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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

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WRIT PETITION NO.364 OF 2023

Mohan R. Jadhav & Ors. ...Petitioners
V/s.
State of Maharashtra & Ors. ...Respondents

Mr.Deepak R. More i/b Mr.Shivram A. Gawade for the Petitioners.

Mr.P.B. Gujar for the Respondent.

Mr.Vishwanath S. Talkute for the Applicants / Intervenors in IA (St.)
No.1121 of 2023.

Mr.A.I. Patel, Addl.G.P. with Mr.Y.D. Patil, AGP for the State –
Respondent.

CORAM : R.D. DHANUKA &
M.M. SATHAYE , JJ.
DATE : 10TH JANUARY, 2023.

P.C. :-

1. Leave to amend is granted to the petitioners to implead the Assistant Director of Town Planning, Satara and District Collector, Satara. The amendment shall be carried out forthwith. Reverification is dispensed with. Mr.Patel, learned Additional Government Pleader waives service on behalf of the newly added parties.
2. The draft amendment tendered across the bar is taken on record and marked "X" for identification. The amendment is allowed in

terms of the draft amendment handed over. It is made clear that reverification insofar as the averments are concerned, is not dispensed with. The amendment shall also be carried out in the copies already supplied to the respondents.

3. By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the notices dated 4th May, 2021 and 2nd June, 2021 issued by the respondent no.2 under Section 52 to 54 of the Maharashtra Regional Town Planning Act (for short “the MRTP Act”) and for various reliefs. Mr.More, learned counsel for the petitioners, on instructions, states that though his clients have impugned the notices under Sections 52 to 54 of the MRTP Act in this petition, his clients do not propose to press prayer clause (a) and states that his clients will withdraw the civil suit bearing R.C.S. No.126 of 2020 filed before the learned Civil Judge (Senior Division), Satara impugning these notices and apply for retention under Section 53(1) read with 44 of the MRTP Act. In support of the submission that his clients are entitled to apply for regularization and for retention, he relied upon two judgments of this Court in case of **United India Assurance Co. Ltd. vs. Sureshkumar Parasnath Singh & Ors., 2013(4) ALL MR 164** and **Vandana Creations Pvt. Ltd. vs. The Municipal Corporation of Greater Mumbai, 2016 (6) ALL MR 173.**

4. It is submitted by the learned counsel that the petitioners

have accepted that there is unauthorized construction put up by his clients however, disputes that the unauthorized construction is put up on any road.

5. The submission of the learned counsel for the petitioners are vehemently opposed by the learned counsel for the respondents on the ground that the suit filed by the petitioners is not dismissed on the ground of jurisdiction. The petitioners have invited the findings from the Trial Court about unauthorized construction carried out by the petitioners and thus the construction having been put up on the road at this stage, cannot be now allowed to seek permission to apply for retention / regularization under Section 53 (1) read with Section 44.

6. We have perused the order in Miscellaneous Appeal No.61 of 2020 passed by the District Judge, Satara in the appeal, Grampanchayat, Shahapuri. The District Court has recorded the findings in paragraph 19 that the existence of the road before institution of the suit is not denied by the plaintiffs. They have acted upon the lay out plan which is got sanctioned by them while executing the sale deed in favour of the plot owners. They have admitted existence of the road. In paragraph 21 of the said order, it is held that the plaintiffs act of closing road by constructing compound is therefore an illegal act. The plaintiffs are aware that the control of

disputed site of road is with the defendant Grampanchayat. Various other observations are made about the conduct of the petitioners about the said unauthorized construction put up on the road. By the said order, learned District Judge allowed the appeal filed by Grampanchayat, Shahapuri.

7. Learned counsel for the petitioners further submitted that the land on which the unauthorized construction is put up by his clients is not acquired by the Grampanchayat of the Council till date and thus the petitioners were entitled to put up the construction. He further stated that no compensation has been paid. We are not inclined to go into the issue of title whether the petitioners are the owners of the said land or not in this proceedings. In our view if the land belongs to the petitioners, they ought to have pleaded before the learned Trial Court that they have never put up the unauthorized construction on the road.

8. There is no substance in the submission made by Mr. More, learned counsel for the petitioners that the unauthorized construction put up by his clients was not on the road. In addition to findings by District Court, our attention is invited to the photographs produced before this Court for perusal of this Court which clearly indicates that the unauthorized construction is put up by the petitioners on the road. We are thus not inclined to grant any

permission to the petitioners to file any application for regularization under Section 53(1) read with 44 of the MRTP Act in view of the fact that the said unauthorized construction carried out by the petitioners on road, as admitted before Civil Court, cannot be allowed to be regularized. The writ petition is thus misconceived and is accordingly dismissed with costs quantified at Rs.50,000/- which shall be paid by the petitioners to the Maharashtra Legal Services Authority within one week from today and shall produce the receipt acknowledging payment of costs before the Sheristedar of this court within one week from the date of payment.

(M.M. SATHAYE , J.)

(R.D. DHANUKA, J.)