

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13577 OF 2019

1. Ram Pralhad Khatri,
Age : 48 Years, Occu. : Business,
2. Ramsukh S/o Babulaji Mantri,
Age : 55 Years, Occu. : Business,
3. Subhash S/o Munjaji Bedre,
Age : 50Years, Occu. : Business,
4. Badruddin Mahmmad Khaja Shaikh,
Age : 65 Years, Occu. : Business,
5. Shivaji S/o Bapurao Chinchane,
Age : 43 Years, Occu. : Business,
6. Bhausahab S/o Haribhau Toke,
Age : 34 Years, Occu. : Business,
7. Hamadbin Saeal Chaus,
Age : 60 Years, Occu. : Business,
8. Mohammadbin Saied Chaus,
Age : t8 Years, Occu. : Business,
9. Chandrakala Shivaji Chinchane,
Age : 45 Years, Occu. : Business,
10. Ahmed Jabbar Ahmed Gafoor Ansari,
Age : 48 Years, Occu. : Business,
11. Hanuman Ravan Ambegaonkar
Age : 48 Years, Occu. : Business,
12. Rajesh S/o Chandumal Gabha
Age : 43 Years, Occu. : Business,

13. Ahmed Khalekh S. Bashir,
Age : 40 Years, Occu. : Business,
14. Mohd. Murtuja Mohad. Musa Ansari,
Age : 49 Years, Occu. : Business,
15. Rukminibai S/o Vitthal Kavale,
Age : 40 Years, Occu. : Business,
16. Anantrao Devrao Shinde,
Age : 45 Years, Occu. : Business,
17. Shaikh Masum Shaikh Amin,
Age : 40 Years, Occu. : Business,
18. Babar S/o Mohammad Idris,
Age : 54 Years, Occu. : Business,
19. Mohd. Azar Mohd. Idris,
Age : 44 Years, Occu. : Business,
20. Mohd. Akbar Mohd. Gafar,
Age : 42 Years, Occu. : Business,
21. Omprakash R. Naikwade,
Age : 52 Years, Occu. : Business,
22. Yunus Hakimji Ansari,
Age : 50 Years, Occu. : Business,
23. Sanjay Ratanlal Mundada,
Age : 45 Years, Occu. : Business,
24. Prashant Mohan Saswade,
Age : 38 Years, Occu. : Business,
25. L. P. Khatri,
Age : 44 Years, Occu. : Business,
26. Shaikh Ahmed Shaikh Rakhmoddin,
Age : 51 Years, Occu. : Business,

27. Namdev Baburao Chinchane,
Age : 39 Years, Occu. : Business,
28. Ashok Murlidhar Vitikar,
Age : 45 Years, Occu. : Business,
29. Shaikh Rasul Shaikh Ashraf,
Age : 40 Years, Occu. : Business,

All R/o Pathri, Tq. Pathri,
Dist. Parbhani.

.. Petitioners

Versus

1. State of Maharashtra,
through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. District Collector,
Parbhani, Dist. Parbhani.
3. Municipal Council,
Pathri, Dist. Parbhani,
Through its Chief Officer.

.. Respondents

Shri Mahesh S. Deshmukh, Advocate for Petitioners.
Mrs. Geeta L. Deshpande, A.G.P. for Respondent Nos. 1 and 2.
Shri V. D. Sapkal, Advocate i/by Shri M. P. Tripathi, Advocate
for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
AVINASH G. GHAROTE, JJ.**

Closed for Judgment on : 02.12.2019

Judgment Pronounced on : 13.03.2020

JUDGMENT (*Per S. V. Gangapurwala, J.*) :

. Rule. Rule returnable forthwith. With the consent of parties taken up for final hearing.

2. The interpretation and scope of Section 89 of the Maharashtra Regional and Town Planning Act, 1966 (for short “M.R.T.P. Act”) is subject matter of consideration in the instant writ petition.

3. The petitioners herein are inducted as tenants by the respondent No. 3/Municipal Council since 1988. The Municipal Council Pathri passed an order U/Sec. 89 of the M. R. T. P. Act directing summary eviction of the petitioners from the writ plots. The petitioners have assailed the same.

4. Mr. Mahesh Deshmukh, the learned advocate for petitioners strenuously contends that, the application of Section 89 of the M.R.T.P. Act would be restricted to the Town Planning Scheme. The definition of scheme under Section 2(30) of the M. R. T. P. Act though includes a plan, however, the plan is only in relation to the town planning scheme and not a plan under the development plan sanctioned under Chapter III of the M. R. T. P. Act. In absence of the town planning scheme sanctioned under Section 86 of the M. R. T. P. Act, merely because in the development plan sanctioned on 15.02.2002, the land in question is designated as reserved site No. 33 for shopping center that by itself does not empower the respondent No. 3 to pass the

impugned order referring it as due process of law. The Civil Court has clamped injunction against the respondent No. 3 in respect of writ plots from evicting the petitioners without following due process of law. The Maharashtra Town Planning Scheme Rules, 1974 lay down the procedure to be followed while evicting a person under Section 89 of the M. R. T. P. Act. The same is referable to the Town Planning scheme and not the development plan. The learned advocate relies on the judgment of the Apex Court in a case of **Bharat Coop. Bank (Mumbai) Ltd. Vs. Coop. Bank Employees Union** reported in *(2007) 4 SCC 685* to contend that, when in a definition clause the word “means” is used, it is intended to speak exhaustively. When the word means is used in definition, it is a “hard-and-fast” definition and no meaning other than that which is put in the definition can be assigned to the same. When the word “includes” is used in the definition, it makes the definition enumerative but not exhaustive.

5. Mr. Sapkal, the learned advocate for the respondent No. 3/ Municipal Council submits that, the term scheme is defined under Section 2(30) of the M. R. T. P. Act. ‘Scheme’ is defined as “scheme” includes a plan relating to a town planning scheme. When the definition is inclusive, the same is illustrative and exhaustive. The learned counsel to substantiate his contention relies on the judgment of the Apex Court in a case of **State of Maharashtra and others Vs. Reliance Industries Ltd. and others** reported in *AIR 2017 SC 4490*. The learned advocate further contends that, plan under the town planning scheme is a part of development plan and the town planning scheme has to be in consonance with

the development plan as provided U/Sec. 39 of the M. R. T. P. Act. It is the duty of every planning authority to take steps as may be necessary to carry out the provisions of such plan or plans as contemplated under Section 42 of the M. R. T. P. Act. The scheme as referred to under Section 89 of the M. R. T. P. Act cannot be given a restricted meaning, in view of the fact that, the scheme is defined under Section 2(30) of the M. R. T. P. Act having a wide connotation. The learned counsel relies on the judgment of the Apex Court in a case of Ravindra Ramchandra Waghmare Vs. Indore Municipal Corporation and others reported in *AIR 2016 SC (Supp.) 372*. The Apex Court in the said case interpreted the word scheme as not having restricted meaning. The Court interpreted explanation with the term scheme under Section 291 of the Act of 1956 to apply it to the regional plan, development plan or town development scheme as provided U/Sec. 292 of the said Act. The learned counsel also relies on the judgment of the Apex Court in a case of Girnar Traders (3) Vs. State of Maharashtra and others reported in *(2011) 3 SCC 01*.

6. The learned counsel further submits that, the Municipal Council can lease the immovable property for a period not exceeding three years and such lease may be renewed by the Municipal Council beyond the period of three years. However, the total period of any lease shall not exceed nine years. The petitioners are occupying the plots since 1988. According to the learned counsel no error has been committed by the respondent by seeking eviction of the petitioners under Section 89 of the M. R. T. P. Act thereby adhering to the due process of law. The

petitioners do not have any right to retain the land. The same would not be in consonance with the development plan/scheme as the said site is reserved for shopping complex under the development plan.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The gravamen of the case put forth by petitioners is that, the action of the respondent No. 3 resorting to Section 89 of the M. R. T. P. Act is without jurisdiction and authority. Section 89 of the M. R. T. P. Act cannot be resorted to unless and until the town planning scheme is prepared.

9. The scheme of the M. R. T. P. Act is such that initially there is regional plan. The regional plan is prepared to secure planned development and use of land in region. The regional plan shall provide for any of the matters as detailed in Section 14 of the M. R. T. P. Act.

10. The planning authority has to carry out a survey, prepare existing land use map and shall prepare a draft development plan in the area within its jurisdiction in accordance with the provisions of the original plan, where there is such a plan. The contents of the development plan shall generally indicate manner in which the use of land in the area of planning authority shall be regulated and shall also indicate the manner in which the development of the land therein shall be carried out.

It shall provide for the matters as enumerated in Section 22 of the M. R. T. P. Act.

11. The planning authority may for the purpose of implementing the proposals in the final development plan, prepare one or more town planning schemes for the area within its jurisdiction. The town planning scheme may make provisions for the matters as specified in Section 59 of the M. R. T. P. Act. The provision relating to town planning scheme are contained in Chapter V of the M. R. T. P. Act. Chapter V consists of Sections 59 to Section 112. The planning authority after it passes resolution declaring its intention to make a town planning scheme in respect of part of area in its jurisdiction may make and publish a draft scheme. The draft scheme is required to be submitted to the Government as provided under Section 61 of the M. R. T. P. Act. Under Sec. 63 of the M. R. T. P. Act, the State Government can direct the planning authority to submit for its sanction a draft scheme in respect of any land in regard to which Town Planning Scheme may be made. The contents of draft scheme are enumerated in Section 64 of the M. R. T. P. Act. In the draft scheme the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes. Sub section 2 of Section 65 of the M. R. T. P. Act provides the draft scheme may contain the proposals. The same reads thus :

THE MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966

1.
2.

65. Reconstituted plot

(1)

(2) For the purpose of sub-section (1), a draft scheme may contain proposals ---

(a) to form a final plot by reconstitution of an original plot by alteration of the boundaries of the original plot, if necessary;

(b) to form a final plot from an original plot by the transfer wholly or partly of the adjoining lands;

(c) to provide, with the consent of the owners, that two or more original plots each of which is held in ownership in severally or in joint ownership shall hereafter, with or without alteration of boundaries be held in ownership in common as a final plot;

(d) to allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

(e) to transfer the ownership of an original plot from one person to another.

12. Section 68A of the M. R. T. P. Act provides that where a draft scheme has been sanctioned by the State Government under sub-section (2) of section 68, all lands required by the appropriate authority for the purposes specified in sub clause (ii-b), (ii-e), (ii-f) and (ii-g) of clause (b) of sub-section (1) of section 59 shall vest absolutely in the appropriate authority free from all

encumbrances. Sub section (3) of Section 68A of the M. R. T. P. Act further provides that, provisions of section 89 and 90 shall *mutatis mutandis* apply to the sanctioned draft scheme as if sanctioned draft scheme were a preliminary scheme. Clause (ii) of sub section (3) of Section 68A of the M. R. T. P. Act further suggests that in sub-section (1) of Section 89 and sub section (1) of Section 90 of the M. R. T. P. Act for the words “the day on which final scheme comes into force”, the words, brackets and figures “the date on which the draft scheme is sanctioned under sub-section (2) of Section 68” were substituted.

13. Once the declaration of intention to make a scheme is published in the official Gazette, no person within the area included within the scheme may institute or change the use of any land or plot without the permission of the planning authority. Section 88 of the M. R. T. P. Act very specifically provides that on and after the day on which a preliminary scheme comes into force, all lands required by the Planning Authority shall unless it is otherwise determined in such scheme vest absolutely in planning authority free from all encumbrances and all rights in the original plots which have been reconstituted shall determine, and the reconstituted plots shall become subject to the rights settled by Arbitrator. The terminology ‘scheme’ under Section 88 of the M. R. T. P. Act would mean Town Planning Scheme.

14. Section 89 of the M. R. T. P. Act is the moot section of debate. Section 89 of the M. R. T. P. Act reads that on and after

the day on which a preliminary scheme comes into force any person continuing to occupy any land which he is not entitled to occupy under the preliminary scheme may in accordance with the prescribed procedure be summarily evicted by the planning authority or any of its officers authorised in that behalf by the planning authority. According to the respondents, the preliminary scheme referred to in Section 89 of the M. R. T. P. Act would also include development plan. The same is sought to be canvassed taking aid of Section 2(30) of the M. R. T. P. Act. Section 2(30) of the M. R. T. P. Act defines 'scheme'. The definition of the scheme reads as under :

(30) "scheme" includes a plan relating to a town planning scheme.

15. The phraseology "scheme" is sought to be interpreted by the respondents in a manner to even include a development plan. Development plan has been independently defined U/Sec. 2(9) of the M. R. T. P. Act. The sanction of preliminary scheme is referable to section 68A sub section (3) of the M. R. T. P. Act. The sanctioned draft scheme under Section 68A of the M. R. T. P. Act is referable to a preliminary scheme.

16. Declaration of intention, preparation, submission and sanction to development plan is provided in Chapter III of the M. R. T. P. Act. Chapter IV of the M. R. T. P. Act deals with the control of development and use of land included in development plans. Section 52 of the M. R. T. P. Act provides for the penalty for unauthorized development or for use otherwise than in-

conformity with development plan. Section 53 of the M. R. T. P. Act empowers the planning authority to require removal of unauthorized development and for that purpose it may serve upon the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to condition existing before the said development took place. Under Section 54 of the M. R. T. P. Act, it has powers to stop unauthorized development not in consonance with the development plan. Under section 55 of the M. R. T. P. Act, it has powers to direct removal or discontinuance of unauthorised temporary development summarily. Under Section 56 of the M. R. T. P. Act the planning authority has power to require removal of unauthorized development or use by the owner or occupier thereof. If any such notice is served, remedy of appeal is provided to the aggrieved person before the State Government under Section 56(2) of the M. R. T. P. Act.

17. The activities vis-a-vis development plans are regulated in Chapter IV of the M. R. T. P. Act, whereas the intention to provide for town planning scheme, preparation of draft/preliminary scheme and the sanction of the final town planning scheme is provided in Chapter V of the M. R. T. P. Act. If the act is not in consonance with the preliminary town planning scheme, then a power has been given to the planning authority to summarily evict under Section 89 of the M. R. T. P. Act. Rule 19 of the Maharashtra Town Planning Scheme Rules 1974 (for short "Rules of 1974") prescribes the procedure for eviction under Section 89 of the M. R. T. P. Act. Rule 19 of the Rules of 1974 provides that for eviction under Section 89 of the

M. R. T. P. Act, the planning authority shall serve a notice upon the person to be evicted requiring him to vacate the land within such reasonable time which shall not be less than 30 days from the date of service thereof as may be specified in the notice. If the person to be evicted fails to comply with the requirements of the notice, the planning authority shall take steps through a duly authorized officer to remove such person and in case such officer is opposed or impeded to take further action as provided in sub section (2) of Section 89 of the M. R. T. P. Act for evicting such person or taking possession of land from such person, the Commissioner of Police or as the case may be the District Magistrate shall at the request of Planning Authority enforce the eviction of such person or secure delivery of possession of the land to the Planning Authority. Rule 19 of the Rules of 1974 prescribes the procedure to be followed while resorting to section 89 of the M. R. T. P. Act.

18. The Maharashtra Development Plan Rules 1970 have been separately published to regulate the preparation of the development plan, so also the manner of appeal against the notice of the planning authority requiring removal of unauthorized development or use. Thus, it would be seen that, the M. R. T. P. Act is a complete code in itself. Different procedure is prescribed for the preparation and implementation, regulation of the development plan and preparation and implementation of town planning scheme.

19. Rules are also separately framed for the purpose of

development plan and the town planning scheme. The Rules under the statute are treated for the purpose of construction as if they were in the enabling act and are to be of the same effect as if contained in Act. The rule is a piece of subordinate legislation. The subordinate legislation may be used to construe the statute. Where the act provides a framework, built on by contemporaneously prepared regulations or rules, the latter may be a reliable guide to the meaning of the statute. The guidance can be had from the rules. The Apex Court in a case of Tata Engineering and Locomotive Engine Co. Vs. Gram Panchayat Pimpri Waghere reported in (1976) 4 SCC 177 has observed that, Rules made under a statute are legitimate aid to construction of the statute as contemporaneous exposition. The statutory rules subsequently made can be used to support a meaning given in a statutory provision. The tenor of the scheme of subordinate legislation can be used while construing a provision of the parent act.

20. The respondents have led much emphasis on the definition clause of the word “scheme” under section 2(30) of the M. R. T. P. Act, which defines “scheme” to include a plan relating to a town planning scheme. Where the word defined is declared to “include”, the definition is *prima facie* extensive. If the definition uses the word means, then the intention is to make it more extensive. The meaning of the word used in a particular provision must be ascertained from the context of the scheme of the act, language of the provision and the object intended to be served thereof.

21. Sub Section 30 of Section (2) of the M. R. T. P. Act shall have to be read along with sub Section (2) of Section 60 of the M. R. T. P. Act. Sub Section (2) of Section 60 provides that not later than thirty days from the date of such declaration of intention to make a scheme, the planning authority shall publish a declaration in the official Gazettee and in such other manner as may be prescribed and dispatch a copy thereof (together with a copy of the plan showing the area to be included in the scheme) to the State Government. Sub Section (3) of Section 60 of the M. R. T. P. Act states that, a copy of the plan shall be open to the inspection of the public. Under section 2(30) of the M. R. T. P. Act the definition “scheme” includes a plan relating to town planning scheme would mean not merely the preliminary or final town planning scheme, but also the plan showing the area to be included in the scheme as contemplated under Section 60(2) of the M. R. T. P. Act. The definition scheme will have to be interpreted in such a manner only. The same would be reasonable and in tune with the provisions contained in the town planning scheme and the Rules of 1974.

22. Considering the scheme of the Act and different provisions dealing with the development plan, the town planning scheme, it would not be possible to accept the contention of the respondents that, the action U/Sec. 89 of the M. R. T. P. Act can be resorted to in absence of a town planning scheme. The power given to the planning authority to evict summarily under Section 89 of the M. R. T. P. Act is for the reason that, on and after the day on which the preliminary scheme comes into force the land acquired by the

planning authority vest absolutely in the planning authority free from all encumbrances. In case of development plan, such is not the eventuality.

23. In the present case, the land is reserved for shopping complex under the development plan. The petitioners are tenants of the respondent No. 3 running their business in the shops may be holding over for a period more than nine years. The Municipal Council does not have power to give lease of the property beyond nine years. In that event, the respondent No. 3 may get a right to evict the petitioners, but not under Section 89 of the M. R. T. P. Act. The planning authority in such case has a right to enforce eviction under other provisions of statute, but not under Section 89 of the M. R. T. P. Act.

24. The judgment in a case of **Ravindra Ramchandra Waghmare Vs. Indore Municipal Corporation and others** reported in *AIR 2016 SC (Supp) 372* may not inure to the benefit of the respondents. The Apex Court in the said case was considering the provisions of Section 292 of the Madhya Pradesh Municipal Corporation Act, 1956. Section 292 of the said Act reads as under, “notwithstanding anything contained in section 291, no town planning scheme shall be made by the Corporation for any area for which a scheme has been sanctioned under the provisions of Town Improvement Act.” Section 291 deals with the town planning scheme and the matters to be provided therein. Section 292 restricts the power of the corporation to make a town planning scheme, where already scheme sanctioned under the

provision of the Town Improvement Act exists. It was held by the Apex Court that development has to be binding and has to be implemented by the corporation not only under the provisions of Section 292, but also under the provisions of Sec. 66(1)(y) of the Act of 1956. The town planning scheme shall have to be subservient to the development plan and the regional plan. It is in that context, the Apex Court has observed of the restrictions on the corporations power to undertake town planning scheme when any scheme under the Town Improvement Act has been formed for the area in question. In the present case, we are dealing with the provision providing for the civil consequences. The same will have to be strictly construed. The judgment of the Apex Court in a case of Girnar Traders Vs. State of Maharashtra reported in *(2011) 3 SCC 1* may not be of much assistance to the respondents.

25. In view of the aforesaid discussion, we hold that, in absence of the town planning scheme in existence, the respondents could not have resorted to section 89 of the M. R. T. P. Act and consequently the action under Section 89 of the M. R. T. P. Act is not sustainable and deserves to be set aside and is hereby set aside.

24. Rule is made absolute in above terms. No costs.

[AVINASH G. GHAROTE, J.]

[S. V. GANGAPURWALA, J.]