



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9208 OF 2021**

Narendra Anant Joshi and Ors

.....Petitioners

Vs.

State of Maharashtra through the Hon'ble
Minister for Revenue, State of Maharashtra
and Ors

.....Respondents

Mr. Omkar Mohan Kulkarni for the petitioners
Mr. P. V. Nelson Rajan AGP for respondent nos. 1 and 2
Mr. Shriram Kulkarni a/w Mr. Yahya Ghoghari, Mr. Mustafa Shabbir
Shamim, Ms. Pratiksha Vichare, Mr. Pratap Tenghere i/b Shamim and
Co. for respondent no. 4

CORAM : GAURI GODSE, J.

DATE : 7th MAY 2024

P.C.

1. This petition takes an exception to the order passed by the learned Minister in a revision application filed under Section 257 of The Maharashtra Land Revenue Code, 1966 ('MLRC') filed by respondent nos. 3 to 5. By the impugned order, the learned Minister has permitted the modification of the order dated 5th March 2001 for

the subdivision of plots pursuant to the non-agricultural ('NA') use order dated 9th August 1998.

2. The order dated 5th March 2001 was passed on an application filed by respondent nos. 3 to 5, who are the owners of the land for the sub-division of the NA plot. Pursuant to the said order, the NA plot was subdivided into six plots, and the area of 413 square meters was shown as an open area. The owners challenged the said order by filing an appeal under Section 247 of the MLRC before the Sub-Divisional Officer ('SDO') and requested for modification of the order dated 5th March 2001 for converting the open area into a plot. The said appeal was dismissed. Hence, the owners filed a second appeal under Section 247 of the MLRC before the Additional Commissioner, who also dismissed the appeal. Hence, the owners preferred revision application under Section 257 of the MLRC before the learned Minister. The said revision is allowed, and modification of the order dated 5th March 2001 is permitted for converting the open area into a separate plot.

3. The petitioners are the owners of four plots sold to them by the

respondent nos. 3 to 5 pursuant to subdivision of the NA plot by order dated 5th March 2001. The petitioners claim to have been aggrieved by the modification because an open area was shown in the layout when the plots were sold to them, and hence, it is their contention that without hearing the petitioners, the said order could not have been modified.

4. Learned counsel for respondent nos. 3 to 5 raised a preliminary objection to the locus of the petitioners to challenge the said order. They submitted that the petitioners' rights are restricted to the area sold to them by way of a registered sale deed, and they have no locus to raise any objection to the modification of the order of subdivision of the NA plot. It is therefore submitted that the petitioners were not necessary parties in the proceedings, and they have no right to challenge the modification order by filing this petition.

5. In response to the preliminary objection raised by the owners, learned counsel for the petitioners submitted that in the sale deed, the description of plots sold to them referred to an open area of 413 square meters. He submitted that based on the order dated 5th March

2001 subdividing the NA plot into six plots with an open area of 413 square meters, sale deed was executed in favour of the petitioners. He therefore submits that the petitioners were made to understand that the open area, as shown in the order dated 5th March 2001, would remain open for the beneficial use of the petitioners being the purchasers of the plots. He further submitted that in view of the Standardized Building Bye-Laws and Development Control Rules of 1979 as well as of the year 2013, the open plot shown in the NA layout is not permitted to be constructed and is required to be kept open. He thus submits that since the petitioners' right of beneficial use of the open area is affected in view of the impugned order, the petitioners have a right to challenge the same by way of the present petition.

6. Learned counsel for respondent nos. 3 to 5 submitted that except for the plots sold to the petitioners by way of a registered sale deed, petitioners are not entitled to claim any right with respect to any other area, apart from the area mentioned in the sale deed. He submits that respondent nos. 3 to 5 are owners of the remaining area, including the open area shown in the order dated 5th March 2001.

Hence, respondent nos. 3 to 5 being the owners are entitled to seek modification of the order dated 5th March 2001. He submitted that the petitioners have no concern with the modification of the order. With reference to the applicability of the Rules, learned counsel for respondent nos. 3 to 5 submitted that as per Rule 16 of the Maharashtra Land Revenue (Conversion of use of Land and Non-Agriculture Assessment) Rules, 1969 ("said Rules") if the land to be converted to non-agricultural use, is larger than 0.4047 hectares, it is necessary to provide for an open space having an area equal to 10% of the total area of the land. He submits that the area of the NA plot in the present case is 0.3600 hectares. Hence, there is no requirement to keep 10% open at the time of subdivision of the NA plot. He therefore submits that the impugned order is passed by relying upon the said provision, which does not require keeping any area open at the time of subdivision of the non-agricultural plot.

7. Learned counsel for respondent nos. 3 to 5 thus submits that even on merits, no fault can be found in the reasons recorded in the impugned order permitting modification in accordance with the

aforesaid applicable Rules. He further submits that rights claimed by the petitioners by way of this petition are disputed. Hence, rights, if any, to be claimed by the petitioners are required to be adjudicated by the appropriate forum. He thus submits that in the absence of any document in support of their claim or any adjudicated rights, the petitioners have no locus to take an objection to the modification of the order subdividing the NA plots owned by respondent nos. 3 to 5.

8. I have perused the papers. Considered submissions made by parties. The petitioners are claiming beneficial use of the open area based on their registered sale deed with regard to four plots out of six plots, subdividing the NA plot by way of order dated 5th March 2001. Except for the sale deed with respect to four plots, the petitioners' claim is not based on any document. Learned counsel for the petitioners was unable to point out any clause in the sale deed in favour of the petitioners granting any beneficial rights to them with regard to the open area shown in the original order dated 5th March 2001 for subdivision of the NA plot. The applicability of the said Rules of 1969 and the requirement to keep 10% open area for a plot having

an area of more than 0.4047 hectares is not disputed by learned counsel for the petitioners. The total area of the NA plot, which was subdivided, was admittedly 0.3600 hectares, which is less than the area mentioned in the relevant Rule 16 of the said Rules of 1969. Thus, the applicability of the said Rules and no requirement of keeping any area open at the time of subdivision of the NA plot, is not disputed by the petitioners. The only objection raised on behalf of the petitioners with regard to their right to challenge the impugned order is their claim of beneficial use of the open area shown in the original order dated 5th March 2001. Reference to open area in the sale deed is limited to description of the boundaries of the plots sold to the petitioners.

9. The said beneficial right, as claimed by the petitioners, does not form part of the title document in favour of the petitioners, nor is it adjudicated by the appropriate forum. The rights claimed by the petitioners to challenge the impugned order are not admitted by respondent nos. 3 to 5, i.e. the owners of the NA plot who have executed the sale deed in favour of the petitioners. Thus, for want of any rights of the petitioners in the open area shown in the order dated

5th March 2001, I do not see any substance in the arguments raised on behalf of the petitioners that they are entitled to challenge the modification of the same. In the event that the petitioners intend to claim any right based on the sale deed in their favour, it is always open for the petitioners to adopt an appropriate remedy as permissible in law to claim beneficial use as contented in the present petition.

10. This petition is filed for invoking powers under Articles 226 and 227 of the Constitution of India. Considering the aforesaid disputed facts, the rights as claimed by the petitioners cannot be adjudicated by invoking powers under Articles 226 or 227 of the Constitution of India. Even with regard to the applicability of the Rules, learned counsel for the petitioners was unable to point out any illegality or any error in the impugned order. The ground of challenge raised on behalf of the Standardized Building Bye-Laws and Development Control Rules of the years 1979 and 2013 would not create a bar to modify the order of sub-division of NA plot. The said Rules would not be applicable for the grant of subdivision of NA land, passed pursuant to the NA permission in favour of the owners.

11. Hence, for the aforesaid reasons, I do not see any valid ground to invoke powers under Article 226 and 227 of the Constitution of India, which is an equitable and discretionary relief.

12. For the reasons stated above, the petition is dismissed.

13. At this stage, learned counsel for the petitioners seeks an extension of the interim order passed on 6th May 2022 for a period of eight weeks from today to enable the petitioners to approach the Apex court.

14. Learned counsel for the owners opposes the extension of the ad-interim order on the ground that the owners' rights to develop the plot are affected in view of the interim order, hence extension if any be granted only for a limited period.

15. The ad-interim protection granted by order dated 6th May 2022 is extended for a period of four weeks from the date of uploading this order.

[GAURI GODSE, J.]