

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 595 OF 2019

Vikas K. Tripathi	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr.R.G.Panchal with Mr.Pramod Yadav,
Mr.Anil Jaiswar, Mr.A.R.Kori and
Mr.Mohan Rawat for the petitioner.

Mr.G.W.Mattos-AGP for respondent nos. 1
to 4.

Ms.Vandana Mahadik for the Municipal
Corporation.

Ms.M. R. Pujari I/b. Ms.Kavita N. Solunke
for respondent no.8.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE :- APRIL 5, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing and setting aside of notification dated 3rd April, 2018. That notification is at page 81 of the paper book. This notification has been issued in terms of the powers conferred under section 31(1AA)(c) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act"). The notification reads thus:-

“Maharashtra Regional & Town Planning Act, 1966.

 * Sanctioned modification to sanctioned Revised Development Plan of K(West) WARD OF Gr. Mumbai under section 31(1AA) (c) of the Act.

GOVERNMENT OF MAHARASHTRA
 Urban Development Department
 Mantralaya, Mumbai 400 032.
 Dated:- 3rd April, 2018

NOTIFICATION

No. TPB 4313/868/CR-120/2013/UD-11:

Whereas, the Development Plan of K(West) Ward of Greater Mumbai (hereinafter referred to as “the said Plan”) has been sanctioned by the Government vide Urban Development Department’s Notification No.4392/5840/UD-11(RDP) dated 19th March, 1993, under section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the said Act”) to come into force with effect from 4th May, 1993;

And whereas, the land bearing CTS No.866, S. No. 111-A/B/C village Ambivali, Taluka Andheri admeasuring about 13.8 Ha. was reserved for (i) Sewerage Plant (Site No.580) (ii) Recreational Ground (Site No.205) (iii) Housing for Dishoused (Site No.549) (iv) Govt. Staff Quarters (Site No.535) (v) Retail Market (Site No.476) and (vi) 13.40 mt. wide Access Road (hereinafter referred to as “the said lands”);

And whereas, the proposal for implementation of rail-based Mass Rapid Transit System (MRTS) along Versova-Andheri-Ghatkopar corridor through Public Private Participation (PPP) has been approved by the Govt. for the purpose of which Govt. has appointed Mumbai Metropolitan Region Development Authority (MMRDA) as a ‘Project Implementing Agency’;

And whereas, the Mumbai Metropolitan Region Development Authority (hereinafter referred to as “MMRDA”) vide letter No.T/MMRDA/MRTS/2004 dt. 12/1/2005 had requested Govt. to earmark the said land for MRTS Car Depot/ Workshop & Allied Activities and Commercial use for Versova-Andheri-Ghatkopar Corridor which is identified as a part of Priority-I corridor of Mumbai Metro Master Plan;

And whereas, after considering the request of the MMRDA, the State Government had sanctioned modification to the said Plan to reserve the said lands for MRTS Car Depot/ Workshop and Allied Activities and Commercial use, vide Notification No.TPB 4304/1430/CR-15/05/UD-11 dated 12th July 2005 (hereinafter referred to as “the said Notification”) with condition that the buffer zone of 30mt. width shall be kept around the periphery of the said lands so as to avoid noise pollution and only tree plantation shall be allowed in this buffer zone.

And whereas, the State Government in Urban Development Department had issued directives under Section 37(1) along with Section 154 vide No.TPB 4308/674/CR-146/08/UD-11 dated 17.7.2008 and brought into force a new regulation for development of MRTS Car Depot/ Workshop and Allied Activities and Commercial use, based on principles/concept of accommodation reservation to make 75% of the land available for MRTS Car Depot/ Work shop and allied uses and allow the entire potential of land to be developed on the remaining 25% of the land in owner’s possession and accordingly issued Notification in this respect under Section 37(2) of the Act, vide No.TPB 4312/223/Cr-29/2013/Ud-11 dated 28th April 2015.

And whereas, the State Government in Urban Development had issued guidelines to reduce noise from existing and proposed elevated roads, flyovers and elevated rail corridors, in which use of installation of noise barriers is recommended, vide circular no.TPB 4308/4011/Cr-343/08/UD-11 dated 3rd December 2008, which has been revised vide order no.TPB4312/208/CR-2013/UD-11 dated 26th October 2015.

And whereas, the Metropolitan Commissioner, MMRDA vide letter dated 8/4/2008 and 5/7/2013 has requested to the State Government that MRTS activities are environment friendly and will not create any noise or environmental pollution, the buffer zone of 30 mt. around periphery to be deleted so as to accommodate the MRTS as per technical and safety requirements in the available land and submitted a letter dated 2/9/2013 from Central Road Research Institute, New Delhi stating that tree plantation is not a scientific option for reduction of noise levels.

And whereas, in view of the facts and circumstances mentioned above Government was of opinion that the condition of the buffer zone of 30 mt. around periphery of

reservation of MRTS Car Depot/ Workshop & Allied Activities and Commercial use imposed by the said Notification be amended;

And whereas, considering the above facts, in the public interest it was necessary to urgently carry out suitable modification to the said Plan, the State Government, in exercise of the powers conferred under sub-section (1AA) of Section 37 of the said Act, had issued Notice of even No. dated 1st February 2016 for inviting suggestions/ objections from general public with regard to the proposed modification in respect of buffer zone of 30 mt. around periphery of reservation of MRTS Car Depot/ Workshop & Allied Activities and Commercial use (hereinafter referred to as "the proposed modification"), proposed in the Schedule of the said Notice and **appointed the Deputy Director of Town Planning, Greater Mumbai as the officer** (hereinafter referred to as "**the said officer**") to submit a report on the suggestions/ objections received in respect of the proposed modification to the Govt. after giving hearing to the concerned persons and the Planning Authority;

And whereas, the Notice of even no. dated 1st February 2016, was published in Maharashtra Government Gazette dated the 18th - 24th February 2016 (hereinafter referred to as "the Official Gazette");

And whereas, the said Officer has submitted his Report vide letter dt.12th January 2017, through the Director of Town Planning, Maharashtra State, after completing the legal procedure stipulated under Section 37(1AA) of the said Act;

And whereas, after considering the Report of the said Officer, and after consulting the Director of Town Planning, Maharashtra State, the Government is of the opinion that the proposed modification is required to be sanctioned with some changes;

Now therefore, in exercise of the powers conferred upon it under section 37(1AA)(c) of the said Act, the Government hereby:-

- (A) Sanctions the said proposed modification as more specifically described below.
- (B) Fixes the date of publication of this Notification in the Official Gazette, as the date of coming into force of this modification.
- (C) Directs the Municipal Corporation of Greater Mumbai that, in the Schedule of Modifications sanctioning the said Development Plan, after the last entry, the Schedule appended hereunder shall be added.

Sanctioned Modification

The condition mentioned at Sr. No.(B) in the Notification NO.TPB 4304/1430/CR-15/05/UD-11 dated 12th July 2005 in respect of sanctioned modification to the Sanctioned Revised Development Plan of K(West) ward of Gr. Mumbai is replaced as follows:-

Existing Condition	Proposed Condition
Buffer Zone of 30 mt. width shall be kept around the periphery of the said land so as to avoid noise pollution and only tree plantation shall be allowed in this buffer zone.	The MMRDA shall provide necessary noise abatement measures to reduce noise pollution at their own cost & all along the periphery of MRTS Car Depot. Certificate to that effect shall be obtained from Maharashtra Pollution Control Board.

This Notice shall also be available on the Govt. of Maharashtra website: www.maharashtra.gov.in.

By order and in the name of the Governor of Maharashtra,

(Pradeep Gohil)
Under Secretary to Government”

2. The issue raised is that this notification contravenes the mandate of Article 21 of the Constitution of India. Now, no trees will be planted. The intent and purpose was to have a Buffer Zone, but that too on conditions. Now, this notification is issued in order to enable the Mumbai Metro Rail Corporation Limited to get over the provisions of law as also the conditions imposed on it while allowing it to create a car depot/workshop.

3. Our attention has been invited by Mr.Panchal to the terms and conditions, based on which the development permission was granted, copy of which is at page 44 of the paper book and Condition No.8 therein. Mr.Panchal would submit that by the proposed modification, the Mumbai Metropolitan Region Development Authority (MMRDA) is obliged to provide noise abatement measures to reduce noise pollution, but there is no requirement of tree plantation.

4. On a perusal of the petition and the annexures as also the impugned notification, we are unable to agree with Mr.Panchal. First of all, a notification dated 12th July, 2005 has been issued sanctioning the revised development plan of K/West Ward of Greater Mumbai. That notification is dated 12th July, 2005. A copy of this notification is at page 22 of the paper book and it reads as under:-

**“Maharashtra Regional & Town
Planning Act, 1966.**

* **Sanctioned Revised
Development Plan of
K(West) ward of Gr.Mumbai.**
* **Notification under section
37(2).**

**GOVERNMENT OF MAHARASHTRA
Urban Development Department
Mantralaya, Mumbai 400-032.
Dated 12th July, 2005**

NOTIFICATION

No. TPB 4304/1430/CR-15/05/UD-11:

Whereas, the Development Plan of K(West) Ward of Greater Mumbai (hereinafter referred to as “the said Plan”) has been sanctioned by the Government vide Urban Development Department’s Notification No.4392/5840/UD-11(RDP) dated 19th March, 1993, under section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the said Act”) to come into force with effect from 4th May, 1993;

And whereas, the land bearing CTS No.866, S. No.111-A/B/C village Ambivali, Taluka Andheri admeasuring about 13.8 Ha. is reserved for (i) Sewerage Plant (Site No.580) (ii) Recreational Ground (Site No.205) (iii) Housing for Dishoused (Site No.549) (iv) Govt. Staff Quarters (Site No.535) (v) Retail Market (Site No.476) and (vi) 13.40 mt. wide Access Road (hereinafter referred to as “the said lands”);

And whereas, the proposal for implementation of rail-based Mass Rapid Trnasit System (MRTS) along Versova-Andheri-Ghatkopar corridor through Public Private Participation (PPP) has been approved by the Govt. for the purpose of which Govt. has appointed Mumbai Metropolitan Region Development Authority (MMRDA) as a ‘Project Implementing Agency’;

And whereas, the MMRDA vide letter No.T/MMRDA/MRTS/2004 dt. 12/1/2005 has requested Govt. to earmark the said land for MRTS Car Depot/Workshop & Allied Activities and Commercial use for Versova-Andheri-Ghatkopar Corridor which is identified as a part of Priority-I corridor of Mumbai Metro Master Plan;

And whereas, after asserting the aforesaid facts, the Govt. finds it necessary to carry out certain changes in the reservation in the said lands by taking recourse to provisions contained in section 37(1AA) of the said Act;

And whereas, considering the urgency of the matter and the public purpose for which the said lands are required, Government is of opinion that the said lands should be reserved for “MRTS Car Depot/ Workshop & Allied Activities and Commercial use” after following

procedure laid down under section 37(1AA) of the said Act (hereinafter referred to as “the said modification”);

And whereas, in view of the facts and circumstances mentioned above and in exercise of the powers contained in sub-section (1AA) of section 37 of the said Act, Government has issued the notice of even no. dated 16/2/05 (hereinafter referred to as “the said notice”) for inviting suggestions/ objections from any person with respect to the said modification;

And whereas, the said notice was published in the Government Gaszette (Ordinary) dated 16/2/05 and the said notice was published in the news paper namely Vartahar dated 23/2/05 and the Midday dated 23/2/05;

And whereas, as per the said notice Government has appointed Dy. Director of Town Planning Gr.Mumbai as an officer under section 162 of the said Act (hereinafter referred to as “the said officer”) scrutinize any suggestions/ objections received, grant hearing to the persons submitting suggestions/ objections including Municipal Corporation of Gr.Mumbai (hereinafter referred to as “the said Corporation”) and to submit his report to the Government regarding the said modification;

As reported by the said Officer 4 suggestions/ objections were received all of which were forwarded to the said Authority on 6/4/05 as per the provisions under section 37(1AA) of the said Act;

After completing the procedure as laid down under section 37(1AA) of the said Act, the said Officer has submitted his report to Govt. on 29/4/05 (hereinafter referred to as “the said Report”) and whereas, hearing was granted by the said officer to the concerned persons including the MMRDA;

And whereas, after consulting Director of Town Planning, Maharashtra State, Govt. is of opinion that the said modification should be sanctioned with some changes.

Now therefore, in exercise of the powers vested under section 37(2) of the said Act, Government hereby sanction the said modification as mentioned in the schedule below:

SCHEDULE

- a) “The land bearing CTS No.866, S.No.111-A/B/C village Ambivali, Taluka Andheri admeasuring about 13.8 Ha. reserved for (i) Sewerage Plant (Site No.580 (ii) Recreational Ground (Site No.205) (iii) Housing for Dishoused (Site No.549) (iv) Govt Staff Quarters (Site No.535 (v) Retail Market (Site No.476) and (vi) 13.40 mt. wide Access Road are reservation and reserved for “MRTS Car Depot/ Workshop & Allied Activities and Commercial use” as shown on the plan attached herewith and the MMRDA shall be Appropriate Authority for this reservation.
- b) Buffer Zone of 30 mt. width shall be kept around the periphery of the said land so as to avoid noise pollution and only tree plantation shall be allowed in this buffer zone.
- c) Fixes the date of publication of this notification in the Government Gazette as the date of coming into force of this notification.
- d) Direct the MCGM that, in the schedule of modification sanctioning the said plan fater the last entry, the schedule referred to as (a), (b) & (c) above shall be added.

By order and in the name of the Governor of Maharashtra.

(S.R.Kini)

Under Secretary to Government

Note:- This notification is also available on Government web site [www. Urban. Maharashtra. gov.in](http://www.Urban.Maharashtra.gov.in)”

5. A bare perusal of this notification denotes that the modification was sanctioned as per the Schedule and sites/ portions thereof were reserved for public purpose. One of the users was Mass Rapid Transit System (MRTS) Car Depot/ Workshop and Allied Activities and Commercial use. The Buffer Zone shall be kept around the periphery of the said land so as to

avoid noise pollution and only tree plantation shall be allowed in this Buffer Zone. In terms of this notification and the further order, copy of which is at page 25 of the paper book dated 17th July, 2008, directions can be issued by the Government to the Municipal Corporation of Greater Mumbai. Those directions were issued on the requirement of the MRTS Car Depot/ Workshop. The reservation of MRTS Car Depot/ Workshop and Allied Activities and Commercial use was to be included in Regulation 9 (Table No.4) of the said Development Control Regulations (DCR) for Greater Mumbai, 1991. That is why directions under section 154 of the MRTP Act were issued. These directions read as under:

Now, therefore in exercise of the powers vested under section 37(1) of the said Act read with provisions contained in section 154 of the said Act, Government is pleased to issue the following directions-

DIRECTIONS

- A) The Municipal Corporation of Gr. Mumbai shall initiate modification to regulation 9 (Table 4) by adding the provision specified in the schedule attached herewith.
- B) The said Corporation shall publish the requisite notice inviting suggestions/ objections over the said modification within a period of 90 days from the date of issue of this order.
- C) After completing the legal procedure, as laid down under section 37(1) of the said Act, the said modification proposal shall be submitted to the Government for final sanction.
- D) Pending sanction to these modification by the Govt. under section 37(2) of the said Act, the aforementioned modification shall come into effect forthwith.

E) Direction vide Order No.TPB 4308/674/CR-146/08/UD-11 Dt.29.04.2008 has been withdrawn.

By order and in the name of the Governor of Maharashtra.

(Abhiraj Girkar)
Under Secretary to Government.

Note: This order also published on government web site at www.urban.maharashtra.gov.in.

6. The Schedules to these notifications are highlighted, but what we have found is that the MRTS Car Depot had to be constructed for which a development permission was necessary. One M/s.Bidco Engineering Division sought such permission and that permission was granted. That permission, copy of which is at Exhibit 'E' at pages 44 and 45, contains several terms. One of the terms is that as per the modification under Notification No.TPB-4304/1430/CR-15/05/UD-11 dated 12th July, 2005, the buffer zone of 30 meters width shall be kept around the periphery of the land under reservation of MRTS Car Depot/ Workshop and Allied Activities so as to avoid noise pollution and only tree plantation shall be allowed in this Buffer Zone.

7. We have not seen any alteration being made as projected by Mr.Panchal. All that the letter at page 63 clarifies is that Condition No.8 in the above communication has been retained. The Project Head may have received some communication from the Maharashtra Pollution Control Board, but that is not

something with which we are concerned. The Municipal Corporation had informed the Deputy Director of Town Planning about the conditions. The proposed modification of the sanctioned development plan of K/West Ward was made after complying with all the legal provisions, including inviting suggestions and objections from the general public. Thereafter, what we find is that the impugned notification has been issued, but this notification does not make a substantial modification. It only says that the the MMRDA shall provide necessary noise abatement measures to reduce noise pollution at their own cost and all along the periphery of MRTS Car Depot. Certificate to that effect shall be obtained from Maharashtra Pollution Control Board. This is an environment friendly and protective measure. Only tree plantation was to be allowed in the Buffer Zone. That does not mean that this tree plantation cannot be made. Any activity, other than making a Buffer Zone so as to avoid noise pollution and preserve greenery can be, therefore, placed at site. We have not seen that by this modification, the authority has done away with the earlier stipulations. What would be allowed is only tree plantation and nothing else. It is very clear that the modification does not contravene the mandate of Article 21 of the Constitution of India. It ensures protection of the environment. It does not prohibit putting up of trees either. All that the notification says

and in clearest terms that noise pollution measures have to be put in place and the only activity that is permitted is plantation of trees.

8. It is in these circumstances, we are unable to agree with Mr.Panchal. The affidavit also explains that the activities are environment friendly and steps are taken to avoid noise pollution. In the light of the above, we find no merit in the writ petition. It is dismissed. There would be no order as to costs.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)