

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

974 WRIT PETITION NO.6345 OF 2021

KAUSALYABAI SUKHLAL BAJAJ
THROUGH ITS POWER OF ATTORNEY
ASHOK SUKHLAL BAJAJ
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Mukul Kulkarni h/f. Mr. Aditya N. Sikchi

AGP for Respondent – State : Mr. S.B. Yawalkar

Advocate for Respondent Nos.2 & 5 : Mr. Nisargraj B. Garje h/f.
Mr. V.D. Saunke

Advocate for Respondent No.4 : Mr. S.G. Dodya h/f. Mr. P.N. Muley

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**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 25-04-2023

PER COURT :

. Respondent No.2 - Municipal Council on 7th October, 2016 granted permission and approved the re-alignment in the lay out plan which was sanctioned on 16th December, 2006 in favour of petitioners without altering the conditions mentioned therein.

2. Respondent no.4, a journalist by profession, appears to have complained to respondent authorities about irregular sanction of the lay out as neither the open space of 10% nor the road of 9 meters are provided in the sanctioned lay out plan. As a sequel of above, respondent no.2 issued a show cause notice to petitioner on

08th December, 2020 based on the complaint of respondent no.4.

3. In response to show cause notice, petitioner submitted her explanation and also the documents, however vide communication dated 03rd March, 2021 respondent no. 2 informed that the lay out which was sanctioned vide order dated 07th October, 2016 by respondent no. 2 is stayed.

4. The aforesaid impugned order is questioned by the learned counsel for petitioner on the following ground:

(a) That, on earlier occasion based on the complaint of respondent no.5, already issue was examined at the behest of Collector and pursuant to the order of the Collector passed on 09th December, 2020, the complaint / objection was decided.

(b) As such Mr. Kulkarni, learned counsel appearing for petitioner would urge that respondent vide order impugned by-passed the orders of the superior authority i.e. Collector.

(c) Mr. Kulkarni, learned counsel would urge that based on the complaint of respondent no.4 a letter was addressed by

respondent no.2 – Chief Officer to respondent no.3 on 18.02.2021 and respondent no.3 without there being application of mind, on very same day communicated to the office of the Chief Officer thereby stating that as per the 2013 Development Control Regulation, 9 meters of road should have been maintained.

5. The contentions are, once 2016 revised lay out plan was sanctioned pursuant to the Development Control Regulation of 2013, there ought not to have been any occasion for the respondent authorities to pass the impugned order thereby granting stay to the order of sanctioning lay out.

6. Pursuant to the orders of this Court, respondent no.2 - Chief Officer, present respondent no.3 and the then respondent no.3 who has communicated with the office of respondent no.2 - Chief Officer have filed their respective affidavits. In response to the Courts query, both the officers i.e. one who has communicated with the respondent no.2 on 18.02.2021 so also the present officer namely Fulchand Vishwanath Nande has assured that they have no objection to withdraw the communication dated 18.02.2021 as at present issue of sanctioning lay out lies with respondent no. 2 – Municipal Council.

7. Mr. Kulkarni in response to the Court's query submits that petitioner has no objection in maintaining the width of the road as 9 meters and petitioner is willing to submit revised lay out plan with the respondent no.2 – Municipal Council within a period of four weeks from today.

8. In the aforesaid background, we direct respondent no.2 - Municipal Council to hear the petitioner and pass an appropriate order about lay out plan of petitioner. The positive directions about sanctioning lay out plan of petitioner is ordered by this Court keeping in mind the earlier sanction orders passed by the respondent authorities i.e. Town Planning and the Municipal Council.

9. Needless to clarify that since the earlier sanction was in view of the Development Control Regulation of 2013, it will be incumbent on the part of respondent no. 2 - Chief Officer to deal with the claim of petitioner in the light of the Development Control Regulation as were prescribed in 2013 and not 2020 Development Control Regulation.

10. We expect respondent no. 2 - Chief Officer to take final decision on the prayer of petitioner in any case by 30th June, 2023.

11. We further make it clear that respondent no.2 shall be taking decision pursuant to the aforesaid observations without being influenced by any of the complaints, if so preferred by respondent nos.4, 5 or any third person who have no connection whatsoever to the matter.

12. In view of assurance given by Mr. Kalyan Aatmaram Jadhav - respondent no.3 and unconditional apology tendered before this court, particularly having regard to his conduct as is reflected herein above, we deem it appropriate to accept his apology.

13. In view of above, writ petition stands disposed of.

(S.G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE , J.)