

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO.12204 OF 2015**

Shri Tukojirao Krushnajirao Pawar )  
 Maharaja of Devas )  
 Age 50 years Occ.Business )  
 Through Constituted Attorney )  
 Director of Moneto Export Ltd. )  
 Mr. Changdeo Rambhau Ghumare )  
 Age 60 years. Occ.Business )  
 R/at Plot No.26 D'Souza Colony )  
 College Road, Nashik. ) ..Petitioner

Versus

1. Asst. Director of Town Planning, )  
 Town Planning Dept. )  
 Kolhapur Municipal Corporation, )  
 Kolhapur – 416 002. )  
 2. The Commissioner, )  
 Municipal Corporation )  
 for the City of Kolhapur, )  
 Kolhapur – 416 002. )  
 3. The State of Maharashtra, )  
 Through Principal Secretary, )  
 Urban Development Department, )  
 Mantralaya, Mumbai. ) ..Respondents

Mr. Amol P. Mhatre, advocate for the petitioner.  
 Mr. Suresh Madhukar Kamble, advocate for respondent Nos. 1 and 2.  
 Ms. R. A. Salunkhe, AGP for respondent No.3-State.

**CORAM : RANJIT MORE &  
 ANUJA PRABHUDESSAI, JJ.**

**DATE OF RESERVING : 7<sup>th</sup> OCTOBER, 2016.**

**DATE OF PRONOUNCEMENT : 5<sup>th</sup> DECEMBER, 2016.**

**Oral Judgment : (Per Ranjit More, J.)**

Rule. Rule is made returnable forthwith and the petition is heard finally by consent.

2. Heard Mr. Mhatre, learned counsel for the petitioner, Mr. Kamble, learned counsel for respondent Nos. 1 and 2 and Ms. Salunkhe, learned AGP for respondent No.3.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner is seeking to quash and set-aside the order dated 15<sup>th</sup> October, 2015, passed by respondent No.2- Municipal Commissioner, rejecting the petitioner's application dated 22<sup>nd</sup> September, 2015, bearing No.1/1471 for necessary sanction of the layout by amalgamating plot Nos. 5 and 6 out of the property bearing revision survey No.1104 under Section 44 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). The petitioner has also sought direction to respondent No.2-Municipal Commissioner to allow the said application.

4. The petitioner was the owner of the entire revision survey No.1104 admeasuring about H19.35R equivalent to 1,93,800 square meters situate at A Ward, Rankala Lake at Karveer, Kolhapur. The 2<sup>nd</sup> revised development plan of Kolhapur City was sanctioned in the

year 1999 and the same came into force in the year 2000. In this plan, revision survey No.1104 was shown in commercial zone. The plan also shows that this land is used for the purpose of "Shalini Cinetone". In the year 2003, the petitioner through his power of attorney had submitted a proposal for layout of property bearing revision survey No.1104 admeasuring about 1,93,800 square meters. It appears that by the time this proposal was submitted, the General Body of Kolhapur Municipal Corporation already passed resolution No.40 dated 30<sup>th</sup> June, 2003, resolving to initiate modification proposal under Section 37 of the MRTD Act, in pursuance of the directives issued by the Government to include the provisions of Regulations for Conservation of heritage buildings/precincts/natural features along with list of heritage buildings in its Development Control Rules, and accordingly, issued notice which was published in Maharashtra Government Gazette, in which, "Shalini Cinetone" was shown at serial No.8 in Grade III of the heritage structures. The petitioner's proposal for sanction of layout of property bearing revision survey No.1104 was tentatively approved on 26<sup>th</sup> September, 2003, and thereafter, this layout was finally approved on 26<sup>th</sup> March, 2004. In the final sanctioned layout of revision survey No.1104, the area under existing building which was used for "Shalini Cinetone" and shown in hatching in the layout are carved out as plot Nos. 5 and 6. In addition to this, 5% of the total area was kept as

amenity space adjacent to plot Nos. 5 and 6 as per the requirement of Rule 57 of the prevailing Bye-laws. The layout was sanctioned on a condition that the area of plot Nos. 5 and 6 including the amenity and open space shall be reserved for "Shalini Cinetone" and would not be used for any other purpose. The petitioner was also directed to give indemnity bond to comply with the said condition and, accordingly, the petitioner has given indemnity bond on 25<sup>th</sup> March, 2004 that the plot Nos. 5 and 6 including the amenity and open space are to be reserved for "Shalini Cinetone" and the same shall not be used for any other purpose.

5. Since the Government deleted the structure "Shalini Cinetone" from the heritage structures – Grade III while granting sanction under Section 37(2) of the MRTPL Act to the modification proposal and list of heritage buildings/precincts/natural features, the petitioner intended to develop the said property viz. plot Nos. 5 and 6 out of revision survey No.1104 and, accordingly, applied for permission for development and sanction of layout of the said property under the MRTPL Act on 28<sup>th</sup> September, 2012. This proposal was kept pending by the Corporation and, therefore, the petitioner was constrained to file writ petition No.9355 of 2013. By an order dated 9<sup>th</sup> October, 2013, the Division Bench of this Court directed respondent – Corporation to decide the petitioner's said representation on merits and in accordance with

law. Thereafter, respondent No.2-Corportion by its order dated 16<sup>th</sup> January, 2014 rejected the petitioner's proposal. The petitioner, thereafter, again approached this Court by filing another writ petition No.2596 of 2014. This petition was also rejected by this Court by an order dated 18<sup>th</sup> June, 2015 by recording the contention of the petitioner that if there is no existing reservation in the sanctioned Development Plan, it is for the petitioner to make an appropriate representation to the Municipal Corporation along with necessary documents. It was also observed that if the reservation continues, remedy of the petitioner is to approach the Municipal Corporation or the State Government for initiating proceedings under Section 37 of the MRTP Act. The petitioner, thereafter, again preferred a fresh representation dated 22<sup>nd</sup> September, 2015. This representation as stated above is rejected by the order impugned in the petition.

6. Mr. Mhatre, learned counsel for the petitioner, submitted that in the revised Development Plan of 1999, revision survey No.1104 was included in commercial zone and shown for the purpose of "Shalini Cinetone". He submitted that this is not designation or reservation as contemplated under Section 22 of the MRTP Act. He submitted that the list of reservations given to the petitioner by the Kolhapur Municipal Corporation under Right to Information Act , 2005, is annexed to the petition at pages 51 to 99 and in this list, revision survey No.1104 or

“Shalini Cinetone” is not shown as designation or reservation. Mr. Mhatre further submitted that though the structure of “Shalini Cinetone” was included in draft heritage list by the Corporation in the year 2003, while granting sanction under Section 37(2) of the MRTP Act, the structure of “Shalini Cinetone” is deleted from the heritage list – Grade III and, therefore, despite the condition of the earlier layout and indemnity bond, the petitioner is entitled to develop plot Nos. 5 and 6. He submitted that this development, however, would be subject to the provisions of Rule 57 of the Development Control Rules and the petitioner is willing to abide by the same. He lastly submitted that the impugned order rejecting the petitioner’s proposal dated 22<sup>nd</sup> September, 2015, in the above circumstances, cannot be sustained and is liable to be quashed and set-aside.

7. Mr. Kamble, learned counsel for respondent Nos. 1 and 2, on the contrary, opposed the petition. He relied upon the affidavit-in-reply filed on behalf of the respondents. He submitted that though the structure of “Shalini Cinetone” is deleted from Heritage Structures (Grade-III), still the said structure is “designated reservation” as per Section 22 of the MRTP Act. Mr. Kamble relied upon the approval of earlier layout in the year 2004 in respect of revision survey No.1104, and particularly condition No.10 thereof, under which it is obligatory on the petitioner to keep the said plot Nos. 5 and 6 for the purpose of “Shalini

Cinetone” and not to use the same for any other purpose. He also relied upon the indemnity bond given by the petitioner in the year 2004. He submitted that the petition is devoid of any merit and the same deserves to be dismissed.

8. Having considered the rival submissions of the respective counsel and having gone through the petition along with its annexures and affidavit-in-reply, we find merit in the petition. In the revised Development Plan of 1999, revision survey No.1104 was included in commercial zone and the same is shown for the purpose of “Shalini Cinetone”. The area of this survey number was H19 and 35R and admittedly, the petitioner was the owner of this survey number as well as the structure standing thereon which was known as “Shalini Cinetone”. In the year 2003, the petitioner submitted the proposal of layout of the property bearing revision survey No.1104 and this layout was also finally approved on 26<sup>th</sup> March, 2004. During this time, the General Body of Kolhapur Municipal Corporation passed resolution on 30<sup>th</sup> June, 2003, resolving to initiate modification proposal under Section 37 of the MRTP Act to include the provisions of regulations for conservation of heritage buildings/precincts/natural features along with list of heritage buildings/precincts/natural features in the Development Plan and notice regarding the said modification was also published in the Maharashtra Government Gazette on 25<sup>th</sup> September, 2003. The

structure known as “Shalini Cinetone” was included at serial No.8 in Heritage Sites (Grade III). It is apparent that in the light of draft heritage list published by Kolhapur Municipal Corporation, in which, “Shalini Cinetone” was shown at serial No.8 in Heritage Sites (Grade-III), the petitioner’s proposal for layout of revision survey No.1104 was approved on the condition that plot Nos. 5 and 6, on which, the structure of “Shalini Cinetone” was standing shall remain reserved for the said purpose and the same shall not be used for any other purpose. The petitioner was accordingly directed to give indemnity bond and, accordingly, the petitioner has also given indemnity bond on 25<sup>th</sup> March, 2004. The Municipal Corporation, however, failed to take further steps as contemplated under Section 37 of the MRTP Act and the Government was constrained to appoint Deputy Director of Town Planning, Pune Division under Section 162 of the MRTP Act to complete the procedure. The Government thereafter followed the procedure and granted approval to the modification proposal to include the provisions of regulations for conservation of heritage buildings/precincts/natural features along with list of heritage buildings/precincts/natural features in the Development Control Rules of Kolhapur Municipal Corporation. However, while granting sanction under Section 37(2) of the MRTP Act, the structure of “Shalini Cinetone” is deleted from the Heritage Sites (Grade-III). The Government dropped the structure of “Shalini Cinetone”

from the Heritage Sites (Grade-III) on the representation dated 17<sup>th</sup> March, 2011, of the Corporation itself. In this representation, it is stated that the structure of "Shalini Cinetone" consists of a shed and is in a dilapidated state. The Corporation has also stated that as on date, no activity related to cinema or ancillary activities are undertaken in the said structure. The Corporation, therefore, represented to the Government to drop the said structure from the list of heritage structures.

9. In these circumstances, condition No.10 imposed while sanctioning earlier layout of revision survey No.1104 as well as the indemnity bond given by the petitioner to the effect that plot Nos. 5 and 6 will remain reserved for "Shalini Cinetone" and the same cannot be used for any other purpose would not continue to operate. In other words, in view of the subsequent development viz. deletion of "Shalini Cinetone" from the list of heritage sites (Grade-III) by the Government while granting sanction to the modification proposal under Section 37 of the MRTP Act, the petitioner is entitled to develop the said land viz. plot Nos. 5 and 6 in accordance with the Development Control Rules of Kolhapur Municipal Corporation.

10. This takes us to consider the submission of respondent-Corporation that though the structure of "Shalini Cinetone" is dropped

from the Heritage Sites (Grade – III), nevertheless, the said structure is designated reservation as contemplated under Section 22 of the MRTP Act. The Corporation, in support of this submission, relied upon the revised Development Plan of 1999 as well as earlier approval of the layout plan in respect of revision survey No.1104. The Corporation submitted that in the said revised Development Plan, revision survey No.1104 was included in commercial zone and was shown for the purpose of “Shalini Cinetone”. It is also the submission of the Corporation that in view of Rule 57 of the Development Control Rules of Kolhapur Municipal Corporation, two plots viz. plot Nos. 5 and 6 of revision survey No.1104 have been reserved and their status as per Development Plan continues to be under reservation. The submissions though appear to be attractive, on deep scrutiny of the relevant documents, are liable to be rejected.

11. The Corporation has provided list of reservations in Kolhapur City to the petitioner in pursuance of query under Right to Information Act, 2005. This list is annexed to the petition at pages 51 to 99. Perusal of this list, makes it clear, that there is no reference of revision survey No.1104 or “Shalini Cinetone”. Therefore, the stand of the Corporation that this entire revision survey No.1104 was reserved for “Shalini Cinetone” in the revised Development Plan of 1999, does not

stand scrutiny of law. This conclusion is supported by the fact that the Corporation itself approved the petitioner's proposal for layout of property bearing revision survey No.1104 in the year 2004. Had the entire revision survey No.1104 reserved for "Shalini Cinetone" in the revised Development Plan of 1999, the petitioner's proposal for layout of the said property would not have been approved. The fact that the Corporation approved the petitioner's proposal for layout plan of property bearing revision survey No.1104 in the year 2004 itself shows that the said property was not designated or reserved for "Shalini Cinetone" in the revised Development Plan of 1999. It is also clear to our mind that while approving the petitioner's proposal for layout of the property bearing revision survey No.1104, condition No.10 to the effect that plot Nos. 5 and 6 would be reserved for "Shalini Cinetone" and the same would not be used for any other purpose, was inserted in the light of inclusion of "Shalini Cinetone" in the draft heritage list, and since, the Government in exercise of powers under Section 37 of the MRTP Act dropped "Shalini Cinetone" from the list of heritage sites (Grade-III), the petitioner is entitled to develop the same in accordance with the Development Control Rules of the Kolhapur Municipal Corporation.

12. The submission of the Corporation that in view of Rule 57 of the Development Control Rules, the said two plots viz. plot Nos. 5 and

6 of survey No.1104 along with amenity space have been reserved and their status as per Development Plan continues to be reserved, is also liable to be rejected. Under Rule 57, in any layout exceeding 2 hectares in area in residential or commercial zones, where the development plan has not provided for amenities and services, or if provided they are inadequate, 5% of the total area shall be designated or reserved as amenity space for provision of primary schools, sub-post officer, police posts etc. as directed and approved by the Commissioner, and such amenities or facilities shall be deemed to be designations or reservations in the development plan thereafter. The petitioner's proposal for layout of the property bearing revision survey No.1104 was approved only after taking into consideration the provisions of Rule 57. The approved layout plan shows that the required 5% amenity space as per the provisions of the prevailing Development Control Rule 57 is kept by the petitioner adjacent to plot Nos. 5 and 6.

13. So far as 5% amenity space is concerned, the petitioner is not entitled to develop as same is deemed to be designation or reservation in the Development Plan. However, this 5% of amenity space has nothing to do with plot Nos. 5 and 6. The said plots cannot be said to be amenity space. However, in the light of condition No.10, the same were reserved for "Shalini Cinetone" and not to be used for any

other purpose. As stated above, the condition was imposed in view of inclusion of "Shalini Cinetone" in the draft list of heritage structures and since the said structure is deleted by the Government while granting final approval under Section 37(2) of the MRTP Act, the petitioner is entitled to develop the said plots in accordance with the Development Control Rules of the Kolhapur Municipal Corporation.

14. In the light of the discussion made hereinabove, the impugned order dated 15<sup>th</sup> October, 2015, rejecting the petitioner's proposal dated 22<sup>nd</sup> September, 2015, cannot be sustained and the same is, accordingly, quashed and set-aside. The respondent-Corporation is directed to process the petitioner's application dated 22<sup>nd</sup> September, 2015 bearing No.1/1471 afresh and take necessary action within six weeks from today in the light of the observations made hereinabove and in accordance with the Development Control Rules.

15. Rule is made absolute in above terms. The writ petition is, accordingly, disposed of.

**[ANUJA PRABHUDESSAI, J.]**

**[RANJIT MORE, J.]**