
(2016) 07 BOM CK 0104
In the Bombay High Court
Case No : Writ Petition No. 5955 of 2014

Shankar Dabhade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Regional and Town Planning Act, 1966 — Section 150, 31

Citation : (2016) 5 AIRBomR 62 : (2017) 3 ALLMR 354 : (2016) 6 BCR 329 :
(2016) 6 MhLJ 555

Hon'ble Judges : A.S. Okaand and C.V. Bhadang, JJ.

Bench : Division Bench

Advocate : Mr. G.S. Godbole i/b Ms. Neha Valsangkar and Mr. Drupad Sopan Patil, Advocates, for the Petitioner (in both Petitions); Mr. V.B. Thadani, AGP, for the Respondent Nos. 1, 2 and 4 (in both Respondents); Mr. Ketan Joshi, Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

A.S. Oka, J.—Notice for final disposal was issued on 2nd February 2016. These two petitions can be conveniently disposed of by a common Judgment. The challenge in both the petitions is to the notification dated 27th May 2013 published in the Maharashtra Government Gazette dated 14/20th November 2013. By the said notification, the State Government exercised power under subsection (1) of section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") by which a draft development plan (second revision) of Talegaon Dabhade Municipal Council with the modifications as specified in the schedule of the modification (Schedule A) was sanctioned. The said sanctioned draft development plan (second revision) is hereinafter referred as the sanctioned revised development plan. Writ Petition No.5955 of 2014 concerns the lands more particularly described in paragraph 2 of the petition. The said lands have been reserved for a play ground admeasuring 19,221 sq meters under the reservation No.107 in the sanctioned revised development

plan. The lands subject matter of Writ Petition No.5956 of 2014 are described in paragraph 2 of the petition. Out of the said lands, an area of 10,000 sq meters has been reserved for sewerage treatment plant under the reservation No.86 under the sanctioned revised development plan. An area of 12,000 sq meters has been reserved for a play ground under the reservation 89 and another part of the land was reserved for 12 and 24 meters development plan road (DP Road).

2. With a view to appreciate the submissions made across the bar, only few events are necessary to be noted. The Planning Authority within the meaning of the MRTP Act in the present case is the Talegaon Dabhade Municipal Council. By a resolution dated 23rd December 2008, the said Municipal Council declared its intention to prepare a draft development plan (second revision). Notice of the said declaration was published in the Government Gazette on 15th January 2009. On 27th October 2011, the Planning Authority published a notice under subsection (1) of section 26 in the Maharashtra Government Gazette inviting objections to the said draft. The petitioners in both the petitions filed objections. In March 2012, the Planning Committee of the said Municipal Council constituted under subsection (2) of section 26 of the MRTP Act submitted its report to the Planning Authority. In the said report, as far as the land subject matter of the Writ Petition No.5955 of 2014 is concerned, the area covered by the reservation No.107 for playground was proposed to be reduced to 12,000 sq meters from 19,221 sq meters as shown in the draft. As far as the lands subject matter of the Writ Petition No.5956 of 2014 are concerned, the Planning Committee recommended that area of reservation for sewerage treatment plant covered by the reservation No.86 should be reduced to 6000 sq meters from 10,000 sq meters. It also proposed that the area of the land reserved for playground under the reservation No.89 should be reduced to 8,000 sq meters from 12,000 sq meters. The Planning Committee suggested that the reservation for 12 meter wide DP Road should be dropped. It also proposed minor modification to the location of 24 meters wide DP Road.

3. Recommendations of the Planning Committee were placed before the said Municipal Council. By a Resolution dated 25th April 2012, the Municipal Council/ Planning Authority accepted the suggestion for reducing area of play ground covered by reservation no. 107 to 12000 sq.meters. The Planning Authority accepted the suggestion to reduce the area of reservation No.86 to 6,000 sq meters. The reservation of playground on the land bearing survey No.58 was shifted to survey No.65 and the reservation for 12 meters DP was deleted.

4. In exercise of power under subsection (1) of section 30, on 29th May 2012, the Municipal Council/Planning Authority submitted the revised draft development plan to the State Government for its sanction. On 4th December 2012, the Director of Town Planning submitted a scrutiny report to the Principal Secretary of the Urban Development Department of the State Government. By the impugned notification dated 27th May 2013, the State Government sanctioned the said draft development plan (second revision) along with

modifications as specified in the schedule A. The said notification provided that the sanctioned revised development plan shall come into force one month after the publication of the said notification dated 27th May 2013 in the Government Gazette. As pointed out earlier, the notification was published in the Government Gazette dated 14th/20th November 2013. As far as the lands subject matter of Writ Petition No.5955 of 2014 are concerned, in the sanctioned revised development plan, the State Government provided for reservation covered by the reservation No.107 for the entire area of 19,221 sq meters as provided in the draft development plan published under the subsection (1) of section 26. As far as the lands subject matter of Writ Petition No.5956 of 2014 are concerned, under the notification dated 27th May 2013, the State Government provided for reservations as shown in the draft development plan published under subsection (1) of section 26 of the MRTP Act. Thus, the State Government did not accept the suggestions of the Planning Committee of the said Municipal Council.

5. The learned counsel for the petitioners pointed out that while sanctioning the revised development plan, the State Government incorporated modifications of substantial nature in relation to the property of the petitioners without giving them an opportunity of submitting objections. He pointed out that the State Government while issuing the impugned notification dated 27th May 2013 completely ignored the modifications made by the Planning Authority while submitting the plan to the State Government and sanctioned the plan as per the original draft published under subsection (1) of section 26. The submission is that as the State Government made modifications of substantial nature, an opportunity of submitting objections ought to have been provided to the petitioners. Inviting our attention to the provisions of section 31 as it existed on 27th May 2013, he urged that the sanction could have been granted within the maximum period of 12 months from 29th May 2012 and that also by a notification in Official Gazette. He pointed out that even going by the impugned notification, the State Government extended the time to grant sanction to the plan up to 28th May 2013 but the notification was published in November 2014 in the Official Gazette. He submitted that the State Government can sanction or refuse to sanction a draft plan by a notification in the Official Gazette within the time specified and the said power ought to have been exercised in the manner provided in the statute by publishing the notification in the Official Gazette within the time specified. He submitted that the requirement of publishing the notification in Official Gazette will have to be held as mandatory. He pointed out that the power to extend the time has to be exercised by publishing a notification in Official Gazette. He placed reliance on the decision of the Apex Court in the case of Ramchandra Jesgav Adke since deceased through L.Rs v. Govind Joti Chavare, (1975) 1 SCC 559 in support of the proposition that the requirement of publishing notification is mandatory. He placed reliance on the another decision of the Apex Court in the case of Dipak Babaria and another v. State of Gujrat and others, (2014) 3 SCC 502. Lastly, he relied upon the decision of the Apex Court in the case of Shiv Kumar Chadha v. Municipal Corporation of Delhi and others,

(1993) 1 SCC 161. The learned AGP as well as the learned counsel for the Municipal Council supported the impugned notification. They submitted that there is no scope to interfere in the writ jurisdiction.

6. We have considered the submissions. Section 31 as it stood on 27th January 2013 reads thus:

"31. Sanction to draft Development plan - (1) Subject to the provisions of this section and not later than (six months) from the 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 subsection (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 clause (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."

Thus, the State Government has a power to grant sanction to a draft development plan within a period of six months of the date on which the plan is submitted to it by the Planning Authority in accordance with subsection (1) of section 30. At the relevant time, there was a power under the first proviso to subsection (1) of section 31 to extend the period of six months by a further period not exceeding six months. In the present case, the draft development plan (second revision) was submitted by the Planning Authority to the State Government on 29th May 2012. The impugned notification dated 27th May 2013 itself extends the period for sanctioning the draft up to and inclusive of 28th May 2013. Therefore, there cannot be any dispute that the impugned notification dated 27th May 2013 sanctioning the draft development plan with modifications was issued within the permissible extended period. Even assuming that the time frame provided to sanction the draft plan is mandatory, the question is whether there is a mandatory requirement of publishing such a notification in Official Gazette within the period of six months or twelve months, as the case may be. In other words, the question is whether a notification which is issued under subsection (1) of section 31 within the prescribed time of six months or extended time of twelve months stands vitiated on the ground that it is published in the Official Gazette after expiry of the aforesaid time of six months or extended time of twelve months.

7. The intention of the legislature of providing outer limit seems to be to ensure that a draft development plan submitted for sanction to the State Government is sanctioned or rejected within a reasonable time. Section 38 of the MRTTP Act provides that at least once in 20 years from the date on which the development plan has come into operation, the Planning Authority may and shall at any time when so directed by the State Government, revise the development plan. Thus, revision of a development plan after periodical intervals is contemplated. That is the reason why the legislature has put outer limit for the exercise of the power under subsection (1) of section 31. Preparation of the development plan is a huge exercise. The development plan contains several aspects/details as provided in section 22. The process starts under section 23 from the declaration

of intention to prepare a development plan. Under section 25, the exercise of survey and preparation of land use map is required to be carried out before the actual preparation of a draft Development Plan. The Planning Authority is required to publish the draft. Objections and suggestions submitted by the members of the public are required to be considered by firstly the Planning Committee of the Planning Authority and thereafter, by the Planning Authority. After this exercise, the Planning Authority is required to submit the draft plan to the State Government for its sanction. There are decisions of this Court holding that the process of preparation of a development plan and the development control regulations forming a part thereof partakes character of a legislative function.

8. Even going by the case of the petitioner, the State Government by the impugned notification dated 27th January 2013 has sanctioned a part of the draft development plan (second revision) with modifications within the extended time specified under the proviso to subsection (1) of section 31. The delay is only in publishing the notification in the Official Gazette. The emphasis under subsection (1) of section 31 is on the State Government taking a decision one way or other on a draft plan submitted to it within the time specified therein. If the State Government takes a decision and issues a notification containing the said decision within the time specified under subsection (1) of section 31, there will be a compliance with the requirements of section 31. The outer limit fixed by subsection (1) of section 31 for the State Government taking a decision on the draft development plan by issuing a notification is certainly mandatory as subsection (1) uses the words "not later than six months from the date of receipt of such plan". As the section stood on the date of the impugned notification, the period of six months could be extended by a maximum period of further six months. The act of publishing a notification issued by the Government in the Official Gazette is a ministerial act. Therefore, if a decision is taken by the State Government on the draft plan by issuing a notification within the time provided in the section, the notification is not vitiated because there is a delay in publication of the notification in the Official Gazette which is a ministerial act. This part of subsection (1) requiring the publication of the notification in the Official Gazette within the time provided in subsection (1) appears to be directory. A statutory provision can be partly mandatory and partly directory. In the present case, it is not the case made out that the impugned notification dated 27th May 2013 is ante dated. Apart from the fact that this part of the provision is directory, there is one more reason why the delay in publication of the impugned notification in Official Gazette is not fatal. Section 150 of the MRTTP Act which reads thus:

"150. Validation of acts and proceedings:

(1) No act done or proceeding taken under this Act, shall be questioned on the ground merely of-

(a) the existence of any vacancy in, or any defect in the constitution of a Regional Board, Planning Authority, or Development Authority;

- (b) any person having ceased to be a member;
 - (c) any person associated with a Regional Board, under section 10 having voted in contravention of the said section;
 - (d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or
 - (e) any omission, defect or irregularity not affecting the merits of the case."
- (emphasis added)

In our view, the failure to publish the impugned notification in the Official Gazette within the period of six months or twelve months, as the case may be is an irregularity or a defect not affecting the merits of the case. Hence, the act done by the Government cannot be questioned on the ground of the delay in publication of the impugned notification in Official Gazette.

9. As far as the decision of the Apex Court in the case of Ramchandra Keshav Adke is concerned, it arose out of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 dealing with surrender of agricultural tenancy by a tenant. In paragraph 20, the Apex Court held thus:

"20 Thus, the imperative language, the beneficent purpose and importance of these provisions for efficacious implementation of the general scheme of the Act, all unerringly lead to the conclusion that they were intended to be mandatory. Neglect of any of these statutory requisites would be fatal. Disobedience of even one of these mandates would render the surrender invalid and ineffectual."

10. The reason for holding the provision as mandatory is recorded in paragraph 19 which reads thus:

"19 The language of Section 5 (3)(b) and Rule 2A is absolute explicit and peremptory. The words "Provided that" read with the words "shall be", repeatedly used in Section 5(3)(b), make the termination of tenancy by surrender entirely subject to the imperative conditions laid down in the proviso. This proviso throws a benevolent ring of protection around tenants. It is designed to protect a tenant on two fronts against two types of dangers - once against possible coercion, undue influence and trickery proceeding from the landlord, and the other against the tenant's own ignorance, improvidence and attitude of helpless self resignation stemming from his weaker position in the tenant-landlord relationship."

(emphasis added)

11. Hence, the aforesaid decision will have no application. Even the decision of the Apex Court in the case of Dipak Babaria and another will not help the petitioner which reiterates the settled law that if the law requires a particular thing should done in a particular manner, it must be done in that way and none other. In the present case, the requirement of law is that the State Government

must take a decision on draft plan within the time specified in subsection (1) of section 31. The decision has been taken within the specified time in the facts of the present case, but there is a delay of few months in the publication of Official Gazette which is a ministerial act.

12. This is not a case where there was a very long delay in publication of the notification in the Official Gazette from the date of notification. The time provided by subsection (1) of section 31 for taking a decision on a draft plan may be mandatory. However, the requirement of publishing the notification in the Official Gazette within the time specified under subsection (1) of section 31 cannot be mandatory. The reason is that the publication of the notification incorporating the decision of the State Government in the Official Gazette is only a ministerial act. If the requirement of publication in the Official Gazette within the time span provided under subsection (1) of section 31 stated is held to be mandatory, if there is a delay of even one day due to administrative reasons in actual publication in the Official Gazette, the order of the Government or the decision of the Government sanctioning or refusing to sanction the development plan will be vitiated. Therefore, such interpretation cannot be accepted. Moreover, clause (e) of Section 150 of the MRTP Act will apply if the delay in publication in Official Gazette is not unreasonable.

13. In the facts of the case, the delay is of five months and 18 days which is not unreasonable. Such delay cannot defeat the exercise of the power to sanction draft Development Plan. It is not the case made out by the petitioner that the notification dated 27th May 2013 is ante dated or that the decision incorporated in the said notification is ante dated. Therefore, we are unable to accept the first submission of the learned counsel appearing for the petitioners.

14. Sub-section (1) of section 31 itself provides that while considering the draft plan submitted by the Planning Authority in accordance with section subsection (1) of section 30, the State Government can approve the draft with such modifications as it may considers proper. The second proviso to subsection (1) of section 31 is applicable when the proposal is to make changes which are of substantial nature. Section 22A defines modifications of substantial nature which reads thus:

"22A. Modifications of substantial nature - In section 31, the expression "of a substantial nature" used in relation to the modifications made by the State Government in the draft development plan means,

(a) any modification to a reserved site resulting in reduction of its area by more than fifty percent or reduction of such amenity in that section by an area of more than ten per cent in the aggregate;

(b) insertion of a new road or a new reservation or modification of a reserved site or a proposed road or a proposed road widening resulting in inclusion of any additional land not so affected previously;

(c) change in the proposal of allocating the use of certain lands from one zone to any other zone provided by clause (a) of section 22, which results in increasing the area in that other zone by more than ten percent, in the same planning unit or sector in a draft Development plan;

(d) alteration in the Floor Space Index beyond ten per cent, of a Floor Space Index prescribed in the Development Control Regulations.

15. Clause (a) of section 22A is not applicable as in this case there is no reduction of area of reserved sites. As far as clause (b) is concerned, the reservation provided is as proposed originally in the draft published under subsection (1) of section 26 of the MRTD Act. Therefore, in the facts of the case, section 22A is not attracted and therefore, there was no need for the State Government to notify the proposed modification.

16. Therefore, challenge in these petitions must fail. Hence, we pass the following order:

17. Writ Petitions are rejected with no order as to costs;