
(1989) 09 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 1666 of 1989

Nagrik Vikas Parishad and Another

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Maharashtra Regional and Town Planning Act, 1966 — Section 21, 22, 31, 42, 44

Citation : AIR 1990 Bom 87 : (1989) 3 BomCR 210 : (1989) 91 BOMLR 332

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : Ms. Rajni Iyer and A.B. Bhandari, for the Appellant; A.H. Desai and R.A. Dada and N.T. Saraf and D.M. Trivedi, for the Respondent

Judgement

1. This petition under Art. 226 of the Constitution of India takes exception to the change of user proposed by the respondents vis-a-vis land hearing C.S. Nos. 433 to 438 at 12th Lane Kamatipura, Bombay-400008.

2. The aforesaid land was reserved as a playground in the sanctioned Development Plan of "E" Ward, Greater Bombay. An Urban Renewal Scheme has been in the pipeline since the year 1976. It required tremendous resources and the Scheme was to depend upon financial assistance from the World Bank. For various reasons, not relevant to be mentioned here, assistance from the World Bank was not forthcoming. The Prime Minister's Grant Project was formulated sometime in the year 1986-87. The object of this Project was to take-over and demolish dilapidated ceased buildings and replace the same with several and expanded structures to be made available to a larger number of residents vis-a-vis those who got dishoused as a result of the take-over and demolition. The land afore-mentioned was made over by Respondent No. 4 (BMC) for being dealt with under the PMG Project. As a whole, the land admeasures about 2,050 sq. mts. Instead of keeping the entire land or at least 1,860 sq. mts. thereof as an open recreational ground, respondent No. 1 in consultation with respondents 4 to 6

agreed to a change in the user. The change was that 1,050 sq. mts. of land would be kept open and 1,000 sq. mts. to be built up. But the structure that is to come up on the built up area will be on stilts at a height of 3.8 mts. The ground underneath excluding the pillars was to be left unbuilt and utilisable as a recreational ground. The structure that is to come up on the 1,000 sq. mts. is to house 240 dishoused families hailing from Kamatipura in self-contained blocks, each having a carpet area of 180 sq. ft. The building is likely to be completed within 18 months of the commencement of the construction. Those to be rehabilitated are presently in transit camps having come there following crashes and demolitions of buildings in Kamatipura area.

3. The petitioners object to the variation in the land used by the respondents. According to them the variation has not been preceded by the steps required under Ss. 2 to 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the "Act"). It was only recently i.e. in Apr., 1989, that petitioners heard of the move to de-reserve the said land from the category of a recreational ground. At the least, the proposed variation constituted a change of substantial nature and unless the same was notified in the Official Gazette and the local newspapers and objections invited and considered, it could not be enforced. Instead of waiting for all this, the respondents had commenced digging and uprooting activities. The public had not been consulted before effecting the change, and petitioners, in particular, would be seriously prejudiced if the variation was allowed to go through. The de-reservation was ultra vires the Act as also Art. 14 of the Constitution of India. Petitioners sought a declaration to that effect and a consequential injunction to restore the absolute reservation of the user as a recreational ground and further restrain respondents from carrying out any operations in furtherance of the proposed variation.

4. Affidavits in reply to oppose the admission of the petition have been filed on behalf of respondents 1, 3 and 5. These deny that the decision to vary the user of the land is mala fide, political or illegal. On the other hand, it is stated that having regard to the representations received from residents of the area, the first respondent has decided to change the user from purely recreational to a mix of recreational-plus-residential. The manner in which the change has to be carried out will give it a larger area than originally proposed to the inhabitants of the locality for recreational purposes. The petition is without merit and no relief, interim or final, should be granted.

5. In regard to the applicability or otherwise of S. 31(1) of the Act, I have in my judgment in two writ petitions Nos. 1452 and 1963 of 1989 delivered today held that de-reservations can be made pending submission of the draft development plan to and its finalisation by the Government. My reasons for so holding will apply to the facts of the present case also. But there is an additional reason for my negating the contention advanced on behalf of the petitioners. The land figuring in this petition belongs to the Government though it is vested in the Bombay Municipal Corporation for the purposes -of the BMC Act. The land is

required by the Government for the construction of a building complex to rehabilitate persons present in transit camps and who originally belonged to Kamatipura area. These people happen to be in transit camps because of house collapses. Section 58 of the Act is worded thus:--

"58.(1) When any Government intends to carry out development of any land for the purpose of any of its departments or offices or authorities, the officer in charge thereof shall inform in writing to the Planning Authority the intention of Government to do so, giving full particulars thereof, and accompanied by such documents and plans as may be prescribed at least thirty days before undertaking such development.

(2) Where a Planning Authority raises any objection to the proposed development on the ground that the development is not in conformity with the provisions either of any development plan under preparation, or of any building bye-laws in force for the time being or for any other material consideration, the officer shall --

(i) either make necessary modifications in the proposals for development to meet the objections raised by the Planning Authority; or

(ii) submit the proposals for development together with the objections raised by the Planning Authority to the State Government for decision.

(3) The State Government, on receipt of the proposals for development together with the objections of the Planning Authority shall, in consultation with the Director of Town Planning, either approve the proposals with or without modifications or direct the officer to make such modifications in the proposals as it considers necessary in the circumstances,

(4) The provisions of Sections 44, 45, 46, 47 and 48 shall not apply to developments carried out under this section."

The State Government wants to make over the land to respondent No. 5 and that respondent will use a part of the land for the purposes of putting up a housing complex. The requirements of S. 58 have been complied with and I deduce this from there being no-objection to the proposed change by the BMC which is respondent No. 4 to this petition. Where the Government intends to carry out any development, Ss. 42 to 48 of the Act are not attracted.

6. It was contended that the change of user of the land from an open recreational ground to that making it partly recreational and partly residential amounts to a substantial change attracting the 2nd Proviso to S. 31(1) of the Act. The question is does the impugned modification envisage change of a substantial nature? The two words indicate a significant deviation or a vital alteration. The deviation and/or alteration has to be measured against the existing position. While scrutinising the contemplated change does one go by the area or the manner of use involved. Going by one to the exclusion of the other would be to take a mechanical view. An overall view has to be taken and while so

doing one must not forget that these questions have to be considered in relation to an ever expanding metropolis with many problems and scarce resources to solve them. A reduction in space of an open ground and a building complex overlooking the said ground cannot be considered so radical a change as to warrant the application of the 2nd Proviso. The answer is not to be drawn from the ease with which full-blooded games can or cannot be played in the two environs. A host of problems face town planners and unless their decision be plainly perverse, judicial intervention is not called for. The impugned change is not substantial in nature to warrant recourse to mandatory publicity, before it is put into effect.

7. The petitioner's reference to Art. 14 of the Constitution is not comprehensible. The grievance is that the 1st respondent has chosen to act whimsically in the matter of de-reservation of plots thus breaching Art. 14. No guidelines have been drawn up. It is not necessary to go into generalisations. Restricting myself to the instant case, I see nothing to indicate waywardness in the modification proposed in the user of the petition land.

8. The petition fails and is rejected with parties being left to bear their own costs. Status quo to continue for four weeks.

9. Petition dismissed.