

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3435/2022

Rajendra S/O Omkarprasad Gautam

Vs

Commissioner, Akola Municipal Corporation, Akola And Another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.S. Deshpande, advocate for the petitioner.

Shri A.S. Thotange, advocate for the respondent No.1.

Shri A.R. Deshpande, advocate for the respondent No.2.

CORAM : ANIL S. KILOR, J.

DATED : 01/02/2023

1. Heard.

2. In this writ petition, the challenge is raised to the legality and correctness of the order dated 14/06/2022 passed by the Municipal Commissioner, Akola, revoking the order of division of plot passed in favour of the petitioner under Section 51 of the Maharashtra Regional and Town Planning Act, 1966 (in short hereinafter referred to as ' the MRTP Act') and further directing to register the offence against the petitioner for submitting the false and fabricated documents to mislead the authorities. It is also directed to the Regional Authority, South Zone, to take action as per the law, as regards illegal construction. Lastly it is directed that as the dispute of ownership is there, the title should not be transferred.

3. The learned advocate for the petitioner submits, that the order of division of plot passed by the Municipal

Commissioner, Akola on 23/03/2017 has been revoked by the impugned order without giving sufficient opportunity to the petitioner.

4. It is submitted that after the order of division, it was implemented, and once it was implemented, the same cannot be revoked. He, therefore, submits that the impugned order is erroneous.

5. It is further submitted that, no show cause notice was issued to the petitioner, stating that the documents are false and fabricated and would be registered if explanation is not found satisfactory. He, therefore, submits that the clause-2 of the impugned order needs to be quashed and set aside, on this count.

6. On the other hand, learned advocate for the respondent No.1/Municipal Corporation supports the order of the Municipal Commissioner and submits that, after giving sufficient opportunity, the impugned order came to be passed. It is pointed out that on three occasions, the time was granted at the request of the petitioner to submit the documents. However, he failed to submit the documents. It is, therefore, submitted that the order was just and proper.

7. Shri A.R. Deshpande, learned advocate for the respondent No.2 points out the provision of Section 2.15 of the Unified Development Control and Promotion Regulations for Maharashtra State and submits that under said provision, the competent authority after giving opportunity of being

heard, the order issued under Section 51 of the MRTP Act or under the regulations, can be revoked, where it is noticed that there had been any false statement of material facts in the application, on the basis of which the development permission was issued.

8. He, therefore submits that no error has been committed by the learned Commissioner in revoking the permission granted under Section 45 of the MRTP Act.

9. In the backdrop of rival contentions raised by the parties, I have perused the writ petition, documents filed along with writ petition and the impugned order.

10. From the record, it is evident that sufficient opportunity was granted to the petitioner to defend his case. On three occasions, the matter was adjourned at the request of the petitioner. Thus, it cannot be said that, the impugned order was passed without giving sufficient opportunity of being heard to the petitioner.

11. Hence, the first contention of the petitioner does not survive.

12. As far as the second submission that, once the order permitting division of the plot, is implemented and construction was carried out on the basis of such permission, it can be revoked the same cannot be accepted, in view of the provision of Section 2.15 of the Unified Development Control and Promotion Regulations for Maharashtra State i.e. relating to revocation of permission which reads thus:

- “(i) Without prejudice to the powers of revocation conferred by Section 51 of the Act the Authority may, after giving the opportunity of being heard, revoke any development permission issued under these regulations where it is noticed by it that there had been any false statement or any misrepresentation of material fact in the application on the basis of which the development permission was issued and thereupon the whole work carried out in pursuance of such permission shall be treated as unauthorised.*
- (ii) In the case of revocation of the permission under sub-regulation (i), no compensation shall be paid.”*

13. It is evident from the said provision, that there is a power to revoke the permission issued under the said regulation, where it is noticed that there had been any false statement or any representation of material fact in the application on the basis of which the development permission was issued and thereupon whole work carried out in pursuance of such permission shall be treated as unauthorized.

14. Thus from the language of the said provision, it is clear that even after the development work was carried out, the said permission can be revoked and in that event, such development work will be treated as unauthorized. In the circumstances, the second submission of the learned advocate does not survive and it is therefore, rejected.

15. As far as the last submission of the learned advocate that, without issuing any show cause notice, directions are issued to register the FIR, is concerned the learned Advocate

for the Corporation is not disputing the fact that without issuing any show cause notice in that respect, the said order was passed holding that the documents are false and fabricated.

16. As the Municipal Commissioner passed the said order without issuing show cause notice to the petitioner and without hearing the petitioner on the said issue, I am of the opinion that the above referred directions need to be quashed and set aside as it suffers from the non-compliance of the principle of natural justice.

17. Accordingly, as far as the clauses 1, 3 and 4 of the operative part of the impugned order are concerned, the writ petition is **dismissed**.

As regard clause-2 of the operative part of the impugned order, the writ petition is **allowed** and thereby the order directing to register the FIR against the petitioner is hereby quashed and set aside with liberty to the Commissioner to issue show cause notice, if the Commissioner so desires and pass appropriate orders, after hearing the petitioner in this regard.

The writ petition is **disposed of** in above terms.

JUDGE