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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.443 OF 2022

M/s.Balaji Enterprises.	...Petitioner
....Versus....	
State of Maharashtra & Anr	...Respondents

Mr.Girish Godbole, Senior Advocate with Mr.Shon Gadgil and
Mr.Pradeep Salgar for the Petitioner.

Ms.M.P. Thakur, AGP for the State -Respondent No.1.

Ms.Swati Sagvekar for Municipal Corporation – Respondent Nos.2 and
3.

CORAM : SUNIL B. SHUKRE, &
RAJESH .S. PATIL, JJ.
DATE : 19TH JUNE, 2023.

P.C. :

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.
2. This Writ Petition filed under Article 226 of the Constitution of India by the Petitioner against the Vasai-Virar Municipal Corporation challenges the impugned letter dated 14th

October, 2021, whereby the Petitioner's application for grant of development permission in respect of Survey No.109, Hissa No.1-A, admeasuring 00 H 42.70 Ares situated at village Dongre, Taluka Vasai, District Palghar, was refused. The Petitioner mainly challenges reason No.1, of letter dated 14th October, 2021 which reads thus :-

“The land bearing Survey No.109, Hissa No.1-A of village Dongre, is already a part of sanctioned development permission VP-0880. Therefore, said proposal cannot be considered for approval.”

3. Mr. Girish Godbole, Senior Counsel appearing for the Petitioner submitted that it is the Petitioner's case that on 5th February, 2021, the erstwhile owner of the subject property one Vasudeo Hari Patil made an application to Municipal Corporation seeking certain information as to whether there was any kind of reservation on the subject property.

3.1. On 12th February, 2021, the Deputy Director of Corporation replied to the letter dated 5th February, 2021, thereby stating that there is no reservation on the subject property.

3.2. The Petitioner by registered Sale-Deed dated 16th March, 2021, purchased the subject property from the erstwhile owner. On 7th April, 2021, the Petitioner through its Architect submitted an

application under Section 44 of the Maharashtra Regional & Town Planning Act, 1966 (MRTP)- to the Municipal Corporation, seeking development permission in respect of the subject property, enclosing there with all the requisite documents. The said application was received by the Municipal Corporation on 12th April, 2021.

3.3. The period of sixty days as contemplated under Section 45 (5) of MRTP, expired on 11th June, 2021, hence the development permission was deemed to have been granted.

3.4. The Petitioner was surprised to receive the impugned letter dated 14th October, 2021, which rejected the development permission on the ground that the subject property is already part of the sanctioned development permission No.VP-0880.

3.5. Mr. Godbolde also further submitted that the Application for Development Permission dated 7th April, 2021, filed through Architect, also contained viz: Application form for development permission, 7/12 extract, 6/12 extract, 8A extract, Akarbandh NA order and other documents. The said fact is not denied in affidavit in reply by the Corporation. Mr.Godbole also submitted that Development Permission is deemed to have been granted and it was statutory obligation of the Respondents to issue a formal Development

Permission; and failure to issue the same cannot be subject matter of Appeal under Section 47 of MRTP.

3.6. Mr. Godbole also submitted that erstwhile owner, had never given any Power of Attorney to Mr. R. K. Wadhwan to apply for Development Permission on its behalf. In fact Petitioner also applied under R.T.I. to Respondent No.2, seeking details of the Development Permission granted bearing No.V.P.-0880. The Respondent No.2 replied that they did not have any details pertaining to the same. On personal of Commencement Certificate dated 28th May, 2009 granted by CIDCO, the reference of subject land is not found. And, in any case the said Commencement Certificate would be valid only for a period of three years, in total.

3.7. The Petitioner hence by its advocate's letter dated 21st October, 2021 addressed to Respondent No.2, called upon to provide the details of reservation of the development permission, within a period of 10 days from the receipt of the letter. However, there was no reply to the said letter dated 21st October, 2021. Therefore, the Petitioner filed the present Writ Petition for quashing impugned letter dated 14th October, 2021 and for a direction to issue a formal Development Permission pursuant to the Application for Development Permission dated 7th April 2021 as being deemed to have been granted

as per Section 45 (5) of the MRTP. The same requires to be allowed.

4. Ms. Swati Sagvekar, counsel for the Respondent Corporation opposed the Petitioner's application and stated that the Respondent Corporation came into existence in the year 2009 and took over charge as planning authority in the year 2010. Ms. Sagvekar further submitted that the Petitioner has alternate efficacious remedy of filing an Appeal under Section 47 of the MRTP.

5. The Unified Development Control and Promotion Regulation for Maharashtra State (UDCPR) came into force on 2nd December, 2022. Regulation 2.6.2 of UDCPR, states about deemed permission. The said Section also has three provisos. The third proviso mentions that the Applicant has to give intimation to the Respondent Corporation if it claims deemed permission and within 15 days the Respondent Corporation has to reply to the said intimation. The Respondent Corporation Counsel submitted that only after rejection of the development permission on 14th October, 2021, the Petitioner sought their claim of deemed permission on 21st October, 2021. Therefore, the Petitioner can't get the benefits of Regulation 2.6.2 deemed permission in view of the third proviso. The Respondent Corporation's Counsel further submitted that vide letter dated 14th October, 2021, permission was refused under Section 45(i) and (iii) of

M RTP Act. She further submitted that land in question purchased by the Petitioner is the part and parcel of the layout approved in the name of R. K. Wadhwan vide V.P. No. 0880 . Therefore, the present Petition should be dismissed.

6. We have heard both the counsels and have gone through the records.

7. Section 45 (5) of the M.R.T.P. reads as under :-

“(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days :

[Provided that, the development proposal, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act :

Provided further that, any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorised development for the purposes of sections 52 to 57.]”

8. Admittedly, the Petitioners through its Architect submitted the application, seeking development permission under Section 44 of MRTP Act. The said communication dated 7th April 2021 was received by the Respondent Corporation on 12th April, 2021. Therefore, the

period of sixty days as contemplated under Section 45(5) of MRTP Act started from 12th April, 2021. Hence the said period of sixty days expired on 11th June, 2021. As the period of sixty days was over on 11th June, 2021, the Petitioner has rightly claimed deemed permission to have been granted for development in view of Regulation 2.6.2 of UDCPR.

9. UDCPR, Regulation 2.6.2 reads as under :

2.6.2 Deemed Permission

If within sixty (60) days of receipt of the notice, along with necessary permission fees under the regulations, the Authority fails to intimate in writing to the person, who has given the notice; of its refusal or sanction or sanction with such modifications or directions, the notice with its plan and statements shall be deemed to have been sanctioned, provided nothing shall be construed to authorize any person to do anything on the site of the work in contravention or against the terms of lease or titles of the land.

Provided that, the development proposal, for which the permission was applied, is strictly in conformity with the requirements of these regulations or regulations framed in this behalf under any law for the time being in force and the same in no way violates either provisions of any draft UDCPR-202035 or final Development/ Regional Plan / Planning Proposal or proposals published by means of notice, submitted for sanction under the Act.

Provided further that any development carried out in pursuance of such deemed permission which is in contravention of the above provisions, shall be deemed to be an unauthorized development for purposes of Section 52 to 57 of the Maharashtra Regional and Town Planning Act, 1966 and other relevant Acts.

Provided further that, upon receipt of intimation of any claim for deemed permission the Authority shall within fifteen days from the date of receipt of such claim, communicate its remarks, if any, regarding deemed permission to the applicant, failing which, the proposal shall be approved and commencement certificate along with one set of duly approved plans for proposed development shall be issued to the applicant within

fifteen days thereafter.

Provided further that, necessary explanation shall be called from the concerned officers of the Planning Authority for not processing and disposing of the proposal within 60 days and necessary action as per relevant provisions of Act / Rules shall be initiated against the defaulter officer.

10. The application for development permission dated 7th April, 2021 also contained documents viz. Application form for Development Permission, 7/12 Extract, 6/12 Extract, 8A Extract, NA Order, Akarbandh, Title search Documents, Owners affidavit, Indemnity, Undertaking, D.P. Extract and Copy of Development Agreement. There is no denial from the Corporation that the Petitioner's application for development permission dated 7th April, 2021 was not in prescribed format except by way of oral submission.

11. The Respondent Corporation rejected the permission on 14th October, 2021 which was beyond the period of sixty days. Amongst various conditions meant for rejection of claim of the development permission, Condition No.1 states that the subject land is already a part of the sanctioned development permission VP-0880. Petitioners have denied that the erstwhile owners have authorised any person to obtain development permission for subject land. Further, the Petitioner submitted that subject land was not part and parcel of the lay out approved in the name of R. K. Wadhwan. The Respondent Corporation was not able to justify its stand about the subject land

being part of the sanctioned development permission. Neither, the Corporation was able to show that the permission of Development proposal sought was not in conformity with rules and regulations. According to us, considering the peculiar facts in this matter and the documents produced a case is made out by the Petitioner for grant of relief in terms of prayer clauses (a) and (b). The same are reproduced herein below :-

“(a). This Hon’ble Court may be pleased to issue a Writ of Certiorari and/or any other writ, order or direction in the nature of Writ of Certiorari, thereby quashing and/or setting aside the impugned letter dated 14th October, 2021, being Exhibit “E” to this petition, thereby refusing development permission to the petitioner.

(b). This Hon’ble Court may be pleased to issue an appropriate writ, order and direction including a writ of mandamus directing the respondent nos.2 and 3 to issue a formal development permission to the petitioner pursuant to the application for development permission dated 7th April, 2021 as one being deemed to have been granted as per Section 45(5) of Maharashtra Regional and Town Planning Act, 1966.”

12. The Writ Petition is accordingly disposed of.
13. Rule is made absolute in the above terms. No costs.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)