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REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7862 OF 2017**

RAMCHANDRA TUKARAM MOHITE,
(Since deceased through LRs)
Age: 76 years, Occ: Agriculturist, R/o F/22,
Siddhivinayak Arcade, Patrakar Nagar,
Behind Chintamani Office, Sangli,

**Amendment carried out as per
Hon'ble Court Order Dated 13-01-
2023**

**RAMCHANDRA TUKARAM
MOHITE,**

Since deceased through heirs and L.R.'s

- 1. SUNIL RAMCHANDRA MOHITE**
Age: Adult, Occupation: Agriculture
- 2. SACHIN RAMCHANDRA MOHITE,**
Age: Adult, Occupation: Agriculture
- 3. NIRMALA RAMCHANDRA
MOHITE**
Age: Adult, Occupation: Agriculture
1 to 3 R/o F/22, Siddhivinayak Arcade
Patrikar Nagar, Behind Chintamani
Office, Sangli
- 4. SPRUHA PRATAP JADHAV**
Age: Adult, Occupation: Household
R/o S/2, Siddhivinayak Arcade,
Patrikar Nagar, Behind Chintamani
Office, Sangli.

... PETITIONER

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5. **SUNITA RAMESH**,
Age: Adult, Occupation: Household
R/o Maithri Pride Apartment,
Flat No. A-401, 5th Main 6th Cross
Opp TNR Tent House Malleshpalya,
Bengaluru 560 075

... **PETITIONERS**

~ **VERSUS** ~

1. **THE STATE OF MAHARASHTRA**,
Through its Department of Urban
Development, having its office at
Mantralaya, Mumbai.
2. **SANGLI MIRAJ AND KUPWAD
MUNICIPAL CORPORATION**,
through its Commissioner Having
office at Sangli
3. **CHHATRAPATTI SHAHU
INSTITUTE OF BUSINESS
EDUCATION AND RESEARCH
TRUST**,
University Road, Kolhapur 416 004.
4. **THE JOINT DIRECTOR, TOWN
PLANNING**,
Pune Division, Pune.

... **RESPONDENTS**

APPEARANCES

FOR THE PETITIONER	Mr Chetan Patil.
FOR RESPONDENTS NOS. 1 & 4-STATE	Mrs MP Thakur, AGP.
FOR RESPONDENT No.2.	Ms Manasi Pawar, i/b Shivaji Masal.

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

DATED : 6th December 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.** By consent, Rule is made returnable forthwith.
2. The principal objection in this Petition is to the refusal of the State Government to accept the proposed modification to a Development Plan (“**DP**”) and, instead, in exercise of its discretion as the sanctioning authority under the Maharashtra Regional Town Planning Act, 1966 (“**the MRTPA Act**”), to revert the land to the purpose for which it was originally sanctioned or reserved initially.
3. The land in question is Gat No 432/4 admeasuring 87 Ares in the jurisdiction of the Sangli Miraj and Kupwad Municipal Corporation (“**the SMKMC**”).
4. The 1st Respondent is the State Government through its Urban Development Department. The 2nd Respondent is the Municipal Corporation. The 3rd Respondent is the Chhatrapati Shahu Institute of Business Education And Research Trust, Kolhapur. The 4th Respondent is the Joint Director, Town Planning, Pune Division.
5. On 7th September 2000, the Municipal Corporation made a declaration following its Resolution No 78 of 20th July 2000. That

declaration was under Section 23(1) of the MRTP Act of the Municipal Corporation's intention to prepare a Development Plan ("DP") for the recently formed SMKMC. The process of preparation of a DP is time-consuming: there are several stages at which an official notification or publication is mandated, followed by a period during which suggestions and objections are allowed to be submitted, then there is to be hearing, following which all objections are to be considered, and then a final report is made. There may or may not be modifications and there are provisions in the Act, as we shall presently see, of the procedure to be followed (including re-publication, fresh suggestions and objections, etc) where a modification is of a substantial nature.

6. While we have dealt with some of these aspects in our recent judgment in *Rational Art & Press Private Limited v State of Maharashtra through the Principal Secretary and Ors*,¹ it will be fruitful to quickly survey the relevant portions of the statute.

7. Section 2 contains definitions and, of these, definitions of 'amenity' in Section 2(2), 'development' in Section 2(7), 'development plan' Section 2(9) and 'planning authority' in Section 2(19) are important. They read:

(2) "amenity" means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply,

¹ 2023 SCC OnLine Bom 2272 : *Neutral Citation*: 2023:BHC-OS:12183-DB.

street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences.

(7) “*development*” with its grammatical variations means the carrying out of buildings, engineering, mining or other operations in or over or under, land or the making of any material change, in any building or land or in the use of any building or land or any material or structural change in any heritage building or its precinct and includes demolition of any existing building, structure or erection or part of such building, structure of erection; and reclamation, redevelopment and lay-out and sub-division of any land; and “to develop” shall be construed accordingly.

(9) “*Development Plan*” means a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a special planning Authority for development of land within its jurisdictions;

(19) “*Planning Authority*” means a local authority; and shall include,—

(a) a Special Planning Authority constituted or appointed or deemed to have been appointed under section 40; and

(b) in respect of the slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act;

8. Title of Chapter III deals with Development Plans. Section 21 is in the first portion of Chapter III regarding the declaration of intention, preparation, submission, and sanction to the DP. Section

21 deals with the DP and Section 22 deals with the contents of a DP. Of immediate importance here are the provisions of Section 22A introduced by amendments which tells us what modifications of a substantial nature are. Under Section 23, a planning authority must, before it surveys and prepares an existing land use map as required by Section 21, resolve to make a declaration of its intention to prepare a DP and a copy of this resolution is to be sent to the State Government. The declaration is to be published in the Official Gazette. Then Section 25 has provisions for the survey and preparation of existing land use maps. Then we come to Section 26, which deals with the preparation and publication of notice of a draft DP. There is thus even up to this stage of a draft DP a sequencing to the process of preparing a DP.

9. The reason is self-evident. In the context of a large urban area, civil engineering and civic planning require that the planning authority and the sanctioning authority take into account myriad factors. Public participation is the *sine-qua-non* of the planning process. After all planning is — at least supposedly — for the citizens and residents of a municipal corporation area or city, and therefore there are these provisions for hearing suggestions and objections from the public.

10. We note this because the effect of at least one of the submissions seems to us to be that a submission or objection from an individual stakeholder is necessarily dispositive of the issue and if the State Government does not accept that suggestion or objection, then that decision is always subject to judicial review.

11. We have in *Rational Art & Press Private Limited* rejected precisely this argument. We have been told that our judgment is distinguishable. On this aspect of the law, we do not believe it is.

12. To return to the chronological narrative, the Municipal Corporation prepared and published a notice under Section 26(1) of the draft DP and invited suggestions and objections. In this draft DP, the property in question at Sangli which belongs to the Petitioner was shown under the reservation for the 3rd Respondent Institute. The Petitioner objected on 28th April 2005. These objections are referenced in paragraph 3 of the Petition itself. The Municipal Corporation forwarded all objections and suggestions received to the Planning Committee constituted under the Act. There is no grievance that hearings did not take place; they did. The Planning Committee then submitted its report to the Municipal Corporation. This resulted in the Municipal Corporation effecting modifications to the draft DP. As regards the property in question, the Petition proceeds on the basis that there was indeed a significant or substantial modification to the original reservation for the 3rd Respondent. By that modification, this particular site (shown as Site No 177) was sought to be partly deleted and included in the residential zone and the remainder was proposed to be re-designated as a garden Site No 577.

13. One of the grievances taken in the Petition though not seriously pressed before us is that this modification required republication under Section 28(4) of the MRTP Act. That is inaccurate. The facts show that the Municipal Corporation

submitted the draft DP with the proposed modification to the State Government for sanction on 21st February 2008.

14. To understand the context of this, we must appreciate the contours of Section 26, Section 28, Section 30 and Section 31 of the MRTP Act. They read as follows:

“26. Preparation and publication of notice of draft Development Plan

(1) Subject to the provisions of section 21, a Planning Authority, or the said officer shall, not later than two years from the date of notice published under section 23, prepare a draft Development Plan and publish a notice in the *Official Gazette* and in such other manner as may be determined by it stating that the Development Plan has been prepared. The notice shall state the name of the place where a copy thereof shall be available for inspection by the public and that copies thereof or extracts therefrom certified to be correct shall be available for sale to the public at a reasonable price, and inviting objections and suggestions within a period of Thirty days from the date of notice in the *Official Gazette*:

Provided that, in case of a Municipal Corporation having population of ten lakhs or more, as per the latest census, the period for inviting objections and suggestions shall be sixty days from the date of notice in the *Official Gazette*.

Provided further that, the State Government may, on an application of the Planning Authority, by an order in writing, and for reasons to be recorded from time to time, extend the period of preparation and publication of notice of the draft Development Plan.

Provided also that, the period so extended shall not in any case, exceed,—

- (i) twenty-four months, in the aggregate, in case of Municipal Corporation having population of one crore or more, as per the latest census figures;
- (ii) twelve months, in the aggregate, in case of Municipal Corporation or Planning Authority, as the case may be, having population of ten lakhs or more but less than one crore, as per the latest census figures; and
- (iii) six months, in the aggregate, in any other case.

(2) The notice shall also state that copies of the following particulars in relation to the Draft Development 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:—

- (i) a report on the existing-land-use map and the surveys carried out for the purpose of preparation of the draft plan;
- (ii) maps, charts and a report explaining the provisions of the draft Development Plan;
- (ii-a) map showing the planning units or sectors unalterable till the Development Plan is revised;
- (iii) regulations for enforcing the provisions of the draft Development Plan and explaining the manner in which the permission for developing any land may be obtained from the Planning Authority or the said officer, as the case may be;
- (iv) a report of the stages of development by which it is proposed to meet any obligations imposed

on the Planning Authority by the draft Development Plan;

(v) an approximate estimate of the cost involved in acquisition of lands required by the Planning Authority for the public purposes, and also cost of works, as may be necessary.

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.”

30. Submission of draft Development Plan

(1) The Planning Authority or as the case may be, the said Officer shall submit the draft Development Plan along with the list of modifications or changes made in the draft Development Plan under sub-section (4) of section 28 to the State Government for sanction within a period of six months from the date of publication of the notice in the *Official Gazette*, regarding is preparation under section 26:

Provided that, the State Government may, on an application by a Planning Authority or the said officer, by an order in writing, and for adequate reasons which shall be recorded, extend from time to time, the said period by such further period as may be specified in the order, but not in any case exceeding,—

- (i) twenty-four months, in the aggregate, in case of Municipal Corporation having population of one crore or more, as per the latest census figures;
- (ii) twelve months, in the aggregate, in case of Municipal Corporation having population of ten lakhs or more but less than one crore, as per the latest census figures; and
- (iii) six months, in the aggregate, in any other case.

(2) The particulars referred to in sub-section (2) of section 26 shall also be, submitted to the State Government.

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)

15. This tells us that after the publication of the declaration, the preparation of the land use map and the surveys, the publication of a draft DP, inviting of suggestions and objections, the considering of those objections to the draft DP under Section 28, the planning authority must then submit that draft DP under Section 30 to the State Government for sanction. This takes us directly to Section 31, quoted above, as to what it is that the State Government can and must do when it is sanctioning a DP.

16. We note here, incidentally, that it is not contentious that a DP must statutorily be revised every 20 years.

17. The modifications in question were published by the Government under a Notification dated 29th June 2009 (the Gazette is dated 30th July 2009).

18. The State Government then sanctioned the draft DP submitted to it in part i.e., not fully, on 4th April 2012. Certain portions submitted to it were excluded from the sanction and these were then known as Excluded Parts. In further documentation these

are always prefixed with the letters EP meaning 'Excluded Part'. According to the Petitioners, the EPP-42 for Plot 177 was then re-designated as a 'technical institute'. The Petitioner objected once again on 20th February 2015. Another round of hearings took place. The Petitioner was even allowed to put in written submissions. Copies of these are annexed to the Petition.

19. The Director of Town Planning then made a report to the Government on 5th March 2015. However, while sanctioning the DP under Section 31(1) of the MRTP Act the State Government sanctioned EP 177 by retaining it for the 3rd Respondent Institute i.e., going back to the original reservation in the initial draft DP. This is what brings the Petitioner to Court.

20. At page 28 is a tabulation in more or less the usual form (Schedule A) of the EPPs and the substantial modifications. The column headings are at page 26. We reproduce the column headings and the entry against EPP-42 for Site No 177 at page 28 on the next page.

SCHEDULE -A

Development Plan of Sangli-Miraj-Kupwad Municipal Corporation (Second Revision)
SUBSTANTIAL MODIFICATIONS SANCTIONED BY GOVERNMENT U/S 31(1) OF MAHARASHTRA REGIONAL AND TOWN PLANNING
ACT, 1966

(Appended to Government Notification No. TPS-2015/1251/CR.363/16/UD-13, Dated 3rd March 2016)
(EP-01 to EP-58)

Modi No.	Proposals as per published Plan under Section 26 of the M.R. and T.P. Act, 1966	Proposal as per Plan submitted under Section 30 of the M.R. and T.P. Act 1966	Substantial Modifications Published by Government under Section 31(1) of the M.R. and T.P. Act 1966	Decision Taken by the Government on Published Substantial Modifications under Section 31(1) the M.R. and T.P. Act 1966
1	2	3	4	5
EPP-42	(vi) Site No. 177-Chhatrapati Shahu Institute of Business Education And Research Trust [Appropriate Authority-Chhatrapati Shahu Institute of Business Education and Research Trust].	Site No. 177 be partly deleted and included in Residential Zone and the remaining portion is redesignated as Garden Site No. 577 [Appropriate Authority-SMKMC] Site No. 178 be partly deleted and included in Residential Zone, roads and partly Reserved for various purposes, as shown on the plan.	Site No. 177 is redesignated as Technical Institute in view of the proposed design for City Park and the Institutional/Public users around it, as shown on the plan. The part of Site No. 179 (part), 186 (PS and PG), and Site No. 580 (Garden) is proposed to be deleted and included in Site No. 178 City Park, as shown on the Plan.	EPP-42 Refused to accord sanction to substantial modification. Site No. 177 is retained as Chhatrapati Shahu Institute of Business Education and Research Trust as per the Plan published under Section 26 Appropriate Authority is Chhatrapati Shahu Institute of Business Education and Research Trust.

21. Now reading these columns from left to right give us a time sequence. Column 2 shows the proposals published in the draft DP under Section 26. Column 3 shows us the proposal under Section 30. Column 4 then sets out the substantial modifications under Section 31(1) and the last Column 5 shows the decision that is assailed.

22. From this it is clear that Site No 177 was initially reserved for the 3rd Respondent Institute. As we have noted, the Section 30 modification was for a partial deletion and a re-designation of the remainder for a garden site. There then followed a substantial modification under Section 31(1) re-designating it as a technical institute but here we find in Column 4 that the reason is actually provided for this substantial modification. The reason is the proposed design for a city park and institution or public users around it as shown on the plan. This was followed by the Column 5 decision by which the State Government refused to accord sanction to the substantial modification but retained it for the 3rd Respondent as per the original Section 26 draft plan.

23. What the Petitioner really pursues is not the substantial modification, but the Section 30 re-partial re-designation and partial deletion. That was after all a modification suggested by the planning authority on an objection taken by the Petitioners.

24. The submission on law before us is that there is no 'justification' demonstrated on the record or even on an Affidavit for a reversion to the original Section 26 draft DP proposal for this

site. It is therefore submitted that the sanction by the State Government under Section 31(1) or, more accurately, the failure to sanction the modification and the reversion instead to the original reservation is unlawful, arbitrary, unreasoned, irrational and therefore susceptible to judicial review as a matter of a challenge mounted and framed under Article 14 of the Constitution of India.

25. Reference is also invited to Section 31(5) of the MRTP Act and which we have set out above. The submission is that where a reservation is for a public purpose and in this case presumably, a technical educational institution is covered by Section 22(b) of the MRTP Act, and if this land does not vest in the planning authority, then the State Government cannot (because of the words “*shall not*”) include that reservation in the DP unless, it is satisfied that the planning authority will be able to acquire that land by private agreement or compulsory acquisition within 10 years from the date on which the DP comes into operation. The submission is that no such satisfaction as to the financial wherewithal of the Respondent corporation is demonstrated and therefore the exercise of this discretion by the State Government cannot be sustained.

26. Our attention is then invited to the Affidavit in Reply and to page 57 where, according to the Petitioners, there is a specific reference by the planning committee that regard must be had to the provisions of Section 31(5) set out above.

27. But the submission overlooks a crucial submission in that very Affidavit which we find on pages 49 and 50. We quote the relevant portions:

“3.

The Government in Urban Development Department sanctioned part area of the said draft Development Plan under Section 31 of the said Act vide notification No. TPS-2008/244/CR-1814/09/DP Sanction/UD-13 dated 4th April, 2012. Simultaneously, the Government in Urban Development Department published substantial modifications for Excluded Part (EP) and invited suggestions and/or objections from the general public on the substantial modifications and the Deputy Director of Town Planning, Pune Division, Pune was appointed as Officer to give hearing and to submit his report to the Government. Accordingly, the Government sanctioned the said Excluded Part of the said Development Plan vide Urban Development Department notification No. TPS-2015/1251/CR-363/16/UD-13, dated 3 March 2016, as specified in Schedule “A” appended thereto. The entry EPP-42 (vi) of the Schedule “A” states that “Site No. 177 is retained as Chhatrapati Shahu Institute of Business Education and Research Trust as per the plan published under Section 26 of the said act and Appropriate Authority to develop the said reservation is Chhatrapati Shahu Institute of Business Education and Research Trust Hereto annexed and marked as Exh-R-1 is a copy of the sectioned Excluded Part Notification dated 03.03.2016. This decision is taken by the Government considering minutes of Development Plan Scrutiny Committee which is annexed herewith as ‘Exh-R-2’.

Being aggrieved by the said sanction of the Excluded Part of draft Development Plan the present Petition is

preferred challenging the legality and validity of said Draft Development Plan.

I say and submit that, the Government has accorded sanction to the part area of the said draft Development Plan and the Excluded Part of the said Development Plan by considering say of Municipal Corporation in Scrutiny Committee Meeting dated 21.11. 2015 and following all the legal procedure laid down in the MR & TP Act 1966 therefore contention of Petitioner is meaningless hence to be denied.

4. I say that total land of about 28,000 sq m is under reservation out of which area admeasuring 8,700 sq m is owned by Petitioner and the balance is reserved, is kept for Chhatrapati Shahu Institute of Business Education and Research Trust, Kolhapur i.e. Respondent No.2. Hence, considering the say of other respondents the Hon'ble Court may pass suitable order as may deem fit."

(Emphasis added)

28. Whether or not to have a city park, and where to locate it, is a planning decision determined by the planning authority and the sanctioning authority. It is not for an individual to determine what or what should not be a reservation or its location.

29. Our attention also drawn to the decision of the Supreme Court in *Hari Krishna Mandir Trust v State of Maharashtra & Ors.*² That dealt with Sections 88 to 91 and other allied Sections of the MRTP Act in the context of a Town Planning Scheme. In paragraph 100, the Supreme Court held that while exercising its jurisdiction

2 (2020) 9 SCC 356.

under Article 226, a High Court is bound to exercise that power where it is shown that the Government or a public authority has failed to exercise, or wrongly exercised, discretion conferred on it by statute or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations. Before us there are no allegations of mala fides. There is no material in regard to irrelevant considerations. What is argued is that the discretion is 'wrongly exercised'. This is an exceedingly problematic formulation. It really amounts to saying that every objector is bound to have his objection favourably considered, i.e., accepted, because if it is not, it will fall within the category of a 'wrongful exercise' of discretion leading to the filing of a Writ Petition which, consequently, must automatically be allowed for the asking.

30. It is pointless to go into hypotheticals, for it is easy to see where the structure of such a submission completely collapses. In a given situation, a person may object to one part of a DP. But another person may object to that objection or may put in a suggestion supporting the proposal. It is undoubtedly for the State Government then to decide which to accept and which to reject because it cannot possibly accept both. But on the present formulation canvassed before us, it would necessarily mean that if one submission is for any reason rejected then discretion must be held or deemed to have been 'wrongfully exercised'. That can never be.

31. This is too far-fetched a submission to merit acceptance. The whole purpose of objections, hearings and suggestions is not to chip and chop a DP to the liking or disliking of individual plot holders but

to involve citizenry in the planning process. This is a process of consultation. Unlike certain other quarters, in this case 'consultation' does not mean concurrence. But that is the unfortunate effect of the submissions of the Petitioners before us. Indeed, it is a sobering thought that if this submission is accepted no DP will ever get finalized or sanctioned, at least not within the 20-year time frame after which it is required to be revised all over again.

32. This was precisely our finding in our judgment in *Rational Art & Press Private Limited*. Individual concerns must, in the context of civil engineering and civic planning for a large command area, yield to what is perceived to be the greater public need. That perception and that decision is of the sanctioning authority. At every stage, there is a process of transparency ensured by inviting suggestions and objections, consultation with the planning authority and so forth. But this does not mean that the sanctioning authority is robbed of its discretion and must only *accept* every suggestion or objection. It also does not mean that every suggestion and objection must be met with a detailed reasoned order for its acceptance or rejection. Such a submission is only to be stated to be rejected.

33. It is not possible to accept the submissions of the Petitioner. We find no merit 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)