Bombay High Court
Housilal Balchand Shah vs State Of Maharashtra And Ors. on 17 April, 2006
Equivalent citations: 2006 (5) BomCR 211, 2006 (3) MhLj 763
Author: D B Bhosale
Bench: B Marlapalle, D Bhosale
JUDGMENT D. B. Bhosale, J.

1. This writ petition under Article 226 of the Constitution of India raises a question whether or not the State Government after sanctioning and publishing the final plan under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short, "the Act"), by issuing corrigendum, could restore the status-quo ante without taking recourse to the entire process of republication of notification under sections 28 and 31 read with Section 37 of the Act. In other words, whether or not for rectifying an error in the final development plan published under Section 31, the procedure contemplated under sections 28 and 31 read with Section 37 of the Act could be by-passed. In the present case, the entire area in survey No. 34, which was reserved for botanical garden in the draft development plan, was reduced and 15,000 sq.meters on the western side was shown in residential zone. This error of reduction was rectified by issuing corrigendum and the status-quo ante was restored.

2. The petitioner is the owner of land bearing survey No. 34, Hissa Nos. 5/1, 6,3,5 situated at Anand Valli, Nasik city, within the territorial jurisdiction of the Municipal Corporation of City of Nasik, i.e. Respondent No. 3 (for short, "the land in question" or "the land"). In the petition it is stated that the total extent of the land in survey No. 34 is approximately 30,000 sq.meters. Respondent Nos. 3 and its Commissioner-respondent No. 4, the Planning Authority, under Section 26 of the Act prepared and published the draft development plan in the Government Gazette dated 3-8-1989 in which at sr. No. 70 the land in question was shown reserved for garden. The petitioner, on 11-9-1989, obtained a copy of the part of the said draft development plan. A notice dated 24-7-1990 bearing No. VIYO/Nasik Mun.Corpn./Sec.28 /1377/237/1556, purporting to be under Section 28(3) read with Section 26 of the Act, inviting objections with respect to the reservation of survey No. 34 in the draft development plan was served on the petitioner. However, he did not submit objections. He was also called upon, to remain present before the concerned authority on 7-8-1990 for personal hearing. In reply dated 21-9-1990, the petitioner contended that there was no need to reserve survey No. 34 for garden inasmuch as the said land was falling in green belt and as such there was no reason for reserving several pieces of land on either side of the road for garden. It was further pointed out that the said property was also an agricultural land which was being cultivated by him and that he had incurred substantial expenditure over its development. A reference was also made to the resolution passed by the Corporation dated 26-4-1985 by which it had decided to convert the said land into residential zone and contended that the reservation shown in the draft development plan was contrary to the said resolution. It appears that the petitioner had on 9-3-1993 made further representation to respondent No. 1 objecting to the reservation of the said land for the purpose of garden.

3. Respondent No. 3-Corporation, after following the procedure stipulated under Section 28 of the Act and giving an opportunity of being heard to the petitioner, finalised the draft development plan

and submitted it to respondent No. 1 for its sanction under Section 31 of the Act. Respondent No. 1, being the final authority, accorded final sanction to the draft development plan of the city of Nasik with some modifications and published the same in the Government Gazette dated 28-6-1993. It was also ordained by respondent No. 1 that the final development plan would come into effect on 16-11-1993.

4. In the final development plan the reservation for garden of survey No. 34 was retained only with respect to a part of the land and the western part of the land admeasuring 15,000 square meters was deleted and included in the residential zone. In other words, only the eastern part of survey No. 34 to the extent of about 15000 sq.meters was shown reserved for garden while the western portion admeasuring 15000 sq.meters was shown in the residential zone.

5. It appears that respondent No. 3 had constituted a committee which had recommended changes in the development plan sanctioned by respondent No. 1. The said committee had suggested changes/modifications in respect of survey No. 34 and pursuant thereto a representation was made by the respondent-corporation to the State Government. The Government, in turn, issued a corrigendum dated 19-8-1994 restoring the status-quo ante. By the said corrigendum, it was notified that the entire area of survey No. 34 would be reserved for garden. The said corrigendum dated 19-8-1994 is impugned in the instant writ petition.

6. The officer in the Urban Development Department of the State of Maharashtra on behalf of respondent No. 1, has filed a reply affidavit, in short, stating that the corrigendum was issued with a view to rectify an error of deleting a part of survey No. 34 from the reservation and inclusion of the same in the residential zone. It is further stated in the affidavit that right from the stage of preparation of the draft development plan under Section 26 till it was submitted to the government for approval, the entire procedure contemplated in law was followed and, therefore, rectification by way of corrigendum in the final development plan to bring the same in consonance with the draft development plan cannot be termed as modification of the final plan as alleged by the petitioner. In short, he stated that the provisions of Section 37 of the Act which provide for modification of final development plan was not attracted in the instant petition.

7. Mr. Dani, learned Counsel for the petitioner, submitted that after final sanction accorded to the draft development plan, there can be no substantial change in the final plan and if any such change is made without taking recourse to the procedure laid down under sections 28 and 31 read with 37, would be non-est in law and liable to be set aside. The action on the part of the respondents reversing the entire survey No. 34 after the final sanction of the draft development plan, in which only eastern portion was reserved for garden, is an act which was totally arbitrary and violative of Article 14 of the Constitution of India. He further submitted that on this ground alone the impugned action is liable to be set aside. He then submitted that the corrigendum by its very nature is meant only to correct clerical or arithmetical mistake as may have crept in due to some human or mechanical error and not for rectifying an error of substantial nature. The corrigendum cannot be used to make a substantial change in the draft development plan, which has been published under Section 31 of the Act. The unilateral action on the part of the respondents is highly arbitrary and is against the established principles of natural justice and violative of Articles 14 and 21 of the

Constitution of India. The impugned action is also violative of Article 300 of the Constitution of India inasmuch as the right and liberty of the person to hold property cannot be taken away unless the procedure established by the law is followed. Lastly, he submitted that the modification of the final development plan made by respondent No. 1 on the so-called representation made by respondent Nos. 3 and 4 amounts to modification of substantial nature and since it was made without following the procedure contemplated under sections 28 and 31 read with Section 37 of the Act it is bad in law.

8. On the other hand, Mrs. Bhende, learned AGP, submitted that the draft development plan was prepared and published by respondent Nos. 3 and 4 after following due procedure contemplated in Part A and B of Chapter III of the Act. The petitioner was given an opportunity to raise objections and suggestions to the draft development plan and after giving him an opportunity of being heard, it was finalised and then forwarded to respondent No. 1 for its sanction and publication under Section 31 of the Act. The Corporation in the draft development plan had approximately shown 30000 sq.meters to be reserved for a garden as site No. 70. She further submitted that the Corporation had also taken steps for acquisition of the entire survey No. 34 for a botanical garden. She then submitted that when the Corporation found that only 15000 sq.meters land in survey No. 34 was shown as reserved for garden the corporation made a representation dated 3-11-1993 to the State Government and in pursuance thereof the corrigendum dated 19-3-1994, restoring status-quo ante had been issued. By the said corrigendum only an error of reducing the substantial area without following the procedure had been rectified. Mr. More, learned Counsel for the Corporation submitted that deletion of 15000 sq.meters out of the total area in survey No. 34 and inclusion of the said portion in residential zone clearly amounts to modification of "substantial nature" and that it was done without following the procedure contemplated in the second proviso to Section 31(1) of the Act. He, therefore, submitted that correction or rectification of such error in law by issuing corrigendum need not be interfered under Article 226 of the Constitution of India. Mr. Dani, learned Counsel for the petitioner in rejoinder submitted that the second proviso to Sub-section (1) of Section 31 has no application since it refers to the modifications of substantial nature in the whole of final development plan and not an isolated planning unit.

9. To address the question that falls for our consideration in the instant writ petition it would be advantageous to look into the relevant provisions of the Act. In the instant writ petition, we are primarily concerned with Chapter III which deals with the development plan. Chapter III has three parts viz. "A", "B" and "C". Part "A", consisting of sections 21 to 22A, deals with preparation, submission and sanction to the development plan. Part "B", consisting of sections 23 to 31, provides for the procedure to be followed in preparing and sanctioning the development plan, whereas Part "C", consisting of sections 32 to 42, provides for preparation of interim development plans, plans for areas of comprehensive development etc. Section 21 provides for notice of preparation of the first draft development plan in the official gazette and in such other manner as may be prescribed within three years of the commencement of the Act. Section 23 requires the Planning Authority to make and publish a declaration of intent to prepare a Development plan. This publication has to be in the official gazette and one or more local newspapers the object being to invite objections and suggestions. These objections and suggestions have to be sent within 60 days of publication. Though at the skeleton stage only the boundary of the area, to be in the plan, is to be depicted, a copy of the

same is required to be kept open for public inspection at the office of the Planning Authority. Section 26 lays down preparation of the draft development plan and the intimation of such preparation in the gazette. Copies of the draft development plan are to be made available for inspection and for sale at reasonable prices. The intimation's avowed purpose is to invite objections and suggestions. Section 28 requires the Planning Authority to consider suggestions and objections received and if necessary modify or change the draft development plan. The objections and considerations are to be submitted to Planning Committee. This Committee is to give a reasonable opportunity of being heard to the persons who have lodged objections and suggestions. The Planning Committee's report is to be considered by the Planning Authority who is to finalise the draft development plan and submit the same to the Government. All this requires to be done within 12 months of the publication of the Section 26 notice.

10. Section 30 provides for submission of draft development plan to the State Government for sanction within a period of 12 months from the date of publication of the notice in the official gazette regarding its preparation under Section 26. The State Government is empowered under that provision to extend the time from time to time by an order in writing and for adequate reasons upto 24 months in aggregate. Section 31, with which we are primarily concerned, in our opinion, needs to be reproduced for better appreciation of the submissions advanced by the learned Counsel for the parties and for addressing the question that falls for our consideration in the instant petition.

31. Sanction to draft-Development Plan -- (1) Subject to the provisions of this section, and not later than one year 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 a notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period as may be specified in the notification.

Provided (further) that, where the modifications proposed to be made by the State Government are of a substantial nature, the State Government shall publish a notice in the official gazette and also in local newspapers inviting objections and suggestions from any person in respect of the proposed modification within a period of sixty days from the date of such notice.

(2) The State Government may appoint an officer of rank not below that of a Class I 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.

(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.

(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.

(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 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 supplied)

11. A plain reading of Section 31 would show that it stipulates that the Government within one year of the receipt of the draft development plan from the planning authority after consulting the Director of Town Planning accord sanction thereto. The sanction may be for the whole area or separately for any part thereof. It may be with or without modifications. It may return the draft development plan with a direction to the planning authority to modify it in the manner indicated or may direct the Planning Authority to prepare a fresh plan. Any step taken by it in the above setting has to be notified in the official gazette. Any extension of the one year period for according or refusing to accord sanction is required to be notified in the gazette as contemplated in first proviso. The second Proviso lays down that where the proposed modifications of the State Government are of substantial nature, it shall invite objections and suggestions to the same by a notice in the gazette and also in the local newspapers. The objections and suggestions, if any, from any person in respect of proposed modifications are required to be raised within 60 days from the date of such notice. Sub-section (2) provides for the appointment of an officer to hear the said objections and suggestions. Thereafter he is to submit a report. The Government has then to consider the objections and suggestions along with the report. In the notification bringing the final plan into operation, the Government has to fix a date which shall not be earlier than one month from the date of publication. The draft development plan insofar as it designates any land for the purposes mentioned in Clauses (b) and (c) of Section 22 shall be acceptable only if the Planning Authority can acquire the same by private agreement or compulsory acquisition in 10 years. The plan that has come into operation, under Sub-section (6) of Section 31, will be binding on the Planning Authority and shall be known as the final development plan.

12. There is no doubt that the State Government is competent to make minor or substantial modifications/variations in the draft development plan. The second proviso to Sub-section (1) of Section 31, in unequivocal terms, states that where the modifications proposed to be made by the State Government are of "a substantial nature" the State Government is obliged to publish a notice

in the official gazette and also in the local newspapers inviting objections or suggestions from any person in respect of the proposed modifications within a period of sixty days from the date of such notice. The procedure contemplated in the second proviso to Sub-section (1) of Section 31 is mandatory in nature. Bypassing of the procedure stipulated therein would render the modification of substantial character illegal and non est in law even though the draft development plan is capable of being revised by the State Government.

13. Under Sub-section (6) of Section 31 of the Act the sanction accorded by the State Government to the draft development plan results in the plans being binding on the Planning Authority. It is true that if any scheme is modified and the plan has become final, the procedure contemplated under sections 28 and 31 read with 37 of the Act is required to be followed. But in this case, by issuing corrigendum what has been modified is that the entire area of survey No. 34 is now reserved for garden. In other words, the status quo ante of the final plan was restored. The question, therefore, is whether the entire process of the issuance of the notice under Section 28 involving consideration of the objections and passing of the final plan after consideration is required to be gone through.

14. In this case, the State Government being the final authority, while according final sanction to the draft development plan of the city of Nasik effected modification of "substantial nature" and published the same in the Government gazette on 28-6-1993 which came into effect on 16-11-1993. In the final development plan the reservation of survey No. 34 was retained only with respect to a part of the land and western part of the land admeasuring 15000 sq meters was deleted and it was shown in the residential zone. A perusal of the record shows the extent of the land in question that was proposed to be reserved for botanical garden is less than 30000 sq.meters. Initially the corporation sought to reserve 50000 sq.meters of land in survey No. 34. The correspondence on the record of the corporation and in particular the letter dated 27-6-1995 of the Special Land Acquisition Officer No. III at page 72 addressed to the Nasik Municipal Corporation shows that the extent of the land proposed to be reserved was only 25,600 sq.meters and not 50000 sq.meters as mentioned in the proposal. There is yet another letter dated 8-8-1995 of the officer of the Municipal Corporation addressed to the Land Acquisition Officer No. II, which states that the extent of the land is 30000 sq.meters approximately. The petitioners in their representation dated 21-9-1989, annexed to the writ petition at Exhibit-6, have also mentioned the extent of the land as 13,500 sq.meters. The another letter of the petitioner dated 9-3-1993, annexed to the writ petition at Exhibit-D, states that the total land in survey No. 34, which was reserved at Sr No. 70, is 27,500 sq.meters. The seven by twelve extracts on the record, pertaining to survey No. 34, also show that the total extent of the land is less than 30000 sq.meters. The learned Counsel for the petitioner and the respondents could not and did not dispute that the land in survey No. 34 is less than 30,000/- sq.meters. Keeping that in view, in our opinion, reduction of 15000 sq.meters of land in survey No. 34 for being reserved for garden, would undoubtedly amount to modification of "substantial nature".

15. At this stage it may be noticed that in 1994, Section 22-A was inserted, defining the expression "of a substantial nature" to mean reduction of more than 50 per cent in area of reservation provided for in Clause (b) to (i) of Section 22 in each planning unit. Though this section has no application to the facts of the present case it can be looked into for our guidance. Thus, reduction of more than 50

per cent in area of reservation i.e. 15,000 sq. mtrs. in survey No. 34, in this case, which clearly amounts to a modification "of a substantial nature" is also covered by the definition under Section 22A. The State Government was, therefore, obliged to follow the procedure contemplated in the second proviso to Sub-section (1) of Section 31 before reducing more than 50 per cent in the area of reservation for botanical garden. It is nobody's case that such procedure was followed by the State Government. The procedure prescribed in the second proviso to Sub-section (1) of Section 31 is mandatory in character and, therefore, cannot be by-passed for any reason whatsoever. The modification of a substantial nature, if any, effected by the State Government overlooking or bypassing the procedure contemplated under this proviso, would be illegal and if such error is subsequently rectified and status-quo ante has been restored by issuing corrigendum, this Court under Article 226 of the Constitution of India need not cause interference in such decision. In other words, for rectification of such error the process of republication of notification under sections 28 and 31 read with Section 37 need not be followed and such error could be rectified by issuing corrigendum. Issuance of corrigendum in this case, in our opinion, is perfectly legal.

16. That takes us to consider the effect of initiation of the acquisition proceedings. Indubitably, in this case, the Planning Authority initiated the acquisition proceedings and the declaration under Section 6 of the Land Acquisition Act, 1894 was also published. It is seen that initially the State Government under Section 31(1) approved the draft development plan with the modifications and on the representation made by the corporation the Government had issued the corrigendum on 19-8-1994 restoring status-quo ante,

17. The Supreme Court had an occasion to deal with somewhat similar situation in Nasik Municipal Corporation v. Harbanslal Laikwant Rajpal and Ors. 1997 (4) Bom.C.R. 455. That case was also pertaining to the development plan of the city of Nasik and the period of the notifications issued was also same. Inter alia, the corrigendum in that case and in the instant case is also same. The Supreme Court was dealing with the appeals filed by the Nasik Municipal Corporation against the judgment of the Division Bench of this Court dated 14-10-1994. In that case, the final development plan was made on 29-11-1980. It appears that the notification under Section 126(4) of the Act was published on 6-8-1987. Subsequently, Section 4(1) notification and declaration under Section 6 of the Land Acquisition Act, 1894 (1 of 1894) were published, notice was issued under Section 9 of the Act on 16-9-1989. The Award came to be passed on 22-9-1989. The respondents therein filed a writ petition on 25-9-1989. The Award was published on 27-9-1989. It further appears that the draft development plan was issued for reservation of certain lands for public purpose and no objections were filed. In the meanwhile, by proceedings dated 26-12-1990 the same came to be deleted by publication of the notification on 28-6-1993 and final plan was published on 30-9-1993. On a representation made by the Corporation, the Government had issued a "corrigendum" on 19-8-1994 restoring the status-quo ante with a slight modification. The High Court in the impugned order, while upholding the validity of the notification under Section 4(1) and declaration under Section 6 of the Land Acquisition Act, held that the award was not valid in law since there was a corrigendum issued by the Government. Consequently, the procedure provided under the Act was to be followed by operation of Section 37 of the Act. The learned senior counsel appearing for the respondents therein had contended that once the reservation has been deleted, status quo ante stands restored and as a consequence, the entire process required under Section 28 and Section 31 read with Section

37 requires to be followed and since it was not done the High Court was right in quashing the Award. The Supreme Court did not find force in the contentions advanced by the learned Counsel. In paragraph 4 of the judgment the Supreme Court held thus :

4. It is true that if any scheme is modified and the Plan has become final, the procedure contemplated under sections 28 and 31 read with Section 37 of the Act is required to be adopted. But in this case, it is seen that as per the corrigendum what has been modified is that the entire site is now reserved for "informal housing" and stable. Originally, the entire area was reserved for stables and 100' wide road. The reservation was deleted earlier, as stated above, and western part was included in commercial zone and eastern part was included in the residential zone on the plan. In view of the fact that status quo ante of the final plan was restored, though a part of it is now said to be used for residential purpose, the question is whether the entire process of the issuance of the notice under Section 28 involving consideration of the objections and passing of the final plan after consideration is required to be gone through. It is seen that by operation of Section 127 of the Act where any land is included in any of the schemes as being reserved, allotted or designated for any purpose specified therein or for the purpose of planning Authority or development Authority or Appropriate Authority and the State Government is satisfied that the same land is needed for a public purpose different from any such public purpose or purpose of the Planning Authority, Development Authority or Appropriate Authority, the State Government may notwithstanding anything contained in this Act, acquire such land under the provisions of the Land Acquisition Act, 1894. Subsection (3) envisages that on the land vesting in the State Government under Section 16 or 17 of the Land Acquisition Act, 1894, as the case may be, the relevant plan or scheme shall be deemed to be suitably varied by reason of acquisition of the said land. Thus it could be seen that once a notification under Section 4(1) was published and the declaration under Section 6 of the Land Acquisition Act came to be published, the public purpose becomes conclusive and for any variation without substantial formalities, it is not necessary that the entire process of republication of the notification under Section 28, finding having been recorded under both Section 31 read with Section 37, requires to be followed. The view of the High Court, therefore, was not correct.

18. In view of the law laid down by the Supreme Court in Nasik Municipal Corporation v. Harbanslal Laikwant Rajpal's case, we are satisfied that since the declaration under Section 6 of the Land Acquisition Act was published the public purpose became conclusive and for any variation it is not necessary to follow the entire process of republication of the notification under sections 28 and 31 read with Section 37 of the Act. We find no force in the contentions advanced on behalf of the petitioner. The writ petition accordingly stands dismissed. Rule discharged. No costs.

Oral application of Mr. Dani, the learned Counsel for the petitioner, for stay of this order for a period of eight weeks is hereby allowed.