of the co-owners, the mother of the Petitioners, was completely kept in the dark. Moreover, the other co-owner had falsely represented that he had authority to execute the Power of Attorney on behalf of all the heirs of Laxman in favour of Respondent no.1. As the transaction has its genesis in the misrepresentation, bordering on fraud, on the part of Ashok, the Collector could not have granted the permission for non-agricultural use. Certain submissions were made reflecting upon the conduct of Respondent no.1 herein also.

6. In opposition to this, Mr. Thorat, the learned Counsel for Respondent nos.1 and 2 pointed out that Respondent no.1 had purchased a large tract of land admeasuring 213 Ares for a valuable consideration. The land in question admeasures 5 Are only. On the own showing of the Petitioners, the deceased Pramila had $1/8^{\text{th}}$ share in the said land. In the circumstances, there was no justifiable reason for the Collector to revoke the order of non-agricultural use, which was passed prior to 16 years. Thus, the Appellate authority has correctly interfered with the order passed by the Collector, Raigad, and the Revisional authority was justified in declining to interfere with the order of the Appellate authority.

7. It is evident that the dispute has its genesis in the proprietary rights of the heirs of the deceased Laxman. There is material on record to indicate that the Petitioners have been perusing their remedies in the Civil Court for partition and separate possession of the share of deceased Pramila. What is of material significance is the fact that the Collector had not embarked upon an enquiry as to whether the non-agricultural permission was rightly granted. Though the trigger for the passing of the order by the Collector was the application preferred by the Petitioners, yet, the Collector had cancelled the

order granting permission for non-agricultural use on the premise that the conditions subject to which the said permission was granted, were not fulfilled.

8. In the aforesaid backdrop, the Appellate authority has correctly pointed out that the subject lands were put to non-agricultural use and even third party rights were created therein. The fact that non-agricultural cess was collected is also a relevant factor.

9. There may be some substance in the allegations on behalf of the Petitioners that, Ashok, from whom Respondent no.1 claimed to have derived title to the subject land, made false statements and misrepresented the authorities that he was Power of Attorney holder of Pramila, though she had expired in the year 1999. However, these questions can be legitimately agitated before, and adjudicated by, the Civil Court.

10. The permission granted by the Collector on 5th January, 1996 was in respect of a large tract of land admeasuring 213 Ares and the share which the Petitioners claim therein can be said to be of a minuscule nature. Third party rights have already been created in the said lands. Thus, there was no justification for the Collector to revoke the said order on the premise that there was breach of the conditions subject to

which the said non-agricultural use permission was granted. Thus, the Appellate and Revisional authorities seem to have correctly exercised the jurisdiction.

11. In the aforesaid view of the matter, I do not find that there is any justifiable reason to interfere with the order passed by the authorities below, in exercise of the limited jurisdiction under Article 227 of the Constitution of India.

12. The petition, therefore, stands dismissed. In the circumstances, there shall be no order as to costs.

13. Rule stands discharged.

[N. J. JAMADAR, J.]