

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

WRIT PETITION NO.6124 OF 2017

- 1) M/s. United Group,
A partnership Firm,
Through its Partner,
Ganesh Vishwanath Mote,
Age-36 years, Occu:Business,
R/o-N-2, L-1-24 / 14, Ramnagar,
CIDCO, Aurangabad,
- 2) Nanasaheb S/o Rambhau Zoal,
Age-39 years, Occu:Service,
R/o-N-2, CIDCO, Aurangabad,
- 3) Prashant S/o Rajendra Rankhamb,
Age-36 years, Occu:Service,
R/o-Rathisansar, Pisa Devi Road,
Harsul, Aurangabad,
- 4) Sunanda R. Gadekar,
Age-58 years, Occu:Housewife,
R/o-N-7, CIDCO, Aurangabad,
- 5) Shrinivas S/o Janardhan Deshmukh,
Age-38 years, Occu:Agriculture,
R/o-Varudkazi, Aurangabad,
- 6) Prashant S/o Gajanan Lanke,
Age-49 years, Occu:Service,
R/o-Jyotinagar, Aurangabad.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Secretary, Urban and
Development Department,
Mantralaya, Mumbai-32,

- 2) The Director,
Town Planning,
State of Maharashtra, Pune,
- 3) The Deputy Director,
Town Planning, Aurangabad,
- 4) Assistant Director,
Town Planning, Aurangabad,
- 5) The Collector,
Collector Office, Aurangabad.

...RESPONDENTS

...
Mr.A.S. Bajaj Advocate for Petitioners.
Mr.S.B. Yawalkar, A.G.P. for Respondent Nos. 1 to 5.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE OF RESERVING ORDER : 12th OCTOBER 2022

DATE OF PRONOUNCING ORDER : 8th DECEMBER 2022

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Petitioner No.1 is registered partnership firm and petitioner Nos.2 to 6 are the purchasers of the plots of the part of the sanctioned layout prepared in Gat No.90 of Mauje Gangapur (Jahagir), Taluka and District-Aurangabad. The petitioners, by invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India had prayed for calling record

and proceedings in respect of preparation of the Zonal Plan of the nine villages adjoining to Shendra MIDC, Aurangabad and to set aside the plan for providing 18 meters road from land Gat No.90 of Mauje Gangapur (Jahagir), Taluka and District-Aurangabad. By way of amendment, it has been sought that Clause (M-4) Schedule of Modification Regional Plan sanctioned by Notification dated 24th July 2012 published in Government Gazette to be set aside as ultra vires.

2. Heard Mr. Bajaj, learned Advocate for the petitioners and Mr. Yawalkar, learned AGP for the respondents.

3. Learned Advocate for the petitioners submitted that one Janardhan Subhanrao Pimpale and Rajendra Rambhau Zol had jointly purchased 60 R land from Gat No.90, whereas one Ganesh Vishwanath Mote and Ganesh Vishupath Ubarhande jointly purchased 50 R land from Gat No.90 by sale deed dated 12th December 2012. The petitioners had applied for conversion of the land from agricultural to non-agricultural and necessary sanction for the lay out. For an area admeasuring 5525 sq. meters and 5000 sq. meters, part of Gat No.90, permission under Section 44 of the Maharashtra Land Revenue Code, 1966

(for short "MLR Code") was granted vide order dated 1st March 2014. The petitioners have stated that after the sanction of the layout, they developed the said land and sold out the said land to petitioner No.1 partnership firm. Petitioner No.1 had then sold out various plots to various persons including petitioner Nos.2 to 6. The respondents had proposed 18 meters road in between the land Gat Nos. 90 and 89 and that the plots situated towards the eastern side of the road are being affected by the road. This was revealed after the permission was sought to construct the house. In fact if such road is carved out then practically hardly any area would remain for the construction. Time and again representations were made by the petitioners since 14th August 2014, however no positive action has been taken. No opportunity of hearing was also given to the petitioners. The development plan was sanctioned vide notification dated 24th July 2012 and it provides for the Zone plan of nine villages to be prepared. Respondent No.4 prepared a map showing existing sanctioned layout, however, it has not shown the layout carved on the two pieces of the land of the petitioners. The preparation of regional plan by some regional board amounts to delegation of power, which is prohibited under Section 151 of the Maharashtra Regional Town Planning Act (for

short "MRTP Act"). Sub-section (3) of Section 151 of the MRTP Act carves out to prepare any regional plan, development plan, town planning scheme or the plan of new town or to make the regulations. Therefore, such power cannot be delegated by the regional board to any further authority. Herein this case the powers delegated to Collector are illegal. It is further stated that the Collector did not follow any formalities which are required to be done while preparing alleged zone plan. Learned Advocate appearing for the petitioners had taken us through the documents which have been produced on record and submitted that even when the affidavits in reply have been filed on behalf of the respondents, they were not sure as to under which provisions of the law said power was given to the Collector to prepared the zonal plan. When the respondents had already granted non agricultural permission and then sanctioned the layout, there was no question of any type of interference thereafter under the guise that respondents want to prepare zonal plans. The Petition, therefore, deserves to be allowed as the act of the respondents is illegal.

4. Per contra, the learned AGP vehemently submitted that regional plan was sanctioned by notification dated 24th July 2012.

As per Section 4 (1) of the MRTP Act, the Government of Maharashtra has constituted regional planning board called "Aurangabad Regional Planning Board". The establishment of that Board was for the preparation of the regional plan for the purpose of planning the development and use of land in Aurangabad region published in Government Gazette dated 8th June 2001. In that notification itself, as well as by the Statute modification in the regional plan can be made as per Section 16 of the said Act. The Government had fixed 30th October 2012 to be the date on which the final Regional Plan would come into force. The schedule of modifications was notified on 24th July 2012 separately, in which Clause M-4 was thus:-

" M-4 The Zone Plan of nine villages adjacent to Shendra Industrial area proposed as New town in Regional Plan, should be prepared and Sanctioned by Collector, Aurangabad in consultation with Divisional Deputy Director of Town Planning Aurangabad. "

5. Learned AGP further submitted that the zone plan for all nine villages adjacent to Shendra Industrial Area is prepared in consonance with the provisions of Maharashtra Land Revenue Rules, 1969 and the Government sanctioned the Regional Plan as per the provisions of the MRTP Act, the Petition deserves to be

rejected. Learned AGP further submitted that there is inordinate delay caused by the petitioners in approaching this Court.

6. At the outset it is to be noted that by the said Regional Plan and the Schedule of Modifications, the Collector, Aurangabad was supposed to prepare and sanction the zonal plan of nine villages adjacent to Shendra industrial area as new town. Now the petitioners are having objection for giving those powers to the Collector, Aurangabad. As per the Government, the said powers are given under Section 151 of the MRTP Act. The fact that is required to be considered is that immediately after the said notification on 24th July 2012, the petitioners had not raised any objection. The present petition has been filed on 21st April 2017 and the amendment challenging Clause M-4 to the Schedule of Modification of Regional Plan has been carried out on 29th October 2018. Therefore, it can be straightway said that the Writ Petition suffers from delay and laches. It is stated that the petitioners were giving representations. The copies of the representations would show that first representation was made on 14th August 2014. That is also almost after two years of the notification that had come into existence. Even otherwise, representations cannot be taken as challenge. If the petitioners

wanted to challenge the authority of the State Government or Collector, Aurangabad or giving powers to the Collector, Aurangabad to prepare and sanction the regional plan, then representation was not the way. Section 151(3) of the MRTP Act empowers the act of preparation of any regional plan, to be prepared by an officer of the State Government which could have been prepared by any Regional Board. Under this provision, the Collector can be considered as the officer of the State Government to whom the work of preparation of the regional plan would have been given. Further, it is also to be noted from Clause M-4 of the said notification that the Collector, Aurangabad was supposed to prepare as well as sanction the regional plan in consultation with the Divisional Deputy Director of Town Planning, Aurangabad. That means, exclusive powers of preparation and sanction were not given to the Collector, Aurangabad. Under this circumstance, it cannot be said that it was complete delegation of powers against the provisions of the Act.

7. The development of a town or industrial area is to be done by the State Government with the help of experts. Therefore, we cannot go into the aspects, as to what was feasible or

economical in respect of preparation of a road. The petitioners say that their land would be affected due to the road. If land of the petitioners is going to be affected, then certainly they can ask for compensation and other remedies would be still open for the petitioners. Merely because their layout was sanctioned earlier, it cannot be the ground on which petitioners can challenge the authority of the State Government itself.

8. Herein this case, the notification came into effect on 24th July 2012, however, till 2017 the petitioners have not challenged the same. From the affidavit in reply filed on behalf of respondent Nos.1 to 4, by Mr. Suhas Sharadchandra Thatte, Assistant Director of Town Planning, Aurangabad, it can be gathered that the Collector, Aurangabad had accorded sanction to zonal plan under the provisions of Section 4(f) of the MLR Code. The said zonal plan covers total nine villages adjacent to Shendra industrial area. Public notice regarding sanction to the zonal plan was published in Government Gazette on 8th August 2014 and the zonal plan came into force on 11th August 2014. Thus, it is to be noted that even after that also the petitioners had not filed any writ petition challenging the said notification. It has been also stated that the preparation of road is on the basis

of requirement of the road alignments and proposed traffic. We could get another affidavit in reply by the Assistant Director of Town Planning, Aurangabad Division, Aurangabad, Mr. Sumedh Sudhakar Kharadwadkar, wherein the same facts have been reiterated and further it is stated that the Government has finalized the procedure of effecting (including percentage of rate of premium also) modification in the Regional Plan proposals vide Government Resolutions dated 6th May 2015, 11th June 2015 and 4th January 2016, from time to time. One more affidavit has been filed by the same authority stating that the Regional Planning Board, Aurangabad had submitted the report dated 24th June 2005, and then thereafter the notification dated 24th July 2012 was published. That means, the said process was going on since 2005. Along with this affidavit, the documents have been produced to show that the planning is complete in respect of 7113 Hectar land in nearby area for the development of Shendra industrial estate. The location of the area, the need for the area and the purpose for which it is planned to be utilized, are the considerations which prompted the State Government to take actions from time to time.

9. Learned AGP has placed reliance on the observations in ***Karawal Nagar Nagar Road Market Welfare Association and others vs. Union of India and others*** (Delhi High Court), reported in ***2010(6) R.C.R. (Civil) 551***, wherein, in connection with Land Acquisition Act, it has been observed that when acquisition proceedings for road are challenged, the aforesaid aspects are really matters of planning and are best left to the concerned authorities and experts in the field.

10. Definitely when certain projects require development with the view to generate industry which will bring employment, then in that situation it will have to be left to the experts in the field to act upon. Herein this case, the writ petition suffers from delay and laches and therefore we do not find it to be a fit case where we should exercise our constitutional powers. The Writ Petition therefore, stands rejected.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

LATER ON:

. After the pronouncement of the decision, learned Advocate for the petitioners seeks continuation of the interim order that was passed in the Writ Petition on 3rd September 2019, as the petitioners intend to approach the Higher Court.

. In view of the said prayer, the interim relief granted on 3rd September 2019 to continue till 20th January 2023.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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