

PUNE MUNICIPAL CORPORATION

v.

PROMOTERS AND BUILDERS ASSOCIATION AND ANR.

MAY 5, 2004

[S. RAJENDRA BABU, CJ. AND G.P. MATHUR, J.]

Maharashtra Regional and Town Planning Act, 1966—Section 37—Submission for sanction of proposed amendments of Development Control Rules to State Government by Municipal Corporation—State Government making some changes before sanction without calling for objections/suggestions—Validity of—Held, the State Government has wide discretion to make minor changes within limits before sanction—On facts, since such changes were not proved to be arbitrary or unreasonable, they are valid.

State Government issued a directive to appellant-Corporation under section 37 of the Maharashtra Regional and Town Planning Act, 1966 to amend its Development Control Rules (DCR) in line with Bombay DCR. The appellant published proposed amendments of DCR in Official Gazette and invited objections and suggestions under section 37(1) of the Act. The appellant submitted the proposed amendments to the State Government for sanction. The State Government, after making certain additions to the Rules, sanctioned the proposed amendments and notified the same. The respondents filed Writ Petitions before High Court challenging the additions as being beyond the powers of the State Government under section 37(2) of the Act. High Court allowed the Writ Petitions. Hence the appeal by the appellant-Corporation.

Allowing the appeals, the Court

HELD : 1.1. Under section 37(1) of the Maharashtra Regional and Town Planning Act, 1966, 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 State Government. The deliberation

A with the public before making the amendment is over at this stage. The State Government, thereafter, under Section 37(2) of the Act is given absolute liberty to make or not to make necessary inquiry before granting sanction. Again, while according sanction, the State Government may do so with or without modifications. The State

B Government could impose such conditions as it deem fit. It is also permissible for the State Government to refuse the sanction. This is the true meaning of the Section 37(2) of the Act. It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the State Government made under section 37(1) of the Act is that no authority can propose an amendment so as to

C 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 State Government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable, the same

D could be challenged. [212-A-D]

1.2. The making of Development Control Rules (DCR) or amendment thereof are legislative functions. Therefore, section 37 of the Act has to be viewed as repository of legislative powers for effecting

E amendments to DCR. That legislative power of amending DCR is delegated to State Government. The true interpretation of section 37(2) of the Act permits the State Government to make necessary modifications or put conditions while granting sanction. In section 37(2) of the Act, the legislature has not intended to provide for a public

F 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

G 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. While exercising legislative functions, unless

H unreasonableness or arbitrariness is pointed out, it is not open for the

Court to interfere. [212-E-H; 213-A-B]

A

Union of India & Anr. v. Cynamide India Ltd. & Anr., [1987] 2 SCC 720; *HSSK Niyami & Anr. v. Union of India & Anr.*, [1990] 4 SCC 516; *Canara Bank v. Debasis Das*, [2003] 4 SCC 557 and *ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat*, [1990] Supp SCC 397, referred to.

B

1.3. The Development Control Rules are framed under section 158 of the Act. Rules framed under the provisions of a statute form part of the statute. In other words, they have statutory force. It is also a settled position of law that there could be no ‘promissory estoppel’ against a statute. Therefore, the High Court again went wrong by invoking the principle of ‘promissory estoppel’ to allow the petition filed by the respondents. [213-C-E]

C

General Officer Commanding-in-Chief & Anr. v. Dr. Subhash Chandra Yadav & Anr., [1988] 2 SCC 351; *A. P Pollution Control Board II v. M V Nayudu*, [2001] 2 SCC 62; *Sales Tax Officer & Anr. v. Shree Durga Oil Mills*, [1998] 1 SCC 572 and *Sharma Transport v. Govt. of AP*, [2002] 2 SCC 188, referred to.

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3800 of 2003.

E

From the Judgment and Order dated 23.4.2002 of the Bombay High Court in W.P. No. 5198 of 2001.

F

WITH

C.A. Nos. 3801, 3802, 3803, 3804 of 2003.

Mukul Rohtagi, Additional Solicitor General, R.F. Nariman, C.A. Sundaram, G.K. Banerjee, Dinesh Diwedi Makarand D. Adkar, S. D. Singh, Vijay Singh, Anurag Kishore, Vishwajit Singh, Shridhar Y. Chitale, Ms. V.D. Khanna, Ravindra Adsure, Mukesh K. Giri, R.N. Karanjawala, Ms. Nandini Gore, Ms. Pragya Bahgal, Mrs. Manik Karanjawala, Mrs. J.S. Wad, Ashish Wad, Ms. Yugandhra Jha, Ritesh Agrawal and A.S. Pundir

G

H

A for the appearing parties.

The Judgment of the Court was delivered by

B **RAJENDRA BABU, CJ.** : 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.

C 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
D 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
E 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
F 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
G 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
H 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. A

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: B

“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. C D E

(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.” G

(emphasis supplied) H

- A** 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
- B** 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
- C** 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
- D** 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
- E** 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
- F** 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
- G** 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
- H** 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. A B

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 statute. (*A.P Pollution Control Board II v. MV 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. C D E

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. F

B.S.

Appeals allowed.