

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10695 OF 2014
WITH
CIVIL APPLICATION NO.762 OF 2015
IN
WRIT PETITION NO.10695 OF 2014

Ahle Sunnat Muslim Jamat Trust Petitioner
Vs.
The Sub-Divisional Officer,
Ulhasnagar Division, Ulhasnagar
& Others Respondents

WITH
WRIT PETITION NO.1557 OF 2016

Mahesh Chintaman Deshmukh
& Others Petitioners
Vs.
Ulhasnagar Municipal Corporation
& Others Respondents

WITH
CIVIL APPLICATION NO.484 OF 2016
IN
WRIT PETITION NO.1557 OF 2016

Muslim Jamat Qabrastan Trust,
Ulhasnagar Applicant
In the matter between
Mahesh Chintaman Deshmukh
& Others Petitioners
Vs.
Ulhasnagar Municipal Corporation
& Others Respondents

WITH
CIVIL APPLICATION NO.2060 OF 2019
IN
WRIT PETITION NO.1557 OF 2016

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The Ulhasnagar Municipal Corporation

.... Applicant

In the matter between

Mahesh Chintaman Deshmukh

& Others

.... Petitioners

Vs.

Ulhasnagar Municipal Corporation

& Others

.... Respondents

WITH

WRIT PETITION NO.1769 OF 2016

Vitthal Khandu Dadhe

.... Petitioner

Vs.

The State of Maharashtra & Anr.

.... Respondents

WITH

CIVIL APPLICATION NO.485 OF 2016

IN

WRIT PETITION NO.1769 OF 2016

Muslim Jamat Qabrastan Trust,
Ulhasnagar

.... Applicant

In the matter between

Vitthal Khandu Dadhe

.... Petitioner

Vs.

The State of Maharashtra & Anr.

.... Respondents

WITH

WRIT PETITION NO.10630 OF 2017

Vitthal Khandu Dadhe

.... Petitioner

Vs.

The State of Maharashtra & Anr.

.... Respondents

Appearance in WP-10695/2014 with CAW-762/2015:

Ms Adeeba Khan h/f Mr. A.A. Siddiqui for the Petitioner/
Applicant.

Ms R.A. Salunkhe, AGP, for Respondent Nos.1, 2 & 4.

Mr. S.M. Gorwadkar, Senior Advocate, with Mr. Ansari
A. Kalim for Respondent No.3.

**Appearance in WP-1557/2016 with CAW-484/2016
& CAW-2060/2019:**

Mr. A.Y. Sakhare, Senior Advocate, with Ms Gauri Godse for the Petitioners.
Mr. S.M. Gorwadkar, Senior Advocate, with Mr. Ansari A. Kalim for Respondent No.1.
Ms R.A. Salunkhe, AGP, for the Respondent-State.
Mr. Ayush Agarwal i/by The Law Point for Respondent No.2-MMRDA.

Appearance in WP-1769/2016 with CAW-485/2016 & WP-10630/2017:

Ms Shruti Tulpule for the Petitioner.
Ms R.A. Salunkhe, AGP, for the Respondent-State.
Mr. S.M. Gorwadkar, Senior Advocate with Mr. Ansari A. Kalim for Respondent No.2.

Mr. Ashok K. Khandekar, Section Officer, U.D.D.,
& Mr. Gajanan P. Pujari, Asst. Town Planner, present.

CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.

DATE : SEPTEMBER 03, 2019

P.C:

1. Mr. Gorwadkar, learned Senior Counsel appearing for the Municipal Corporation has placed before us an order of the Municipal Commissioner of the Ulhasnagar Municipal Corporation.

2. Mr. Gorwadkar says that insofar as Site No.244 is concerned, that is a vacant land and that has now been earmarked by this order and fenced as well. That is a burial ground. That has been handed over also for use as such. In the circumstances, we take on record the copies of the two

documents handed in by Mr. Gorwadkar and mark them "X" collectively for identification.

3. As far as Site No.243 is concerned, the learned AGP says that the report of the Director of Town Planning is still awaited and until that is received, the further process cannot commence.

4. In relation to that it is conceded that this Site was reserved/earmarked earlier for Transport. For change of that designation or reservation, sub-section (1) of Section 37 of The Maharashtra Regional & Town Planning Act, 1966 will have to be followed. That section reads as under:-

"(1) Where a modification of any part of or any proposal made in, a final Development Plan, the Planning Authority may, or when so directed by the State Government [shall, within ninety days from the date of such direction, publish a notice] in the Official Gazette [and in such other manner as may be determined by it] inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) [to the State Government for sanction within one year from the date of publication of notice in the Official Gazette. If such modification proposal is not submitted within the period stipulated above, the proposal of modification shall be deemed to have lapsed:

Provided that, such lapsing shall not bar the Planning Authority from making a fresh proposal.

[(IA) If the Planning Authority fails to issue the notice as directed by the State Government, the State

Government shall issue the notice, and thereupon the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.]

[(IAA)(a) Notwithstanding anything contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development Plan of such a nature that it will not change the character of such Development Plan, the State Government may, on its own, publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.

(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the Government.

(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modification with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette, the final Development Plan shall be deemed to have been modified accordingly.]

[(1B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is satisfied that a modification of any part of, or any proposal made in, a Final Development Plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed

modification, and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction.]

(2) The State Government may, [make such inquiry as it may consider necessary] and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit or refuse to accord sanction. If a modification is sanctioned, the final Development Plan shall be deemed to have been modified accordingly.”

A perusal of sub-section (1) shows that, where a modification of any part or any proposal made in a Final Development Plan, the Planning Authority has a discretion or if directed by the State Government by a mandate, to invite objections and suggestions from any person with respect to the proposed modification not later than one month from the date of Notice which the sub-section itself contemplates has to be served on persons affected by the proposed modification. This is to facilitate a hearing to be given to such persons and the proposed modification has then to be submitted to the State Government for sanction. We do not know whether any proposal of the nature stated in sub-section (1) has emanated from the Planning Authority. If sub-section (1A) is taken to be the governing section for this Site, then the Planning Authority is bound by the Notice issued by the State Government and thereupon sub-section (1) shall apply. There is a further provision inserted by Maharashtra 7 of 2002 which is deemed

to have come into effect from 9-10-2000, styled as Section 37(1AA) under which clause (a) says that it overrides sub-sections (1), (1A) and (2) and where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in a Final Development Plan of such a nature that it will not change the character of such Development Plan, it may, on its own, publish a notice in the Official Gazette and invite objections. It may also publish the Notice in such other manner as it may deem fit and there also there is a time-frame. A bare look at all these provisions would indicate that time-frames are inserted advisedly to facilitate the modifications. The Government must realise that in this case, for the population that is increasing day-by-day and planning for future generations, this one site demarcated as burial ground for the Municipal Corporation would not be enough. It will have to make more arrangements and if it is of that view then it must act swiftly.

5. We do not think that the Director of Town Planning can sit on the files, as is now projected before us. We direct him to dispose of the same within two weeks of the date of communication of our order.

6. We place these matters, excepting Civil Writ Petition

No.1557 of 2016 and the Civil Applications preferred therein, on **10-10-2019**, before which we expect a substantial progress to be made in relation to Site No.243.

7. So far as Civil Writ Petition No.1557 of 2016 is concerned, the same would not survive as there is no apprehension any longer that the property of the petitioners therein would be earmarked or reserved for a burial ground. A copy of the document styled as Notification and dated 9-3-2019 is taken on record which would enable the petitioners to give their no objection to the disposal of this writ petition. This writ petition and the connected applications therein are disposed of.

(G.S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)