

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6656 OF 2015
WITH
WRIT PETITION NO. 8696 OF 2015

Hiralal Surajkaran Surana ..Petitioner
V/s.
The Chief Officer, Manmad Municipal
Council and Ors. ..Respondents

WITH
WRIT PETITION NO. 8697 OF 2015

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Sunil Manikchand Kasaliwal ..Petitioner
V/s.
The Chief Officer, Manmad Municipal
Council and Ors. ..Respondents

Mr. R.D. Soni with V.R. Kasale i/b Ram and Company for the
Petitioners.
Mr. Shriram Kulkarni with Pranjal Khatavkar, Radhali Kadam
for Respondent No.1.
Mr. Vasant Gokhale, 'B' Panel counsel for Respondent Nos. 2 to
4.

CORAM : R.D.DHANUKA, AND
M.M.SATHAYE, JJ.

RESERVED ON : 15th DECEMBER 2022
PRONOUNCED ON : 03rd FEBRUARY 2023

: JUDGMENT (PER: M.M.SATHAYE, J.):

1. Rule. Mr. S.S. Kulkarni waives service for Respondent No.1. Mr. Gokhale, learned AGP waives service for Respondent Nos. 2 to 4. Rule is made returnable forthwith. Taken up for final disposal with consent of the parties.

2. These petitions filed under Articles 226 and 227 of the Constitution of India challenge the orders dated 23.03.2015 passed by Respondent No.3, Director of Town Planning for Maharashtra at Pune, whereby the Petitioners' separate appeals under Section 47 of the Maharashtra Regional & Town Planning Act, 1966, are dismissed. The Petitioners also seek writ in the nature of mandamus directing the Respondents to sanction final layouts as submitted by the Petitioners or to consider their proposals dated 19.09.2013, 20.09.2013 and 30.09.2013 as deemed to have been sanctioned.

3. Facts and circumstances necessary for deciding these matters, are as below:

(i) The Petitioner in Writ Petition No. 6656 of 2015 is owner of Survey No. 344/1, 344/2 and 344/3. The Petitioner in Writ Petition No. 8696 of 2015 is owner of Survey Nos. 348/1 and the Petitioner in Writ Petition No. 8697 of 2015 is owner of Survey No. 257/2 and 257/3, all situated at Manmad, District Nashik. These writ properties were initially agricultural lands.

Since the Petitioners intended to develop them, they got layout plans prepared through their Architect, dividing the writ lands in various plots and submitted the same, separately to Respondent No.1 Manmad Municipal Council for its scrutiny and approval. Respondent No. 1 sent the said lay-outs to Respondent No. 2 for approval.

(ii) Respondent No. 2 after scrutiny, recommended sanction to the said layouts and sent them to Respondent No. 1 by it's Orders dated 10.10.2012, 06.10.2012 and 19.11.2012 for taking appropriate action and thereafter, the Respondent No.1 granted sanction to tentative layouts, submitted by the Petitioners. It is material to note that at that time, old D.C.Rules were in force.

(iii) The Petitioners thereafter, applied for grant of NA permission in respect of the writ lands. By orders dated 14.02.2013, 14.02.2013 and 11.03.2013 the Additional Collector, Malegaon, granted NA permission to Petitioners, subject to certain terms and conditions.

(iv) The Petitioners then got the writ lands measured and demarcated by the Deputy Superintendent of Land Record, Nandgaon. Demarcated measurement plans/maps were issued to the Petitioners on 05.09.2013, 05.09.2013 and 29.08.2013.

(v) In September 2013, the Petitioners applied through their Architect/s for sanction of final layout and submitted all the requisite documents.

(vi) On 21.11.2013, by a notification, Standardised Development Control and Promotion Regulations for Municipal Councils & Nagar Panchayats in Maharashtra came into force. (hereinafter referred to as “new D.C.Rules” for short)

(vi) On 05.12.2013, the Respondent No.1 Municipal Council submitted the proposals of Petitioners for final layout to Respondent No.2 (A.D.T.P., Nashik). The Respondent No.1 submitted that when tentative layouts were sanctioned under old D.C.Rules, 5% amenity space was not compulsory. Therefore, an opinion and guidance of Respondent No.2 was sought at the time of grant of final layouts. In short, which D.C.Rules, old or new should be applied while granting of final layout was a question raised by Respondent No. 1, in view of the fact that tentative layouts were granted by Respondent No. 2 without 5% amenity space, when old D.C.Rules were in force.

(vii) By letter dated 22.01.2014, Respondent No.2 (A.D.T.P., Nashik) opined that since on 30.06.2011, the proposed new D.C.Rules were published and they are sanctioned by the State Government and came into force on 21.11.2013, in accordance with new D.C. Rule No. 13.3.11, when the land under development is more than 2 Hectare, both old and draft new Rules should have been considered and harder Rule should have been applied, requiring provision of 5% amenity space /plot. It was opined that inadvertently a mistake has been committed by the office of the Respondent No. 2, which was realized while

discussions and therefore, it was necessary to correct the same. Respondent No. 2 therefore, directed Respondent No. 1 to accord sanction, only after fresh lay-outs/proposals are submitted.

(viii) In view of the aforesaid opinion, Respondent No.1 Municipal Council by its letter dated 05.02.2014 informed the Petitioners that final layout, as submitted by them, cannot be sanctioned and called upon them to submit fresh proposals in accordance with new D.C. Rules published on 21.11.2013.

(ix) On receiving said letter dated 05.02.2014, which in effect was the rejection of Petitioners' application for grant of sanction to final layout, Petitioners preferred appeals under Section 47 of the Maharashtra Regional Town Planning Act, 1966 ('MRTP Act', for short) to Respondent No.3, the Director of Town Planning at Pune.

(x) On 23.03.2015, Respondent No.3 - Director of Town Planning at Pune passed the impugned orders whereby the appeals filed by the Petitioners were dismissed confirming the respective Orders of Respondent No.1 Municipal Council.

(xi) These orders passed by Respondent No. 3 are impugned in the present petitions.

4. Heard learned counsel for the parties. With the assistance of the learned counsel for both the sides, we have perused the record, which will be referred to at appropriate place in the order to follow.

5. Mr. Soni, learned counsel for the Petitioners submitted that the notification for bringing new DC Rules in effect is dated 21.11.2013 in which, at the very beginning, there is a saving clause No. 1.4. Inviting our attention to the said saving clause No. 1.4, learned counsel submitted that permissions granted or actions taken prior to coming into force of new DC Rules are specifically saved and continue to be valid, unless otherwise specified. He submitted that nothing otherwise has been specified. He submitted that the notification dated 21.11.2013, itself provides that the new DC Rules shall come into force on the date of its publication and shall be applicable to the development proposals in respect of fresh or revised permissions for towns including Manmad where the writ lands are situated.

6. It is submitted that the said savings clause 1.4 of the new DC Rules starts with a non-obstante clause and thus prevails over all other provisions, including DC Rule No. 13.1.11. He further submitted that by a specific explanation dated 07.04.2014, Respondent No.3 Director of Town Planning at Pune itself has issued clarification/explanation to the savings clause, where it is specifically provided that, only for 'completely new proposals after 21.11.2013', the new DC Rules would apply. On these submissions, the learned counsel for the Petitioners submitted that the Petitioners could not have been asked to submit fresh

proposals and final sanction ought to have been granted to tentative layouts, as submitted.

7. The learned counsel for the Petitioners gave a list of proposals identical to Petitioners which were finally sanctioned on the basis of tentative layout without applying new D.C. Rule No. 13.1.11 by Respondent No.1/Municipal Council in respect of other developers. Few finally sanctioned layouts are also placed on record. He submitted that the Petitioners are being singled out and Respondent No.1 has granted final sanction in respect of other similarly situated developers. For the reasons to follow, we do not propose to go into this argument of 'equality in illegality'.

8. On the other hand, the learned counsel Mr. S.S. Kulkarni appearing for Respondent No.1/Municipal Council, vehemently contended that perusal of clarification given by the Director, Town Planning, Pune shows that as per Notification dated 21.11.2013, Rule No. 3.1 applies to revised development permission. He further submitted that after new D.C.Rules came into effect, there is no clarity from what stage the new D.C.Rules will be applicable. He further submitted that therefore in exercise of powers under Rule No. 46, it is clarified that new D.C.Rules shall be applicable to revised development permissions.

9. Mr. Kulkarni further argued that Rule No. 3.1 contemplates that it shall apply to all development,

redevelopment, erection and/or re-erection of a building, change of user etc. as well as design, construction or reconstruction of, additions and alteration to the building and therefore, new D.C.Rules shall also apply to revision of the development permission and building permission granted earlier under any DC Rules. He further submitted that having regard to Rule No. 3.1, the Director of Town Planning has given clarification as to at what stage the Rule has to apply.

10. Therefore, according to Mr. Kulkarni, this clarification is given for revised development permission. It is further submitted that the present case of tentative approval granted under Rule 13 and final approval being under consideration, is totally different situation. Therefore, according to Mr. Kulkarni, the clarification issued by the Director Town Planning, Pune dated 07.04.2014 has no application where the final layout is pending for sanction.

11. Mr. Kulkarni contended that if the final layout is sanctioned without 5% amenities space, it will be direct conflict with new D.C.Rule 13.3.11 and contrary to provision of Section 31(6) and Section 42 of M.R.T.P. Act, 1966. He further contended that clarification is given after the appeal is decided and said clarification is given in different context and not in respect of tentative or final layout. He lastly submitted that arguments of the Petitioners that they are being singled out is untenable because there cannot be equality in illegality.

12. Mr. Gokhale, learned AGP for Respondent Nos. 2 to 4/ State submitted that the DC Rules for A, B and C Class Municipal Councils were initially published long ago and in March 2010, Government appointed an expert committee to draft new DC Rules and the draft of new DC Rules was published on 30.06.2011. He submitted that the provision for 5% amenity space/plot was provided in said draft Rules. He submitted that the notification bringing the draft DC Rules into force was issued on 21.11.2013. He invited our attention to Section 46 of the M.R.T.P. Act and Rule 2.9 and Rule 13.3.11 of the new D.C. Rules, which provide for amenity space which according to him is necessary to be applied to Petitioners pending layouts.

13. Mr. Soni, the learned counsel for the Petitioners, in rejoinder invited our attention to Rule 46 of the New DC Rules, which reads thus:

“46.0. Clarification.

If any question or dispute arises with regard to interpretation of any of these Regulations the matter shall be referred to the Director of Town Planning, Maharashtra State who after considering the matter and after giving hearing to the parties, if necessary, shall give a decision on the interpretation of the provisions of these Regulations. The decision of the Director of Town Planning, Maharashtra State on the interpretation of these Regulations shall be final and binding on the concerned party or parties.”

REASONS AND CONCLUSION

14. We have heard the learned counsel for the parties at length and we have perused the record. Perusal of common letter dated 05.12.2013, which is produced by Respondent No.1/Municipal Council with its affidavit in Reply (at page 148 of W. P. No. 6656 of 2015) shows that guidance was solicited by Respondent No.1 from Respondent No. 2 in respect of the Petitioners' proposals for development. It was pointed out by the Municipal Council that in the tentative layout which was sanctioned, 5% amenities space was not provided. It appears that in response to said letter dated 05.12.2013, asking for guidance, Respondent No. 2 (A.D.T.P., Nashik) has replied by letter dated 22.01.2014. In the said letter, it was stated that between the old DC Rules and new DC Rules, stricter/harder provision should have been applied for scrutiny of the development plan. In the said letter, it was admitted that while granting permission to tentative layout, by inadvertence, mistake has been committed on the aspect of amenity space. It was further stated in the said letter that while granting tentative layout, it was necessary to provide for 5% amenity space and therefore, it was opined that revised/fresh plans be sought for.

15. A perusal of the impugned Orders show that it is based on reason that since the draft DC Rules were published on 30.06.2011, as per Section 46 of the M.R.T.P. Act, for development of the land more than 2 Hectare, 5% amenity space

ought to have been provided and harder rule between the old and the new D.C.Rules should have been applied while granting tentative layout, but mistake was committed. Further reason appears that mistake can be corrected therefore, fresh proposal from the Developer must be sought. On these grounds, the appeals of the Petitioner seem to have been rejected.

16. It must be noted at the beginning that the impugned Orders simply do not consider effect of savings clause 1.4, despite the same being argued. Also Respondent No. 3 has not followed its own clarification dated 07.04.2014. We have carefully considered the said clarification dated 07.04.2014 issued by Respondent No. 3 (Director, Town Planning, Pune) under provisions of Rule No. 46 of the new DC Rules.

17. Perusal of said clarification produced by Petitioner with his Rejoinder (at page 163 of W. P. No. 6656 of 2015) shows that it was given on 07.04.2014 which is prior to date of the impugned Order (23.03.2015). In that view of the matter, there is no substance in the argument of Respondent No.1 that the clarification is issued after the impugned Orders and therefore not applicable. The argument is thus only stated to be rejected. Respondent No. 3 - Director, Town Planning Pune has exercised his powers to issue clarification under Section 46 of the new DC Rules and it is issued to all the Assistant Directors, Town Planning of Pune, Konkan, Nagpur, Amravati and Aurangabad

(covering present dispute in Nashik district). In the first clarification issued under Rule 46 in respect of saving clause 1.4, it is clarified that the new DC Rules and its provision would apply to 'completely new proposal' for development received after 21.11.2013, which is the date on which new DC Rules came into force.

18. It is not disputed that the Petitioners' proposals for development were made and consequent tentative layouts were sanctioned in October / November 2012, which is much prior to the new DC Rules coming into force. In view of this, it cannot be said by any stretch of imagination that, Petitioners' proposals can be treated as 'completely new proposals' after 21.11.2013. What is being suggested by Respondent No.1 is that since the sanction of final layout was pending as on 21.11.2013, when new DC Rules came into force, the Petitioners' proposals should be considered as new proposals. This suggestion cannot be accepted in view of mandate of Rule 46 of new DC Rules which provides that clarification issued by the Director Town Planning shall be final and binding on all concerned parties. It is needless to mention that, Respondent Nos. 1 and 2 are concerned parties in these matters, on whom also, the clarification is binding.

19. It is clear that the new DC Rules cannot be applied to Petitioners' proposals and therefore, the impugned orders holding

that the tentative layouts sanctioned to the Petitioners cannot be converted into final layouts, is not sustainable.

20. The reliance placed on Section 46 of the M.R.T.P. Act by the Respondent/State to contend that the Planning Authority while considering application for permission, shall have due regard to provision of any draft or final plan and if the DC Rules are yet to be sanctioned, then in considering applications for permission, the Planning Authority shall have due regard to provision of draft or sanctioned regional plan, will have to be read along with saving clause 1.4 and clarification issued under Rule 46 of the new DC Rules. Similarly reliance placed on Section 31(6) and 42 of the M.R.T.P. Act by Mr. Kulkarni on behalf of the Respondent No. 1, will also have to be read along with saving clause 1.4 and clarification issued under Rule 46 of the new DC Rules.

21. It is to be noted that the savings clause 1.4 of the new D.C.Rules starts with a non-obstante clause, which provides that notwithstanding anything contained in the Rules, any permission granted or any action taken under the regulations in force prior to these Regulations shall be valid and continue to be so valid, unless otherwise specified. Perusal of clarification issued by Respondent No. 3 – Director Town Planning, Pune, under Rule 46 is in fact ‘specific reiteration’ that only for completely new

proposals received after 21.11.2013, the new DC Rules shall apply and therefore, it cannot be said that 'anything otherwise' is specified.

22. The argument of Mr. Kulkarni, learned counsel for the Respondent No.1 that there is no clarity about at what stage the new D.C. Rules should be made applicable and therefore Rule No.3, which speaks about applicability of the Regulations at various stages of the development such as part construction, change of occupancy, reconstruction etc., has no merit. The saving clause 1.4 as well as clarification issued under Rule 46 of the new D.C. Rules have given sufficient clarity for which proposals, the new DC Rules would apply and at what stage. In the facts and circumstances of the present case, new D.C.Rules will not apply to the pending proposals of the Petitioners for sanction of final lay out.

23. In view of the aforesaid discussion, we find merit in the contentions of the Petitioners. Therefore, the petitions succeed and following order is passed:

(i) Impugned orders dated 23.03.2015 passed by the Director, Town Planning, Pune, in respect of Petitioners' writ lands are quashed and set aside.

(ii) Respondents are directed to accord sanction to final layouts as submitted by the Petitioners within four weeks from today.

(iii) Writ Petitions are allowed in the above terms. Rule is made absolute. No order as to costs.

(iv) Parties to act on an authenticated copy of this order.

M.M.SATHAYE, J.

R.D.DHANUKA, J.