

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

**WRIT PETITION NO.216 OF 2019**

Shri Laxman Mahadev Aher and Ors. ... Petitioners

Vs

The State of Maharashtra and Ors. ... Respondents

...

Mr. T.D.Deshmukh for the Petitioners.

Mr. P.G.Sawant, AGP for the Respondent Nos.1 to 4/State.

**CORAM : B.P.DHARMADHIKARI &  
SANDEEP K. SHINDE JJ.**

**DATE : AUGUST 29, 2019**

**P.C. :**

Heard Mr. Deshmukh learned counsel for the petitioners  
and Mr. Sawant, the learned AGP for the State.

2           The Government of Maharashtra in its Urban  
Development Department, vide its Notification dated 25<sup>th</sup> November,  
1997 sanctioned the Regional Development Plan, for Pune District,  
which came into force with effect from 10<sup>th</sup> February, 1998.

3           The State with an intention to promote residential  
development in agricultural/no development zone, proposed  
modification in Regional Plan and thus, issued a notice under

Section 20(3) of the Maharashtra Regional and Town Planning Act, 1966 (in short '**MRTP Act**') on 6<sup>th</sup> May, 2015 and appointed Divisional Joint Director of the Town Planning as the officer for giving hearing in respect of the suggestions and/or objections to proposed modification.

4           The notice under Section 20(3) of the MRTP Act, proposed 'zone change premium' at the rate of 50% of the valuation of the land for permitting its change of user. On 11<sup>th</sup> June, 2015, 'Zone Change Premium', rates were revised and scaled down to 30% from 50%.

5           Petitioner's land bearing Gat No.188 at Chandoli, Taluka: Khed, District: Pune was within the agricultural zone as per the Regional Development Plan and situated within the belt of 500 meters from Gavthan area of Village: Chandivali.

6           Petitioners vide application 20<sup>th</sup> October, 2015 sought Non-Agricultural permission, i.e. converting subject property from agricultural to residential use against the payment of 'Zone Change Premium' ("**Premium**" for short). Petitioners thus paid premium

Rs.36,06,100/- @ 50% in terms of the notification dated 6<sup>th</sup> May, 2015 and as such, vide order dated 31<sup>st</sup> December, 2015, permission was granted.

7            Later, petitioner realised that the State vide Government Resolution of 10<sup>th</sup> June, 2015 reduced 'premium' from 50% to 30% and thus, applied for refund of excess payment.

8            Respondent-Planning Authority, however, declined to refund excess payment of premium vide order dated 20<sup>th</sup> December, 2017. Aggrieved by it, this Writ Petition is preferred.

9            In this case, petitioner applied on 20<sup>th</sup> October, 2015 for the change of user of the subject land. On 6<sup>th</sup> May, 2015, the State had issued a notice under Section 20(3) of the MRTP Act declaring its intention to modify the Regional Plan wherein 'premium' for change of user of agricultural land to residential use was notified @ 50%. This 'premium' has been revised by the State on 11<sup>th</sup> June, 2015 and scaled down from 50% to 30%. Thus, as on the date of application made by the petitioner for change of user of the subject land, the GR dated 11<sup>th</sup> June, 2015 was operating in the field. It

appears from the impugned order that the Assistant Director, Town Planning Department, Pune did not consider provisions of the GR dated 6<sup>th</sup> May, 2015.

10            Thus, in view of the facts and in particular, for non-consideration of the provisions of GR dated 11<sup>th</sup> June, 2015, we set aside the impugned order dated 28<sup>th</sup> December, 2017 passed by the Assistant Director, Town Planning Department, Pune and direct the petitioners to prefer fresh application for claiming refund of excess payment premium with liberty to point out provisions of GR dated 11<sup>th</sup> June, 2015 to the concerned authority.

11            The Petitioners shall make such an application within four weeks from today and the concerned authority shall decide the said application on its own merits and without being influenced by the order passed by this Court, within four months therefrom.

12            With the aforesaid directions, petition is partly allowed and disposed of accordingly.

**(SANDEEP K. SHINDE, J.)**

**(B.P.DHARMADHIKARI, J.)**