

SUPREME COURT OF INDIA

Mayor Municipal Corporation

Vs.

Govind Bajirao Navpute

C.A.No.2237 of 2020

(Mohan M.Shantanagoudar and R.Subhash Reddy,JJ.,)

17.04.2020

JUDGMENT

R.Subhash Reddy.J.,

SLP(C)No.25967 of 2016

1. Leave granted.

2. These civil appeals are filed, aggrieved by the judgment dated 5.8.2016 passed in Writ Petition No. 1981 of 2016, by the High Court of Judicature at Bombay, bench at Aurangabad. By the aforesaid impugned judgment, the High Court has allowed the Writ Petition and quashed the Notification dated 4.2.2016, by which draft development plan under Section 26(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereafter “the MRTP Act”) was published. Further, the High Court has set aside the order dated 29.03.2016 passed by the Director of Town Planning, granting extension of time for submitting draft development plan to Government. Further, it is held that the Planning Authority has failed to perform the duty imposed upon it within the time frame as per the MRTP Act, as such the remaining work relating to draft development plan shall be completed by the concerned Divisional Joint Director or the Deputy Director of the Town Planning and Valuation Department.

3. Before its conversion to Municipal Corporation, there existed a Municipal Council for Aurangabad city and final development plan for Aurangabad Municipal Corporation area was published in the year 1975, and the same was revised from time to time. The Aurangabad Municipal Corporation came to be established vide Government Notification dated 3.12.1982 w.e.f. 8.12.1982. At the time of establishment of the Municipal Corporation in the year 1982, 18 villages were included in the Municipal limits, which is an additional area forming part of the Municipal Corporation. A development plan in respect of the additional area came to be published in the Official Gazette on 15.10.1991. At a later point of time, City Industrial Development Corporation Area (CIDCO Area) was also denotified and as a result thereof an area admeasuring 209.88 hectares came to be included within the area of Municipal Corporation. The Declaration under Section 23 (1) read with Sections 34 and 38 of the MRTP Act came to be published in the Official Gazette, declaring intention to prepare revised development plan for an additional area

i.e. de-notified area of CIDCO, and newly added Shivaji Nagar Area on 7.2.2013. On 05.02.2013, the Town Planning Officer came to be appointed for the purposes of preparation of development plan. After completing survey and preparation of existing land use map as contemplated under Section 25 of the MRTP Act, the planning authority, is required to prepare draft development plan and publish notice as contemplated under Section 26 of the MRTP Act, not later than two years from the date of notice published under Section 23 of the said Act. Such notice was published on 04.02.2016. As per the second proviso to Section 26, as applicable to the city of Aurangabad, the State Government is empowered to extend the time not exceeding 12 months, in aggregate to prepare and publish the draft development plan. Though the extendable period of 12 months lapsed by 6.2.2016, subsequently an application dated 18.3.2016, seeking extension of time was moved before the Competent Authority. On such application, time was extended in two spells for an aggregate period of 12 months.

4. The draft development plan, notified by the Municipal Corporation of Aurangabad on 04.02.2016, was questioned, amongst others, in the writ petition bearing no.1981 of 2016 on several grounds. As several writ petitions were filed seeking similar relief, for the sake of brevity and convenience we refer to the facts arising out of W.P. No.1981 of 2016.

5. It was the case of the writ petitioners that the said plan was not prepared in accordance with provisions of Maharashtra Regional and Town Planning Act, 1966; the said plan was not prepared and notified within the statutory period; the delegated authority has no jurisdiction to grant extension of time ex post facto; the said plan was tinkered by the Mayor and councillors of the corporation. It was the specific case in the writ petition that 361 public amenities prescribed in draft development proposals were deleted; about 500 hectares of land covered by forest and water bodies is converted to a no zone and the alignment of 22 roads were changed etc. The relief sought in the writ petition was opposed mainly on the ground that the development plan was at the stage of proposals and was incomplete and inchoate and has to undergo the process provided under Sections 28 and 31 of the MRTP Act. It is the case of the respondents in the writ petition that ultimate development plan is to be sanctioned by the Government under Section 31 of the MRTP Act.

6. The High Court while allowing the writ petition, in the impugned judgment, has held that the statutory time limit prescribed under Section 26 of the MRTP Act is mandatory and Section 21(4A) of the MRTP Act is applicable in respect of proceedings under Section 38 of the MRTP Act. The High Court has further held that the Director of Town Planning, as a delegated authority of the Government, did not have jurisdiction to extend the time after the expiry of period of one year, in addition to prescribed two years' period. Further the High Court has noticed that about 114 reservations sanctioned under previous development plan were directed to be deleted and the large area around the Airport, which was maintained as a green belt, was recommended under revised plan for commercial zone.

7. In view of the aforesaid findings and other reasons recorded in the order, writ petition was allowed by quashing the notification dated 04.02.2016, issued under Section 26(1) of Maharashtra Regional and Town Planning Act, 1966 and further declared the orders of the delegated authority, extending the period as illegal, with a further direction that the

remaining work of preparation of the plan is to be undertaken by the Deputy Director of Town Planning or the concerned Divisional Joint Director, as the case may be.

8. We have heard Sri Harin P. Raval, learned senior counsel appearing for the appellant in appeal arising out of S.L.P.(C) No.33858 of 2016, Sri Gopal Shankar Narayan, learned senior counsel appearing for the Mayor, Municipal Corporation; Sri Shivaji M. Jadhav, learned counsel for the appellants in remaining appeals; Sri Vinay Navare, learned senior counsel for the respondent-writ petitioner; Sri Rahul Chitnis, learned counsel for the respondent-State; Sri A.P. Mayee, learned counsel for the Aurangabad Municipal Corporation; and learned counsel for the impleading parties.

9. Having heard learned counsels on both sides and on perusal of the impugned judgment and other material placed on record, we are of the view that it is not a fit case to interfere with the impugned order under Article 136 of the Constitution of India.

10. The High Court, mainly on the ground that the Planning Authority has not prepared a draft development plan within the time prescribed under Section 26 of the MRTP Act, has allowed the writ petition with a further direction that the competent authority shall undertake the remaining work relating to preparation of draft development plan and submit to the State Government for sanction. Though, elaborate arguments were advanced, stating that the time frame fixed under Section 26 of the MRTP Act is only directory and not mandatory and further prescribed period can be extended as per the proviso, by entertaining an application even after expiry of time etc., however, we are of the view that the said aspects need not be gone into at this stage by this Court. Chapter III of the MRTP Act deals with the preparation of development plan and as per Section 38 of the MRTP Act development plan is to be revised at least once in twenty years. For the preparation of development plan, or the revised development plan, proceedings have to be initiated three years earlier to its sanction by the Government. If the draft development plan is not prepared and published in the Official Gazette, by the planning authority, within the time frame, the competent authority as prescribed under Section 21(4A) shall exercise all the powers and perform all the duties of a planning authority which may be necessary for the purpose of preparing a development plan and submitting it to the State Government for sanction. Section 21(4A) of the Maharashtra Regional and Town Planning Act, 1966 reads as under:-

“Sec.21(4A) If at any stage of preparation of the draft Development plan, the time fixed under sections 25,26 and 30 for doing anything specified in the said sections lapses, the Planning Authority shall be deemed to have failed to perform its duty imposed upon it by or under the provisions of this Act and any work remaining to be done upto the stage of submission of the draft Development plan under section 30 shall be completed by the concerned Divisional Joint Director or Deputy Director of Town Planning and Valuation Department or an officer nominated by him not below the rank of an Assistant Director of Town Planning, as the case may be. The said officer shall exercise all the powers and perform all the duties of a Planning Authority which may be necessary for the purpose of preparing a Development plan and submitting it to the State Government for sanction and may, notwithstanding anything contained in any other law relating to the funds of the Planning Authority, recover the cost thereof from such funds:

Provided that, the said Officer shall exercise all the power and perform all the duties of the planning authority within such period as may be specified by an order by the Director of Town Planning, having regard to the stage of preparation of Development plan: Provided further that, the said period specified under the first proviso shall not exceed the original period stipulated under the relevant section.”

11. Further during the course of hearing, learned counsel appearing for the Aurangabad Municipal Corporation and State of Maharashtra brought to our notice letters dated 15.10.2018 and 15.01.2020 issued by the Government of Maharashtra. In proceedings dated 15.10.2018, Government of Maharashtra in exercise of power under Section 154 of the MRTP Act has issued directions for preparing combined development plan, for original area and for newly added area. The direction issued in the said proceedings reads as under:-

“If development plan of original area and increased area of any Municipal Corporation/Nagar Parishads/Nagar Panchayat/Special Planning Authority or any other authority is due by the reason of completion of 20 years, in that case before initiating revised development plan 3 years before completion of said period, if revised development plan is prepared for entire area which comes within the purview of planning authority then, proper planning could be made and process of preparation of future revised development plan will occur at same time. Therefore, preparation of revised development plan for entire area falling under the jurisdiction of planning authority shall be made, though the date for part of the revised development plan is different, and combined development plan shall be prepared for entire area. In the name and by the order of Governor of Maharashtra.”

12. Government of Maharashtra, by referring to the earlier proceedings dated 15.10.2018, has addressed a letter dated 15.01.2020 to the Commissioner of Aurangabad Municipal Corporation. In the aforesaid letter, the Government has issued instructions to the Commissioner, to prepare a new combined development plan for original and extended limits of Aurangabad city. The relevant portion of the said letter reads as under:-

“However, considering complete area of Planning Authority with a view to make better planning of development scheme proposals while revising the Development Plan, the Government has issued directions on 15.10.2018 as per Section 154 of Maharashtra Regional and Town Planning Act 1966 to prepare combined Development Plan for original and extended limit. Considering the period of Development Plan period of original limits of Aurangabad city and the directions issued by the Government as above, further action may be taken by the Aurangabad Municipal Corporation in regard to prepare new combined Development Plan for original and extended limits of Aurangabad city.”

13. In this case, it is to be noted that proceedings were initiated in the year 2013 for revising the draft development plan and for one reason or the other, the proceedings remained at the stage of preparation of draft development plan. In view of the directions of the High Court, the said plan is yet to be prepared and is to be submitted to the Government for sanction. In any event having regard to communication/letter dated

15.01.2020 a fresh combined development plan for original and extended limits is to be prepared for Aurangabad city.

14. In view of the further developments, as indicated above, and having regard to findings recorded in the impugned order that huge variations are made by the planning authority while preparing the draft development plan, we find no reason to interfere with the impugned judgment. Accordingly, these civil appeals are dismissed, with no order as to costs.