IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 8528 OF 2022

Ramesh Vitthal Pardeshi and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Devdatt P. Palodkar, Advocate for the Petitioners.
Shri P. K. Lakhotiya, A. G.P. for Respondent No. 1.
Shri Sachin S. Deshmukh, Advocate for the Respondent No. 3.
Shri C. R. Thorat, Advocate for the Respondent No. 4.
Shri K. D. Mundhe, Advocate for Respondent Nos. 6 and 7.
The Respondent Nos. 2 and 5 are served.

CORAM : NITIN W. SAMBRE AND S. G. CHAPALGAONKAR, JJ.
DATE : 25TH APRIL, 2023.

FINAL ORDER (Per Nitin W. Sambre, J.) :-

. The petition is by residents of the respondent No. 4/Village Panchayat who have purchased or having land within the territorial limit of said village panchayat developed by the respondent No. 2/CIDCO through the respondent No. 5, a private entrepreneur.

2. Since the act of the respondent No. 5 is alleged to be contrary to the agreement entered into between respondent No. 2 and the respondent No. 5, the respondent No. 2 has caused show cause notices on 10th October, 2019 and 10th July, 2020. The petitioners are seeking action pursuant to the aforesaid show cause notices against the respondent No. 5 by the respondent No.

2. The petitioners are also claiming that since the respondent No. 2 is collecting service tax from the petitioners, the respondent No. 4/Gram Panchayat be restrained from interfering with the administration and maintenance including civic amenities and facilities, so also from recovering taxes or charges from the residents of the South City area which is developed in land gut No. 114 to 117 of village Tisgaon, Tq. and Dist. Aurangabad.

3. The petitioners claim to be owners and possessors of respective plots and residential houses constructed thereon in Waluj notified area of Aurangabad city which is popularly known as “South City”, which is developed on land gut Nos. 114 to 117 of village Tisgaon, Tq. and Dist. Aurangabad.

4. The respondent No. 2/CIDCO was appointed as a special planning authority in respect of said area which is a government owned public authority. The notification dated October 07, 1991 appointing the respondent No. 2 as a special planning authority is alleged to be still holding the field. The Government pursuant to the plan submitted by the respondent No. 2 sanctioned the development plan of Waluj on August 14, 2001, which consists of total eighteen villages.

5. The petitioners allege that for carrying out peripheral development, an agreement was entered into with the respondent No. 5 by the respondent No. 2 for the purpose of infrastructural facilities viz water supply, street lights, storm water drains, sewerage, roads, open spaces, etc. It is claimed that the

respondent No. 5 is under obligation to carry out infrastructural and peripheral development in the aforesaid area as has been agreed with the respondent No. 2/Special Planning Authority. It is the case of the petitioners that the respondent Nos. 2 and 3 are not interested in peripheral development in the Waluj notified area. It is claimed that more than four decades have expired from the date of notifying respondent No. 2 as a special planning authority and the petitioners are not provided with requisite civic amenities, though the work to that effect was allotted by the respondent No. 2 to the respondent No. 5.

6. According to petitioners the Director of the respondent No. 5 and the members of the respondent No. 4/village panchayat are acting hand in gloves with each others. Instead of handing over the property/facilities to the plot owners including petitioners, same has been handed over by the respondent No. 5 to the respondent No. 4. It is claimed that there is default on the part of the respondent No. 2 in not taking action pursuant to show cause notices dated 10th October, 2019 and July 10, 2020. However, till this date the respondent No. 2 has not taken those show cause notices to its logical end.

7. It is also claimed that since the respondent No. 2 is special planning authority, hence respondent No. 4 ceases to have any control over the area and that being so, it can neither control the administration and maintenance of the civic amenities for the aforesaid area, nor it can charge and recover taxes from the residents like the petitioners. In this background, the aforesaid

writ petition.

8. Mr. Palodkar, learned counsel appearing for the petitioners would urge that the respondent No. 2 was appointed as a special planning authority and for carrying out peripheral developments an agreement was entered into with the respondent No. 5 pursuant to the development plan so as to provide basic infrastructure and also the growth centres which will act as catalysts for urbanisation. According to Mr. Palodkar, it was for the respondent No. 5 to hand over developed area to the respondent No. 2/Special Planning Authority who was collecting taxes from the petitioners. The respondent No. 5 in turn should have handed over the area in question to the respondent No. 2 for the purpose of effecting maintenance of development carried out. According to him in view of the notification issued by the respondent No. 1/State Government appointing the respondent No. 2 as a special planning authority, the respondent No. 4/Village Panchayat ceases to have control over the said area. In that view of the matter, the respondent No. 4 has no authority whatsoever to gain control of area in the presence of special planning authority i. e. the respondent No. 2. So as to substantiate the aforesaid contentions, learned counsel for the petitioners has relied on the provisions of Section 40(i), Section 113(viii) read with Section 40 Clause 3(ii)(a) and Section 23 of the Maharashtra Regional and Town Planning Act (for short "MRTP Act"). According to him, perusal of the show cause notice will reflect that the respondent No. 5 has not carried out the development work in accordance with agreement entered into. As

such show cause notice for initiating action against the respondent No. 5 was issued on 10th October, 2019 and 10th July, 2020. Mr. Palodkar would urge that respondent Nos. 2, 4 and 5 are acting hand in gloves to frustrate claim of the petitioners.

9. While countering aforesaid submissions, Mr. Deshmukh, learned counsel appearing for the respondent No. 3 would urge that by virtue of provisions of Section 113(v) read with Section 40 of the MRTP Act, the respondent No. 2 is conferred with the power to control of erection and re-erection of buildings only. According to him, after publication of notice under Section 113 of the MRTP Act, the powers of the gram panchayat U/Sec. 52 of the Maharashtra Village Panchayat Act are shadowed. He would submit that the CIDCO does not have any control in relation to the rights those are vested in the gram panchayat in relation to levy, assessment and recovery/collection of the taxes as are vested in it by virtue of provisions of the Maharashtra Village Panchayat Act. According to him the issue as to whether respondent No. 4/Gram Panchayat can lawfully collect tax is already decided by the Division Bench of this Court in the matter of **Bima Office premises Co-operative Society and Etc. Vs. Kalamboli Village Panchayat and others etc.** reported in ***AIR 2001 Bom. 83***. He would further urge that the issue as to the authority of the gram panchayat to collect taxes is already looked into in Writ Petition No. 5598 of 2019, which was disposed of in view of law laid down by this Court in the matter of **Bima Office premises Co-operative Society and Etc. Vs. Kalamboli Village Panchayat and others etc.** referred to supra. According to him the act of handing

over the alleged developed area by the respondent No. 5 developer to the respondent No. 4 village panchayat is independent of the consent of the other respondents. There is no consent of the Zilla Parishad or the Collector for the same.

10. He has further claimed that show cause notice issued to the respondent No. 5 shall be taken to its logical end within reasonable period as shall be directed. He would further urge that the respondent No. 2/CIDCO is not collecting any tax from occupiers, but only what is collected is service charges. He would urge that the issue is squarely covered by the judgment of this Court in the matter of **Bima Office premises Co-operative Society and Etc. Vs. Kalamboli Village Panchayat and others etc.** cited supra.

11. Mr. Thorat, learned counsel appearing for the respondent No. 4/village panchayat would adopt the arguments of the respondent No. 3/CIDCO with an explanation that handing over of the developed infrastructure was in the interest of the residents of the village panchayat. According to him in view of provisions of Section 129 and Section 124 of the Village Panchayat Act, the gram panchayat has sole authority to levy and collect the property taxes. In that view of the matter, he would urge that petition is liable to be dismissed.

12. Mr. Lakhotiya, learned Assistant Government Pleader for the respondent No. 1 would adopt the aforesaid arguments and sought dismissal of the petition.

13. We have appreciated the aforesaid submissions.

14. The fact remains that the respondent No. 2/CIDCO was appointed as a special planning authority and draft development plan in relation to the Waluj Mahanagar came to be issued in April 1992. So as to facilitate public and private sector participation 25% of the land from the aforesaid area of South City was put to acquisition out of total land and 75% balance land was free hold of such land owners. The lease hold rights are created to the extent of aforesaid 25% of acquired land in favour of the respondent No. 2/CIDCO with an object of having peripheral city development by providing facilities like community centre, school, garden, play ground, etc.

15. The respondent No. 2 appears to be duty bound in providing basic infrastructure and assist in development of growth centres so as to achieve the objection of urbanization. It is for the owners like the petitioners who are required to develop the land by providing internal infrastructure to the extent of aforesaid 75% of the free hold land.

16. It appears that the respondent No. 5 was accordingly issued with commencement certificate on 14th April, 1999 pursuant to the provisions of Section 45 of the MRTP Act in relation to land gut Nos. 114 to 117 with following stipulations.

a) Internal access road along with storm water drains

b) Channelization of water courses and culverts, if any.

c) The arrangements of water supply and drainage disposal shall be made by the individual owners of the plot at his own cost.

d) Arrangements for conveyance and disposal of sullage and sewage without creating any insanitary condition in the surrounding area.

e) Arrangements for collection of solid waste.

17. It appears that the respondent No. 5 by giving go-bye to the same appears to have handed over the developed infrastructural project and land to the respondent No. 4 without there being any consent or approval of the respondent No. 2.

18. In this background, the respondent No.2 having taken note of such default on the part of the respondent No. 5 has caused show cause notices to the respondent No. 5 and it is assured that the said show cause notices shall be taken to its logical end by passing reasoned orders in the matter of aforesaid show cause notices and ancillary issues. We direct the respondent No. 2 to take decision on the said show cause notices within a period of four months from today and communicate decision taken to the petitioners within a period of fifteen days by registered post A.D. from the date of such decision.

19. As regards the issue of collection of taxes by the respondent No. 4 is concerned, the issue felt for consideration before this Court in the matter of **Bima Office premises Co-operative Society and Etc. Vs. Kalamboli Village Panchayat and others etc.** cited supra. While dealing with the claim of the village panchayat

like respondent No. 4 to levy property taxes, this Court has gone into the provisions of Section 129, Section 124 of the Maharashtra Village Panchayat Act and Section 113 of the MRTP Act. This Court while endorsing right of the respondent No. 4 to levy and collect property tax has made following observations in para Nos. 33, 34, 35 and 37 as under :

> 33. At this juncture, it will be worthwhile to notice that Section 4 of the BVP Act provides for declaration of village. Every village specified in the notification issued under Clause (g) of Article 243 of the Constitution of India is known by the name of that village specified in that notification and where the circumstances so require, provision is made to include or exclude any local area from the local area of a village or to alter the limits of a village or to take away that local area from the concerned village by the noti-fication issued, in the like manner, after consultation with the Standing Committee and upon such declaration local area is either included or excluded shall form the village. With the publication of such notification, the local area is either included or excluded and the limits of the village, accordingly, stand altered. Upon exclusion of the local area of the village, it ceases to be a village under the BVP Act. In the light of the said provisions, we agree with the submissions advanced by respondent No. 1 that so long as notification is not issued under Subsection (2) of Section 4, the respondent No. 1 Gram Panchayat cannot be said to have ceased to exist. In absence of any such notification by the State, the respondent No. 1 -- Gram Panchayat cannot be said to have ceased to be a Gram Panchayat within the provisions of the said Act. It is, therefore, clear that there is no substance in the contention raised by the petitioners that in view of the constitution of a site for new town under Section 113 of the MRTP Act, the respondent No. 1 Gram Panchayat has ceased to exist and, therefore, respondent No. 1 --Gram Panchayat has no right to levy tax on the petitioners. In our view, so long as respondent No. 1 continue to exist as a Gram Panchayat, it has a right to levy tax on the lands and buildings situated within its jurisdiction and, consequently, action of respondent No. 1 -- Gram Panchayat, levying, assessing and calling upon the petitioners to pay tax, cannot be said to be bad and

illegal.

34. The submissions addressed on behalf of the petitioners even though considered on the pedestal of the provisions of MRTP Act, no different conclusion, other than conclusion already drawn by us, can be reached. The object and purpose of the enactment of MRTP Act is to make provision for planning and development and use of land in Regions established for that purpose and to provide therefor constitution of Regional Planning Boards; to make better provision for preparation of Development Plan with a view to ensure that town planning schemes are made in a proper manner and their execution is made effective; to provide for creation of new towns by means of Development Authority and to make provisions for compulsory acquisition of land required for public purposes connected with the said matters. As already pointed out hereinabove that in view of the provision of Article 265 of the Constitution no tax can be levied without authority of law. There is absolutely no provision in the MRTP Act conferring any such power on the Development Authority so as to enable it to levy tax. If the legislation, under which respondent No. 2 CIDCO was designated as Town Development Authority, does not have power to impose and recover tax then in that event the authority designated under the Act, cannot claim such power and as a fact, no such power has been claimed by respondent No. 2 -- CIDCO. Having taken into account the various provisions extracted hereinabove, it is clear that once the Development Authority is designated under Section 113(5) of the MRTP Act, then such authority has to function and exercise powers under the legislation under which it was designated i.e. under the MRTP Act only. The effect of the notification Issued under Section 113 of the MRTP Act is to take away right to control development, erection or re-erection of buildings by the Gram Panchayat and District Collector, vested in Section 52 of the BVP Act. By virtue of subsection (5) of Section 113 of the MRTP Act, all such powers with the publication of the notification in the Official Gazette stands transferred from Gram Panchayat to the authority designated under Section 113(3-AJ'of the MRTP Act. Therefore, what is taken away by Sub-section (5) is the power of respondent No. 1 -- Gram Panchayat, or other local authority to have control on erection or re-erection of

buildings. This is obviously done with the specific purpose to permit the Development Authority designated under MRTP Act to develop new town in a planned and systematic manner. Consequently, authority vested in the local authority inclusive of Municipal Council or Panchayat under the relevant provisions of the Municipal Law or Local Panchayat Law, is taken away so as to permit planned development of the new towns. Therefore, effect of publication of notification under Section 113 of the MRTP Act is only to take away powers of the Gram Panchayat under Section 52 of the Act and nothing more.

35. Perusal of provision contained in Chapter VII of the MRTP Act clearly establishes that sanction of the Legislature to create a Development Authority was with a view to establish a new town and to authorise such Development Authority including Corporation or a company if so required to acquire, hold, transfer the land situated within the area or jurisdiction of the new town or site to be established. For the aforesaid purpose the powers conferred upon the Development Authority for acquisition of land via Section 116 of the MRTP Act. The object of the Development Authority is to be found in Sub-section (3) of Section 114 of the MRTP Act, which reads as under :--

"(3) For avoidance of doubt, it is hereby declared that the provisions of Sub-section (1) with respect to the powers of Development Authorities relate only to their capacity as statutory corporation; and nothing in this section shall be construed as authorising the disregard by a Development Authority of any enactment or rule of law."

In the aforesaid backdrop, it cannot be said that the Development Authority has any right to levy taxes and made recovery thereof.

37. Now, turning to the provisions of schedule with regard to the special provisions relating to New Town Development Authority, it is clear from Clause 7, the text of which is already extracted above, that New Town Development Authority subject to the rules, if any, that may be framed under the Act and considering the fact that the New Town Development Authority itself provides within the jurisdiction of the local authority or any of the amenities which the local

> authority provides then the relevant authority is not liable to pay taxes including property taxes, if any, but it is lawful for the local authority to arrive at any agreement with the relevant authority with the prior sanction of the State Government to receive a lump sum contribution from the relevant authority in lieu of all or any of the taxes levied or services rendered by the local authority. It is, therefore, clear that the Gram Panchayat can very I much levy and collect tax even from the New Town Development Authority subject to the provisions incorporated in Clause 7 of the said Schedule. Whatever benefits are given by Clause 7 of the said Schedule are given to the Development Authority in respect of the property owned by them. Such Development Authority also has to pay taxes, may be in the form of lump sum contribution. Under these circumstances, we are of the considered view that respondent No. 1 -- Gram Panchayat was perfectly justified in assessing, imposing and recovering the taxes from the petitioners notwithstanding the designation and establishment of NewTown Development Authority under Section 113(3-A) of the MRTP Act.

20. Section 124 of the Village Panchayat Act deals with the powers to levy taxes even by the Panchayat, whereas Section 113 of the MRTP Act provides for designation of site for new town. Section 114 of the MRTP Act provides for development authority and Section 123 of the MRTP Act provides for transfer of undertaking of development authority.

21. This Court has considered the issue canvassed by the learned counsel for the petitioner in above judgment, which is similar to the one which is canvassed in this petition viz issue of existence of gram panchayat in view of notification of special planning authority. As a sequel of which the issue of right of gram panchayat to levy tax on the lands, buildings situated within the jurisdiction, inspite of there being special planning

authority for the said area has held that levy of property tax on land and buildings situated as a site of new town under the town planning act cannot be said to be under shadow or eclipse as village panchayat did not cease to exist. As such can levy taxes in respect of buildings notwithstanding establishment of new town development authority for the area. This Court has held that the charges collected from the users like the petitioners by the development authority in the form of development charges or fees cannot be said to be contrary to the legal provisions.

22. In view of above, the issue canvassed by the learned counsel for the petitioners Mr. Palodkar that the respondent No. 4 has no authority to levy and collect taxes cannot be accepted as the respondent No. 4/village panchayat has every authority in law to levy and accept the property taxes from the residents.

23. In view of above, we deem it appropriate to reject the prayer of the petitioner to aforesaid extent, however, by directing the respondent No. 2 to take the proceedings under show cause notices dated 10th October, 2019 and 10th July, 2020 to its logical end within a period of four (04) months from today. The writ petition stands disposed of.

[S. G. CHAPALGAONKAR, J.] **[NITIN W. SAMBRE , J.]**

bsb/May 23