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

WRIT PETITION (ST) NO. 14717 OF 2018

Maya Madan Thakur & Ors. ... Petitioners
Versus
State of Maharashtra & Ors. ... Respondents

Ms. Minal J. Chandnani i/b Mr. Vivek Pohuja for the Petitioners.
Ms. Nisha Mehra, AGP for Respondent Nos. 1, 7, 8, 10 to 13.
Mr. R.S. Apte, Senior Advocate i/b Mr. Suresh M. Kamble, for
Respondent Nos. 2 to 4.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 7TH JUNE, 2018.

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

1. Heard the learned counsel appearing for the Petitioners. The challenge in this Petition under Article 226 of the Constitution of India is to the notification issued under sub section 1 of Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") by which the State Government sanctioned certain excluded part of the Draft Development Plan for the City of Ulhasnagar. Draft revised Development Plan for the City of Ulhasnagar was prepared by the Planning Authority (The Municipal Corporation of City of Ulhasnagar) and on 2nd July, 2014 was submitted to the State Government in accordance with sub section 1 of Section 30 of the MRTP Act. A part of the said

draft revised Development Plan was sanctioned by the State Government by a exercising power under sub section 1 of Section 31 by notification dated 21st April, 2017. As regards the part of the draft revised Development Plan which was not sanctioned, the State Government published the proposed modification by a notification dated 21st April, 2017. A corrigendum was subsequently issued to the said notification. Objections and suggestions to the proposed modifications were called for and after the objections and suggestions were considered, out of the excluded portion of the revised draft development plan, the portions appearing in EP-1, EP-18, EP-19 and EP-129 were sanctioned with modification by the impugned notification dated 23rd April, 2018.

2. The case of the Petitioners is that they are residents of the site Nos. 244 and 245 covered by the impugned notification. The Petitioners are residents of structures on the said sites. Even according to the case of the Petitioners, they have no right, title and interest in respect of the lands subject matter of site Nos. 245 and 244 and that they are merely occupying the structures thereon. The objection is to the reservation of a part of the site No. 245 for burial ground under the notification dated 21st April, 2018.

3. The contention of the Petitioners is that the description of site Nos.245 & 244 went on changing and it is not clear which land forms a part of site No. 245 and which part the land comprising of site No.245 is reserved for burial ground. Her submission is that in the same locality, there is a Shiv Temple and near the same locality, a Ganpati Visarjan Ghat was sanctioned by the Municipal Corporation. Her submission is that if the reservation for burial ground continues as a result of the failure of this Court to interfere, communal tension will be created in the area.

4. We have considered the submissions. Admittedly the Petitioners have no right, title and interest of whatsoever nature in respect of the lands forming a part of either site No. 244 or 245. The Petitioners are merely claiming to be residents of the structures on one of the two sites.

5. Preparation and sanction of development plan is a very elaborate process under the MRTP Act. Before publishing the impugned notification, objections and suggestions were invited. Opportunity of being heard was granted to persons who had filed objections and suggestions. The exercise of preparation and finalisation of development plan under MRTP Act partakes character of a legislative function.

6. It is not the case of the Petitioners that their structures are on the site reserved for burial ground. Their objection seems to be that in the same area, there is a Shiv Temple and a Ganpati Visarjan Ghat (a place for immersion of Ganpati idols). It is not their case that devotees visiting the temple or the visarjan ghat are required to approach the said places through the portion reserved for burial ground. The purpose of reserving the land is also a public purpose. It is not the case that a burial ground is not at all needed in the city. Even if it is assumed that the Petitioners are in possession of structures on the portion of the land reserved for burial ground, we make it clear that neither the Planning Authority nor the State Government can evict the Petitioners or can demolish their structures without following due process of law. If the Petitioners are entitled to protect their structures by virtue of any policy or by virtue of any legislation which is applicable to the City of Ulhasnagar for regularisation of illegal structures, the Petitioners can always seek appropriate remedy in that behalf.

7. Suffice it to say that if the Petitioners are in possession of any residential structure on the plot reserved for burial ground under the impugned notification, the Planning Authority or the State Government shall not dispossess them without following due process of law.

8. No case is made out to interfere at the instance of the Petitioners with the impugned notification whereby a reservation has been imposed for burial ground on a particular land.

9. The argument that if the Court does not interfere with the impugned reservation, communal tension will be created is to be deprecated. Ultimately, this Court while exercising writ jurisdiction is concerned with the merits of the case. The Court is concerned with legality and validity of the action which is challenged. This Court exercises the powers conferred on it under the Constitution. India is a Secular Democratic Republic. The Petitioners have to respect ideals of the Constitution as required by Article 51-A(a). If by virtue of lawful orders of the Court which uphold the law, communal tension is created, it is always the responsibility of the State Government to ensure that such a situation does not arise. We must reiterate that a Court of law does not get impress by such submissions.

10. Subject to what is observed above, the Petition is rejected.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)