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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3633 OF 2023

SUBHASH DATTATRAY SASTE,
Age 66 yrs, Occ: Social Worker,
R/at Sushilanand Soc., Sopan Nagar,
Near Palkhi, Saswad, Tal: Purander

...PETITIONER

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through its Secretary, Urban
Development Department, Mantralaya,
Mumbai.
- 2. SASWAD MUNICIPAL COUNCIL,**
Saswad, Tal-Purandar, Dist-Pune.
Through its Chief Officer Saswad, Tal -
Purandar, Dist.- Pune, through its Chief
Officer.
- 3. SANJAY KALURAM PAWAR,**
Age 56 Years, Occu-Business,
R/at - Amar Chouk, Bajarpeth,
Saswad, Tal- Purandar,
Dist.- Pune 412 301.
- 4. BADAMBAI DUGGAD,**
Age 70 Years, Occu-Business,
R/at - Saswad, Tal - Purandar,
Dist. - Pune 412 301.

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5. **SP ASSOCIATES,**
A partnership Firm, through its partner.
Through Partner,
Vasant Asalchand Solanki,
R/at Saswad, Tal - Purandar,
Dist - Pune.
6. **SB ASSOCIATES,**
A partnership Firm, Through its
partner. Kapil Kishor Solanki,
Adult, Occ - Business,
R/at- Saswad, Tal-Purnadar,
Dist-Pune.
7. **SUB-DIVISIONAL OFFICER,**
Office at Saswand, Tal - Purnadar,
Dist-Pune.
8. **DY. DIRECTOR OF TOWN
PLANNING,**
Pune, Office at Pune.

...RESPONDENTS

WITH
WRIT PETITION NO. 10436 OF 2018
WITH
INTERIM APPLICATION NO. 3307 OF 2023

PRADEEP VITHAL GIRME,
Age 59 years, Occ. Social Service
Residing at Post Saswad,
Taluka - Purandar, District Pune.

...PETITIONER

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
(summons to be served on learned Government Pleader appearing for State of Maharashtra under Order XXVII Rule 4 of the code of Civil Procedure 1908.
2. **THE PRINCIPAL SECRETARY,**
Urban Development Department,
State of Maharashtra, Mantralaya, 4th Floor, Mumbai (Summons to be served on learned Government Pleader appearing for State of Maharashtra under Order XXVII rule 4 of the code of Civil Procedure 1908).
3. **THE DIRECTOR OF TOWN PLANNING,**
Maharashtra State having office at Pune (Summons to be served on learned Government Pleader appearing for State of Maharashtra under Order XXVII rule 4 of the code of Civil Procedure 1908).
4. **DEPUTY DIRECTOR OF TOWN PLANNING,**
Maharashtra State having office at Sahakar Nagar, Pune Division, Pune.
5. **SP ASSOCIATES,**
A partnership Firm, through its partner. Through Partner,
Vasant Asalchand Solanki,
adult, Occupation-Business,
residing at Saswad, Taluka-Purandar,
District - Pune.

6. SB ASSOCIATES,

A partnership Firm, Through its
partner. Kapil Kishor Solanki,
Adult, Occupation - Business,
residing at - Saswad, Tal - Purnadar,
District - Pune.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER Mr Drupad S Patil.

**FOR RESPONDENTS NOS Mrs Rupali Shinde, AGP.
1, 4, 7 & 8 - STATE**

**FOR RESPONDENT NO 2 Mr Sarang S Aradhye, with Gauri
Velankar, Shruti Kothamale &
Shantanu Gurav.**

**FOR RESPONDENTS NOS Mr Kayval P Shah.
5 & 6**

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 30th November 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Rule was issued on 18th April 2023.
2. We have heard Mr Patil for the Petitioners, learned AGP, Mr Aradhye for 2nd Respondent and Mr Shah for Respondents Nos 5 and 6.

3. The challenge in this Writ Petition is to a Government Notification dated 23rd June 2017 issued under Section 31(1) of the Maharashtra Regional Town Planning Act, 1966 (“**the MRTP Act**”). By that Notification, a substantial modification was sought to be effected to the Development Plan (“**DP**”) proposed for the Saswad Municipal Council (“**SMC**”). The case has a chequered history and was once carried to the Supreme Court. The present Petition comes to be filed pursuant to the order and directions of the Supreme Court and the liberty that the Supreme Court granted the Petitioner. The facts leading to that order are set out below.

4. One of the questions that arises in this Writ Petition, which is not filed as a public interest litigation is necessarily the question of locus. The Petitioner admittedly has no interest in the plot in question. It is true that the Petitioner, whether as a local resident or even otherwise, as a concerned citizen was entitled to submit suggestions or objections once a notification was issued under the MRTP Act inviting such suggestions from the public. But, as we shall presently see, the question of an entitlement to submit suggestions and objections to any modification or draft DP is in law a distinct matter from the question of standing or locus in a Writ Petition.

5. But first to the facts of the case.

6. The DP for the SMC came into force on 1st March 1989. In this DP, Survey No 617/1/1/2/A/3 of 90 R was shown under Reservation No 39 for a Post and Telegraph Office. Another Survey

No 617/1/2A admeasuring 2 hectares and 34 R was shown in the industrial zone.

7. On 26th May 1994, this DP was modified following the procedure under Section 37 of the MRTP Act to include 1 hectare 20 R from the industrial zone portion of Survey No 617/1/2A in the residential zone. However, the remaining 1 hectare 14 R continued in the industrial zone. This remaining land was numbered as Survey No 617/1/1/2 and was of the area of 1 hectare 14 R.

8. On 30th September 2005, the Sub-Divisional Officer granted permission to change the user of Survey No 617/1/1/2 from industrial to residential use. This really means that under the DP while the zoning continued to be industrial, that land was allowed to be used for residential purposes, a situation specifically contemplated by the DP in question. On 31st January 2006, this permission was apparently cancelled. On 26th March 2006, the owners of the land executed a development agreement with one SP Associates for Survey No 617/1/1/A/2 which admeasured 90 R (or just a little over).

9. Building permissions followed on 22nd March 2007 for seven structures numbered as A to G on CTS Nos 4501/2. The 2nd Respondent noted that this proposal meant that Buildings A, E, F and G were on the land that was supposedly shown as a reservation for the Post and Telegraph Office. Buildings Nos B and D were partly on that reservation and Building No C was entirely in the residential zone.

10. On 16th November 2010, the Municipal Council apparently put into abeyance its proposed modifications of the DP. On 17th October 2011, the State Government rejected the Municipal Council's proposal under Section 37 of the MRTP Act apparently on the basis that the Municipal Council should have sought a modification of the DC Rules rather than suggested, recommended or proposed a deletion of the reservation itself.

11. In Public Interest Litigation No 20 of 2011, this Court passed an order of status quo on 21st February 2013 regarding two of the buildings. While there is mention of the fact that the Post and Telegraph Department showed willingness to acquire the land, this is not an aspect that needs to detain us in the present Petition.

12. As of 15th April 2013, therefore, the position was that construction was partly going on where the reservation for the Post and Telegraph Office was proposed. The developers sought regularisation, and, on 15th April 2013, this regularisation proposal came to be rejected. The affected parties went in appeal and sometime in August 2013, the Director of Town Planning allowed that appeal in regard to the construction on the reserved portion that fell in the industrial zone. The appeal was rejected in regard to the construction on the reservation for the Post and Telegraph Office.

13. It is at this time that the Petitioner filed Public Interest Litigation No 163 of 2013. On 21st April 2014, this Court admitted the Petition and granted an injunction restraining parties from

creating third party rights. Two years later, on 4th May 2016, the Director of Town Planning submitted a report to the State Government.

14. Then, on 23rd June 2017 came the impugned Government Notification which approved the modifications thereby including part of the land under construction in the residential zone, but the remaining land was retained under reservation for the Post and Telegraph Office.

15. Another Writ Petition No 10436 of 2018 was filed challenging the Government Notification approving these modifications.

16. By an order dated 12th July 2021, the Municipal Council, Saswad regularised the structures in question. The Petitioner's Public Interest Litigation No 20 of 2011 and other PILs were disposed of finally on 11th July 2022.

17. Aggrieved by this order, the Petitioner approached the Supreme Court in Special Leave Petition (C) No 36318 of 2022. An order came to be passed on 13th January 2023. A copy is at page 241. We reproduce the whole of that order of the Supreme Court:

“Delay condoned.

Learned Counsel appearing on behalf of the petitioner(s) has vehemently submitted that the construction in question is carried on Survey No. 617A/1/1A/2 and Survey No. 617A/1/2A at Saswad, Tehsil Purandar, District Pune, Maharashtra was/were absolutely illegal. It is submitted that only during the pendency of the

PILs before the High Court, the authorities have with mala fide intention and to frustrate the PILs have subsequently modified the Development Plan and granted the permissions to regularise the illegal construction making the PILs infructuous. The petitioners may be justified in contending so. However, in view of the fact that the subsequent development/regularisation and the modifications in the zone is the subject matter of challenge before the High Court by way of Writ Petition No. 10436/2018, without further entering into the merits of the matter, we permit the petitioners to file a substantive petition before the High Court like Writ Petition No. 10436/2018 and permit the petitioners to challenge the subsequent development/modification in the zones/regularisation of the construction in which it will be open for the petitioners to contend that the said subsequent changes and the regularisation is with a view to frustrate the PILs and that the same has been done with a mala fide intention and on all other grounds, which may be available to the petitioners. As and when such proceedings are initiated, the same shall be considered by the High Court in accordance with law and on its own merits at the earliest and along with Writ Petition No. 10436/2018. In any case, we request the High Court to finally decide and dispose of Writ Petition No. 10436/2018 and/or any other writ petition, which may be filed, if filed within a period of four weeks from today as expeditiously as possible.

With this, the present Special Leave Petition stand disposed of.

Pending application (s) shall stand disposed of.”

18. We note that the liberty granted to the Petitioner was to file a substantive Petition to challenge the subsequent developments modifications in the zone. This is how the present Petition comes to

be filed. The Supreme Court also said that the Petitioner would be entitled to contend that these changes and regularisations were with a view to frustrate the Public Interest Litigations or were actuated by mala fides as also taking all other grounds.

19. Importantly, the Supreme Court order did not decide these questions. Instead, it said clearly that the fresh Petition would be decided in accordance with law and on merits at the earliest possible.

20. The submission by Mr Patil is centred almost entirely on a reading of certain provisions of the MRTP Act and in particular Section 31. A substantially similar question arose before us in *Rational Art & Press Private Limited v State of Maharashtra & Ors*,¹ which we decided by our judgment dated 6th and 9th October 2023.

21. There as well, the Petitioner challenged a modification and a sanction by the State Government to a DP. The question was whether such an action of the State Government was justiciable or, more accurately could ever be subjected to judicial review. This was (and in the present Petition is) a central aspect and in our view is undoubtedly dispositive. For, if it is found that such an executive action under the statute by the State Government is not amenable to judicial review by the High Court in exercise of its powers under Article 226 of the Constitution of India, then the Petition must necessarily fail. This would be so even if the Petitioner did have sufficient locus.

22. We consider the statutory provisions in our judgment in *Rational Art & Press Private Limited*. These were set out at some length including Section 31 and in the interest of compactness, we believe it would be useful to reproduce those paragraphs rather than revisit the question all over again.

23. Paragraphs 23 to 49 of that judgment read thus:

“23. We proceed now to consider the relevant provisions of the MRTP Act. For our purposes, the essential definition is that of ‘*development*’ in Section 2(7). It is an expansive definition.. It covers the carrying out of buildings, engineering, mining in, over, under land, the making of material changes in any building or land or, and this is important, *in the use of any building or land* or any material or structural change in any heritage building or precinct. It then goes on to use the expression ‘*includes*’ to bring within its ambit demolition of existing buildings, reclamation, erections of part of buildings, redevelopment, layouts and subdivisions. An ‘*Amenity*’ is defined in Section 2(2) to mean roads, streets, open spaces, parks, recreational grounds and other elements. It is said to include other utilities, services and conveniences. A ‘*Development Plan*’ is defined in Section 2(9) to be a plan for the development or redevelopment of an area within the jurisdiction of a planning authority and it includes revisions of DPs and proposals of a special planning authority. A ‘*development right*’ is the right to carry out development under Section 2(9A) or to develop the land or building or both and includes transferable development rights in the form of the right to use the FSI of land utilisable either on the remainder of the land partially reserved for a public purpose or elsewhere, as the final development control regulations may provide. ‘*Floor Space Index*’ is defined in Section

2(13A), as the ratio of the total covered area of all floors in relation to the plot area. This definition corresponds to the one in the DCPR 2034. A '*planning authority*' is defined in Section 2(19) of the MRTP Act and includes a special planning authority under Section 40 and the Slum Rehabilitation Authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Similarly a '*Regional Board*' or a '*Board*' means a regional planning board under Section 4 within the meaning of Section 2(24) of the MRTP Act and a '*Regional Plan*' under Section 2(25) means a plan for the development or redevelopment of a region approved by the State Government and which has come into operation under the Act.

24. Importantly '*regulation*' is defined in Section 2(27) to mean a regulation under Section 159 of the Act and includes — and this is critical — *zoning* and special development control regulations and other regulations made as a part of a regional plan, DP or a town planning scheme. In this context we note that under section 2(30), '*scheme*' includes a plan relating to a Town Planning Scheme.

25. Chapter II of the Act has provisions relating to regional plans. We are not immediately concerned with that, and we pass on to Chapter III which deals with Development Plan. Sub part (a) of Chapter III deals with the '*Declaration of intention, preparation, submission and sanction to a Development Plan*'.

26. Section 21 deals with the Development Plan (DP). Sub-section (1) says that every planning authority must survey and prepare an existing land-use map and prepare a draft DP for the area within its jurisdiction in accordance with the provisions of the regional plan where there is such a plan. The planning authority must publish a notice in the official gazette stating that a draft DP has been prepared. It

must submit that plan to the State Government for sanction. It must also submit a quarterly report about the progress made in carrying out the survey and preparing the plan. Sub-section (2) says that every planning authority must declare its intention to prepare a draft DP, prepare such a plan and publish a notice of such preparation in the official gazette and submit the draft DP to the State Government for sanction. Then sub-section (3) says that on an application made by a planning authority the State Government may from time-to-time order in writing the extension of the period to prepare the draft DP. Sub-section (4) deals with the situation where the declaration of intention under Section 23 is not made or a draft DP is not submitted within the specified period or within an extended time. Then sub-section (4A) says that if the time fixed for doing anything specified in Sections 25, 26 and 30 lapses the planning authority is deemed to have failed to perform its duty and any work remaining to be done up to the stage of submission of the draft DP under Section 30 is to be completed by the officer named.

27. Section 22 deals with the 'Contents of a Development Plan'. It opens by saying there a DP must generally indicate the manner in which *the use of the land in the area of a planning authority shall be regulated*. It must also indicate the manner in which the development of land therein shall be carried out. It then particularises thereafter from sub clauses (a) to (m) the various items that are specifically enumerated to be considered and provisioned in a DP. The very first one of these clauses speaks of proposal for allocating the *use of land* for purposes such as residential, industrial, commercial, agricultural and recreational. Sub-section (b) then deals with designation of land for public purposes such as schools, colleges etc. Then there are provisions for proposals for designations of areas for open spaces, playgrounds, stadia and so on. Sub-section

(m) interestingly deals with ‘provisions for *permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of fees, charges and premium, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant DCPR, and also for the imposition of conditions and restrictions of various kinds, including the use and purposes to which building or specified areas of land may or may not be appropriated.*

28. Pausing for a moment, this is in itself sufficient to dispense with the submission that there is no statutory backing to the practice of ‘zoning’. Not only is this included in the definition of regulation under Section 2(27) but the frequent and recurrent ‘use of land’-tells us that this is nothing but another word for *zoning*.

29. Section 22(A) was added by a 2011 amendment. It deals with modifications of a substantial nature to Section 31 which we will see shortly. ‘Modification of a substantial nature’ is defined in Section 22(A). Sub-clause (c) says that a change in the proposal of allocating the use of certain lands from one zone to any other zone provided by clause (a) of Section 22 which results in the increasing of that area in that other zone by more than 10 percent in the planning unit or sector in a draft DP is a modification of a substantial nature. Now this again tells us that there is an inbuilt concept of zoning within the MRTP Act itself. This also contemplates the idea of a change in the zoning.

30. Section 23, with its two sub-sections (1) and (2), requires a planning authority before it carries out a survey and prepares an existing land-use map by resolution to make a declaration of its intention to prepare a DP. A copy of this resolution along with a copy of the plan showing only the boundaries of the entire area to be included in the DP is to be sent to the State Government. The officer in question

must make a similar declaration to the State Government. The planning authority must also publish a notice of the declaration in the official gazette and in one or more local newspapers. A copy of this plan is open for public inspection at all reasonable hours at the head office of the planning authority and the local authority.

31. We pass over Section 24 substituted by an amendment which deals with the town planning officer and come to Section 25 which deals with the provisions for survey and preparation of an existing land-use map. This tells us that after a planning authority has declared its intention to prepare a DP but within six months of the date of such declaration or within such extended time as the State Government permits (in any case not exceeding one year in aggregate), the planning authority must carry out a survey of the lands within the planning authority's jurisdiction and prepare an existing land-use map indicating the existence of land therein.

32. Section 26 was amended in 1976. Sub-section (1) says that, subject to the provisions of Section 21, explained above, a planning authority must within two years from the date of notice published under Section 23 prepare a draft DP and publish a notice in the official gazette stating that the DP has been prepared. That notice must give the name of the place where a copy of the plan is available for inspection by the public and must state that copies or extracts certified to be correct are available for sale at a reasonable price. Importantly, this notice must invite objections and suggestions within a period of 30 days from the date of notice in the official gazette. There is an extension of time to 60 days if a Municipal Corporation has a population of 10 lakhs or more and there is a second proviso permitting the State Government to extend the period. The last proviso says that the extended period cannot exceed 24 months in the case of a Municipal

Corporation with a population of 1 crore or more as per the latest census figures (applicable to the Mumbai City). Separate provisions are made for other Municipal Corporations.

33. Then sub-section (2) of Section 26 says that the notice must also state that copies of certain particulars in relation to the draft DP are also available for public inspection along with copies or certified extracts, namely, a report on the *existing land-use map* and surveys carried out, maps, charts and so forth.

34. There is a hierarchical connection between the regional plan and a DP. The regional plan covers a much wider area — the region as defined — and Section 27 tells us that where a DP is within the ambit of a region, the planning authority must have regard to and be guided by principles in the regional plan. This is only logical because there cannot be a diversion or a conflict between a DP and a regional plan.

35. Section 28 is an all-important section. As we have already seen there are provisions made for making available to the public information about the DP and inviting suggestions and objections. But Section 28 is the one that tells us what is to be done with these objections. Given the nature of arguments, we believe it is necessary to quote Section 28 as amended.

“28. Objections to draft Development Plan

(1) Subject to the provisions of this Act, if within the time allowed under sub-Section (1) of section 26 any person communicates in writing to the Planning Authority or the said Officer any suggestion or objection relating to the draft Development Plan, the Planning Authority

or the said officer may, after considering the report of the Planning Committee under sub-Section (2) and the suggestions or objections received by it or him, modify or change the plan in such manner as it or he thinks fit.

(2) The Planning Authority or the said Officer shall forward all objections and suggestions received by it to a Planning Committee consisting of three members of the Standing Committee of the Planning Authority and such additional number of persons, not exceeding four, appointed by the Director of Town Planning having special knowledge or practical experience of matters relating to town and country planning or environment or relating to both for consideration and report:

Provided that, where a Planning Authority is not a local authority, the Planning Committee shall consist of such members as the Planning Authority may determine:

Provided further that, where the Divisional Joint Director or Deputy Director of the Town Planning and Valuation Department or an Officer nominated by him under sub-section (4) of section 21, as the case may be, exercises the powers and performs the duties of the Planning Authority, then the Planning Committee may consist of such Divisional Joint Director or Deputy Director or, as the case may be, of such officer.

Provided also that, where the State Government or any person or persons

appointed under section 162, exercise the powers and perform the duties of a Planning Authority or Development Authority, then the Planning Committee may consist of the State Government or the person or persons so appointed:

Provided also that, the Planning Committee contemplated in the preceding provisos shall also consist of such additional number of persons, not exceeding four, appointed by the Director of Town Planning having special knowledge or practical experience of matters relating to town and country planning or environment or relating to both.

(3) The Planning Committee, shall, on receipt of objections and suggestions, make such enquiry as it may consider necessary, and give a reasonable opportunity of being heard to any person including representatives of Government departments who may have filed any objection or made any suggestions in respect of the draft Development Plan and after considering the same, the Planning Committee shall submit its report to the Planning Authority or as the case may be, the said Officer within a period of two months from the date of its appointment or within such extended period as the Planning authority may specify.

(4) Not later than two months, after the receipt of the report of the Planning Committee, the Planning Authority or the said officer shall consider the report

including the objections and suggestions received by it or him and make a list of such modifications or changes and carry out the same in the draft Development Plan, as it or he may consider proper. The Planning Authority or the said officer shall publish, in the *Official Gazette* and in not less than two local newspapers, the list of modifications or changes made in the draft Development Plan for information of the public.”

(Emphasis added)

36. As the emphasised portions show, there is the constitution of a three-member planning committee. This is a body of experts with special domain knowledge or practical experience of matters relating to town and country planning. Sub-section (3) tells us that the planning committee is to make such inquiry as it considers necessary. It must give a reasonable opportunity of hearing to any person who has filed an objection or made any suggestion. Then “*after considering the same*” the planning committee is to submit its report to the planning authority. There is nothing in this Section that indicates that the planning committee must give reasons for the view that it takes on considering a particular suggestion or objection. If the suggestion or objection is accepted and forms part of the report, that automatically indicates that it has been favourably considered. But the opposite must equally be true. If a particular suggestion or objection does not find place in the report of recommendations, then it must necessarily follow that the particular suggestion or objection has not been favourably considered. The error on the part of the Petitioners, in our view, is to misread the words “*after considering the same*” to mean performing an act that is in itself justiciable, i.e., susceptible to judicial review.

We do not think that this is a fair or a meaningful reading of the Act. Every single recommendation of a planning committee would necessarily be brought under challenge and no process of planning could ever be completed if this view was to be taken.

37. Extremely important is sub-section (4) highlighted above. This tells us that after the planning committee's report is received the planning authority is to consider the report including the suggestions and objections received and then make a list of these modifications or changes and have them reflected in the draft DP as the planning authority considers proper. Then this requires a fresh publication in the official gazette and in newspapers. Thus, the planning authority 'considers' the recommendations of the planning committee. Not all recommendations must necessarily be accepted.

38. Then comes Section 30. Sub-section (1) tells us that the planning authority must submit the draft DP along with a list of all modifications or changes made in it under Section 28(4) to the State Government for sanction within six months from the date of publication of the notice in the official gazette regarding its preparation under Section 26. This time may be extended as per the population of Municipal Corporations.

39. Then comes Section 31. This is where the State Government sanctions a draft DP. This is important because it tells us of the additional latitude that is afforded to the State Government even at the time of sanction. So far, the structure tells us that the planning authority is required mandatorily to prepare a DP. Its contents are defined. Its periodicity is known. Even the intention to prepare it has to be publicised. The draft DP has to be notified. Suggestions and objections are to be invited. These are to be considered and a hearing is to be given by the

special planning committee. That planning committee then makes a report to the planning authority. The planning authority then reflects such of the changes that it accepts in the draft DP that it submits to the Government for final sanction.

40. Section 31 says this:

“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, **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:

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by 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 Committee (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.

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 substantial 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.

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 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 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.

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.

(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 purpose in the Development Plan, unless it is 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.

(Emphasis added)

41. As the emphasised portions show, the State Government enjoys discretion under Section 31(1). It may sanction the draft DP as submitted to it for the whole area. It may sanction it separately for a part of that area. And it may do so either without modifications or subject to such modifications as the State Government considers proper. It may also return the draft DP to the planning authority for modifying the plan according to State Government directions. It may direct or refuse to accord sanction and it may direct the planning authority to prepare the DP afresh.

42. We pause to consider the extraordinary width and ambit of the State Government discretion. We believe we must do so because the canvas of the Petition before us is precisely the reverse, which is to narrow the amount of discretion. If that discretion conferred by statute is to be read down or to be restricted, then surely such a restriction or a reading down must find support in the plain words of the statute itself.

43. Plainly read, and leaving aside any questions for the moment of a modification of a substantial nature, the State Government enjoys plenary powers when it comes to sanctioning a draft DP. This goes to the extent of allowing the State Government not to sanction it at all. It allows the State Government to send the entire exercise back to the planning authority. Importantly it allows the State

Government to sanction it with such modifications as the State Government thinks are necessary.

44. The second proviso to Section 31(1) then tells us that where the modifications that the State Government proposes (and these include any changes proposed by the planning authority under Section 30) and which are proposed to be accepted by the State Government are of a 'substantial nature' when compared to the draft DP published under Section 26 the Government must again publish a notice in the official gazette and must once again invite objections and suggestions from any person in regard to these modifications of a substantial nature. Here again we see the concept of public participation in the planning process at play. If the modification is minor, no fresh notice or hearing is required. But if it is a modification of a substantial nature as defined in the statute itself then, on the principle that the citizen not only has a right to know but has a right to participate in the planning process, there is a statutory mandate for inviting suggestions and objections to a modification of a substantial nature.

45. The next proviso tells us that if the Government does nothing, then by a deeming fiction the draft DP as submitted is deemed to have been sanctioned on the date of the period specified. However, there is a proviso to this proviso. Any modification of a substantial nature proposed by the planning authority is not deemed to have been sanctioned merely on account of State Government inaction. That is the fourth proviso to Section 31(1).

46. Two interesting provisions are sub-section (2) and sub-section (3) of Section 31, both frequently overlooked. The first of these gives the State Government power to appoint a certain officer with a direction to hear a particular person regarding objections and suggestions and submit a report to the State Government. Sub-section (3) also tells us

that the State Government must before it sanctions a draft DP, take into consideration such suggestions and objections and the report that is made to it under sub-section (2).

47. Once the DP is sanctioned it becomes a final DP and is then binding on the planning authority.

48. In this context, and for completeness, we must note three further Sections. There is Section 37 which provides for a modification even of a final DP. This also requires inviting suggestions and objections. Section 37(1AA), added by an amendment, is a bypass provision where the State Government may directly make a modification if it is necessary to do so urgently in the public interest. Finally, Section 38 tells us that a DP must undergo a revision at least once every 20 years, i.e., that every two decades this entire cycle must start again.

49. Section 158 of the MRTP Act allows the State Government to make rules. Section 159 deals with the power to make regulations and specifically states that any regional planning authority or development authority may with the previous approval of the State Government make regulations consistent with the Act and its Rules to carry out the purpose of this Act.”

(Emphasis in the original)

24. In paragraph 57 we held that:

57. Part VII of DCPR 2034 deals with land-use classification uses permitted. Regulation 34 deals with what are called land-use zones. To describe these as unguided or uncanalised is ex facie not credible. Residential zones are mixed use zones with residential as the predominant one and other specified uses are permitted. Equally, an industrial zone is one with manufacturing as the primary activity but in addition warehousing and logistics are

permissible. New industries must not pollute, must not be hazardous and must be subject to clearance from the Pollution Control Board. Further, under this very DCR conversion of land-use can be permitted as specified in the regulations themselves.

25. Then we must also refer to paragraph 62 of *Rational Art & Press Private Limited*. In that paragraph we held:

“62. We do not believe that this is a reason to exercise our discretion. After all, we must have a regard to what it is that the Petitioner is asking us to do. In unambiguous terms, the Petitioner seeks a mandamus directing the sanctioning in a particular manner of part of a DP. This is entirely an executive exercise within the exclusive domain and jurisdiction of the State Government. The statute commands the preparation of a DP and sets out the manner in which it is done. There is no question of a writ court issuing a mandamus to the State Government to sanction a DP in a particular manner or for a particular purpose. This may be, as Dr Tulzapurkar puts it, a reflection of the concept of the State Government urban planner as an ‘urban planning omniscience’, one who knows all and determines all for the next 20 years, but if that is in fact the structure of the MRTP Act itself, then that is all there is to it. The opposite perspective is equally true, that balanced development and town planning are undoubtedly necessary. Somebody has to decide these matters. It can hardly be left to the decision of individual plot owners to decide what should be done for their respective plots without regard to the larger interest of the city itself.”

26. Mr Patil has strived long and hard to put as much distance as possible between this case and *Rational Art & Press Private Limited*.

He invites us to reappraise the contours of Section 31. We have already extracted it above. His emphasis is on the first and second provisos of Section 31(1). The first proviso is relevant because it clearly confers executive discretion on the State Government. But Mr Patil's emphasis is on the second proviso which deals with modifications of a substantial nature. We have understood his submission to be that use of the word 'shall' makes it mandatory for the State Government to not only consider an objection or suggestion but that it show *how* that suggestion or objection from the public was in fact dealt with.

27. If the word used is 'decision', then, in Mr Patil's submission, some level of reasoning is implicit and is required. The Government could not, he submits, have simply rejected the Municipal Council's proposal and reverted to the original reservation, nor could it have exercised its discretion in any other manner without there being a cogent and demonstrated basis for the final decision.

28. Equally, if the reservation was originally for a Post and Telegraph Office, the State Government could not have made a modification converting it into a residential zone, effectively deleting the reservation. That kind of a deletion would amount to a substantial modification and would require republication, the inviting of suggestions and objections afresh and so on to the end of the chapter.

29. The first argument that reasons are required is one that we have already rejected in *Rational Art & Press Private Limited*. As we

noted in that judgment, if every suggestion or objection from the undefined public is required to have a speaking order then no DP will ever get finalised. The already over crowded dockets of courts, especially writ courts will become even more congested. The statutory period of 20 years for preparation of a DP will simply come and go without any plan ever being in place because every suggestion and objection will be litigated for years on end in court. That is not the purpose of the statute. That is not the frame of the statute. Planning is to be holistic and balanced but it is essential for the orderly development of all planning areas and regions.

30. The formulation that was commended in *Rational Art & Press Private Limited* and which Mr Patil echoes even today would result in complete development planning anarchy and resultant chaos.

31. As to the question of the sufficiency of power in the State Government to sanction a plan with or without such modifications as it deems fit, we believe that Mr Patil's submission is not well founded. Section 37 of the MRTP Act deals with modification of the final DP. The Section has been modified several times. The last amended version of Section 37 reads as follows:

“37. Modification of final Development plan

(1) Where a modification of any part of or any proposal made in a final Development plan, the Planning Authority may, or when so directed by the State Government shall, within ninety days from the date of such direction, publish a notice in the *Official Gazette* and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and

shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction within one year from the date of publication of notice in the *Official Gazette*. If such modification proposal is not submitted within the period stipulated above, the proposal of modification shall be deemed to have lapsed:

Provided that, such lapsing shall not bar the Planning Authority from making a fresh proposal.

(1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government shall issue the notice, and thereupon, the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.

(1AA)(a) Notwithstanding anything contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development Plan of such a nature that it will not change the character of such Development Plan, the State Government may, on its own, publish a notice in the *Official Gazette*, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice, and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.

(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its consideration. The Planning Authority shall, thereupon, submit its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions

from the government.

(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the *Official Gazette*, publish the approved modification with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the *Official Gazette*, the final Development Plan shall be deemed to have been modified accordingly.

(1B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is satisfied that a modification of any part of, or any proposal made in, a final Development plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may publish a notice in the *Official Gazette*, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification, and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction.

(2) The State Government may, make such enquiry as it may consider necessary and after consulting the Director of Town Planning by notification in the *Official Gazette*, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development plans shall be deemed to have been modified

accordingly.”

32. Notably Section 37(1AA) which confers an even wider power in the State Government opens with a non-obstante clause. We notice that Section 37(1AA) mentions the satisfaction of the State Government to the effect that a modification is “in the public interest”. We confess that this is somewhat odd because we would be entitled to presume that everything the State Government does is always in the public interest, and it is never necessary to specifically mention it. It would be a curious day indeed when the State Government began to do things that were not in the public interest. But the emphasis there must be on the powers of the State Government which are untied, on account of the non-obstante clause, to the previous sub-sections of Section 37 which deals with modifications to a final DP.

33. Section 22A of the MRTP Act added by the 2011 amendment defines what is meant by a ‘modification of a substantial nature’. To leave no room for ambiguity, we reproduce Section 22A.

“22A. Modification of substantial nature

In Section 31, the expression “of a substantial nature” used in relation to the modifications made by the State Government in the draft Development Plan means,—

(a) any modification to a reserved site resulting in reduction of its area by more than fifty per cent or reduction of such amenity in that sector by an area or more than ten per cent in the aggregate;

(b) insertion of a new road or a new reservation or modification of a reserved site or a proposed road widening resulting in inclusion of any additional land not so affected

previously;

(c) change in the proposal of allocating the use of certain lands from one zone to any other zone provided by Clause (a) of Section 22, which results in increasing the area in that other zone by more than ten per cent in the same planning unit or sector in a draft Development Plan;

(d) alteration in the Floor Space Index beyond ten per cent of the Floor Space Index prescribed in the Development Control Regulations.”

34. Clearly the question is not merely of deleting or retaining a reservation or of changing zoning. The degree of modification is necessarily to be gauged by the amount of the area affected and is calculated on percentage terms or insertion of a new reservation or modification of an existing reservation. Mr Patil submits that the deletion of the reservation — and we note that he is not claiming that the Petitioner has a fundamental right to a Post Office — required republication and could not have been effected in the manner in which it was done by the State Government itself absent a proposal from the Municipal Council.

35. But the argument cannot be that if the modification is substantial, it cannot be effected at all. All that the Act says is that for substantial modifications, re-publication for suggestions and objections is necessary. It does not say that substantial modifications are forbidden or prohibited.

36. In this case, the State Government accepted the fact that what was being proposed was indeed a substantial modification and *in fact followed the process and procedure mandated by law*. This has two consequences. Clearly, there is no violation of procedural due process or of a violation of the due process required by the statute.

37. The argument then is that to this republication the Petitioner had submitted suggestions and objections including the submission that the proposed modification was mala fide and intended to benefit Respondents Nos 3 to 6. But that is not an assumption that can validly be made. The deletion of every reservation will undoubtedly benefit some land holder. That does not automatically make every modification resulting in a deletion of a reservation mala fide. Something more will have to be shown and mala fides in law especially in a Writ Petition are never to be assumed. Indeed, the Supreme Court itself has on more than one occasion remarked that allegations of mala fides are the last resort of the losing litigants.¹

38. Mr Patil's argument seems to be that since the deletion allegedly benefitted the landholder, therefore it was necessarily mf; therefore, the Petitioner's submission or objection had to be upheld; if not, reasons were necessary; and, therefore, the final sanction is bad and must be set aside.

39. In the exercise of such planning discretion, what the Petitioner asks us to do is to assume mala fide because the deletion of the reservation benefits Respondents Nos 3 to 6 and allows their

1 *Gulam Mustafa v State of Maharashtra*, (1976) 1 SCC 800.

construction to proceed. This is an insufficient basis on which to hold in favour of the Petitioner.

40. Any observations in the Supreme Court order are on the basis of that order itself not determinative or dispositive. They only note that these are grounds that the Petitioner could take but they required the Petitioner to make good these grounds, including of mala fides.

41. Finally there comes the question of standing or locus of the Petitioner. We do not believe that the Petitioner has sufficient locus outside of a full-spectrum Public Interest Litigation to sustain such a litigation. No prejudice or damage is shown to have been caused to the Petitioner by the deletion of the reservation. It is true that he claims to be a concerned citizen and a member of the public and one who had put in a suggestion or an objection. But that in itself will not give the Petitioner enough locus to sustain the present Petition.

42. In the result, we see no substance in the Petition. It is rejected. In the facts and circumstances of the case there will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)