

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7978 OF 2009

Shri Sampat Motilal Gandhi

and Others

..Petitioners

Vs.

State of Maharashtra and Others

..Respondents

Mr. S. B. Deshmukh, for the Petitioners.

Mrs. K. R. Kulkarni, AGP, for the Respondent State.

CORAM:-**S. C. DHARMADHIKARI &**
B. P. COLABAWALLA, JJ.
DATE :- **APRIL 10, 2019.**

P. C.:

We do not find any substance in the challenge and it is entirely academic.

2 Section 46 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”) is taken as an obstacle and that because it also speaks of a draft development plan, the proposals therein are required to be adhered to, and according to the Petitioner on account of that the potential of the

property cannot be fully exploited.

2 There are no facts and circumstances other than the Petitioner's perception to indicate as to how it is not possible for the Petitioner to exploit the potential of the property to the fullest.

3 Section 46 of the MRTP Act prior to its amendment and later on reads thus:-

Section 46 prior to its amendment

46. Provisions of Development Plan to be considered before granting permission:-

The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan [or proposals,] [published by means of notice] [submitted] or sanctioned under this Act.

Section 46 after its amendment

46. Provisions of Development Plan to be considered before granting permission:-

The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan [or proposal,] [published by means of notice] [submitted] or sanctioned under this Act.

[Provided that, if the Development Control Regulations for an area over which a Planning Authority has been appointed or constituted, are yet to be sanctioned, then in considering application for permission referred to in sub-section (1), such Planning Authority shall have due regard to the provisions of the draft or sanctioned Regional plan, till the Development Control Regulations for such area are sanctioned:

Provided further that, if such area dose not have draft or sanctioned Regional plan, then Development Control Regulations applicable to the area under any Planning Authority, as specified by the Government by a notification in the Official Gazette, shall apply till the Development Control Regulations for such area are sanctioned.]

4 If the planning authority in considering the application for permission shall have due regard to the provisions of any draft or final plan or proposal published by means of notice submitted or sanctioned under the MRTP Act, then, that is a consequence flowing from the provisions preceding and succeeding the Section.

5 It is to ensure that there is a planned development and that 'Control of Development and use of Land included in Development Plans', is a title of Chapter IV, then, to carry the object and purpose of the Act further and to fully achieve it, such a stipulation has been made. To our mind, therefore, there is no substance in the challenge. The Petition is dismissed.

6 We may also usefully refer to the judgment of the Hon'ble Supreme Court in the case of **S. N. Rao and Others v/s the State of Maharashtra and Others reported in AIR 1988 SC.712**, in this regard. Particularly, the Hon'ble Supreme Court had the following to observe with regard to the provisions of Section 46 of the MRTP Act.

6. At this stage, we may refer to some of the provisions of the Act. It is an Act to

make provision for planning the development and use of land in Regions established for that purpose and for the Constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development plans with a view to ensuring that, town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid. Section 2(9) defines "Development Plan" to mean a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a special planning Authority for development of land within its jurisdiction. Under Section 2(19), "Planning Authority" means a local authority; and includes a Special Planning authority constituted or appointed under Section 40. Chapter III of the Act contains provisions for the Development plan. Section 23 provides for the declaration of intention by the Planning Authority to prepare a Development plan. Section 26 provides for the preparation and the publication of notice of draft Development plan. Under Section 30, the Planning Authority has to submit the draft Development plan to the State Government for sanction. Section 31 provides for the sanction to the draft Development plan by the State Government. Section 43 provides, inter alia, that after the date on which the declaration of intention to prepare a Development plan for any area is published in the Official Gazette, no person shall carry out any development of land without the permission in writing of the Planning Authority. Section 45 deals with grant or refusal of sanction for development by the Planning Authority. Section 46 enjoins that the Planning Authority in considering an application for permission shall have due regard to the provisions of any draft or final plan or proposals published by means of notice submitted or sanctioned under the Act. Section 47 provides for an appeal to the State Government or to an officer appointed by the State Government by any applicant aggrieved by an order granting permission on conditions or refusing permission under Section 45.

7. In allowing the appeal of the respondent No. 5 and directing sanction of the development plan, the respondent No. 2 observed that in view of the clear provisions of Ss. 46 and 31(6) of the Act and having regard to the position that in the sanctioned plan of 1966, the said land was included in the residential zone and no proposal to exclude it therefrom in the draft revised development plan had been published, the Municipal Commissioner was not justified in rejecting the application for approval of the plan submitted by respondent 5 on the ground that the Bombay Municipal Corporation had decided to revise the 1966 Development Plan. We have already referred to Section 46 of the Act which provides that the Planning Authority in considering the application for permission shall have due regard to the provisions of any draft or final plan or proposals published by means of notice submitted or sanctioned under the Act. It seems that respondent 2 was of the view that the Planning Authority could only take into its consideration any draft or final plan or proposal which had been published by means of notice or sanctioned under the Act as provided in Section 46. There is, in our opinion, some force in the contention made by Mr. Kalsekar, learned Counsel appearing on behalf of the appellants, that respondent 2 has misunderstood the provisions of Section 46. It is submitted by the learned

Counsel that the Municipal Corporation was entitled to take into consideration other relevant facts including the contemplated revision of the plan, apart from those mentioned in Section 46. In support of his contention, the learned Counsel has placed reliance on an unreported decision of a learned Single Judge of the Bombay High Court in Life Insurance Corporation of India v. Municipal Corporation of Greater Bombay, Writ Petition No. 2944 of 1982 disposed of on 6-3-1984. In that case, a development application was rejected by the Municipal Corporation on the ground that the property was proposed to be reserved for public purposes or for recreational ground in the draft revised development plan, and the High Court repelled the challenge to the decision taking the view that even the proposed revision could be taken into account as one of the relevant factors.

8. There can be no doubt that if there be any other material or relevant fact, Section 46 does not stand in the way of such material or fact being considered by the Municipal Corporation for the grant or refusal to grant sanction of any development plan. In the unreported decision of the High Court, the relevant fact that was taken into consideration was the draft revised development plan, even though the plan was not published. In the instant case, however, at the time the Municipal Commissioner rejected the plan submitted by respondent 5, there was no draft revised development plan in existence. It was in contemplation. If there had been such a plan, the Municipal Commissioner would be entitled to rely upon the same in rejecting the plan submitted by respondent 5. But, as there was no such draft revised plan as has been stated before this Court even by the Counsel for the Municipal Corporation, the Municipal Commissioner was not justified in merely relying upon a proposal for the preparation of a draft revised plan. An order rejecting a development plan submitted by the owner of the land should be supported by some concrete material. In the absence of any such material, it will be improper to reject the plan on the ground that there is a proposal for revision of the draft plan or that such a revision is under contemplation. We are, therefore, of the view that the ground for rejecting the plan submitted by respondent 5 was not tenable and the appellate authority was justified in allowing the appeal."

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)