

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.132 OF 2008

Sachin Shrikant Patwardhan

Age:- 39 years, Occupation :- Advocate,

R/at:- 3, Chinar Apartment,

Pimpri Chinchwad Link Road,

Chinchwad, Pune – 411 033.

...Petitioner

v/s.

- 1) State Government of Maharashtra
Ministry of Urban Development,
Through Government Pleader,
High Court, Bombay.
- 2) Cabinet Minister – Urban Development
Department, State of Maharashtra,
Through Government Pleader,
High Court, Bombay.
- 3) Principal Secretary – Urban Development
Department, State of Maharashtra,
Mantralaya, Mumbai,
Through Government Pleader,
High Court, Bombay.
- 4) Pimpri Chinchwad Municipal Corporation,
Through its Commissioner,
Having its office at Pimpri,
Pune – 411 018.

- 5) Commissioner,
Pimpri Chinchwad Municipal Corporation,
Having its office at Pimpri,
Pune – 411 018.
- 6) City Engineer,
Pimpri Chinchwad Municipal Corporation,
Having its office at Pimpri,
Pune – 411 018.
- 7) Municipal Secretary,
Pimpri Chinchwad Municipal Corporation,
Having its office at Pimpri,
Pune – 411 018.
- 8) Assistant Town Planner,
Pimpri Chinchwad Municipal Corporation,
Having its office at Pimpri,
Pune – 411 018.

...Respondents.

Mr.A.S.Khandeparkar i/b M/s.Khandeparkar & Associates, for the
Petitioner.

Mr.V.S.Gokhale, AGP for the Respondent Nos.1 to 3.

Mr.Deepak R. More, for the Respondent Nos.4 to 8.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 12th AUGUST, 2015.

ORAL JUDGMENT (Per A.S.Oka, J.) :

1. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the fourth to eighth respondents and the learned AGP appearing for the first to third respondents.

2. The substantive challenge in this petitioner under Article 226 of the Constitution of India is to the notification dated 18th August, 2004 issued by the State Government in exercise of powers under sub-Section (1) of Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the MRTP Act'). Under Section 31 of the MRTP Act, the Development Control Regulations (for short 'the said Regulations') of the Pimpri Chinchwad Municipal Corporation were sanctioned vide notification dated 17th December, 1990 which were modified further by a notification dated 16th December, 1999.

3. Resolution No.4566 dated 29th September, 2001 was passed by the General Body of the Pimpri Chinchwad Municipal Corporation, Pimpri, Pune (for short 'the said Corporation') proposing to initiate proceedings under sub-Section (1) of Section 37 for modification of the said Regulations. There were five proposals approved under the said

Regulations. In respect of four, a preliminary notification under sub-Section (1) of Section 37 of the MRTP Act was issued on 31st October, 2001 and in case of the fifth proposed modification, the preliminary notification under sub-Section (1) of Section 37 was issued on 24th February, 2004. It will be necessary to make a reference to the modification proposed under the notification dated 24th February, 2004 by adding Regulation No.M-6.5 which reads thus:-

“6.5 In accordance with the Sanctioned Regional Plan of Pune district, it has been decided as a policy to reduce the industrial acreage in Pune Metropolitan Region. In view of this, owner of all the lands in Industrial Zones may be allowed to develop such lands for residential use, if they so desire. The Municipal Commissioner, Pimpri-Chinchwad Municipal Corporation, Pimpri Pune may independently entertain development permissions for residential use for such lands against payment of premium to decided by the Municipal Commissioner from time to time.”

4. Thereafter, the State Government exercised power under sub-Section (2) of Section 37 by issuing the impugned notification dated 18th August, 2004 by which the proposed Regulation No.M-6.5 was approved by the State Government with some modification. The Regulation No.M-

6.5 sanctioned by the State Government reads thus:-

“6.5 In accordance with the Sanctioned Regional Plan of Pune district, it has been decided as a policy to reduce the industrial acreage in Pune Metropolitan Region. In view of this, owner of all the lands in Industrial Zones may be allowed to develop such lands for residential use, if they so desire, subject to condition that besides the 10 per cent Open Space the owner shall provide 10 per cent amenity space which shall be handed over to the said Corporation free of cost. The Municipal Commissioner, Pimpri-Chinchwad Municipal Corporation, Pimpri may independently entertain development permission for residential use for such lands against payment of premium to be decided by the Municipal Commissioner from time to time. This rule shall not be applicable to M.I.D.C., Industrial area.

Note.- The aforesaid notification sanctioning the said modification is kept open for inspection by the public during office hours on all working days in the office of the Commissioner, Pimpri-Chinchwad Municipal Corporation for period of one month”

5 The first submission of the learned counsel appearing for the petitioner is that the proposal for incorporating Regulation No.M-6.5 was brought before the General Body meeting held on 29th September, 2001 at

the last moment by the Mayor. He pointed out that only with a view to ensure that the said proposal goes through without any objection, though the five proposals were approved, the notifications in respect of four were published on 31st October, 2001. He pointed out that the said four modifications were approved by the State Government under sub-Section (2) of Section 37 with modification on 21st February 2007, but in case of impugned modification, the preliminary notification was published on 24th February, 2004 and only within six months i.e. on 18th August, 2004, the State Government approved the said modification. He urged that there is no policy which forms part of the sanctioned Regional Plan which provides that industrial area in Pune Metropolitan Region should be reduced. He invited our attention to the extract of Industrial Development Policy annexed to affidavit of Smt. Sadhana Pradeep Naik, Deputy Director of Town Planning, Pune Division, Pune filed on behalf of the State Government. He submitted that the proposal for incorporating the said Regulation No.M-6.5 itself proceeds on a wrong assumption that there exists such a policy.

6 He invited our attention to sub-Section (1) of Section 37 as it stood prior to amendment made by the Maharashtra Act No.43 of 2014. He

urged that the unamended Section provided that recourse can be taken to Section 37 provided the change proposed does not change the character of the Development Plan. He submitted that a blanket provision has been made by the impugned modification permitting the change of user of all the plots in the industrial zones for residential use. He submitted that there is no rational criteria adopted and several plots in the industrial zone have been converted for residential use. He urged that by making such a blanket provision, all the industries within the limits of the said Municipal Corporation will be shifted. He pointed out that till the date of filing of the petition, about 38 lacs sq.ft of land which was forming a part of the industrial zone was already put to residential use. He would, therefore, urge that the said Regulation will change the character of the Development Plan. He submitted that such a modification by incorporating the said Regulation could not have been made in exercise of powers under Section 37. Lastly, he urged that in case of several proposals which are approved, the requirement of surrendering 10% of the land by way of amenity open space to the Municipal Corporation has not been complied with. He invited our attention to the chart annexed on page 88 of the petition giving instances where residential use has been permitted on the plots in industrial zones without the owners thereof handing over 10% of the

amenity open spaces.

7. The learned counsel appearing for the Municipal Corporation submitted that there is no illegality associated with the impugned notification, inasmuch as the entire procedure as provided by sub-Section (1) of Section 37 has been complied with. He submitted that merely because notifications under sub-Section (1) of Section 37 were published at two different stages, no illegality is attracted. He pointed out the further modification made under notification dated 7th July, 2008. He submitted that the allegation that permissions have been granted without surrender of 10 percent amenity open space has no basis. The learned AGP supported the impugned notification.

8 We have given our careful consideration to the submissions. Firstly we deal with the contention that the incorporation of the said Regulation will change the character of the Development Plan.

9 The contents of the Development Plan are provided under Section 22 of the MRTP Act. It contains (a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial,

agricultural, recreational; (b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theaters and places for public entertainment, or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government; (c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies; (d) transports and communications, such as roads, high-ways, park ways, railways, water-ways, canals and airports, including their extension and development; (e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas; (f) reservation of land for community facilities and services; (g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale; (h) preservation, conservation and development of areas of natural scenery and landscape; (i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value and of heritage buildings and heritage precincts ; (j) proposals for flood control and prevention of river pollution etc.

10. It is pointed out that the area/total area covered by the Municipal Corporation is 170 sq.kms. What is provided by the said Regulation M-6.5 incorporated by way of amendment is that the use of lands in industrial zones shall be permitted for construction of residential buildings subject to the condition incorporated by the State Government by modifying the Regulation as proposed by the Planning Authority. The State Government incorporated a modification in the Regulation No.M-6.5 proposed by the Planning Authority by providing that 10% open space shall be maintained while using lands in the industrial zones for residential purpose and in addition, 10% amenity open space shall be handed over to the Municipal Corporation free of cost.

11. Out of the total area of the jurisdiction of the Municipal Corporation covering 170 sq.km, the industrial zone forms a small part thereof. What is provided is that the use of lands in industrial zone, can be made for residential purpose, subject to the aforesaid conditions. As pointed out earlier, Section 22 provides for the contents of a Development Plan. The provision regarding the use of the lands in industrial zone is only one of the several provisions in the Development Plan. Hence, the

modification made by incorporating Regulation No.M-6.5 by no stretch of imagination affects the character of the entire Development Plan.

12. Now we deal with the second submission regarding the manner in which the notification under sub-Section (1) of Section 37 was published. It is true that the Resolution no.4566 dated 29th September, 2001 of the General Body of the Municipal Corporation provides for five different modifications. Four modifications were notified under sub-Section (1) of Section 37 on 31st October, 2001 which were belatedly approved by the State Government with modification in the year 2007. The modification proposed for introducing Regulation No.M-6.5 was published on 24th February, 2004, which was approved in hurry on 18th August, 2004. We have perused sub-Section (1) of Section 37 as it stood in the year 2001 and 2004. There is no time limit prescribed by the Section for implementation of the Resolutions of the Planning Authority proposing modification in accordance with Section 37.

13. It is difficult to understand as to why and how the notification dated 24th February, 2004 becomes illegal only because there is a wide time gap between the publication of the proposed modification and the

Resolution of the Planning Authority proposing the modification. We must note here that this Court has repeatedly held that the exercise of preparation of a Development Plan under the MRTP Act partakes a character of legislative function. We see no illegality committed due to the delay in publication of the notification under sub-Section (1) of Section 37 or any illegality on account of publication of two separate notifications on the subjects covered by one Resolution of the Planning Authority.

14. Next submission was that the reference to a policy in the impugned modification is erroneous as there is no policy to reduce the industrial acreage in Pune Metropolitan Region. We have perused the extract of the Chapter – IV under the heading ‘Industrial Development Policy’ which is annexed to the affidavit of the State Government. This Chapter IV is a part of the Regional Plan for Pune Metropolitan Region. In the General Approach, mentioned in Chapter – IV, it is stated that the State Government is committed to a policy of industrial dispersal and decentralization. It provides that SICOM has for this purpose introduced a package scheme of incentives for industries which are willing to locate themselves in the backward areas. Again in the second part of the General Approach, it is reiterated that there is a policy objective of decentralizing

industries. Regulation No.M-6.5 refers to a policy to reduce the industrial acreage in Pune Metropolitan Region. The Policy of the State as reflected from the Industrial Development Policy is of decentralizing of industries. Obviously, the Industrial Development Policy need not provide for the details of the manner in which the said policy will be implemented by the State. After a preliminary notification was published on 24th February, 2004 by the Municipal Corporation, the State Government has considered the same and has granted approval under sub-Section (2) of Section 37 by making modifications which we have already narrated above. Therefore, there is no illegality associated with the impugned notification, only because it refers to a policy. It was tried to be submitted by the learned counsel appearing for the Petitioner that there was no proper publicity given to the notice dated 24th February, 2004 issued in accordance with sub-Section (1) of Section 37. The sub-Section (1) of Section 37 provides that the notice inviting objections shall be published in the Official Gazette and in such other manner as may be determining by the Planning Authority or the Government, as the case may be. In paragraph 11, the petitioner himself has stated that the notice was published in 'Daily Kesari' dated 27th February, 2004. It is not the case of the petitioner that the said news paper has no circulation within limits of the said Municipal Corporation.

15. Thus, looking from any angle, we see no illegality associated with the impugned modification by introducing Regulation No.M-6.5 in the Development Control Regulations of the said Municipal Corporation.

16. The petitioner has given instances where the development of residential use of the lands falling under the industrial zone has been permitted without surrendering 10% amenity space to the Municipal Corporation free of cost.

17. The conditions incorporated by the impugned Regulation No.M-6.5 will have to be scrupulously implemented by the said Municipal Corporation. Therefore, we propose to direct the Municipal Corporation to examine all sanctioned proposals permitting residual use in industrial zones for ascertaining whether compliance with regard to the said requirement has been made in case of each proposal. Hence, we pass the following order:-

ORDER

- i) The challenge to the impugned notification dated 18th August, 2004 by which Regulation No.M-6.5 was incorporated in the said Regulations is rejected;

- ii) We direct the Pimpri-Chinchwad Municipal Corporation to examine all proposals sanctioned under the Regulation No.M-6.5 and to ascertain whether the requirement of surrendering 10% amenity open space has been complied with;
- iii) If such compliance is not made, we direct the Pimpri-Chinchwad Municipal Corporation to initiate appropriate proceedings in accordance with law against the owners who have not complied with the said requirement;
- iv) Compliance affidavit shall be filed recording compliance with these directions on or before 26th October, 2015;
- v) We direct the said Municipal Corporation to ensure that the conditions incorporated in Regulation No.M-6.5 are scrupulously complied with;
- vi) The petition is disposed of on above terms. There shall be no order as to costs
- vii) For considering the compliance affidavit, the petition shall be listed on 28th October, 2015 in the caption of 'Directions'.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)