

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8721 OF 2017

1. Arjun Sheshrao Adamane
Age-42 years, Occu-Business
R/o. Plot No. RL-9, Bajaj Nagar,
MIDC Waluj, Aurangabad.
2. Suryabhan Deorao Rautraj,
Age-52 years, Occu-Business
R/o. Row House No. 3, Shrihari
Park, Shri Krishna Nagar,
Shahnoorwadi Darga Road,
Aurangabad.
3. Sarangdhar Shankar Jadhav
Age-31 years, Occu-Agri.,
R/o. Oasis Chowk, House No. 76,
Bajaj Nagar, Waluj MIDC,
Aurangabad.
4. Bhimrao Haribhau More
Age-38 years, Occu-Business
R/o. Ranjangaon, Shenpunji,
MIDC Waluj, Aurangabad.
5. Kakasaheb Bhanudas Kolse
Age-31 years, Occu-Labour
R/o. Ranjangaon, Shenpunji,
MIDC Waluj, Aurangabad.

....Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,

Industries Department
Mantralaya Mumbai – 32.

2. The Chief Executive Officer,
Udyog Sarthi, Maharashtra
Industrial Development Corporation
Marol Industrial Area mahakali
Caves Road, Andheri (E),
Mumbai – 93
3. The Regional Officer,
Maharashtra Industrial Development
Corporation, Aurangabad Region,
Udyog Shakti, Railway Station Road,
Aurangabad.
4. Dr. Amar Kodgire
Age-Major, Occu-Business
Chief Promoter of proposed
private limited Promoter of and
having its office at MIDC
Plot No. RM-15, Bajajnagar,
Waluj, Aurangabad.

....Respondents

Advocate for Petitioners : Mr. A.G. Talhar
AGP for Respondent No. 1 : Mr. A.S. Shinde
Advocate for Respondent Nos. 2 & 3 : Mr. S.S. Deve
Advocate for Respondent No. 4 : Mr. A.P. Bhandari

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**

DATE : 5 JULY, 2022.

JUDGMENT [PER : C.V. BHADANG, J.] :-

Rule made returnable forthwith. The learned counsel for

the respondents waive service. Heard finally by consent of parties.

2. By this petition under Article 226 of the Constitution of India, the petitioners are seeking following substantive reliefs, vide prayer clauses (C) and (C – 1) :-

“(i) By appropriate writ order or direction the action of the respondent MIDC in calling the e-bidding for the plot No. O/S032 (X-385) in Waluj Industrial Area may kindly be quashed and set aside and the action of the respondent MIDC in converting the said open space in to commercial plot may kindly be declared null and void.

(ii) By appropriate writ order or direction the order dated 28.12.2017 passed by the respondent No. 3 Regional Office in allotting the plot No. X-385 in Waluj Industrial Area to the respondent No. 4 may kindly be quashed and set aside.”

3. The brief facts necessary for the disposal of the petition may be stated thus :-

The petitioners claim to be residents’ of the industrial area of Waluj, Aurangabad. The petitioner No.2 also claims to be having an industrial unit in the said industrial area. The petitioners are challenging the action of the respondent Maharashtra Industrial Development Corporation (‘Corporation’ for short) of conversion of an open space No.32 (Plot No. X-385) as a commercial plot and allotment of the same to the respondent No.4 by order dated

28.12.2017.

4. It is contended on behalf of the petitioners that it was not open for the respondent – Corporation to convert the open land to a commercial plot and to allot the same to respondent No.4 without approval of the State Government. It is submitted that the action of the respondent – Corporation is against the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the Act of 1966) and the Maharashtra Industrial Development Corporation Act, 1961(for short, 'the Act of 1961) and Revised Development Control Regulation, 2009 framed thereunder (for short 'the 2009 regulations'). It is contended that the open spaces are essentially maintained for the purpose of environmental/ecological reasons and are breathing spaces/lungs. It is contended that there is no provision or procedure to convert such open space/amenity area into a commercial plot. It is pointed out that earlier, the subject open space was given to one Jai Bhavani Samajik Vriksha Ropan Vikas Sanstha, for tree plantation in the year 1996.

5. The respondent – Corporation has resisted the petition on the ground that the conversion is within the permissible limits of the maintenance of commercial/industrial plots and the open space/amenity area as required by the relevant regulations. It is contended that the matter has been considered by the Minor Modification Committee (MMC) of the corporation in its meeting dated 6th April, 2017 and as per the resolution passed in the meeting

of the said committee, the conversion has been effected which is within the permissible limits of the ratio/proportion of the industrial/commercial spaces and the open as well as amenity spaces required to be maintained within the industrial area. It is pointed out that under the relevant provisions of the Act of 1966, the Corporation is a 'special planning authority' and under the provisions of the Act of 1961 and 2009 regulations framed thereunder, the Corporation has authority to effect such change which is accordingly made as per the resolution passed by the MMC. It is contended that the petition is misconceived and the same is filed at the behest of certain vested interests.

6. The respondent No.4 has also opposed the petition on similar grounds. It is pointed out that Writ Petition No. 5069 of 2010 was filed by the Industrial Association of Small Scale Industries before this Court for similar reliefs and on identical grounds, which has been dismissed by this Court by order dated 29 March, 2019. It is submitted that the contentions which have been negated by this Court in the aforesaid judgment could not be re-agitated by the petitioners.

7. We have heard the learned counsel for the parties. Perused record.

8. Mr. Talhar, learned counsel for the petitioner strenuously urged that Corporation is a special planning authority. Strong reliance

is placed on Section 115 of the Act of 1966 in order to submit that the respondent – Corporation was required to invite objections from the public at large for such conversion of open space to commercial space and then to seek approval of the State Government for such conversion. It is submitted that the Corporation, without following the due procedure as per Section 115 of the Act of 1966 has converted the open space to commercial space which has been now allotted to respondent No.4. It is submitted that the reliance placed on behalf of the Corporation on the regulation of 2009 cannot be accepted for the reason that the rules or regulations framed under the Act of 1961 cannot override the provisions of the said Act being in the nature of subordinate legislation. It is submitted that if the contentions as raised on behalf of the respondent – Corporation are accepted, the same would render Section 115 of the Act of 1966 otiose and without any effect. In so far as the judgment of this Court in W.P. No. 5069 of 2010, (The Industrial Association of Small Scale Industries Versus The State of Maharashtra and others) is concerned, it is submitted that although the ground based on section 115 of the Act was raised, the same has not been considered by the Division Bench. The learned counsel pointed out that an application for review of the said judgment is filed and same is pending.

9. It is submitted that the open spaces are essential as breathing spaces and are considered important in the matter of development of the industrial area and such open spaces cannot be sacrificed particularly in the absence of the enabling powers with the

Corporation to grant such conversion. Except this, there are no other contentions raised.

10. The learned counsel for the respondent – Corporation has taken us through the judgment of this court in W.P. No. 5069 of 2010 in order to submit that all the relevant circumstances and grounds raised in this petition, have been considered by the coordinate Bench of this Court and the same cannot be revisited or re-considered. Specific reliance is placed on Section 40(1A) and 40(3) of the Act of 1966 as well as regulation No. 21.5 and 21.6 of the 2009 regulations in order to point out that the Corporation as a Special Planning Authority for the industrial area has the power to grant such conversion within the permissible limits of proportion/ratio to be maintained between the industrial/commercial area and open/amenity areas. The learned counsel has referred to the minutes of the meeting of the MMC in order to submit that the proposed conversion is within the said limits.

11. The learned counsel for the respondent No.4 has advanced arguments on similar lines. It is submitted that the respondent No.4 has been allotted the said land and he has expended substantial amount and has been unnecessarily embroiled in to litigation since the year 2010. The learned counsel submitted that the petitioners have no *locus-standi* to challenge the conversion or the allotment in favour of the respondent No.4.

12. We have given our anxious consideration to the rival submissions and we do not find that a case for interference is made out. It is not in dispute that the Corporation is a Special Planning Authority for the industrial area under the 1966 Act. Section 115, on which strong reliance is placed on behalf of the petitioners, reads thus :-

“115. Planning and control in notified area

(1) A Special Planning Authority shall, from time to time, submit to the State Government its proposals for the development of land (being land either belonging to, or vesting in, it or acquired or proposed to be acquired under Section 116), and the State Government may, after consultation with the Director of Town Planning, approve such proposals either with or without modification.

(2) Before submitting the proposal to the State Government, the Special Planning Authority shall carry out a survey and prepare an existing land-use map of the area and prepare and publish the draft proposals for the lands within its jurisdiction together with a notice in the Official Gazette and local newspapers in such manner as the Special Planning Authority may determine, inviting objection and suggestions from the public within a period of not more than 30 days from the date of notice in the Official Gazette. The Special Planning Authority may, if it thinks fit, give individual notices to persons

affected by the draft proposals.

(3) The Special Planning Authority may after duly considering the objections or suggestions, received by it, if any, and after giving an opportunity, to persons affected by such draft proposals of being heard modify its proposals, if necessary, and then submit them to the State Government for its approval. The orders of the State Government approving such proposals shall be published in the Official Gazette.”

13. It can thus be seen that Section 115 refers to the submission of the proposal for development of land, being land either belonging to or vested in it or acquired or proposed to be acquired under section 116. This, in our view pertains to the larger aspect of the matter, namely the development of the overall/larger area under the management of the corporation. It is clear that the said section does not pertain to change of any user as commercial or industrial and for that matter, from open space/amenity space to industrial/commercial user within the layout sanctioned by the government *albeit* within permissible limits. That aspect is covered by Section 37 of the 1966 Act.

14. It is necessary to note that under section 40(3)(d) of the 1961 Act, the Corporation has prepared the Regulations which are approved after considering the objections and suggestions. A useful reference at this stage may be made to clause 21.5 and 21.6 of the

2009 regulations which read thus :-

“21.5 Recreational Open Spaces within Layout

In any layout or subdivision of land admeasuring more than 1 hectare for industrial purpose and more than 0.5 hectare for residential purpose, 10% of total area of land so subdivided shall be reserved for open space, which shall as far as practicable, be located in one central place. Out of such open spaces, an area to the extent of 5%, may be allowed to be constructed, only with ground floor structure, for the purpose of incidental/alied public use, such as pavilion, club house gymnasium, water tank, care taker's room, toilet, store room, creche, library, children play school and such other purpose which is incidental to the main purpose for which the open space is used. Location of such structures shall be in one corner of the open space provided further that in the industrial layouts, minimum width of open space shall be 15 m and area of open space shall not be less than 750 Sq.m and in residential zone, it shall not be less than 125 Sq.m. In the case of layouts of sub-division where there is a combination of smaller (up to one 1.0 Ha.) and bigger plots (more than 1 Ha.), the recreational open space of 10% of the total area, excluding the area under bigger plots, shall be provided. The recreational open spaces within bigger plots shall be provided in accordance with Regulation No. 21.5 above.

21.6 Amenity Areas :

In any layout or sub-division of land admeasuring more than 1 hectare for industrial purpose and 0.5 hectare for residential purpose, 5% of the total area of land so sub-divided, shall be reserved for “Amenity Area”. Following uses shall be permissible in the lands reserved for Amenity Area-MIDC offices, Local Area offices, Post Offices, Telephone Exchange, Fire Stations, Police Stations/Chowkies, Electric Sub-station, Water Supply Works, Drainage Works, Common Facility Centre/Recreation Centre, Industries” Association offices, Schools/Colleges, Educational institutions, Training Centre, Pollution Control Laboratories, Sulabh Shauchalaya, informal shopping, stall sites, plots for PAPs, communication centers, milk booths, and such other users as may be permitted by MIDC.”

15. Thus, under the regulations, proportion of recreational open spaces and amenity areas have been prescribed. This Court in W.P. No. 5069 of 2010 has *inter alia* held that when the Corporation is empowered to prepare the layout, the said power includes the power to amend, alter or modify the layout subject to maintenance of the proportion of open spaces and amenity plots as provided under the Development Control Regulations, being adhered to. The Minor Modification Committee (MMC) can approve said conversions as are permissible under the regulations.

16. Coming to the specific resolution passed by the MMC in its meeting No.3 of 2017 dated 6.4.2017, vide item No.10, it can be seen that the Committee, after examining the maximum permissible area and proposed change in the context of existing area for commercial, support activity and open spaces, has approved the said conversion. The relevant resolution at Item No.10 can be reproduced thus :-

10	A'bad	Waluj : Conversion of open space into commercial use. In Waluj Industrial Area, open space no. OS-32 admeasuring 8160 sqm is proposed to be subdivided into small plots up to 200 sqm and the plots are proposed to be allotted through auction. The proposal is approved by Hon. Minister (Industries) on 28/12/2015. Proposal : With reference to the approval of Hon. Minister (Inds.), Land Department has submitted a proposal of conversion of open space no. OS-32 into commercial use, as the location of this open space is encroachment prone and it is proposed to allot converted commercial land by auction. After proposed conversion, the area under commercial use, support activities and open spaces in Waluj Industrial Area will be as follows- <table><tr><th>Sr. No.</th><th>Land use</th><th>Max. permissible area (HA)</th><th>Existing area (HA)</th><th>Proposed change in area (HA)</th><th>Area after conversation (HA)</th></tr><tr><td>1</td><td>Commercial</td><td>65.75 (5.00%)</td><td>29.42 (2.23%)</td><td>(+) 0.8160 from industrial</td><td>30.24 (2.30%)</td></tr><tr><td>2</td><td>Support Activity</td><td>262.98 (20.00 %)</td><td>177.01 (13.46%)</td><td>(+) 0.8160 from industrial</td><td>177.82 (18.26%)</td></tr><tr><td>3</td><td>Open Space</td><td>82.85 (10.00 %)</td><td>853.94 (10.37 %)</td><td>(-) 0.8160 from commercial</td><td>85.12 (10.27 %)</td></tr></table>	Sr. No.	Land use	Max. permissible area (HA)	Existing area (HA)	Proposed change in area (HA)	Area after conversation (HA)	1	Commercial	65.75 (5.00%)	29.42 (2.23%)	(+) 0.8160 from industrial	30.24 (2.30%)	2	Support Activity	262.98 (20.00 %)	177.01 (13.46%)	(+) 0.8160 from industrial	177.82 (18.26%)	3	Open Space	82.85 (10.00 %)	853.94 (10.37 %)	(-) 0.8160 from commercial	85.12 (10.27 %)
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		After above mentioned changes, the area under commercial use, support activity and open spaces will be as per DCR. As the proposal involves change in land use, approval of MMC is necessary. The issue was discussed in MMC meeting when it was opined that since the proposal involves conversion of open space into																								

		commercial use, it is necessary to submit the proposal to Hon. CEO for approval as per guidelines issued vide circular dt. 03/04/2017. <i>Resolution : After detail discussion on the issue, it was resolved to approve the proposal of conversion of open space no. OS-32 admeasuring 8160 sqm into commercial use for allotment by way of auction. It was also resolved to submit the proposal to Hon. CEO for approval with reference to guidelines issued vide circular dt. 03/04/2017.</i>
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In so far as the issue of open space is concerned, the MMC has found that the maximum permissible area was 82.85 Hectars (10%) while the existing area was 85.94 Hectares (10.37%) and even after the proposed conversion of 0.8160 Hectares, the balance area under open spaces was 85.12 Hectares i.e. 10.27%. In that view of the matter the conversion has been approved. Thus, we do not find that any exception can be taken to the conversion and allotment in favour of the respondent sole.

17. That apart, we also find that the petitioners have no *locus-standi* to challenge the conversion/allotment of the said plot to respondent No.4 on the broad/general ground of maintenance of open spaces as breathing spaces. A specific query was made to the learned counsel for the petitioner, whether this is filed as a public interest litigation, to which, the answer was in the negative. Even otherwise, we find on merits that the conversion is well within the powers of the respondent corporation and conforms to the requirement of 2009 regulations and has been duly approved by the MMC.

18. In the result, writ petition stands dismissed, with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.

grt/-