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

WRIT PETITION NO. 3416 OF 2021

Monito Export Pvt. Ltd. ... Petitioner
Versus
The State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION NO. 9827 OF 2022

The Kolhapur Municipal Corporation
Through The Commissioner and Anr. ... Petitioners
Versus
Tukojirao Drushnajirao Pawar
Through Constituted Attorney
of Monito Export Pvt. Ltd.
Changdeo Ghumare and Ors. ... Respondents

Mr. Pradeep D. Dalvi for the Petitioner in WP/3416/2021 and for
Respondent No. 1 in WP/9827/2022.
Mr. Abhijit M. Adagule for the Petitioner in WP/9827/2022 and for
Respondent Nos. 2 & 3 in WP/3416/2021.
Mrs. M. P. Thakur, AGP for the State.

**CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.**

DATE: 19th APRIL, 2023.

ORAL JUDGMENT (Per G. S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.
2. These are two writ petitions. Writ Petition No. 3416/2021 is filed by Monito Export Private Limited through its director Prashant

Changdeo Ghumare, (for short “the Petitioner”) primarily against Respondent No. 2, Kolhapur Municipal Corporation (for short “**Municipal Corporation**”), praying for reliefs *inter-alia* that a direction be issued to Municipal Corporation and also its Assistant Director of Town Planning-Respondent No. 3, to sanction layout plan in respect of the petitioner’s plot of land in a time bound manner, as per the orders passed by the State Government, on petitioners appeal filed under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 (for short, “**the MRTP Act**”) dated 05/11/2018 in case no. TPS-2118/Case No. 327/18-UD-13. The second writ petition (Writ Petition No. 9827/2022) is filed by the Municipal Corporation against the petitioner, assailing the orders dated 05/11/2018 passed by the State Government on the said appeal filed by the petitioner under Section 47 of the MRTP Act.

3. For convenience, the substantive prayers made in both the writ petitions, are required to be noted below:-

“Writ Petition No. 3416/2021 :

(a) Issue an appropriate writ, order, or direction and direct the Respondent Nos. 2 & 3 to sanction the layout plan of the petitioner within time bound programme, pursuant to the order passed by the Hon'ble Minister of State for Urban Development, Mantralaya passed on 05/11/2018 vide its No. TPS-2118/Case No. 327/18-UD-13 and

(b) Pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to direct the Respondent Nos. 2 & 3 to sanction the layout plan of the petitioners within time bound programme, pursuant to the order passed by the Hon'ble Minister of State for Urban Development, Mantralaya, passed on 05/11/2018 vide its No. TPS-2118/Case No. 327/18-UD-13;

Writ Petition No. 9827/2022 :

(a) Rule be issued, record and proceedings be called for;

(b) This Hon'ble Court be pleased to quash and set aside the impugned judgment and order dated 05/11/2018 passed by Respondent No. 2 in an appeal filed under Section 47 of the MRTTP Act by Respondent No. 1 and further be pleased to dismiss said appeal filed by the Respondent No. 1 and

(c) Pending the hearing and final disposal of the present writ petition, the effect, implementation, and execution of the judgment and order dated 05/11/2018 passed by Respondent No. 2 in the appeal under Section 47 of the MRTTP Act be stayed/suspended."

4. The litigation being pursued by the petitioner has some history. This is in fact the sixth proceeding, which has come to this Court, on the subject matter of the property in question.

5. Shortly stated the facts are:-

The petitioner in the year 1983 purchased the land in question described as Revision Survey No. 1104, admeasuring about H19.35R, equivalent to 193800 square meters situated at 'A' Ward, Rankala Lake at Karveer, Kolhapur from its Owner-Maharaja of Devas sometime. Prior thereto the Maharaja of Devas through its Constituted Attorney had submitted a proposal to the Municipal Corporation for part development of the said land as part of the land was occupied by what was described as a heritage building known as "**Shalini Cinetone**". There were disputes in regard to the said structure situated on the part of the land on an alleged claim that the structure was a heritage structure. As the dispute was not resolved, the petitioner submitted a proposal to the Municipal Corporation for development for the part of the land not occupied by the said structure. On such application, the petitioner's proposal for sanction of the layout of property bearing Revision Survey No. 1104, was tentatively approved by the Municipal

Corporation on 26/09/2003 as also final layout was approved by the Municipal Corporation on 26/03/2004.”

6. It is the petitioner's case that the structure, which was used for "Shalini Cinetone", was on Plot Nos. 5 & 6, and an additional 5% of the total area was kept as amenity space adjacent to Plot Nos. 5 & 6 as per Rule 57 of the prevailing Bye-laws. To comply with such conditions, an indemnity bond was called upon to be submitted by the petitioner to the Municipal Corporation, which was submitted by the petitioner on 25/03/2004 which recorded that Plot Nos. 5 & 6 were carved out being occupied by "Shalini Cinetone" including the amenity and open space and its reservation, and the same shall not be used for any other purpose.

7. Later on it appears that the State Government by Government Resolution dated 30/06/2003, deleted "Shalini Cinetone" from the list of heritage structures (Grade-III). In pursuance of such deletion of "Shalini Cinetone" from the list of heritage structures, the designated reservation as per Section 22 of the MRTP Act was required to be deleted from the Development Plan. The petitioner also intended to develop Plot Nos. 5 & 6. An application for a development permission was accordingly made by the petitioner on 28/09/2012. The Municipal Corporation, however, did not decide on such an application of the petitioner. This made the petitioner to approach this Court by filing Writ Petition No. 9355/2013. Such writ petition came to be disposed of by a Division Bench of this Court, by an order dated 09/10/2013, whereby this Court directed the Assistant Director of Town Planning, Kolhapur Municipal Corporation to decide the

petitioner's application/representation dated 28/09/2012, on merits and in accordance with law within a period of three months from the date of Court's order.

8. In pursuance of the said directions of the Division Bench, the designated officer of the Municipal Corporation considered the petitioner's application for grant of a development permission. However, the designated officer held that although the building "Shalini Cinetone" was removed from the list of heritage structures, in the sanctioned development plan the reservation of plot in question for "Shalini Cinetone" had continued. It was observed that unless a modification is made in the Sanctioned Development Plan as per the provisions of Section 37 of the MRTP Act, the proposal submitted by the petitioner cannot be considered. On such backdrop, the petitioner was required to file another writ petition in this Court being Writ Petition No. 2596 of 2014 assailing the said order dated 16/01/2014 passed by the designated officer/Commissioner of Kolhapur Municipal Corporation. In such writ petition, the petitioner contended that as the building "Shalini Cinetone" was removed from the category of "heritage structures", the stand of the designated officer/Municipal Commissioner that there was a reservation due to such heritage structure would not hold good and/or was illegal. The petitioner also contended that the petitioner intended to develop the property in accordance with the Regulation 59 of the Development Control Regulations. A Division Bench of this Court considering the rival contentions, disposed of the said writ petition by an order dated 18/06/2015 in terms of the following observations:-

“ The challenge in this Petition under Article 226 of the

Constitution of India is to the order dated 16 th January 2014 passed by the Commissioner of Kolhapur Municipal Corporation. The order holds that though the building “Shalini Cinetone” has been removed from the list of Heritage Structures, in the sanctioned Development Plan, the reservation of the plot in question for “Shalini Studio” continues. The impugned order, therefore, records that unless a modification is made to the sanctioned Development Plan by taking recourse to Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”), the proposal submitted by the Petitioner cannot be considered.

2. The submission of the learned counsel appearing for the Petitioner is that admittedly the building “Shalini Cinetone” has been removed from the category of “Heritage Structures”, and therefore, the stand taken that there is a reservation cannot be taken into consideration. He submits that the Petitioner intends to develop the property in accordance with the Regulation No.59 of the Development Control Regulations.

3. There is no material on record to controvert the conclusion recorded in the impugned order that the reservation in the sanctioned Development Plan continues.

4. Therefore, this Petition under Constitution of India cannot be entertained. Article 226 of the If the contention of the Petitioner is that there is no such existing reservation in the sanctioned Development Plan, it is for the Petitioner to make an appropriate representation to the Municipal Corporation alongwith necessary documents. If the reservation continues, remedy of the Petitioner is to apply either to the Municipal Corporation or to the State Government for initiating proceedings under Section 37 of the MRTP Act.

5. Subject to what is observed above, the Petition is rejected."

9. In pursuance of the observations, as made by this Court in the aforesaid order, the petitioner filed a fresh representation on 22/09/2015, requesting the Municipal Corporation to sanction the layout plan in respect of the land in question considering the fact that the structure was no more recognised as a heritage structure being

deleted by notification issued by the State Government. However, again such representation came to be rejected by the Municipal Corporation by an order dated 15/10/2015. In these circumstances, the petitioner again approached this Court by filing a writ petition bearing No. 12204/2015, *inter-alia* praying that the order dated 15/10/2015 passed by the Municipal Corporation, rejecting the petitioner's application dated 22/09/2015 (bearing no. 1/1471) for necessary sanction of the layout by amalgamating Plot Nos. 5 & 6 (reservation for "Shalini Cinetone") out of the property bearing Revision Survey No. 1104 under Section 44 of the MRTP Act, be set aside and for a direction to the Municipal Corporation, to allow the proposal/application of the petitioner for amalgamation of Plot Nos. 5 & 6 and sanction of the layout. A Division Bench of this Court by its judgment and order dated 05/12/2016, allowed said writ petition, whereby the order passed by the Commissioner of the Municipal Corporation, rejecting the petitioner's proposal dated 22/09/2015, was quashed and set aside, with a direction to the Municipal Corporation to decide the petitioner's application dated 22/09/2015 (no. 1/147) afresh and take necessary action within six weeks from the date of said order. The detailed observations, as made by the Division Bench of this Court, which are quite significant in the present context, are required to be noted, which read thus:-

"8. Having considered the rival submissions of the respective counsel and having gone through the petition along with its annexures and affidavit-in-reply, we find merit in the petition. In the revised Development Plan of 1999, revision survey No.1104 was included in commercial zone and the same is shown for the purpose of "Shalini Cinetone". The area of this survey number was H19 and 35R and admittedly, the petitioner was the owner of this survey number as well as the structure standing thereon which was known as "Shalini Cinetone". In the year 2003, the petitioner submitted the proposal of

layout of the property bearing revision survey No.1104 and this layout was also finally approved on 26th March, 2004. During this time, the General Body of Kolhapur Municipal Corporation passed resolution on 30th June, 2003, resolving to initiate modification proposal under Section 37 of the MRTTP Act to include the provisions of regulations for conservation of heritage buildings/precincts/natural features along with list of heritage buildings/precincts/natural features in the Development Plan and notice regarding the said modification was also published in the Maharashtra Government Gazette on 25th September, 2003. The structure known as “Shalini Cinetone” was included at serial No.8 in Heritage Sites (Grade III). It is apparent that in the light of draft heritage list published by Kolhapur Municipal Corporation, in which, “Shalini Cinetone” was shown at serial No.8 in Heritage Sites (Grade-III), the petitioner’s proposal for layout of revision survey No.1104 was approved on the condition that plot Nos. 5 and 6, on which, the structure of “Shalini Cinetone” was standing shall remain reserved for the said purpose and the same shall not be used for any other purpose. The petitioner was accordingly directed to give indemnity bond and, accordingly, the petitioner has also given indemnity bond on 25th March, 2004. The Municipal Corporation, however, failed to take further steps as contemplated under Section 37 of the MRTTP Act and the Government was constrained to appoint Deputy Director of Town Planning, Pune Division under Section 162 of the MRTTP Act to complete the procedure. The Government thereafter followed the procedure and granted approval to the modification proposal to include the provisions of regulations for conservation of heritage buildings/precincts/natural features along with list of heritage buildings/precincts/natural features in the Development Control Rules of Kolhapur Municipal Corporation. However, while granting sanction under Section 37(2) of the MRTTP Act, the structure of “Shalini Cinetone” is deleted from the Heritage Sites (Grade-III). The Government dropped the structure of “Shalini Cinetone” from the Heritage Sites (Grade-III) on the representation dated 17th March, 2011, of the Corporation itself. In this representation, it is stated that the structure of “Shalini Cinetone” consists of a shed and is in a dilapidated state. The Corporation has also stated that as on date, no activity related to cinema or ancillary activities are undertaken in the said structure. The Corporation, therefore, represented to the Government to drop the said structure from the list of heritage structures.

9. In these circumstances, condition No.10 imposed while sanctioning earlier layout of revision survey No.1104 as well as the

indemnity bond given by the petitioner to the effect that plot Nos. 5 and 6 will remain reserved for “Shalini Cinetone” and the same cannot be used for any other purpose would not continue to operate. In other words, in view of the subsequent development viz. deletion of “Shalini Cinetone” from the list of heritage sites (Grade-III) by the Government while granting sanction to the modification proposal under Section 37 of the MRTP Act, the petitioner is entitled to develop the said land viz. plot Nos. 5 and 6 in accordance with the Development Control Rules of Kolhapur Municipal Corporation.

10. This takes us to consider the submission of respondent-Corporation that though the structure of “Shalini Cinetone” is dropped from the Heritage Sites (Grade – III), nevertheless, the said structure is designated reservation as contemplated under Section 22 of the MRTP Act. The Corporation, in support of this submission, relied upon the revised Development Plan of 1999 as well as earlier approval of the layout plan in respect of revision survey No.1104. The Corporation submitted that in the said revised Development Plan, revision survey No.1104 was included in commercial zone and was shown for the purpose of “Shalini Cinetone”. It is also the submission of the Corporation that in view of Rule 57 of the Development Control Rules of Kolhapur Municipal Corporation, two plots viz. plot Nos. 5 and 6 of revision survey No.1104 have been reserved and their status as per Development Plan continues to be under reservation. The submissions though appear to be attractive, on deep scrutiny of the relevant documents, are liable to be rejected.

11. The Corporation has provided list of reservations in Kolhapur City to the petitioner in pursuance of query under Right to Information Act, 2005. This list is annexed to the petition at pages 51 to 99. Perusal of this list, makes it clear, that there is no reference of revision survey No.1104 or “Shalini Cinetone”. Therefore, the stand of the Corporation that this entire revision survey No.1104 was reserved for “Shalini Cinetone” in the revised Development Plan of 1999, does not stand scrutiny of law. This conclusion is supported by the fact that the Corporation itself approved the petitioner’s proposal for layout of property bearing revision survey No.1104 in the year 2004. Had the entire revision survey No.1104 reserved for “Shalini Cinetone” in the revised Development Plan of 1999, the petitioner’s proposal for layout of the said property would not have been approved. The fact that the Corporation approved the petitioner’s proposal for layout plan of property bearing revision survey No.1104 in the year 2004 itself shows that the said property was not designated or reserved for “Shalini

Cinetone” in the revised Development Plan of 1999. It is also clear to our mind that while approving the petitioner’s proposal for layout of the property bearing revision survey No.1104, condition No.10 to the effect that plot Nos. 5 and 6 would be reserved for “Shalini Cinetone” and the same would not be used for any other purpose, was inserted in the light of inclusion of “Shalini Cinetone” in the draft heritage list, and since, the Government in exercise of powers under Section 37 of the MRTTP Act dropped “Shalini Cinetone” from the list of heritage sites (Grade-III), the petitioner is entitled to develop the same in accordance with the Development Control Rules of the Kolhapur Municipal Corporation.

12. The submission of the Corporation that in view of Rule 57 of the Development Control Rules, the said two plots viz. plot Nos. 5 and 6 of survey No.1104 along with amenity space have been reserved and their status as per Development Plan continues to be reserved, is also liable to be rejected. Under Rule 57, in any layout exceeding 2 hectares in area in residential or commercial zones, where the development plan has not provided for amenities and services, or if provided they are inadequate, 5% of the total area shall be designated or reserved as amenity space for provision of primary schools, sub-post office, police posts etc. as directed and approved by the Commissioner, and such amenities or facilities shall be deemed to be designations or reservations in the development plan thereafter. The petitioner’s proposal for layout of the property bearing revision survey No.1104 was approved only after taking into consideration the provisions of Rule 57. The approved layout plan shows that the required 5% amenity space as per the provisions of the prevailing Development Control Rule 57 is kept by the petitioner adjacent to plot Nos. 5 and 6.

13. So far as 5% amenity space is concerned, the petitioner is not entitled to develop as same is deemed to be designation or reservation in the Development Plan. However, this 5% of amenity space has nothing to do with plot Nos. 5 and 6. The said plots cannot be said to be amenity space. However, in the light of condition No.10, the same were reserved for “Shalini Cinetone” and not to be used for any other purpose. As stated above, the condition was imposed in view of inclusion of “Shalini Cinetone” in the draft list of heritage structures and since the said structure is deleted by the Government while granting final approval under Section 37(2) of the MRTTP Act, the petitioner is entitled to develop the said plots in accordance with the Development Control Rules of the Kolhapur Municipal Corporation.

14. In the light of the discussion made hereinabove, the impugned order dated 15th October, 2015, rejecting the petitioner's proposal dated 22nd September, 2015, cannot be sustained and the same is, accordingly, quashed and set-aside. The respondent-Corporation is directed to process the petitioner's application dated 22nd September, 2015 bearing No.1/1471 afresh and take necessary action within six weeks from today in the light of the observations made hereinabove and in accordance with the Development Control Rules.

15. Rule is made absolute in above terms. The writ petition is, accordingly, disposed of."

10. On the aforesaid backdrop, the Municipal Corporation was required to consider the order dated 05/12/2016, passed by the Division Bench of this Court and process the petitioner's application dated 22/09/2015 afresh and take necessary action within six weeks from the date of order in the light of the observations made and in accordance with the Development Control Rules.

11. It appears that the Heritage Conservation Committee also rejected the amalgamation proposal and hence, the petitioner was required to submit a fresh proposal/application to the Heritage Conservation Committee, pointing out all the material. By an order dated 31/05/2017, the Municipal Corporation again rejected the proposal of the petitioner. The petitioner, however, being of the opinion that the rejection by Municipal Corporation of its proposal as per directions of the Division Bench of this Court dated 05/12/2016, was not appropriate and in violation of the order passed by this Court, approached this Court by filing Contempt Petition (Stamp) No. 3976 of 2017 in Writ Petition No. 12204 of 2015. The said contempt

petition was disposed of by an order dated 06/06/2017, passed by the Division Bench of this Court permitting the petitioner to assail such rejection of the petitioner's proposal in independent proceeding, inter-alia observing that the remedy, if any, for the petitioner was to challenge the communication dated 31/05/2017 of the Municipal Corporation in accordance with law. Accordingly, the said contempt petition was disposed of.

12. The petitioner on the above backdrop, approached the State Government by an appeal filed under the provisions of Section 47 of the MRTP Act, assailing the rejection of the petitioner's proposal by an order passed under Section 44 of the MRTP Act. The State Government by an order dated 05/11/2018 allowed the appeal filed by the petitioner and directed the Municipal Corporation to sanction the layout plan. The said order has continued to operate. The Municipal Corporation however being aggrieved by such order has filed the present writ petition (Writ Petition No. 9827/2022). Further the proposal dated 18/03/2021 of the petitioner to the Heritage Committee came to be rejected by the Heritage Committee by its order dated 05/05/2021.

13. We may observe that although the appeal filed by the petitioner was allowed by the State Government by an order dated 05/11/2018, on 08/01/2019, the Hon'ble Chief Minister passed an order by which the said order dated 05/11/2018 allowing the petitioner's appeal, came to be stayed. The petitioner in such circumstances was required to again approach this Court by filing a writ petition bearing No. 1671/2020. After such writ petition was filed by the petitioner, the

Hon'ble Chief Minister passed an order whereby the orders dated 13/12/2018 & 08/01/2019 granting a stay to the orders passed by the State Government on the petitioner's appeal, came to be vacated.

14. Further the Municipal Corporation after a period of more than 4 years and 257 days, filed a review petition in this Court bearing Review Petition Stamp No. 17290 of 2021, praying for review of the order dated 05/12/2016 passed by the Division Bench of this Court in Writ Petition No. 12204 of 2015. Thus, the situation was to the effect that, not only the present Writ Petition No. 9827/2022, filed by the Municipal Corporation was pending, but in addition to it such Review Petition (Stamp No. 17290/2021), filed by the Municipal Corporation, was also pending, on the subject matter in hand. The said review petition application along with the delay condonation application filed in the review petition (Interim Application No. 2754 of 2022) came to be disposed of by a Co-ordinate Bench of this Court (**Coram:** R. D. Dhanuka and Anuja Prabhudessai, J.J.), by an order dated 27/03/2023, whereby considering the rival contentions, the interim application praying for condonation of delay itself came to be rejected. Consequently, the review petition filed by the Municipal Corporation also came to be rejected.

15. In the above circumstances, in the present proceedings before us, we have heard Mr. Pradeep Dalvi and also Mr. Abhijit Adagule, learned counsel for the parties, and Mrs. M. P. Thakur, AGP for the State-Municipal Corporation.

16. The entire basis, on which the Municipal Corporation has filed

its writ petition in question (Writ Petition No.9827 of 2022) is on the ground that the Review Petition (supra) was filed by the Municipal Corporation before this Court, praying for review of the orders passed by the Division Bench dated 05 December, 2016. As seen from the above discussion, such ground, would now, not survive in view of the review petition having stood dismissed as noted above. This is also fairly conceded by the learned counsel for the Municipal Corporation. In such circumstances, in our opinion, no reliefs can be granted to the Municipal Corporation in Writ Petition No. 9827/2022. Considering such grounds, as raised by the municipal corporation, the said petition is required to be rejected.

17. Insofar as the Writ Petition No. 3416/2021, filed by the petitioner is concerned, we are of the considered opinion that the controversy in regard to the municipal corporation is put to a *quietus* by the orders dated 05 December 2016 passed by this Court in Writ Petition No. 12204 of 2015 and after which detailed orders are passed by the State Government allowing the petitioner's appeal as per provisions under Section 47 of the MRTTP Act. The challenge to the said orders passed by the State Government has also stood concluded in view of the writ petition filed by the Municipal Corporation being not entertained. Thus, the orders passed by the State Government on the petitioner's appeal have become binding on the Municipal Corporation and accordingly these orders are required to be implemented.

18. In the above circumstances, taking an overall view of the matter, we are of the opinion that Writ Petition No. 3416/2021 needs

to succeed. The Municipal Corporation shall approve the proposal of the petitioner for amalgamation and sanction of the layout in respect of the land in question. We, accordingly, allow writ petition No. 3416 of 2021 in terms of prayer clause (a), which reads thus:-

“(a) Issue an appropriate writ, order, or direction and direct the Respondent Nos. 2 & 3 to sanction the layout plan of the petitioner within time bound programme, pursuant to the order passed by the Hon'ble Minister of State for Urban Development, Mantralaya passed on 05/11/2018 vide its No. TPS-2118/Case No. 327/18-UD-13.”

19. The necessary orders be passed by the Municipal Corporation within a period of eight weeks from today.

20. Rule is made absolute in the aforesaid terms. No costs.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]