

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4589-4590 OF 2008

PUNE MUNICIPAL CORPORATION

& ANR.

APPELLANTS

VERSUS

MOTIBAGH CO-OPERATIVE HOUSING

SOCIETY LIMITED & ORS.

RESPONDENTS

O R D E R

1. Heard learned Senior Counsel for the parties.
2. These appeals have been preferred by Pune Municipal Corporation, aggrieved by judgment and order passed by the Division Bench of the Bombay High Court on 03.05.2005.
3. Facts in short are, that in the year 1966 the suit lands came under a green zone. On 01.06.1983, the Town Planning Scheme for Pune was sanctioned under the Maharashtra Regional and Town Planning Act, 1966 (herinafter referred to as 'MRTP Act'). On 18.09.1982, the said land was reserved for the purpose of parking in the draft Development Plan. The objections were invited in respect of the reservation for parking sometime in the year 1983. The respondents herein submitted their objections and pointed out that an area has already been surrendered for

the purpose of 'Dhobhi Ghat' which was lying unutilized and suggested that the said land could be used for parking purpose.

4. On 05.01.1987, the development plan was sanctioned by the State Government under Section 31 of the MRTP Act, as a result thereof, the land in question was shown as "reserved for a bus depot" instead of "parking".
5. In a similar matter, the amended provision came up before the Bombay High Court in the case of "Bombay Environmental Action Group Versus The State of Maharashtra", 1990 M.L.J. 139 in which concept of substantial change came up for consideration on 05.01.1987 when the plan had been timely sanctioned under provisions of MRTP Act.
6. There was no requirement of law to invite objections and suggestions as to change of land for public purpose from "Parking" to "Bus depot" as it could not have been treated as a case of substantial change is the ground urged by the appellant.
7. As the Notification was relating to Scheme under MRTP Act Declaration under Section 6 was issued on 06.04.1992 read with Section 126 of the MRTP Act for the purpose of acquisition of the land for the bus depot.
8. In 1993 two Writ Petitions were filed by Respondent Nos.1 and 2 and Respondent No.3 respectively challenging the

acquisition proceedings. The High Court, vide an interim order, allowed the acquisition proceedings to proceed, but declaration of the award was restrained.

9. Ultimately, the High Court by impugned order dated 11.04.2005/03.05.2005 has set aside the Government Notification dated 05.01.1987 insofar as it seeks to reserve the land for "Bus Depot", by observing, that the modifications having been effected without inviting objections or suggestions in the official Gazette as required by the 2<sup>nd</sup> Proviso to Section 31 of the Act was illegal. Aggrieved thereby, Municipal Corporation has come up in appeal before this Court.

10. It was submitted by Mr. V. A. Mohta, learned Senior Counsel appearing for the appellants that the provisions of Section 22A were not applicable to the case because the acquisition had been initiated much before and it was not necessary to invite objections afresh. Objections had already been invited in the year 1982 at the time of revision of Draft Development Plan, whereas Government has sanctioned the Development Plan in the year 1987 under Section 31 of the MRTP Act in which suit lands were shown as reserved for "Bus Depot". Therefore, the High Court has erred in law by holding that change of nature of reservation from "Parking" to "Bus Depot" was modification of substantial nature and there was no requirement of law to invite objections again as the

change of public purpose from Parking to Bus Depot could not be termed as substantial modification.

11. Mr. Raju Ramachandran, learned Senior Counsel appearing for the respondents submitted that lot of water has flown in Ganga, since a afresh scheme has been framed under provisions of MRTP Act and therefore the provisions of Section 22A are attracted. In the Revised Development Plan as to the suit land more beneficial, provisions have been provided that the respondents be given opportunities to avail the benefit of the same.

12. After hearing learned counsel for the parties, we are of the considered opinion that the order passed by the High Court cannot be allowed to sustain. Later on Section 22A in the MRTP Act was inserted by Maharashtra Act No.10 of 2011 dated 05.04.2011 so as to provide what are modifications of "substantial nature". Section 22 cannot be said to be applicable. Section 22A is extracted hereinbelow:

"Sec. 22 (A)

In Section 29 or 31, the expression "of a substantial nature" used in relation to the modifications made by the Planning Authority or the officer appointed by the State Government under sub-section (4) of Section 21 (hereinafter referred to as "the said Officer") or the State Government, s the case may be, in the draft Development Plan means;-

(a) reduction of more than fifty per cent, or increase by them per cent, in area of reservations provided for in clauses (b) to (i) of Section 22 in each planning unit or sector of a draft development plan, in sites admeasuring more than 0.4 hectare in the Municipal Corporation area and "A" Class Municipal area and 1.00 hectare in "B" Class and "C" Class Municipal areas;

(b) all changes which result in the aggregate to a reduction of any public amenity by more than ten per cent of the area provided in the planning unit or sector in a draft Development Plan prepared and published under Section 26 or published with modification under section 29 or 31, as the case may be;

(c) reduction in an area of an actually existing site reserved for a public amenity except for marginal area upto two hundred square meters required for essential public amenity or utility services;

(d) 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 then per cent, in the same planning unit or sector in a draft Development Plan prepared and published under Section 26 or published with modification under Section 29 or 31, as the case may be;

(e) any new reservation made in a draft development plan which is not earlier published under Section 26, 29 or 31, as the case may be;

(f) alternation in the Floor Space Index beyond then per cent of the Floor Space Index prescribed in the Development Control Regulations repaired and published under Section 26 or published with modification under Section 29 or 31, as the case may be."

13. The provisions of Section 31 of the MRTP ACT is extracted hereunder:

"31. Sanction to draft Development plan - (1) Subject to the provisions of the section, and not later than (six months) from 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 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, -twenty-four months, in the aggregate, in case, the area of such Development plan falls in the jurisdiction of a Metropolitan Planning Committee constituted under the Maharashtra Metropolitan Planning Committees (Constitutions and

Functions) (Continuance of Provisions) Act, 1999 (Mah. V of 2000); twelve months, in the aggregate, in any other case, as may be specified in such 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.]

[Provided also that, if the Government does not publish its decision by notification in the Official Gazette, regarding sanctioning 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, within the period under this section, such draft Development plan shall be deemed to have been sanctioned as submitted to the Government under Section 30, on the date immediately following the date of expiry of the period under this section:

Provided also that, where any modification submitted by the Planning Authority or, as the case may be, the said Officer, under Section 30 is of substantial nature with respect to the draft Development plan published under section 26, such modification shall not be deemed to have been sanctioned and the Government shall publish a notice regarding such modifications of substantial nature and the provisions relating to publication of the notice in the *Official Gazette* and two local newspapers for obtaining suggestions and objections as stipulated in the second proviso, shall apply.]

(2) The State Government may appoint an officer of rank not below that of a [Group A 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 [within one year from the date of publication of notice under second proviso to sub-section (1)]

(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.

[Provided that, the time-limits as provided in sub-sections (1) and (2) shall not apply for according sanction to the modifications published under sub-section (1):

Provided further that, the Government shall take final decision regarding such modifications within one year from the date of receipt of the report from the officer appointed under sub-section (2).]

(4) The State Government shall fix in the notification under sub-section (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 clauses (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."

14. A reading of Section 31 of the MRTTP Act clearly reveals that the Government was required to invite objections only in case the change in the public purpose is a substantial one and not otherwise. The State Government while sanctioning the Development Plan reserved the suit lands for Bus Depot instead of Parking. In our considered view, the change of public purpose from Parking to Bus Depot was not a substantial change and therefore there was no need to invite fresh objections / suggestions as directed by the High Court.

15. Once declaration under Section 6 had been issued for the acquisition of the land for Bus Depot, it was supposed to

be taken to the logical conclusion. The High Court has also held in "Bombay Environmental Action Group Versus The State of Maharashtra", 1990 M.L.J. (Supra) that only in case of substantial change in the nature of public purpose, fresh objections/suggestions were required to be invited and not otherwise. As the change of public purpose in the final Sanctioned Plan made from Parking to Bus Depot was not a substantial change, it was not incumbent upon the appellants to invite fresh objections.

16. As to the submission raised by learned senior counsel for the respondent regarding framing of the new scheme, since the land stands reserved for bus depot under New Scheme also that further justify our conclusion that land was required to be notified for the public purpose of Bus Depot, the, High Court erred in law in holding otherwise. Some more options have been given to the Planning Authority and the appropriate authority under New Scheme would also not come to rescue of respondents as the New Scheme is not applicable to the respondents. As the new notified Scheme cannot be said to be applicable to the acquisition which has been initiated in 1987.

17. It was further submitted by learned Senior counsel that since there was restraint Order on the passing of the award as such land has not so far vested absolutely in Corporation and the option under the new scheme can be exercised. We are of the considered view that since order

of the High court is illegal and provisions of new scheme are not applicable and due to interim stay, award could not be passed would not come to the rescue of the respondent to avail the benefit of the new scheme. We unhesitatingly rejects the submissions to avail benefits under New Scheme raised by the respondents to reopen the issue.

18. In these circumstances, we set aside the impugned judgment and order passed by the High Court. Appeals are allowed. No order as to costs.

.....J.  
[ARUN MISHRA]

.....J.  
[MOHAN M. SHANTANAGOUDAR]

New Delhi  
August 09, 2017

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4589-4590/2008

PUNE MUNICIPAL CORPORATION & ANR.

APPELLANT(S)

VERSUS

MOTIBAGH CO-OPERATIVE HOUSING SOCIETY

LIMITED & ORS.

RESPONDENT(S)

Date : 09-08-2017 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) Mr. V. A. Mohta, Sr. Adv.

Mr. Vijay Kumar, Adv.

Mr. Nilkanth Nayak, Adv.

Mr. Vishwajit Singh, AOR

Mr. M. D. Adka, Adv.

Ms. Vandana Gogna, Adv.

For Respondent(s) Mr. Raju Ramachandran, Sr. Adv.

Mr. Jayant Bhushan, Sr. Adv.

Mr. A. P. Mayee, Adv.

Mr. A. Selvin Raja, Adv.

Mr. Avnish M. Oza, Adv.

Mr. Chirag Jain, Adv.

Charudatta Mahindrakar, Adv.

Mr. Mahaling Pandarge, Adv.

Mr. Nishant Katneshwarkar, Adv.

Ms. Asha Gopalan Nair, AOR

Mr. P. V. Yogeswaran, AOR

UPON hearing the counsel the Court made the following

O R D E R

Appeals are allowed in terms of the Signed Order placed on the file.

Pending application(s), if any, stands disposed of.

(RASHI GUPTA)

SENIOR PERSONAL ASSISTANT

(TAPAN KUMAR CHAKRABORTY)

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]