



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5212 OF 2019

Rangnathappa s/o Tukaramappa Kathar
(Deceased through LRs) & others .. Petitioners

versus

The State of Maharashtra & others .. Respondents

Ms. P. S. Talekar, Advocate for Petitioners.
Mr. S. K. Tambe, AGP for the State.
Mr. A. S. Deshapnde, Advocate for Respondent No. 3.
Mr. Sachin Deshmukh, Advocate holding for Mr. M. S. Shaikh,
Advocate for Respondent No. 5.
Mr. M. R. Sonawane, Advocate for Respondents No. 8 and 9.

WITH
WRIT PETITION NO. 10150 OF 2019

Pawan s/o Kailasprasad Gaud
& another .. Petitioners

versus

The State of Maharashtra & others .. Respondents

Mr. M. S. Deshmukh, Advocate holding for Mr. S. S. Bora,
Advocate for Petitioners.
Mr. S. K. Tambe, AGP for the State.
Mr. A. S. Deshapnde, Advocate for Respondent Nos. 5 and 6.
Mr. Sachin Deshmukh, Advocate holding for Mr. M. S. Shaikh,
Advocate for Respondent No. 7.
Mr. M. R. Sonawane, Advocate for Respondents No. 11 and 12.

CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.

RESERVED ON : 9th MAY, 2024.
PRONOUNCED ON : 26th JULY, 2024.

PER COURT : (Per R. M. Joshi, J.)

1. Both these Petitions seek following substantial reliefs :-

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A) x x x

B) The respondent No. 2 to 4 may kindly be directed to ensure that, the Development Plan sanctioned by the Govt. of Maharashtra under Notification dated 2.4.2013 and 24.9.2015, is maintained as it is, and the Layout Plan sanctioned on 22.2.2016 of Survey No. 173, in respect of the lands belonging to R-5 to R-12 may kindly be cancelled, being contrary to the Development Plan, to the extent it is contrary/not in tune with the Development Plan duly sanctioned by the Govt.

C) x x x

D) x x x

E) To direct the respondent no. 5 to act in accordance with the final revised development plan dated 02.04.2013 and ensure access by 15 mtr road to the land of the petitioners, by issuing a writ of mandamus or any other writ, order or direction as the case may be;

F) To quash and set aside the Resolution dated 05.03.2019 passed by the respondent no. 3 on subject no. 57 for initiation of proceeding under section 37 of Maharashtra Regional Town Planning Act, 1966, by issuing a writ of certiorari or any other writ, order or direction as the case may be;

G) To quash Notification u/s 37 of the MRTP Act, 1965 dated 17.06.2019 published in the marathi daily 'Duniyadari' dated 04.07.2019, by issuing a writ of certiorari or any other writ, order or direction as the case may be;

H) x x x

I) x x x

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A) x x x

B) x x x

(a) The notification issued by the President of Municipal Council, Jalna dated 17.06.2019 which is published in daily "Duniyadari" on 04.07.2019 under Section 37 of the MRTP Act. (Annexure "I")

(b) The Resolution dated 05.03.2019 passed by the respondent No. 5 on Subject No. 57 for initiation of

proceeding under Section 37 of the MRTP Act (Annexure "J")

(C-A) The Hon'ble High Court may be pleased to issue writ certiorari or any other appropriate writ or order or direction in the nature of writ and thereby quash and set aside :

a) O.W.No. 2017/JaNaPa/NaRaVi/S.K.r.173 (Bhag)/73 dated 03/01/2018 in respect of Survey No. 173 (Part) 16,100 sqr.mtrs. land situted Mauje Jalna, Tal, Jalna (Annexure "F")

b) O.W.No. 2017/JaNaPa/NaRaVi/S.Kr.173 (Bhag)/7 2 dated 03/01/2018 in respect of Survey no. 173 (Part) for 16100 sqr. Mtrs land situated Mauje Jalna, Tal. Jalna (Annexure "F")

c) O.W.No. 2016/NaPaJa/NaRaVi/S.Kr.172 (Bhag) Va 173 (Bhag)/4543 dated 30/06/2016 in respect of Survey/Gut Nos. 172 (Part) and 173 (Part) for 14200 sq.r.trrs land situated Mauje Jalna, Tal. Jalna (Annexure "F")

d) all the consequent building permissions/development permissions on the basis of these layouts for the reasons mentioned in the writ petition.

e) the decision of the Chief Officer, Municipal Council, Jalna dated Nil, bearing outward No. Nil whereby a decision is taken to submit the proposal for minor modification to the State Government (Annexure "P")

(D-A) The Hon'ble High Court may be pleased to issue writ of mandamus or any other appropriate writ or order or direction in the nature of writ and thereby direct the respondent Nos. 2 and 3 to forthwith conduct an enquiry in respect of sanctioning of layouts/building permissions i.e.

(a) O.W.No. 2017/JaNaPa/NaRaVi/S.Kr. 173 (Bhag) / 7 3 dated 03/01/2018 in respect of Survey No. 173 (Part) 16.100 sqr.mtrs land situated Mauje Jalna, Tal. Jalna (Annexure "F")

(b) O.W. No. 2017/JaNaPa/NaRaVi/S.Kr.173 (Bhag) / 7 2 dated 03/01/2018 in respect of Survey no. 173 (Part) for 16100 sqr. Mtrs. land situated Mauje Jalna, Tal Jalna (Annexure "F")

(c) O.W. No. 2016/NaPaJa/NaRaVi/S.Kr. 172 (Bhag) Va 173 (Bhag) / 4543 dated 30/06/2016 in respect of Survey/Gut Nos. 172 (Part) and 173(Part) for 14200 sqr. Mtrs. land situated Mauje Jalna, Tal Jalna (Annexure "F")

(E-A) x x x

(F) x x x

(G) x x x

2. State Government approved development plan of Jalna town under Notifications dated 02.04.2013 and 24.09.2015. A zone

certificate has already been issued by Respondent No. 4 on 15.01.2019. As per the development plan of Jalna town as indicated in zone certificate, 15 mtrs. wide DP road passes through Gat Nos. 170, 172 and 174 on one hand from southern side and Gat Nos. 171 and 173 on the other from northern side. It is claimed that only access to land Gat No. 173 is 15 mtrs from proposed D.P. road. According to the Petitioners, Respondent Nos. 3 and 4 sanctioned lay out submitted by Respondent Nos. 5 to 12 in contravention of the development plan. It is alleged that the lay out has been sanctioned upto the boundaries of Survey No. 173 belonging to Respondent Nos. 5 to 12 and thereby no room is left for laying 15 mtrs wide DP road.

3. On 04.02.2019, representation was submitted to Respondent Nos. 2 to 4 pointing out that the lay out sanctioned on 22.12.2016 runs contrary to the development plan of Jalna town in as much as 15 mtrs wide DP road passing from Survey No. 173 to the extent of 7.5 mtrs has not been maintained resulting in the total blockage of access to the land belonging to the Petitioner. It is claimed that the municipal authorities could not have sanctioned any lay out contrary to the draft development plan published on 18.11.2010 in the light of the provisions under Section 37 of the

Maharashtra Regional & Town Planning Act, 1966 (for short 'the MRTP Act') and on issuance of final development plan dated 02.04.2013 without any modification. It is alleged that the municipal authorities passed resolution dated 05.03.2019 which is contrary to the law and is malafide and afterthought action to cover up the illegal sanction granted to the lay out contrary to the development plan. It is also alleged that the impugned resolution dated 05.03.2019 is unreasoned, cryptic and unsustainable in law. It is claimed that the resolution is not in accordance with the provisions of Section 37 of the MRTP Act. It is also averred that *post facto* validation of the lay out is not permissible in law and that the resolution dated 05.03.2019 is unsustainable. The Petitioners, therefore, seek direction to ensure that the development plan sanctioned by the Government under Notification dated 02.04.2013 and 24.09.2015 is maintained and the lay out plan sanctioned on 22.02.2016 of Survey no. 137 be cancelled being contrary to the development plan. Petitioners also seek quashment of resolution dated 05.03.2019 passed by Respondent No. 3 in purported exercise of powers under Section 37 of the MRTP Act.

4. Perusal of the prayers in both the Petitions indicate that the Petitioners are taking exception to the resolution passed by the then Jalna Municipal Council (a Municipal Corporation since 2023) on 05.03.2019 invoking provisions of Section 37 of Maharashtra Regional and Town Planning Act for seeking modification of final development plan published by the State Government vide notification dated 02.04.2013. The Petitioners alleged malafides against Municipal Council for passing resolution and it is contended that said resolution has been passed in order to cover up the illegal sanction of lay out/plans in favour of Respondent Nos. 5 to 12.

5. It is argued on behalf of the Petitioners that it cannot be left to the State Government to take a decision on the proposal forwarded by the Municipal Council for modification of the final development plan for Jalna, it being malafide and against law and that this Court is required to consider the illegality, correctness and bonafides of the same. Whereas in other Petition, grievance is about lands of Petitioners becoming landlocked.

6. MRTP Act prescribes a procedure that is required to be followed by the various authorities including the town planning

authority and for confirmation of the said draft development plan, after hearing objections of the concerned to be finally declared as approved by issuance of notification of the State Government.

7. Section 37 of the Act specifically deals with the modification of the declared plan. At this stage, it must be appropriate to reproduce the said provision, which reads thus :-

37. [Modification] of final Development plan:-

1[(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 2[shall, within sixty days from the date of such direction, publish a notice] in the Official Gazette 3[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.

4[(1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government

shall issue the notice, and thereupon the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.]

5[(1AA) (a) Notwithstanding anything Contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development Plan of such a nature that it will not change the character of such Development Plan, the State Government may, on its own, 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 the Planning Authority.

(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the Government.

(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and

consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modifications with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette, the final Development Plan shall be deemed to have been modified accordingly.]

6[(1-B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971(Mah. XXV-III of 1971) is satisfied that a modification of any part of, or any proposal made in, a final Development Plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may 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.]

(2) The State Government may, 7[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 8* * * 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.

8. It is pertinent to note that Section 37 was amended by Act 39 of 1994 whereby minor modification of draft development plan has been amended to modification of development plan deleting the word "minor". It is thus clear that not only minor but any modification of Final Development Plan is also permissible now. No doubt, deletion of word "minor" would not entitle the appropriate authority as well as the State Government to modify the plan changing character of the final development plan. However, at the same time, provision of statute as it stands today, permits modification of the final development plan on compliance of prescribed procedure therefor.

9. In the instant case, Jalna Municipal Council (now Municipal Corporation) claims to have followed the procedure laid

down by Section 37 of the act. In order to substantiate the same, prima facie, there is material on record in the form of resolution passed by the Municipal Council dated 05.03.2019 regarding intention of the Municipal Council to go for such modification as well as notification has been issued calling upon objection to the said modification from all concerned. It is thereafter pursuant to the provisions of above provisions, resolution and draft modification has been sent to the State Government for its approval. Clause 3 of Section 37 provides that the State Government shall after hearing affected persons and planning authority and after making such enquiry as may consider necessary and consulting the director of Town Planning, by notification in Government Official Gazette, publish the approved modification with or without change. It is thus clear that the modification of the plan can be permitted provided the same is approved by the State Government under Section 37(c) of the Act. Section 37(2) provides that sanction of the modification is deemed to have been modification of final development plan. The consequence of such approval/sanction of modification by the State Government would be deemed to have effect on the final development plan.

10. Merely because the Petitioners are aggrieved by such proposed modification and allege non-compliance of procedure and attribute malafides against Planning Authority, it is not permissible to this Court to usurp powers of the State Government under Section 37 to exercise the same for approval or rejection thereof. The powers statutorily vested with the State Government cannot be nullified by taking exception to the proposed modification which has not attained finality. We are, therefore, of considered view that it would be for the State Government to exercise such powers, whether to approve the proposed amendment sought to the final development plan of Town Jalna, or not.

11. Perusal of record indicates that there is no specific order passed by this Court directing the State Government not to take decision on the proposal forwarded by the Municipal Council, however, one order passed by this Court on 11.12.2020 mandates that the parties will not alter the existing situation till the next date. This order is continued till further orders by passing order dated 16.01.2022. If the State Government has not proceeded further to take decision in view of this order, we make it clear that this order would not apply as stay to the State Government for taking decision

on the proposal forwarded by the Municipal Council under Section 37 of the Act.

12. In view of the fact that the said proposal is sent in the year 2019 which has bearing on the issue raised in the Petitions in hand including land of Petitioner becoming landlocked and in other Petitions challenging the approval of plans of development in favour of Respondent Nos. 5 to 12, the State Government is directed to decide the said issue expeditiously and in any case not later than six months from date of this order.

13. Further hearing in both these Petitions will stand adjourned till receipt of the decision of the State Government on the issue. Liberty to circulate the same, after decision of the State Government.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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