Pune Municipal Corporation & Anr vs Promoters & Builders Association & Anr on 5 May, 2004

Equivalent citations: AIR 2004 SUPREME COURT 3502, 2004 AIR SCW 3352, (2004) 3 ALLMR 621 (SC), 2004 (2) UJ (SC) 1257, 2004 (4) SLT 483, 2004 (3) ALL MR 621, 2004 (5) ACE 522, 2004 (2) HRR 57, (2004) 5 JT 191 (SC), 2004 UJ(SC) 2 1257, 2004 (5) SCALE 361, 2004 (10) SCC 796, 2004 (6) SRJ 305, (2004) 3 LANDLR 733, (2004) 3 MAH LJ 360, (2004) 4 SUPREME 308, (2004) 5 SCALE 361, (2004) 2 WLC(SC)CVL 370, (2005) 1 GCD 185 (SC), (2004) 18 INDLD 495, (2004) 6 BOM CR 787, 2004 (3) BOM LR 862, 2004 BOM LR 3 862

Bench: Chief Justice, G.P. Mathur

CASE NO.:
Appeal (civil) 3800 of 2003

PETITIONER:
Pune Municipal Corporation & Anr.

RESPONDENT:
Promoters & Builders Association & Anr.

DATE OF JUDGMENT: 05/05/2004

BENCH:
CJI & G.P. MATHUR.

JUDGMENT:

JUDGMENT (with Civil Appeals Nos. 3801/2003, 3802/2003, 3803/2003, 3804/2003)
RAJENDRA BABU, CJI. :

Whether the impugned amendment to the Development Control Rules (DCR) sanctioned by the State Government of Maharashtra is in accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966 (the Act) is the matter for consideration herein.

The Act inter alia constituted Regional Development Authorities to streamline the development planning of Greater Bombay and Pune. Respective Corporations of Bombay and Pune were nominated as Regional Development Authorities under the Act. On 8-7-1993 the Maharashtra Government issued a directive under section 37 of the Act to Pune Municipal Corporation (PMC) to amend its DCR in the line of Bombay DCR. On 30-9-1993 PMC published the proposed amendments in the Official Gazette and invited objections / suggestions in accordance with section 37(1)

> of the Act. Subsequently the State Government sanctioned the proposed amendments. On 22-8-1995 the PMC submitted a proposal for modification of the DCR without any modification in the draft regulations. Thereafter, the State Government vide Notification dated 5-6-1997 under section 37(2) of the Act sanctioned the proposal of the modification and notified the modified DCR. It is pointed out that the proposal submitted by the PMC did not contain the words "very said plot" in the proposed amendment to Rule N

2.4.11. However when the sanction was granted the State Government made certain additions to the Rules and the Rule N 2.4.11 contains the word "very said plot". The Floor Space Index (FSI) granted additionally under these rules was properly sanctioned by the PMC. Subsequently, the request to grant additional FSI was rejected by the PMC. This resulted in the present litigation. The Respondents herein challenges this amendment before the High Court on the ground that the additions made by the State Government while giving the final sanction is beyond the powers of the State Government under section 37(2) of the Act. The High Court allowed the petition on the reasoning that the language of section 37(2) nowhere allows the State Government to add conditions of its own or amendments of its own in the modifications submitted by the Planning Authority. It is also found that the State Government is bound to hear the affected parties or those who suggested modification to the proposals, before giving sanction. High Court also pointed out that on applying the principles of promissory estoppel the corporation couldn't be allowed to insist that the additional 0.4 FSI be used on the same very plot. This decision is impugned before us.

The question now for consideration is whether the State Government can make any changes of its own in the modifications submitted by Planning Authority or not. The impugned section 37 of the Act reads as follows:

> "37(1) Where a modification of any part of or any proposal made in, a final Development plan is of such a nature that it will not change the character of such Development plan, the Planning Authority may, or when so directed by the State Government shall, within sixty days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification with amendments, if any, to the State Government for sanction. (1A) (1AA) (1B) (2) The State Government may, make such inquiry as it may consider necessary and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development plans shall be deemed to have been modified accordingly."

(emphasis supplied) Reading of this provision reveals that under clause (1), the Planning Authority after inviting objections and suggestions regarding the proposed amendment and after giving notice to all affected persons shall submit the proposed modification for sanction to the Government. The deliberation with the public before making the amendment is over at this stage. The Government, thereafter, under clause (2) is given absolute liberty to make or not to make necessary inquiry before granting sanction. Again, while according sanction, Government may do so with or without modifications. Government could impose such conditions as it deem fit. It is also permissible for the Government to refuse the sanction. This is the true meaning of the clause (2). It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the Government is made under clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. And for such minor changes it is only normal for the government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the Respondents herein that the proposed change is arbitrary or unreasonable. They challenged the same citing the reason that the Government is not empowered under the Act to make such changes to the modification.

Making of DCR or amendment thereof are legislative functions. Therefore, section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to State Government. As we have already pointed out, the true interpretation of section 37(2) permits the State government to make necessary modifications or put conditions while granting sanction. In section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in section 37. Delegated legislation cannot be questioned for violating principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for 'such inquiry as it may consider necessary' by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India and Anr. v. Cynamide India Ltd and Anr. (1987) 2 SCC 720 paragraphs 5 and 27. See generally HSSK Niyami and Anr. v. Union of India and Anr. (1990) 4 SCC 516 and Canara Bank v. Debasis Das (2003) 4 SCC 557). While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat 1990 (Supp) SCC 397) Therefore, the view adopted by the High Court does not appear to be correct.

The DCR are framed under section 158 of the Act. Rules framed under the provisions of a statute form part of the statute. (See General Office Commanding-in-Chief and Anr. v. Dr. Subhash Chandra Yadav and Anr. (1988) 2 SCC 351, paragraph 14). In other words, DCR have statutory force. It is also a settled position of law that there could be no 'promissory estoppel' against a statue. (A.P Pollution Control Board II v. M V Nayudu (2001) 2 SCC 62, paragraph 69, Sales Tax Officer and Another v. Shree Durga Oil Mills (1998) 1 SCC 572, paragraphs 21 and 22 and Sharma Transport v. Govt. of AP (2002) 2 SCC 188, paragraphs 13 to 24). Therefore, the High Court again went wrong by invoking the principle of 'promissory estoppel' to allow the petition filed by the Respondents herein.

For the foregoing reasons, the view adopted by the High Court cannot be sustained.

These appeals are allowed by setting aside the order of the High Court and the writ petitions filed before the High Court are dismissed.