
(2010) 08 MP CK 0096

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9505 of 2008 (P.I.L.)

Bhopal Citizen's Forum

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Nagar Tatha Gram Nivesh (Amendment) Act — Section 14 , 17, 17A, 18, 19

Citation : (2010) ILR (MP) 2111 : (2011) 3 MPHT 218 : (2010) 3 MPJR 377

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Advocate : Sidharth Gupta, for the Appellant; Prashant Singh, Addl. A.G., Sanjay Dwivedi, G.A. for Respondent No. 1, 3, 6, Ajay Mishra, Pratyush Tripathi for Respondent No. 4, P.L. Shirvastava, for Respondent No. 5, R.B. Tiwari and S.K. Rao, for the Respondent

Final Decision : Allowed

Judgement

S.R. Alam, C.J.

Petitioner, which is a forum of retired IAS, IPS officers and other eminent citizens of State of Madhya Pradesh, through this public interest litigation has challenged the validity of Section 23-A of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, as amended by Amendment Act, 2005, (hereinafter referred to as the "Act"), as well as notifications dated 14.3.2008 and 05.9.2007, Annexures-P-1 and P-2 respectively, issued by the State Government in exercise of powers u/s 23-A of the Act. By the impugned notifications the land use of various sites in the city of Bhopal has been changed from public/semi public purpose to commercial in order to facilitate the construction of Five Star Hotel, a Commercial Complex and an Oceanarium on lands measuring 10.19 acres over Khasra Nos. 1431 and 1432 which situate adjacent to Minto Hall and for the construction of Central Business District on land measuring 15 acres in and around South T.T. Nagar Market surrounding area, which is purely a residential

area. Similarly, Petitioner in WP No. 8886/2008 is non-Government organization, which has also challenged the validity of Section 23-A of the Act as well as notifications dated 14th March, 2008 and 5th September, 2007. Since common questions of law and fact are involved in both the writ petitions and also as agreed to by the Counsel for the parties, they were heard together and are being decided by this common order.

For reference, facts as stated in W.P. No. 9505/2008(PIL) are being referred to for convenience. It is averred in the writ petition that Minto Hall was constructed in the year 1909 and epitomizes the extant awareness of Paladian Architecture. Since 1956 till construction of new Vidhan Sabha, the sessions of Madhya Pradesh Legislative Assembly were held in Minto Hall. Adjoining to aforesaid Minto Hall a vast open land and dense plantation attributing scenic beauty is situated. According to development plan of 2005 of Bhopal, the aforesaid site has been designated for the purpose of "Administrative Complex/Units, Institutions". The aforesaid area situate on a hilly region in proximity of lower lake, one of the major water sources of the city.

The State Government in exercise of powers u/s 23-A of the Act issued a notification dated 14.3.2008 (annexure P/1) by which the land use of the land measuring 10.5 acres situate adjacent to Minto Hall has been changed from public/semi public to commercial whereupon the State Government intends to construct "Mega Commercial Complex", a 200 roomed Five Star Hotel with an oceanarium. Similarly, by another notification dated 05.9.2007 (Annexure-P-2) the land use of the land situate around 15 acres of land in South T.T. Nagar has been changed in order to facilitate construction of "Central Business District". In the aforesaid factual backdrop the Petitioner has approached this Court for declaration of Section 23-A of the Act as ultravires and for quashing of the aforesaid notifications dated 14.3.2008 and 5.9.2007.

Respondents No. 1, 2, 3 and 6 have filed return, inter alia, contending that instant writ petition is not a genuine public interest litigation, but, in fact, against the public interest. The Petitioner has no locus standi to challenge the amendment which has been incorporated in Section 23-A of the Act. It has been averred that before issuance of the notifications, which have been impugned in the instant writ petition, a notice was published in daily newspaper on 31.1.2008, namely, "Nav Bharat" and "Raj Express" inviting objections and suggestions from the public in general with regard to proposed change of land use of the lands adjoining Minto Hall. Similarly, in respect of proposal of change of land use in respect of an area situate adjoining to South T.T. Nagar objections were invited. However not a single objection was received. Minto Hall is being converted into Modern Convention Centre and its utility to the public at large is being ensured. Presently, Minto Hall is an unoccupied building which is getting ruined with the passage of time. To bring back the lost glory of Minto Hall, the State Government has appointed an experienced Conservation Architect Firm, M/s Cultural Resource Conservation Initiative New Delhi (CRCI). The aforesaid firm after detailed study

of the said building has submitted a report on Conservation and Revitalization plan of Minto Hall as City Trade and Convention Centre. The total project area i.e. 15.72 acres including Minto Hall and adjoining land i.e. land measuring 10.19 acres shall be transferred to Model Agency, the Respondent No. 7. The total project area has been divided into two parts i.e. an area of 5.53 acres of Minto Hall Complex and remaining area i.e. 10.19 acres. As per the Development Plan the complete project area has a land use of "public/semi public" with FAR of 1.0.

It has further been averred that in order to ensure free flow of traffic a committee was constituted which has submitted its report. It has been further averred in the return that there is no residential locality surrounding Minto Hall, the proposed site of Conventional Centre. Thus, there is no intrusion into the privacy, safety and peaceful living of common man due to this project. The project is conceptualized with the aim of Conservation and Revitalization of Minto Hall as a Convention and Trade Centre, a land mark infrastructure development in Bhopal, in wider interest of its citizens. Adequate care has been taken while planning the project regarding issues like water supply, sewerage, drainage capacity/layout, traffic arrangements, electricity, open spaces and such other amenities with a view not to cause any impact on the surrounding areas. It has been claimed that the project will not have any adverse impact on the public amenities. The height of any component of the project shall not be more than the sky line of the existing Minto Hall building. A sewerage treatment plant at the proposed project site will be installed to ensure that there is no adverse impact on the Lower Lake. Widening of existing 24 meter road and a provision for new 24 meter road through project land will help to bear the existing as well as traffic load which may be generated in future. It has been further averred that construction of Five Star Hotel and a retail space of approximately 4 lac sq.ft. is necessary for the purpose of providing convenient star accommodation to the delegates arriving for attending convention/meeting and to financially support the operation and for maintenance of the non viable main activity of "Convention Centre". The Government of India was proposing to build a world class conventional centre in some part of the central India. A request was made by the Chief Minister of the State of Madhya Pradesh and in view of the efforts made by the State Government, Ministry of Commerce and Industries Department, the Government of India has agreed that a modern State of Art Convention Centre should be set up in Bhopal. The Ministry of Commerce, Government of India has deputed a Team of Indian Trade Promotion Organization to visit Bhopal and to make a spot assessment about the possibility of converting Old Vidhan Sabha building in Bhopal into a modern convention centre. Thereafter, the Project is being developed by the State Government. It has been further stated that Indian Trade Promotion Organization had jointly set up exhibition and Convention Centre with Karnataka Trade Promotion Organization and Tamil Nadu Trade Promotion Organization and similar plans are underway in the State of West Bengal. Thus, Minto Hall was selected for the purpose of setting up of an area for Convention Centre after exercise made at the top level with the help of Indian

Trade Promotion Organization.

Shri Siddharth Gupta, Counsel for the Petitioners submitted that the Act needs to be interpreted in purposive manner while construing Section 23-A of the Act. In support of the aforesaid proposition he has placed reliance on a decision of the Supreme Court reported in *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others*, It has further been contended that powers u/s 23-A of the Act cannot be invoked as a matter of routine and it is permissible to invoke Section 23-A only in unavoidable situations and circumstances. Powers u/s 23-A of the Act can be permitted to be exercised only while keeping in mind and balancing the proportionality of action sought to be taken with the aims, object and cognate provisions. In support of the submission reliance has been placed on the decision of Supreme Court in *Nandkishore Ganesh Joshi v. Commissioner, Municipal Corporation of Kalyan and Dombivali* (2004) 2 SCC 417 . It has further been submitted that in the facts and circumstances there is no justification for invocation of Section 23-A of the Act and no ground is available to the State Government to invoke the powers u/s 23-A of the Act. It has further been contended that whether circumstances justifying the invocation of Section 23-A of the Act exist or not can be ascertained only from the record and not from the subsequent explanations filed by way of affidavit. For this proposition, Counsel has placed reliance on *Bhikhubhai Vitlabhai Patel and Others Vs. State of Gujarat and Another*, . It has further been contended that the proposed activities in the land in the premises in question if allowed to be undertaken pursuant to the impugned notification, it would seriously not only deteriorate the beauty of the entire premises of the old Vidhan Sabha, i.e. Minto Hall, but shall have serious adverse impact on environment of the city and also disturb the ecological balance.

Learned Counsel for the Petitioners further argued that a bare glance of Bhopal Development Plan (Annexure-P-12) would clearly show that the city of Bhopal is amidst hill top with lower lake which is one of the major water resources of the city on its foot hills. If any commercial development is permitted in the area, it would inevitably have adverse impact on the lake situate down the hill. The argument proceeds that no material with respect to exercise of change of land use u/s 23-A of the Act has been produced by the Respondents nor any study has been conducted to find out as to whether the site in question is suitable for such intense commercial development and mega projects. While referring to the Development plan, it is contended that development plan also prescribes that existing residential area should not be over loaded beyond a particular capacity as that would have serious implications over various civil amenities like water supply, sewerage disposal, parking requirements and other amenities. It has been contended that there are large patches of land which have already been earmarked for commercial development in Bhopal city which could be utilized for the proposed International Convention Centre, 5 Star Hotel, etc. The argument proceeds that in modern planning and development the issue relating to environment and pollution occupy an important place; promotion of

environmental protection implies maintenance of eco-friendly environment as a whole comprising of man-made and natural environment, therefore, the impugned notifications and the action of the State Government cannot be approved. In this connection, Counsel for the Petitioner has relied on decisions of Apex Court in *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, and *Bangalore Medical Trust Vs. B.S. Muddappa and others*,

On the other hand, Mr. Prashant Singh, learned Additional Advocate General for the State contended that before issuance of notifications (Annexures-P/1 and P/2), notices dated 29.1.2008 were published in two news papers, by which objections were invited with regard to proposed change in land use. However, no objection was received from anybody including the Petitioners. International Convention Centre is being set up in view of initiative which has been taken by the State Government. A committee of experts has examined the pros and cons of the project and thereafter a decision to set up the project has been taken. It has further been contended that there is no element of public interest involved in the instant writ petition. The Minto Hall is being converted into Modern Conventional Hall by experienced Conservation Architect Firm, M/s. Cultural Resource Conservation Initiative New Delhi (CRCI) which has successfully undertaken various works of conservation of main structure of heritage in India. After a series of long discussions and deliberations, the project has been undertaken which is in larger public interest. Counsel for the Respondents has placed reliance on decisions of the Supreme Court in *National Centre for Human Settlements and Environment v. Union of India and Ors.* (2005) 12 SCC 369 and *Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others*, in support of his proposition.

So far the challenge to the constitutional validity of Section 23-A, as amended by Amendment Act 22 of 2005, is concerned, it is no more *res Integra* and is concluded by a judgment of Division Bench of this Court in *Madan Parmaliya Vs. State of Madhya Pradesh and Others*, The Division Bench held as under:

It will be clear from Clause (a) of Sub-section (1) of Section 23-A of the Adhinyam that the modifications in the development plan or the zoning plan under Clause (a) of Sub-section (1) of Section 23-A are to be for proposed projects of the Government of India or the State Government and its enterprises or for any proposed projects related to development of a State or for implementing a scheme of a Town and Country Development Authority and all these proposes by their very nature are public purposes. A reading of Clause (b) of Sub-section (1) of Section 23-A of the Adhinyam as substituted by Act No. 22 of 2005 quoted above would also show that the State Government may on application from any person or an association of persons make modifications to the development plan or zoning plan for the purpose of undertaking an activity or scheme which is considered by the State Government and the Director on the advice of the committee constituted by the State Government for this purpose, "to be beneficial to the society". "To be beneficial to the society" also mean "for

public purpose". Thus, the contention of Mr. Dalai that by the omission of words "for urgent public purpose", from Section 23-A of the Adhiniyam by Act No. 22 of 2005, the State Government would be free to modify the development plan or the zoning plan even for a purpose other than public purpose has no merit.

We do not find any reason to take a different view. Further, when the Counsel for the Petitioners was confronted with the view taken by the Division Bench in the aforesaid case and it was pointed out that the validity of the aforesaid provision has already been upheld by the Division Bench, he did not put forth any new reason or ground to disagree with the view taken by the earlier Division Bench. Besides that once the validity of a provision or statute is challenged, all the grounds ought to have been raised and it would be presumed that all grounds which could validly be raised were raised and considered by the Court. A litigant or a party cannot be permitted to challenge the validity or vires of the provision on the plea that the ground being raised was not decided or a particular aspect was not expressly considered in the earlier proceeding. In that event there can be no finality in litigation and public policy. A litigant can go on challenging the validity of the provisions of the Act or notification at different times on different grounds which would be contrary to the doctrine of resjudicata and the doctrine of binding judicial precedent. Our view further finds support from the constitutional Bench judgment of the apex Court in the case of *Ambika Prasad Mishra v. State of U.P.*, reported in AIR 1980 SC 1762 wherein it has been held that every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. It does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned. Similar view was expressed by a larger Bench of five Hon'ble Judges of Allahabad High Court in the case of *Rana Pratap Singh Vs. State of Uttar Pradesh*,

For the aforesaid reasons, the attack on the validity of the amended Section 23-A need not detain us long as we are bound by the judgment of the Division Bench in *Madan Parmaliya (supra)*. We, therefore, hold that Section 23-A of the Act, as amended by the Amending Act 2005, is intra vires.

Before proceeding to deal with the challenge to the validity of the notifications (Annexures-P/1 and P/2) dated 14.3.2008 and 5.9.2007, it would be appropriate to examine the case law on the scope of judicial review with regard to the change in land use. In *Greater Kailash Part-II Welfare Association and Others Vs. DLF Universal Ltd. and Others*, the residents of Greater Kailash Part II being aggrieved by the change of user of the plot into a multiplex cum commercial complex filed the appeal before the apex Court on the ground inter alia that it would cause great hardship to the inhabitants because the area is already congested and there are continuous traffic jams and large number of visitors would come to the multiplex cum commercial complex which would completely breakdown the traffic system and the same being in violation of the master plan of Delhi the permission granted for the construction be set aside and by issuance of a writ of Prohibition the Respondents may be restrained from raising

construction. The Apex Court having found that the Respondents since have complied with all the requirements of the law held that decision of executive authorities based on opinion of experts deserves to be respected. The Court in exercise of powers under Article 226 of the Constitution of India cannot sit in appeal over the decision of the Executive authorities.

Similar view is expressed in *D.D.A. Vs. Rajendra Singh and Others*, wherein once again dealing with the scope of interference in the matter of change of land use, the Supreme Court held that decision of an expert body cannot be interfered with by the Court without adequate contra material. Thus, from the aforesaid exposition of law, it is clear that the Government is best Judge to decide whether a particular piece of land can be used for what purpose. However, where a challenge is made to the decision of the Government with regard to change of land use, the scope of judicial scrutiny is limited to find out whether the decision suffers from any illegality or infraction of any statutory provision or is arbitrary.

We may now advert to the provisions of the Act. The purpose and object of the enactment of the Act as mentioned in the preamble is to make provision for planning and development and use of land and to make better provision for preparation of development plan and zoning planning with a view to ensuring that town planning scheme are made in a proper manner and their execution is made effective.

Section 17 of the Act provides the contents of development plan which shall take into account any draft five year and Annual Development Plan. Section 17-A of the Act authorizes the State Government to constitute a Committee to consider and suggest modifications and alterations in the draft development plan prepared by the Director u/s 14 of the Act; and to hear the objections after publication of the draft development plan u/s 18 and suggest modifications or alterations, if any, to the Director. Section 17-A of the Act reads as under:

"17-A. Constitution of committee.(1) The State Government shall constitute a committee of the following namely:

- (a) Mayor of the Municipal Corporation or President of the Municipal Council or Nagar panchayat, as the case may be, which wholly or partly fall within the planning area;
- (b) President of the Zila Panchayat which wholly or partly fall within the planning area;
- (c) Members of Parliament representing constituencies which wholly or partly fall within the planning area;
- (d) All Members of the State Legislative Assembly representing the constituencies which wholly or partly fall within the planning area;
- (e) Chairman of the Town and Country Development Authority, or Special Area Development Authority, if any, which wholly or partly fall within the planning

area;

(f) President of the Janpad Panchayat which wholly or partly fall within the planning area;

(g) Sarpanchas of the Gram Panchayats which wholly or partly fall within the planning area;

(h) Other persons not exceeding seven to represent specific interests to be nominated by the State Government;

(i) An officer not below the rank of Deputy Director, Town and Country Planning to be nominated by the Director, who shall be the Convener of the Committee;

(2) The Committee constituted under Sub-section (1), shall:

(a) consider and suggest modifications and alterations in the draft development plan prepared by the Director u/s 14;

(b) hear the objections after publication of the draft development plan u/s 18 and suggest modifications or alterations, if any, to the Director.

(3) The Convener of the Committee shall record in writing all the suggestions, modifications and alterations recommended by the committee under Sub-section (2) and thereafter forward his report to the Director.

After receipt of the report from the Convener of the Committee constituted u/s 17-A, the Director is required to consider the report and publish the draft development plan prepared u/s 14 of the Act in such manner as may be prescribed, inviting objections and suggestions in writing within 30 days from the date of publication of notice, as provided u/s 18 of the Act which reads as under:

Publication of draft development Plan.- (1) On receipt of the report from the Convener of the Committee under Sub-section (3) of Section 17-A, the Director shall consider the report of the Committee and in consultation with the Committee constituted under Sub-section (1) of Section 17-A publish the draft development plan prepared u/s 14 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or places where the copies may be inspected, inviting objections and suggestions in writing from any person with respect thereto, within thirty days from the date of publication of such notice, such notice shall specify in regard to the draft development plan the following particulars, namely-

i) the existing land use maps;

ii) a narrative report, supported by maps and charts, explaining the provisions of the draft development plan;

iii) the phasing of implementation of the draft development plan as suggested by the Director;

iv) the provisions for enforcing the draft development plan and stating the manner in which permission for development may be obtained;

v) approximate cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan

(2) The committee constituted under Sub-section (1) of Section 17-A shall not later than ninety days after the publication of the notice under Sub-section (1), consider all the objections and suggestions as may be received within the period specified in the notice under Sub-section (1) and shall, after giving reasonable opportunity to all persons affected thereby of being heard, suggest such modifications, in the draft development plan as it may consider necessary, and submit, not later than six months after the publication of the draft development plan, the plan as so modified, to the Director together with all connected documents plans, maps and charts.

(3) The Director shall, within 30 days of the receipt of the plan and other documents from the committee submit all the documents and plans so received along with his comments, to the State Government.

Sub-section (1) of Section 18, therefore, mentions the particulars with regard to draft development plan required to be published in the notice as mentioned in (i) to (v) of Sub-section (1). After receipt of the objections and suggestions, if any, pursuant to the notice, the Committee constituted under Sub-section (1) of Section 17-A shall consider the same and after affording reasonable opportunity to all the persons affected thereby of being heard, may suggest such modification in the draft development plan as it may consider necessary and submit, not later than six months after the publication of draft development plan, the plan so modified to the Director along with all connected documents, plans, maps and charts. The Director thereafter within thirty days of the receipt of the plan from the Committee shall submit the plan and the documents so received from the Committee along with his comments to the State Government.

Section 19 deals with the sanction of development plan by the State Government. Section 19 of the Act reads as under:

Sanction of development plans.-(1) As soon as may be after the submission of the development plan u/s 18 the State Government may either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as the State Government may deem appropriate.

(2) Where the State Government approves the development plan with modifications, the State Government shall, by a notice published in the Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Gazette.

(3) After considering objections and suggestions and after giving a hearing to the persons desirous of being heard, the State Government may confirm the modification in the development plan.

(4) The State Government shall publish a public notice in the Gazette and in such other manner as may be prescribed of the approval of the development plan approved under the foregoing provisions and the place or places where the copies of the approved development plan may be inspected.

(5) The development plan shall come into operation from the date of publication of the said notice in the Gazette under Sub-section (4) and as from such date shall be binding on all the Development Authorities constituted under this Act and all local authorities functioning within the planning area.

Thus, Section 19 of the Act inter-alia provides that after submission of the development plan u/s 18, the State Government may either approve the development plan or may approve it with such modification as it may consider necessary or may return it to the Director to modify the same or to prepare a fresh plan in accordance with such directions as the State Government may deem appropriate. Sub-section (2) of Section 19 mandates that where the State Government approves the development plan with modifications, the State Government shall by a notice published in the Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of notice in the Gazette. After considering the objections and suggestions and after giving a hearing to the person desirous of being heard, the State Government may confirm the modification in the development plan.

Therefore, from perusal of Sections 17 to 19 of the Act, it is apparent that a detailed procedure has been prescribed by the Act which is required to be followed while preparation of the development plan. Public participation is envisaged by the aforesaid provisions of the Act at two stages firstly at the stage of preparation of draft development plan and secondly at the stage of sanction of the development plan by the State Government in case the State Government chooses to sanction the development plan with some modifications.

Section 20 of the Act provides for preparation of zoning plans whereas Section 21 provides about the contents of zoning plan. Section 20 and 21 of the Act are extracted below for ready reference:

Preparation of Zoning Plans.- The Local Authority may on its own motion at any time after the publication of the development plan, or thereafter if so required by the State Government shall, within six months of such requisition, prepare a Zoning Plan.

Contents of zoning plan.-(1) The zoning plan shall enlarge the details of land use as indicated in the development plan and shall-

(a) indicate the land liable to acquisition for public purpose for the purposes of

the Union Government, the State Government, a Town and Country Development Authority, a Special Areas Development Authority, a local authority, a public utility or any other authority established by or under any enactment for the time being in force.

Provided that no land shall be so designated unless the acquisition proceedings are likely to be completed within ten years of the preparation of the plan;

(b) define in detail and provide for areas reserved for agriculture, public and semi public open spaces, parks, playground, gardens, recreational areas, green-belts and nature reserves;

(c) allocate in detail areas or zones for residential, commercial, industrial, agricultural and other purposes;

(d) define and provide for the complete road and street pattern for the present and in the future and indicate the traffic circulation;

(e) lay down in detail the projected road and street improvements;

(f) indicate and provide for areas reserved for public buildings, institutions, and civic developments;

(g) assess, make projections for and provide for the future requirements of amenities, services and utilities such as municipal transport, electricity, water and drainage;

(h) prescribe in detail the zoning regulations for each zone; with a view to facilitating an individual lay out and regulating the location, height number of storeys and the size of buildings and other structures, the size of the Courtyards, Courts and other open spaces and the use of the buildings, structures and land;

(i) define areas which have been badly laid out or areas which have developed so as to form slums, and provide for their proper development and/or relocation;

(j) designate areas for future development and expansion;

(k) indicate the phasing of the programme of development.

(2) The zoning plan may, and, if possible, shall, indicate,-

(a) control over architectural features, elevation and frontage of buildings and structures; and

(b) the details of development of specific areas for housing, shopping centres, industrial areas, educational and cultural institutions and civic centres.

Section 18 and 19 of the Act is made applicable for preparation and publication of zoning plan u/s 20 and 21 by inserting Section 22 which reads as under:

22. Provisions of Section 18 and 19 to apply to zoning plan.- The provisions of Sections 18 and 19 shall apply for the preparation, publication approval and

operation of zoning plan as they apply in respect of the development plan.

Thus, by virtue of Section 22 of the Act provisions of Section 18 and 19 have been made applicable in the preparation of zoning plan.

The next important provision contained in the Act is Section 23 which provides for review and modifications of development plan or zoning plan. Section 23 of the Act reads as under:

Review and modifications of development Plan or Zoning Plan.-(1) the Director may, on his own motion or if so required by the State Government shall undertake a review and evaluations of the development plan.

(2) The Director may if necessary propose modification of the plan under Sub-section (1).

(3) The Director shall, if so required by the State Government proceed to review and propose modifications of any planning unit of a development plan.

(4) the Local Authority shall on its own motion or if so required by the State Government or the Director undertake review and evaluation of the Zoning Plan.

(5) The provisions of Sections 18 and 19 shall, so far as may be, apply to the modifications under Sub-section (2), review and modification under Sub-section (3) and review and evaluation under Sub-section (4) as these provisions apply in relation to the preparation, publication and approval of a development plan.

Thus, Section 23 of the Act provides that the Director may on his own motion or if so required by the State Government shall undertake a review and evaluation of the development plan. Sub-section (5) of Section 23 of the Act makes the provision of Sections 18 and 19 of the Act applicable for carrying out modification of the development plan and zoning plan as well. Therefore, the Act envisages participation of the public and an opportunity of hearing to public in general even in respect of modification in the development plan.

The next relevant and important provision for the purpose of this case is Section 23-A of the Act which provides for modification of development plan or zoning plan by the State Government in certain circumstances. Section 23-A of the Act, as it stood prior to amendment by the Amendment Act of 2005 reads as under:

23-A. Modification of Development Plan or Zoning Plan by State Government in certain circumstances.-(1) The State Government, on its own motion or on the request of Development Authority, may make modification in the Development Plan or the Zoning Plan for urgent public purpose. The modification so made in the Development Plan or Zoning Plan shall be an integrated part of the revised Development Plan or Zoning Plan.

(2) The State Government shall publish the draft of modified plan together with a notice of the preparation of the draft modified plan and the place or places where the copies may be inspected, continuously for two days in such two daily news

papers which are in the approved list of Government for advertisement purpose having circulation in the area to which it relates and a copy thereof shall be affixed in a conspicuous place in the office of the Collector, inviting objections and suggestions in writing from any person with respect thereto within fifteen days from the date of publication of such notice.

After considering all the objections and suggestions as may be received within the period specified in the notice and shall, after giving reasonable opportunity to all persons affected thereby or being heard, the State Government shall confirm the modified plan.

(3) The provisions of Sections 18, 19 and 22 shall not apply for modification made by the State Government.

The unamended Section 23-A provides that State Government on its own motion or on the request of the development authority may make modification in the development plan or zoning plan for urgent public purpose. Sub-section (3) of Section 23-A of the Act excluded the applicability of provision of Sections 18, 19 and 22 for the purposes of carrying out modifications for urgent public purposes. However, under Sub-section (2) of Section 23-A of the Act, the State Government was required to publish a draft modified plan together with notice of preparation of draft modified plan and the place or places where the copies may be inspected continuously for two days in such two daily newspapers which are in the approved list for Government for advertisement purpose having circulation in the area to which it relates and a copy thereof was required to be affixed in a conspicuous place in the office of the Collector inviting objections and suggestions in writing from any person with respect thereto within fifteen days from the date of publication of such notice. After considering the objections and suggestions and after giving reasonable opportunity to all persons affected thereby of being heard, the State Government was empowered either to confirm or to modify the plan. The Legislature in its wisdom even while excluding the provisions of Sections 18, 19 and 22 of the Act, in respect to modification of development plan or zoning plan by the State Government for urgent public purpose, incorporated the conditions of publication of notice and opportunity of hearing to the affected persons. Thus, the Act provides for two provisions namely Section 23 and Section 23A for modification of development plan. Section 23A of the Act is a special provision and resort to the same can be had for urgent public purpose only.

In the light of recommendations made by the Committee of experts constituted by the Government of India, Ministry of Home Affairs, National Disaster Management Division in the month of September, 2004, with a view to provide for "multi national hazard safety" under the development plan, or amendment were proposed in the Act. Provisions of Section 23-A of the Act were amended by the Amending Act of the year 2005 with a view to provide separate provision in the Act to make modification in the development plan for implementation of the project of Town and Country Development Authority as well as development

projects of Central Government or State Government and its enterprises.

From perusal of statement of objects and reasons of the Amendment Act, 2005, it is clear that amendment in Section 23-A of the Act was made with a view to provide special consideration to the cases mentioned therein with a view to curtail the delay in the process of modification in development plan. Relevant extract of statement of objects and reasons appended to bill reads as under:

As there is no separate provision in the Act to make modifications in the development plan for the implementation of the projects of a Town and Country Development Authority as well as the development projects of the Central Government or the State Government and its enterprises. The amendment in Section 23-A will provide special consideration to these cases and will curtail the delay in the process of modification in development plan.

Section 23-A of the Act as amended by Amendment Act of 2005 reads as under:

"23-A. Modification of Development Plan or Zoning Plan by State Government in certain circumstances.-(I)(a) the State Government, may on its own motion or on the request of Town and Country Development Authority, make modification in the development plan or the zoning plan for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project related to development of the State or for implementing a scheme of a town and country Development Authority, and the modification so made in the development plan or zoning plan, shall be an integral part of the revised development plan or zoning plan.

(b) The State Government may, on an application from any person or any association of persons for modification of development plan or zoning plan for the purpose of undertaking an activity or scheme which is considered by the State Government or the Director, on the advice of the committee constituted by the State Government for this purpose, to be beneficial to the society, make such modification in the development plan or zoning plan as may be deemed necessary in the circumstances of the case and the modification so made in the development plan or zoning plan shall be an integral plan or zoning plan shall be an integral part of the revised development plan or zoning plan.

It is relevant to mention here that though the amendment was made by the State Legislature in Section 23-A with the object to provide for modification in the development plan for implementation of projects of Town and Country Development Authority as well as development projects of Central Government or the State Government and its enterprises, yet Sub-section (2) of Section 23-A which requires the State to publish a draft of modified development plan continuously for two days in such two daily newspapers which are in the approved list of the Government having circulation in the area and to make available copies for inspection at a conspicuous place in the office of the Collector inviting objections and suggestions in writing from any person within 15 days and the requirement of consideration of objections and suggestions and to afford

reasonable opportunity of hearing to all persons affected thereby was kept intact.

At this stage, it is relevant to reproduce para 11 of the return as well as para 4 of the additional return, which has been filed on behalf of Respondents No. 1, 2, 3 and 6:

That the notification dated 14.3.2008 was issued whereby the proposal of changing the land use of 10.19 acres land part of Khasra No. 1431 and part of Khasra No. 1432 in Bhopal city from "public/semi public" to "commercial" in "Bhopal Development Plan, 2005" with specific condition regarding FAR 1:1.75 (for commercial through FAR is 2.5 maximum height of the building shall be fixed by the Home Department, the proposed width of road towards Minto Hall would be 24 meters from lower lake to Minto Hall. The notification has been issued by the Housing and Environment Department, Govt. of M.P. on 31.1.2008 in the Hindi Daily newspaper "Nav Bharat" and "Raj Express" inviting objections and suggestions from the public. Copy of the newspaper clippings are filed herewith as Annexure R-2. Thus the procedure as laid down under the law was followed before issuance of the said notification. In the same manner notification was also issued in respect of C.B.D. Project on 5.9.2007, which is filed by the Petitioner as Annexure P/2.

Before issuance of Annexure P/1 and P/2, notification was published in newspapers under the provisions of Section 23-A(1)(A) inviting objections or suggestions from the general public within a period of 15 days of their publication. Copy enclosed as Annexure R-10. In response to these advertisements published in two prominent daily newspapers, no objections were raised by the Petitioner and thereafter following the due procedure, notifications Annexure P/1 and P/2 were issued. Thus, it is apparent that Petitioners who profess themselves to be prominent citizen comprising of former bureaucrats had not objected to the said change of land from residential, public and semi-public to commercial and thus by implication had expressed their faith in the said conversions. Now, after failing to participate in the legal process of making objections/suggestion to the proposed change in the land use and having missed the bus to propose detailed objections (not the cursory one as have been raised in the petition), Petitioners have invented the mechanism of PIL to circumvent the legal provisions of Nagar Tatha Gram Nivesh Adhiniyam, 1973. In the humble information of the answering Respondents, Petitioners cannot be allowed to misuse the forum of PIL for their failure to avail the legal remedy provided under the provisions of the 1973 Act.

Thus, from perusal of averments made in the return, it is clear that notice of draft development plan was published only in two daily newspapers namely "Nav Bharat" and "Raj Express" dated 31st January, 2008. There is neither any averment in the return nor any notice has been annexed with the return indicating that notice with regard to draft modified plan was published continuously for two consecutive days in two daily newspapers. From perusal of the return, we also gather that there is no averment in the return that draft

modified plan was affixed in a conspicuous place in the office of Collector, inviting objections and suggestions in writing from any person with respect thereto within 15 days from date of publication of such notice. It has only been stated in the notice published in the newspaper that copy of draft development plan shall be available in the office of Joint Director, Town and Country Planning and in the office of Collector for inspection. Thus, from perusal of the averments made in the return as well as documents annexed with the return, it is graphically clear that the draft modified plan has not been published in the manner prescribed in Sub-section (2) of Section 23-A of the Act.

Now the question arises for consideration is as to whether the provisions contained in Section 23-A of the Act are directory or mandatory and if the draft modified plan has not been published in the manner prescribed u/s 23-A(2) of the Act, what would be its consequence.

To find out as to whether a particular provision is a mandatory or directory one has to carefully look to the real intention of the legislature and the scope of the statute. The intention of the Legislature has to be gathered not only from the phraseology of the provision but also by considering its nature, design and the consequences which would follow from construing it one way or the other. The Apex Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, has approved the following passage from Crawford on "Statutory Construction" which reads as under:

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.

In *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, 3, the Supreme Court has held that question whether a particular provision was mandatory or directory has to be adjudged in the light of intention of legislature as disclosed by the object, purpose and scope of the Statute. Again in *Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others*, the Apex Court approving the aforesaid passage from the Crawford on "Statutory Construction" held as under:

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 circumstances 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.

The Apex Court again reiterated the similar view in *B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another*, *State of M.P. and Another Vs. Pradeep Kumar and Another*, and *Sarla Goel and Others Vs. Kishan Chand*,

If the object of the enactment will be defeated by holding the same to be directory, it will be construed as mandatory. (See: *Principles of Statutory Interpretation*, Justice G.P. Singh, 12th Edition page 391). If certain requirement or conditions are provided by a statute in public interest, the same cannot be waived. (See: *Principles of Statutory Interpretation*, Justice G.P. Singh, 12th Edition page 395). It is equally well settled in law that the word "shall" is ordinarily mandatory, but it is sometimes not so interpreted if the context or the intention otherwise demand. (See: *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*,

In the aforesaid backdrop of well settled principles of statutory interpretation, let us examine the provisions contained in Section 23-A(2) of the Act to find out as to whether the same are mandatory and are required to be adhered to strictly. The Legislature had amended provisions of Section 23-A of the Act by Amendment Act of 2005 with a view to make provision for modification in the development plan for implementation of project of Town and Country Development Authority as well as development project of Central or State Government and its enterprises. The amendment was incorporated with the object to curtail the delay in the process of modification of development plan. For carrying out the modification in the development plan, provisions of Sections 18, 19 and 22 have been excluded. At the cost of repetition, we may once again state that Section 18 of the Act provides for publication of draft development plan and its consideration by a Committee constituted u/s 17-A of the Act within a period of 90 days from the date publication of draft development plan. Section 19 deals with sanction of the development plan which once again mandates the State Government to publish the development plan if it sanctions the same with some modification and to afford an opportunity of hearing. The aforesaid provisions have not been made applicable in respect of Section 23-A of the Act. However, even while amending Section 23-A of the Act, Sub-section (2) of Section 23 of the Act which requires publication of draft development plan and invitation of objections and suggestions and for affording reasonable opportunity of hearing to the affected persons has been kept intact in the statute book. The Scheme of the Act as well as the object of Section 23-A shows the intention of legislature that in the matter of preparation of Development Plan and its modification, participation of public in general and affording an opportunity of hearing to aggrieved person is envisaged by the legislature. The object of providing for publication of notice contained in Section 23-A(2) of the Act, is to

invite objections from public in general, who would be affected. The purpose of such publication is in furtherance of the democratic process and to provide reasonable opportunity of being heard to those who are likely to be adversely affected. As stated supra, Section 23-A of the Act is a special provision and provides for a shortcut procedure for modification of development plan which is to be resorted to in the case of an urgent public purpose. The procedural requirement for invoking the power u/s 23-A has to be fulfilled while exercising power under the said section. In this connection we may refer to decisions of the Supreme Court in the cases of Mohan Singh and Others Vs. International Airport Authority of India and Others, and Union of India (UOI) and Others Vs. Mukesh Hans etc., Thus taking into account the scheme of the Act, intention of legislature and use of word "shall" in Section 23-A(2) of the Act, we have no hesitation to hold that the manner of requirement of publication of notice contained in Section 23-A(2) of the Act is mandatory in nature.

There is another aspect of the matter. It is well settled in law that if the statute prescribes a mode of doing a particular act in a particular manner, that act has to be done in that manner alone and all other modes of its performance are necessarily forbidden. (See: Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, and Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others,

Since provisions of Section 23-A(2) of the Act have been held to be mandatory in nature and since the notice with regard to draft modified plan has not been published in accordance with provisions of Sub-section (2) of Section 23 of the Act, all subsequent actions have to be held to be invalid and no sanctity can be attached to the same as it is well settled in law that any action taken in breach of a mandatory provision would be invalid. (See: L. Hazari Mal Kuthiala Vs. The Income Tax Officer, Special Circle, Ambala Cantt., and Dr. Ram Deen Maurya Vs. State of U.P. and Others,

For the aforementioned reasons, notifications dated 14.3.2008 and 5.9.2007 issued by the State Government are hereby quashed. However, the State Government shall be at liberty to take action in the matter in accordance with law. Though submissions were made at length with regard to adverse impact, which the proposed project would have on ecosystem of lower lake and surrounding areas and it was further contended that no study was conducted to ascertain whether site in question is suitable for intense commercial development, we are not adverting to aforesaid submissions as we have no doubt that the State Government while dealing with the matter afresh would take into account all relevant factors which are necessary and required to preserve the ecology and to provide pollution free atmosphere in the area and will also explore the available viable alternatives for the proposed commercial development.

Accordingly, the writ petitions are allowed. However, there shall be no orders as to cost.