

JPP

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

WRIT PETITION NO. 7651 OF 2018

Mayur Pradiprao Mundhe

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. A.Y. Sakhare, Senior Advocate I/b. Mr. Rajendra Anbhule for the
Petitioner

Mr. M.M. Pabale, AGP for Respondent No.1.

Mr. R.S. Khadapkar for Respondent No.2.

***CORAM : NARESH H. PATIL, C.J. &
N.M. JAMDAR, J.***

DATE : 20 FEBRUARY 2019.

P.C. :-

The Respondent - Planning Authority, Pune Municipal Corporation had proposed to widen the Mahadji Shinde Road from existing 18 meters to 30 meters. The State Government, in exercise of provisions under Section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short MRTP Act), changed the proposed width from 30 meters to 24 meters. The notification to

that effect was issued on 5 January 2017. The Petitioner, a resident of Pune has filed this Petition, aggrieved by the notification.

2. Mr. Sakhare, the learned Senior Advocate appearing for the Petitioner submits that the change made by the State Government under the Notification is not in the public interest and particularly, in the interest of the residents of the locality. He submitted that the Pune Municipal Corporation had proposed 30 meters wide road for the city in the identical locations, but in the present case probably to favour certain structures including a shopping mall, the State Government has unreasonably interfered and issued the notification reducing the width. Mr. Sakhare referred to the photographs to demonstrate that it has become very difficult for even the pedestrians and users of two wheelers and four wheelers to drive their vehicles on this road. It was therefore, submitted that the Respondents should reconsider the said notification and also that this Court should set aside the notification.

3. In response to the notice issued, the Respondent - State Government filed the reply, and in paras 4 and 8 of the reply, the State Government has assured as under :-

“4. With reference to Para Nos. 8 to 11 of the Writ Petition, I say that in the First Revised Sanctioned Development Plan the said road was shown to be of 18 metres width. In the Second Revised Draft Development

Plan published under Section 26 of the said Act, the width of the said existing road was 18 metres. On the said published draft Development Plan, the Planning Committee under Section 28 submitted its report to the Planning Authority i.e. Pune Municipal Corporation in which the said road was proposed to be made 30 metres wide. On consideration of the said Committee Report of the Planning Committee, the Committee of Officers appointed under Section 162 of the said Act recommended to propose the width of the road as 30 metres originating from Gaikwad Road towards North for an approximate length of 720 metres up to Mula river edge and further towards North for an approximate length of 80 metres and 60 metres, out of total 800 metres of approximate length.

The said Development Plan was submitted under Section 30 of the said Act by the said Committee. The said modification of change in width of the road being of substantial nature with reference to the draft plan published under Section 26, hence the same was re-published by the State Government as EPR-12 along with similar other such modifications. The suggestions and objections were called from the general public on all such Excluded Parts including the said EPR-12. Regarding EPR-12, the objection was received saying that the width of the existing road is 18 metres and there are many authorized structures on both sides of the said road constructed with due permission from the Pune Municipal Corporation and the widening from the existing 18 metres to proposed 30 metres, is shown on one side of the road only i.e. towards Western side. The request made by the objector was to keep the width of the said road as 18 metres only or make it 24 metres by showing the widening of 6 metres on the Eastern side.

The Officer appointed after hearing all the Excluded Parts had a visit to all the sites including the site under reference. He observed that the existing road is of width of 18 metres and there are authorized structures on both sides of the said road and if the said road is made 30 metres, as proposed vide EPR-12, in that case many of the structures will get affected. In view of these ground realities, the Officer suggested to reduce the width of the said road from 30 metres to 24 metres. As required under Section 31 of the said Act, the Director of Town Planning, Maharashtra State was consulted. The Director of Town Planning, Maharashtra State in his report has suggested in respect of the said EPR-12 that in view of commitments in the form of authorized structures standing on ground and the resolution of Pune Municipal Corporation, it would have been proper to keep the width of the said road as 18 metres only. However, considering the network of roads and the traffic plying over the said road, the width of the said road should be made 24 metres. On this, the Scrutiny Committee appointed by the State Government in its meeting held on 27 October 2017 recommended to make the width of the said road as 24 metres by taking 12 metres on both sides from the centre of the existing road.

It is therefore clear from what is narrated above that keeping in view the road network available in and around the said area and the legitimate buildings standing, the said decision is taken to reduce the width from 30 metres to 24 metres. Therefore, the allegations by the Petitioner are denied since it is not decided arbitrarily but after due consideration of the permissions granted by the Planning Authority i.e. the Pune Municipal Corporation and the situation present on the ground.

The Petitioner has mentioned that he has submitted representation dated 28 February 2018 addressed to the Principal Secretary, Urban Development Department, requesting to consider the said decision in regard to EPR-12. The same is not considerable for reasons mentioned above.

As mentioned above, the said area is served by following parallel existing roads with proposed widening as Development Plan roads :-

- (1) 24 metres road on the West side of suit road passing through S.No.158 of Aundh.*
- (2) 45 metres wide major road (called as Ganesh Khind road) to the East of suit road.*
- (3) 12 metres wide road passing through Aundh gaathan.*

From this it is seen that due care has been taken to see that proper road network of required width is proposed in the Development Plan to take care of the traffic movement in and around that area and, therefore, the contention of the Petitioner that the life of the people of vicinity is in danger, is unjustified.”

“8. With reference to Grounds (G to I) of the Writ Petition, I say the allegation made herein is denied. In fact, by the proposed widening to 24 metres, the said mall is also going to be affected. Had it been kept as 30 metres as published, ramp going towards the basement parking would have got affected by 12 metres, making the parking of the mall impossible.

Two objections were received from (1) M/s. Chaitrali Properties and (2) Shri Premji Sudam Kamble. One of which objected to keep the said road width as 18 metres because many authorized structures on both the sides of the roads were getting affected. The other one objected saying that they have got occupancy certificate after construction of mall from the Pune Municipal Corporation and requested to keep the said road as 18 metres or if at all widening is required, should be shown on the opposite side. However, while deciding on the issue, the Government has made it 24 metres width by proposing equal widening on both sides from the centre of the existing road.”

4. The learned Assistant Government Pleader submitted that the Development Plan was submitted under Section 30 of the MRTTP Act by the Committee and the Planning Authority. Suggestions and objections were called from the general public and thereafter, the decision was taken. He submitted there are various authorized structures on both the sides of the road and in case the road is widened to 30 meters, many structures will get affected. It was submitted that in view the ground reality, after taking into consideration various parameters, the State had decided to reduce the proposed width of the road from 30 meters to 24 meters.

5. It was contended that in case the road is increased to 30 meters width, the shopping mall would be affected so, also ramp going towards the basement parking would be affected by 12 metres,

making the parking of the mall impossible. The learned AGP submitted that this decision has not been taken in favour of the structures, owners, occupants of the area, but the decision was taken keeping in view possible problems that would arise.

6. The learned Counsel for the Corporation submitted that in the interest of general public, the planning authority has proposed the change and submitted to the State Government for sanction.

7. Perused the entire record. We have considered the submissions advanced.

8. We find that in the light of the reply filed by the State Government, no interference is warranted under Writ Jurisdiction of this Court as the Plan is sanctioned by the Planning Authority. It is not possible to sit in appeal over the decision of the authorities, which does appear to be ex-facie absurd or arbitrary. The Petition is rejected.

9. There is no doubt that roads must have sufficient width in the city like Pune. It is certainly a great need as the vehicles and pedestrians have to use over crowded roads. Heavy vehicular traffic congestions are now a matter of routine in the urban areas and mega cities cities. One of the effective ways of addressing this serious issue

is providing good public transport and not just widening the roads. Several orders are passed by this Court and this Court is still seized of the Petitions raising similar problems and issues. It is expected that the Planning Authority and State Government would strive hard to find a long term solution.

10. The Registry to forward the copy of the order to the Secretary, Urban Development Department and the Commissioner, Pune Municipal Corporation.

N.M. JAMDAR, J.

CHIEF JUSTICE