

S. N. Rao and Others

Vs

State of Maharashtra and Ors.

G. J. Saldhana and Others

Vs

State of Maharashtra and Others

Civil Appeal No. 2537 of 1985

(M. P. Thakkar, M. M. Dutt JJ)

09.02 1988

JUDGMENT

DUTT, J. –

1. The subject-matter of this appeal by special leave is the permission for development of the land granted in favour of respondent 5 who proposed to construct a five star hotel on a tract of land measuring 44,820.49 square yards at Bandra, Bombay, bearing R.S. Nos. 416 (Part) and 417. The land in question had been purchased by respondent 5, Enjay Estates Pvt. Ltd., from its erstwhile owner, Byramji Jeejeebhoy Pvt. Ltd. In the 1966 sanctioned Development Plan of Greater Bombay, the said land was shown in the residential zone and a contiguous parcel of land measuring 18,000 sq. yds. was shown as a green belt.
2. With a view to developing the disputed land, respondent 5 submitted a plan to the Municipal Corporation of Greater Bombay for the construction of a five star hotel. The Commissioner of the Municipal Corporation, however, rejected the plan on the sole ground that it was proposed to earmark the said land under reference as a recreational ground with suitable internal network of roads during the revision of the development plan which was in the offing. Being aggrieved by the said rejection of the plan, respondent 5 preferred an appeal to the Government of Maharashtra under Section 47 of the Maharashtra Regional and Town Planning Act, 1966, hereinafter referred to as 'the Act'.
3. The appellants who are rate-payers of the Municipal Corporation of Greater Bombay and claim to be members of various ecological action groups, appeared in the appeal and opposed the same contending, inter alia, that the whole of the said land should be kept reserved for a green belt or recreational ground in the interest of the general public.
4. The appeal was heard by the Minister of State for Urban Development, respondent 2 herein. Respondent 2 set aside the order of the Commissioner of the Municipal Corporation rejecting the plan submitted by respondent 5 after hearing the petitioners as also the Municipal Commissioner and directed sanctioning of the plan on certain conditions which will be referred to later in this judgment.

5. The Municipal Corporation accepted the appellate order and did not challenge the order of respondent 2. But the appellants filed a writ petition challenging the legality of the order of respondent 2 granting sanction of the plan submitted by respondent 5 for the construction of a hotel on the said land. The writ petition was, however, dismissed by the Division Bench of the High Court by the judgment under appeal.

6. At this stage, we may refer to some of the provisions of the Act. It is an Act to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning boards therefore; to make better provisions for the preparation of development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid. Section 2(9) defines "development plan" to mean a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a special planning authority for development of land within its jurisdiction. Under Section 2(19), "Planning Authority" means a local authority; and includes a Special Planning Authority constituted or appointed under Section 40. Chapter III of the Act contains provisions for the development plan. Section 23 provides for the declaration of intention by the Planning Authority to prepare a development plan. Section 26 provides for the preparation and the publication of notice of draft development plan. Under Section 30, the Planning Authority has to submit the draft development plan to the State Government for sanction. Section 31 provides for the sanction to the draft development plan by the State Government. Section 43 provides, inter alia, that after the date on which the declaration of intention to prepare a development plan for any area is published in the official gazette, no person shall carry out any development of land without the permission in writing of the Planning Authority. Section 45 deals with grant or refusal of sanction for development by the Planning Authority. Section 46 enjoins that the Planning Authority in considering an application for permission shall have due regard to the provisions of any draft or final plan or proposals published by means of notice submitted or sanctioned under the Act. Section 47 provides for an appeal to the State Government or to an officer appointed by the State Government by any applicant aggrieved by an order granting permission on conditions or refusing permission under Section 45.

7. In allowing the appeal of respondent 5 and directing sanction of the development plan, respondent 2 observed that in view of the clear provisions of Sections 46 and 31(6) of the Act and having regard to the position that in the sanctioned plan of 1966, the said land was included in the residential zone and no proposal to exclude it therefrom in the draft revised development plan had been published, the Municipal Commissioner was not justified in rejecting the application for approval of the plan submitted by respondent 5 on the ground that the Bombay Municipal Corporation had decided to revise the 1966 Development Plan. We have already referred to Section 46 of the Act which provides that the Planning Authority in considering the application for permission shall have due regard to the provisions of any draft or final plan or proposals published by means of notice submitted or sanctioned under the Act. It seems that respondent 2 was of the view that the Planning Authority could only take into its consideration any draft or final plan or proposal which had been published by means of notice or sanctioned under the Act as provided in Section 46. There is, in our opinion, some force in the contention made by Mr. Kalsekar, learned counsel appearing on behalf of the appellants, that respondent 2 has misunderstood the provisions of Section 46. It is submitted by the learned counsel that the Municipal Corporation was entitled to take into consideration other relevant facts including the contemplated revision of the plan, apart from those mentioned in Section 46. In support of his contention, the learned counsel has placed

reliance on an unreported decision of a learned Single Judge of the Bombay High Court in LIC v. Municipal Corporation of Greater Bombay (Writ Petition No. 2944 of 1982, decided on March 6, 1984 (Bom HC)). In that case, a development application was rejected by the Municipal Corporation on the ground that the property was proposed to be reserved for public purposes or for recreational ground in the draft revised development plan, and the High Court repelled the challenge to the decision taking the view that even the proposed revision could be taken into account as one of the relevant factors.

8. There can be no doubt that if there by any other material or relevant fact, Section 46 does not stand in the way of such material or fact being considered by the Municipal Corporation for the grant or refusal to grant sanction of any development plan. In the unreported decision of the High Court, the relevant fact that was taken into consideration was the draft revised development plan, even though the plan was not published. In the instant case, however, at the time the Municipal Commissioner rejected the plan submitted by respondent 5, there was no draft revised development plan in existence. It was in contemplation. If there had been such a plan, the Municipal Commissioner would be entitled to rely upon the same in rejecting the plan submitted by respondent 5. But, as there was no such draft revised plan as has been stated before this Court even by the counsel for the Municipal Corporation, the Municipal Commissioner was not justified in merely relying upon a proposal for the preparation of a draft revised plan. An order rejecting a development plan submitted by the owner of the land should be supported by some concrete material. In the absence of any such material, it will be improper to reject the plan on the ground that here is a proposal for revision of the draft plan or that such a revision is under contemplation. We are, therefore, of the view that the ground for rejecting the plan submitted by respondent 5 was not tenable and the appellate authority was justified in allowing the appeal.

9. It is urged by Mr. Kalsekar that in any event no appeal lay under Section 47 when the Municipal Corporation had decided to revise the development plan. We are afraid, we are unable to accept the contention. The same contention was advanced before respondent 2 and it was rightly rejected. Section 47 of the Act does not warrant the contention urged by the learned counsel. In our opinion, to hold that after the Municipal Corporation had decide to revise the development plan, no appeal would be competent to the State Government under Section 47, would amount to legislating and rewriting the provision. Such a contention is without any substance and is rejected.

10. Respondent 2 directed sanction of the plan out of 44,820.49 sq. yds. belonging to respondent 5, on the following conditions :

(i) 15 per cent recreation space to be left in Block 'A' shall be kept on the southern side of the plot abutting the green space left from Block 'B' after merging the road area in the green space.

(ii) The development shall be allowed IOD and CC shall be issued as per the Development Control Rules.

(iii) The FSI of the road area would be admissible on plot 'A' as per Development Control Rule 10(2).

(iv) The Municipal Commissioner, Municipal Corporation of Greater Bombay, Bombay, shall take over the possession of the land proposed to be kept as green on southern side, abutting the sea after getting the plots properly demarcated.

The Municipal Commissioner, M.C., G.B., Bombay, may consider the proposal of allowing the development and maintenance of the park and garden space by the applicant party at their own cost after obtaining the possession of the lands now proposed to be kept green.

The permission for development of plots as per plans submitted by appellants be granted by the M.C.B.M.C. subject to the conditions mentioned above.

11. We are told that after the above conditions are worked out, the area that will be available to respondent 5 for the construction of the hotel is only 19,951.10 sq. yds. It is, therefore, apparent that in granting sanction to the plan, respondent 2 was quite alive to public interest.

12. At this stage, we may notice a very significant development that has taken place during the pendency of this appeal, namely, that the Municipal Corporation has, subsequent to the judgment of the High Court, prepared and published on April 30, 1984 a draft revised development plan. The plan of respondent 5 is not inconsistent with the draft revised development plan. This fact demolishes all the contentions of the appellants against the plan submitted by respondent 5. Realising this difficulty, Mr. Kalsekar assailed the draft revised plan on the ground that it was prepared in accordance with the direction of respondent 2. This contention of the learned counsel has no foundation whatsoever. There is no material on record to show that the Municipal Corporation which is the Planning Authority, had prepared the draft revised plan in accordance with the direction of respondent 2. Respondent 2, in our opinion, has acted in public interest by imposing the conditions mentioned above. The conditions would show that considerable area out of the disputed land has been reserved for recreational ground or green belt. The plan, as sanctioned by respondent 2 with the conditions imposed, has been shown in the draft revised plan. It was open to the Municipal Corporation to accept the verdict of the appellate authority and it has done so by not challenging it in the High Court or before this Court. In the circumstances, there is no merit in this appeal challenging the order of respondent 2 sanctioning the development plan of respondent 5.

13. Now we may take up the two special leave petitions being Special Leave Petition (Civil) No. 17376 of 1985 and Special Leave Petition (Civil) No. 17377 of 1985. A few facts may be stated.

14. The Municipal Corporation passed a resolution on December 3, 1973, inter alia, extending the park reservation by including the remaining area of the land comprised in R.S. No. 416 and R.S. No. 417 (Part) at Bandra. By another resolution dated March 14, 1974, the first resolution was modified limiting the reservation for the park to 7000 sq. yds. out of the disputed land. The petitioners, who are the appellants in the above appeal, filed two miscellaneous petitions, namely, Misc. Petition No. 463 of 1974 challenging the legality and validity of the resolution dated March 14, 1974 and Misc. Petition No. 1406 of 1978 challenging the order of the Government of Maharashtra dated July 25, 1978 exempting the disputed land under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the 'Urban Land Ceiling Act'. Both the miscellaneous petitions were dismissed by a learned Single Judge of the Bombay High Court. Two appeals were preferred by the petitioners against the judgment of the learned Single Judge to the Division Bench. On July 30, 1984 when the appeals were taken up for hearing, a prayer was made by the learned counsel for the petitioners for an adjournment for two weeks on the ground that Shri Bhore, the advocate-on-record, had met with an accident and the learned counsel was unable to proceed with the appeals without the advocate-on-record. The learned Judges of the Division Bench did not accede to the prayer of the learned counsel for an adjournment for two weeks on the ground that the appeals were old appeals of 1979, and that the learned counsel who prayed for adjournment himself appeared throughout the proceedings as an advocate. The learned Judges, however,

adjourned the appeals to the next day, that is, July 31, 1984 to enable the learned counsel to be ready with the matter.

15. On the next day, the learned counsel did not appear and the learned Judges of the Division Bench disposed of the appeals ex parte by a judgment dealing with the contentions of the petitioners. The result was that both the appeals were dismissed. We do not think that we are called upon to consider whether the learned Judges should have granted an adjournment for two weeks as was prayed for by the learned counsel. Suffice it to say that if an adjournment had been granted, multiplicity of proceedings could have been avoided.

16. Be that as it may, the petitioners filed two applications for review. Both the said applications for review were dismissed by the Division Bench after considering all the points including certain additional grounds to the effect that certain contentions had not been dealt with earlier by the judgment dated October 9/10, 1985. The petitioners have not challenged the judgment of the High Court passed on the review applications. They have, however, filed before this Court the above two special leave petitions.

17. Special Leave Petition (Civil) No. 17376 of 1985 arises out of Misc. Petition No. 463 of 1974 whereby the petitioners challenged the legality and validity of the said resolution dated March 14, 1974. We are of the view that the contention of the petitioners against the validity of the resolution is no longer tenable, regard being had to the fact that the draft revised development plan has since been published and the plan submitted by respondent 5 and conditioned by respondent 2 is not inconsistent with the draft revised plan. In that view of the matter, Mr. Kalsekar also has not seriously pressed the validity of the said resolution. Accordingly, Special Leave Petition (Civil) No. 17376 of 1985 is liable to be dismissed.

18. So far as Special Leave Petition (Civil) No. 17376 of 1985 is concerned, it has been strenuously urged by Mr. Kalsekar that in granting exemption to respondent 5, the authority concerned has violated the relevant guidelines and also the provision of Section 20 of the Urban Land Ceiling Act. Learned counsel points out that one of the grounds for exemption on the ground of availability of 75,000 sq. yds. of vacant land is available for the development of gardens. As a matter of fact, counsel submits, it is not a vacant land, but contains 350 houses. It is submitted that granting exemption on the ground of availability of 75,000 sq. yds. of open site for the purpose of gardens is a fraud on the Urban Land Ceiling Act. It is, accordingly, urged by the learned counsel that the order granting exemption should be quashed.

19. The above grounds of challenge to the order of exemption granted to respondent 5 have all been considered by the High Court in its judgment disposing of the review applications. The petitioners have not challenged the judgment on review applications. The petitioners are only interested in seeing that sufficient area is kept reserved for a park or recreation ground for the benefit of the members of the public. They are not, in our opinion, concerned with the question as to the legality or otherwise of the exemption granted by the government to respondent 5 under the Urban Land Ceiling Act. A copy of the draft revised development plan has been produced before us by Mr. Desai, learned counsel appearing on behalf of respondent 5. We are satisfied that the question whether or not sufficient quantity of land has been kept reserved for park and recreation ground has been adequately considered and taken into account by the High Court. In the circumstances, we do not think that we are called upon to decide the legality or otherwise of the order granting exemption to respondent 5 under the Urban Land Ceiling Act. There is, therefore no substance also in Special Leave Petition (Civil) No. 17377 of 1985.

20. In the result, the appeal and both the special leave petitions are dismissed. There will, however, be no order as to costs.

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