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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

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Date: 2022.10.12
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WRIT PETITION NO.7132 OF 2021

A.V.F. Enterprises

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Atul Damle, Senior Counsel with Mr.Sujit Lahoti, Mr.Parth Shah and Mr.Aniket Worlikar i/b Mr.Sunit Lahoti & Associates for the Petitioner.

Mr.A.I. Patel, Addl. Government Pleader with Mrs.A.A. Purav, AGP for the State - Respondent Nos.1 and 2.

Ms.Swati H. Sagvekar for the Respondent No.3.

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATE : 10TH OCTOBER, 2022.

P.C. :-

1. Leave to amend is granted to the petitioner to correct the description of the property in paragraph 11 (i), (ii) and (iii). The amendment shall be carried out forthwith. Reverification is dispensed with. The amendment shall also be carried out in the copies supplied to the respondents.

2. Rule. Mr.Patel, learned Additional Government Pleader waives service for the respondent nos.1 and 2. Ms.Sagvekar waives service for the respondent no.3. Rule is made returnable forthwith.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner prays for a declaration that the land bearing Survey No.47/3B, 47/10, 48/2, 48/3A and 48/5C admeasuring 6250 sq. mtrs. situated at Chandrapada, Naigaon (East), Taluka Vasai, District Palghar is not a wetland as described under the Wetland (Conservation and Management) Rules, 2017.

4. Mr.Damle, learned senior counsel for the petitioner invited our attention to various exhibits annexed to the petition and also to the exhibits of the affidavit in reply filed by the Tahsildar Revenue Collector Office, Palghar and submitted that though in the communication dated 6th August, 2021 from the Municipal Corporation, it was contended that the land of the petitioner was included in the wetland according to the Government Resolution dated 18th December, 2013, the subsequent records produced by the State Government, including the report dated 7th March, 2022 would clearly indicate that the land of the petitioner was not included as wetland even in the brief document. He submitted that the affidavit in reply filed by the State Government, is thus contrary to the subsequent reports placed on record by the deponent of the affidavit and thus the contentions raised in the affidavit in reply are contrary to the documents on record and shall be ignored.

5. It is submitted by the learned senior counsel that the facts

of this case and the facts before this Court in Writ Petitions No.4096 of 2022 and 6893 of 2022, which are separately disposed off by an order passed by this Court today are identical.

6. Mr.Patel, learned Additional Government Pleader could not dispute that the reports that were subsequently placed on record along with the affidavit in reply filed by the State Government clearly indicate that the land in question of the petitioner does not fall in the category of wetland in the brief document or otherwise. In our view, the stand taken by the State Government in the affidavit in reply is contrary to the factual position on record and thus cannot be accepted.

7. In our view, the facts of this case are identical to the facts in Writ Petitions No.4096 of 2022 and 6893 of 2022, which petitions are allowed by a separate order passed by this Court today, the order passed in the said two writ petitions would apply to the facts of this case.

8. We accordingly pass the following order :-

a). The writ petition is allowed in terms of paragraph 11(i) and (iii). The respondent nos.2 and 3 are directed to grant permission to undertake the construction / redevelopment activities on the land described in paragraph 11 (i) subject to compliance of any other legal requirements.

- b). Rule is made absolute accordingly.
- c). There shall be no order as to costs. Parties to act on the authenticated copy of this order.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J.)