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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
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Date: 2023.02.10
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WRIT PETITION NO.4044 OF 2016

Mohan D. Mankumbare & Ors.

...Petitioners

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Jaydeep Deo i/b Mr.Vikram R. Sutaria the Petitioners.

Ms.M.S. Bane, AGP for the State – Respondent No.1.

CORAM : R.D. DHANUKA &

M.M. SATHAYE , JJ.

DATE : 8TH FEBRUARY, 2023.

P.C. :-

1. Rule. Learned AGP waives service for the Respondents.

Rule is made returnable forthwith.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioners have prayed for a writ of certiorari for quashing and setting aside the order dated 26th December, 2013 passed by the Collector, Satara, refusing to grant permission applied by the Petitioners for carrying out construction on the land bearing Survey Nos.18/3A/, 18/1 and 23/1 in Village Kaswad, Taluka Mahabaleshwar, District Satara.

3. On 15th December, 2008, the Petitioners had applied for

permission for seeking permission to carry out the construction on the writ property. The Town Planning & Valuation Department, Satara by an order dated 12th November, 2019 recommended approval of the proposed construction on the writ property. The application remained pending for last five years, which ultimately came to be rejected on the ground that the writ property fell in the forest zone.

4. Learned counsel states that the Petitioners have already complied with the requisitions sought by the Respondents from time to time. He invited our attention to various averments and exhibits annexed to the Petition in support of the contention that all other requisitions are already complied with. He also invited our attention to the averments made by the Respondents in the affidavit in reply dated 4th January, 2020 filed by Vishwas B. Bhadale and more particularly paragraphs 2, 3, 6 and 7. He submitted that it is admitted by the deponent of the said affidavit in reply filed on behalf of the Respondents that from the report, it is clear that the lands bearing Survey Nos.18/3A/, 18/1 and 23/1 in Village Kaswad, Taluka Mahabaleshwar, District Satara are not included in the forest alike area. He submitted that though it is an admitted position that the writ property is not included in the category of identified forest, learned Collector has rejected the permission for carrying out the construction without application of mind.

5. In pursuance of the order passed by this Court on the last date, learned AGP produces a copy of the proceedings in Original Application No.66 of 2016 filed by Bombay Environment Action Group against the Union of India before the National Green Tribunal, Pune. Learned AGP states that the said proceedings filed by Bombay Environment Action Group is already disposed off. Learned AGP could not point out any material contrary to the stand already taken by the State Government in the affidavit in reply filed in this Writ Petition.

6. In view of the fact that it is an admitted position that the lands of the Petitioners are not included in the forest alike area, learned Collector could not have refused the permission to carry out construction. In our view, the order passed by learned Collector is thus perverse and without application of mind.

7. We accordingly pass the following order :-

a). The Writ Petition is made absolute in terms of paragraph 23(ii).

b). The application filed by the Petitioners for seeking permission to carry out the construction on 15th December, 2008 is allowed. The Respondents shall grant permission to the Petitioners, if all other requisitions are complied with within four weeks from today, without fail.

c). Rule is made absolute accordingly in aforesaid terms.

Place the matter on board for reporting compliance after six weeks.

d). All parties to act on the authenticated copy of this order.

(M.M. SATHAYE , J.)

(R.D. DHANUKA, J.)