

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

934. WRIT PETITION No. 3248 of 2020

Rajaram Namdeo Suradkar

...Petitioner

VERSUS

The State of Maharashtra and others

...Respondents

Mr. S.S. Thombre, Advocate for petitioner

Mrs. M.A. Deshpande, Addl. Govt. Pleader for respondents No.1 to 3

Mr. D.P. Palodkar, Advocate for respondent No.5

CORAM : S.V. GANGAPURWALA &

SHRIKANT D. KULKARNI, JJ.

DATE : 26th February, 2020

ORDER :

1. The business rivalry is the genesis of the present litigation.
2. The petitioner assails the final approval to the lay out.
3. The tentative lay out was sanctioned in favour of respondent No.5 on 16th January 2020 and the same is finally approved on 1st February 2020.
4. Mr. Thombre, learned Counsel for the petitioner strenuously contends that the tentative approval was granted subject to certain terms and conditions. Clause 28 of the tentative approval has not been adhered to and followed by the authority

while passing the impugned approval order in favour of respondent No.5. As required under clause 28 of the tentative approval order, the guidance and opinion of the authorities has not been obtained. In the adjoining Gat No. 466, the permission is already granted and the final approval is granted to the layout wherein the said land is meant for use of the retail outlet. The order of the final layout is against the terms and conditions of the tentative lay out and same is illegal. The learned Counsel submits that issuance of the letter of intent in favour of respondent No.5 has no co-relation with the sanction of the lay out and the sanction of the final lay out has to be upon the compliance of the terms and conditions, as enumerated in the tentative lay out. All the terms and conditions of tentative lay out were not complied with before the order of final approval of layout. The final approval cannot stand to any reason. The learned Counsel submits that it is irrelevant whether the letter of intent in favour of the petitioner is earlier or subsequent in point of time.

5. The learned Counsel further submits that final approval to the petitioner's land is granted after considering the Ministry of Road Transport of Highway (MORTH) Rules, whereas, in case of respondent No.5, the same is flouted. When the tentative lay out is granted to the land of the petitioner, layout of the land of respondent No.5 was not in existence. In the light of that, it was for respondent No.5 to comply with all the terms and conditions. In

absence of the compliance of the terms and conditions of the tentative approval, the final approval could not have been granted by the authority.

6. The learned Counsel for respondent No.5 submits that letter of intent is issued in favour of the petitioner on 6th August 2019 and much prior to the letter of intent issued in favour of the petitioner, letter of intent is issued in favour of respondent No.5 on 7th March 2019. The permission in favour of the petitioner is also cancelled. According to the petitioner, appeal against the same is pending. All no objection certificates have been issued by the authorities in favour of the respondent also.

7. Mr. Thombre, learned Counsel submits that in the tentative lay out permission, it is clearly stated in clause 27 that the tentative plan of 14th March 2019 was cancelled. Then again, on the basis of the same, the final approval could not have been granted.

8. According to Mr. Palodkar, learned Counsel for respondent No.5, the Assistant Town Planning Director, Aurangabad, has observed in letter dated 15th January 2020 that on the basis of the recommendation, the revised plan sanctioned does not get cancelled.

9. In fact, the retail outlet is owned by the Corporation-Oil

Company. It appears that in case of the petitioner the Oil Company is Hindustan Petroleum Corporation Limited and in case of respondent Oil Company is Bharat Petroleum Corporation Limited. The petitioner is only licensee to run the retail outlet. The retail outlet will be owned by the Oil Company. The oil companies have not disputed any of the permissions. The MORTH requirements, to be complied with, has to be considered by the authorities.

10. It is not for this Court to sit in appeal over the said order. The approval has been granted for the purpose of the retail outlet on particular land. In case the letter of intent issued is against the regulations, action can be taken in respect of the same. The lay out has been sanctioned as per the provisions of the statutes. The Assistant Director of Town Planning and/or the Chief Executive Officer has considered the relevant aspects. In fact, it is only the business interest, which has propelled the petitioner to approach the Court.

11. Considering the above, the writ petition is accordingly disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

Madkar

(S.V. GANGAPURWALA)
JUDGE