

(2008) 02 BOM CK 0057

In the Bombay High Court

Case No : Civil Revision Application No. 222 of 999

Kalyan Dombivli Municipal Corporation

APPELLANT

Vs

Shri Prakash Mutha

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 7 Rule 11
Maharashtra Regional and Town Planning Act, 1966 — Section 149, 21, 23, 23(2), 26

Citation : (2008) 3 ALLMR 269 : (2008) 3 BomCR 720 : (2008) 3 MhLj 686

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : A.S. Rao, for the Appellant; Rajesh Ketkar, for the Respondent

Final Decision : Allowed

Judgement

J.H. Bhatia, J.—This application is preferred by the Kalyan Dombivli Municipal Corporation the original defendant, seeking to challenge the order passed by the Joint Civil Judge, Junior Division Kalyan below Exhibit 30 holding that the suit filed by the plaintiff/respondent is not barred by Section 149 of the Maharashtra Regional Town Planning Act (In brief "M.R.T.P.Act") and the plaint is not liable to be rejected under Order 7 Rule 11 of the Civil Procedure Code.

2. To state in brief, it is the case of the plaintiff/respondent that he is resident of Kalyan city and has also some property within the limits of Municipal Corporation. The defendant/Corporation is the local authority and is also planning authority for the corporation area under the Bombay Provincial Municipal Corporations Act, 1949 and under the M.R.T.P. Act. It is contended that this Corporation was constituted on 1-10-1983. Even before that there was development plan prepared in the year 1980 for Kalyan, which is within the local limits of the Corporation. According to the plaintiff, that plan is still in existence and no directions were issued to modify the plan. However, on 5-12-1996, the defendant/Corporation prepared a Draft Development Plan and notified the same in the Gazette on 5-12-1996. The objections were called by 3rd February, 1997 from

the aggrieved parties. According to the plaintiff, he and some other persons had raised certain objections about the said development plan. However, no attempt was made by the Corporation to redress the grievances of these persons. It is contended that draft Development Plan was not prepared as per the procedure laid down under the M.R.T.P. Act. It is also not within the period of limitation and its period has not been extended. It was contended that the draft Development Plan was sanctioned by the Mayor, who was not the Competent Authority and it was also not published in local newspapers. With these allegations, the plaintiff filed suit seeking several reliefs. Mainly he sought declaration that the draft Development Plan published in the official Gazette on 5-12-1996 is illegal and ultra vires of the M.R.T.P. Act. He also sought perpetual injunction restraining the Municipal Corporation from taking any action on the basis of the draft Development Plan. He filed the suit as representative suit under Order 1 Rule 8 and accordingly notice was published. In the view of the said notice, one Nandkumar Sonavane also joined as a plaintiff. Plaintiff also filed an application, Exhibit 5 for seeking temporary injunction of the same nature.

3. Municipal Corporation resisted the suit by filing written statement and at the same time, also filed an application Exhibit 27 contending that the notice/draft plan published on 5-12-1996 had reached its finality and in view of the provisions of Section 149 of the M.R.T.P. Act, such order or notice can not be questioned in any suit or legal proceeding and, therefore, the suit is not tenable. In view of this, no cause of action is disclosed and the plaint is liable to be rejected under Order 7 Rule 11.

4. In view of this application and the objection taken by the defendant about the tenability of the suit, trial Court framed preliminary issues and heard the parties. After hearing the parties, the learned trial Court rejected the contention of the defendant/Corporation that the suit is barred u/s 149 of the M.R.T.P. Act. In the result, the said application came to be rejected. Hence, this Revision Application by the Defendant/Corporation.

5. Heard the learned Counsel for the Parties.

6. From the pleadings in the plaint, it is clear that plaintiff has challenged the legality and vires of the Draft Development Plan published on 5-12-1996. According to the plaintiff, this Draft Development Plan has not been prepared as per the provisions of M.R.T.P. Act and, therefore, it is illegal and liable to be set aside. The learned Counsel for the Defendant/Corporation vehemently contended that when provisions of Chapter III pertaining to the Development Plan in the M.R.T.P. Act and the provisions of Section 149 of the said Act are carefully perused, it will be clear that the procedure has been laid down for preparation of development plan and for its sanction and when any such order or notice is issued or published by the State Government or by the Planning Authority or Development Authority under this Act, it shall be final and shall not be questioned in any suit or other legal proceedings. In support of this the learned Counsel placed reliance upon several authorities. On the other hand, Mr. Ketkar

the learned Counsel for the plaintiff/respondent placed reliance upon Raja Bahadur Motilal and Another Vs. State of Maharashtra and Others, in support of his contention that Section 149 has limited application to orders issued in the Act and it does not completely bar filing of the suit challenging such development plan. To appreciate rival contentions advanced by the learned counsel, it will be necessary to find out procedure laid down in the M.R.T.P. Act in connection with the preparation and publication of development plans in the light of several authorities, which have been referred to by the learned Counsel for the Parties.

7. Section 21 of the M.R.T.P. Act provides that as soon as may be after the commencement of this Act, but not later than three years after such commencement, every Planning Authority shall carry out a survey, prepare an existing land-use map and prepare a draft Development Plan for the area within its jurisdiction in accordance with provisions of Regional plan, where there is such a plan, publish a notice in the Official Gazette and in such other manner as may be prescribed stating that the draft Development Plan has been prepared and submit the same to the State Government for sanction. Sub-section (2) provides that Planning Authority, which is constituted after the commencement of this Act shall, not later than three years after the date of its constitution, prepare a draft Development Plan and publish a notice of the same in the Official Gazette or in such other manner as may be prescribed and submit the draft Development Plan to the State Government. Aforesaid period of three years may be extended from time to time by the State Government on request made by the Planning Authority. If the Draft Development Plan is not submitted within the prescribed period or extended period, the State Government may appoint an officer for that purpose, who may, in consultation with the Director of Town Planning, prepare such Development plan and publish the same.

8. Section 23 provides that before carrying out a survey and preparing an existing land-use map of the area as provided in Section 21, a Planning Authority shall, 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. The Planning Authority shall also publish a notice of such declaration in the Official Gazette and also in one or more local newspapers inviting suggestions or objections from the public within a period of not less than 60 days from the publication of notice in the Official Gazette. Sub-section 2 of Section 23 provides that 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.

9. Section 26 provides that a Planning Authority shall prepare a draft Development Plan and publish a notice in the Official Gazette and in such other manner not later than two years from the date of notice published u/s 23. Notice shall state the name of the place where a copy of the draft Development Plan shall be available for inspection by the public and that copies thereof certified to

be correct shall be available for sale to the public at a reasonable price. By the same notice, objections and suggestions shall be invited within 60 days from the date of notice in the Official Gazette. Time provided in Section 26 may be extended by the Government from time to time. Sub-section 2 of Section 26 provides about the requirements of the said notice and the documents, which are required to be made available. They include a report on the existing-land-use map and the surveys carried out for the purpose of preparation of the draft plan, maps, charts and a report explaining the provisions of the draft Development Plan and other legal provisions about the sanction and implementation of the plan, etc.

10. Section 28 provides that if any suggestion or objection is received by the Planning Authority relating to the draft Development Plan from any person, the Planning Authority may, after considering the report of the Planning Committee and the suggestions or the objections, modify or change the plan in such manner as it may think fit. Sub-section 2 provides that the Planning Authority shall forward the draft Development Plan alongwith the objections and suggestions received by it to the Planning Committee. Sub-section 3 of Section 28 provides that the Planning Committee shall, on receipt of objections and suggestions, make such enquiry as it may consider necessary and give a reasonable opportunity of being heard to any person, who may have filed any objection or made any suggestion in respect of the draft Development Plan and after considering the same, the Planning Committee shall submit its report to the Planning Authority. Not later than three months after the receipt of the report of the Planning Committee, the Planning Authority shall consider report including objections and suggestions and make such modifications or changes in the draft Development Plan and the draft Development Plan so modified shall be again published in the Official Gazette. Section 30 provides for the procedure to be followed by the Government for according sanction to the draft Development Plan. u/s 31(2) the State Government may appoint an officer of rank, not below that of a Class I. The officer, appointed for this purpose, shall hear any person, who has made any objections or suggestions in respect of the draft Development Plan. After hearing the concerned parties and persons, the Government may sanction the plan with or without modification and after it is sanctioned, it becomes "final Development Plan"

11. From the provisions pertaining to the preparation, publication and sanction of the draft Development Plan, it becomes clear that extensive procedure has been laid down by the law and almost at every stage, there is a provision for inviting objections and suggestions and for giving opportunity of hearing to the person, who might have raised objections or made suggestions. Naturally complete procedure is very lengthy and time consuming. So many steps for calling objections, suggestions and hearing are prescribed to see that before the development plan is finally sanctioned, all the pros and cons should be taken into consideration.

12. If pleadings of the plaintiff are taken into consideration, it becomes clear that the draft Development Plan was infact published in the Official Gazette on 5-12-1996 and the objections or suggestions were invited from the public. According to him, he had infact raised certain objections and grievances about the said plan but he was not given hearing and he rushed to file a suit in October, 1997 seeking declaration that the draft Development Plan is unlawful, ultra vires, illegal and the same should be cancelled. It indicates that the plaintiff did not even wait for following of the procedure laid down by the M.R.T.P. Act about sanction of the said plan. As per the procedure laid down by law, he had opportunities to raise objections and to make suggestions from time to time and even if the Planning Authority did not consider his objections or suggestions, they could be considered by the Planning Committee, which would be constituted under the Act. The Planning Committee would include not only certain representatives of the Planning Authority but also some experts appointed by the Government. If he would not be satisfied with the view taken by the Planning Authority and thereafter again by the Planning Committee, he could still approach the Government and he would have an opportunity of being heard by the Government or by Class I officer appointed for this purpose. Therefore, it is clear that there is fool proof mechanism provided by the Act for the preparation, publication and sanction of development plan of any municipal area. The objections, which the plaintiff has raised against the Draft Development Plan in the application could be very conveniently raised before the Planning Authority, Planning Committee or the Government and they could be looked into.

13. Section 149 of the M.R.T.P. Act reads as follows:

Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings. " From the language of this Section, it is clear that every order passed or direction issued by the State Government or order passed or notice issued by any Regional board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings. The notice of intention to prepare draft Development Plan as well as the notice of the preparation of the draft Development Plan inviting objections and suggestions from the public and all acts done by the Planning Authority under the provisions of the M.R.T.P. Act and, therefore, all such orders and notices get the finality and are immune from being challenged or questioned in any suit u/s 149 of the M.R.T.P. Act. Thus, the jurisdiction of the Civil Court is expressly and clearly excluded u/s 149 of the M.R.T.P. Act. Object of the exclusion of the jurisdiction of the Civil Court u/s 149 appears to be avoiding unnecessary litigation in respect of any order or notice that may be issued under the M.R.T.P. Act in respect of any acts, which are required to be done by different authorities under the M.R.T.P. Act. Taking the case of the development plant itself, if the jurisdiction of the Civil Court would not be excluded, any person, whether he is genuinely interested in

the development of the town or with some ulterior motive could file a suit, obtain some stay and then see that the suit is not disposed off for a long period. As a result of this preparation of the development plan and the actual development of the city itself may be unnecessarily prevented or stopped. This would not be in larger interest of the society and particularly the people living in the city.

14. In *Raja Bahadur Motilal and Anr. (Supra)* , there was a dispute between the petitioner and the respondent No. 7 regarding the rights of the developer to load the T.D.R. on the construction made on the land of the petitioner under some agreement between the parties. The developer had sought permission to load T.D.R. on the construction made on the land of the petitioner under some agreement between the parties. As there was question of interpretation of contract between the parties and as it was found that in such cases, sanction to the construction plan or to the user of the T.D.R. by the Municipal Authority was only mechanical and administrative, while the Municipal Authority was not much interested or concerned in the real dispute between the parties, the jurisdiction of the Civil Court was not taken away u/s 149 of the M.R.T.P. Act. It was held that the dispute between the petitioner and the respondent No. 7 Developer could be decided only by filing suit because the terms of the contract between the petitioner and the respondent No. 7 could be interpreted only after evidence was led by the concerned parties and this could not be possible in the writ filed before the High Court. With reference to the facts of the particular case, Division Bench of this Court had held that bar to the filing of the suit u/s 149 has limited application to the orders for grant or refusal of permission for construction. Division Bench was not called upon to decide bar to the filing of the civil suit in relation to the orders or notices, which may be required to be passed or issued by different authorities under this Act while discharging their official functions.

15. It may be noted that after decision of the Division Bench in *Raja Bahadur Motilal & Another (Supra)* , the learned Single Judge of this Court in Appeal From Order No. 813 of 1982, decided on 11-10-2002, held that suit is barred u/s 149 of the M.R.T.P. Act. This authority was relied upon by another learned Single Judge of this Court in *Dr. Mohan N. Bhawe Vs. The Municipal Corporation of Greater Bombay* , . In that case a notice u/s 55(1) of the M.R.T.P. Act was issued for demolition of unauthorised temporary structure raised by the plaintiff/appellant and it was held that the suit is barred and such notice could not be challenged or questioned in any suit. Again in *Bales Sardara Paracha v. Municipal Corporation of Greater Bombay* 2005(4) Bom C.R. 557, the learned Single Judge of this Court after referring to the several authorities came to conclusion that when notice u/s 55(1) of the M.R.T.P. Act is issued, jurisdiction of the Civil Court is excluded u/s 149 of the M.R.T.P. Act and the suit can not be entertained.

16. In *Mohan N. Bhawe* as well as in *Bales Sardara Paracha*, atleast the plaintiff could have some grievance because a notice was issued to the concerned party u/s 55(1) for demolition of structure raised by him and it was held by this Court that the suit is barred u/s 149. In the present case, the plaintiff does not appear

to have any personal grievances nor his own property or right were being affected by any order or notice issued by the Planning Authority. In the present case, the Planning Authority had issued and published draft Development Plan calling objections and suggestions from the people only for the purpose of preparation of development plan for the controlled and regulated development of the city. In my considered opinion, Section 149 clearly bars jurisdiction of the Civil Court to entertain any suit challenging such notice or order. The learned trial Court has not considered the objection taken by the defendant/Corporation in proper perspective and came to wrong conclusion that the suit is not barred.

17. Taking into consideration all the facts, circumstances and the legal position, I find that suit is clearly barred u/s 149 of the M.R.T.P. Act and, therefore, Revision Application deserves to be allowed.

18. In the result, Revision Application is allowed. The impugned order passed by the trial Court is hereby set aside and it is declared that the suit is barred u/s 149 of the M.R.T.P. Act.