

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11643 OF 2021

ARUN SADASHIV MARATHE AND ANOTHER
VERSUS
KRISHNA BHALCHANDRA RUDRAWAR AND ANOTHER

Mr.A.S.Deshmukh, Advocate for the petitioners.
Mr.S.S.Bora, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE AND
S.G. DIGE, JJ.)

DATE : APRIL 11, 2022

PER COURT :

1. By this petition, the petitioner has put forth prayer clause "C" as under :-

"C. That, the respondent No.2 Commissioner, Parbhani City Municipal Corporation, Parbhani the Appellate Authority may kindly be directed to decide the matter in respect of sanction of Building Permission and commencement certificate dated 21.12.2019 in respect of Plot No.4 revenue survey No.630, City Survey No.630/A, 631/B and 632/A situated at Parbhani, Jintoor Road, Parbhani vide approval no.DDMCP/B/2019/APL/00529 as early as possible within a period of 6 months."

2. We find that the petitioner is aggrieved by the commencement certificate dated 21.12.2019 issued by the Town Planner, Parbhani Municipal Corporation in favour of respondent No.1. This certificate is issued u/s 44 of the MRTP Act, 1966 and Section 2-B of the Municipal Corporations Act, 1949.

3. The petitioner contends that he has preferred an appeal u/s 151 and 154 of the MRTP and PULP Act before the Municipal Corporation. He concedes that these provisions have been wrongly mentioned or invoked. It should have been an application u/s 258 of the Maharashtra Municipal Corporations act.

4. Section 258 reads as under :-

"258. Power to Commissioner to cancel permission on the ground of material misrepresentation by applicant :-If at any time after permission to proceed with any building or work has been given under the rules, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under section 253 or 254, or of further information, if any, furnished, he may

cancel such permission, and any work done thereunder shall be deemed to have been done without his permission"

5. It is thus apparent that the Municipal Commissioner can cancel the permission to proceed with building or construction of any work if it is brought to his notice that the permission granted was in consequence of any material mis-representation or a fraudulent statement.

6. The petitioner submits that RCS No.229/2012 seeking specific performance of contract is filed by the petitioner against respondent No.1. Grant of permission u/s 44 and 253 would cause prejudice to the petitioner. He, therefore submits that the pending appeal dated 20.09.2020 though invoked section 154 of the MRTP Act, the same has to be construed u/s 258 of the Maharashtra Municipal Corporations Act.

7. Despite service of Court notice, neither respondent No.1 nor respondent No.2 have caused an appearance in these matters.

8. In the interest of justice, we called upon Mr.Bora, the learned Advocate who normally appears for the Municipal Corporation, Parbhani to cause an appearance in this matter. On the request of the Court, he has appeared.

9. In view of the above, this petition is disposed off. We call upon respondent No.2 to decide the proceedings in the light of the application filed by the petitioner dated 20.09.2020 u/s 258 of the Maharashtra Municipal Corporations Act and after granting reasonable opportunity of hearing to all the parties, pass a reasoned order as expeditiously as possible, preferably on or before 30.06.2022.

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)