

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

PUBLIC INTEREST LITIGATION NO. 114/2017.

Prabhakar Yadavrao Sontakke, Nagpur.

-VERSUS-

Union of India and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : B. P. DHARMADHIKARI
AND Z.A. HAQ, JJ.

DATE : JULY 19, 2018.

Heard Shri O.D. Jain, learned Counsel for the petitioner, Shri U.A. Aurangabadkar, learned A.S.G.I. for respondent nos. 1,6 and 7, Shri S.Y. Deopujari, learned G.P. for respondent nos. 2 and 4, Shri A.A. Naik, learned Counsel for respondent no.3 and Shri S. Manohar, learned Senior Counsel with Shri R.Joshi, learned Counsel for respondent no.5.

2. Though learned Counsel appearing on behalf of the petitioner sought time to present a rejoinder, we did not grant his request and started hearing respondents, due to urgency shown by respondent no.4.

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3. Respondent No.4 has already constructed two petrol pumps on two sites out of three in dispute. These two petrol pumps are at – one near C.I.D. Office, Jafar Nagar, Nagpur, while the other is near Gittikhadan Police Station, Katol Road, Nagpur.

4. Third site is located opposite Rajbhavan, Nagpur. However, the Municipal Commissioner has not granted necessary approval and hence, respondent no.4 does not propose to have any petrol pump on that site. Petitioner's grievance to that extent is redressed.

5. In relation to two other sites, petitioner has pointed out that the sites are located within a distance of 90 meters from the junction of the road, and therefore, its location is contrary to the provisions of Regulation No. N-2.6(b) of the Development Control Regulations, 2000 for Nagpur City (DCR).

6. Shri Jain, learned Counsel for the petitioner has also during hearing, tendered a rejoinder to urge that a Lawn by name 'Utsav Lawn', run by the Police Department only is situated at a distance of 44.4 meters from the petrol pump near C.I.D. Office. He has relied upon Sub-clause [d] of the DCR N-2.6 also to urge

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that as it is within 90 meters from the place of assembly, the site could not have been approved.

7. In rejoinder, it is claimed that Utsav Lawn having about 50000 square feet area beyond 24 meters wide road, is let out for marriages and other public functions by the Police Welfare Society only.

8. The location of sites is not in dispute. Respondents attempt to point out relaxation allowed by the Municipal Commissioner in defence.

9. The Director of Town Planning for State has on 04.04.2018, issued an order which incorporates Clause 7 in DCR M-7. Note -II of that DCR M-7, enables a user, other than one specified in its Clauses [1] to [6], with prior approval of the Director of Town Planning, Pune, if it is included in DCR M-7 and approved by the Chairman of Nagpur Improvement Trust or the Municipal Commissioner of Nagpur Municipal Corporation, in public interest. Users not specified in DCR M-7 are not permissible in public or semi-public zone.

10. Thus, till 04.04.2018, such user was not envisaged in

D.C.R. M-7. After addition of Clause 7, Municipal Commissioner appears to have taken a decision in pursuance of Note 2 of DCR M-7. Added Clause 7 permits Petrol/Diesel /LPG/CNG filling station with or without service bay, however, the same is subject to satisfying the conditions mentioned in the Regulation N-2.6 and other conditions, decided by the Commissioner of Municipal Corporation or the Chairman of the Nagpur Improvement Trust.

11. The distance norms mentioned supra, form part of N-2.6 only in Regulation DCR N-2.6 [b] and [d].

12. However, our attention has been invited by Shri Naik, learned Counsel appearing for respondent Corporation to an order contained in the file of Municipal Corporation. This order is contained on note side of a file, which deals with grant of construction permission to the Police Department. The relevant photocopies are now shown to us and none of the parties have objected to its production. We have also perused the original file. On note side, on page no.5, Corporation office has submitted a proposal. The proposal emanates from Assistant Estate Officer and proceeds right upto the Deputy Municipal Commissioner. All paper on notes side of the file containing said proposal, further

papers upto page N-10 and hand written note on its reverse side, are made available to the Court by learned counsel for respondent Corporation. Same are at Exh.- Annexure-A with the record. The Municipal Corporation is relying upon signature put after words “as proposed” by the Municipal Commissioner on 25.04.2018 at page no.6. A note before it, points out distance norm, flowing from DCR N-2.6 and thereafter the power available to the Municipal Commissioner under Clause 6.5.2.3. This note does not point out how proceeds or profit generated through the petrol pumps are to be used. However, we find at page N-10, one more signature by the Municipal Commissioner in green ink. There in a note written by the Assistant Estate Officer, words “demonstrable hardship” employed in DCR 6.5.2.3 are used and then there is reference to a legal opinion. In that note, it is mentioned that the petrol pumps are by police department in the interest of public.

13. DCR 6.5.2.3 by a special written permission allows relaxation from any provision of the D.C.R. if it is clearly demonstrated that hardship is caused due to it. The note produced before us by Municipal Corporation, do not show any

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such specific finding. The contention that the proceeds of the petrol pump are to be used for the welfare of police authorities, is also not appearing anywhere in papers presented to the Municipal Commissioner.

14. Thus, in present matter, after the completion / construction of petrol pumps is practically over, the Director has exercised powers on 04.04.2018, and permitted the two sites in question to be used for petrol pump. The Director then has however mentioned that it has to be subject to conditions mentioned in Regulation N-2.6. These conditions are claimed to be relaxed by the Municipal Commissioner of respondent no.3 Corporation, in exercise of powers available to him under Clause 6.5.2.3. The material on record however, does not show any such conscious decision by the Municipal Commissioner.

15. Not only this, the relevant clearance are being obtained after the work of project is practically over, and the provisions of law are also amended to accommodate thereafter the project. Though rejoinder has been presented today and distance of site near CID Office from Utsav Lawn has been brought on record, learned Government Pleader upon instructions

from the officers present in the Court is not in a position to urge that the distance is more than 90 meters.

16. First note produced by Corporation is of July, 2017 and it does not mention DCR M-7 or N-2.6 [b] and [d] at all. Later page on which number is put as N/2, recommends rejection of proposed petrol pumps on 08.11.2017. This note points out DCR M-7, but, then this note is not even seen/countersigned by the Municipal Commissioner. Next page i.e. note at page N/3, points out rejection of proposal on 09.11.2017. This note is prepared in January, 2018 with reference to present Public Interest Litigation. Next note at page N-4 is dated 25.04.2018. It points out user permitted by Director on 04.04.2018, and seeks relaxation in terms of DCR 6.5.2.3 about distance from road junction. It is in respect of site near Gittikhadan Police Station. This note is lastly put before Municipal Commissioner, who signs it with words "as proposed" on 25.04.2018.

17. At page N-7 is a distinct note pointing out that respondent no.4 has tendered NOC of Fire department. This page is not signed by the Municipal Commissioner or any of his deputies. Junior Engineer has signed on first note at central

portion on 09.05.2018, and then at the end on 05.06.2018, on second note. Deputy Engineer has signed only on first note on 09.05.2018. Though second note is addressed to the Deputy Engineer, he has not signed it. It is not clear whether this note is about Gittikhadan site or CID Office site.

18. Note at page N/8 is in relation to Gittikhadan site only, and it points out rejection of building permission on 15.05.2017. Strangely, it points out submission of building plan by respondent no.4 on 26.05.2017. This note prepared on 13.06.2018, also mentions re-submission of those plans by respondent no.4 on 25.11.2017. In this note, there is no reference to site near CID Office. It speaks of relaxation allowed by the Municipal Commissioner on 25.04.2018. This note refers to meeting with two Advocates on 10.07.2018 and uses word “demonstrable hardship”. It records that one Advocate opined that facts indicated “demonstrable hardship” to support the act of relaxation dated 25.04.2018. This note is signed by the Municipal Commissioner also on 10.07.2018. Thus, till then the concept of “demonstrable hardship” has not even entered the consideration of Municipal authorities. There is no application of mind on

25.04.2018, by the Municipal Commissioner vis-a-vis said aspect of the matter.

19. Thus, material facts which may constitute “demonstrable hardship” have been overlooked on 25.04.2018 in relation to Gittikhadan site. There is no relaxation by the Municipal Commissioner under DCR 6.5.2.3, qua CID Office location. Though respondent no.3 Corporation has produced its records in this connection, there are no suggestions in respect of any relaxation for CID Office site in it. Though in additional affidavit reply, dated 13.07.2018, in paragraph no.13, there is a plea of granting building permission for said site on 10.07.2017, it is prior to exercise of powers by Director on 04.04.2018. This plea is contrary to rejection on 09.11.2017, recorded on page note N3. This note brings on record rejection of building permission in relation to both the sites i.e. Khasra No.40 as also Khasra No.9 of Police Line Takli. It has also sworn an affidavit reply dated 12.02.2018, which is in consonance with this note. In paragraph no.5 of the said affidavit, respondent no.3 has asserted that, it has rejected the building permission for site adjacent to CID Office. This affidavit dated 12.02.2018, is contrary to the additional

affidavit dated 13.07.2018. Respondent no.3 Municipal Corporation has therefore, dared to take two inconsistent stands on oath before this Court. Though learned Government Pleader for respondent no.4 – Police Commissioner prayed for vacating interim order, respondent no.4 has avoided to file any reply affidavit before this Court giving relevant dates and events. Respondent no.4 in reply affidavit sworn on 23.04.2018, in paragraph no.28 has accepted fact of rejection of both the building plans. Attempt of respondent no.4 to compare other petrol pumps in city is therefore, misconceived and unsustainable.

20. In this situation, it is clear that a petrol pump cannot come up on the site opposite Raj Bhavan. Similarly, same cannot come up on sites near CID Office or opposite Gittikhadan Police Station.

21. We therefore, restrain respondents from having any petrol pump on the sites mentioned above. Writ Petition is thus, partly allowed and disposed of. No costs.

JUDGE

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