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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5382 OF 2019

1. Suhas Shridhar Shahane,
Age about 63 years,
Occupation : Business / Agri.
R/o. Bilwadal Bungalow,
Near Natraj Mandir,
Satara - Koregaon Road,
Krushnanagar, Satara - 415 003.
 2. Subhash Kondiram Sawant,
Age about 72 years,
Occupation : Business / Agri.,
R/o. Kodoli, Degaon Phata,
Kodoli, Tal. & District: Satara.
- .. Petitioners.

Versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Collector, Satara,
Having office at Collector
Compound, Powai Naka, Satara.
3. The Additional Collector,
Satara, Having office at Collector
Compound, Powai Naka,
Satara.
4. Assistant Director,
Town Planning, Satara.
Office: 1st floor, Zilla Parishad
Extension Building, Satara.
5. Regional Planning Committee @
Assistant Director, Town Planning
Regional Project, Satara.
Office: 217, Raviwar Peth,

Sahakar Vaibhav, District
Marketing office Building, 1st floor,
Market Yard, Satara.

.. Respondents.

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- Mr. G.S. Godbole a/w. Mr. Dilip Bodake, Advocates for the Petitioners.
 - Ms. Shruti D. Vyas, 'B' Panel Counsel for the Respondent Nos.1 to 5.
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**CORAM : S. J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : 23 MARCH, 2022.

JUDGMENT (Per : S.J. Kathawalla & Milind N. Jadhav, JJ.)

. By the present petition, the Petitioners have prayed for the following reliefs:

"(b) This Hon'ble Court be pleased to issue the Writ of Mandamus or Certiorari or any other appropriate Writ/ Direction/Order in the nature of Writ of Mandamus or Certiorari under Article 226 of the Constitution of India,

- (i) be pleased to hold and declare that the Rule M-3 of Development Control and Promotion Regulations for Satara Region in Notification No.TPS-1917 /1585/C.R.150/17/UD-13 dated 08.01.2018 published by the Government of Maharashtra, Urban Development Department, Mantralaya, Mumbai which is subsequently published in Government Gazette, Part 1, Pune Divisional Supplement dated 08 to 14.02.2018 is ultra-vires and contrary to the provisions of Maharashtra Regional and Town Planning Act, 1966 and Regional Planning Board Regulations, 1967 and Rules made there under and the same may be struck down;
- (ii) be pleased to quash and set aside the letter / communication dated 24.08.2018 bearing No. P.Y. Satara/Report/Non Agricultural/SCC/2666 issued by the Assistant Director, Town Planning, Satara i.e. Respondent No. 4;
- (iii) be pleased to quash and set aside the order/letter dated

19.12.2018 bearing No. MH/3/J/G/N.A./SR-14/17 passed by the Additional Collector, Satara i.e. Respondent No. 5 and further direct the Respondents to allow the Petitioners proposal dated 14.03.2017 submitted u/sec. 44 of the Maharashtra Land Revenue Code, 1966."

2. The Petitioners are owners of agricultural land bearing Gat No.268 admeasuring 66 Ares in Village Shirval, Taluka - Khandala, District - Satara ("**the said land**").

3. The Petitioners have challenged the letter dated 24.08.2018 issued by the Respondent No.4 - Assistant Director - Town Planning, Satara ("**ADTP**") rejecting the Petitioners' proposal for conversion of the said land from agricultural user to non-agricultural user and the letter dated 19.12.2018 issued by the Respondent No.3 - Additional Collector, Satara rejecting the Petitioners' applications for development of the said land. The Petitioners have further challenged Modification - M-3 of the Development Control and Promotion Regulations ("**DCPR**") for Satara Region issued vide Notification No.TPS-1917/1585/C.R. 150/17/UD-13 dated 08.01.2018 published by the Government of Maharashtra, Urban Development Department in the Schedule appended to the notification as being ultra-vires and contrary to the provisions of the Maharashtra Regional and Town Planning Act, 1966 ("**the said Act**") and the Rules made thereunder read with the Regional Planning Board Regulations, 1967.

4. Before we advert to the submissions made by the Advocates representing the respective parties, it will be apposite to refer to the facts in brief:

4.1. The Respondent No.1, Government of Maharashtra through the Urban Development Department vide Notification dated 03.12.2012 issued under Section 4(1) of the said Act constituted a Regional Planning Board called as the "Satara Regional Planning Board" ("**the Board**") for preparing a Regional Plan for Satara region.

4.2. As stated above, Petitioners are owners of the said land which was originally classified as Deshmukh Watan Unalienated Condition II-Inam Class V land. On 04.07.2016, the Petitioners made an application to the Tahasildar for seeking conversion of the said land to Class I Cultivator (Bhogvatdar) under the provisions of the Maharashtra Land Revenue Code, 1966 ("**MLR Code, 1966**"). The Petitioners were directed to pay *Najarana* amount as per Government Resolutions dated 28.03.1998 and 09.07.2022 as conversion charges. The Petitioners paid *Najarana* amount of Rs.8,31,000/-, upon which by order dated 02.02.2017 the Tahasildar allowed the application for conversion to Class I Cultivator and further directed to give the effect in the 7/12 extract pertaining to the said land.

4.3. On 14.03.2017, the Petitioners submitted an application to the Respondent No.2 - Collector, Satara ("**Collector**") under the provisions of Section 44(1) of the MLR Code, 1966 seeking conversion of the said land from agricultural user to non-agricultural user ("**NA**").

4.4. On 17.03.2017, the Collector addressed separate letters to the (i) ADTP, (ii) Tahasildar - Khandala, (iii) Executive Engineer - MSSEDCL, Khandala, (iv) Executive Engineer - Development (North), District Parishad Satara, (v) Executive Engineer - PWD Department (West) Satara, (vi) District Health Officer, Zilla Parishad Satara, (vii) Deputy Collector (Rehabilitation) Satara, (viii) Deputy Collector - Land Acquisition, Satara and (ix) Deputy Collector and Sub-Divisional Officer (Land Acquisition), Wai, *inter alia*, informing that the Petitioners had applied for NA permission in respect of the said land and the concerned authorities should at their level after conforming to the statutory provisions and conducting due enquiry submit a report in the prescribed format within 20 days to the office of the Collector. It was stated in the letter that in the event if the report was not received from the concerned authorities within 20 days, it would be deemed that the concerned authorities had no objection for grant of NA permission to the Petitioners and accordingly further action would be initiated on the Petitioners' application.

4.5. On 24.03.2017, some of the concerned authorities submitted their reports to the Collector certifying the details of the said land, submitting the map/plan of the said land and their no objection for conversion to NA. The Petitioners have annexed these reports at Exhibit "E" (page 116 to 130 of the Writ Petition).

4.6. On 28.03.2017, (after 5 years of its constitution) the Board held its 7th Board Meeting and resolved to publish the draft Regional Plan for Satara region.

4.7. On 29.03.2017, the ADTP submitted his report addressed to the Collector, recommending the conversion of the user of the said land for NA. It was stated in the report that the Petitioners were entitled for conversion in view of the applicability of the Regional Town Planning Scheme, Satara which was approved w.e.f. 15.05.2015 under the Standardized Development Control and Promotion Regulations ("**SDCPR**") for Regional Plans.

4.8. On 30.03.2017, the Board through the ADTP published the notice in the Government Gazette under the provisions of Section 16 (1) of the said Act stating that the Draft Regional Plan for Satara Region has been prepared and the Board has given its approval for publication of the Plan in its meeting held on 28.03.2017 and invited

objections or suggestions to the plan within a period of 4 months from the date of publication of the notice. On 30.03.2017, the aforesaid notice was published in the Marathi newspaper "Dainik Pudhari" for giving wide publicity.

4.9. On 12.05.2017, the Collector issued a letter to the Petitioners seeking production of certain documents. On 05.06.2017 the Petitioners supplied the requisite documents in compliance of the letter dated 12.05.2017 to the Collector.

4.10. On 16.06.2017, the Petitioners submitted their written objections to the statutory notice dated 30.03.2017, *inter alia*, contending that the said land is situated within close proximity of 100 meters from the residential area; that there is a big water tank situated within 500 meters from the said land; and that there is electricity available within the distance of 4 to 5 electric pole distance from the said land; hence it was urged to delete the said land from 'agricultural region' and keep the said land in the 'residential zone'.

4.11. On 21.06.2017, the Petitioners by their letter renewed their request to the Collector praying for grant of permission to convert the said land from agricultural user to NA.

4.12. On 19.07.2017, the Board addressed a letter to the Petitioners directing them to remain present for hearing of their objections to the draft Regional Plan qua the said land on 27.07.2017.

4.13. On 05.01.2018, the Respondents No.1 - State issued the Notification under the provisions of Section 28(4) of the said Act notifying the list of modifications / changes made in the draft Regional Plan for information of the public.

4.14. On 08.01.2018, the Respondent No.1 - State after enquiry and consulting the Director of Town Planning, Pune granted sanction to the draft Regional Plan of Satara and issued Notification under Section 15(1) of the said Act read with Clause 7 of the Regional Planning Board Regulations, 1967 subject to the modifications specified in Schedule 'A' and 'B' appended thereto and fixed the date after two months as the date on which the Final Regional Plan of Satara Region would come into force as the "Final Regional Plan of Satara Region (2016-2036)".

In Schedule 'B', the Special Regulations suggested by the Board were included wherein Modification No.3 ("**M-3**") impugned in the present Petition reads as under:-

"M-3 : Regarding Committed Development:

Any development permission granted or any development proposal for which tentative or final approval has been recommended by the concerned Town Planning Office and is

pending with concerned Revenue Authority for demarcation or for final NA before 28.03.2017 (i.e. the date of resolution of the RP Boards for the publication) shall be continued to be valid for that respective purpose along with approved Floor Space Index. Provided that it shall be permissible for the owner to either continue with the permission in toto as per such earlier approval for that limited purpose under the erstwhile regulation or apply for grant of revised permission under the new regulations. However, in such revision of cases, the premium if any, shall not be applicable; for the original approved land use and FSI."

4.15. On 24.05.2018, the Petitioners filed a detailed representation to the Chief Minister through the Urban Development Department to seek change of date in M-3 from 28.03.2017 to 30.03.2017 on the ground that the draft Regional Plan of Satara District was published under Section 16(1) of the said Act on 30.03.2017 in the Gazette and in the newspaper and therefore all conversion proposals pending / recommended before the said date i.e. 30.03.2017 by the ADTP be considered for sanction for conversion to NA (including the proposal of the Petitioners). By letter dated 24.07.2018, the Collector directed the ADTP to consider the representation of the Petitioners after due enquiry and accordingly inform the Petitioners.

4.15.1. On 24.08.2018, the ADTP informed the Petitioners that the Urban Development Department of the Government of Maharashtra has sanctioned the Regional Plan for Satara vide Notification dated 08.01.2018; that the same was published in the Government Gazette -

Supplementary dated 8 to 14 February, 2018 and after two months of its publication the Regional Plan for Satara has come into effect from 08.04.2018; that as per M-3 all proposals and/or recommendations made by the ADTP before 28.03.2017 are to be considered valid for conversion; that 28.03.2017 is the date fixed as the cut-off date; that since the Petitioners' proposal was recommended by the ADTP on 29.03.2017, it was beyond the cut-off date and hence the Petitioners representation stood rejected.

4.15.2. On 19.12.2018, the Respondent No.3 addressed a letter to the Petitioners stating that their applications dated 14.03.2017, 05.06.2017 and 21.06.2017 seeking conversion of the said land to NA cannot be considered as the date of recommendation by the ADTP in their case was beyond the cut-off date and hence the applications stood disposed of.

4.15.3. Both the above communications / letters dated 24.08.2018 and 19.12.2019 are impugned in the present Petition.

4.16. The Petitioners have also challenged the vires of M-3 which has fixed the cut-off date as 28.03.2017 as being contrary to and ultra-vires of the provisions of Sections 15 to 18 of the said Act and have sought striking down of the said Modification as suggested.

5. Mr. G.S. Godbole, learned Advocate appearing for the Petitioners has taken us through the facts of the present case and made the following submissions:

- i. that the Petitioners have paid a sum of Rs.8,31,000/- as *Najarana* amount for conversion of the said land from Deshmukh Watan Classified Unalienated - Condition II - Inam Class V tenure to Class I - Cultivator (Bhogvatdar) as per the prevailing Government Resolutions dated 28.03.1968 and 09.07.2002, pursuant to which the Tahsildar by order dated 02.02.2017 granted conversion of the said land;
- ii. that on 14.03.2017, the Petitioners made the application under Section 44(1) of the MLR Code, 1966 to the Collector for conversion of the said land from Class I - Cultivator i.e. agricultural user to residential / NA; that the application was forwarded to 9 concerned authorities by the Collector on 17.03.2017 seeking their no objection and report for conversion, which were received by the Collector before 28.03.2017; that on 29.03.2017, the ADTP submitted his report and recommended conversion of the said land from agricultural user to NA, however, the cut-off date fixed in the notification dated 08.01.2018 regarding 'committed

development' was 28.03.2017; that this date was the date of passing of the resolution by the Board in its 7th Meeting held on 28.03.2017; that fixation of this date as the cut-off date is unreasonable and contrary to the provisions of Sections 15 to 18 of the said Act;

- iii. that the cut-off date as appearing in M-3 has been suggested by the Regional Planning Board and adopted by the Government; it has been fixed arbitrarily; that the statutory notice under Section 16(1) issued by the State Government on 30.03.2017 for inviting suggestion and objections to the draft regional plan should be considered as the cut-off date for committed development.

6. Ms. Shruti D Vyas, learned AGP appearing for Respondent Nos.1 to 5 has drawn our attention to the Affidavit-in-Reply dated 17.11.2019 filed by the ADTP and contended that the cut-off date of 28.03.2017 in M-3 which is impugned in the present petition is a policy decision taken by the Respondent No.1 - State towards 'committed development' as mentioned in Schedule B - Part II of the Notification dated 08.01.2018 issued under the provisions of Section 15(1) of the said Act.

6.1. Ms. Vyas, learned AGP has submitted that the Respondent No.1 has taken a similar policy decision of fixing the cut-off date regarding "committed development" in respect of 16 other Regional Plans sanctioned by the State Government in the year 2018 and therefore the Petitioners' case cannot be considered for change of the cut-off date; that in the present case, since the recommendation made by the ADTP is on 29.03.2018, i.e. one day after the cut-off date, the Petitioners' case cannot be considered; therefore the Petitioners' case does not fall within the ambit of "valid committed development" as the recommendation for development permission / NA for the said land is made on 29.03.2017 which is after the date fixed under M-3 and adopted by the State Government as the cut-off date. She has therefore prayed for dismissal of the petition.

7. Mr. Godbole, learned Advocate in his rejoinder submissions has stated that the action taken by the Respondents on the Petitioners' proposal is contrary to the provisions of Section 16 to 18 of the said Act; he submitted that the savings clause 1.6 of the DCPR which were published in the Regional Plan alongwith the notification dated 30.03.2017 issued under Section 16(1) of the said Act is required to be considered; he submitted that the the Development Control Regulations of the Satara Regional Plan published with the statutory notice under Section 16(1) on 30.03.2017 were not approved while

sanctioning the Regional Plan and instead the SDCPR for Regional Plans for Maharashtra (sanctioned on 21.11.2013) were approved; that the SDCPR did not include Modification - M-3; that in the notifications dated 30.03.2017 and 08.01.2018 issued in the present case there is no mention of "committed development" as the savings clause 1.6 deals with the same; that in the present case, it is clear from the document produced by the Petitioners at Exhibit "E" at Page 116 to the Writ Petition that the ADTP has approved and recommended the Petitioners' application for conversion on 24.03.2017; however the report recommending the Petitioners' case was dated by the ADTP 29.03.2017 and forwarded to the Collector; that on 28.03.2017 i.e. the date of the meeting of the Regional Planning Board which is deemed to be the cut-off date was a national holiday and therefore a non working day; that the Petitioners have complied with each and every condition as required by the Respondent Nos.2 and 3; that M-3 as inserted in Schedule 'B' to the Notification dated 08.01.2018 was not in existence till the notification was issued; that M-3 even if construed as it reads, states that it refers to any development permission granted or development proposal for which tentative or final approval has been recommended by the concerned authorities and is pending with the concerned Revenue Authority for demarcation or for final NA before 28.03.2017 shall be continued to be valid; that there are two conditions stated in M-3 namely that the tentative or final approval

has been recommended by the concerned Town Planning Authority to the development proposal / conversion and secondly that the development proposal should be pending with the concerned Revenue Authority for demarcation or final NA, but nowhere in the said Act or the provisions of Section 15 to Section 18 of the said Act, it is stated that the development proposal should fulfill both the conditions to qualify the status of "committed development"; that clause 1.6 which is the savings clause clearly states that any action taken under the regulations in force prior to the regulations coming into force shall be valid and continue to be so valid unless otherwise specified; thus the Petitioners' proposal has qualified on this ground alone; that the policy decision about "committed development" taken by the Respondent No.1 to fix the cut-off date as 28.03.2017 is contrary to the provisions of Section 16 to 18 of the said Act; that the date of imposing the arbitrary cut-off date is contrary to the aim and object of the said Act which states that a modification of Rules can only take place by the procedure permissible under the Act and not by the means of an administrative decision / policy decision / instruction / order; that the State by virtue of the policy decision cannot introduce an arbitrary cut-off date which is not supported by the statute and which directly affects the rights of the land owners; that Section 18(1) deals with the restriction on change of user of land or development thereof; that the provisions of Section 18(1) of the said Act clearly provide a mandate

about the date to be considered as the date of publication of notice which in this case is 30.03.2017 and there are no statutory provisions to alter the said date by any policy / administrative decision; hence, the policy decision allegedly taken regarding the addition of definition of "committed development" in the final notification dated 08.01.2017 and further fixing the cut-off date as 28.03.2017 is bad in law as it clearly deprives the land owners of their rights for development.

8. We have perused the pleadings and submissions made by the respective Advocates. Submissions made are on pleaded lines.

9. In the present case the following five dates are important for consideration:

- i. **14.03.2017:** on this date Petitioners submitted application to the Collector for seeking NA permission under Section 44 (1) of the MLR Code, 1966; thereafter on 17.03.2017 the Collector called for NOC / Report from 9 relevant Government Departments;
- ii. **28.03.2017:** on this date the Board's Committee held its 7th Meeting and resolved to submit the draft Regional Plan for Satara to the State Government; in this plan the said land of the Petitioners was proposed in the agricultural zone for

rural growth Center; 28.03.2017 was a bank holiday; the Board meeting was held at 5.00 p.m. when the resolution was passed;

- iii. **29.03.2017:** on this date the ADTP submitted his report to the Collector in respect of the said land recommending that since there was no Development Plan, Town Plan or Regional Plan in existence for village Shirval, the Petitioners were entitled to use the said land for any purpose under the existing SDCPR applicable to Regional Plans in Maharashtra which were in force since 15.05.2015; thus recommending the Petitioners' application for conversion and issued tentative approval for NA;
- iv. **30.03.2017:** on this date the Draft Regional Plan for Satara was published in the Maharashtra Government Gazette Extraordinary Part - I Pune Division Supplement stating that the Board has granted approval for such publication in its 7th Meeting held on 28.03.2017;
- v. **08.01.2018:** on this date the Respondent No.1 - State issued sanction under Section 15(1) of the said Act to the draft Regional Plan of Satara with certain modifications as specified in Schedule 'A' and 'B'. In Schedule 'B' one of the

Special Regulation suggested by the Board incorporated a condition Modification - 'M-3' relating to "committed development". The said condition stated that any development permission granted or any development proposal for which tentative or final approval has been recommended by the concerned Town Planning Office (ADTP) and is pending with the concerned Revenue Authority (Collector) for demarcation or for final NA before 28.03.2017 (i.e. the date of resolution of the Board for the publication) shall be continued to be valid for that respective purpose along with approved Floor Space Index. Thus effectively the cut-off date is fixed by the Government as 28.03.2017. It is submitted before us that this decision is a policy decision taken by the State.

9.1. According to the Petitioners, the fixation of the cut-off date is arbitrary; that there is no enabling statutory provision to decide or fix that date; that if at all any-cut off date has to be fixed, then it ought to be the date of publication of the draft Regional Plan under Section 16(1) of the said Act i.e. 30.03.2017.

10. The Petitioners sought intervention of the Chief Minister contending that the date of publication of the draft Regional Plan in

the Maharashtra Government Gazette is on 30.03.2017 which for the first time intimated that the Board has granted approval for such plan and that should be treated as the relevant cut-off date; that the said date was the first instance in point of time to inform the public at large / land owners about the status of their lands. The Petitioners have asserted that adopting 28.03.2017 as the relevant cut-off date is not in consonance with the provisions of the said Act.

10.1. In the present case, it is an admitted position that the Petitioners' said land was covered by the SDCPR prevailing in the State of Maharashtra from 15.05.2015 since there was no sanctioned Regional Plan for Satara. It is also an admitted position that the ADTP by his report dated 29.03.2017 granted in-principle approval and recommended grant of development permission / conversion to NA to the Petitioners in respect of the said land. The draft Regional Plan was published in the Gazette for the first time on 30.03.2017. The Petitioners have therefore asserted that in the final Regional Plan of Satara which came into force w.e.f. 14.04.2018, Modification M-3 could not have provided the cut-off date of 28.03.2017 which stated that only the proposals which were approved in principle by the ADTP and pending with the Collector till 28.03.2017 would be considered as valid. This effectively makes the Regional Plan applicable retrospectively, which is impermissible. We therefore find substance

in the submissions of the Petitioners.

11. We may usefully quote the provisions of Sections 16 to 18 of the said Act to guide us through the present situation. Section 16 to 18 of the said Act read thus:

"16. Procedure to be followed in preparing and approving Regional Plans

(1) Before preparing any Regional plan and submitting it to the State Government for approval, every Regional Board shall, after carrying out the necessary surveys and preparing an existing-land-use map of the Region, or such other maps as are considered necessary, prepare a draft Regional plan [and publish a notice in the *Official Gazette* and in such other manner as may be prescribed, stating that the draft Regional plan has been prepared. The notice shall state the name of the place where a copy of such plan shall be available for inspection by the public at all reasonable hours mentioned therein and that copies thereof or any extract therefrom certified to be correct shall be available for sale to the public at a reasonable price and invite] objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice, such date not being earlier than four months from the publication of the notice. [The notice shall also state that copies of the following particulars in relation to the draft Regional plan are also available for inspection by the public and copies thereof or extracts therefrom certified to be correct are also available for sale to the public at a reasonable price at the place so named, namely:-]

(a) a report on the existing-land-use map and the regional survey carried out as aforesaid;

(b) maps, charts and a report illustrating and explaining the provisions of the draft Regional plan and indicating the priorities of works to be executed thereunder;

(c) a report of the stages of the development programme by which it is proposed to execute the Regional plan; and

(d) recommendations to the State Government regarding the directions to be issued to the local authorities in the Region and the different departments of the State Government, if any, in respect of enforcement and implementation of the proposals contained in the draft Regional plan.

(2) The Regional Board shall refer the objections, suggestions

and representations received by it to the Regional Planning Committee appointed under section 10 for consideration and report.

(3) The Regional Planning Committee shall, after giving a reasonable opportunity to all persons affected by the Regional plan of being heard, submit its report to the Regional Board together with all connected documents, maps, charts and plans within such time as may from time to time be fixed in that behalf by the Regional Board.

(4) After considering the report of the Regional Planning Committee, and the suggestions, objections and representations, the Regional Board shall prepare the Regional plan containing such modifications, if any, as it considers necessary, and submit it to the State Government for approval, together with the report of the Regional Planning Committee and all connected documents, plans; maps and charts.

17. Publication of Regional Plan and date of its operation

Immediately after a Regional plan is approved by the State Government, the State Government shall publish, in such manner as may be prescribed by rules as is calculated to bring to the notice of all persons concerned; and in particular, to all persons affected by the Regional plan, a notice stating that the Regional plan has been approved, and naming a place where a copy of the Regional plan may be inspected at all reasonable hours [and stating also that copies thereof or any extract therefrom certified to be correct shall be available for sale to the public at a reasonable price,] and shall specify therein a date (not being earlier than sixty days from the date of publication of the said notice) on which the Regional plan shall come into operation and the plan which has come into operation shall be called the "final Regional plan".

18. Restriction on change of user of land or development thereof

[(1) No person shall, on or after the publication of the notice that the draft Regional plan has been prepared or the draft Regional plan has been approved, institute or change the use of any land for any purpose other than agriculture or carry out any development in respect of any land without the Previous permission,-

(i) in case the land is situated in the limits of a Municipal Corporation or a Municipal Council, or a *Nagar Panchayat* or a Special Planning Authority or any other planning authority, of such Municipal Corporation or Municipal Council, *Nagar Panchayat* or Special Planning Authority or other planning authority, as the case may be, or

(ii) in case the land is situated in the *gaathan*, within the

meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966, of the village panchayat concerned, or

(iii) in case the land is situated in areas other than those mentioned in clauses (i) and (ii) above, of the Collector of the District:

Provided that, the Collector may delegate his powers under this clause to an officer not below the rank of Tahsildar.

Explanation.- For the removal of doubt, it is hereby declared that, no such permission of the Collector shall be required in the *gaathan* area of a revenue village within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966.]

[(2) Notwithstanding anything contained in any other law for the time being in force, the Village Panchayat or, as the case may be, the Collector, in considering application for permission shall have due regard to the provisions of any draft or Regional plan or proposal published by means of a notice under this Act.]

(2A)(i) The provisions of sections 52, 53, 54, 55, 56, 57 and 58 shall apply *mutatis mutandis* to the unauthorized development carried out in the area of Regional plan, as they apply to the unauthorized development carried out in the area of a Planning Authority; and

(ii) the Collector shall be the Authority Competent to take action in respect of such unauthorized development.

(2B) Notwithstanding anything contained in this Act or any other law for the time being in force, the State Government may, upon a request made by the Collector, specify the terms and conditions on compliance of which and the compounding charges, [infrastructure charges and premium] on payment of which the Collector may declare an unauthorized structure to be a compounded structure:

Provided that, on declaration of an unauthorized structure as compounded structure, the proceedings under any law for the time being in force against such structure initiated by the Collector shall stand abated, and if such proceedings are yet to be initiated, no proceedings shall be maintainable:

Provided further that, no further construction shall be permissible in any compounded structure, other than repairs and maintenance, and any redevelopment or reconstruction of such structure shall be only as per the provisions of the prevailing Development Control Regulations.]

[(3) Without prejudice to the provisions of sub-sections (1) and (2) or any other provisions of this Act, any person intending to

execute [an Integrated Township Project] on any land, may make an application to the State Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be [an Integrated Township Project] by notification in the *Official Gazette* or, reject the application.]"

11.1. Section 16 relates to the procedure to be followed in preparing and approving the Regional Plans. Sub-section 1 of Section 16 begins by stating that before preparing any Regional Plan and submitting it to the State Government for approval, every Regional Board shall, after carrying out the necessary surveys, prepare the existing land use map of the Region, prepare a draft Regional Plan and publish by notice in the Official Gazette that the draft Regional Plan has been prepared. The notice further requires to state all details and invite objections and suggestions to the draft plan within a period of four months from the date of publication of the notice. Sub-section 2 of Section 16 thereafter empowers the Regional Board to refer the objections and suggestions received by it to the Regional Planning Committee for consideration and report. Sub-section 3 of Section 16 requires the Regional Planning Committee to hear the objections and submit its report thereon to the Regional Board. Sub-section 4 of Section 16 thereafter requires the Regional Board to prepare the Regional Plan with modifications if any and submit it to the State Government for approval together with the report of the Regional Planning Committee. As can be seen from the aforesaid provision the

sine qua non of the procedure to be followed in preparing and approving the Regional Plan is the publication of notice under Section 16(1) by the Regional Board about the preparation of the draft Regional Plan and calling for objections and suggestions to the same.

11.2. Section 16 of the said Act provides for the procedure to be followed in preparing and approving the Regional Plans and contemplates the following:

- i. Carrying out and preparing existing land use map to prepare a draft Regional Plan and publish notice in the Official Gazette;
- ii. Invite objections and suggestions which are to be heard by the Regional Planning Committee and submit report to the Regional Planning Board;
- iii. Submission of the draft Regional Plan to the State Government for sanction.

11.3. The earliest point of time at which the draft Regional Plan comes into existence in the public domain is the date of its publication under Section 16(1) which in the present case is 30.03.2017 and therefore if any cut-off date is to be specified in Modification M-3 then all in-principle approvals granted prior to this date must be treated as valid. We find that fixation of '28.03.2017' as the cut-off date in M-3 is

arbitrary because the date of passing of the resolution by the Board resolving to publish the draft Regional Plan does not have any relevance or statutory force in the scheme envisaged under Sections 16 to 18 of the said Act.

11.4. Section 17 provides for publication of Regional Plan and date of its operation. This Section is another indicator which refers to the date of operation of the Regional Plan. Section 17 states that immediately after a Regional Plan is approved by the State Government, the State shall publish a notice stating that the Regional Plan has been approved in order to bring to the notice of all persons concerned and in particular to all persons affected by the Regional Plan and the notice to state that a copy of the Regional Plan shall be available for sale to the public at a reasonable price or the same may be inspected at a particular place and shall finally specify a date not being earlier than 60 days from the date of publication of the said notice on which the Regional Plan shall come into operation and the Regional Plan which will come into operation shall be called the Final Regional Plan.

12. There is another provision which comes to the aid of the Petitioners in the present case. Section 18 of the said Act refers to restriction on change of user of land or development thereof and states

that no person shall on or after the publication of the notice that the draft Regional Plan has been prepared or the draft Regional Plan has been approved, institute or change the use of any land for any purpose other than agricultural or carry out any development in respect thereof without previous permission. If the restriction on the change of user of the Petitioners' said land is to be applied then the same can be applied only if the Petitioners' application for NA permission was not pending as on 30.03.2017. However, that is not the case herein because on 29.03.2017 the ADTP has recommended the Petitioners' application for tentative approval for NA.

13. In the present case, the draft Regional Plan has been notified and published on 30.03.2017. Though the Board has granted approval for such publication in its meeting convened on 28.03.2017, the provisions of Section 16 do not refer to any date of grant of approval for publication of the draft Regional Plan by the Board. That apart, it is an admitted position that the Petitioners' application for NA permission was pending with the Collector, Satara since 14.03.2017 and the ADTP has admittedly submitted his report to the Collector recommending tentative approval to the said application on 29.03.2017.

14. In the present case, the Final Regional Plan has come into

operation on 08.01.2018. The cut-off date appearing in Modification M-3 in Schedule 'B' appended to the Final Regional Plan is a date which is prior to the date of publication of notice of the draft Regional Plan i.e. 30.03.2017 or the date of notice of publication of the Final Regional Plan i.e. 08.01.2018. The provisions of Section 16 to 18 read together leave no doubt in mind that the provisions of the said Act are required to be followed scrupulously. There is no statutory provision enabling the State Government to fix the cut-off date to freeze the rights of the land / property owners on a particular date prior to the date of publication of the statutory draft Regional Plan and / or the Final Regional Plan. Fixing of the cut-off date in M-3 as on 28.03.2017 which has been done in the present case and which is prior to the date of publication of the statutory notice under Section 16(1) of the said Act is therefore unreasonable and arbitrary.

15. The submission of the Respondents that since they have fixed the cut-off date on the basis of the date of passing of the resolution by the Board in respect of 16 similar Regional Plans is no answer in law. All actions of the Government are required to be supported by statutory provisions and more particularly when such statutory provisions relate to substantive rights.

16. It is interesting to note that the Government of Maharashtra

in exercise of its powers conferred under the provisions of sub-section (1) of Section 3 of the said Act constituted a region to be called "Satara region" for the entire area within the jurisdiction of Satara District (excluding Mahabaleshwar and Panchgani region) and detailed the limits of this region under Notification dated 15.10.2012 which was published in the Maharashtra Government Gazette, Pune Division, Part - I dated 01.11.2012 to 07.11.2012. Thereafter by another Notification dated 03.12.2012 issued under sub-section (1) of Section 4 of the said Act, the Government of Maharashtra constituted a Regional Planning Board to be called as "Satara Regional Planning Board". This Board after carrying out the necessary surveys for preparing an Existing-land-use Map of the said region, prepared and published a draft Regional Plan for the said region for inviting suggestions and / or objections from the public in accordance with the provisions of sub-section (1) of Section 16 of the said Act on 30.03.2017. Finally on 08.01.2018, the Government of Maharashtra accorded sanction to the said draft Regional Plan of Satara to be called as the 'Final Regional Plan' subject to the modifications specified in the Schedules (Schedules 'A' & 'B') appended thereto. One of the modifications specified i.e. M-3 is the subject matter of challenge in the present Petition. In this particular modification, the State Government has stated the cut-off date as 28.03.2017 in respect of the pending applications made for development / conversion of land from agricultural user to non-

agricultural user.

17. From the above discussion, it is clear that there is no statutory force behind fixing the cut-off date and determining the rights of land owners. The draft Regional Plan was under preparation by the Board for a period of almost five years. We find that there is no basis to consider the date "28.03.2017" i.e. the date of passing of the resolution by the Board as the cut-off date in M-3. Undoubtedly M-3 is an important transitional condition for development as the Final Regional Plan has come into force for Satara Region. We state that if at all there has to be a cut-off date to determine the rights of the land owners in respect of pending applications for development or for seeking conversion from agricultural user to NA, then the cut-off date should be the date of publication of the notice of the draft Development Plan under the provisions of Section 16(1) of the said Act. This is so because this is the first date on which the general public at large and more specifically the affected land owners are put to notice by the State Government about its intention to prepare the 'Final Regional Plan' on the basis of the draft Regional Plan and the procedure for preparing the 'Final Regional Plan' kicks in.

18. We state that introduction of any restrictive condition has to be strictly in consonance with the provisions of the said Act. The State

Government, if it has to put any restriction has to adhere to the provisions of Section 16 and 17 so as to ensure that the legislative mandate is followed. In the present case, the fixation of the relevant cut-off date in the impugned M-3 Modification regarding committed development is the date of passing of the resolution in the 7th Meeting convened on 28.03.2017 granting approval for publication of the draft Regional Plan. Admittedly the draft Regional Plan has been published for the first time in the Gazette on 30.03.2017. The statutory provisions discussed above do not support the date of passing of the resolution by the Regional Planning Board as a restrictive cut-off date which is accepted and passed by the State Government as a policy decision in the present case. It is stated that any policy decision introduced by the State is required to have the mandate of law which we find absent in the present case. The fixation of the relevant cut-off date as on 28.03.2017 in M-3 therefore does not satisfy the provisions of Section 16 to 18 of the said Act and is therefore held as ultra-vires. It is held that fixation of the relevant cut-off date in condition M-3 has to be the date on which the notice of the draft Regional Plan is published in the Maharashtra Government Gazette in the first instance bringing it to the notice of the public at large and calling for objections and suggestions from any affected person as prescribed in Section 16(1) of the said Act.

19. We therefore hold that the relevant cut-off date as appearing in clause M-3 of the Notification dated 08.01.2018 be read as 30.03.2017 in place of 28.03.2017.

20. In view of the above findings we quash and set aside the communications dated 24.08.2018 and 19.12.2018 addressed by the Respondent No.4 - Assistant Director - Town Planning, Satara and Respondent No.5 - Additional Collector, Satara respectively which are impugned in the present Writ Petition. The necessary consequences in respect of the Petitioners' case shall follow.

21. With the above directions, the Writ Petition is disposed of. However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]

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