

Sng

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

**WRIT PETITION NO. 5524 OF 2017
WITH
CIVIL APPLICATION NO. 1708 OF 2018**

Sandeep Raman Pawar & Ors. .. Petitioners

Versus

State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 9673 OF 2017**

Narayan Shivram Kamble & Ors. .. Petitioners

Versus

State of Maharashtra & Ors. .. Respondents

Mr. G. S. Godbole i/by Mr. Ashok B. Tajane for petitioners in WP/5524/2017.

Mr. S. S. Redekar for petitioners in WP/9673/2017.

Mr. M. M. Pable, AGP for respondent No.1/State.

Mr. Deepak R. More for respondent No.4 in WP/5524/2017.

Mr. Anil Anturkar, Senior Advocate a/w Mr. Ajinkya Udane for respondent No.5 in WP/5524/2017.

Mr. Rohit Sakhadeo for respondent No.4 in WP/9673/2017.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

RESERVED ON :- FEBRUARY 9, 2021

PRONOUNCED ON :- FEBRUARY 18, 2021

JUDGMENT [Per DIPANKAR DATTA, CJ.] :

1. These two writ petitions have been heard together since the subject matter of challenge therein is common. This common judgment shall decide both the writ petitions.
2. A notice dated January 6, 2017 issued by the Under Secretary to the Government of Maharashtra, Urban Development Department is under challenge in these writ petitions and prayer is made for issuance of a writ of or in the nature of certiorari to quash and set aside such notice.
3. Writ Petition No. 5524 of 2017 is at the instance of 13 (thirteen) petitioners. Mr. Godbole, learned counsel has advanced arguments in support of this writ petition.
4. Mr. Redekar, learned counsel appears for the 3 (three) petitioners in Writ Petition No. 9673 of 2017. He adopted the arguments of Mr. Godbole and did not advance any additional submission.
5. It would be appropriate if we now proceed to ascertain the facts giving rise to the writ proceedings.

6. Writ Petition No. 5524 of 2017 was presented on April 19, 2017, whereas Writ Petition No. 9673 of 2017 [earlier Writ Petition Stamp No. 8995 of 2017] was presented on March 27, 2017.

7. Writ Petition No. 5524 of 2017, as filed, does not give a clear picture of the petitioners' cause of action. An application for amendment having been granted by an order dated May 11, 2018, the writ petition was amended and the pleaded case appearing therefrom will be noted a little later after we advert to Writ Petition No. 9673 of 2017, which was filed earlier in point of time.

8. The petitioners in Writ Petition No. 9673 of 2017 claimed that the property bearing Survey No. 64/13/3 admeasuring 15.9 acres approximately and situated at village Tathawade, taluka Mulshi, district Pune, as described in paragraph 1, is the subject matter of the writ petition (hereafter "the subject property", for short). It is pleaded therein that the Government of Maharashtra, in the Urban Development Department, vide Notification dated July 30, 2009 extended the limits of the Pimpri-Chinchwad Municipal Corporation (hereafter "the Corporation", for short) by including village Tathawade. Consequently, the Corporation by its resolution dated August 21, 2009 made a declaration under Sections 23 and 34 of the Maharashtra Regional and Town Planning Act, 1966 (hereafter "the Act", for short) of its intention to prepare development plan for the area newly added to its territorial jurisdiction. Notice of such declaration was published in the

gazette of Government of Maharashtra, Pune Division supplement, dated October 14, 2010. On February 20, 2013, the Corporation prepared a draft development plan of village Tathawade vide Resolution No. 237 and published such plan under Section 26 of the Act. A notice was published in the gazette dated March 7, 2013 inviting suggestions/objections from the public. In such draft proposed development plan, the subject property was shown as reserved for 'garden'. Being put on notice, the petitioners lodged objection and participated in the hearing. The Planning Authority under Section 28(4) of the Act published the changes in the Development Plan on July 23, 2014. The reservation of the subject property as 'garden' was sought to be deleted and proposed to be included in 'residential zone'. Upon consideration of suggestions/objections that were received from the public in respect of the said plan, the modified plan was submitted to the Government of Maharashtra for sanction on August 1, 2014 under Section 30(1) of the Act. The appropriate department of the Government considered the modified plan and thereafter issued the impugned notice dated January 6, 2017, being the final notification, whereby a part of the said development plan of village Tathawade was sanctioned along with modifications as specified in **SCHEDULE-A** (as **SM-1, SM-2, --- etc.**), excluding the substantial modifications (as **EP-1, EP-2, --- etc.**) as specified in **SCHEDULE-B**. The effect of such an exercise was that the reservation in respect of the subject property as 'garden' was restored, which left the petitioners aggrieved.

9. Relevant portion of the impugned notice is extracted hereunder:

“Now, therefore, in **exercise** of the powers conferred under **Section 31(1)** of the Said Act and all other powers enabling it on that behalf, the Government of Maharashtra hereby: -

a) Gives Notice for inviting suggestions and objections from any person in respect of the **proposed substantial modifications** as specified in the **SCHEDULE-B** appended hereto, within the period of one month from the date of publication of this Notice in the Official Gazette.

b) Appoint the Joint Director of Town Planning, Pune Division, Pune as the “Officer” under Section 31(2) of the Said Act, to hear all the persons filing suggestions and objections as stated in (a) above within the stipulated period and to submit his report thereupon to the Government for further necessary action.

Only the suggestions or objections regarding substantial modifications mentioned in **SCHEDULE-B**, that may be received by the Joint Director of Town Planning, Pune Division, Pune, having his office at Survey No. 74/2, Sarang Society, Above Bank of Maharashtra, Sahakar Nagar, Pune-9, within the stipulated period of one month from the date of publication of this Notice in the Official Gazette, shall be considered.

Copy of this Notice along with **SCHEDULE-B** and the Plan showing the proposed substantial modifications shall be made available for inspection to general public at the following offices during office hours on all working days.: -

- 1) ***
- 2) ***
- 3) ***

This Notice shall also be published on the Government web-site at www.maharashtra.gov.in (कायदे व नियम)

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

(bold in original)

10. It has not been shown to us from either of the writ petitions that any of the two sets of petitioners lodged any objection and/or tendered any suggestion in pursuance of the aforesaid notice within the time stipulated therefor. We, thus, checked the pleadings and the exhibits to the writ petitions and record that no objection/suggestion was lodged/tendered by the petitioners and they straightaway approached the writ Court.

11. Be that as it may, in Writ Petition No. 5524 of 2017 (as amended), it is averred that on April 4, 2018, the petitioners found that digging work had started in Survey No.42 but they failed to obtain any information upon enquiry. They then

searched the website of the Corporation and discovered, for the first time, that on May 7, 2018 a commencement certificate had been granted in favour of the fifth respondent (added respondent) in respect of 1000 sq.m. at village Tathawade, ward B, Survey No. 42/2. It was further found that the fifth respondent had submitted a layout plan in which the existing road and the proposed road are shown as 6m and 9m, respectively. Paragraph 2-I of the writ petition brings out the essence of the petitioners' grievance and is set out below:

"2-I. It is pertinent to note that when the Planning Authority sent its development plan for approval to the State Government (which plan has attained deemed sanction under law) it had, in modification at M-38 suggested 18M, wide road from Eastern Boundary of survey No.26, 27, 42 and 43 up to S.No.46. The said survey No. 42 is part of the present Writ Petition and the Petitioners are seeking the implementation of the corrected proposal sent by planning authority which includes 18M. road."

12. The petitioners in Writ Petition No. 5524 of 2017 sought to challenge the notice dated January 6, 2017 on, *inter alia*, the following points of law:

"(A) The impugned notification dated 06.01.2017 is bad in law and liable to be quashed and set aside on the ground that the same has been published without following the mandatory provisions of Section 31 of MRTP Act 1966.

(B) When the planning authority has submitted the Development plan after considering the suggestions/ objections/ received from the public under section 30 (1) of MRTP Act to the Government of Maharashtra on 01.08. 2014 in such case in view of proviso three to sub Section (1) of Section 31 of MRTP Act, the State Government was bound to publish the final notification within 24 months as per Clause (i) of sub Section (1) of Section 30 of MRTP Act, 1966 i.e. on or before 01.08.2016 but the same is published on 06.01.2017 i.e. beyond the period of 24 months and hence the modifications published under sub section (4) Section 28 of MRTP Act by the planning authority and submitted to the government under Section 30 of MRTP Act are final.

(C) In view of mandatory provision of 24 months under proviso three to sub Section (1) of Section 31 of MRTP Act for sanctioning the draft development plan submitted by the planning authority to the Government and failure to sanction the same within above statutory period such draft development plan shall be deemed to have been sanctioned as submitted to the Government under Section 30 on the date immediately following the date of expiry of the period under this Section and hence on 02.08.2016 the draft development plan submitted to the State Government on 01.08.2014 is deemed to have been sanctioned.

***"

13. On behalf of the respondent nos. 1, 2 and 3, it has been pleaded in the affidavit-in-reply dated March 12, 2018 to Writ Petition No. 5524 of 2017 as follows:

“Since in the present case, Pimpri-Chinchwad Municipal Corporation’s Development Plan falls within the jurisdiction of the Metropolitan Planning Committee for Pune Metropolitan Region, the time for according sanction to this Development Plan is six months + twenty-four months i.e. in total 30 months from the date of submission of Development Plan by Pimpri Chinchwad Municipal Corporation. The said Development Plan was submitted by Pimpri Chinchwad Municipal Corporation U/s 30 of the said Act vide letter dt. 01.08.2014. The period of 30 months comes upto 31.01.2017. The Government has sanctioned the Development Plan vide Notification No. TPS-1815/2012/CR-84/15/D.P. Sanction/UD-13 dt. 06.01.2017. Thus the State Government has sanctioned Development Plan within the time limit stipulated in the said Act.

In view of above, the contention of the petitioner that the statutory permissible period is 2 years is baseless & consequently, his contention that, the Development Plan as submitted by Planning Authority should have been given effect of deemed sanction is not acceptable.”

14. An additional affidavit-in-reply dated November 29, 2019 was filed on behalf of the respondent nos.1, 2 and 3. Paragraph 3 thereof reads as follows:

“3. It is also submitted that, Government through Urban Development Department, has constituted Pune Metropolitan Planning Committee for the said Metropolitan area vide notification No.TPS-1899/1812/C.R.124/1999/UD-30, dated 10.11.2008. Hereto annexed and marked as **Exhibit “A”** is the copy of the Notification dated 10.11.2008. This committee is constituted as per the provisions of Section 3 of the Metropolitan Planning Committee Act, 1999 and consists of 45 members including a person nominated by the State Government as the Chairperson, 6 members nominated by the State Government from amongst the Municipal Commissioners and Chief Officers of the Municipal Councils, the Chief Executive Officers of the Special Planning Authorities or New Town Development Authorities constituted under the Maharashtra Regional and Town Planning Act, 1966 and members of any other local authority, operating in the Metropolitan area; Two Members nominated by the State Government from amongst the Members of the Legislative Assembly and the Members of the Legislative Council, elected from the Metropolitan area; Four expert members, two Ex Officio Members and two third members as elected members from amongst the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area.....”

15. It is such an affidavit that resulted in the petitioners in WP No.5524 of 2017 raising an additional ground of challenge

through their additional affidavit dated November 30, 2019. It was pleaded in paragraph 4(ii) of such affidavit by the petitioners that the Notification dated November 10, 2008, relied upon by respondent no.1 / State, clearly shows that various persons (30 in number) were the elected members of the Committee. As on August 1, 2014, being the date of submission of the draft development plan under Section 30 of the Act by the Corporation to the State Government, the tenure of office of the elected members must have come to an end inasmuch as the respective enactments namely, Maharashtra Municipal Corporation Act, 1949, the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 and the Maharashtra Village Panchayats Act, 1959 provide that the tenure of the general body of such Local Authorities would be five years. Consequently, none of the elected members of the Metropolitan Planning Committee could have continued in any case beyond December 16, 2013 and on expiry of such period, there would be no elected members which is a mandatory pre-requisite for a valid constitution of a Committee, such as the Metropolitan Planning Committee.

16. Mr. Godbole has argued in support of the relief claimed in the writ petition. His attack to the impugned notice is based on the following 2 (two) grounds:

- I. Section 31(1) of the Act requires the State Government, *inter alia*, to sanction the draft Development Plan within 6 (six) months of its

receipt from the Planning Authority. However, the State Government may extend the time period by such further period not exceeding 24 (twenty-four) months in the aggregate in case the area of such development plan falls in the jurisdiction of a Metropolitan Planning Committee constituted under the Maharashtra Metropolitan Planning Committee (Constitutions and Functions) (Continuance of Provisions) Act, 1999 (hereafter "the MPC Act", for short) and in any other case by a period not exceeding 12 (twelve) months as may be specified in the notification. In the present case, the draft Development Plan of the Planning Authority was received by the State Government on August 8, 2014 and according to the statutory mandate in the first proviso to Section 31(1) of the Act, the sanction ought to have been accorded with or without modification by August 7, 2016, whereas the impugned notice was issued on January 6, 2017, i.e. well after 24 (twenty-four) months of receipt of the draft Development Plan; and having regard to the third proviso to Section 31(1) of the Act, the sanction ought to be deemed to have been accorded on the expiry of August 7, 2016. Therefore, the Development Plan in its draft form, as proposed by the Planning Authority, would stand and the properties of the petitioners ought to be de-reserved for residential use.

- II. Article 243-P(c) of the Constitution of India defines "Metropolitan area". In terms of Article 243-ZE of the Constitution, there shall be a Committee constituted in every Metropolitan area to prepare a draft development plan for the Metropolitan area as a whole. According to the proviso to sub-clause (b) of clause 2 of Article 243-ZE of the Constitution, not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area. In terms of the provisions of Article 243ZE, the MPC Act has been enacted which provides in sub-section (1) of Section 3 thereof that a Metropolitan Planning Committee for every Metropolitan area consisting of 45 members as provided in sub-section (2), shall prepare a draft development plan for the Metropolitan area as a whole. Sub-section (2) thereof is the provision which relates to composition of every Metropolitan Planning Committee. Sub-section (2) of Section 4 of the MPC Act ordains that the term of office of the elected members shall be co-terminus with their tenure in the respective local authority. Referring to the aforesaid provisions, it is argued that the Metropolitan Planning Committee did not

comprise of two-thirds of the elected members at the relevant point of time, as per the mandate of the Constitution and, therefore, any act of such improperly constituted Metropolitan Planning Committee cannot be given effect.

17. Mr. Anturkar, learned senior counsel appearing for the respondent no.5 has objected to the relief claimed by the petitioners in WP No.5524 of 2017 on technical grounds as well as on merits. We shall keep his arguments in mind while we examine the grounds of challenge.

18. Mr. Pable, learned AGP for the State adopted the submission of Mr. Anturkar and did not advance any additional submission.

19. Having heard learned advocates for the parties at some length and on consideration of the materials on record, we do not consider the need to deal with the technical objections raised by Mr. Anturkar for the simple reason that the petitioners in WP No.5524 of 2017, *a fortiori*, the petitioners in WP No.9673 of 2017, are not entitled to any relief even on merits.

20. The first ground of challenge raised by Mr. Godbole is that if a draft development plan is not sanctioned (with or without modification) or not returned by the State Government to the Planning Authority or refused by the State Government, within a maximum period of 24 months from the

date of its receipt, such draft development plan in terms of the third proviso to Section 31(1) of the Act would be deemed to have been sanctioned. We have no hesitation in rejecting this contention.

21. A bare reading of sub-section (1) of Section 31 of the Act would lead to the unmistakable conclusion of the legislative intent that desirably, the draft development plan must be considered by the State Government in the manner as ordained within six months of receipt thereof from the Planning Authority. However, the period is not rigid or inflexible. Read together with the first proviso, what emerges is an enabling provision of extension of the period from time to time for consideration of the draft development plan, with the rider that such extended period must not exceed 24 months in the aggregate. There is no stipulation that extension has to be for a particular period or that extension for more than 2/3 times cannot be granted. There could be one extension of 24 months or several extensions for shorter periods, not exceeding 24 months in the aggregate. Thus read, in a given case, the State Government would have to give its decision on the draft development plan, either by way of sanction (with or without modification) or return or refusal, desirably within 6 months. However, the State Government may, if it thinks fit, from time to time extend the period for consideration of the draft development plan either for sanctioning or refusal to accord sanction or to return such plan to the Planning Authority by further periods so as not to exceed 24 months in the aggregate. Apart from 6 months, a

further 24 months' time would be available, totaling to 30 months, and not 6 + 18 months', as argued by Mr. Godbole. Therefore, it has to be seen whether within 30 months from August 4, 2014, the draft development plan was accorded sanction by the State Government with modification. Reckoning from August 4, 2014, the period of 30 months would end on February 3, 2017. In this case, the State Government having sanctioned (with modification) the draft development plan vide notice dated January 6, 2017, i.e., well within the period of 30 months, we find no merit in Mr. Godbole's contention.

22. The second contention of Mr. Godbole is equally without merit. There is no dispute that village Tathawade, which has been added to the territorial limits of the Corporation, falls within the Pune Metropolitan Area and that it also falls in the jurisdiction of the Pune Metropolitan Planning Committee constituted under the MPC Act. When one looks at clauses (1) and (2) of Article 243-ZE of the Constitution of India, it would appear that the same refer to constitution of a Metropolitan Planning Committee for a Metropolitan area and composition of the Metropolitan Planning Committees, separately. A distinction has, therefore, to be drawn between 'constitution' and 'composition'. The Pune Metropolitan Planning Committee has been constituted in terms of Section 3 of the MPC Act. The petitioners in Writ Petition No.5524 of 2017 while referring to Government Notification dated November 10, 2008 have conceded that there was a Metropolitan Planning

Committee at least till December 16, 2013. Their contention appears to be that beyond December 16, 2013, there were no elected members in terms of the mandatory pre-requisite for a valid constitution (sic, composition) of a Committee for the Metropolitan Planning Committee. That the Metropolitan Planning Committee has been constituted, thus, stands well-established. Even assuming that the Pune Metropolitan Planning Committee did not consist the requisite number of elected members, nothing turns on it. Requirement of Section 31 of the Act is that the area must fall in the jurisdiction of a Metropolitan Planning Committee constituted under the MPC Act and not that the area must fall in the jurisdiction of a Metropolitan Planning Committee under the MPC Act, composed of the required number of elected members. We may in this context refer to Section 7 of the MPC Act providing as follows:-

“No act or proceeding of the Metropolitan Planning Committee shall be invalid by reason only of vacancy therein, or any defect in election or nomination of any member, if such act or proceeding is otherwise in accordance with the provisions of this Act.”

23. This provision makes it clear that if any decision taken by a Metropolitan Planning Committee is challenged only on the ground that such Committee, at the relevant point of time, did not consist of the required number of elected members, such decision would not suffer from any invalidity

merely by reason of a vacancy if otherwise it is in accordance with law.

24. Apart from the ground of the Pune Metropolitan Planning Committee not consisting of elected members in sufficient measure, no other invalidity in the decision has been shown.

25. For the reasons aforesaid, we find no merit in either of the two petitions. The writ petitions stand dismissed, without any order for costs.

26. Civil Application No. 1708 of 2018 does not survive and stands disposed of accordingly.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

Pravin
D.
Pandit

Digitally
signed by
Pravin D.
Pandit
Date:
2021.02.18
18:33:41
+0530