

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ WRIT PETITION No.16456 OF 2021

% Delivered on: 17-01-2022

Between:

Smt. Lalitha Srikrish & others .. Petitioners

Vs.

\$ The State of Telangana, rep.by its Principal
Secretary, MA & UD, Secretariat, Hyderabad
& others .. Respondents

! For Petitioners : Mr. M. Surender Rao,
Learned Senior Counsel representing
Mr. Vijay B. Paropkari

^ For Respondent No.1 : Government Pleader for MA & UD

For Respondent No.2 & 3 : Mr. Chatla Madhu,
Learned Standing Counsel for GHMC

For Respondent No.4 : Mr. R. Sushanth Reddy

For Respondent Nos.5 to 8 : Mr. K. Mohan.

< Gist :

> Head Note :

? Cases Referred :

1. 2008 (5) ALD 226
2. 1992 (2) APLJ 386
3. 1975 (2) APLJ 328
4. 2020 SCC OnLine TS 1569
5. Writ Appeal No. 162 of 2021
6. (1975) 2 SCC 482
7. (1978) 3 SCC 258
8. (2003) 8 SCC 498

HON'BLE SRI JUSTICE K. LAKSHMAN**WRIT PETITION No.16456 OF 2021****ORDER:**

The present writ petition is filed seeking a direction against Respondent No.3 in keeping the revised permissions in File Nos. TS/00432/2021 (Plot Nos. 58 to 60), TS/000433/2021 (Plot Nos. 61 to 63), TS/ 000735/2021 (Plot Nos. 87 to 89 Part) and TS/000793/2021 (Plot Nos. 89 Part to 91) temporarily in abeyance and not releasing the same in spite of representation dated 22.05.2021 to Respondent No.3 and representation dated 17.6.2021 to Respondent Nos. 1 and 2. Further, the proceedings dated 10.05.2021 vide Lr. No.G1/TPS/Secbad Zone/2021 is challenged as arbitrary, illegal and violative of Articles 14, 19, 21 and 300A of the Constitution of India. A consequential direction is sought against the Respondent authorities to forthwith release the Plans in the above said Files and without reference to the representations 20.04.2021 and 21.04.2021 and in the light of the Orders dated 01/06/2021 passed by the XVI Addl. District Judge, Malkajgiri in I.A. No.59 of 2021 in O.S. No.13 of 2021.

2. Heard Mr. M. Surender Rao, learned senior counsel representing Mr. Vijay B. Paropakari, learned counsel for the petitioners, learned Government Pleader for Municipal Administration and Urban Development appearing on behalf of respondent No.1, Mr. Chatla Madhu, learned Standing Counsel for GHMC appearing on behalf of respondent Nos.2 and 3, Mr. R. Sushanth Reddy, learned counsel for

respondent No.4 and Mr. K. Mohan, learned counsel for respondent Nos.5 to 8.

3. **Facts of the case**

i) The Petitioners claim to be the owners of Plot Nos.58 to 63 and Plot Nos.87 to 91 which are named as 'Srikrish Enclave' and form part of Sy. Nos.137 to 140 & 150 Village, Malkajgiri Mandal.

ii) According to the Petitioners, they had previously applied for building permissions in respect of Plot Nos.58 to 63, 82, 87 to 91. Building permissions were granted separately in respect of the said plots on 29.11.2020 and work commencement letters were issued on 15.12.2020 and 14.12.2020.

iii) However, on various dates i.e., 18.02.2021, 08.03.2021 and 10.03.2021, the Petitioners filed revised applications for building permissions in respect of Plot Nos.58 to 63 and Plot Nos. 87 to 91. In respect of the revised applications, fee intimation letters dated 15.04.2021 were issued for payment. The Petitioners paid various amounts to the tune of Rs.34,26,397/- and executed a registered mortgage deed dated 16.04.2021 as required under the GHMC Act, 1955.

iv) While the matters stood thus, Respondent No.3 received complaints dated 20.04.2021 and 21.04.2021 from Respondent No.4. In his complaint, Respondent No.4 claimed to be the absolute owner of Plot Nos. 58 to 63 and stated that the permissions granted in favour of the Petitioners are illegal as O.S. No.13 of 2021 between the parties is pending.

v) Pursuant to the said complaints, an intimation letter No.G1/223/TPS/Secbad zone/GHMC/2021 dated 05.05.2021 was issued by Respondent No.3 calling Petitioner No.6 and Respondent No.4 to attend a personal hearing on 06.05.2021. The parties were heard and Respondent No.3 passed the impugned order dated 10.05.2021.

vi) In the said impugned order, Respondent No.3 observed that the documents submitted by the Petitioners and Respondent No.4 are suspicious and a civil suit is pending between the parties. Therefore, Respondent No.3 kept the building applications in abeyance temporarily.

vii) The Petitioners submitted representations dated 22.05.2021 and 17.06.2021 to the Respondent authorities requesting them to pass orders on revised building applications dated 18.02.2021, 08.03.2021 and 10.03.2021.

viii) Hence, this writ petition challenging the impugned order dated 10.05.2021.

4. **Contentions of the Petitioners**

i) The Petitioners are absolute owners and possessors of the property and the flow of title is explained.

ii) The Petitioners applied for revised building permissions and after verification of the submitted documents, plans and site inspections, fee intimation letters dated 15.04.2021 were issued for payment. Accordingly, payments were made.

iii) The Petitioners filed R & T No.5 of 2021 on 11.01.2021 before the High Court with a prayer to receive a suit to be filed before the XVI Additional District Judge, Ranga Reddy District. In the said R & T No.5 of 2021 an interlocutory application bearing I.A. No.1 of 2021 was filed seeking temporary injunction. The said I.A. No.1 of 2021 was allowed vide order dated 12.01.2021. Subsequently, the R& T No.5 of 2021 and I.A. No.1 of 2021 were numbered as O.S. No.13 of 2021 and I.A. No.59 of 2021 respectively.

iv) The said interim order dated 12.01.2021 was challenged by Respondent No.5 herein vide C.M.A. No.90 of 2021 before a Division Bench of this Court. This Court vide order dated 22.02.2021 suspended the order passed dated 12.01.2021. Subsequently, the Petitioners challenged the interim Order in C.M.A. No.90 of 2021 before the Supreme Court vide S.L.P. (C) No.3825 of 2021 & 4025 of 2021. The Supreme Court passed orders dated 08.03.2021 and stayed the orders of this Court dated 22.02.2021 for a period of six weeks.

v) This Court passed orders dated 07.04.2021 in C.M.A. No.90 of 2021 and remanded I.A. No.59 of 2021 in O.S. No.13 of 2021 to the Trial Court with a direction to decide the said I.A. on or before 30.04.2021. Subsequently, the order dated 07.04.2021 was challenged by the Petitioners before the Supreme Court vide S.L.P. (C) No.6162 of 2021 & 6252 of 2021. The Supreme Court ordered status quo vide orders dated 19.04.2021 later incorporated by orders dated 01.06.2021.

vi) The Trial Court vide orders dated 01.06.2021 allowed I.A. No.59 of 2021 granting injunction against the Respondents. C.M.A. No.314 of 2021 was filed challenging the order dated 01.06.2021. This Court passed order dated 17.08.2021 in C.M.A. No.314 of 2021 directing the Trial Court to decide the matter afresh within three weeks. The order dated 17.08.2021 was challenged vide S.L.P. (C) No.13051 of 2021 & 13272 of 2021 before the Supreme Court. The Supreme Court directed the Trial Court to decide I.A. No.59 of 2021 in O.S. No. 13 of 2021 uninfluenced by the orders dated 17.08.2021 within two weeks. The Trial Court vide order dated 14.09.2021 allowed I.A. No.59 of 2021 in O.S. No.13 of 2021.

vii) The intimation letter dated 05.05.2021 does not allege that the Petitioners have committed any misrepresentation or made any fraudulent statement in terms of Section 428 and Section 433 of the GHMC Act, 1955 when the applications for building permissions were submitted i.e., on 29.11.2020 or on 18.02.2021, 08.03.2021 and 10.03.2021.

viii) The intimation letter dated 05.05.2021 is vague and does not specify what misrepresentation was committed and what fraudulent statements were made. Reliance was placed on **Garapati Radha v. Commissioner, Vijayawada MCH¹**.

ix) Even if assumed that the intimation letter dated 05.05.2021 was issued under Section 450 of the GHMC Act, 1955 Respondent No. 3

¹. 2008 (5) ALD 226

does not have the power to entertain a rival claim made by Respondent No.4 as no permission was granted.

x) The revised applications were submitted in terms of the TS b-PASS Act, 2020. Relying on the checklists and procedure manual on the TS b-PASS website it was argued that disclosure of pending suits is not required under the TS b-PASS Act, 2020.

xi) Respondent No.3 conducted a hearing on 06.05.2021 without issuing the copies of complaints dated 20.04.2021 & 21.04.2021 and without affording the Petitioners an opportunity to file a reply to the said complaints.

xii) While considering revised applications for building permissions, having received the fees and having already granted permission, Respondent No. 3 could not have expressed suspicion about the documents (GPAs and an Unregistered Will) submitted by the Petitioner.

xiii) By passing the impugned order dated 10.05.2021, Respondent No.3 has delved into the merits and genuineness of the documents which is impermissible and it is for the competent Civil Court to decide the said issues.

xiv) Respondent No.3 has no power to withhold the building permissions. It can only grant or refuse permissions; it cannot keep the permissions in abeyance.

xv) The original building applications were filed on 29.11.2020 and no litigation was pending at that time as the documents clearly indicated the ownership of the Petitioners. The building permissions and work commencement letters issued in furtherance of applications dated 29.11.2020 were never questioned or disputed by the Respondents.

xvi) Under Section 7(11) of the TS b-PASS Act, 2020 a deemed permission/approval can only be revoked within 21 days of such deemed approval. A deemed permission cannot be revoked after the expiry of 21 days from the date of deemed approval. Reliance was placed on **Aditya Construction v. The Secretary, Housing Municipal Administration & Urban Development**² and **V. Rajeshwaramma v. Commissioner MCH**³.

xvii) The Petitioners submitted revised applications on 18.02.2021, 08.03.2021 and 10.03.2021 and after 21 days of the said dates they have already received deemed approvals/permissions. The said deemed approvals can only be revoked before the expiry of 21 days i.e. (application dated 18.02.2021 can be revoked on or before 11.04.2021 or 12.04.2021; application dated 08.03.2021 can be revoked on or before 19.04.2021 or 20.04.2021; application dated 10.03.2021 can be revoked on or before 21.04.2021 or 22.04.2021).

xviii) The deemed approvals were not revoked within 21 days in terms Section 7(11) of the T.S. b-PASS Act, 2020 and after lapse of 21

². 1992 (2) APLJ 386

³. 1975 (2) APLJ 328

days approvals cannot be revoked even on the ground of misrepresentation or false statements.

xix) The Petitioners have been continuously enjoying the interim orders in O.S. No.13 of 2021 and on 14.09.2021 the Trial Court held that the Petitioners are absolute owners of the suit schedule properties.

xx) Respondent No.3 is not empowered to entertain and adjudicate title disputes. Building permissions cannot be rejected merely because third party is claiming a rival title. Reliance was placed on orders passed in **A. Shalivahana Reddy v. GHMC**⁴.

5. Contentions of Respondent Nos.2 and 3

i) Respondent Nos.2 and 3 after receiving the revised applications from the Petitioners inspected the site and processed the fee intimation letters which were paid by the Petitioners.

ii) While the revised building applications were under consideration, the authorities received complaints dated 20.04.2021 and 21.04.2021. in the complaints, Respondent No. 4 stated about the pending civil suit and the interim order dated 22.02.2021 passed in C.M.A. No.90 of 2021 which was filed against the order passed in I.A. No.1 of 2021 in R & T No.5 of 2021.

iii) Noting the pendency of civil litigation between the parties, a hearing was conducted on 06.05.2021 which was attended by both the parties/their representatives.

⁴. 2020 SCC OnLine TS 1569

iv) Verification of the documents submitted by the parties raised suspicions regarding their genuineness.

v) The Respondent authorities did not find any merits in the representations submitted by the Petitioners as they have suppressed the civil disputes.

vi) Considering the pendency of litigation between the parties and the facts, the impugned order dated 10.05.2021 was rightly passed.

6. Contentions of Respondent No.4

i) Respondent No.4 is the absolute owner and possessor of Plot Nos.58 to 63 since 2019. The flow of title is explained relying on unregistered sale deeds.

ii) The Petitioners are unlawfully interfering with Respondent No.4's possession and are trying to alienate the same.

iii) The Petitioners herein have filed O.S. No.13 of 2021 which is pending.

iv) Respondent Nos.2 and 3 rightly passed the order dated 10.05.2021 and kept the Petitioner's building permissions in abeyance.

v) Merely a temporary injunction was granted in I.A. No.59 of 2021 in O.S. No.13 of 2021. The said interim order does not in any manner effect the perfect title of Respondent No.4.

7. Contentions of Respondent Nos.5 to 8

i) Respondent No. 5 is the owner and purchaser of Plot No.82.

ii) The sale deeds of the Petitioners are fabricated.

iii) The order dated 10.05.2021 was rightly passed.

8. **Analysis and findings of the Court**

i) In the present case, the Petitioners have challenged the order dated 10.05.2021 passed by Respondent No.3 whereby the revised building permissions submitted by the Petitioners are kept in abeyance. The Petitioners contend that Respondent No.3 does not have the power to keep the applications in abeyance and their permission cannot be revoked or kept in abeyance in light of Section 7(11) of the TS b-PASS Act, 2020. On the other hand, Respondent Nos.2 & 3 justified the order dated 10.05.2021 on the ground that civil litigation is pending between the parties and the Petitioners have suppressed the pendency of the same. Therefore, the following issues fall for consideration before this Court.

1. Whether the Petitioners have suppressed the pendency of O.S. No.13 of 2021?
2. Whether Respondent No.3 has the power to pass the impugned order dated 10.05.2021 by keeping the applications seeking building permissions in abeyance?
3. Whether 7(11) of the TS b-PASS Act, 2020 bars Respondent Nos.2 & 3 to revoke or keep the permission in abeyance after expiry of 21 days from the date of deemed approval?

9. **Issue No.1**

i) To decide the question whether the Petitioners have suppressed the pendency of O.S. No.13 of 2021, it is necessary to decide whether

disclosure of pendency of suit/litigation is compulsory while applying for building permissions under the TS b-PASS Act, 2020.

ii) The TS b-PASS Act, 2020 grants building and layout permissions based on self-declaration and self-certification of the applicant. Under the TS b-PASS Act, 2020, the burden is on the applicant to disclose all the material facts relating to the ownership and title. The manual and the checklist on the TS b-PASS website mandates submission of all the title/ownership documents along with the link documents. Although the TS b-PASS Act, 2020 does not specify that pending civil suits over the property are to be disclosed, it mandates submission of documentation regarding ownership/title. Therefore, it is implicit that all the material facts connected to the question of ownership/title have to be disclosed.

iii) A pending civil suit or any litigation involving declaration of title or recovery of possession or grant of injunction over any property over which building permission is invariably linked to ownership or title. Such pending litigation disputing/questioning the title over the property is a material fact which has to be mandatorily disclosed by the applicant who seeks building permission over such property. Such disclosure of pending suits is necessary for the authorities to determine '*prima facie*' title.

iv) A Division Bench of this Court in **Fortuna Infrastructure India Pvt. Ltd. v. State of Telangana**⁵ held that non-disclosure of

⁵. Writ Appeal No. 162 of 2021

pending litigation amounts to material representation under Section 450 of the GHMC Act, 1955. The relevant paragraphs are extracted below:

“27. Under this provision, the Commissioner of GHMC has power to cancel any permission obtained for making building construction, if he is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement by the applicant for building permission.

28. No material is placed before this Court by the 7th respondent that he had disclosed to the Commissioner of GHMC about the litigation pending between it and the appellant i.e. E.A. No. 81 of 2008 in E.P. No. 37 of 2008 in O.S. No. 1402 of 1996 before the V Senior Civil Judge, City Civil Court, Hyderabad or that appellant had obtained registered sale deed dt. 17.11.2007 from the said Court through decree dt. 27.11.1996 in O.S. No. 1402 of 1996.

29. Had such information been disclosed, it is possible that the Commissioner might have rejected the application made for grant of Municipal permission to 7th respondent as there would be a serious doubt as to whether he had prima facie title to the subject property or not.”

v) This Court cannot accept the contention of the Petitioners that the TS b-PASS Act, 2020 does not specify disclosure of pending suits. As mentioned above, it is implicit that all the details regarding ownership/title have to be disclosed. Therefore, the Petitioners had an obligation to disclose the details of the pending suit bearing O.S. No.13 of 2021 which they have not done.

vi) The Petitioners also contended that there was no misrepresentation or suppression as no litigation was pending when the original applications were filed. The original applications were already processed and permissions were granted on 29.11.2020 and the same were never questioned. Only revised applications were submitted on 18.02.2021, 08.03.2021 and 10.03.2021 by which date the said suit O.S. No.13 of 2021 was pending. Therefore, the said argument is unsustainable.

vii) The Petitioners cannot contend that since only revised applications were filed, the pending suit was not disclosed. Once an application is made including a revised application seeking building permission all the relevant documentation and relevant facts are to be filed and disclosed. The Petitioner filed the suit bearing O.S. No.13 of 2021 on 11.01.2021 which was prior to the filing of the revised building permissions. The Petitioners were aware of the said suit filed by themselves, but did not disclose the same. Therefore, non-disclosure of O.S. No.13 of 2021 amounts suppression of material fact.

10. **Issue No.2**

i) A perusal of the impugned order dated 10.05.2021 indicates that Respondent No.3 kept the building applications of the Petitioners in abeyance by expressing suspicion on the documents submitted by the parties. The Petitioners relying on various judgments contended that Respondent No.3 had no power to pass the impugned order dated 10.05.2021.

ii) There is force in the argument advanced by the Petitioners that Respondent No.3 has no authority to keep building permission applications in abeyance. Municipal authorities can only grant or reject applications for building permissions. They have no authority to withhold such applications or keep them in abeyance. Further, it has been held in catena of decisions that municipal authorities cannot delve into the factual aspects of title and play the role of an adjudicator. The Petitioners have rightly placed reliance on **A. Shalivahana Reddy**⁴.

iii) In the present case, the authority acted beyond its power by suspecting the genuineness of the documents submitted and keeping the permissions in abeyance. Neither the TS b-PASS Act, 2020 nor the GHMC Act, 1955 empower the authority keep the applications of permissions in abeyance. Therefore, the impugned order dated 10.05.2021 is set aside.

iv) It was further contended by the Petitioners that the intimation letter dated 05.05.2021 was vague as details of suppression/misrepresentation were not mentioned. The said contention cannot be accepted as the order clearly mentions that on account of pendency of O.S. No.13 of 2021 the said order was passed. Further, as the said suit was filed by the Petitioners themselves, they cannot claim that the notice did not specify the details of suppression/ misrepresentation.

v) It was also argued that no copies of Respondent No. 4's complaints dated 20.04.2021 and 21.04.2021 were given to the Petitioners and no opportunity was given to file a reply to the said

complaints. This argument is also misconceived as the Petitioners were aware that the complaint was regarding the pending suit and they have participated in the hearing dated 06.05.2021.

11. **Issue No.3**

i) The Petitioners contended that since their revised building permissions were not processed even after lapse of 21 days from the date of application and even after submitting representations dated 22.05.2021, they had deemed approval under Section 7 (10) of the TS b-PASS Act, 2020. It was argued that under Section 7 (11) such deemed approval can only be revoked within 21-days, from the date of deemed approval and after lapse of 21 days, the permission under deemed approval cannot be revoked. According to the Petitioners, the 21-day period within which the deemed approval can be revoked has already expired. Therefore, it relevant to discuss the scope of deemed approvals text of Sections 7 is extracted below:

“7. Approval of Building permissions

(1) No piece of land shall be used as a site for the construction of a building, and no building shall be constructed or reconstructed, and no addition or alteration shall be made to an existing building without the self certification based declarations or the required approval in the manner prescribed, relating to the use of building sites or the construction or reconstruction of buildings:

Provided that the Government may exempt certain buildings from taking building permission under this section, in the manner prescribed.

(2) For plot size upto 75 square yards (63 square meters), and the construction of ground or ground plus one floor, will not require any permission. The applicant however need to register online with a token amount of

Rs.1 and duly self certifying his title, the size of the plot and floors, it shall also not require a completion certificate or occupancy certificate. Any plot bigger than 75 sq yards cannot be split for this purpose or this provision cannot be misused for taking up constructions in government or prohibited or disputed land and action as prescribed shall be initiated for violations noticed.

(3) Plot size upto 500 square meters and height upto 10 meters: The permission applications for all the individual residential buildings having plot area of 500 square meters and less and building height of 10 meters as specified, shall be processed through an online based Self-Certification System in accordance with the Master Plan or Detailed Planning Scheme or Local Area Plan and the building rules and in the manner prescribed, and upon furnishing all required information details shall get instant online approval.

(4) The onus to ensure authenticity of self-certification and compliance with the self-certification lies with the applicant, who shall be held personally accountable and liable in case of false declaration and action shall be initiated against the said person, as prescribed.

(5) The owner or developer shall along with the building application form, submit an undertaking that in case of any actual construction made by him or her in violation of sanctioned plan, the Government or the Commissioner or the Agency authorized by him or her shall take-up the demolition without issuance of any notice. Further, the District level committee may verify the documents so submitted, and in case of any misrepresentation or false statement, the action shall be taken as prescribed.

(6) Citizens shall be encouraged to bring to the notice of Municipality and District Collector cases where unauthorized construction or construction in violation of or in excess of permissions, in the manner prescribed. The identity of such informers shall be kept confidential. All such cases shall be examined within a week from such information and appropriate action initiated. The informant shall be incentivized in all such cases where the information furnished by him is found to be correct.

(7) Plot size above 500 square meters and height above 10 meters: There shall be a single window system in case of applications for building permission in plots of area above 500 square meters and height above 10 meters and

all Commercial Buildings, High Rise Buildings, Group Development Schemes, Group Housing, Apartment Complexes, Multiplexes, Non Residential Buildings and other such constructions, which require multiple NOCs, one common application form shall be submitted through web based online system as prescribed.

(8) The online application has to be submitted with all requisite documents as may be prescribed. The online system shall not accept the application unless all such documents are submitted. Such documents upon submission shall be examined by the single window committee set up for this purpose and shortfalls or incompleteness or cases where further information or clarification is needed shall be communicated to the applicant within 10 days from the date of applying, in such manner, as may be prescribed.

(9) In all other cases, the applications for building permissions accompanied by all valid and required documents, as required and prescribed, shall be sanctioned within 21 days and in such manner, as may be prescribed.

(10) If no order is issued on the building application within the time prescribed, then the approval will be deemed to have been issued, as may be prescribed. The official concerned shall be liable for disciplinary action, if there has been a delay in arriving at a decision within the time period.

(11) The permission issued under deemed clause can be revoked by the commissioner within 21 days from the date of deemed approval if it is found that deemed approval has been obtained by mis-representation of the facts or false statements, and/or against the building rules, regulations and Master Plan land use provisions.”

ii) Before deciding the issue whether Section 7 (11) of the T.S. b-PASS Act, 2020 prevents the authorities from revoking deemed permissions after expiry of 21 days from the date of deemed approval, it is necessary to decide whether any deemed permission in terms of Section 7(10) of the T.S. b-PASS Act, 2020 accrued on the Petitioners.

iii) Section 7 (9) of the T.S. b-PASS Act, 2020 states that only those applications seeking building permissions which are accompanied by all valid and required documents shall be sanctioned within 21 days. As stated above, the valid and required documents include all the documents, facts and details of ownership title. Further, Section 7 (10) of the T.S. b-PASS Act, 2020 grants deemed permissions/approvals only where all the all valid and required documents are submitted and no permission was sanctioned within 21 days. No building approval or deemed building approval accrues on a person who submits incomplete or false documents or makes misrepresentation or suppresses material facts.

iv) In the present case, the contention of the Petitioners that they had deemed approvals over the subject plots is unsustainable. As discussed above, the Petitioners suppressed the details of the suit bearing O.S. No.13 of 2021 when they applied for the revised permissions. They had not made an application in terms of the TS b-PASS Act, 2020 making full disclosure about the pending litigation. Therefore, no deemed approval accrued to the Petitioners to make constructions over the subject plots.

v) Now the question to be decided is whether Section 7 (11) of the T.S. b-PASS Act, 2020 bars the authorities to revoke deemed permissions after lapse of 21 days from the date of deemed approval. In the present case, as no deemed approval has accrued on the petitioners, no question of revoking it arises.

vi) However, the contention of the Petitioners raises an important issue which is whether the time period prescribed under Section 7 (11) of T.S. b-PASS Act, 2020 is directory or mandatory. In **Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee**⁶, the Hon'ble Supreme Court discussing the rules of interpretation regarding mandatory and directory provisions held as follows:

“13.*Crawford on Statutory Construction* (Edn. 1940, Article 261, p. 516) sets out the following passage from an American case approvingly:

“The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.”

Thus, the governing factor is the meaning and intent of the Legislature, which should be gathered not merely from the words used by the Legislature but from a variety of other circumstances and considerations. In other words, the use of the word “shall” or “may” is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the Legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. [*Shriram v. State of Bombay*, AIR 1961 SC 674 : (1961) 2 SCR 890, 898 : (1961) 1 Cri LJ 760] Section 6(1) of the Act provides in terms, plain and precise, that a

⁶. (1975) 2 SCC 482

notification issued under the section “shall also” be published in Gujarati in a newspaper. The word ‘also’ provides an important clue to the intention of the legislature because having provided that the notification shall be published in the Official Gazette, Section 6(1) goes on to say that the notification shall also be published in Gujarati in a newspaper. The additional mode of publication prescribed by law must, in the absence of anything to the contrary appearing from the context of the provision or its object, be assumed to have a meaning and a purpose. In *Khub Chand v. State of Rajasthan* [AIR 1967 SC 1074 : (1967) 1 SCR 120, 124-25] it was observed that:

“The term ‘shall’ in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the Legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations.”

The same principle was expressed thus in *Haridwar Singh v. Bagun Sumbrui* [(1973) 3 SCC 889, 895]:

“Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured.”

Recently in the *Presidential Election case* [In re Presedential Poll, (1974) 2 SCC 33, 49], the learned Chief Justice speaking on behalf of a seven-Judge Bench observed:

“In determining the question whether a provision is mandatory or directory, the subject-matter, the import of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory., It is the duty of the courts to get at the real intention of the Legislature by carefully attending to the whole scope of the provision to be

construed. ‘The key to the opening of every law is the reason and spirit of the law, it is the *animus imponentis*, the intention of the law-maker expressed in the law itself, taken as a whole.’

vii) Further, in **Lila Gupta v. Laxmi Narain**⁷, it was held that the test to determine if a provision is directory or mandatory depends on whether failure to comply with such a provision leads to a specific consequence. If no consequence is prescribed then such provision is directory and not mandatory. The relevant paragraph is extracted below:

“10. Undoubtedly the proviso opens with a prohibition that: “It shall not be lawful” etc. Is it an absolute prohibition violation of which would render the act a nullity? A person whose marriage is dissolved by a decree of divorce suffers an incapacity for a period of one year for contracting second marriage. For such a person it shall not be lawful to contract a second marriage within a period of one year from the date of the decree of the Court of first instance. While granting a decree for divorce, the law interdicts and prohibits a marriage for a period of one year from the date of the decree of divorce. Does the inhibition for a period indicate that such marriage would be void? While there is a disability for a time suffered by a party from contracting marriage, every such disability does not render the marriage void. **A submission that the proviso is directory or at any rate not mandatory and decision bearing on the point need not detain us because the interdict of law is that it shall not be lawful for a certain party to do a certain thing which would mean that if that act is done it would be unlawful. But whenever a statute prohibits a certain thing being done thereby making it unlawful without providing for consequence of the breach, it is not legitimate to say that such a thing when done is void because that would tantamount to saying that every unlawful act is void.** As pointed out earlier, it would be all the more inadvisable in the field of marriage laws. Consequences of treating a marriage void are so serious and far

⁷. (1978) 3 SCC 258

reaching and are likely to affect innocent persons such as children born during the period anterior to the date of the decree annulling the marriage that it has always been considered not safe to treat a marriage void unless the law so enacts or the inference of the marriage being treated void is either inescapable or irresistible. Therefore, even though the proviso is couched in a language prohibiting a certain thing being done, that by itself is not sufficient to treat the marriage contracted in contravention of it as void.”

viii) Likewise, in **P.T. Rajan v. T.P.M. Sahir**⁸ it was held that a provision prescribing time-limits are generally directory in nature, unless the language employed is mandatory. The relevant portion is extracted below:

“48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See *Shiveshwar Prasad Sinha v. District Magistrate of Monghyr* [AIR 1966 Pat 144 : ILR 45 Pat 436 (FB)] , *Nomita Chowdhury v. State of W.B.* [(1999)2 Cal LJ 21] and *Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana* [(1997)1CHN 189] .)”

ix) It is relevant to note that Section 7 (11) of the T.S. b-PASS Act, 2020 does not employ mandatory language. It only states that authorities *can* revoke deemed approvals within 21 days. The provision does not make it imperative for the authorities to revoke permissions only within 21 days from the dated of deemed approvals. Further, the TS b-PASS Act, 2020 does not state that non-compliance of the 21-day period

⁸. (2003) 8 SCC 498

under Section 7 (11) leads to any consequence. Therefore, the time-limit of 21 days under Section 7 (11) is directory and not mandatory. The interpretation of Section 7 (11) that after the lapse of 21 days deemed approvals cannot be revoked is incorrect. Section 7 (11) being directory cannot be interpreted in a way which restricts the power of authorities to take action against people obtaining permissions by making false declarations, suppressing material facts and misrepresentations.

12. **Conclusion:**

i) In light of the aforesaid discussion, the impugned order dated 10.05.2021 is set aside. The Petitioners are at liberty to file fresh building applications seeking permission by disclosing the pending litigation and requesting respondent Nos.2 and 3 to adjust the amount of Rs.34,26,397/- already paid, and it is for respondent Nos.2 and 3 to consider the same. Till the fresh applications of the Petitioners are decided, the Petitioners shall not carry on any construction on the subject plots.

ii) Accordingly, the writ petition is disposed of. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

K. LAKSHMAN, J

17th January, 2022

Note: L.R. Copy to be marked
(B/O.) Mgr