

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 702 OF 2006

Pune Municipal Corporation,]
Shivaji Nagar, Pune - 5.] ... Petitioners

Versus

1 Shri Keshav Antumal]
2 Shri Ram Megha Ram]
3 Sheela Arjundas]
4 Seeta Daulat Ram]
5 Kholi Bai Khoop Chand]
6 Jayabai Megha Ram]

All though their Power of Attorney]
Holder i.e. Shri Altaf Maniyar residing]
at Pune c/o. Space Designers & Group]
& Sunil Vartak Associates, 322,]
Arora Tower, Pune - 411 001]

7 The State of Maharashtra, through]
the Chief Secretary, and the Hon'ble]
Minister, Urban Development]
Department, Government of]
Maharashtra, Mantralaya,]
Mumbai - 400 032.] ... Respondent

Mr. Abhijit P. Kulkarni for the Petitioner.

None for the Respondent Nos.1 to 6.

Mr. A.I. Patel, AGP, for the Respondent No.7-State.

**CORAM : S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

THURSDAY, 21ST SEPTEMBER, 2017

ORAL JUDGMENT : [Per S.C. Dharmadhikari, J.]

1 By this petition under Article 226 of the Constitution of India, the Municipal Corporation challenges the order passed by the State Government under section 47 of the Maharashtra Regional and Town Planning Act, 1966 (for short “The MRTPA Act”).

3 The respondent Nos.1 to 6 claim to be owners of Survey No.550, Hissa No.4, situate at Gultekdi, Pune, admeasuring about 8 acres and 1 guntha. The land, though forming part of Town Planning Scheme No. III, sanctioned on 1st April, 1943, was not allotted a final plot number as it was a Nala-bed. It is claimed that the land is surrounded towards North by an aqueduct of canal, towards South by bridge of T.P.S. Road, towards East by compound wall on the boundary of Pune Cantonment Board and towards the West by compound wall of Mira Housing Society. The land is a low lying area, about ten feet

deep from the road level and thus does not have direct access.

4 Respondent Nos.1 to 6 submitted an application seeking development permission under section 44 of the MRTP Act for carrying on construction on the land. The Municipal Commissioner, after considering the record, refused this development permission. This order was passed on 31st December, 1999. This order records that the permission cannot be granted for the above reasons and particularly because of the opinion of the Municipal Commissioner. The petitioner claims that this rejection was communicated as per Rule 6.7.1 of the Development Control Rules to the respondents. There was also correspondence with the Architect of respondent Nos.1 to 6.

5 Being aggrieved and dissatisfied with the rejection of the development permission, the respondent Nos.1 to 6 invoked section 47 of the Maharashtra Regional Town Planning Act, 1966, by filing an appeal to the State Government. The petitioner resisted this appeal by filing its reply. However, the State Government, on 28th July, 2004, allowed this appeal directing the petitioner to initiate action for granting development permission

by taking recourse to Rule 11.1 of the Development Control Rules and further considering building permission granted to final plot No.435A, which is situate opposite the respondent No.1 to 6's property by diverting the Nala therein.

6 We have heard Mr. Kulkarni appearing for the petitioner - Corporation. Respondent Nos.1 to 6 are absent, though duly served. The learned Assistant Government Pleader appears for respondent No.7.

7 This petition was admitted by this Court on 16th February, 2006 and there was an ad-interim order in terms of prayer (c). Thus, the effect, execution and operation of the impugned order has been stayed during the pendency of this petition.

8 We have not found from the record any attempt being made by the contesting respondent Nos.1 to 6 to seek a variation or setting aside of this interim order. That order has been stayed from 2006. Prior to that also, the effect was not given to this order.

9 Even otherwise, from a perusal of the order passed at page 45 and impugned in the petition, we find that the State Government had before it, not only the appeal of the respondent Nos.1 to 6, but the remarks and opinion of the petitioner - Municipal Corporation and the Town Planner. The specific remark or opinion of the Town Planner is that the land is in Nala-bed. It is pointed out that the development plan road is also passing through the property. The various other objections have been pointed out.

10 It was specifically pointed out that there is no access and directly to this property. The objection of the respondent Nos.1 to 6 that the plot of land is not included in the Town Planning Scheme is also incorrect. It has been also pointed out that if such permissions are granted, that would be not conducive to proper development. It would rather frustrate and defeat the object of a planned development. In paragraph 6 of the impugned order, the Appellate Authority has clearly referred to these objections. It has been pointed out that the whole portion is part of a Nala and it is a cluster of trees. The Nala itself is

located / situate ten feet below the road level. The Nala is connecting a canal from the Northern portion and thereafter meeting a larger Nala. It is despite such clear objections and opinions in writing of the petitioner and the Town Planner dated 6th January, 2001 and 7th April, 2003, that the Appellate Authority granted the permission.

11 We have perused the order under challenge and we find that such objections, though on the record, have been brushed aside. They have been brushed aside on the specious ground that the plot of land is falling within a residential zone.

12 We do not think that the finding that merely because on the opposite plot of land, a building has been standing and the plans in relation to that building have been approved by itself and without anything more can be a ground to direct the Municipal Corporation to allow development on the subject plot. Merely because the permission for an opposite plot has been granted does not mean that respondent Nos.1 to 6 are entitled to development permission on their plot of land. It is clear that the State Government was aware that there is no access available.

Though the respondent Nos.1 to 6 stated before the Appellate Authority that they would make available such access road, we do not think that the grounds or the objections by the petitioner - Municipal Corporation could have been brushed aside and so casually and lightly. Eventually, the Planning Authority in charge of regulating and controlling development activities and so empowered by the MRTP Act, 1966, having recorded its objection consistent with the aim and object of the MRTP Act, could not have been interfered with unless there was a serious legal infirmity in the refusal of the development permission by the Pune Municipal Corporation. That serious legal infirmity or lack of *bona fides* or perversity in the conclusion having not been demonstrated, we are of the opinion that the order dated 28th July, 2004, impugned in the petition cannot be sustained.

13 The respondent Nos.1 to 6, though duly served, have not bothered to oppose the grant of relief in the petition. They have been represented by an advocate whose name appeared on the daily board whenever this matter was listed. The writ petition is of the year 2006 and no useful purpose would be served by keeping it pending.

14 For the reasons aforesaid, the writ petition succeeds. The impugned order is quashed and set aside. Rule is made absolute accordingly, but without any order as to costs.

PRAKASH D. NAIK, J.

S.C. DHARMADHIKARI, J.