

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

WRIT PETITION NO.6275 OF 2021

Smt. Aparna Jayprakash Mistry ... Petitioner
V/s.
Pune Municipal Corporation
Through its Commissioner and ors. ... Respondents

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Mr. Tejas Deepak Deshmukh, Advocate for the Petitioner.
Mr. Abhijit Purushottam Kulkarni alongwith Mr. Viraj Hake and Ms.
Sweta Sham, Advocates for Respondent No.1 (PMC)
Ms. M. P. Thakur, AGP for Respondent Nos. 2 to 4-State.

**CORAM : S. V. GANGAPURWALA AND
VINAY JOSHI, JJ.
DATE : 30th MARCH, 2022.**

P.C.:-

1. The Petitioner assails the modification dated 17th February, 2018 of the Development Plan only to the extent of reservation in land survey No.54/2(part) situated at Sangamwadi within the limits of Pune Municipal Corporation. So also the notification dated 14th February, 2020 for the same purpose.
2. The learned counsel for the Petitioner submits that initially the acquisition process was initiated in respect of the writ land.
3. The award was passed on 28th November, 2014, but as the award was passed beyond the period of limitation, the same stood lapsed. The learned counsel submits that fresh acquisition process is

initiated under Section 126 of the Maharashtra Regional and Town Planning Act. The learned counsel submits that the reservation of the writ land has been erroneously maintained. Infact, the Municipal Corporation did not propose reservation on the writ land. The Government on its own proposed the modification for reservation of museum on the writ land. The learned counsel submits that the procedure as contemplated under Section 31 of the Maharashtra Regional and Town Planning Act is not adhered to. The development plan under Section 28 was not forwarded by the Municipal Corporation recommending reservation on the writ land. The Government *suo-moto* was considering the said modification. In view of second proviso to Sub-Section (1) of Section 31 the Government was required to sent back the proposal with modification to the Planning Authority. On its own it could not have modified the plan. The learned counsel submits that as the procedure itself is erroneous, the reservation cannot be sustained and deserves to be quashed and set aside.

4. The learned counsel submits that initially when the land was acquired and the award was passed, the land of the Petitioner was not under reservation. The General Body of the Municipal Corporation passed the reservation that they require the land for constructing the memorial of the freedom fighter. The same was only for political purpose. The learned counsel submits that as reservation could not have been for constructing the memorial, the Government has

reserved it for construction of a museum. The learned counsel relied upon the resolution passed by the Municipal Corporation to substantiate his contention. The learned counsel submits that the notification under Section 126 suggests that provisions from Sections 16 to 18 of the Right to Fair Compensation Act, 2013 would not apply. In fact as per statute the provisions of Sections 4 to 14 are not applicable, on that ground also the notification is bad in law.

5. The learned counsel for the Municipal Corporation and the learned AGP submits that the procedure has been followed. The land acquired has to be used for the purpose for which it is reserved and a communication to that effect is also placed on record. The complete procedure is followed. Section 31 of the Maharashtra Regional and Town Planning Act has also been adhered to.

6. Before proceeding to deal with the contention of the learned counsel for the parties, it would be appropriate to refer to Section 31(1) to (6) provisions of the Maharashtra Regional and Town Planning Act:-

“31. Sanction to draft Development Plan

(1) Subject to the provisions of this section, and not later than six months from the date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, 2[* * *] the State Government may, after consulting the Director of Town Planning by notification in the *Official Gazette* sanction the draft Development Plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft Development plan to the Planning Authority or as the

case may be, the said Officer for modifying the plan as it may direct, or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan:

3[**Provided that**, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the *Official Gazette*, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period not exceeding,-

(i) 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 Committees (Constitutions and Functions) (Continuance of Provisions) Act, 1999;

(ii) twelve months, in the aggregate, in any other case, as may be specified in such notification:]

1[**Provided further that**, where the modifications proposed to be made by the State Government or submitted by the Planning Authority under section 30 and proposed to be approved by the State Government without any further change are of a substitutional nature with respect to the draft Development plan published under section 26, the Government shall publish a notice in the *Official Gazette* and also in not less than two local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of one month, from the date of such notice]:

2[**Provided also that**, if the Government does not publish its decision by notification in the Official Gazette, regarding sanctioning the draft Development plan submitted to it, for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft Development plan to the Planning Authority, or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan, within the period under this section, 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:

Provided also that, where any modification submitted by the Planning Authority or, as the case may be, the said Officer, under section 30 is of substantial nature with respect to the draft Development plan published under Section 26, such modification shall not be deemed to have been sanctioned and the Government shall publish a notice regarding such modifications of substantial nature and the provisions relating to publication of the notice in the *Official Gazette* and two local newspapers for obtaining suggestions and objections as stipulated in the second proviso, shall apply.]

(2) The State Government may appoint an officer of rank not below that of a 1[Group A Officer] and direct him to hear any such person in respect of such objections and suggestions and submit his report thereon to the State Government 2[within one year from the date of publication of notice under second proviso to sub-section (1)];

(3) The State Government shall before according sanction to the draft Development plan take into consideration such objections and suggestions and the report of the officer.

3[**Provided that,** the time-limits as provided in sub-sections (1) and (2) shall not apply for according sanction to the modifications published under sub-section (1):

Provided further that, the Government shall take final decision regarding such modifications within one year from the date of receipt of the report from the officer appointed under sub-section (2)]

(4) The State Government shall fix in the notification under sub section (1) a date not earlier than one month from its publication on which the final Development plan shall come into operation.

4[(4A) The State Government may, by notification in the Official Gazette, delegate all the powers and functions under this section to the Director of Town Planning in such cases and subject to such conditions, if any, as may be specified in such notification.]

(5) If a Development plan contains any proposal for the designation of any land for a purpose specified in clauses (b) and (c) of section 22, and if such land does not vest in the Planning Authority, the State Government shall not include that in the Development plan, unless it

satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition not later than ten years from the date on which the Development plan comes into operation.

(6) A Development plan which has come into operation shall be called the “final Development plan” and shall, subject to the provisions of this Act, be binding on the Planning Authority.”

7. Section 31 contemplates the modification suggested by the Planning Authority and also the modification at the behest of the Government. Proviso to Clause (1) of Sub-Section (1) of Section 31 unambiguously clarifies that where the modification proposed to be made by the State Government are of a substitutional nature of the plan published under Section 36, the Government shall publish notice in the official gazette and also in two local newspapers inviting objections and suggestions for the proposed modification. It is not disputed by the Petitioners that after the modification was proposed by the Government, the objections were invited from the public at large. The Petitioner it appears did not raise any objection. The Petitioner had opportunity to raise objection to the said modification, however, the Petitioner failed to do so. It is only after the notification under Section 126 is issued, the Petitioner has raised the objection by filing the present petition.

8. The purpose for which the Petitioner's land is reserved is a public purpose. If the land is reserved in the development plan, the Planning Authority and/or the Government can acquire the same land

for fructifying the purpose it is reserved for. No illegality can be found in the same.

9. The anxiety of the Petitioner is that the land is being acquired ostensibly for construction of museum but the same is acquired for construction of a memorial of the freedom fighter. The land necessarily is acquired for the purpose it is reserved. The land cannot be used contrary to the reservation in the development plan. The land has to be used for the purpose it is reserved in the development plan and for no any other purpose. The development plan will have to be adhered to.

10. The other objections of the Petitioner is that wrong section is mentioned in the notification under Section 126 of the Maharashtra Regional and Town Planning Act. Mere referring to wrong section in the notification would not vitiate the notification.

11. In the light of the above, the Writ Petition is disposed of. No costs.

(VINAY JOSHI, J.)

(S.V.GANGAPURWALA, J.)

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