



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5569 OF 2012

1. Chandrakant s/o Tukaram Gunale,
Age: 58 years, Occ: Agri,
2. Jayprakash s/o Gokuldas Bhutda,
Age: 41 years, Occ: Business & Agri.
3. Gangadhar s/o Tukaram Gunale,
Age: 60 years, Occ: Agri.
4. Satish s/o Sheshrao Lohare,
Age: 41 years, Occ: Business & Agri.
5. Sau. Padma w/o Jayprakash Bhutda,
Age: 39 years, Occ: Household & Agri.
6. Shivraj s/o Sakharam Shelke,
Age: 60 years, Occ: Agri. & Pensioner.
7. Jugalkishor s/o Kanhyalal Sharma,
Age: 56 years, Occ: Service & Agri.

All R/o: Ahmedpur, Tq. Ahmedpur,
Dist. Latur.

.....PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary,
Urban Development Department Mantralaya,
Mumbai-32.
2. The Director Town Planning,
Maharashtra State Pune,
Administrative Building near
Railway Station, Pune.
3. The Town Planner, Latur,
Tq. & Dist. Latur.



4. The Municipal Council,
Ahmedpur through Chief Officer.
5. Maharashtra Housing Development Corporation
Through its Executive Engineer,
Latur Division, Gruha Nirman Bhavan,
Near mahavir Stambh, Bus Stand Road,
Aurangabad.

.....RESPONDENTS

**WITH
WRIT PETITION NO.5599 OF 2012**

1. Adv. Santosh s/o Gopikishan Bharadiya
Age: 28 years, Occ: Practitioner,
2. Dr. Sachin s/o Gopikishanji Bharadiya,
Age: 26 years, Occ: Medical Practitioner.
3. Sau. Puspadevi w/o Gopikishan Bharadiya,
Age: 48 years, Occ: Household.
4. Dr. Sau. Anjusha w/o Shyamsundar Malu,
Age: 38 years, Occ: Agri. & Medical Practitioner.
5. Smt. Narmadabai w/o Ambalal Dhoot,
Age: 70 years, Occ: Agri.

All R/o: Ahmedpur, Tq. Ahmedpur,
Dist. Latur.

.....PETITIONERS

VERSUS

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Through Secretary,
Urban Development Department Mantralaya,
Mumbai-32.
2. The Director Town Planning,
Maharashtra State Pune,
Administrative Building near
Railway Station, Pune.



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Ahmedpur through Chief Officer.
5. Maharashtra Housing Development Corporation
Through its Executive Engineer,
Latur Division, Gruha Nirman Bhavan,
Near mahavir Stambh, Bus Stand Road,
Aurangabad.

.....RESPONDENTS

**WITH
WRIT PETITION NO.9062 OF 2012**

1. Laxmikant s/o Shivrampanth Pantoji,
Age: 64 years, Occ: Pensioner.
2. Anantrao s/o Shankarrao Pantoji,
Age: 80 years, Occ: Pensioner.
3. Shashikant s/o Shankarrao Pantoji,
Age: 76 years, Occ: Agriculture.
4. Pandit s/o Vitthalrao Devne,
Age: 58 years, Occ: Service.
5. Rameshwar s/o Pundlikrao Kadam,
Age: 42 years, Occ: Service.
6. Ravindra s/o Apparao Sakhre,
Age: 48 years, Occ: Service.
7. Baburao s/o Maroti Kotgire,
Age: 52 years, Occ: Service.
8. Anant s/o Vithalrao Kashikar,
Age: 50 years, Occ: Service.
9. Rangnath s/o Venkatrao Bhadate,
Age: 44 years, Occ: Service.

All R/o: Ahmedpur, Tq. Ahmedpur,
Dist. Latur.



10. Sau. Durgabai w/o Anantrao Joshi,
Age: 40 years, Occ: Household,
R/o: Vishalnagar Behind Nirmaladevi
Kale School, Latur, Dist. Latur.
11. Kalyaneshwar s/o Prabhuappa Kore,
Age: 35 years, Occ: Agri,
R/o: Satala, Tq. Ahmedpur,
Dist. Latur.

.....PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary,
Urban Development Department Mantralaya,
Mumbai-32.
2. The Director Town Planning,
Maharashtra State Pune,
Administrative Building near
Railway Station, Pune.
3. The Town Planner, Latur,
Tq. & Dist. Latur.
4. The Municipal Council,
Ahmedpur through Chief Officer.

.....RESPONDENTS

Mr. V. D. Salunke, Advocate for the petitioners.
Mr. S. N. Kendre, Advocate for respondent nos.1 to 3
Mr. P. S. Jadhav h/f Mr. V. P. Latange, Advocate for respondent no.4.
Mr. U. S. Mote, Advocate for respondent no.5

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CORAM : KISHORE C. SANT &
AJIT B. KADETHANKAR, JJ.

RESERVED ON : 29TH JULY, 2026

PRONOUNCED ON : 03RD AUGUST, 2026



JUDGMENT :- (Per Ajit B. Kadethankar, J.)

(i) Preface:

a. Interpretation of Section 26 (1) of the Maharashtra Regional

and Town Planning Act, 1966 r/w its Third Proviso clause (iii), as

regards to the limitation mandate is the subject-matter of this

Petition.

b. In brief, whether if the phrase “Shall” used in Section 26 (1) of

the Act continued with ‘not later than’ is of mandatory nature or

leaves discretion forming it directory in character, is the moot point

to be decided in this petition.

c. Section 23 (1) of the Maharashtra Regional and Town Planning

Act 1966 (“the 1966 Act” for brevity), provides that the Town

Planning authority shall declare a notice of intention for preparing

Development Plan. Section 26(1) of the 1966 Act mandates that the

Planning authority Shall “not later than two years” prepare a

Development Plan and publish the same in official gazette for

inspection to the public and for invitation of objections, if any.

d. In the case of Ahmedpur city, a notice u/s 23 (1) of the 1966

Act was issued on 27.08.2003. However, instead of complying Section

26(1) within the mandatory period of two years w.e.f. notice u/s

23(1), the Planning Authority did it extreme belatedly i.e. almost

after five years on 08.05.2012.



e. One more issue requires to be dealt herein. Second proviso to Section 26(1) of the 1966 Act permits the State Government to grant extension to the Two years mandate at the request of the Planning Authority. Third proviso to the Section 26(1) provides that the extension shall not be of 06 months 'in aggregate'. Such extension must be sought before lapse of the two years w.e.f. notice u/s 23(1) of the 1966 Act. In this case the extension itself is sought after five years; and the State government granted backdated extension of 24 months that too in a single day.

f. As such, at two stages the Respondent nos. 1 to 3 have grossly violated the mandate of compliance and the restricted leave.

(ii) Rule. Rule made returnable forthwith. Heard the petitions for final disposal by consent of the parties.

(iii) Petitioners have lodged their respective Writ Petitions with following substantive prayers;

Writ Petition No.5569 of 2012

(B)To issue writ of certiorari or any other appropriate writ or direction in the like nature, the impugned notification dtd. 29.03.2012 issued by Urban Development Department Maharashtra State, Mumbai published in Government Gazette dtd. 08.05.2012 may kindly be quashed and set-aside to the extent of finalization of draft development plan by reserving site no.49 for Mahda. To the extent of 5 A. 27 G. of land in S.Nos. 67/1, 67/1/2 and 67/2 of Ahmedpur qua the petitioners.



(c) To issue writ of mandamus or any other appropriate writ, order or directions in the like nature, it may be hold and declare that, the impugned notification dtd. 29.03.2012 issued by Urban Development Department Maharashtra State, Mumbai, published in Government Gazette dtd. 08.05.2012 to the extent of reservation of site No.49 for Mahda in Land S.No. 67/1, 67/1/2 and 67/2 to the extent of 5-A & 27-G owned and possessed by petitioners, is illegal being contrary to mandatory provisions of the Act, hence it is vitiated.

Writ Petition No.5599 of 2012

(B)To issue writ of certiorari or any other appropriate writ or direction in the like nature, the impugned notification dtd. 29.03.2012 issued by Urban Development Department Maharashtra State, Mumbai published in Government Gazette dtd. 08.05.2012 may kindly be quashed and set-aside to the extent of finalization of draft development plan by reserving site no.49 for Mahda. To the extent of 3 A. 16 G. of land in S.Nos. 67/2 of Ahmedpur.

(c) To issue writ of mandamus or any other appropriate writ, order or directions in the like nature, it may be hold and declare that, the impugned notification dtd. 29.03.2012 issued by Urban Development Department Maharashtra State, Mumbai, published in Government Gazette dtd. 08.05.2012 to the extent of reservation of site No.49 for Mahda in Land S.No. 67/2 to the extent of 3 A & 16 G owned and possessed by petitioners, is illegal being contrary to mandatory provisions of the Act, hence it is vitiated.

Writ Petition No.9062 of 2012

(B)To issue writ of certiorari or any other appropriate writ or direction in the like nature, the impugned notification dtd. 29.03.2012 issued by Urban Development Department Maharashtra State, Mumbai published in Government Gazette dtd. 08.05.2012 may kindly be quashed and set-aside to the extent of finalization of draft development plan by reserving site no.49 for Mahda. To the extent of 10 H. 64 R. of land in S.Nos. 68/1, 68/1/1 and 68/2 of Ahmedpur qua the petitioners.

(c) To issue writ of mandamus or any other appropriate writ, order or directions in the like nature, it may be hold and declare that, the impugned notification dtd. 29.03.2012 issued by Urban Development Department Maharashtra State, Mumbai, published in Government Gazette dtd. 08.05.2012 to the extent of reservation of site No.49 for Mahda in Land S.No. 68/1, 68/1/1 and 68/2 to the extent of 10 H & 64 R owned and possessed by petitioners, is illegal being contrary to mandatory provisions of the Act, hence it is vitiated.

(iv) Facts in brief:

- a. Facts of these cases are undisputed and common. The reliefs claimed by the Petitioners are also identical and, solely depend upon the mandatory legal provisions under the Maharashtra Regional and Town Planning Act (“the Act” for brevity), and the relevant dates in the process of preparation and publication of the Sanctioned Development Plan for city Ahmedpur, District Latur.
- b. The sequence of the events in the process of sanction of development plan could be seen as follows:

No.	Process	Date
01	Declaration of intention for preparation of development plan u/s 23 of the Act	27.08.2003
02	Publication of notification in daily ‘Rajsatta’	27.09.2003



03	Notification u/s 26 of the Act.	23.10.2008
04	1 st request for extension	24.10.2008
05	Approval to extension w.e.f. 04.09.2005 to 03.03.2006	28.01.2009
06	Approval to extension w.e.f. 04.03.2006 to 03.09.2006	28.01.2009
07	Approval to extension w.e.f.04.09.2006 to 03.03.2007	28.01.2009
08	Approval to extension w.e.f.04.03.2007 to 03.09.2007	28.01.2009
09	Invitation for objections	12.09.2008
10	Resolution by the Municipal Council Ahmedpur objecting the impugned development plan	26.08.2008
11	Notice for hearing on objections	05.06.2009
12	Final notification dated 06.03.2012 published in government gazette	08.05.2012
13	Writ Petition filed	13.06.2012

c. As stated in the preface, the Planning Authority was under mandate to prepare draft Development Plan and publish it in official gazette within Two years from the date of publication of notice u/s 23(1) of the 1966 Act.



d. The notice u/s 23(1) was published on 27.08.2003. Hence the Planning Authority was under obligation to prepare the draft Development Plan and publish it in official gazette within two years thereafter. The said job is not done within time.

e. As per the Proviso to the Section 26(1), more particularly Third Proviso, the State Government could have granted extension of maximum 06 months for preparation of Development Plan and publishing it.

f. The Planning authority sought permission for extension belatedly i.e. five years after publication of the notice u/s 23 (1) of the 1966 Act. The extension is granted by the State Government for 24 months on a single day.

g. The Petitioners lodged their objections to the competent authority, however could not succeed. Hence they have approached this Court vide present Writ Petition.

(v) **Submissions:-**

a. Mr. V. D. Salunke, learned Advocate for the petitioners refers to the mandates of the Section 23 to 32 of the Act. He would submit that it is evident that the respondent authorities utterly failed to follow the strict timeline provided under the statute.



b. He harps on failure of the authorities to follow the mandate of limitation enumerated in Section 26 (1) of the Act following the notice u/s 23 of the Act.

c. Mr. Salunke concludes his argument submitting that no adherence to the mandatory timeline frustrates the development plan. That, even the municipal council has also objection to the said plan. Under these circumstances continuing the development plan and justifying the same is an arbitrary act of the respondent authorities.

d. It is lastly submitted that the State Government misinterpreted the clause (iii) of Third Proviso to Section 26(1). While it is clearly provided that the extension can only be upto Six months in aggregate, the State Government granted extension of 24 months – however in a slot of Six months. With this arguments, Mr. Salunke, learned advocate prays to allow the Writ Petition.

e. Mr. S.N. Kendre, learned Assistant Government Pleader would however tries to justify the action of the respondent authorities. He would submit that despite there was some delay, that itself would not wash out the entire exercise of the respondent authorities nor would render the development plan illegal.



f. He would submit that, the development plan is prepared for the purpose of allotment of residences to the needy by the Maharashtra Housing and Area Development Authority i.e. M.H.A.D.A.

g. That, considering the noble object of the development plan, technicality of delayed procedure must not vitiate the development plan. Mr. Kendre, heavily places reliance on the reply affidavit filed by the respondent authorities.

h. Mr. U. S. Mote, learned advocate representing added Respondent no.5 - Maharashtra Housing and Area Development Authority would be at the disposal of the arguments advanced by the learned Assistant Government Pleader.

i. Mr. P. S. Jadhav, learned advocate h/f Mr. V. P. Latange, learned advocate for Respondent no.4 - Municipal Council, Ahmedpur submits that the local body has already objected the impugned development plan, and supports the Petitioner.

(vi) Discussion and consideration:

a. We heard the parties at length. With the able assistance of the learned advocates and the learned Assistant Government Pleader, we have gone through the record. Considering the facts recorded above and the arguments advanced by the parties, we are only required to answer the interpretation of the provisions u/s 26(1) of the 1966 Act.



- b. Petitioners are the residents of the Ahmedpur having their respective lands affected by the impugned development plan. We find that their locus does not invite any objection.
- c. It would be appropriate to go through the most relevant provisions under the Act for the purpose of adjudicating the grievance of the petitioners.

Section 23 of the Act Reads thus:

23. Declaration of intention to prepare development plan.— (1) A planning Authority shall, before carrying out a survey and preparing an existing-land-use map of the area as provided in section 21, by a resolution make a declaration of its intention to prepare a Development plan; and shall despatch a copy of such resolution with a copy of a plan showing only the boundary of the entire area proposed to be included in the Development plan to the State Government. 2[The said Officer] shall also make a similar declaration and submit a copy thereof to the State Government. The Planning Authority or the said Officer, as the case may be, shall also publish a notice of such declaration in the Official Gazette, and also in one or more local newspapers in the prescribed manner, inviting suggestions or objections from the public within a period of not less than sixty days from the publication of the notice in the Official Gazette.

(2) A copy of the aforesaid plan shall be open to the inspection of the public at all reasonable hours at the head office of the Planning Authority and Local Authority.



Section 26 (1) of the Act reads thus:

[Preparation and publication of notice] of draft Development plan.

26. (1) Subject to the provisions of section 21, a Planning Authority, or the said Officer shall, not later than two years from the date of notice published under section 23, [prepare a draft Development plan and publish a notice in the Official Gazette, and in such other manner as may be determined by it stating that the Development plan has been prepared. The notice shall state the name of the place where a copy thereof shall be available for inspection by the public and that copies thereof or extracts therefrom certified to be correct shall be available for sale to the public at a reasonable price, and inviting] objections and suggestions within a period of [thirty days] from the date of notice in the Official Gazette :

[Provided that, in case of a Municipal Corporation having population of ten lakhs or more as per the latest census, the period for inviting objections and suggestions shall be sixty days from the date of notice in the Official Gazette:]

[Provided further that], the State Government may, on an application of the Planning Authority, by an order in writing, and for reasons to be recorded from time to time extend the period for preparation [and publication of notice] of the draft Development plan.

[Provided also that, the period so extended shall not in any case, exceed,—

(i) twenty-four months, in the aggregate, in case of Municipal Corporation having population of one crore or more, as per the latest census figures;

(ii) twelve months, in the aggregate, in case of Municipal Corporation having population of ten lakhs or more but less than one crore, as per the latest census figure ;

and

(iii) six months, in the aggregate, in any other case.]



d. Section 26 (1) of the Act mandates that the planning authority must prepare a draft development plan within two years from the date of publication of notice u/s 23 (1) of the Act, and must publish it in official gazette.

e. In order to hold whether the imposition of limitation is mandatory or directory in nature, it would needful to see the *litera legis* of Section 26(1) of the 1966 Act. It says,

*(1) Subject to the provisions of section 21, a Planning Authority, or the said Officer **shall, not later than two years** from the date of notice published under section 23, 3[prepare a draft Development plan and publish a notice in the Official Gazette, and in such other manner as may be determined by it stating that the Development plan has been prepared.”*

f. The articulated phrase “not later than” is significant to expose the *sententia legis* the provision. Intention of the legislature is abundantly clear from the specific phraseology that the word ‘Shall’ is for mandatory compliance of the limitation which can be not more than two years. There is difference between ‘within two years’ and ‘not later than two years’. While the former may attribute directory nature, the later would abundantly ‘mandatory’. It must be understood that ‘content changes the context’.

g. In view of above, we are of the considered view that the limitation provided u/s 26(1) for preparing and publishing the



Development Plan is absolutely mandatory, and the provision is not at all directory.

h. Chapter III (b) of the 1966 Act is a complete code in itself for preparation and publication of Development Plan under the 1966 Act. Considering the time-lined mechanism, missing a single process qua the mandatory provisions in the entire chain, would vitiate the process itself.

i. A feeble attempt was made by the learned Assistant Government Pleader referring to the 'extension' clause at the Proviso of the Section 26(1). It is sought to be submitted that since there is provision for extension, it needs to be treated that the provision for strict limitation u/s 26(1) is not mandatory, but it would be directory. We find that such submission is misconceived.

j. We do not subscribe ourselves to such logic. The Third proviso to the Section 26 (1) leaves a restricted space for extending the limitation to publish the draft development plan and publishing it in official gazette. In view of the clause (iii) to the Second Proviso, in the case in hand the extension can only be by Six months maximum.

k. It is trite law that Proviso can not override the spirit of the principal provision. From the wording of the proviso itself it is clear that it is merely an 'extension'. This proviso can not be read in isolation without the context of principal provision. Hence we discard



the arguments advanced by the respondent authorities.

l. Lets now revisit the dates of the events. The declaration of intention for preparation of development plan u/s 23 (1) of the Act was published on 27.08.2003. The Planning Authority was bound to prepare and publish the draft plan on or before 26.08.2005. On an application by the Planning Authority, and off course for reasons recorded, the limitation could be maximum extended to 26.02.2006.

m. Apparently, the planning authority neither complied the mandate of preparing the draft plan and publishing it within two years from 27.08.2003, nor within two years sought extension to the State Government.

n. The extension is sought directly on 28.01.2009 i.e. almost after Five and a half year. Ridiculously, at one stroke the State authorities granted four back dated extensions i.e. 04.09.2005 to 03.03.2006, 04.03.2006 to 03.09.2006, 04.09.2006 to 03.03.2007, and 04.03.2007 to 03.09.2007.

o. Third Proviso of Section 26 (1) says,

*“Provided also that, the period so extended **shall not in any case**, exceed,—*
(i)....
(ii).....
*(iii) six months, **in the aggregate**, in any other case.”*

p. Thus, it is abundantly clear that the State Government seriously erred in granting four extensions of six months each, that



too, backdated.

q. The act of the Respondent nos. 1 to 3 is not at all justifiable.

Their haphazard procedure is in utter derogation of the Chapter III

(b) of the Act. The provisions and the mandates of law are crumbled

and twisted absolutely unthoughtfully. It has made the provisions and

the mandates therein meaningless.

r. Reliance placed by the Petitioners on the observations made by

this Court in the case of ***Govind Navpute Vs. State of Maharashtra***

and ors. reported at ***2016(6) All M.R. 655*** can not be said out of

place, of which paragraph no.36 read thus:

36. In the instant matter, notice under section 23 of the Act, declaring the intention to prepare a development plan, was published on 7.2.2013 and as such, the period provided for preparation and publication of notice of draft development plan came to an end on 6.2.2015. Until this date, the draft development plan was not prepared by the Planning Authority. The officer appointed by the Planning Authority with the approval of the State Government, submitted the draft development plan in sealed cover to the Municipal Corporation for publication on 25.3.2015 i.e. after lapsing of the period provided under section 26(1). The request for grant of extension of time, as provided under the second proviso, was itself tendered after lapse of the extended period i.e. application for extension was tendered to the Director of Town Planning on 29.3.2016. The Planning Authority sought extension under the proviso for a period commencing from 7.2.2015 to 6.2.2016. The said request for grant of extension was made after lapsing of extended period, which can be provided under the proviso to section 26. In the meantime, the development plan was published by the Municipal Corporation on 4.2.2016. It is, thus, clear that even until lapsing of the extended period, as provided under the third proviso to section 26, the Planning Authority did not make any request for grant of extension and proceeded to publish the draft development plan without securing such



extension. It must be recorded that grant of extension under section 26 second proviso) is not merely an empty formality. The State Government, on consideration of application of Planning Authority, by an order in writing and for the reasons to be recorded from time to time, is required to grant extension, as requested. The State Government is expected to apply its mind to the circumstances and thereafter grant extension on consideration of all relevant factors. Section 26(1) of the Act provides a mandate to prepare and publish the notice of draft development plan within a period of two years. The word used in sub-section (1) of section 26 is “shall” and not “may”. There is a power with the State Government to grant extension, but the power is to be exercised after application of mind and by issuing order in writing and for the reasons to be recorded. If the facts of the instant case are considered, it is clear that for initial period of two years, as provided under section 26(1), after publication of intention under section 23, the notice in respect of preparation of the draft development plan was not published. It is permissible for the State Government to grant extension for a total period of twelve months in aggregate, however, until completion of extended period of one year from the date of publication of intention under section 23 i.e. up to 6.2.2016, even a request was not made to the Director for grant of extension and such a request was made belatedly after publication of notice of the draft development plan.

While interpreting provisions of section 26, the consequences, as provided under section 21(4-A) for not adhering to the time frame prescribed under section 26(1) cannot be overlooked. Sub-section (4-A) of section 21 also uses the word “shall” and as such, it shall have to be construed as a mandate. Sub-section (4-A) of section 21 provides that if the time frame provided under sections 25, 26 and 30 for doing anything specified in the said sections lapses, it shall be presumed that the Planning Authority has failed to perform the duties imposed upon it and the work remaining to be done up to the stage of submission of draft Development Plan shall be done by the authority prescribed in the said section.

- s. Effective and scrupulous implementation of the legislation is the foremost object and duty of the executive. We are well guided by the basic basic principle *Lex ita scripta est*. On not count the action of



Respondent nos.1 to 3 can be justified, so the impugned development plan too, for the reasons recorded above.

t. We find that the Respondent nos. 1 to 3 have given ceremonial goby to the mandates of Section 23 and 26 of the Act, for which we must exercise our extra ordinary jurisdiction u/a 226 of the Constitution.

u. Resultantly, we pass following order.

ORDER

Writ Petition No.5569 of 2012

- (i) Writ Petition stands allowed in terms of prayer clause (B) and (C) of the Writ Petition.
- (ii) Issue writ accordingly.
- (iii) Rule made absolute in above terms.

Writ Petition No.5599 of 2012

- 1. Writ Petition stands allowed in terms of prayer clause (B) and (C) of the Writ Petition.
- 2. Issue writ accordingly.
- 3. Rule made absolute in above terms.

Writ Petition No.9062 of 2012

- I. Writ Petition stands allowed in terms of prayer clause (B) and (C) of the Writ Petition.
- II. Issue writ accordingly.
- III. Rule made absolute in above terms.

[AJIT B. KADETHANKAR, J]

[KISHORE C. SANT, J.]