# S.N. Rao & Ors. Etc vs State Of Maharashtra on 9 February, 1988

## Equivalent citations: 1988 AIR 712, 1988 SCR (2) 919, AIR 1988 SUPREME COURT 712, 1988 (1) SCC 586, (1988) 1 JT 288 (SC), (1988) 1 BOM CR 457

## Author: M.M. Dutt

## Bench: M.M. Dutt, M.P. Thakkar

PETITIONER:
S.N. RAO & ORS. ETC.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT09/02/1988

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
THAKKAR, M.P. (J)

CITATION:
1988 AIR 712 1988 SCR (2) 919
1988 SCC (1) 586 JT 1988 (1) 288
1988 SCALE (1)299
CITATOR INFO :
RF 1992 SC1817 (17)

ACT:
Maharashtra Regional and Town Planning Act, 1966 : Sections 31, 40, 43, 45, 46, and 47-Development of land for construction of five star hotel-Master plan showing the land as residential zone and contiguous zone as green belt Municipal Commissioner rejecting the plan-Appeal to Government-Minister setting aside the Commissioner's order-Validity of the appellate order.

HEADNOTE:
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A piece of land had been purchased for the construction of a five-star hotel. In the sanctioned development plan the said land was shown in the residential zone and a contiguous parcel of land was shown as green belt. When the plan was

submitted to the Municipal Corporation for the construction of a five-star hotel, the Commissioner rejected the plan on the ground that it was proposed to earmark the said land as a recreational ground with suitable internal network of roads during the revision of the development plan which was in the offing. Aggrieved by the rejection, an appeal was preferred to the State Government under sec. 47 of the Maharashtra Regional and Town Planning Act, 1966.

The appeal was heard by the Minister of State for Urban Development. The appellants herein, members of various ecological groups and rate payers of the Municipal Corporation, appeared and opposed saying that the land should be kept reserved for a green belt or recreational ground in the interest of the general public. However, the Minister set aside the order of the Municipal Commissioner and directed the sanctioning of the plan on certain conditions. The Municipal Corporation accepted the appellate order and did not challenge it. But the appellants filed a Writ Petition challenging the legality of the order. The writ petition was dismissed by the High Court. The present appeal by special leave is against this dismissal.

Meanwhile the Municipal Corporation passed a resolution extending the park reservation by including the remaining area of the land in question. By another resolution the first resolution was modified limiting the reservation for the park to 7,000 sq. yards out of the dis-

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puted land. Thereafter the State Government exempted the disputed land under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976. The resolutions and the order were challenged in the High Court. The petitions were dismissed by a Single Judge of the High Court and later by the Division Bench on appeal. The Review Petitions also met the same fate. The petitioners have not challenged the judgment of the High Court passed on the review applications, but filed before this Court the two special leave petitions challenging the legality and validity of the two resolutions and the order of Government giving exemption under section 20 of the Urban Land (Ceiling and Regulation) Act.

Dismissing the appeal, and the special leave petitions, this Court,

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HELD: 1.1 In allowing the appeal and directing sanction of the development plan, the Minister observed that in view of the clear provisions of sections 46 and 31(6) of the Act and having regard to the position that in the sanctioned plan of 1966, the said land was included in the residential zone and no proposal to exclude it therefrom in the draft revised development plan had been published, the Municipal Commissioner was not justified in rejecting the application for approval of the plan on the ground that the Bombay Municipal Corporation had decided to revise the 1966

Development Plan. The Minister was of the view that the Planning Authority could only take into consideration any draft or final plan or proposal which had been published by means of notice, or sanctioned under the Act. When Municipal Commissioner rejected the plan, there was no draft revised development plan in existence. It was in contemplation. If there had been such a plan, the Municipal Commissioner would be entitled to rely upon the same in rejecting the plan. The Commissioner was not justified in merely relying upon a proposal for the preparation of a draft revised plan. An order rejecting a development plan submitted by the owner of the land should be supported by some concrete material. In the absence of any such material, it will be improper to reject the plan on the ground that there is a proposal for revision of the draft plan or that such a revision is under contemplation. Therefore, the ground for rejecting the plan was not tenable and the appellate authority was justified in allowing the appeal. [923H; 924A-B, H; 925A-C]

1.2 The Municipal Corporation has, subsequent to the judgment of the High Court, prepared and published a draft revised development plan. The plan is not inconsistent with the draft revised development plan. There is no material on record to show that the Municipal Corporation which is the Planning Authority, had prepared the draft revised
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plan in accordance with the direction of the Minister. The Minister has acted in public interest by imposing the conditions. The conditions would show that considerable area out of the disputed land has been reserved for recreational ground or green belt. The plan, as sanctioned with the conditions imposed, has been shown in the draft revised plan. It was open to the Municipal Corporation to accept the verdict of the appellate authority and it has done so by not challenging it in the High Court or before this Court. [926E-H]

2. The contention of the petitioners against the validity of the resolution is no longer tenable, regard being had to the fact that the draft revised development plan has since been published and the plan submitted and conditioned by the Minister is not inconsistent with the draft revised plan. The petitioners have also not seriously pressed the validity of the said resolution. [928C-D]

3. This Court is not called upon to decide the legality or otherwise of the order granting exemption. These have been considered by the High Court in its judgment disposing of the review applications. The petitioners have not challenged the judgment on review applications. The petitioners are only interested in seeing that sufficient area is kept reserved for a park or recreation ground for the benefit of the members of the public, and are not concerned with the question as to the legality or otherwise of the exemption granted by the Government. The question whether or not sufficient quantity of land has been kept

reserved for park and recreation ground has been adequately considered and taken into account by the High Court. [928G-H; 929A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2537 of 1985 etc. From the Judgment and Order dated 27.4.1984 of the Bombay High Court in O.S.W.P. No. 704 of 1984.

G.G. Kalsekar, K.M.M. Khan, N. Nettar and S.N. Bhat for the Appellants.

S.K. Dholakia, Ashok H. Desai, A.M. Khanwilkar, A.S.Bhasme, D.N. Mishra, S. Sukumaran, G.E. Vahanvati, V.B. Agarwala, B.B. Agarwala, R.B. Hathi Khanawala for the Respondents.

Vinod A. Bobde, Mrs. J. Wad and Mrs. Aruna Mathur for the Intervener.

The Judgment of the Court was delivered by DUTT, J. The subject-matter of this appeal by special leave is the permission for development of the land granted in favour of respondent No. 5 who proposed to construct a five-star hotel on a tract of land measuring 44,820.49 square yards at Bandra, Bombay, bearing R.S. Nos. 416 (Part) and 417. The land in question had been purchased by the respondent No. 5, Enjay Estates Pvt. Ltd., from its erstwhile owner, Byramji Jeejeebhoy Pvt. Ltd. In the 1966 sanctioned Development Plan of Greater Bombay, the said land was shown in the residential zone and a contiguous parcel of land measuring 18,000 sq. yds. was shown as a green belt.

With a view to developing the disputed land, the respondent No. 5 submitted a plan to the Municipal Corporation of Greater Bombay for the construction of a five star hotel. The Commissioner of the Municipal Corporation, however, rejected the plan on the sole ground that it was proposed to earmark the said land under reference as a recreational ground with suitable internal network of roads during the revision of the development plan which was in the offing. Being aggrieved by the said rejection of the plan, the respondent No. 5 pref erred an appeal to the Government of Maharashtra under section 47 of the Maharashtra Regional and Town Planning Act, 1966, hereinafter referred to as 'the Act'.

The appellants, who are rate-payers of the Municipal Corporation of Greater Bombay and claim to be members of various ecological action groups, appeared in the appeal and opposed the same contending, inter alia, that the whole of the said land should be kept reserved for a green belt or recreational ground in the interest of the general public.

The appeal was heard by the Minister of State for Urban Development, the respondent No. 2 herein. The respondent No. 2 set aside the order of the Commissioner of the Municipal Corporation rejecting the plan submitted by the respondent No. 5 after hearing the petitioners as also the Municipal Commissioner and directed sanctioning of the plan on certain conditions which will be

referred to later in this judgment.

The Municipal Corporation accepted the appellate order and did not challenge the order of the respondent No. 2. But the appellants filed a writ petition challenging the legality of the order of the respon-

dent No. 2 granting sanction of the plan submitted by the respondent No. 5 for the construction of a hotel on the said land. The writ petition was, however, dismissed by the Division Bench of the High Court by the judgment under appeal.

At this stage, we may refer to some of the provisions of the Act. It is an Act to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development Plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid. Section 2(9) defines "Development Plan"

> to mean a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a Special Planning Authority for development of land within its jurisdiction. Under section 2(19), "Planning Authority"

means a local authority; and includes a Special Planning Authority constituted or appointed under section 40. Chapter III of the Act contains provisions for the Development plan. Section 23 provides for the declaration of intention by the Planning Authority to prepare a Development plan. Section 26 provides for the preparation and the publication of notice of draft Development plan. Under section 30, the Planning Authority has to submit the draft Development Plan to the State Government for sanction. Section 31 provides for the sanction to the draft Development plan by the State Government. Section 43 provides, inter Ala, that after the date on which the declaration of intention to prepare a Development plan for any area is published in the Official Gazette, no person shall carry out any development of land without the permission in writing of the Planning Authority. Section 45 deals with grant or refusal of sanction for development by the Planning Authority. Section 45 enjoins that the Planning Authority in considering an application for permission shall have due regard to the provisions of any draft or final plan or proposals published by means of notice submitted or sanctioned under the Act. Section 47 provides for an appeal to the State Government or to an officer appointed by the State Government by any applicant aggrieved by an order granting permission on conditions or refusing permission under section 45.

In allowing the appeal of the respondent No. 5 and directing sanction of the development plan, the respondent No. 2 observed that in view of the clear provisions of sections 46 and 31(6) of the Act and having regard to the position that in the sanctioned plan of 1966, the said land was included in the residential zone and no proposal to exclude it therefrom in the draft revised development plan

had been published, the Municipal Commissioner was not justified in rejecting the application for approval of the plan submitted by the respondent No. 5 on the ground that the Bombay Municipal Corporation had decided to revise the 1966 Development Plan. We have already referred to section 46 of the Act which provides that the Planning Authority in considering the application for permission shall have due regard to the provisions of any draft or final plan or proposals published by means of notice submitted or sanctioned under the Act. It seems that the respondent No. 2 was of the view that the Planning Authority could only take into its consideration any draft or final plan or proposal which had been published by means of notice or sanctioned under the Act as provided in section 46. There is, in our opinion, some force in the contention made by Mr. Kalsekar, learned Counsel appearing on behalf of the appellants, that the respondent No. 2 has misunderstood the provisions of section 46. It is submitted by the learned Counsel that the Municipal Corporation was entitled to take into consideration other relevant facts including the contemplated revision of the plan, apart from those mentioned in section 46. In support of his contention, the learned Counsel has placed reliance on an unreported decision of a learned Single Judge of the Bombay High Court in Life Insurance Corporation of India and Another v. Municipal Corporation of Greater Bombay and Others, Writ Petition No. 2944 of 1932 disposed of on 6.3.1984. In that case, a development application was rejected by the Municipal Corporation on the ground that the property was proposed to be reserved for public purposes or for recreational ground in the draft revised development plan, and the High Court repelled the challenge to the decision taking the view that even the proposed revision could be taken into account as one of the relevant factors.

There can be no doubt that if there be any other material or relevant fact, section 46 does not stand in the way of such material or fact being considered by the Municipal Corporation for the grant or refusal to grant sanction of any development plan. In the unreported decision of the High Court, the relevant fact that was taken into consideration was the draft revised development plan, even though the plan was not published. In the instant case, however, at the time the Municipal Commissioner rejected the plan submitted by the respondent No. 5, there was no draft revised development plan in existence.

It was in contemplation. If there had been such a plan, the Municipal Commissioner would be entitled to rely upon the same in rejecting the plan submitted by the respondent No.

5. But, as there was no such draft revised plan as has been stated before this Court even by the Counsel for the Municipal Corporation, the Municipal Commissioner was not justified in merely relying upon a proposal for the preparation of a draft revised plan. An order rejecting a development plan submitted by the owner of the land should be supported by some concrete material. In the absence of any such material, it will be improper to reject the plan on the ground that there is a proposal for revision of the draft plan or that such a revision is under contemplation. We are, therefore, of the view that the ground for rejecting the plan submitted by the respondent No. 5 was not tenable and the appellate authority was justified in allowing the appeal.

It is urged by Mr. Kalsekar that in any event no appeal lay under section 47 when the Municipal Corporation had decided to revise the development plan. We are afraid, we are unable to accept the contention. The same contention was advanced before the respondent No. 2 and it was rightly

rejected. Section 47 of the Act does not warrant the contention urged by the learned Counsel. In our opinion, to hold that after the Municipal Corporation had decided to revise the development plan, no appeal would be competent to the State Government under section 47, would amount to legislating and rewriting the provision. Such a contention is without any substance and is rejected.

The respondent No. 2 directed sanction of the plan out of 44,820.49 sq. yds. belonging to the respondent No. 5, on the following conditions:

> (i) 15% Recreation space to be left in Block 'A' shall be kept on the southern side of the plot abutting the green space left from Block 'B' after merging the Road area in the Green space.
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> (ii) The Development shall be allowed IOD and C.C. shall be issued as per the Development Control Rules.
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> (iii)The F.S.I. of the road area would be admissible on plot 'A' as per Development Control Rule 10(2).
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> (iv) The Municipal Commissioner, Municipal Corporation of Greater Bombay, Bombay, shall take over the possession of the land proposed to be kept as Green on southern side, abutting the sea after getting the plots properly demarcated.

The Municipal Commissioner, M.C., G.E., Bombay, may consider the proposal of allowing the development and maintenance of the park and garden space by the applicant party at their own cost after obtaining the possession of the lands now proposed to be kept green. The permission for development of plots as per plans submitted by appellants be granted by the M.C.B. M.C. subject to the conditions mentioned above. We are told that after the above conditions are worked out, the area that will be available to the respondent No. 5 for the construction of the hotel is only 19,951.10 sq. yds. It is, therefore, apparent that in granting sanction to the plan, the respondent No. 2 was quite alive to public interest.

At this stage, we may notice a very significant development that has taken place during the pendency of this appeal, namely, that the Municipal Corporation has, subsequent to the judgment of the High Court, prepared and published on April 30, 1984 a draft revised development plan. The plan of the respondent No. 5 is not inconsistent with the draft revised development plan. This fact demolishes all the contentions of the appellants against the plan submitted by the respondent No. 5. Realising this difficulty, Mr. Kalsekar assailed the draft revised plan on the ground that it was prepared in accordance with the direction of the respondent No. 2. This contention of the learned Counsel has no foundation whatsoever. There is no material on record to show that the Municipal Corporation which is the Planning Authority, had prepared the draft revised plan in accordance with the direction of the respondent No. 2. The respondent No. 2, in our opinion, has acted in public interest by imposing the conditions mentioned above. The conditions would show that considerable area out of the disputed land has been reserved for recreational ground or green belt. The plan, as sanctioned by the respondent No. 2 with the conditions imposed, has been shown in the draft revised plan. It

was open to the Municipal Corporation to accept the verdict of the appellate authority and it has done so by not challenging it in the High Court or before this Court. In the circumstances, there is no merit in this appeal challenging the order of the respondent No. 2 sanctioning the development plan of the respondent No. 5.

Now we may take up the two Special Leave Petitions being Special Leave Petition (Civil) No. 173776 of 1985 and Special Leave Petition (Civil) No. 17377 of 1985. A few facts may be stated.

The Municipal Corporation passed a resolution on 3.12.1973, inter Ala, extending the park reservation by including the remaining area of the land comprised in R.S. No. 416 and R.S. No. 417 (part) at Bandra. By another resolution dated 14.3.1974, the first resolution was modified limiting the reservation for the park to 7,000 sq. yds. out of the disputed land. The petitioners, who are the appellants in the above appeal, filed two Misc. Petitions, namely, Misc. Petition No. 463 of 1974 challenging the legality and validity of the resolution dated 14.3.1974 and Misc. Petition No. 1406 of 1978 challenging the order of the Government of Maharashtra dated 25.7.1978 exempting the disputed land under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the 'Urban Land Ceiling Act'. Both the Misc. Petitions were dismissed by a learned Single Judge of the Bombay High Court. Two appeals were preferred by the petitioners against the judgment of the learned Single Judge to the Division Bench. On July 30, 1984 when the appeals were taken up for hearing, a prayer was made by the learned Counsel for the petitioners for an adjournment for two weeks on the ground that Shri Bhore, the Advocate-on-Record, had met with an accident and the learned Counsel was unable to proceed with the appeals without the Advocate-on-Record. The learned Judges of the Division Bench did not accede to the prayer of the learned Counsel for an adjournment for two weeks on the ground that the appeals were old appeals of 1979, and that the learned Counsel who prayed for adjournment himself appeared throughout the proceedings as an Advocate. The learned Judges, however, adjourned the appeals to the next day, that is, July 31, 1984 to enable the learned Counsel to be ready with the matter.

On the next day, the learned Counsel did not appear and the learned Judges of the Division Bench disposed of the appeals ex parte by a judgment dealing with the contentions of the petitioners. The result was that both the appeals were dismissed. We do not think that we are called upon to consider whether the learned Judges should have granted an adjournment for two weeks as was prayed for by the learned Counsel. Suffice it to say that if an adjournment had been granted, multiplicity of proceedings could have been avoided.

Be that as it may, the petitioners filed two applications for review. Both the said applications for review were dismissed by the Division Bench after considering all the points including certain additional grounds to the effect that certain contentions had not been dealt with earlier by the judgment dated October 9/10, 1985. The petitioners have not challenged the judgment of the High Court passed on the review applications. They have, however, filed before this Court the above two Special Leave Petitions.

Special Leave Petition (Civil) No. 17376 of 1985 arises out of Misc. Petition No. 463 of 1974 whereby the petitioners challenged the legality and validity of the said resolution dated 14.3.1974. We are of

the view that the contention of the petitioners against the validity of the resolution is no longer tenable, regard being had to the fact that the draft revised development plan has since been published and the plan submitted by the respondent No. 5 and conditioned by the respondent No. 2 is not inconsistent with the draft revised plan. In that view of the matter, Mr. Kalsekar also has not seriously pressed the validity of the said resolution. Accordingly, Special Leave Petition (Civil) No. 17376 of 1985 is liable to be dismissed.

So far as Special Leave Petition (Civil) No.17377 of 1985 is concerned, it has been strenuously urged by Mr. Kalsekar that in granting exemption to the respondent No. 5, the authority concerned has violated the relevant guidelines and also the provision of section 20 of the Urban Land Ceiling Act. Learned Counsel points out that one of the grounds for exemption is that 75,000 sq. yds. of vacant land is available for the development of gardens. As a matter of fact, Counsel submits, it is not a vacant land, but contains 350 houses. It is submitted that granting exemption on the ground of availability of 75,000 sq. yds. of open site for the purpose of gardens is a fraud on the Urban Land Ceiling Act. It is, accordingly, urged by the learned Counsel that the order granting exemption should be quashed.

The above grounds of challenge to the order of exemption granted to the respondent No. 5 have all been considered by the High Court in its judgment disposing of the review applications. The petitioners have not challenged the judgment on review applications. The petitioners are only interested in seeing that sufficient area is kept reserved for a park or recreation ground for the benefit of the members of the public. They are not, in our opinion, concerned with the question as to the legality or otherwise of the exemption granted by the Government to the respondent No. 5 under the Urban Land Ceiling Act. A copy of the draft revised development plan has been produced before us by Mr. Desai, learned Counsel appearing on behalf of the respondent No. 5. We are satisfied that the question whether or not sufficient quantity of land has been kept reserved for park and recreation ground has been adequately considered and taken into account by the High Court. In the circumstances, we do not think that we are called upon to decide the legality or otherwise of the order granting exemption to the respondent No. 5 under the Urban Land Ceiling Act. There is, therefore no substance also in Special Leave Petition (Civil) No. 17377 of 1985.

In the result, the appeal and both the special leave petitions are dismissed. There will, however, be no order as to costs.

G.N. Appeal and Petitions dismissed.