

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10442 OF 2018

M/s.Mahamantra Construction. ... Petitioner.

V/s.

The Sub-Divisional Officer,

Wai Sub-Division and others. ... Respondents.

WITH

WRIT PETITION NO. 13737 OF 2018

Shri Ajit Shantilal Shah. ... Petitioner.

V/s.

State of Maharashtra and others. ... Respondents.

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KASHINATH
NANOSKAR

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Mr.Drupad S. Patil for the Petitioner in WP No.10442/2018.

Mr.Prathamesh B. Bhargude with Mr.Sumit Sonare for the
Petitioner in WP No.13737/20178.

Mr.N.K.Rajpurohit, AGP for the State.

Ms.Shakuntala S. Wadekar with Ms.Bhavana Punalekar
for Respondent No.2- Lonand Nagar Parishad.

Mr.Graham Francis i/b. Mr.Vishwanath S. Talkute for
Respondent No.12 in WP No.13737/2018.

CORAM : **NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATE : **15 September 2022.**

P.C. :

Heard learned counsel for the parties.

2. The Petitioner in Writ Petition No.10442/2018- M/s.Mahamantra Construction and the Petitioner in Writ Petition No.13737/2018- Shri Ajit Shantilal Shah are neighbours. Their structures are located at village- Lonand, taluka- Khandala, and district- Satara.

3. The Petitioner in Writ Petition No.10442/2018 ("Petitioner- Mahamantra Construction" for short) who has its structure on City Survey No.826 and 843 to 851 at village- Lonand, taluka- Khandala, district- Satara has challenged the order passed by the Sub-Divisional Officer, Wai dated 27 August 2018 cancelling the order dated 7 July 2015. By the impugned order, the Sub-Divisional Officer ("SDO" for short) has further directed the Petitioner- Mahamantra Construction to remove the construction put up by the Petitioner within one month, treating it as unauthorized construction.

4. Writ Petition No.13737/2018 is filed by Shri Ajit Shantilal Shah ("Petitioner- Ajit Shah" for short) challenging the revised building permission dated 16 June 2017 bearing No.285 issued by the Lonand Nagar Parishad in favour of the Petitioner- Ajit Shah.

5. Both these petitions are argued together and are taken up for consideration together.

6. The Petitioner- Mahamantra Construction had applied to the SDO on 19 September 2014 in respect of City Survey Nos.826, 843 to 851, admeasuring 544.20 sq. meters for the construction of a building. The Assistant Director of Town Planning, Satara, on 28 April 2015, had recommended in favour of Petitioner- Mahamantra Construction as per the plan annexed by the Petitioner subject to conditions stipulated therein. The SDO, in his order dated 7 July 2015, referred to the Maharashtra Land Revenue (Conversion of Use of Land and Non-agricultural Assessment) Rules, 1969 and, more particularly, Rule 4 thereof, which stipulated conditions in which the permission is to be granted. The SDO granted permission for construction as sought by the Petitioner- Mahamantra Construction on specific terms and conditions, one of the conditions being that the construction will be carried out as per the plan annexed to the permission. It has been pointed out to us that at the relevant time when the permission was granted, the SDO

was also acting as the planning authority for the area as it was the period of transition for the transfer of lands to the Municipal Council.

7. The Petitioner- Ajit Shah complained to SDO on 12 April 2018, stating that the Petitioner- Mahamantra Construction has not carried out their construction as permitted under the order dated 7 July 2015 and the plan appended thereto. The SDO referred to the site report of the Assistant Director of Town Planning, Satara dated 30 March 2018 and stated that the construction carried out by the Petitioner- Mahamantra Construction is not as per the building plan appended to the order dated 7 July 2015. Taking note of the same, the SDO, by the impugned order dated 27 August 2018, exercising powers under sections 44 and 45 of the Maharashtra Land Revenue Code, 1966, directed that the order dated 7 July 2015 granting construction permission is cancelled and the Petitioner- Mahamantra Construction shall remove the structure.

8. The contention of the Petitioner- Mahamantra Construction is that the SDO has only gone by the plan appended to the permission dated 7 July 2018 and has not considered the revised building permission dated 16 June 2017 issued by the Municipal Council. According to the Petitioner- Mahamantra Construction, its structure is as per the revised building permission, and, therefore, the SDO could not have proceeded based on the old plan and could not

have directed cancellation and removal. Apart from this aspect, it was also contended by the Petitioner- Mahamantra Construction that the SDO does not have any power to hold that the construction is against the sanctioned plan and should be demolished, as he is no longer a planning authority whose power can only be exercised by the Municipal Council. The revised permission upon which the Petitioner- Mahamantra Construction seeks to rely is the subject matter of challenge in Writ Petition No.13737/2018.

9. As regards the impugned order in Writ Petition No.10442/2018 is concerned, we find that the SDO has proceeded with reference to the conditions in the order dated 7 July 2015 imposed under Rule 4(1)(e) of the Rules of 1969 which stipulates that when the permission is granted for construction, it should be in accordance with the permission granted by the planning authority. The moot question, therefore, is as to which plan should be taken into consideration when the action for breach of conditions is to be taken by the authority. The SDO has referred to the plan appended to the original permission order dated 7 July 2015 granted by the then planning authority, which at the relevant time vested in the SDO due to transitory provision. However, when the order was passed on 27 August 2018, the plan stood revised and according to the Petitioner- Mahamantra Construction, the construction is as per the revised plan. Neither in the order nor in the reply do we find any application of mind by the SDO as to which plan is to be taken

into consideration to hold that there is a breach of permission granted under order 7 July 2015. Since this inquiry is entirely missing and this issue was raised by the Petitioner- Mahamantra Construction, it would be necessary to direct SDO to proceed after taking into account this aspect of the matter.

10. As regards Writ Petition No.13737/2018 is concerned, the Petitioner- Ajit Shah, as stated, has challenged the revised sanctioned plan granted in favour of Mahamantra Construction. According to the Petitioner- Ajit Shah, the revised sanctioned plan and the construction carried out by the Mahamantra Construction, on the face of it, is not legal. No side margin is left when the law requires two meters to be kept on either side. There is no front side set back. When maximum ground coverage of 60% is permitted, 90% is utilized. The basement, which is to be used for parking, is used for shops constructed on the ground floor. It is contended that apart from these gross illegalities, there are various other illegalities. It is also the contention of the Petitioner- Ajit Shah that despite making various representations and after site reports having been placed on record as to the valuation, no action is being taken by the Municipal Council. It is the case of the Petitioner- Ajit Shah that the Chief Officer, who is joined by name as party respondent, is aiding the Mahamantra Construction, in violating the planning laws.

11. The learned counsel appearing for the Municipal Council, the planning authority, states that the grievance raised by the Petitioner- Ajit Shah, would be looked into, and appropriate action would be taken. The learned counsel for the Mahamantra Construction submitted that the Petitioner- Ajit Shah has already filed a civil suit on the same subject matter and also submitted that Petitioner- Ajit Shah had filed Writ Petition No.9742/2016 wherein the same grievance was made regarding development permission granted and Division Bench by order dated 6 September 2017 has disposed of the said petition holding that since on the relevant date the Gram Panchayat stood dissolved and the Municipal Council was yet to be constituted, there was no planning authority, and therefore there was no error in granting development permission on 7 July 2015. The learned counsel for the Mahamantra Construction also relied upon the order dated 1 April 2017 passed in Writ Petition No.4002/2012 filed by Petitioner- Ajit Shah.

12. As far as the earlier challenge of the Petitioner- Ajit Shah in Writ Petition No.9742/2016 is concerned, the same was to the order dated 7 July 2015 and not to the order impugned in the present petition. Therefore, that issue cannot be said to be concluded by the Division Bench. As regards the civil suit is concerned, that is in respect of *inter se* rights. But if the Petitioner- Ajit Shah has brought the grievance to the Court that a construction in the vicinity is carried out in violation of the planning laws, then it

is the duty of the planning authority to look into the same. We note that the issues raised by the Petitioner- Ajit Shah of alleged illegal construction by Mahamantra Construction, would entail factual inquiry. However, we do not intend to relegate the Petitioner to civil suit but to direct the planning authority to examine grievances raised by the Petitioner- Ajit Shah. We have also not been shown any order of the planning authority after considering of grievances of Petitioner- Ajit Shah that they are not correct and/or that there is no illegality in the construction carried out by Petitioner- Mahamantra Construction.

13. We would have directed the Municipal Council, the planning authority, to examine the grievances made by Petitioner- Ajit Shah; however, by way of amendment in the petition, Petitioner- Ajit Shah has levied certain allegations against the Chief Officer. The amendment is carried out in the year 2018. The learned counsel for the Petitioner- Ajit Shah, has also pointed out that certain documents on record show that in spite of such clear material, the Chief Officer is not proceeding further. Without any stigma on the Chief Officer, so that there should be transparency and that the grievances raised by any party are to be considered, it would be appropriate if this task of examining allegations raised by the Petitioner- Ajit Shah, is entrusted to the authority superior to the Chief Officer of the Municipal Council. The learned AGP states that the authority would be the Deputy Director of Town Planning, Pune.

14. The outcome of this discussion in these two petitions would be that the SDO would re-examine the issue in light of what is stated above. The Deputy Director of Town Planning, Pune, will hold an enquiry upon the grievances raised by the Petitioner- Ajit Shah after giving an opportunity of hearing to both the Petitioners.

15. The learned counsel for the Petitioner- Ajit Shah, states that there are various representations and various facts are sought to be brought on record, and for the sake of clarity, a combined representation setting out points of objections would be addressed and submitted to the Deputy Director of Town Planning. Liberty to do so. We also observe that any decision of the SDO regarding cancellation or otherwise of the permission based either on the original plan or the revised plan will be subject to the decision to be taken by the Deputy Director of Town Planning regarding the revised plan.

16. Accordingly, Writ Petition No.10442/2018 is disposed of as follows:

The impugned order dated 27 August 2018 is quashed and set aside. The complaint made by the Petitioner- Ajit Shah, dated 12 April 2018, is restored to the file of SDO. The SDO will take a fresh decision in respect of the complaint after giving opportunity of hearing to both parties and after examining the issues highlighted in this order.

17. Writ Petition No.13737/2018 is disposed of as follows:

The Petitioner- Ajit Shah, will represent the Deputy Director of Town Planning, setting out the grievances concerning construction carried out by the Petitioner- Mahamantra Construction, within four weeks from today.

The Deputy Director of Town Planning will examine the representation made by the Petitioner- Ajit Shah, and decide the same after giving a hearing to both the Petitioners by a speaking order.

After the representation is made, the Deputy Director of Town Planning, subject to earlier time-bound commitment and pressing public duties, will take a decision within twelve weeks.

18. The time limits will commence from the date this order is uploaded. The contentions of the parties are kept open.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)