
(2015) 02 BOM CK 0238
In the Bombay High Court
Case No : Writ Petition No. 7118 of 2011

Modern Education Society	Vs	APPELLANT
State of Maharashtra and Others		RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Regional and Town Planning Act, 1966 — Section 126, 2, 22, 26, 28

Citation : (2015) 02 BOM CK 0238

Hon'ble Judges : Abhay Shreeniwas Oka, J; A.K. Menon, J

Bench : Division Bench

Advocate : Shriniwas S. Patwardhan, for the Appellant; V.S. Gokhale, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Abhay Shreeniwas Oka, J.

1. Heard the learned counsel appearing for the Petitioner, the learned Senior Counsel appearing for the third Respondent, the learned counsel appearing for the second Respondent and the learned AGP for the first Respondent. By this Petition under Article 226 of the Constitution of India, the challenge is to a part of the Notification dated 1st June, 2011 published by the State Government in exercise of powers under Sub-Section (1) of Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP").

2. The second Respondent is the Municipal Council constituted under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "the said Act of 1965"). The second Respondent Municipal Council is the local authority within the meaning of Sub-Section (15) of Section 2 of the MRTP Act. The second Respondent is also a Planning Authority within the meaning of Sub-Section (19) of Section 2 of the MRTP Act.

3. The Petitioner is a registered Public Trust which is carrying on educational activities as described in paragraph 1 of the Petition. The third Respondent is also a Public Trust carrying on educational activities. The second Respondent Planning Authority published a draft Development Plan dated 25th March, 2006 and objections and suggestions to the said draft were invited. After following the procedure, the second Respondent submitted the draft Development Plan to the State Government on 24th March, 2009 for sanction. The draft Development Plan was submitted in accordance with Sub-Section (1) of Section 30 of the MRTP Act. Two parts of the said draft Development Plan were sanctioned by the State Government by the notifications dated 1st October, 2009 and 23rd February, 2011.

4. On 31st August, 2009, the State Government published a Notification by which the State Government notified its intention to make certain modifications of substantial nature in relation to certain proposals of reservations and zoning in the said draft Development Plan as specified in Schedule (A) appended to the said Notification. The State Government, therefore, invited objections and suggestions to modifications as specified in Schedule (A). The Deputy Director of Town Planning, Pune Division, Pune was authorised to hear the objections and suggestions to the proposed modifications in accordance with Sub-Section (2) of Section 31.

5. In this Petition, we are concerned with the proposal bearing No. EP-25 in relation to Site No. 117 which was shown reserved for a High School in the draft Development Plan published by the second Respondent Municipal Council with the Petitioner as the Appropriate Authority. The draft Development Plan submitted by the Planning Authority to the State Government contained a proposal that northern 50% portion of the reservation be deleted. The proposed modification published by the State Government was that the entire reservation of Site No. 117 (High School) be reinstated as per the published plan in accordance with Section 26 with the Appropriate Authority as the third Respondent Trust. The said proposed modification in respect of Site No. 117 has been sanctioned by the impugned Notification dated 1st June, 2011. The challenge by the Petitioner to the impugned Notification dated 1st June, 2011 is to that extent.

6. It will be necessary to make a reference to other factual aspects of the case. On 24th December, 2003, the Petitioner applied to the Town Planning Officer of the second Respondent for reserving the land adjoining Sangli - Vita road for its benefit. In the draft Development Plan published in March, 2006 by the second Respondent Municipal Council, it was provided that the land bearing Survey No. 899 admeasuring 150 gunthas covered by reservation site No. 117 shall be reserved for a High School and related activities of the Petitioner. The case of the Petitioner is that except the owner of the land under Reservation of site No. 117, no one else raised any objection. It is pointed out in the Petition that the Planning Committee appointed by the second Respondent dealt with the

objections raised by the then owner of the land bearing Survey No. 899. The Planning Committee suggested that 50% of the proposed reservation from its Northern side be deleted and be included in the residential zone. The Planning Committee recommended that the Southern half portion be retained as reserved for the benefit of the Petitioner for High School.

7. On 1st December, 2008, a resolution was passed by the General Body of the second Respondent Municipal Council. The proposal before the General Body was to delete the name of the Petitioner as the Appropriate Authority of the land under Reservation No. 117 and show the name of the third Respondent as Appropriate Authority. The General Body of the second Respondent rejected the resolution.

8. It is contended in the Petition that the fourth and fifth Respondents are controlling the second Respondent Municipal Council and that the third Respondent Trust is in the name of the fifth Respondent's father. The case made out in the Petition is that after the Development Plan was submitted by the second Respondent to the State Government, the Director of Town Planning submitted a report recommending that the reservation No. 117 as proposed in the draft Development Plan published under Section 26 of the MRTP Act be retained. The case of the Petitioner is that in terms of the report of the Deputy Director of Town Planning, a sanction was accorded by the Principal Secretary of the Urban Development Department and by the Hon'ble the Chief Minister on 28th August, 2009 and thereafter within three days, on 31st August, 2009, the Notification inviting objections to the proposed major modifications was issued. As stated earlier, the major modifications proposed was to make a reservation on the entire plot for the benefit of the third Respondent. It is not in dispute that in terms of the said Notification, the Petitioner raised objection. Only after considering the objections, a report was submitted by the Deputy Director of Town Planning, Pune and thereafter, the proposal in terms of the Notification dated 31st August, 2009 was sanctioned in terms of impugned Notification dated 1st June, 2011.

9. The first submission of the learned counsel appearing for the Petitioner is that as the Development Plan was submitted by the second Respondent in terms of Sub-Section (1) of Section 31 of the MRTP Act on 24th March, 2009, a portion of the plan has been sanctioned on 1st June, 2011 beyond the period prescribed by Sub-Section (1) of Section 31. He pointed out that the provision of Section 31 of the MRTP Act is amended by Maharashtra Act No. X of 2011 with effect from 5th April, 2011. He urged that the plan was not sanctioned even within the time prescribed by the MRTP Act as amended. He urged that even assuming that the amended provision of Sub-Section (1) of Section 31 was applicable, the plan for the excluded portion could have been published on or before 27th December, 2010 as the report was submitted by the Deputy Director of Town Planning, Pune on 28th June, 2010. He pointed out that though the impugned Notification was issued on 1st June, 2011 it was not published in Official Gazette on or before

26th June, 2011. He submitted that even otherwise as the report of the officer appointed under Sub-Section (2) of Section 31 was submitted on 26th June, 2010, the Development Plan of the excluded portion could have been sanctioned on or before 26th June, 2011 by actually publishing the notification in the Gazette on or before the said date. But it was not done.

10. His second contention is based on the definition of "Appropriate Authority" under Sub-Section (3) of Section 2 of the MRTP Act. He urged that on the basis of an application made by the Petitioner to the Planning Authority, a provision was made in the draft Development Plan by which the Petitioner was designated as an Appropriate Authority for reservation of site No. 117. He urged that the third Respondent never applied to the Planning Authority for designating it as an Appropriate Authority in respect of the reservation in question. He urged that in fact on 28th August, 2009, a decision was taken to approve the reservation No. 117 as provided in the draft published in the year 2006. Though the third Respondent never applied for being considered as the Appropriate Authority, for the first time, the State Government did the exercise of appointing the third Respondent as the Appropriate Authority by proposing major modification under the Notification dated 31st August, 2009. He urged that this exercise is completely illegal. He pointed out that as per the report submitted by the Deputy Director of Town Planning, there was no necessity of the modification of the said reservation. He submitted that the said action of the State Government is completely illegal and the status of the Petitioner as the Appropriate Authority could not have been disturbed.

11. The learned Senior Counsel representing the third Respondent urged that the third Respondent is the owner of the plot in reservation. He urged that before modifying the draft Development Plan as regards the reservation No. 117, the State Government followed the procedure for notifying the proposed changes. He pointed out the power of the State Government under Section 31 of modifying the draft Development Plan submitted by the Planning Authority. He also pointed out the resolution dated 1st December, 2008.

12. We had called upon the learned AGP to produce the file of the State Government for the purposes of perusing the notings made thereon. The learned AGP pointed out that the original file of the State Government has been destroyed in fire in Mantralaya. However, he produced the file available with the office of the Deputy Director of Town Planning, Pune for perusal of the Court.

13. We have carefully considered the submissions. It will be necessary to make a reference to certain provisions of the MRTP Act. Under Section 26 of the MRTP Act, the Planning Authority is required to publish the draft Development Plan in the Official Gazette for inviting objections and suggestions. Sub-Section (2) of Section 28 contemplates that the objections and suggestions received by the Planning Authority shall be forwarded to the Planning Committee of the Planning Authority as provided thereunder. Sub-Section (3) of Section 28 provides that the Planning Committee, on receipt of objections and suggestions, shall make

such inquiry as it may consider it to be necessary after giving an opportunity of being heard to those who have filed any objections or suggestions. The report of the Planning Committee is required to be placed before the Planning Authority. The Planning Authority is empowered to make modifications or changes in the draft Development Plan after considering the report of the Planning Committee and such draft is required to be published in the Official Gazette. Section 30 of the MRTTP Act contemplates the submission of the draft Development Plan approved by the Planning Authority to the State Government.

14. It will be necessary to make a reference to Section 31 of the MRTTP Act as amended by Maharashtra Act No. X of 2011 with effect from 5th April, 2011 which reads thus :-

"31. Sanction to draft Development plan:- (1) Subject to the provisions of this section, and not later than [six months] from date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, [***] the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft, Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan:

[Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period [not exceeding six months in the aggregate,] as may be specified in the notification:]

[Provided further that, where the modifications proposed to be made by the State Government or submitted by the Planning Authority under section 30 and proposed to be approved by the State Government without any further change are of a substantial nature with respect to the draft Development plan published under section 26, the Government shall publish a notice in the Official Gazette and also in not less than two local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of one month, from the date of such notice.]

(2) The State Government may appoint an officer of rank not below that of a Class-I Officer and direct him to hear any such person in respect of such objections and suggestions and submit his report thereon to the State Government.

(3) The State Government shall before according sanction to the draft Development plan take into consideration such objections and suggestions and the report of the officer.

(4) The State Government shall fix in the notification under sub-section (1) a date not earlier than one month from its publication on which the final Development plan shall come into operation.

(4A) The State Government may, by notification in the Official Gazette, delegate all the powers and functions under this section to the Director of Town Planning in such cases and subject to such conditions, if any, as may be specified in such notification.

(5) If a Development plan contains any proposal for the designation of any land for a purpose specified in clauses (b) and (c) of section 22, and if such land does not vest in the Planning Authority, the State Government shall not include that in the Development Plan, unless it is satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition not later than ten years from the date on which the Development plan comes into operation.

(6) A Development plan which has come into operation shall be called the "final Development plan" and shall, subject to the provisions of this Act, be binding on the Planning Authority."

15. Before the amendment was incorporated by the Maharashtra Act No. X of 2011, the first proviso to Sub-Section (1) of Section 31 provided the time of twelve months to the State Government to sanction the Development Plan from the date of the submission of its draft by the Planning Authority. The unamended section conferred a power on the State Government to extend the period for sanctioning the draft Development Plan which was provided in Sub-Section (1). By Maharashtra Act No. X of 2011, Sub-Section (1) was modified by curtailing the time of twelve months to six months and by providing that the extension cannot exceed six months in aggregate. The proviso underwent further amendment by Maharashtra Act No. V of 2014. The modified proviso permitted the State Government to extend the period provided in Sub-Section (1) of Section 31 not exceeding twelve months in case of Municipal Corporations and six months in any other case.

16. The power under Sub-Sections (1) of Section 31 vesting in the State Government is very wide. The State Government may sanction the draft Development Plan for the whole area, or for any part thereof, either with or without modification. The State Government is empowered to return the draft Development Plan to the Planning Authority for modifying the same. The State Government is also empowered to refuse to accord sanction and direct the Planning Authority to prepare a fresh Development Plan. The embargo of the outer limit prescribed will apply for exercise of power under Sub-Section (1) of Section 31.

17. If the State Government proposes to make any modifications in the draft Development Plan submitted by the Planning Authority which are of substantial nature, the second proviso to Sub-Section (1) of Section 31 mandates the State

Government to publish a notice in the Official Gazette inviting objections and suggestions in respect of the proposed modifications within a period of one month from the date of such notice. In the present case, the said exercise was done by the State Government by publishing a Notification dated 31st August, 2009. Under Sub-Section (2), the State Government is empowered to appoint an officer to hear the objections and suggestions invited in terms of the second proviso. On conjoint reading of Sub-Section (1) of Section 31 and the second proviso to Sub-Section (1), it is apparent that the time limit of six months (twelve months prior to amendment) provided in Sub-Section (1) of Section 31 will apply only when exercise is done by the State Government in accordance with Sub-Section (1) of Section 31. The State Government can take recourse to second proviso to Sub-Section (1) of Section 31 before the expiry of the time or extended time (of total twelve months) as provided in Sub-Section (1) of Section 31 from the date of submission of the draft Development Plan. Time of one month is provided for submitting objections and suggestions. Thereafter, the officer nominated under Sub-Section (2) of Section 31 is required to hear the objections and to submit a report. When the power under the second proviso of publishing changes of substantial nature in the draft Development Plan is exercised, it is obvious that the time limit provided in the Sub-Section (1) cannot be adhered to for sanction of the substantial changes notified. Therefore, the time limit of six months or twelve months, as the case may be, from the date of submission of the draft plan by the Planning Authority will not apply when the exercise is done by the State Government under the second proviso to Sub-Section (1) of publishing proposed changes of substantial nature.

18. We may note here that proviso added to Sub-Section (3) of Section 31 by Maharashtra Act No. V of 2014 clarifies that the time limit as provided in Sub-Sections (1) and (2) shall not apply for granting sanction to the Development Plan published under second proviso to Sub-Section (1) with a rider that the State Government shall take final decision regarding such modifications within a period of twelve months from the date of receipt of the report of the officer appointed under Sub-Section (2). This supports our conclusion that till the Act No. V of 2014 came into force, there was no such time limit for taking decision regarding the modifications notified.

19. Therefore, in the present case, the Petitioner cannot rely upon the time constraint provided by the Sub-Section (1) and the first proviso to Sub-Section (1) of Section 31. Therefore, the submission that the exercise of the power of sanction of the part of the Development Plan for which modifications were suggested as per the second proviso, was made after the prescribed period was over cannot be accepted.

20. It will be necessary to make a reference to Sub-Section (3) of Section 2 which defines "Appropriate Authority" which reads thus :-

"(3) "Appropriate Authority" means any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorised

to acquire."

21. A public authority becomes Appropriate Authority when a land is designated on behalf of the public authority for any public purpose in any plan or scheme and when it is authorised to acquire the said land. A land designated or reserved in a Development Plan can be acquired in accordance with Sub-Section (1) of Section 126 of the MRTP Act. The question of acquisition arises only after the Development Plan is sanctioned. Thus, ultimately the reservation or designation as provided in the sanctioned Development Plan which determines which authority is the Appropriate Authority. Under Sub-Section (1) of Section 31, there is a vast power vested in the State Government to sanction draft Development Plan with necessary modifications. It is obvious that the power to make modifications will also include the power to modify the proposals in the draft Development Plan of designating a public authority as an Appropriate Authority. In the present case, the State Government has not exercised the power of modifying the draft Development Plan as submitted by the Planning Authority. The State Government went further and notified the proposed modification in accordance with second proviso to Sub-Section (1) of Section 31 inviting objections to the modification proposed for designating the third Respondent as the Appropriate Authority in respect of site No. 117. The Petitioner raised objections which were considered by the officer appointed under Sub-Section (2) of Section 31. On the earlier date, the learned AGP has placed on record a communication dated 28th June, 2010 submitted by the officer appointed under Sub-Section (2) of Section 31 under the notification dated 31st August, 2009. A report was submitted with the said communication. The report takes note of the objections raised by the Petitioner for the proposal to reinstate the reservation No. 117 of High School with the Appropriate Authority as the third Respondent. The objection raised by the Petitioner is noted by the said officer along with his recommendation to retain the designation in favour of the Petitioner. Thus, the procedure contemplated by second proviso to Sub-Section (1) of Section 31 as well as Sub-Section (2) of Section 31 was followed and after considering the objections of the Petitioner, recommendation was made by the officer appointed by the State Government. As seen from Sub-Section (3) of Section 31, the State Government is not bound by the recommendations of the officer appointed under Sub-Section (2) of Section 31 and the State Government is under an obligation only to consider the recommendations in the report.

22. It is true that the file of the State Government recording noting made on the basis of the report of the officer has been destroyed in fire. Suffice it to say that the procedure contemplated by second proviso to Sub-Section (1) of Section 31 and Sub-Sections (2) and (3) of Section 31 has been followed and the report of the Deputy Director of Town Planning, Pune was placed for consideration of the State Government. There is nothing on record to show that the Hon'ble the Chief Minister or any other Authority took a decision approving the draft showing the Petitioner as the Appropriate Authority and that the said decision was changed within three days.

23. It is well settled that the function of preparation and sanction of Development Plan partakes a character of a legislature function and therefore, there are limitations on entertaining a challenge to the action of sanction to a Development Plan. Suffice it to say that the contention of the Petitioner that the State Government cannot bring about the change in the name of the Appropriate Authority has no merit considering the fact that wide powers are vested in State Government under Section 31. Moreover, before exercise of the power, the State Government notified the proposed change showing the third Respondent as the Appropriate Authority and objections and suggestions of the Petitioner were heard and considered.

24. Therefore, we find no reason to interfere in writ jurisdiction under Article 226 of the Constitution of India with the sanction granted by the State Government to the Development Plan. There is no merit in the Petition and the same is accordingly rejected. The learned counsel appearing for the Petitioner prays for extension of ad-interim relief granted on 11th October, 2011. The prayer is opposed by the counsel representing the contesting respondent as the ad-interim relief is in operation for a considerable long time. We direct that the same will continue to operate for a period of twelve weeks from today.