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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.6588 OF 2012

Tukaram Shamrao Rathod
and others
vs.
State of Maharashtra & Ors.

...Petitioners
...Respondents

Mr.A.V.Anturkar, Senior Advocate a/w Ms Kalyani
Tulankar i/b Mr.Sugandh Deshmukh for the petitioners
Ms Neha Bhide, AGP `B' Panel for the respondent
Nos.1 and 2
Mr.I.M.Khairdi for respondent Nos.3 and 4
Mr.R.S.Apte, Senior Advocate i/b Mr.Anand Kulkarni
for respondent Nos.5 to 7.

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : JANUARY 23, 2015

P.C.:

1 Heard the learned senior counsel for the petitioners, learned AGP for the respondent Nos.1 and 2, learned counsel for the respondent Nos.3 and 4 and learned senior counsel for the respondent Nos.5 to 7.

2 In this petition basically there are two challenges. First is to the notification dated 18th August 2004 under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short `the MRTP Act'). By the said notification, the State Government sanctioned a development plan for the city of Solapur in exercise of power under sub-section (1) of Section 31 of the MRTP Act. The

second prayer is for challenging the action of Solapur Municipal Corporation of granting Transferable Development Rights (for short 'TDR') to the respondent Nos.5 to 7 in respect of the property claimed by the petitioners.

3 As far as the first challenge is concerned, the learned senior counsel for the petitioners invited our attention to the exercise of power of granting extension as regards the periods provided in Sections 21, 25, 26 and 28 by submitting that extensions have been granted by the Authorities not empowered to do so under the provisions of the MRTP Act. He has invited our attention to the paragraph 4 forming part of concluding paragraph in this petition. His submission is that the petitioners belong to the SRP force and considering the exigencies of their service, they are posted in different parts of the State and even outside the State. His contention is that when the objections were invited, the petitioners were in Chandrapur and therefore, they were not in a position to raise any objection. Their contention is that only when the notices were issued to some of the petitioners, that they became aware about the sanction of the development plan and the reservations provided thereunder. He submitted that going by the stand taken in the affidavit in reply filed on behalf of the third and fourth respondents, the TDR was given to the persons whose names were mutated in the revenue record on the basis of a sale deed. His submission is that the respondent Nos.5 to 7 have

played a fraud upon the Municipal Authorities and had procured the TDR. The learned counsel for the Municipal Corporation states that the petition suffers very gross delay as development plan sanctioned on 18th August 2004 is sought to be challenged by filing the present petition in the August 2012. The submission of the learned senior counsel for the respondent Nos.5 to 7 is that the issue of title is a disputed question of fact and, therefore, in this petition under Article 226 of the Constitution of India, this Court cannot decide the issue of eligibility to get the TDR in respect of a reserved plot of land. The learned senior counsel for the petitioners pointed out that in this petition the challenge is also to the notices issued for demolition of the structure erected by some of the petitioners. His submission is that action of demolition under Section 260 of the Maharashtra Municipal Corporations Act, 1949 (for short 'the said Act of 1949') is sought to be taken without giving an opportunity of being heard to the petitioners.

4 We have carefully considered the submissions. It is well settled that the process of preparation of a draft development plan and sanction of the development plan under the MRTP Act partakes a character of legislative function. The process of preparation and finalisation of development plan is an elaborate process. Under the provisions of the MRTP Act, before submitting the draft development plan for sanction of the State Government, elaborate process is required to be undertaken prescribed

under Sections 23 onwards of the MRTTP Act. Declaration of intention of preparing development plan is required to be notified in the Official Gazette as well as in the local newspapers. In the present case, there is no dispute that the said declaration was made. Thereafter, the draft development plan is required to be published. Objections and suggestions made by the citizens are required to be considered by the Planning Authority and only after considering the said objections and suggestions, the Planning Authority submits the draft development plan for sanction to the State Government. In the present case, the declaration of intention under Section 23 read with Section 38 of the MRTTP Act was published in Government Gazette dated 22nd October 1992 and in daily Newspapers on 23rd September 1992. The draft development plan was published in accordance with Section 26 on 26th March 1999 in Government Gazette and on 10th April 1999 in various newspapers including Daily Lokmat. The draft development plan was published under sub-Section (4) of Section 28 in Government Gazette on 31st January 2002 on page 258 and in Daily Lokmat on 5th February 2002. The grievance made in this petition is as regards the extensions granted from time to time at various stages right from the year 2000. The draft development plan is published at two stages. As stated earlier, the first publication is in the year 1999 and the second one is in the year 2002. The sanctioned development plan was published in August 2004 in Government Gazette as well as in news papers. There are 45 petitioners in this

petition. It is impossible to believe that all the petitioners were not aware of the process which commenced from the year 1992 and which concluded in the year 2004. The explanation for delay of so many years cannot be accepted especially when the function exercised partakes character of a legislative function.

5 We must note here that the exercise of making development plan and sanction thereof is a very elaborate exercise. The development plan contains reservations for various public purposes. It contains several aspects of overall planning of the city including Development Control Regulations. Within a span of 8 years, it must have been acted upon. Any interference by the Writ Court may cause prejudice to the large number of citizens of the city of Solapur. Therefore, prayer (a) cannot be granted and the same is rejected only on the ground of delay.

6 As far as the grievance regarding grant of TDR is concerned, the real dispute is about the title claimed by the petitioners. Unless the petitioners establish their title by approaching the competent Civil Court, the petitioners cannot claim any right in relation to the TDR in respect of the lands claimed by them.

7 As regards the notices of demolition, we find that no opportunity of being heard has been given to the petitioners who have been served with the

notices. If the Municipal Corporation wants to take an action under Section 260 of the said Act of 1949, the Municipal Corporation will have to take recourse to the law laid down by this Court in the case of Sopan Maruti Thopte and another vs. Pune Municipal Corporation and another¹. Notices under Section 478 of the said Act of 1949 have been issued on the basis of the earlier notices issued under Section 260 of the said Act.

8 Therefore, no action on the basis of notices which are impugned in this petition can be taken. However, it will be open for the respondent No.3 to take recourse of the provisions of the said Act of 1949 or the MRTP Act for taking action in relation to the alleged illegal constructions.

9 As the petitioners will have to file a suit, we propose to protect the petitioners for a limited period by directing the respondent Nos.5 to 7 hereinafter not to create any rights in respect of the TDR and not to hereinafter use the TDR subject matter of challenge.

10 Accordingly, we dispose of the petition by passing the following order:

- (I) Prayer clause (a) is rejected;
- (II) We direct the Municipal Corporation not to take action of demolition on the basis of the notices which are annexed to the petition.

¹ 1996 (1) Mh.L.J. 963

However, as observed earlier, it will be open for the respondent No.3 to initiate action either under the MRTTP Act or under the said Act of 1949;

(III) The issue of legality of the constructions carried out by the petitioners is kept open;

(IV) It will be open for the petitioners to approach the Civil Court for seeking appropriate relief as regards the title claimed by them. To enable the petitioners to file appropriate proceedings before the Civil Court and to apply for appropriate interim relief, we direct that for a period of three months from today, the respondent Nos.5 to 7 shall not create any further third party rights in respect of the TDR subject matter of the dispute and shall not use the said TDR;

(V) It is obvious that the prayer for interim relief which will be made by the petitioners before the Civil Court shall be decided on its own merits without being influenced by the limited protection granted to the petitioners by this Court;

(VI) We make it clear that we have made no adjudication on the rival claims of the petitioners and the respondent Nos.5 to 7 on title;

(VII) Petition is disposed of on above terms.

(A.K.MENON,J.)

(A.S.OKA,J.)