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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1929OF 2019

Badruddin Kutubuddin Shaikh & Anr. ... Petitioners

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr. S. M. Gorwadkar, Sr. Counsel i/b S. H. Joshi, for the
Petitioners.

Mrs. K. R. Kulkarni, AGP for the Respondent – State.

CORAM : INDRAJIT MAHANTY &
N. B. SURYAWANSHI, JJ.

DATE : AUGUST 27, 2019.

P.C.

1. Heard the learned counsel appearing for the
respective parties. Present writ petition came to be filed,
seeking to challenge an order dated 20th July, 2018 (Exhibit J
to the petition) passed by the District Collector, Palghar,
refusing the application made by the Petitioners for
conversion of agriculture land purchased by them into non-
agriculture land for the industrial use.

2. The learned senior counsel appearing for the Petitioners drew our attention to paragraph 8 of the reply affidavit filed by the Tahsildar Palghar, dated 1st July, 2019, which is quoted as under:

“8. I say that the Assistant Director Town Planning, Palghar submitted their report on 12.7.2018 to the collector office Palghar. Inward branch of the office of Collector, Palghar received the said report on 18.7.2018 and thereafter concern branch/table received this report on 24.7.2018. At the time of passing the order on 20.7.2018 there was no any enquiry report on record from the Assistant Director, Town Planning, Palghar. Then as per the natural justice this respondent office informed the petitioner vide letter dated 16.8.2018 about the report and queries raised by the Town Planning Authority. Hereto annexed and marked as Exhibit-C Collectively are the copies of the report dated 12.7.2018 and letter dated 16.8.2018.”

3. It is submitted that the application made by the Petitioners for conversion of agriculture land into non-agriculture for industrial use, as per Section 44A of the Maharashtra Land Revenue Code, 1966 and in particular, in terms of sub-section (1) thereof, the Collector was required to ascertain as to whether such land falls within the regional industrial zone of the regional plan of the Town Planning Authority. He submits that the impugned order came to be

issued on 20th July, 2018. Whereas in paragraph 8, as noted above, the report of the Assistant Director, Town Planning, Palghar, dated 12.7.2019 received by the office of the Collector on 18.7.2019 and the concerned branch received said report on 24.7.2019. On this limited limited contention, learned senior counsel submitted that the order of the Collector refusing prayer of the Petitioners for conversion of agriculture land into non-agriculture for industrial use was premature, inasmuch as receipt of the report of the Town Planning Authority to the concerned branch subsequent to passing of the impugned order.

4. It is an admitted fact that the report of the Town Planning Authority was not, therefore, available for consideration of the Collector on the date of passing of the impugned order dated 20.7.2018.

5. We are in agreement with the learned senior counsel appearing for the Petitioners, inasmuch as report of the Town Planning Authority is a relevant factor for consideration of the Collector while considering application of the Petitioners for conversion of agriculture land into non-

agriculture for industrial use, since report of the Town Planning Authority came to the appropriate branch / table on 24.7.2018 and the impugned order has been passed earlier thereto i.e. on 20.7.2018. We consequently, pass the following order.

ORDER

- (i) The impugned order dated 20.7.2018 (Exhibit J to the petition) is quashed and set aside, and the matter is remanded to the District Collector, Palghar for reconsideration of the application of the Petitioners dated 25.6.2018 (Exhibit F to the petition), after taking into account report of the Town Planning Authority as well as any other evidence / documents that may be provided by the Petitioners in support of their prayer, as also affording the Petitioners further opportunity of hearing.
- (ii) It shall be open for the Collector to pass the order on the Petitioners' application on merits and in accordance with law within three months from

today.

- (iii) It is made clear that nothing observed hereinabove shall amount to determination of any issue, which remains to be decided by the Collector.

. The writ petition is disposed of in the aforesaid terms.

Sd/-

[N. B. SURYAWANSHI, J.]

Vinayak Halemath

Sd/-

[INDRAJIT MAHANTY, J.]