

THE MAYOR JAIPUR MUNICIPAL CORPORATION & ANR. A

v.

THAKUR SHIV RAJ SINGH & ORS.

(Civil Appeal No.6030 of 2019)

AUGUST 05, 2019

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[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Rajasthan Municipalities Act, 1959 – s.173-A – Predecessor-in-interest of the respondents purchased the property in question – After his death, respondents became the owner of the property – Respondents made application to the Corporation for conversion of land use as condition precedent for sanction of building plan for constructing commercial-cum-residential complex – Corporation directed the respondents to deposit Rs.1,01,04,672/- towards the conversion charges – Respondents reserving their rights, deposited the amount –Conversion of the land use allowed– Respondents issued notice to the Corporation claiming refund – Respondents filed writ petition in the High Court – Dismissed – Special appeal filed by the respondent before the Division Bench – Allowed– Direction to the appellants to refund Rs.1,01,04,672/- with interest – Held: s.173-A deals with the power of the State Government to allow the change of use of land – s.173-A was amended by Amendment Act of 1999 – Prior to amendment, the power of the State Government to allow the change in the use of land was confined to a land allotted or sold by Municipality or the State Government– Both sub-ss.1 & 2 of s.173-A now contain restriction on both the categories of land, i.e. (i) originally allotted/sold by the State Government/any Municipality/other local authority/body/legal authority (ii) in the case of any land not allotted or sold and not covered u/sub-sec.1 of s.173-A – Restriction is with regard to the land use as provided in Master Plan –In the present case, even though prior to amendment of s.173-A, the respondents were using the land for commercial purposes, that user is prohibited by virtue of restriction brought by amended s.173-A(2) – Division Bench was unduly led by the fact that land which was purchased in 1959 was being used for commercial purpose – It did not advert to either sub-sec.2 of s.173-A or to the land use in the Master Plan at the relevant

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- A *time, i.e., in 2002 when the respondents made application for sanction of building plan – Although, appellants brought on record the Land Use Plan 2011, which is in force w.e.f. 01.09.1998, the respondents contended that the said Plan does not conclusively establish that land use of the property in question was residential – Impugned judgment set aside – To meet the ends of justice, respondents given liberty to submit representation to the Corporation, if there are any materials and grounds that in the Master Plan in operation in 2002, the land use of the property in question was not residential but commercial – Rajasthan Municipalities (Amendment) Act, 1999.*
- B **Allowing the appeal, the Court**
 - HELD: 1.1 Section 173-A of Rajasthan Municipalities Act, 1959 is provision dealing with the power of the State Government to allow the change of use of land. Section 173-A was amended by Rajasthan Municipalities (Amendment) Act, 1999. The demand for conversion charges having been raised in the present case in the year 2002, the provisions of Section 173-A as amended by Act 19 of 1999 are applicable in the present case. A perusal of unamended and amended Section 173-A indicates that there is substantial change in the statutory provision of Rajasthan Municipalities Act, 1959. Prior to amendment, the power of the State Government to allow the change in the use of land was confined to a land allotted or sold by Municipality or the State Government. The amended Section 173-A has not only changed heading of the Section but contents also. Section 173-A as amended contains restriction on use of land. Both sub-section (1) and sub-section (2) of Section 173-A now contain a restriction on both the categories of land, i.e., (i) originally allotted or sold by the State Government, any Municipality and other local authority or any other body or legal authority; (ii) in the case of any land not allotted or sold and not covered under sub-section (1). The restriction is that no person shall use or permit the use of any such land situated in a municipal area other than that for which such land use was or is permissible, in accordance with the Master Plan, wherever it is in operation. The amended provision of Section 173-A has been brought on the Statute book to ensure planned development of a municipal area. Master Plans are to be**
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prepared according to the statutory Scheme keeping in view the future developments of the city and the municipal area. A clear distinction between the statutory Scheme under Section 173-A, unamended and amended, is visible. Earlier the restriction was there only with regard to land, which has been allotted or sold to any person by a Municipality or the State that too restriction for land use for any other purpose other than the purpose for which it was originally allotted or sold. After the amendment restriction is with regard to the land use as provided in Master Plan. Even if prior to amendment in Section 173-A, a person holding the land which was neither allotted nor sold to it by Municipality or State could have used the land for any purpose, the restriction has now been placed by amended Section 173-A. In the facts of the present case, even though prior to amendment of Section 173-A the respondents were using the land for commercial purposes that user is prohibited by virtue of restriction brought by amended Section 173-A(2) for using the land for a purpose other than one which is permitted under Master Plan, permission of State or any authority authorised by it, is required as provided by sub-section (3) of Section 173-A. [Paras 8, 10] [1030-C;1033-B-H; 1034-A]

1.2 In event, the appellants claim that land use of Plot No.21 in the Master Plan 2011 enforced w.e.f. 01.09.1998 is accepted as residential, the restriction as imposed by sub-section 2 of Section 173-A as amended by Act, 1999 shall come into force and for change of land use as given in Master Plan 2011, the respondents were obliged to seek permission under sub-section (3) of Section 173-A and without payment of conversion charges, they could not have obtained sanction map for commercial use of the land. [Para 14] [1034-G-H; 1035-A]

1.3 The pleading of the respondents only indicates that when they intended to construct multi-storeyed building for commercial-cum-residential complex they were told to deposit conversion charges as condition precedent for sanction map. Single Judge in its judgment had noted that the respondents intended to deposit conversion charges for the land use as commercial-cum-residential complex. The submission of the counsel for the respondents that they were forced to apply for conversion of land use from residential to commercial does not

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- A commend. Whether the respondents were liable to deposit the conversion charges is to be determined in accordance with the statutory Scheme and statutory requirement. In the event, under the Statute they were obliged to obtain conversion of land use from residential to commercial, they were bound to do the same and the fact that they were asked by the Corporation to do the same is inconsequential. The Division Bench in the impugned judgment has been unduly led by the fact that land which was purchased in the year 1959 is being used for commercial purpose. The Division Bench did not advert to sub-section (2) of Section 173-A as amended by Act 19 of 1999 and its consequences. The Division Bench did not consider the issues raised in the appeal in the correct perspective and has not adverted to the effect and operation of the statutory Scheme as delineated by sub-section (2) of Section 173-A as amended by Act 19 of 1999. The Division Bench did not advert to either sub-section (2) of Section 173-A or to the land use in the Master Plan at the relevant time, i.e., in the year 2002 when the respondents made an application for sanction of building plan. The appellants although have brought on record the Land Use Plan 2011, which is in force w.e.f. 01.09.1998 along with their rejoinder-affidavit but since during the submission the counsel for the respondents has contended that the said Land Use Plan 2011 does not conclusively establish that land use of Plot No.21 was residential, ends of justice shall be served in giving liberty to the respondents to submit a representation before the Corporation, if there are any materials and grounds that in the Master Plan which was in operation in the year 2002, when respondents submitted an application that land use of Plot No.21, Lal Niwas was not residential but commercial. The impugned judgment is set aside. [Paras 18-20 and 24] [1038-C-F; 1039-B-C; 1040-B-D]
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Municipal Corporation, Rajasthan v. Sanjeev Sachdeva and Others (2013) 12 SCC 562 : [2013] 1 SCR 220 – held applicable.

Case Law Reference

[2013] 1 SCR 220 held applicable Para 14

MAYOR JAIPUR MUNICIPAL CORPORATION & ANR. v. 1027
THAKUR SHIV RAJ SINGH & ORS.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6030 A
of 2019

From the Judgment and Order dated 12.01.2018 of the Division Bench of the High Court of Judicature for Rajasthan, Jaipur Bench, at Jaipur in D.B. Special Appeal (Writ) No. 793 of 2006

Harin P. Raval, Sr. Adv., Shiv Mangal Sharma, Saurabh Rajpal, B
Kartikey Bhatt, M/s. Aura & Co., Advs. for the Appellants.

Vivek Jain, Ms. Suchitra Kumbhat, Pancham Surana, Anshul Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by C

ASHOK BHUSHAN, J.

1. The Jaipur Municipal Corporation has filed this appeal challenging the Division Bench judgment of Rajasthan High Court, Bench at Jaipur dated 12.01.2018 by which the Special Appeal filed by the respondents questioning the judgment of learned Single Judge has been allowed and the appellants have been directed to refund the conversion charges deposited by the respondents along with six percent interest.

2. Brief facts of case giving rise to this appeal are:

Lt. Col. Late Harnath Singh, the predecessor-in-interest of the respondents by registered sale deed dated 16.04.1959 had purchased the property in question known as 'Lal Niwas' from His Highness Sawai Man Singh of Jaipur. Lt. Col. Late Harnath Singh died on 08.01.1997 after which the respondents became owner of the property. The respondents, with intent to develop by constructing a multi-storeyed building, commercial-cum-residential complex in the area of 8080.14 square meter, made an application to Corporation for conversion of land use as condition precedent for sanction of building plan for constructing commercial-cum-residential complex. The Corporation issued an order dated 22.02.2003 directing the respondents to deposit an amount of Rs.1,01,04,672/- towards the conversion charges. The respondents reserving their rights deposited the amount through pay order dated 20.03.2003. An order dated 06.05.2003 was passed by the Corporation allowing the conversion of the land use of the aforesaid land. The building plan was thereafter approved by the Corporation on 08.01.2004. The respondents issued notice dated 28.04.2004 to the Corporation calling

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- A upon the appellants to pay a sum of Rs.1,13,86,703/- along with interest. The respondents filed a Writ Petition No.4783 of 2004 in the High Court of Rajasthan at Jaipur Bench praying for following reliefs:
- (i) By an appropriate writ, order and direction impugned orders dated 22.02.2003 (Annexure.2), order dated 01.04.1003 (Annexure.4), 19.11.2003 & 20.12.2003 (Annexure.7) passed by the respondents No.2 & 3 may kindly be quashed and set aside.
 - (ii) By an appropriate writ, order or direction the respondents may be directed to refund the amount of Rupees 1,01,04,672/- charged/ extracted by the respondents towards conversion charges of the land in question and an amount of Rupees 6,31,542/- and Rupees 6,59,961/- charged by the respondents towards Shahari Jama Bandi & interest thereon, thus totalling Rs. 1,13,96,175/- from the petitioners along with interest @ 18% p.a. thereon as damages for unnecessarily withholding the aforesaid amount w.e.f. date of deposit to the date of payment. The respondents may further be directed to refund the total amount as prayed hereinabove to the petitioners in the proportion viz. 30% to Thakur Shiv Raj Singh (Petitioner No.1) and 1/3rd of the remaining to each of the Petitioners No.2 to 4.
 - (iii) Cost of litigation be awarded to the petitioners.
 - (iv) Any other order(s) as this Hon'ble High Court may deem fit and proper in the facts and circumstances of the present writ petition be also passed in favour of the humble petitioners and against the respondents."
3. In the writ petition, the Corporation filed its reply. The Corporation resisted the writ petition. A learned Single Judge of the High Court vide its judgment dated 04.07.2006 dismissed the writ petition. Aggrieved against the judgment of learned Single Judge, Special Appeal was filed by the respondent before the Division Bench. The Division Bench of the High Court vide its impugned judgment dated 12.01.2018 allowed the Special Appeal and directed for refund of the amount of Rs.1,01,04,672/- with interest. The Corporation aggrieved by the judgment of the Division Bench has come up in this appeal.
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4. We have heard learned counsel for the appellants as well as A learned counsel appearing for the respondents.

5. Learned counsel for the appellants submits that it is the respondents who had submitted an application for paying conversion charges to enable sanction of building plan of commercial-cum-residential complex in the premises in question. The Corporation had directed for deposit of conversion charges which were deposited by the respondents. The respondents are not entitled to claim any refund. They have themselves deposited the conversion charges. It is submitted that in view of the land use of plot in the Master Plan, which was in force at the time when the application was moved by the respondents, i.e., 'residential', it was obligatory for the respondents to seek permission for using the land for commercial purpose as required by Section 173-A of Rajasthan Municipalities Act, 1959 as amended by Act 19 of 1999. It is submitted that the respondents' map for sanction of building plan for commercial-cum-residential plot could not have been sanctioned unless the conversion of land use was permitted and the amount demanded by the Corporation from respondents was the amount of conversion charges of land use. It is submitted that the Division Bench without considering the relevant issues and provisions of Section 173-A allowed the appeal. The Division Bench erred in directing for refund of the amount deposited by the respondents. E

6. Learned counsel for the respondents refuting the submissions of the learned counsel for the appellants contends that the respondents were forced to deposit the amount of Rs.1,01,04,672/- by the Corporation. The respondents deposited the amount under protest. It is submitted that from the date property was purchased in the year 1959, the property is being used for commercial purposes. It is submitted that a Company M/s. Hindustan Salts Limited was using the premises for commercial purpose till M/s. Hindustan Salts Limited handed over the premises in the year 1996 to Lt. Col. Late Harnath Singh. When the premises was being used for commercial purpose since before the date when building plan for constructing commercial-cum-residential complex was made, there was no occasion for payment of any conversion charges. It is submitted that in Master Plan the land use of plot in question as on date as well as at the relevant time was commercial. It is submitted that the respondents were not liable to pay any conversion charges and the F

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- A Corporation, having realised the conversion charges illegally and arbitrary from the respondents, is obliged to refund the amount. It is submitted that the learned Single Judge also has returned a finding that the land in question is being used for commercial purposes.

B 7. We have considered the submissions of the learned counsel for the parties and have perused the records.

C 8. Before we enter into the submissions made by the learned counsel for the appellants, it is relevant to notice the relevant provisions of Rajasthan Municipalities Act, 1959 pertaining to land user. Section 173-A is provision dealing with the power of the State Government to allow the change of use of land. Section 173-A was amended by Rajasthan Municipalities (Amendment) Act, 1999. It is useful to notice the provisions of Section 173-A before the amendment and after the amendment which are as follows:

D “Section 173-A of the Act, prior to its amendment, reads as follows:

E D **“173-A.Power of the State Government to allow change in the use of land.-**(1) Notwithstanding anything contained in this Act, where any land has been allotted or sold to any person by a municipality or the State Government subject to the condition of restraining its use for a particular purpose, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of such land to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charges as may be prescribed:

F Provided that the rates of conversion charges may be different for different areas and for different purposes.

G F (2) The conversion charges so realized shall be credited to the Consolidated Fund of the State or to the fund of the Municipality as may be determined by the State Government.

H G (3) Such charges shall be the first charge on the interest of the person liable in the land the use of which has been changed and shall be recoverable as arrears of land revenue.”

I H Section 173-A of the Act as amended by the Amending Act No. 19 of 1999 reads as follows:

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“Section 173-A - Restriction on change of use of land and power of the State Government to allow change of use of land.-(1) No person shall use or permit the use of any land situated

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in any municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government, any municipality, and other local authority or any other body or authority in accordance with any law for the time being in force or, otherwise than as specified under a Master Plan, wherever it is in operation.

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(2) In the case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal area for the purpose other than that for which such land use was or is permissible, in accordance with the Master Plan, wherever it is in operation, or under any law for the time being in force.

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(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the State Government or any authority authorised by it by notification in the Official Gazette, may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest, on payment of conversion charges at such rates and in such manner as may be prescribed with respect to the following changes in use:

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- (i) from residential to commercial or any other purpose; or
 - (ii) from commercial to any other purpose; or
 - (iii) from industrial to commercial or any other purpose; or
 - (iv) from cinema to commercial or any other purpose:

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Provided that rates of conversion charges may be different for different areas and for different purposes.

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(4) Any person who has already changed the use of land in violation of the provisions of this Act in force at the time of change of use, shall apply to the State Government or any authority authorised by it under sub-section (3), within six months from the date of commencement of the Rajasthan Municipalities (Amendment) Act, 1999 (19 of 1999) for regularisation on said

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- A use and upon regularisation of the change of use of land he shall deposit the amount contemplated under sub-section (3).
 - (5) Where the State Government or the authority authorised by it under sub-section (3) is satisfied that a person who ought to have applied for permission or regularisation under this Section, has not applied and that such permission can be granted or the use of land can be regularised, it may proceed to determine the conversion charges after due notice and hearing the party/parties and the charges so determined shall become due to the municipality and be recoverable under sub-section (7).
 - (6) The conversion charges so realised shall be credited to the fund of the municipality.
 - (7) Charges under this section shall be the first charge on the interest of the person liable to pay such charges with respect to the land, the use of which has been changed and shall be recoverable as arrears of land revenue.””
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- E “The existing provisions contained in Section 173-A of the Rajasthan Municipalities Act, 1959 provide that where any land has been allotted or sold subject to the condition of restraining its use for a particular purpose, to any person by a Municipality or the State Government, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of the land, to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charge as may be prescribed.
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- G With a view to ensure planned and regulated development of the urban areas it is necessary to restrict and bar the change of use in certain circumstances of those lands also which were not sold or allotted by Municipality or the State Government. However, the power of the State Government or any other authority authorised by it, to allow change of use of land, on payment of conversion charges is sought to be retained.
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With a view to achieve the aforesaid objective, the existing Section 173-A of the Rajasthan Municipalities Act, 1959 is proposed to be substituted.” A

10. The demand for conversion charges having been raised in the present case in the year 2002, the provisions of Section 173-A as amended by Act 19 of 1999 are applicable in the present case. A perusal of unamended and amended Section 173-A indicates that there is substantial change in the statutory provision of Rajasthan Municipalities Act, 1959. Prior to amendment, the power of the State Government to allow the change in the use of land was confined to a land allotted or sold by Municipality or the State Government. The amended Section 173-A has not only changed heading of the Section but contents also. Section 173-A as amended contains restriction on use of land. Both sub-section (1) and sub-section (2) of Section 173-A now contain a restriction on both the categories of land, i.e., (i) originally allotted or sold by the State Government, any Municipality and other local authority or any other body or legal authority; (ii) in the case of any land not allotted or sold and not covered under sub-section (1). The restriction is that no person shall use or permit the use of any such land situated in a municipal area other than that for which such land use was or is permissible, in accordance with the Master Plan, wherever it is in operation. The amended provision of Section 173-A has been brought on the Statute book to ensure planned development of a municipal area. Master Plans are to be prepared according to the statutory Scheme keeping in view the future developments of the city and the municipal area. A clear distinction between the statutory Scheme under Section 173-A, unamended and amended, is visible. Earlier the restriction was there only with regard to land, which has been allotted or sold to any person by a Municipality or the State that too restriction for land use for any other purpose other than the purpose for which it was originally allotted or sold. After the amendment restriction is with regard to the land use as provided in Master Plan. Even if prior to amendment in Section 173-A, a person holding the land which was neither allotted nor sold to it by Municipality or State could have used the land for any purpose, the restriction has now been placed by amended Section 173-A. In the facts of the present case, even though prior to amendment of Section 173-A the respondents were using the land for commercial purposes that user is prohibited by virtue F G H

- A of restriction brought by amended Section 173-A(2) for using the land for a purpose other than one which is permitted under Master Plan, permission of State or any authority authorised by it, is required as provided by sub-section (3) of Section 173-A.

- B 11. We need to notice the land use as permissible in the Master Plan, which was in operation at the relevant time when respondents submitted an application for sanction of building plan for commercial-cum-residential complex.

- C 12. The appellants have filed a rejoinder-affidavit dated 26.07.2019 wherein Jaipur Development Authority Land Use Plan-2011 has been brought on record as Annexure-R/1, which indicates that Master Development Plan was prepared and approved, which Plan for Jaipur Region came into force with effect from 01.09.1998. In paragraph 6(c) of the rejoinder-affidavit, it has been pleaded that the Master Plan 2011 has been notified on 01.09.1998. It was further pleaded that with a view to ensure planned and regulated development, the Master Plan 2011 for
- D Jaipur Region was notified in which the present area where the property in question is situated was declared a 'residential' area. In the Land Use Plan 2011 of Master Plan 2011 as per Annexure-R/1 Plot No.21, Lal Niwas is mentioned as residential as submitted by the learned counsel for the appellants.

- E 13. Learned counsel appearing for the respondents has submitted that Annexure-R/1 filed by the appellants along with the rejoinder-affidavit is only a map which cannot be read to mean that land use of Plot No.21, Lal Niwas, has been shown as residential except that it has been marked as residential by officials of the Corporation. It has further been pleaded in the rejoinder-affidavit that in Master Plan 2025, which was brought into force on 01.09.2011, the property in question has now been earmarked as commercial.

- G 14. In event, the appellants claim that land use of Plot No.21 in the Master Plan 2011 enforced w.e.f. 01.09.1998 is accepted as residential, the restriction as imposed by sub-section 2 of Section 173-A as amended by Act, 1999 shall come into force and for change of land use as given in Master Plan 2011, the respondents were obliged to seek permission under sub-section (3) of Section 173-A and without payment of conversion charges, they could not have obtained sanction map for

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commercial use of the land. This Court in **Municipal Corporation, Rajasthan vs. Sanjeev Sachdeva and others, (2013) 12 SCC 562**, had occasion to consider Section 173-A as amended by Act 19 of 1999.

15. In the above case also, the respondents therein had purchased a plot of land with a house on 09.09.2002, situated in a residential area by way of a registered sale deed. On an application submitted for conversion of land use from residential to commercial, certain amount was deposited by the respondents. The respondents filed a writ petition challenging the vires of the amended Section 173-A as well as the demand notice. The writ petition after some litigation was allowed by the learned Single Judge and demand notice was quashed. The Division Bench dismissed the appeal of the Corporation against which judgment the Municipal Corporation had come to this Court. This Court while interpreting Section 173-A laid down following in paragraph Nos.11, 12 and 13:

“11. A bare reading of unamended Section 173-A(1) of the Act would indicate that the conversion for change of land use charges could only be realised if the land was allotted by the Municipality or the State Government and there was a condition for restraining use for a particular purpose only. Therefore, in the absence of land being allotted by the State Government/ Municipality and in absence of any specific stipulation regarding use of land, the conversion charges could not be claimed. This was the ratio laid down in Pareshar Soni case, (2007) 14 SCC 144, interpreting the unamended Section 173-A of the Act. The Legislature, with a view to ensure planned and regulated development of the urban area felt it necessary to charge for the change of use in certain circumstances of those lands which were not sold or allotted by municipality or by the State Government, Further, it is also felt that such a change of user be permitted only “in public interest”. In this connection, we may refer to the Statement of Objects and Reasons of the Amendment Act, 1999, which reads as under:

“The existing provisions contained in Section 173-A of the Rajasthan Municipalities Act, 1959 provide that where any land has been allotted or sold subject to the condition of

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- A restraining its use for a particular purpose, to any person by a Municipality or the State Government, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of the land, to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charge as may be prescribed.
- B With a view to ensure planned and regulated development of the urban areas it is necessary to restrict and bar the change of use in certain circumstances of those lands also which were not sold or allotted by Municipality or the State Government. However, the power of the State Government or any other authority authorized by it, to allow change of use of land, on payment of conversion charges is sought to be retained.
- C With a view to achieve the aforesaid objective, the existing Section 173-A of the Rajasthan Municipalities Act, 1959 is proposed to be substituted.”
- D 12. Amended Section 173-A not only restricts the change of use of land, as the same has been allotted by the municipality or the State Government, but also put restrictions if the land has been allotted by any other local authority. Section 173-A(2) covers the cases which are not even covered by Section 173-A(1) and brings in its fold even the change of use of land which is not in consonance with the Master Plan. Further Sections 173-A(1)(2) and (3) also contemplate a situation wherein the State Government is entitled to levy conversion charges if the change in use from one purpose to other purpose. The amendment was necessitated since the State Legislature thought the provision of Section 173-A (unamended) stood as an impediment for proper planning of urban areas. In other words, with a view to ensure planned and regulated development of urban areas, it was felt that some restrictions have to be imposed and it was for that purpose that Section 173-A was amended.
- E 13. We may, in this respect, also indicate that, in exercise of powers conferred under Section 297 read with Section 173-A of the 1959 Act, 2000 Rules were promulgated. It is under the abovementioned Rules that the Respondents filed an application on 16.7.2003 for change of land use from residential to
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commercial. Following those Rules, the Corporation issued public notice inviting objections. Later, the Land Use Committee met and approved the conversion for which a demand notice of Rs. 5,70,300/- was raised by the Corporation on 2.4.2004. We are of the view that the demand is legal and valid and in accordance with the provisions of Section 173-A, as inserted by Amendment Act 19 of 1999 read with the 2000 Rules. We are also of the view that the Rajasthan High Court has committed an error in applying the judgment of this Court in Pareshar Soni case which was dealing with the unamended provision of Section 173-A.”

16. The law laid down by this Court in the above case is fully applicable in the facts of the present case. The present case is also where sub-section (2) of Section 173-A covers the case.

17. We may also notice one of the submissions vehemently raised by the learned counsel for the respondents that the respondents were forced to deposit the conversion charges, which they deposited under the protest. The copy of the writ petition filed by the respondents has been brought on record as Annexure-P/12. In paragraph Nos. 5,6 and 7, following has been pleaded by the respondents:

“5. That the petitioners intended to get the aforesaid plot of land admeasuring 10067.14 sq.yards which is equivalent to 8420.56 sq. meters, developed by constructing a multi-storeyed commercial-cum-residential complex. In this connection, on having been approached the respondents No.2 & 3 asked to apply with them for land use conversion as a condition precedent so that maps of building plans can be approved for constructing commercial-cum-residential complex.

6. That the respondents No 2 & 3 vide order bearing No.F.13/ At.Mu.N.Niyo./ dated 22.02.2003 directed to deposit an amount of 1,01,04,672/- towards conversion charges. The copy of the aforesaid order dated 22.02.2003 is being enclosed herewith and marked as Annexure.2.

7. That in pursuance of the aforesaid order passed by the respondents No.2 & 3, the humble petitioners reserving their rights deposited the amount so demanded i.e. a sum of Rs.1,01,04,672/- through pay order dated 20.03.2003 drawn

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- A on City Bank, M.I.Road, Jaipur vide duly filled challan dated 16.1.2003/20.3.2003 under Covering Letter dated 20.3.2003. Consequently, receipt dated 20.3.2003 was issued from office of respondents No.2 & 3 in proof of said amount having been duly deposited. The photocopy of the Covering letter dated 20.3.2003 along with receipt dated 20.3.2003 and challan dated 16.1.2003/20.3.2003 are being enclosed herewith and collectively marked as Annexure-3.”
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- C 18. The above pleading of the respondents only indicates that when they intended to construct multi-storeyed building for commercial-cum-residential complex they were told to deposit conversion charges as a condition precedent for sanction map. Learned Single Judge in its judgment had noted that the respondents intended to deposit conversion charges for the land use as commercial-cum-residential complex. The submission of the learned counsel for the respondents that they were forced to apply for conversion of land use from residential to commercial
- D does not commend us. Whether the respondents were liable to deposit the conversion charges is to be determined in accordance with the statutory Scheme and statutory requirement. In the event, under the Statute they were obliged to obtain conversion of land use from residential to commercial, they were bound to do the same and the fact that they were asked by the Corporation to do the same is inconsequential.
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- F 19. The Division Bench in the impugned judgment has been unduly led by the fact that land which was purchased in the year 1959 is being used for commercial purpose. The Division Bench did not advert to subsection (2) of Section 173-A as amended by Act 19 of 1999 and its consequences. The total consideration of the Division Bench on the entire case is in paragraph Nos.7, 8 and 9 which are to the following effect:

- G “7. We have gone through the property document which shows that the land was purchased in the year 1959 and the same property was used by the company for commercial purposes. In our considered opinion, with a view to avoid any delay in their construction activities, the appellants have paid the amount under protest to the respondents.
- H 8. In that view of the matter, respondents are not entitled for conversion charges and the amount deposited by the appellants is required to be refunded with immediate effect.

9. The respondents are directed to refund the said amount alongwith interest @ 6% within a period of three months from today. If the payment is not made within a period of three months, the appellants will be entitled for interest @ 9% and difference of 3% will be recovered from the officer who has made delay in making payment.” A

20. We are of the view that the Division Bench did not consider the issues raised in the appeal in the correct perspective and has not adverted to the effect and operation of the statutory Scheme as delineated by sub-section (2) of Section 173-A as amended by Act 19 of 1999. The judgment of the Division Bench, thus, cannot be upheld. B

21. We may also notice that this Court in **Municipal Corporation, Rajasthan (supra)**although had allowed the appeal but gave liberty to the respondents to take up the issue before the Corporation regarding land use in the Master Plan which was in operation at the relevant time. In paragraph No.14 of the judgment, following has been observed: C

“14. The learned Counsel appearing for the respondents, however, submitted that the area in question is notified as commercial area under the Master Plan and, therefore, there is no question of any conversion of the residential property to commercial. We notice that this point was not raised before the High Court and we are, therefore, not called upon to decide that question. However, the Respondents, if so advised, may take up this issue before the Corporation and it is for the Corporation to consider that issue in accordance with law. Appeals are accordingly allowed and the judgments of the High Court are set aside. However, there will be no order as to costs.” F

22. In the present case, learned Single Judge has made following observation:

“It is also not disputed that in the Master Plan area in question is earmarked for commercial use and it is also not disputed the earlier the area in question is used for commercial purpose. Therefore, the petitioner moved application for conversion for approval of map for constructing a commercial building.” G

23. Although learned Single Judge made the above observation, but the judgment does not indicate that said observations were made H

- A after looking into the Master Plan which was in force at the time of submission of application by the respondents.

24. The Division Bench did not advert to either sub-section (2) of Section 173-A or to the land use in the Master Plan at the relevant time, i.e., in the year 2002 when the respondents made an application for B sanction of building plan. The appellants although have brought on record the Land Use Plan 2011, which is in force w.e.f. 01.09.1998 along with their rejoinder-affidavit but since during the submission learned counsel for the respondents has contended that the said Land Use Plan 2011 does not conclusively establish that land use of Plot No.21 was residential, we are, thus, of the view that ends of justice shall be served in giving C liberty to the respondents to submit a representation before the Corporation, if there are any materials and grounds that in the Master Plan which was in operation in the year 2002, when respondents submitted an application that land use of Plot No.21, Lal Niwas was not residential but commercial. Subject to the above liberty, the appeal is D allowed and the impugned judgment is set aside. Parties shall bear their own costs.

Divya Pandey

Appeal allowed.