

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

WRIT PETITION NO.6489 OF 2020

WITH

CA/8263/2020 IN WP/6489/2020

AVENUE SUPERMARTS PVT. LTD.

VERSUS

**THE COMMISSIONER, DHULE MUNICIPAL CORPORATION AND
OTHERS**

...

Advocate for Petitioner: Mr. R. N. Dhorde, Senior
Advocate a/w. Mr. Vaibhav Sugdare, Adv. i/b. Mr.
V. R. Dhorde, Adv.

AGP for Respondents No. 1 to 4: Mr. S. G. Karlekar
Advocate for Respondents No. 2 & 3:

Mr. N. N. Desale

Advocate for Applicant: Mr. V. D. Sapkal, Senior
Advocate i/b. Mr. A. B. Girase, Adv.

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WRIT PETITION NO.6449 OF 2020

KISHOR MOHANLAL BAFNA

VERSUS

**THE STATE OF MAHARASHTRA, THROUGH ITS SECRETARY
AND OTHERS**

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Advocate for Petitioner: Mr. V. D. Hon, Senior
Advocate i/b. Mr. M. V. Bhamre

AGP for Respondent No. 1: Mr. S. G. Karlekar
Advocate for Respondents No. 2 & 3:

Mr. N. N. Desale

Advocate for Respondent No. 4: Mr. V. D. Sapkal,
Senior Advocate i/b. Mr. A. B. Girase, Adv.

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**CORAM: S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

RESERVED FOR ORDERS ON:	15.12.2020
ORDER PRONOUNCED ON:	09.02.2021

ORDER:

1. The petitioners assail the order of the Commissioner Municipal Corporation, Dhule directing petitioners to stop work.

2. The case put-forth by the petitioners is that land Survey No. 483/A-2 admeasuring 4H.77G. is owned by Khandesh Goseva Shramantargat Goshala, Dhule (*hereinafter referred to as "Trust"*). It bears CTS No. 6800 and is a non-agriculture land. The Trust issued tender for sale of 70 Guntha (7000 Sq.Meters) of land forming part of Survey No. 483/A-2. The Joint Charity Commissioner, Nashik granted permission to sell the land to Mr. Shashikant Khairnar. Pursuant thereto, registered Conveyance Deed was executed by the Trust in favour of Mr. Khairnar on 27.04.2009 and the purchasers name is entered into revenue record vide mutation entry no. 55131. On or about 04.06.2009, Mr. Khairnar sold the land to Mr. Kishor Bafna i.e. the petitioner in Writ Petition No. 6449 of 2020. The purchasers name was entered in the Revenue Record vide Mutation Entry No.

55412. The said plot was subsequently incorporated into residential zone. On or about 25.07.2019, Dhule Municipal Corporation granted provisional building permission in favour of Mr. Kishor Bafna. On or about 08.08.2019, on an application of Mr. Kishor Bafna his land is measured and divided into Survey No. 6800/2, 6800/3 and 6800/4. On or about 14.09.2019, the Corporation granted construction permission to Mr. Kishor Bafna on his application. After subdivision of the plots Mr. Kishor Bafna again applied for revised construction permission. Said Mr. Kishor Bafna was granted fresh construction permission on 21.12.2019 for plot bearing CTS No. 6800/2. CTS No. 6800/2 is sold by Mr. Kishor Bafna in favour of the petitioner of Writ Petition No. 6489 of 2020 on 15.01.2020. The said purchaser started the construction work. On or about 12.08.2020, complaint is made by one Mr. Ninand Patil to Dhule Municipal Corporation about the construction. On or about 13.08.2020, notice was issued by Dhule Municipal Corporation U/Sec. 51 of

the MRTTP Act, to the petitioner and on 21.08.2020 the Corporation passed the order asking the petitioners to stop the construction work. The present petition is filed against the said order.

3. It was the case of the petitioners that the petitioners were not accorded any opportunity before passing the stop construction order. This Court under order dated 06.11.2020 accepted the request of the parties and the statement of the learned Counsel for the Municipal Corporation that Municipal Corporation would give opportunity of the hearing to the petitioner and take decision afresh. Pursuant thereto, the petitioners were accorded opportunity of hearing and thereafter the Municipal Corporation passed an order and continued order of the stop work. The petitioners amended the writ petition assailing the fresh order dated 25.11.2020.

4. Mr. Dhorde, learned Senior Advocate for the petitioner strenuously contends that the Municipal Commissioner has failed to reason out the exact

breach and / or violation of any condition of development permission and / or sanction plan. The construction is carried out as per the construction permission. The learned Commissioner has erred in linking the layout plan of a bigger plot with the construction in question. The K-Prat survey report dated 08.08.2019 dissects the said plot of the petitioner in Writ Petition No. 6489 of 2020 with the other plots sub divided out of a bigger plot. The layout order dated 25.07.2019 duly sub divides the plot. CTS No. 6800/2 admeasuring 5598 Square Meters is specially earmarked for commercial use without any encumbrance. The construction permission dated 14.09.2019 and 21.12.2019 were duly issued by the sanctioning authority and the construction work was strictly in compliance with the commencement / construction permission. The plea of Mr. Ninad Patil is absolutely false. No violation has been made of any of the conditions of provisional layout. The open plot never vest with the Municipal Corporation. The open plot is only meant

for use and enjoyment of the plot holders in the locality or the persons of the said vicinity. It need not be transferred in favour of the Municipal Corporation and petitioners have kept 10% open space. The said aspect ought to have been considered in its correct perspective. According to the petitioner, keeping 10% open space is the responsibility of the owner, the petitioner cannot be made to suffer. The Municipal Commissioner in his order has failed to record any reason as to why the K-Prat survey report dated 08.08.2019 is of no consequence. The impugned order deserves to be set aside.

5. Mr. Hon, learned Senior Advocate for the petitioner in Writ Petition No. 6449 of 2020 echoed the arguments of Mr. Dhorde, learned Senior Advocate for the petitioner in Writ Petition No. 6489 of 2020 and further submitted that the CTS No. 6800 is converted into non-agricultural use and Sanad to that effect was issued on 09.08.1983. The layout was sanctioned by the Corporation on 25.07.2019. The temporary layout is not in

existence. The impugned communication is issued on the presumption that the temporary layout is in existence. The parties would be governed by the Sanad.

6. Mr. Desale, learned Counsel for the Municipal Corporation submits that after purchase of 70 Are land from Survey No. 483/A-2 Mr. Bafna approached the Corporation to sanction the layout to the extent of an area admeasuring 7000 Sq. Meters from Survey No. 483/A-2. The approval was accorded by the respondent to the layout on 25.07.2019; upon certain terms and conditions. As per Rule 24.3 of the Development Control and Promotional Regulations for D-Class Municipal Corporations, it is mandatory to keep 10% recreational open space and the same is required to be transferred in favour of the Municipal Corporation on a meager amount of Rs.1 as per condition no. 13. The concerned owner is required to get N.A. permission as per Section 42-B of the Maharashtra Land Revenue Code. As per Clause 14 of the N.A. permission; unless condition no. 13 is complied

with, the plot cannot be used for construction and if any such construction is carried out the same would be illegal. It was binding on the part of Mr. Bafna to keep 10% open space. After receipt of the order dated 25.07.2019 granting provisional layout Mr. Bafna on 07.08.2019 requested to carry out the measurement. After measurement, the land admeasuring 7000 Sq. Meters from Survey No. 483/A-2 was bifurcated into four sub divisions viz. (i) CTS No. 6800/1 admeasuring 1100 Sq.Meters is shown as owned by Khandesh Goseva Ashram, (ii) Survey No. 6800/2 admeasuring 5598 Sq. Meters is shown as owned by Mr. Kishorkumar Mohanlal Bafna, (iii) Survey No. 6800/3 admeasuring 554 Sq. Meters is shown as owned by Mr. Kishorkumar Mohanlal Bafna, (iv) Survey No. 6800/4 admeasuring 848 Sq. Meters. is shown as owned by Mr. Kishorkumar Mohanlal Bafna (kept for Development Plan Road). Thereafter, 3 independent Property Cards of 6800/2, 6800/3 and 6800/4 were prepared in the name of Mr. Kishor Bafna. Mr. Kishor Bafna sold Survey No. 6800/3 admeasuring 554 Sq. Meters

by registered Sale Deed to one Mr. Rajesh Patil and others. The said Sale Deed was not permissible as the same was the open space / recreational space shown in the layout as per the Development Control and Promotional Regulations. Mr. Bafna, further executed conveyance of 5598 Sq. Meters from Survey No. 6800/2 in favour of the petitioner in Writ Petition No. 6489 of 2020 under Deed of Conveyance dated 15.01.2020. The area under sanctioned lay out admeasuring 621 Sq. Meters from original Survey No. 483/A-2 now Survey No. 6800/2, 6800/3 and 6800/4 is kept as layout open space / recreational space. Mr. Bafna hand in glove with the officers of City Survey prepared the measurement map showing that the open space is owned by Mr. Bafna. The land was measured dislodging the open space. In fact, open space ought to have been transferred to the Corporation, instead, he sold the open space / recreational space. Noticing the said illegality, the petitioner was directed to stop construction. The Corporation directed the Town Planning Officer to

mutate the name of the Corporation in the records of right of the open space in the layout. In fact, Mr. Bafna, committed offence and offence is directed to be registered against Mr. Bafna by the Corporation. The Corporation gave hearing to the petitioner. During the hearing, the petitioner in Writ Petition No. 6489 of 2020 proposed to increase the open space from 504 to 554 Sq. Meters but no such proposal was submitted by him. Large scale illegalities exist. Non-agriculture permission is also not taken by the petitioner.

7. Mr. Sapkal, learned Senior Advocate for respondent no. 4 in Writ Petition No. 6449 of 2020 and intervenor in Writ Petition No. 6489 of 2020 submits that the Trust passed Resolution to sell 70 Are land from Survey No. 483/A-1 and the same was sold by tender to Mr. Khairnar. After purchase of the land from Survey No. 483/A-1 it was divided and land admeasuring 70 Are was numbered as 483/A-2. Said Mr. Khairnar, sold 70 Are land to Mr. Bafna. Mr. Bafna, approached the Corporation on 27.03.2019 requesting to sanction lay out to the

extent of 7000 Sq. Meters from Survey No. 483/A-2. Sanction was accorded to the extent of 7000 Sq. Meters from Survey No. 483/A-2 with certain conditions. In stead of transferring the open space to the Municipal Corporation, Mr. Bafna sold the open space from Survey No. 483/A-2 in favour of Dr. Rajesh Patil and others. Mr. Bafna, sold the property to the extent of 5598 Sq. Meters on 15.01.2020 from Survey No. 483/A-2 to the petitioner in Writ Petition No. 6489 of 2020. The possession and rights of the open space are required to be transferred in favour of local authority in view of the Regulations, in stead, Mr. Bafna sold the open space. He has committed offence. If original record of CTS No. 6800 is inspected, then it is City Survey Officer who had issued Sanad on 09.08.1983. The Survey No. 483/B admeasuring 8100 Sq. Meters was converted into CTS No. 6800. Mr. Bafna, in collusion with City Survey Officer prepared forged documents. Mr. Bafna was aware that he has purchased property 483/A-2 and not 483/B and CTS No. 6800 is from Survey No. 483/

B and not from CTS No. 483/A-2. Conveyance Certificate was obtained by playing fraud upon Dhule Municipal Corporation. The petitioners are showing that CTS 6800 is carved out of 483/A, the same is illegal. CTS No. 6800 is from Survey No. 483/B. The petitioners did not get ownership of the said land from Survey No. 483/B. The Corporation has rightly passed the order.

8. We have considered the submissions canvassed by the learned Counsel for respective parties.

9. In writ jurisdiction, we are not going to embark upon the investigation of the title. If, the aspect of title exists, it is for the parties to approach the competent Civil Court.

10. In the present matter, we are only concerned with the legality of the order passed by the Municipal Corporation based upon the reasons arrived at by the Corporation while passing the impugned order. Initially, after the order was passed directing the petitioner to stop work the

petitioners filed the instant writ petitions. This Court on the basis of the submissions made directed the Corporation to pass orders afresh after hearing the petitioners. The Municipal Commissioner, it appears, granted hearing to the petitioners and passed orders afresh. The Commissioner of Municipal Corporation continued the order of stop work.

11. The legality of the said order would only be subject matter of consideration before this Court. The Commissioner came to the conclusion that as per condition no. 6 of the provisional layout within one year the petitioner was required to hand over to the Corporation for supervision / maintenance the open space and the rights of the open space of the layout. The petitioner failed to do so. Petitioner failed to transfer open space admeasuring 621 Sq.Meters from Survey No. 483/A-2. On the contrary, Mr. Bafna sold this 621 Sq.Meters of open space in favour of third person. Mr. Bafna deceived the Corporation. The order, as such, is based on the ground that the petitioners failed to

comply with the conditions of the provisional layout in as much as failed to transfer the open space and the rights.

12. Clause 24.3 of the Development Control and Promotional Regulations for 'D' Class Municipal Corporations reads thus -

"24.3 Recreational open spaces : In any layout or sub-division or any development of land for any use/zone, admeasuring 0.20 Ha. or more after deducting D.P. Road and reservation area, if any, 10% of the land under layout or sub-divisions shall be reserved as recreational open space, which shall as far as possible be provided in one place. In case of land admeasuring more than 0.8 hector, recreational open space may be allowed to be left at different locations in the same layout."

13. Reading Clause 24.3, as reproduced supra, it is manifest that, in any layout or subdivision or development of land admeasuring 0.20 H. or more after deducting D.P. road and reserved area if any 10% of the land under layout or subdivision shall be reserved as a recreational open space which shall as far as possible be provided in one place. The petitioner in Writ Petition No. 6489 of 2020 has purchased about 5598 Sq.Meters of land i.e.

more than 0.20 H. and less than 0.8 H. In fact, when the provisional layout was sanctioned the plots were divided considering the entire 7000 Sq. Meters of the land and it appears that 554 Sq. Meters from Survey No. 6800/3 was kept as open space as contended by the Corporation. The land transferred in favour of the petitioner is more than 0.20 H. In the said land, as per the layout, the open space is not kept. The construction permission is obtained. The bone of contention would be of 10% open space. It is for the authorities to consider the said aspect. We need not go into the niceties of the same nor in the present matter would dilate on the dispute as to whether CTS No. 6800 is part of 483/A-2 or 483/B nor the same was a subject matter of issue dealt with by the Commissioner in the impugned order.

14. It is a fact that construction permission was granted and the petitioner in Writ Petition No. 6489 of 2020 had commenced with the construction activity, the same proceeded and after about 8 months the stop work order is passed.

15. Considering the technicality of the matter *vis-a-vis* the impugned order, we refer the parties to the Director of Town Planning who is an Appellate Authority, if the construction permission is revoked or modified to consider the matter and in the interregnum we allow the petitioner in Writ Petition No. 6489 of 2020 to carry out the construction as per the construction permission sanctioned albeit maintaining 10% open space i.e. at least to the extent of 554 Sq. Meters at one place excluding the margin space, parking area and the said construction will certainly be subject to the further orders passed by the Director of Town Planning. The petitioner will not create any third party interest in respect of the said plot or the superstructure constructed over it unless and until the Director of Town Planning decides the issue. The parties may proceed further depending upon the decision taken by the Director of Town Planning. The parties may appear before the Director of Town Planning on 22.02.2021. The Director of Town

Planning on considering the case put-forth by the petitioners and respondents take decision on the construction permission issued in favour of the petitioner.

16. Writ Petitions with civil application are disposed of. No costs.

[SHRIKANT D. KULKARNI, J.]

[S. V. GANGAPURWALA, J.]

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