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REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3008 OF 2021

RATIONAL ART & PRESS PRIVATE LIMITED,
a company incorporated under the Companies Act, 1956, having its office at Rational House, 951-A, Appasaheb Marathe Marg, Prabhadevi, Mumbai 400 025.

...PETITIONER

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,**
through the Principal Secretary Urban Development Department, having his office at Mantralaya, Madame Cama Road, Mumbai 400 032.
- 2. DEPUTY DIRECTOR OF TOWN PLANNING, GREATER MUMBAI,**
having his office at E-Block, Insahutment, Azad Maidan, Mahapalika Marg, Mumbai 400 001.
- 3. MUNICIPAL CORPORATION OF GREATER MUMBAI,**
statutory corporation constituted under the Mumbai Municipal Corporation Act, 1888, having its office at Municipal

Head Office, Mahapalika Marg,
Mumbai 400 001.

4. **MUNICIPAL COMMISSIONER,**
Municipal Corporation of Greater
Mumbai, having its office at Municipal
Head Office, Mahapalika Marg,
Mumba 400 001.

... **RESPONDENTS**

APPEARANCES

FOR THE PETITIONER	Dr Veerendra Tulzapurkar, Senior Advocate, with Sanjay Kadam, Sanjeel Kadam, Sayalee Rajpurkar, Nitisha Lad & Soham Salvi, i/b Kadam & Company.
FOR RESPONDENT- STATE	Dr Birendra Saraf, Advocate General, with Abhay L Patki, Addl GP, with Vilasini Subramaniam.
FOR RESPONDENT- MCGM	Mr Yashodeep Deshmukh, with Kunal Waghmare, i/b Sunil K Sonawane.

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

**DATED : 6th and 9th October
2023**

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.**

2. Respondents waive service. A few days ago, we heard Dr Tulzapurkar for the Petitioner and Dr Saraf, learned Advocate General for the State Government extensively and listed the matter for orders.

3. Just south of the Ravindra Natya Mandir and Siddhivinayak Temple lies Appasaheb Marathe Marg. There is here, in the Mahim Division, a Town Planning Scheme formulated under the Maharashtra Regional Town Planning Act, 1966 (“**MRTP Act**”). This is TPS-IV. One of the plots on this, Final Plot No. 951(A), is owned by the Petitioner. On this there stands a building with the somewhat hopeful name of ‘*Rational House*’.

4. The facts are not contentious. Dr Tulzapurkar has positioned his case as one entirely on questions of law. The Rational House property is ‘zoned’ in the industrial or ‘*I Zone*’; specifically, the *I-2 Zone*. All around it, Dr Tulzapurkar says are properties that are in the residential or ‘*R Zone*’. Rational House alone is an industrial zone island in an ocean of residential zone properties.

5. Dr Tulzapurkar submits that on the face of it this zoning, even if permissible in law, which he maintains it is not, is utterly arbitrary and irrational. It is true, as we shall presently see, that under the Development Control Regulations (“**DCR**”) of 1991 and the Development Control and Promotion Regulations (“**DCPR**”), 2034 a plot in an industrial zone may be ‘converted’ into a ‘residential zone’ or may be allowed to be developed for residential purposes, but this requires the payment of a certain fee or premium

or other charge by whatever name called, as also the surrender of part of the land to the public authority.

6. There is, therefore, an Article 14 classification challenge, Dr Tulzapurkar submits, because the Rational House property's classification or categorisation, which is another word for zoning, in the industrial zone is entirely arbitrary, irrational and without any demonstrable nexus to the purposes of the Act.

7. Carrying this further, Dr Tulzapurkar submits that neither under the MRTP Act nor under any other governing statute is there a concept of "*zoning*" properly so called. This is an artificiality created by the planning authority namely the Municipal Corporation of Greater Mumbai ("**MCGM**") and it has no basis in law. More importantly, in his submission, the zoning exercise is entirely without governing or controlling guidelines. Assuming, therefore, that zoning is permissible, the power to zone, i.e., the power to include or exclude a particular property from a particular zone cannot be an unfettered or uncanalised discretion. Unless it is shown that the zoning follows certain established and discernible guidelines, such a zoning has no sanctity in the eyes of the law.

8. If this is so, then there is no question of the Petitioner being asked to pay anything for putting its property to residential use, nor of ceding any portion of the property to the public authority. That would amount to an unconstitutional levy and expropriation, both.

9. Lastly, Dr Tulzapurkar submits that in a matter of planning law, public participation is essential. Indeed, public participation is the *sine qua non* of town and country planning. At every stage, significant changes, modifications and proposals are to be placed for public suggestions and objections. Of necessity, he submits, when such suggestions and objections are placed, they are required to be considered. The law is well settled that a consideration of suggestions and objections is not merely picking up the suggestions and separating them into one pile of 'accepted' and another pile of 'rejected'. There may not be a requirement of giving reasons for rejecting a proposal, presumably no reasons would be required for accepting a suggestion, the suggestion itself providing its own reason. But at the very least it must be demonstrated that the suggestion or objection in question was in fact considered. To this extent, he submits, if it is shown that the suggestions raised by the Petitioner to a proposed zoning of the Rational House property in the industrial zone were not even considered, then it is necessarily subject to judicial review of administrative action and a writ can certainly issue at the instance of the Petitioner.

10. The submissions are contested by the learned Advocate General. He counters each one of them in turn. There is no arbitrariness in the classification or categorisation, Dr Saraf submits, for it is well established that categorisation is nothing but the creation of sets. It is entirely permissible, whether in logic or in law, to have a set of one. This is as well known to mathematics as it is to law and it is equally valid in both. Merely because the Petitioner's property alone happens to be in an industrial zone, therefore, it does not automatically follow that there is arbitrariness in classification.

Indeed, in a city like Mumbai it is the more common experience that zones are intermingled and in a given geographical area there are interspersed industrial, commercial and residential zones.

11. It is also incorrect to say that there is no concept of “zoning” in our planning law. It is very much there and the Act itself contemplates what is called a ‘*land-use map*’. The actual terminology is irrelevant. Whether one calls it land-use or zoning makes no difference. The DCR from 1991 or perhaps even earlier, and certainly both DCR 1991 and the DCPR 2034 have detailed provisions for land-use in the form of the creation of Industrial or ‘*I Zones*’, Residential or ‘*R Zones*’ and Commercial or ‘*C Zones*’. Within each zone the kind of activity is specified. It is impossible to suggest, therefore, that zones are undefined and undefinable. Both are clearly defined. It may well be argued that a zone is defined by the uses that are permissible within it apart from being plotted on an actual map. The actual map is only a graphic representation for ease of reference or convenience of the various types of land- use determined by those who finally sanction a Development Plan (“DP”).

12. Dr Saraf accepts that under our planning law public participation is indeed crucial to the planning process. There are a few exceptions, where in emergent situations a government may make changes to a sanctioned DP. But the common thread in the town and country planning law is that revisions to DPs and major modifications must be placed for suggestions and objections. This

has to be done in a specified manner, i.e., by notification, by inviting suggestions and objections and by holding a hearing.

13. While this is so, Dr Saraf submits, the final decision of the sanctioning authority is in no sense and in no circumstances justiciable, i.e., sanctioning process, or the decision to sanction (or not sanction) is never subject to judicial review. The legislation itself may well be subjected to a vires challenge, as many provisions of the DCRs have been, but that is a challenge to the constitutionality of law, a very different thing from challenging as arbitrary an executive decision to bring that law into force. It is for the sanctioning authority to accept or reject a proposed DP or a modification or a revision, as the case may be, and equally to accept or reject any suggestions or objections that are invited and come from the public. Self-evidently, no reasons can ever be required for accepting a suggestion from the public. There is nothing in law to indicate that reasons must be given for rejecting a particular suggestion or objection.

14. As to the question of demonstrating that a submission has been “considered”, Dr Saraf submits that the argument is impossible to understand if it is not being contended that reasons are required. Where, for example in an arbitral award, reasons are required, then it follows that the absence of reasons means that a particular point was not considered. But if no reasons are required, then there is simply no requirement or even a method of showing that a particular suggestion was either accepted or rejected. Just as a suggestion if accepted shows implicitly the reasons for acceptance,

the reverse is equally true, namely that if a suggestion is not accepted, it necessarily means that it was found unworthy of acceptance, i.e., it was rejected. This is a simple yes/no, or true/false binary. Nothing further is ever required from the sanctioning authority and there is no provision in either the statute or in any judgment of any Court that requires a town planning authority either to give reasons for rejecting a particular suggestion or even to ‘demonstrate’ that the objection or suggestion was “considered”. Dr Saraf submits that it is exceedingly difficult to understand how he as the law officer for the State Government would ever be able to “demonstrate” that a suggestion and objection was “considered”. He could not be required to disclose any internal notes, noting or comments by the sanctioning authority. He could not disclose any notes or minutes of discussions, if there were any. At best, he would be able to show that here was a suggestion that was received and here was the final plan which did not accept the suggestion. That would automatically mean that the suggestion was considered and was found unworthy of acceptance. That is enough.

15. In this context, Dr Saraf points out that if what Dr Tulzapurkar suggests is to be accepted then the town planning process would never end. It would be constantly subjected to challenges at every single stage — with every executive action being questioned in court — and this would result in indefinite and inordinate delays in the preparation and sanctioning of development and regional plans.

16. The factual narrative need not detain us. Under the sanctioned revised DP of 1991, the Rational House property was in the general industrial I-2 Zone. The Rational House building was originally used for a printing press. In 2000–2001 the Petitioner applied to the MCGM for a change of user from printing press to information technology and for consequential changes to the building. The MCGM allowed this change of user. It granted the Petitioner a Completion Certificate on 31st August 2002. This change of user however did not amount to a change of zoning, i.e., a shift away from the general industrial I-2 zone. MCGM is the planning authority for Greater Mumbai. As we shall presently see, one of its tasks is to prepare a revised DP every 20 years. The MCGM published a draft DP by a notice of 27th May 2016. Here, it proposed to show the Rational House property in the residential or R zone. According to the Petitioner, this was commonsensical, because by this time the rest of the surrounding area had already been largely developed as residential. By a notification dated 8th May 2018, exercising its powers under Section 31(1) of the MRTP Act which is to be read with a corrigendum dated 22nd June 2018 and an addendum dated 29th June 2018, the Government of Maharashtra sanctioned the draft DP for Greater Mumbai with modifications as shown in Schedule ‘A’ to that notification. A copy of this notification is at Exhibit “B”. The substantial modifications shown in Schedule ‘B’ were not included, i.e., they did not receive sanction. The result of this was that the Government of Maharashtra did not accept the MCGM’s proposal for zoning the Rational House property in the residential zone. Instead, it was in the excluded schedule ‘B’ at Serial No. 33 numbered as EP-GS33, and was designated as being in the industrial zone. The immediately

adjoining land , i.e., Final Plot 951 was shown at Serial No. 32, also in the industrial zone. Then by the 8th May 2018 notice, the Schedule 'B' substantial modifications were published inviting suggestions and objections. On 6th June 2018, the Petitioner lodged an objection. A copy is annexed to the Petition at Exhibit "J". Paragraph 5.10 at pages 24 and 25 of the Petition contains a half-hearted submission that this change was at the instance of some mischievous person, but we propose to let that pass. This is entirely without particulars and, as it turns out, also without consequence.

17. On 11th and 17th September 2018, the Deputy Director heard the Petitioner's objections. It seems that the Deputy Director submitted a report on all the EPs or excluded portions. The Government of Maharashtra seems to have asked for inputs from the Director of Town Planning, who in turn submitted reports.

18. Finally, by a notification dated 23rd November 2020, a copy of which is at Exhibit "C", the Government of Maharashtra sanctioned certain EPs from certain wards but kept the sanction pending in regard to the other EPs. The Petitioner saw from the 2020 notification that its entry EP-GS33 was absent from the Schedule. This meant that it had not been sanctioned but was kept pending. However, it is contended, for the adjacent property, Final Plot No. 951, the Government of Maharashtra did not approve the proposal to revert to the I Zone but retained the original proposal of the residential zoning.

19. Then, on 12th March 2021, the Government sanctioned certain EPs from various wards in Mumbai under Section 31(1) of the MRTP Act. At this time, the Petitioner found that its EP-GS33 had been sanctioned, i.e., the Government had accepted the proposal to change it from the residential zone in the draft DP to an industrial zone.

20. On 19th March 2021, there came a corrigendum to the 2020 Notification. This was issued for only one EP namely the adjacent property.

21. The Petition then proceeds on the basis that without being in the residential zone the Petitioner cannot construct on this property for residential purposes. The only option is to follow the route now under DCPR 14(B) of DCPR 2034, i.e., to convert from the I-2 to the R zone. This involves paying a premium to the MCGM and delivering to the MCGM free of cost either 10% amenity in the form of open land or 5% of the built-up area worked out at a zonal or basic Floor Space Index (“FSI”) in the proposed construction. It is to this, i.e., being compelled to pay the premium and to hand over a part of the property for the conversion that the Petitioner has the most serious objection. It is for this reason that the Petitioner maintains that it is entitled in law, equity, and even common sense to have its plot in the residential zone. As Dr Tulzapurkar puts it, it makes no sense at all to have a solitary plot as an industrial plot when it is surrounded on all sides with residential plots.

22. Paragraph 6 of the Petition also contains a challenge to Regulation 14(B) of the DCPR 2034. This is more specifically set out in sub paragraph (AD) at pages 50 and 51 and reference is made to Article 265 of the Constitution of India to submit that the charging of a premium under this regulation is a compulsory extraction of money that is ultra vires. There is a similar challenge to the requirement in the same regulation to the handing over of a defined percentage of land or built-up area to the MCGM free of cost.

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 MRTTP 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.

50. There can be no dispute that DCPR 2034 like its predecessor DCR 1991 was formulated under Section 159. Notably Section 159(4) also has a provision for the draft regulations being subjected to suggestions and objections.

51. We turn to the DCPR 2034. This broadly follows the contours of DCR 1991 but with additional liberalisations and relaxations. Part III of DCPR 2034 is captioned '*Land Uses And Manner Of Development*'. This deals with Regulations 13 to 17.

52. The bulk of the argument before us really ends on a consideration of this part. Regulation 13 deals with 'Development Stipulations'. Sub-Regulation (1) captioned 'General' states that in every case of development or redevelopment of any land, building or premises, the intended use must conform to the zone uses, purpose of designation, allocation or reservation, as the case may be, unless specified otherwise. It is therefore pointless to say that there is no concept of zoning under our town and country planning law.

53. Regulation 14 deals with 'Amenities'. Regulation 14(B) deals with 'Conversion Of Industrial Zones To Residential Or Commercial Zones For Uses Permissible In Residential Or Commercial Zones'.

54. Since there is a supposedly a substantive challenge to this regulation, we will need to set it out.

“[B] Conversion of Industrial Zone to Residential or Commercial Zone for the Uses permissible in Residential or Commercial Zone

With the previous approval of the Commissioner, any open land in the Industrial Zone, (I Zone) (including industrial estates), excluding lands of cotton textile mills, may be permitted to be converted into Commercial or Residential zone for permissible uses in the Residential Zone (R Zone)

or Commercial Zone (C Zone) The area for conversion shall be considered after deduction of area under proposed DP Road/ Prescribed Regular line/Existing Municipal Road affecting the plot/s.

Such conversion shall be subject payment of the premium at the rate of 20% of Annual Schedule of Rates (ASR rate) of developed land or as may be decided by Government from time to time out of which 50% amount towards Government share shall be deposited in the office of the Deputy Director of Town Planning, Greater Mumbai and subject to the following:

(a) Conversion of Industrial Zone to Residential/Commercial Zone in respect of closed industries shall be permitted subject to NOC from Labour Commissioner, GoM.

Provided that where conversion has been permitted on the basis of this certificate, Occupation Certificate will not be given unless a no dues certificate is granted by the Labour Commissioner.

(b) However, in respect of any open land in the Industrial Zone where industry never existed, NOC from Labour Commissioner will not be required.

(c) If the land under such conversion admeasures

—

(i) less than 2000 sq. m, either 10% amenity in the form of open land or 5% of built up area worked out at Zonal (basic) FSI in the proposed construction and appropriate location preferably on ground floor shall be handed over to MCGM free of cost in the form of residential or commercial premises. Such areas shall be over and above the FSI permissible on the plot. BUA in lieu of cost of

construction of built up amenity to be handed over shall be as per the provisions of Regulation number 17(1) note 1(d).

(ii) Equal to 2000 sq. m or more amenity area to be handed over to MCGM shall be as detailed below—

Sr. No	Plot Area of conversion	% of land area as Amenity to be handed over to MCGM	Condition
1	2000 sq.m. or more, but less than 2 ha	10	Entirely shall be designated as POS
2	2 ha or more, but less than 5 ha	2000 sq.m. plus 20% of plot are in excess of 2 ha	At least 50% of the amenity shall be designated as POS
3	5 ha or more	8000 sq.m. plus 25% of plot are in excess of 5 ha	POS reservation

However, if the Developer provide constructed amenity as decided by the Commissioner on the plot to be handed over and Commissioner shall give due regard to amenity deficits in the ward. In such cases, TDR in lieu of cost of construction of built-up amenity to be handed over shall be as per the provisions of Regulation 17(1) Note 1(d).

(d) These areas will be in addition to the LOS as required to be provided under Regulation No. 27.

(e) The required segregating distance as prescribed under these Regulations shall be provided within such land intended to be used for residential or commercial purposes.

(f) Such residential or commercial development shall be allowed within the permissible FSI of the adjoining Residential or Commercial Zone.

(g) Such provisions for public utilities, amenities shall be

considered to be reservations in the DP.

(h) Public utility and amenity shall not be developed under AR as per Regulation No.17. The entire plot of amenity shall be developed entirely for the purpose of public amenity/POS as per sub regulation No 14(B)(c)(ii) above of this regulation

Note:

I. Conversion from industrial zone to residential/commercial zone shall be applicable to the part area of land holding subject to the condition that total area of the entire land holding shall be considered for deciding the payment of premium and percentage of land to be reserved for amenity, as per this Regulation.

II. In the event of DP having provided a reservation/reservations on a plot desiring conversion from Industrial Zone to Residential/Commercial Zone, the following shall apply:—

a. If the area under DP reservation to be handed over to MCGM (excluding the areas under DP roads/ road setback) is less than the required area of amenity as per this Regulation, only the additional land area shall be provided for amenity.

b. If the area under DP reservation to be handed over to MCGM, (excluding the areas under DP roads/ road setback), is more than the required area of amenity as per this Regulation, then the provision for amenity is not necessary.

c. In case plot area under conversion is less than 2000 sq. m, land component either 10% amenity in the form of open land or 5% of built up amenity shall be considered for the purpose of calculation of amenity as per note (a) and (b) above.

III. Out of the total floor area proposed to be utilized for

residential development, 20% of the same shall be built for residential tenements, each having BUA up to 50sq. m. (without fungible compensatory area) or 67.50 sq. m. inclusive of fungible compensatory area.

IV. If the development is already in progress and if full Occupation Certificate has not been granted to any of the buildings in the layout, then the land owner/developer may convert the proposal in accordance with the provisions of this Regulation subject to the following conditions:—

Conditions:

a) The revised provisions will be applicable in totality. The benefit of both old and revised Regulations shall not be allowed.

b) The benefit of revised Regulations will be applicable only in cases where (a) full Occupation Certificate has not been granted to any of the buildings in the layout and (b) required amenity or DP reservation, if any, has not been handed over to the Corporation.

V. Out of the built up area proposed to be utilized for residential purpose as per zonal basic FSI, minimum 20% built up area shall be used for commercial purpose as permissible in these regulations.

VI. If the lands for industrial units are acquired under the provisions of part VII of the land acquisition Act 1894, then prior permission of the Government is necessary before permitting residential / commercial use in such lands and additional terms and conditions mentioned in Revenue Department, G.R. No. MISC-01/2017/C.R.11/A-2, Dated. 11/01/2018 shall be applicable.”

(Emphasis added)

55. These are by no means the only provisions under the DCPR that deal with what we may broadly call 'permissible uses'. There are provisions that deal with uses, land uses, plot areas and the permissible developments in each. As a ready example, we may have reference to Regulation 26 and Table 10 which provides for the minimum plot area for various uses. We are only noting this because the concept of residential, commercial and industrial is to be found here as well. Similarly, layout and open spaces in residential and commercial layouts are specifically provided in Regulation 27. There are separate provisions for such layouts in industrial plots within that Regulation itself. Part V of the DCPR 2034 is the portion that deals with FSI. This specifies the FSI separately for residential, commercial and industrial zones. The tabulation, i.e., Table 12 shows us the zoning and the permissible FSI for residential, commercial and industrial. On the face of it, for example, residential zoning in the island city enjoys a basic zonal FSI of 1.33. Industrial zoning in the island city has a basic zonal FSI of 1.

56. This tells us that on conversion from industrial to residential the landowner would immediately get a 0.33 additional basic zonal FSI benefit.

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.

58. What the Petition seeks, as we have seen, is that this benefit must be afforded to the Petitioner without requiring the payment of a premium or the ceding to the city for public purposes of an amenity open space.

59. Such a submission has only to be stated to be rejected. The only basis for this submission is once again the fact that many of the surrounding plots are shown as residential. In this regard, we notice page 104. This is a site plan, and it purports to show 951(A), i.e., Rational House's property as commercial (it is actually industrial). Around it on other sides are said to be residential plots and, therefore, it is contended that Rational House should also be earmarked for residential use. The argument confuses zoning with an individual plot use. As we noted, a zone may include several plots or it may include a single plot. There is nothing irrational about having a single plot industrial zone although around it there may be residential zones with multiple plots. The juxtaposition of residential and commercial or residential/commercial and industrial is by no means illogical, arbitrary or antithetical to the planning process.

60. The last argument that is canvassed before us is the argument that when the Petitioner objected, and their objection was noted as having been filed, there is nothing on record to indicate that the objection was “considered”. The submission, therefore, is that the statute itself requires the objection to be “considered” and, therefore, it must be shown that the objection was taken up and somehow dealt with.

61. Page 116 shows the proposal for Rational House on CS No. 951(A) at Serial No. 6 against excluded part or EP-GS33. The draft DP proposal was that it should be in the R zone. The proposal of the draft DP submitted under Section 30 suggested that it be in the I zone in place of the R zone. A substantial modification was thus proposed under Section 30. It was this proposal that was placed before the Government and was finally sanctioned under Section 31, i.e., as an I zone. Our attention is drawn to pages 7 and 8 of a compilation. This again shows EP-GS33 at Serial No. 33 and the same modification under Section 30, i.e., to the I zone that was proposed. The submission is that the comment says that no suggestions and objections were received to the proposal and, therefore, it was sanctioned as proposed. The argument is that this shows that the objections by the Petitioner were never even considered. This sheet is actually very peculiar because the objection is actually shown in the box immediately above the row for EP-GS33 exactly as it is voiced before us today namely that there are no other industrial units surrounding but they are all residential.

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.

63. The Affidavit in Reply specifically mentions that a three-member committee was indeed constituted to consider the objections and suggestions to the draft DP and the modifications to it.

64. The argument on legitimate expectations is an argument of desperation rather than substance. No plot owner can have a legitimate expectation of any kind that his land will fall into this or

that use. The suggestion has only to be stated to be rejected. The decision of the Supreme Court in *Global Energy Ltd & Anr v Central Electricity Regulatory Commission*¹ was in a completely different context.

65. As Dr Saraf points out on the strength of *Pune Municipal Corporation v Promoters and Builders Association & Anr*,² these matters of land use, zoning, development regulations and the control of development in a city are matters mandated by a statute. A development control regulation is thus a legislative function. It is a form of subordinate legislation (possibly distinguishable from delegated legislation). The Supreme Court held that if the statute did not provide for a public hearing or a personal hearing in some sections for example making a minor modification to a final DP, then that requirement cannot be read into a statute. There is no question of reading natural justice into what is essentially a legislative Act. When a legislative body is asked to consider, it only means that the legislative body, in the course of achieving the necessary balanced development requirement, may either accept or reject a particular proposal or objection or suggestion. We hesitate to go so far as to expand this to the principle of unreasonableness. It is true that both unreasonableness, at least in the context of *Wednesbury unreasonableness*,³ and the doctrine of proportionality may both be applied in judicial review, neither prevailing over the other, but it must first be shown that the impugned action is indeed amenable to

1 (2009) 15 SCC 570.

2 (2004) 10 SCC 796.

3 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, [1948] 1 KB 223.

judicial review. Merely because there are other plots which are in a R zone does not facially make the zoning of the Petitioner's plot as industrial either arbitrary or unreasonable. This is especially so when there is a provision made in Part VII of the DCPR of land use classification and permitted uses and there is the provision as we have seen for permitting, on certain terms and conditions the conversion from one zone to another zone. In any case, that action of accepting a proposal or a modification for final sanction, is never subject to judicial review.

66. It is pointless, therefore, to assail the vires of Regulation 14(B) simpliciter. The only argument presented is that the requirement for payment of a premium or ceding of some land is unconstitutional. If the sanctioning of a development plan cannot be subjected to judicial review, and, consequently, the executive action of sanctioning a particular zoning cannot be assailed, then a Regulation that sets the terms for conversion of a zone, or prescribes conditions in which additional development is permitted is also not susceptible to challenge on this ground. Logically, it ought to have been urged suggested that wherever there are predominantly R zones there can *never* be an I zone. There is no such challenge in the present Petition; and there cannot be. There mere imposition of conditions such as premium or ceding of land are not per se or facially of manifestly arbitrary.

67. In view of this discussion, we do not believe that there is any case made out for our interference. It is always open to the

Petitioner to apply for a change of user according to the DCPR and the existing rules, norms, regulations and guidelines.

68. In these circumstances, Rule is discharged. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)