SUPREME COURT OF INDIA

Promoters and Builders Association of Pune

Vs

Pune Municipal Corporation and Others

(G. P. Mathur and R.V. Raveendran, JJ)

11.05.2007

JUDGMENT

G. P. MATHUR, J.

1. These are review petitions seeking review of the judgment and order dated 5.5.2004 passed by this Court in Civil Appeal No.3800 of 2003. We will give the facts of Review Petition No.1809 of 2005, which is the leading case.

2. The Maharashra legislature enacted Maharashtra Regional Town Planning Act, 1966 (for short 'the Act') for planning and development of the cities, constitution of Regional Planning Boards and to make provision 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 and for ancillary purposes. Chapter III of the Act deals with development plans. Under the Scheme of the Act, Development Control Rules are framed separately for each city keeping in view the peculiar requirements of each city/town. The dispute here pertains to Development Control Rules (for short 'DCR') for Pune which has been constituted as a corporation under the Bombay Provincial and Municipal Corporation Act, 1949 (for short 'BPMC Act'). Pune Municipal Corporation is also the planning authority under the provisions of the Act for the city of Pune. A concept of Transfer of Development Rights (for short 'TDR') was introduced in the Regulations of Greater Bombay and the object of introducing such concept was to facilitate acquisition of land for public purposes. The concept of TDR operates in the following manner :-

"The owner or the lessee of the plot of land will hand over the possession of the reserved land to the

planning authority and as against such handing over, such owner or the lessee will be granted "development right certificate" so as to enable such owner to construct built up area equivalent to permissible FSI of the land acquired in one or more other plots and in the zones specified. Such one or more plots are termed as "receiving plots".

3. The State of Maharashtra issued a directive under Section 37(1) of the Act to the Pune Municipal Corporation on 8.7.1993 to amend Development Control Rules of Pune city. The Pune Municipal Corporation then issued a notification in the Gazette on 30.9.1993 by which the process of modification was initiated and it was notified that the modification would be on the same lines as applicable in Greater Bombay. One of the proposed modifications was in Rule N.2.4.11 which was as under:

"FSI of receiving plot shall be allowed to be exceeded by not more than 0.4 in respect of D.R. available in respect of the reserved plot and upto a future 0.4 in respect of D.R. available in respect of the lands surrendered for road widening or construction of new roads as prescribed."

After prescribed procedure had been completed, the Corporation forwarded the proposed modification to the State Government. The State Government then issued a notification under Section 37(2) of the Act on 5.6.1997 sanctioning the proposal and notified the modified Development Control Rules of Pune Municipal Corporation. Rule N.2.4.11 which was sanctioned and notified by the State Government reads as under :

"(a) The FSI on receiving plots shall be allowed to be exceeded not more than 0.4 in respect of DR available for the reserved plots.

(b) The FSI on receiving plots shall be allowed to be exceeded by further 0.4 in respect of DR available on account of the land surrendered for the road widening or construction of new road from very said plot."

4. The State Government while sanctioning Rule N.2.4.11 introduced a departure from the Bombay Development Control Rules. Some other changes were also made by the State Government in the Rules which had been proposed by the Pune Municipal Corporation. Thereafter, some exchange of correspondence and meetings took place between the Pune Municipal Corporation and the State Government as regards the interpretation of the above Rule. The Chief Secretary of the Urban Development Department, Government of Maharashtra then sent a detailed letter to the Pune Municipal Corporation on 11.6.1998 regarding the correct interpretation of the notified Development Control Rules. Regarding Rule N.2.4.11 it was stated as under in the said letter :

"8. Use of 0.4 Transferable Development Rights and 0.4 Development Plan Road together making 0.8 Floor Space Index on the same property.

The policy adopted by the Mumbai Municipal Corporation should be followed by the Pune Municipal Corporation."

5. In view of the clarification issued by the State Government, the Pune Municipal Corporation issued a circular on 20.7.1999 and with regard to Rule N.2.4.11 it was stated as under:

"As per the rule No.2.4.11 (a & b) of the Development Control Rules the TDR of 0.4 of the total floor space area of the receiving plot out of TDR of road widening or other roads widening and 0.4 of the total floor space area of the receiving plot out of TDR of areas reserved for other purposes is allowed. Thus a maximum of 0.8 of the total floor space area of the receiving plot shall be permitted."

More than two years thereafter, the Pune Municipal Corporation passed a Resolution on 29.10.2001 not to allow use of additional 0.4 FSI in the area other then the plot from which the land for road widening has been acquired which was in tune with clause (b) of D.C.R.-2.4.11. This decision of the Corporation was endorsed by the General Body on 21.11.2001. It may be pointed out here that while sanctioning the proposal of the Pune Municipal Corporation, the State Government added the words "from the very said plot" towards the end of clause (b) of Development Control Rule N.2.4.11 in the notification which was issued by it on 5.6.1997. It is the addition of these words by the State Government which gave rise to the litigation which was ultimately decided by this Court in Civil Appeal No.3820 of 2003 and the introduction of said words is also under challenge in the present review petitions.

6. Promoters and Builders Association of Pune, a Society registered under the provisions of Societies Registration Act, 1860, filed Writ Petition No.5198 of 2001 against Pune Municipal Corporation and State of Maharashtra challenging the modified Development Control Rules, especially Rule N-2.3(A) and N.2.4.11 (a) and (b), wherein the principal relief claimed was that a writ of mandamus be issued commanding the respondents to the writ petition to implement Development Control Rule N-2.4.11(b) in a manner that the road area in respect of the plot, which is reserved for the road can be utilized being 0.4 FSI on the same plot and the balance unutilized FSI, if any, can be converted into TDR and can be used anywhere on a receiving plot to the extent of 0.4 FSI, in addition to the 0.4 FSI permissible on the receiving plot for amenities under Rule N-2.4.11(a) and direct the Municipal Corporation to forthwith dispose of the applications which had been submitted by the members of the petitioner Association in the light of said clarification. The writ petition was contested by the Pune Municipal Corporation and State of Maharashtra by filing counter affidavits. The High Court after considering the provisions of Section 37 of the Act and also of the Development Control Rules, allowed the writ petition on 23.4.2002. It will be useful to reproduce the findings recorded by the High Court and the relevant part of paras 18, 19 and 21 of the judgment of the High Court are reproduced below:

"18. In our opinion, therefore, it was not possible for the State to add the words "from the same plot" in clause 2.4.11 as the same have been added without being publicized as required by the provisions of Section 37(1). The planning authority did not want the words "same plot" to be introduced. It did not therefore propose the modifications in that fashion. It is the claim of the

Planning Authority before us that the words were inserted by the Government. There is no answer to this by the State Government and it was obvious that it was done by the State Government. Since the addition has been done by the State without following the procedure established by Section 37(1)(A) or Section 37(1), the words added cannot be read as validly added in the Development Regulations and the addition will have to be struck down as beyond the competence of the State Government. The State Government has not directed under Section 37(1) to make modification in the Regulations as the direction does not include the words "from the same plot". There was no notice to the persons affected and therefore there was no objection raised to it. The insertion of those words by the State while granting sanction is therefore tantamount to modifying the Final Development Plan in the exercise of its powers under Section 37(1)(A). The State could have done so but then it was duty bound to follow the procedure under Section 37(1)(A). Obviously there is failure on the part of the State to do so and therefore inclusion of those words in the Regulation is illegal.

19. On the principles of promissory estoppel also, therefore, the Corporation cannot be allowed to insist that the additional 0.4 FSI be used on the same very plot. In our opinion, therefore, even if the interpretation put by us on Section 37 is not accepted still on the ground of promissory estoppel, the corporation will have to be restrained from requiring the owners or builders from giving up additional 0.4 FSI on the interpretation of the regulation of 2.4.11 to mean that it must be used on the same very plot.

21. In the result, therefore, the petitions succeed and are allowed. The words "from the same very plot" in clause 2.4.11 of the Development Control Regulation as passed by the Planning Authority, Municipal Corporation, Pune are hereby struck down. The respondents Planning Authority is directed to permit the use of 0.8 FSI to the petitioners and other similarly situated owners, builders etc. as transferred development rights wholly or on part as proposed by them. Consequently, the respondents are directed to sanction the building plan submitted by the petitioners incorporating FSI of 0.8 as available in accordance with D.C. Rules 2.4.11."

7. Feeling aggrieved by the decision of the High Court, the Pune Municipal Corporation filed Civil Appeal No.3800 of 2003 in this Court. After hearing learned counsel for the parties, this Court allowed the appeal by the judgment and order dated 5.5.2004. The judgment of the High Court was set aside and the writ petition filed before the High Court was dismissed. For the sake of convenience, the relevant part of the judgment of this Court is reproduced below:

"The question now for consideration is whether the State Government can make any changes of its own in the modifications submitted by Planning Authority or not. The impugned Section 37 of the Act reads as follows:

"37(1) Where a modification of any part of or any proposal made in, a final Development plan is of such a nature that it will not change the character of such Development plan, the Planning Authority may, or when so directed by the State Government shall, within sixty days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not

later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification with amendments, if any, to the State Government for sanction.

(1A).....

(1AA).....

(1B).....

(2) The State Government may, make such inquiry as it may consider necessary and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development plans shall be deemed to have been modified accordingly."

(Emphasis supplied)

Reading of this provision reveals that under Clause (1), the Planning Authority after inviting objections and suggestions regarding the proposed amendment and after giving notice to all affected persons shall submit the proposed modification for sanction to the Government. The deliberation with the public before making the amendment is over at this stage. The Government, thereafter, under Clause (2) is given absolute liberty to make or not to make necessary inquiry before granting sanction. Again, while according sanction, Government may do so with or without modifications. Government could impose such conditions as it deem fit. It is also permissible for the Government to refuse the sanction. This is the true meaning of the Clause (2). It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the Government is made under Clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. and for such minor changes it is only normal for the government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the Respondents herein that the proposed change is arbitrary or unreasonable. They challenged the same citing the reason that the Government is not empowered under the Act to make such changes to the modification.

Making of DCR or amendment thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37(1). Delegated legislation cannot be questioned for violating principles of natural justice

in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for 'such inquiry as it may consider necessary' by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India and Anr. v. Cynamide India Ltd and Anr. ﷺ paragraphs 5 and 27. See generally HSSK Niyami and Anr. v. Union of India and Anr. ﷺ and Canara Bank v. Debasis Das ﷺ . While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat ﷺ Therefore, the view adopted by the High Court does not appear to be correct.

The DCR are framed under Section 158 of the Act. Rules framed under the provisions of a statute form part of the statute. (See General Office Commanding-in-Chief and Anr. v. Dr. Subhash Chandra Yadav and Anr. ﷺ , paragraph 14). In other words, DCR have statutory force. It is also a settled position of law that there could be no 'promissory estoppel' against a statue. (A.P Pollution Control Board II v. M V Nayudu ﷺ 8, paragraph 69, Sales Tax Officer and Another v. Shree Durga Oil Mills ﷺ 9, paragraphs 21 and 22 and Sharma Transport v. Govt. of AP ﷺ 17, paragraphs 13 to 24). Therefore, the High Court again went wrong by invoking the principle of 'promissory estoppel' to allow the petition filed by the Respondents herein. For the foregoing reasons, the view adopted by the High Court cannot be sustained."

8. We have heard Mr. U.U. Lalit and Mr. V.A. Bobde, Senior Advocates for the review petitioners and Mr. Mukul Rohatgi, Senior Advocate for the respondents at considerable length and have examined the record.

9. The main challenge of the review petitioners is to the addition of the words "from the very said plot" towards the end of clause (b) in DCR-2.4.11. Learned counsel for the petitioners have submitted that in the proposal sent by the Pune Municipal Corporation after following the procedure prescribed in Sub-section (1) of Section 37 the aforesaid words were not there. However, the State Government while sanctioning the proposal added the said words which in law it could not do. It has been submitted that the Municipal Corporation had submitted the proposal after inviting objections and after giving an opportunity of hearing and the proposal so made by the Municipal Corporation could not have been modified or altered by the State Government without inviting objections or giving an opportunity of hearing with regard to changes which it proposed to make and which were ultimately made in the notification issued by it. This point has been considered and examined in the judgment and order of this Court dated 5.5.2004. The language of Sub-section (2) of Section 37 uses the expression "sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction". The language of the Section is very clear and it empowers the State Government to sanction the proposal of the Municipal Corporation regarding modification of Development Control Rules "with or without any changes as it may deem fit". These words are important and cannot be ignored. They have to be given their natural meaning. In Union of India v. Hansoli Devi ﷺ 1it has been held that it is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be

open to the court to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and the policy of the Act. In Nathi Devi v. Radha Devi Gupta [illegible] 6it was emphasized that it is well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part of a statute for a purpose and the legislative intention is that every part of the statute should have effect. In Dr.Ganga Prasad Verma v. State of Bihar [illegible] 0it has been held that where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature. Therefore, the view taken by this Court in the judgment and order dated 5.5.2004 that the State Government had full authority to make any changes or add any condition in the proposal of the Municipal Corporation is perfectly correct. In fact, on the plain language of the statute no other view can possibly be taken.

10. The High Court also accepted the contention of the writ petitioners based on the ground of promissory estoppel. The Development Control Rules are framed by the State Government in exercise of power conferred by Section 158 of the Act. Consequently they must be treated as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction and obligation. [See State of U.P. v. Babu Ram Upadhya [illegible] and State of Tamil Nadu v. Hind Stones [illegible] (para 11)]. If the Development Control Rules have the same force as that of a statute, then no question of promissory estoppel would arise as the principle is well settled that there can be no estoppel against a statute. We are in complete agreement with the view taken earlier by this Court and there is not even a slightest ground which may cast any doubt regarding the correctness of the earlier judgment.

11. As was observed by this Court in Col. Avtar Singh Sekhon v. Union of India [illegible] review is not a routine procedure. A review of an earlier order is not permissible unless the Court is satisfied that material error, manifest on the face of the order undermines its soundness or results in miscarriage of justice. A review of judgment in a case is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility ..... The stage of review is not a virgin ground but review of an earlier order which has the normal feature of finality.

This view has been reiterated in Devender Pal Singh v. State [illegible] 2(para 16). This being the legal position, there is absolutely no ground for review of the judgment and order dated 5.5.2004. The review petitions are, therefore, liable to be dismissed.

12. Learned counsel for the review petitioners next submitted that after the clarification had been issued by the Chief Secretary of the Urban Development Authority of the State Government by the letter dated 11.6.1998 and consequent circular had been issued by the Pune Municipal Corporation on 20.7.1999 which provided that a maximum of 0.8 of the total floor space area of the receiving plot shall be permitted, large number of land owners whose properties were reserved for public amenities like roads, schools, gardens, etc. were encouraged to hand over their lands to the Pune Municipal Corporation free of cost, in the expectation of fetching higher price for this TDR as a result of greater utilization to the extent of 0.8 being permissible as against the earlier 0.4 FSI.

Similarly, the developers while negotiating for buildable properties considered total FSI potential of 1.8 (1 + 0.8 TDR, FSI) as against 1.4 FSI and have accordingly paid much higher consideration towards the land. Many developers commenced their projects after sanctioning regular 1.0 FSI and as per the Pune Municipal Corporation procedure applied for further 0.8 TDR, FSI. In fact, many builders and land owners had got their entire project lay out approved from the Corporation with 1.8 FSI and had constructed some buildings upto the sanctioned height. Many such plans were approved by the Pune Municipal Corporation between the period 20.7.1999 and 21.11.2001 when the second circular was issued adopting a different stand. It has been urged that refusal of Pune Municipal Corporation to honour its own lay out plan has given rise to disputes between developers and buyers of the flats and also between the developers and land owners. The difficulty being faced by the review petitioners appears to be quite genuine as the stand of Pune Municipal Corporation between the period 20.7.1999 to 21.11.2001 was different and building plans were sanctioned without giving effect to the words "from the very said plot" occurring towards the end of clause (b) in D.C.R.-2.4.11. A reply affidavit has been filed by Shri Prashant Madhukar Waghmare, City Engineer, Pune Municipal Corporation giving statement of TDR cases wherein an excess of TDR was claimed during the period 20.7.1999 to 21.11.2001. The sanction of plan and construction undertaken has been broadly described in 7 categories and category nos.1 to 4 are as under:-

S. No.DescriptionTotal CasesTotal sanctioned area (in sq. meters)Excess TDR utilized (in sq. meters)1.Details of construction works for which the final completion certificate was granted after 21.11.2001, wherein the original sanction for construction by the Corporation was in excess of 0.4 TDR55213763.8935544.662.Details of construction works for which the part completion certificate was granted after 21.11.2001, wherein the original sanction for construction by the Corporation was in excess of 0.4TDR.992287.1420073.253.Details of construction works for which the completion certificate was granted between 20.07.1999 to 21.11.2001, wherein the original sanction for construction by the Corporation was in excess of 0.4 TDR1431124.474676.574Details of construction works for which no completion certificate has been granted so far, wherein the original sanction for construction by the corporation was in excess of 0.4 TDR58555.621600.88

It will be seen that in all the above mentioned four categories the Municipal Corporation gave sanction for construction in excess of 0.4 TDR and even completion certificates were issued for serial nos.1 to 3.

13. During the course of hearing Mr. Makarand D. Adkar, learned Advocate for Pune Municipal Corporation, on instructions received from the Commissioner, Pune Municipal Corporation, has made a statement that having regard to the facts and circumstances of the case, the respondent corporation will have no objection if the constructions made as enumerated in category nos.1 to 4 described above are treated to be not in violation of clause (b) of D.C.R.-2.4.11. In the written submission filed by Mr. Vishwajit Singh, Advocate, learned counsel for Pune Municipal Corporation, it is stated that the Corporation does not have objection if the four categories of construction mentioned above are given relief in view of the fact that

A .The building plans have been sanctioned by the Corporation

B .In most of the cases, the completion or the part completion certificates have been issued by the Corporation.

C In all the cases, the TDR has been loaded/utilized and commencement certificate has been issued for the particular projects.

D .In all the cases, the construction have taken place with sanction of Corporation.

The statement made by Mr. Makarand D. Adkar, Advocate, is accordingly taken on record.

14. The review petitions are dismissed, recording the submission on behalf of the Pune Municipal Corporation that the constructions mentioned in categories 1 to 4 above will not be treated to be in violation of clause (b) of D.C.R.-2.4.11.