IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3098 OF 2021

BASAVRAJ GURAPPA PATIL
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Santosh Madhukar Bhondve & Ors. } ….. Petitioners

Versus

State of Maharashtra & Ors. } ….. Respondents

Shri Anil Anturkar, Senior Advocate with Shri Sugandh B. Deshmukh for petitioners.

Shri P. P. Kakade, Government Pleader with Shri O. A. Chandurkar, Additional Government Pleader and Ms. G. R. Raghuwanshi, AGP for respondents 1 to 3 (State).

Shri Ashutosh Kumbhakoni, Senior Advocate with Shri Rohit Sakhadeo for respondent no. 4 (PCMC).

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & AMIT BORKAR, J.

RESERVED ON : AUGUST 19, 2024
PRONOUNCED ON : SEPTEMBER 12, 2024

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard Shri Anil Anturkar, learned Senior Advocate representing the petitioners, Shri Chandurkar, learned Additional Government Pleader for respondent Nos.1 to 3 – State and Shri Ashutosh Kumbhakoni, learned Senior Advocate representing respondent No.4 – Pimpri Chinchwad Municipal Corporation.

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(A) Challenge:

2. This petition has been instituted assailing the validity of an order dated 18th June 2018 passed by the District Collector, Pune whereby a piece of land admeasuring 1H 46R comprised in Gut No.96 situate at Mauje Ravet, Taluka Haveli, Dist. Pune has been allotted to respondent No.4 - Pimpri Chinchwad Municipal Corporation (hereinafter referred to as the **Corporation**) for development of a scheme of affordable housing under the Prime Minister Awas Yojana (hereinafter referred to as the **PMAY**).

3. The petition also challenges an order dated 13th July 2018 passed by the Additional Tahasildar, Pimpri Chinchwad, Taluka Haveli, Dist. Pune whereby the Additional Tahasildar has directed the Divisional Office, Chinchwad that possession of the land in question shall be given to the Commissioner of respondent No.4 – Corporation and that the compliance report should be submitted along with panchnama, 7/12 extract, possession receipt and sketch map in relation to advance possession of the said land. The letter/order dated 13th July 2018 further provides that the Commissioner of respondent No.4 shall be granted certificate of occupancy Class-II and that the said entry shall be made in the revenue records. Challenge has also been made to

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the letter dated 9th July 2018 written by the Commissioner of respondent No.4 to the Collector, Pune whereby consent was given to all the 10 conditions mentioned in the order of allotment made by the Collector, dated 18th June 2018. The petition also challenges the possession receipt dated 21st July 2018 executed between the Surveyor, Department of Urban Planning, Pimpri Chinchwad Municipal Corporation, Pimpri and the Divisional Officer, Chinchwad, Taluka Haveli, Dist. Pune on behalf of the Additional Tahasildar, Chinchwad, Taluka Haveli, Dist. Pune.

An order dated 21st December 2012 passed by the Tahasildar, Haveli, Pune has also been challenged whereby an area of 0/20R in Gut No.96 has been reserved for the office and residence of Talathi and another area of 0/20R has been reserved for the office and residence of Divisional Officer. The said order directed the Talathi office to register the entry to the said effect in the revenue records.

(B) Background facts:

4. The facts which are necessary for proper adjudication of the issues involved in this petition and which can be culled out from the pleadings and documents available on record of this petition are;

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(a) Gut No.96 having total area of 7H 43R situate at village Ravet, Taluka Haveli, Dist. Pune was reserved for economically weaker section of the society.

(b) Respondent No.4 made a request for allotment of an area of 1H 46R out of Gut No.96 for development.

(c) As per the revenue record of rights (Village Form No.7) the said land is recorded as *gairan* land which means land for grazing cattles.

(d) By means of an order dated 21st December 2012 passed by the Tahasildar concerned, an area of 0/20 R was reserved for the office and residence of Talathi and in addition, an area of 0/20R was reserved for the residence and office of Divisional Officer.

(e) Respondent No.4 – Corporation made a request for allotment of an area of 1H 46R for development, free of charge, out of Gut No.96.

(f) The Divisional Commissioner, sometime in the year 2018 proposed the said land for transfer to respondent No.4 for development of housing for economically weaker section of the society.

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(g) The State Government, in the department of Revenue and Forest, vide its letter dated 26th April 2018 intimated to the Collector that the Government had received a proposal to transfer the land in question to respondent No.4 for housing under the PMAY for economically weaker section of the society. The said letter further provided that the Collector, Pune should take appropriate decision at his level for providing the subject land to respondent No.4 on such terms and conditions as the Collector may deem appropriate, for the purposes of constructing housing for economically weaker section and low-income group beneficiaries under the PMAY.

(h) The Collector, thus, decided in accordance with the provisions contained in Section 40 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as the **MLRC, 1966**) read with Rule 5 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 (hereinafter referred to as the **Rules, 1971**) to allot the subject land for the project under the PMAY – Home for All 2022 Scheme.

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(i) The project of construction of housing under the PMAY was approved by the State Approval and Coordination Committee (SACC) on 18th October 2017 as per the requirement of clause 1 of the Government decision dated 19th September 2016.

(j) The Collector, thus, passed the impugned order dated 18th June 2018 wherein decision to allot the subject land is embodied by taking recourse to the powers vested in him under Section 40 of the MLRC, 1966 read with Rule 5 of the Rules, 1971.

(k) Pursuant to the said allotment order dated 18th June 2018 the Commissioner of respondent No.4 wrote a letter to the State Government accepting the conditions of allotment as mentioned in the allotment order dated 18th June 2018 and thereafter the Additional Tahasildar concerned, vide his letter dated 13th July 2018 directed the Divisional Officer, Chinchwad that possession of land admeasuring 1H 46R out of Gut No.96 be handed over to respondent No.4 and accordingly, a compliance report be submitted along with panchnama, 7/12 extract,

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possession receipt and a sketch map in reference to the advance possession. It also provided that requisite entry in the revenue records shall also be made.

(l) The possession was, thus, handed over to respondent No.4 and accordingly a possession receipt was also executed between the Department of Urban Planning of respondent No.4 and the Divisional Officer, Chinchwad.

(m) The revenue entries were also accordingly made as is apparent from a perusal of Village Form No.6 and Village Form No.7 enclosed at pages 34 and 35 of the writ petition which were prepared under the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance), Rules 1971.

5. Thus, the order/letter of allotment passed/issued by the District Collector, Pune, dated 18th June 2018 and other consequential actions such as handing over possession, execution of possession receipt and ancillary correspondence have been challenged by the petitioners, besides the order dated 21st December 2012, whereby certain area of Gut No.96 has

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been reserved for construction of office and residence of Talathi and for construction of office and residence of the Divisional Officer has also been challenged.

(C) Submissions of Shri Anil Anturkar, learned Senior Advocate appearing for the petitioners :

6. Impeaching the impugned allotment order dated 18th June 2018 passed by the District Collector, Pune, it has been argued on behalf of the petitioners that in view of the prohibition on diversion of use of *Gairan* land as contained in Section 22A of the MLRC, 1966, the allotment of land by the Collector in favour of respondent No.4 – Corporation is illegal.

7. It has been argued by Shri Anturkar that Section 22A(1) creates a prohibition on diversion of use of *Gairan* land according to which the land which is set apart for free pasturage of village cattles shall not be diverted, granted or leased for any other use. His further submission is that such diversion is permissible only under the provisions of sub section (2) or (3) of Section 22A of the MLRC, 1966 which provides for exceptions to the prohibition contained in Section 22A. It has been contended on behalf of the petitioners by Shri Anturkar that sub section (2) of Section

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22A of the MLRC, 1966 permits diversion of *Gairan* land for public purpose or for public project of the Central Government or the State Government or any other statutory or public authority or undertaking under the Central/State Government only if no other suitable piece of Government land is available for such public purpose or public project. He has also stated that exception carved in sub Section (3) of Section 22A permits diversion, grant or lease of *Gairan* land for a project proponent, not being a public authority when such *Gairan* land is unavoidably required for such project and such project proponent transfers to the State Government, compensatory land in terms of the provisions contained in sub Section (4) and (5) of Section 22A. It has been argued, thus, by Shri Anturkar that in absence of any material to establish that no land other than the subject land was available for the PMAY, the prohibition as contained in Section 22A shall operate in full force and, hence, the impugned allotment order dated 18th June 2018 passed by the Collector is vitiated.

8. Further submission of the learned Senior Advocate representing the petitioners is that it is completely wrong to assume that since the land in question is reserved for housing

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purposes in the Development Plan prepared under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the **MRTP Act, 1966**), as such it was not necessary to comply with the provisions of Section 22A of the MLRC, 1966 and that only because the land in question has been reserved for housing purposes in the Development Plan, it will not ceased to be a *Gairan* land and therefore, Section 22A of the MRLC, 1966 is applicable to the facts of the instant case. Shri Anturkar has argued that such an assumption on the part of the respondent authorities is absolutely untenable and as a matter of fact, even on inclusion of the village, where the land in question is situated, within the limits of the municipal body (respondent No.4), the MLRC, 1966 will not cease to operate and both the enactments viz., MRTP Act, 1966 and MLRC, 1966 shall apply.

9. He has further argued that merely because the land in question is shown in the residential zone or for housing purpose in the Development Plan, it will not mean that the provisions of Section 22A of the MLRC, 1966 has to be given a go-bye. Submission further, as advanced by Shri Anturkar challenging the impugned allotment order dated 18th June 2018, is that the Collector has abdicated his discretion and has acted on the diktat

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of the State Government in the Department of Revenue and Forest and while passing the impugned order dated 18th June 2018 allotting the land in question in favour of respondent No.4 Collector has acted solely on the directions of the State Government. According to Shri Anturkar, thus, the discretion vested in the Collector under Section 40 of the MLRC, 1966 has not been exercised by the Collector for making allotment of the land in faovur of respondent No.4 by applying his independent mind to the facts and circumstances as also the law applicable in relation to disposal of any Government land under Section 40 of the MLRC.

10. On the aforesaid grounds, it has been argued on behalf of the petitioners that the impugned action on the part of the Collector in allotting the subject land and accordingly altering the revenue entries and giving possession of the subject land to respondent No.4 – Corporation is illegal and is liable to be quashed.

(D) Arguments on behalf of the State – authorities:

11. Opposing the writ petition, an affidavit in reply has been filed by the Collector stating therein that the State of

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Maharashtra has issued Government Resolution/Circular dated 14th December 1998 mentioning therein that an area which is already included in the final Development Plan of a Planning Authority for a specific reservation, can be allotted for public purpose and further that Section 22A(2) of the MLRC, 1966 also provides that even *Gairan* land can be diverted/granted or leased for public purpose or the public project of the Central Government or the State Government and accordingly, such a land was available and has been allotted for a public purpose/public project.

12. In the affidavit in reply filed by the Collector, it has also been stated that the land was allotted for public purpose of constructing housing for economically weaker section of the society for the reason that the area in question was reserved in the sanctioned Development Plan of the respondent Corporation for the residence of economically weaker section of the society. Shri Chandurkar, learned Additional Government Pleader, on the basis of the statements made in the affidavit in reply filed by the Collector, has thus, argued that the subject land has been allotted to respondent No.4 – Corporation for a public purpose keeping in view the purpose for which it has been reserved in

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the Development Plan as sanctioned by the State Government under the MRTP Act and hence, the impugned order of allotment does not warrant any interference by this Court in this petition.

(E) Submission of Shri Ashutosh Kumbhakoni, learned Senior Advocate representing respondent No.4 – Corporation:

13. Appearing on behalf of respondent No.4 – Corporation, it has been argued by Shri Kumbhakoni, learned Senior Advocate that after inclusion of the village where the subject land is situated within the municipal area, the Development Plan was prepared wherein land in question has been reserved for economically weaker section of the society. According to Shri Kumbhakoni, after sanction to the draft Development Plan is accorded by the State Government under Section 31 of the MRTP Act, 1966, such plan becomes final and forms part of the statute itself for the reason that any exercise of powers in terms of the provisions of the MRTP Act for preparation/sanction of plan is statutory in nature. His further submission is that the subject land has been allotted in favour of respondent No.4 – Corporation for construction of houses for economically weaker section of the society which is a public purpose and considering

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this aspect of the matter alone, this Court ought not exercise its discretion vested in it under Article 226 of the Constitution of India for interfering with the impugned allotment order.

14. He has further argued that the land in question was included in the municipal limits on 11th September 1997 in terms of the provisions contained in Section 3(3)(a) of the Maharashtra Municipal Corporations Act, 1949 (hereinafter referred to as the **Corporations Act, 1949**) which provides that the State Government, in consultation with the Corporation, may alter the limits of a municipal area by including therein or excluding therefrom, such area as may be specified in the notification to be issued for the said purpose. Drawing our attention to the provisions of Section 3(3)(b), Shri Kumbhakoni has argued that in case any area is included within the limits of a Municipality, any appointments, notifications, notices, taxes, orders, schemes, licenses, permissions, rules, bye-laws etc. which were in force in the Municipality, shall apply to and be in force in respect of the additional area included in the municipality. He has specifically mentioned that Section 3(3)(b) contains a *non-obstante* clause which provides that such appointments, notifications, notices, taxes, orders, schemes, licenses, permissions, rules, bye-laws

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etc. shall apply to the additional area as well, notwithstanding anything contained in any other law which may be in force at the relevant time.

15. It is his submission that it is not that by inclusion of the land in question in the municipal area of respondent – Corporation, MLRC, 1966 will have no application, however, in case of conflict all the provisions of the Corporations Act, 1949 shall prevail by virtue of operation of Section 3(3)(b) of the Corporations Act, 1949.

16. His further submission is that before inclusion of the land in question in the municipal area of the Corporation since the MRTP Act, 1966 applied to the entire Municipal Corporation area hence, by virtue of operation of Section 3(3)(b) of the Corporations Act, 1949, the MRTP Act, 1966 will apply to the subject land also after its inclusion in the municipal area in terms of Section 3(3)(a) of the Corporations Act, 1949 for the reason that such provisions are applicable notwithstanding anything contained in any other law which may be in force. His submission, in other words, is that notwithstanding operation of MLRC, 1966 on the subject land prior to its inclusion in municipal area of respondent

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No.4 – Corporation, the provisions of MRTP Act, 1966 will be applicable by operation of Section 3(3)(b) of the Corporations Act, 1949 on its inclusion in the municipal limits of the respondent No.4 – Corporation.

17. He has further submitted that Section 34 of the MRTP Act, 1966 provides for preparation of Development Plan for additional area and accordingly on inclusion of this additional area, subject land was part of which, within the municipal limits of the respondent No.4 – Corporation, the Development Plan was prepared where the subject land has been reserved for the purpose of residence of the economically weaker section of the society and accordingly, the character of the land in question as *Gairan* land in terms of the provisions of the MLRC, 1966 will have to give way to the land use as determined in terms of the Development Plan prepared by respondent No.4 – Corporation under Section 34 of the MRTP Act, 1966. Shri Kumbhakoni has also drawn our attention to the provisions contained in Section 52(2) of the MRTP Act, 1966 which in an unambiguous terms provides that the use of any land in contravention of the provisions of Development Plan attracts punishment and hence, on inclusion of the subject land within the municipal area, if

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anyone uses the land as *Gairan* land which is contrary to the purpose for which it is reserved under the Development Plan prepared under Section 34 of the MRTP Act, 1966 will attract penal provisions and therefore, the land in question cannot be permitted to be used as *Gairan* land.

18. Shri Kumbhakoni, in support of his submission, has cited two judgments of this Court; ***Madhukar Sampatrao Patil & Ors. Vs. State of Maharashtra & Ors.***[1] and ***Municipal Corporation of City of Thane Vs. Mukesh Ramful Gupta***[2]***.***

19. Shri Khumbhakoni has also submitted that the instant petition does not seek to espouse any public purpose as in the vicinity of the subject land various housing projects have come up and in case upon the subject land houses are constructed under the PMAY which will be made available to economically weaker section of the society at affordable rates, the developers in the vicinity apprehend that the prices of the houses being constructed by them shall fall steeply and thus this petition has been filed to serve the cause of the developers in the area. His contention is that to the contrary, the subject land has been

[1] **2019 SCC OnLine Bom 331**
[2] **2018(3) Mh.L.J. 182**

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allotted by the impugned order to respondent No.4 – Corporation for a public purpose which is to provide affordable houses to the economically weaker section of the society.

20. In light of the aforesaid submissions, it has been contended by Shri Kumbhakoni that the impugned allotment order dated 18th June 2018 and consequential action of handing over possession etc. do not call for any interference by this Court in this petition and he, thus, urges that the petition may be dismissed.

(F) Discussion:

21. Before delving into the submissions made by the learned Counsel for the respective parties, it would be apposite to notice certain statutory provisions.

Section 22A of the MLRC, 1966, which puts prohibition on diversion or grant or lease of *Gairan* land with certain exceptions thereto, is extracted hereunder:

> ***"22A. Prohibition on diversion of use of Gairan Land.—***
>
> *(1) The land set apart by the Collector for free pasturage of village cattle (hereinafter referred to as "the Gairan Land") shall not be diverted, granted or leased for any other use, except in the circumstances provided in sub-sections (2) or (3), as the case may be.*

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(2) The Gairan land may be diverted, granted or leased for a public purpose or public project of the Central Government or the State Government or any statutory authority or any public authority or undertaking under the Central Government or the State Government (hereinafter in this section referred to as "Public Authority"), if no other suitable piece of Government land is available for such public purpose or public project.

(3) The Gairan land may be diverted, granted or leased for a project of a project proponent, not being a Public Authority, when such Gairan land is unavoidably required for such project and such project proponent transfers to the State Government, compensatory land as provided in sub-sections (4) and (5).

(4) The compensatory land to be transferred to the State Government under sub-section (3) shall be in the same revenue village have area equal to twice the area of the Gairan land and its value shall not be less than the value of the Gairan land so allotted under sub-section (3) :

Provided that, the area of compensatory land shall have to be suitably increased, wherever necessary, so as to make its value equal to the value of the Gairan land so allotted under sub-section (3).

(5) The compensatory land to be transferred to the State Government under sub-section (3) shall, notwithstanding anything contained in any other law, rule or orders made thereunder, be assigned by the Collector under section 22 for the use only of free pasturage of village cattle or for grass or fodder reserve.

(6) The powers of diversion, grant, lease of Gairan land under this section shall be vested in the State Government:

Provided that, notwithstanding anything contained in section 330A, the powers of the State Government under sub-section (3) shall not be delegated to any officer or other authority sub-ordinate to it.

Explanation .—

(a) For the purposes of this section, the term "public purpose" shall have the same meaning as assigned to it in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).

(b) The question whether or not such land is unavoidably required for a project under sub-section (3) shall be determined by the State Government on the advice of the Divisional Commissioner.

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(7) Notwithstanding anything in sub-sections (1) to (6) or any other provision of this Act, Gram Sabhas shall be competent to preserve, safeguard and manage Gairan land in Scheduled Areas: Provided that, no Gairan land in the Scheduled Areas shall be diverted or disposed of without the prior informed consent of the Gram Sabhas concerned.

Explanation.— For the purposes of sub-section (7), the term "Gram Sabha" shall have the same meaning as assigned to it in section 54-1A(b) of the Maharashtra Village Panchayats Act (III of 1959)."

Section 40 which vests authority in the State Government to dispose of any Government land is also extracted hereinbelow:

"40. Saving of powers of Government *—Nothing contained in any provision of this Code shall derogate from the right of the State Government to dispose of any land, the property of Government, on such terms and conditions as it deems fit*."

Section 3(3)(a) and 3(3)(b) of the Corporations Act, 1949 which read thus:

"Section 3 - Specification of larger urban areas and constitution of Corporations.

(1) ……
(1A) ……
(2) ……..
(2A) ……

(3) (a) Subject to the provisions of sub-section (2), the State Government may also from time to time after consultation with the Corporation by notification in the Official Gazette, alter the limits specified for any larger urban area under sub-section (1) or sub-section (2) so as to include therein, or to exclude therefrom, such area as is specified in the notification.

(3) (b) Where any area is included within the limits of the 4 larger urban area under clause (a), any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, by-laws or forms made, issued, imposed or granted under this Act or any other law, which are for the time being in force in the 5[larger urban area] shall,

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notwithstanding anything contained in any other law for the time being in force but save as otherwise provided in section 129A or any other provision of this Act, apply to and be in force in the additional area also from the date that area is included in the larger urban area."

Sections 34, 35 and 52(2) of the MRTP Act, 1966 are also relevant to be quoted which run as under:

"34. Preparation of Development plan for additional area:-

(1) If at any time after a Planning Authority has declared its intention to prepare a Development plan or after a Development plan prepared by a Planning Authority has been sanctioned, the jurisdiction of the Planning Authority is extended by inclusion of an additional area, the Planning Authority shall make a fresh declaration of intention to prepare a Development plan for the additional area; and after following the provisions of this Act for the preparation of a draft Development plan, 1[prepare a draft Development plan and publish a notice regarding its preparation], for such additional area either separately or jointly with the draft or final Development plan prepared or to be prepared for the area originally under its jurisdiction, and submit it to the State Government for sanction after following the same procedure as is followed for submission of a draft Development plan to the State Government :

***Provided** that, where a draft Development plan for the additional area requires modification of the final Development plan or where the State Government directs any such modification, the Planning Authority shall revise the final Development plan after following the procedure laid down in section 38 so far as may be relevant.*

(2) Where any area is withdrawn from the jurisdiction of a Planning Authority the proposals, if any, made for that area so withdrawn in a Development plan shall also be deemed to be withdrawn therefrom."

"35. Development plans sanctioned by State Government before commencement of this Act :-

If any Planning Authority has prepared a Development plan which has been sanctioned by the State Government before the commencement of this Act, then such Development plan shall be deemed to be final Development plan sanctioned under this Act."

"52. Penalty for unauthorised development or for use otherwise than in conformity with Development plan:

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(1) …….

(2) Any person who continues to use or allows the use of any land or building in contravention of the provisions of a Development plan without being allowed to do so under section 45 or 47, or where the continuance of such use has been allowed under the section continues such use after the period for which the use has been allowed or without complying with the terms and conditions under which the continuance of such use is allowed, shall on conviction be punished 3[with fine which may extend to five thousand rupees]; and in the case of a continuing offence, with a further fine which may extend to one hundred rupees for every day during which such offence continues after conviction for the first commission of the offence."

22. Main plank of argument of Shri Anturkar, learned Senior Advocate representing the petitioners is that in terms of the provisions contained in Section 22A of the MLRC, 1966, *Gairan* land cannot be diverted or granted or leased for any other use and since in this case *Gairan* land has been allotted in favour of respondent No.4 – Corporation for use of construction of houses for economically weaker section, the same is illegal being violative of the prohibition contained in Section 22A of the MLRC, 1966. It is his further submission that exception to prohibition as carved out in sub Section (2) of Section 22A of the MLRC, 1966 will operate only with a pre-condition that *Gairan* land may be diverted or granted or leased for public purpose/project only if no other suitable land of the Government is available for such public purpose/project and in the instant case, there is nothing on record to establish that any other Government land was

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available for the construction of houses for economically weaker section under the PMAY. Thus, it is his contention that the allotment was is unlawful.

23. However, the said submission of Shri Anturkar on behalf of the petitioners has to be scrutinized keeping in mind what Section 40 of the MLRC, 1966 provides for. The said submission also needs to be tested on the legal proposition as argued by Shri Kumbhakoni, learned Senior Advocate representing respondent No.4 – Corporation that in view of the provisions of Section 3(3)(a) and 3(3)(b) of the Corporations Act, 1949 on inclusion of subject land within the municipal area of respondent No.4 – Corporation, the provisions of the MRTP Act, 1966 and the Development Plan sanctioned by the State Government under Section 34/35 of the MRTP Act, 1966 will operate and therefore, any violation of the land use as determined by the Development Plan prepared under Section 34/35 of the MRTP Act, 1966 will not be permissible.

24. Section 40 of the MLRC, 1966 as extracted above, vests almost absolute right in the State Government to dispose of any land or property of the Government on such terms and

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conditions as it deems fit. The language in which Section 40 is couched leaves no room of doubt that the right of the State Government to dispose of any of its land or property is irrespective of any provision of MLRC, 1966 for the reason of opening phrase occurring in Section 40 is "nothing contained in any provision of this Code". Thus, we are of the opinion that by operation of Section 40 of the MLRC, 1966, the State Government is vested with right to dispose of any land of the Government on such terms and conditions which are to be determined by it irrespective of any other provision available in MRLC, 1966 including Section 22A. Such, an interpretation of Section 40 qua Section 22A of the MLRC, 1966 is based on the rationale that the Government is the absolute owner of its own property and land and hence, putting any fetter on the right of the Government to dispose of any property on the terms and conditions to be determined by it, in our opinion, will not be permissible and therefore, in the view of the Court, notwithstanding the prohibition contained in Section 22A of the MLRC, 1966, the Government still will have all the authority and power to dispose of its land.

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25. It is further noticed that Section 3(3)(a) of the Corporations act, 1949 permits the State Government to exclude or include by way of alteration of limits to exclude or include any area from the municipal limits by its alteration. Section 3(3)(b) provides that in case any area is included within the municipal limits of a Municipal Corporation by the State Government in exercise of its powers available to it under Section 3(3)(a), various acts, such as appointments, notifications, notices, taxes, orders, schemes, licenses, permissions, rules, bye-laws etc. made or issued or imposed or granted under the Corporations Act, 1949 or any other law for the time in force, shall apply to and be in force in the additional area also from the date of its inclusion in the municipal limits under Section 3(3)(a). The relevant phrase occurring in Section 3(3)(b) is various acts done under "this Act" that means the Municipal Corporations Act or "any other law". Thus, any act of the Municipal Corporation referable to MRTP Act, 1966 will be covered by the phrase "any other law" occurring in Section 3(3)(b) of the Corporations Act, 1949. Since the Development Plan for the additional area is prepared by the Corporation with the sanction of the State Government under Section 34/35 of the MRTP Act, 1966,

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therefore, such a Development Plan will apply to and shall be in force in respect of the additional area as well. Meaning thereby, such Development Plan will apply to the subject land for the reason that the subject land was included in the municipal area of respondent No.4 by the State Government vide its notification dated 11th September 1997.

26. The land use prescribed in the Development Plan prepared by respondent No.4 in respect of subject land under Section 34/35 of the MRTP Act, 1966 will operate and apply and will over-ride the use of the subject land as *Gairan* land also keeping in view the provisions contained in Section 52(2) of the MRTP Act, 1966. The reason for such application of Development Plan is that Section 52 of the MRTP Act, 1966 provides that any person who contravenes the provisions of the Development Plan invites certain penal consequences. Thus, if user of any land before its inclusion in the Municipal Corporation was other than the user prescribed in the Development Plan prepared by the Municipal Corporation, after its inclusion in the municipal limits, earlier user is impermissible and such use has penal consequences. Therefore, we conclude that the user of the land as per the prescription of the Development Plan prepared under

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Section 34/35 of the MRTP Act, 1966 in respect of the additional area will prevail over the land use of the land in the additional area which was in existence prior to inclusion of the additional area within the municipal limits of the Municipal Corporation.

27. For the reasons aforesaid, we do not find that the Collector, while granting the subject land to respondent No.4 – Corporation for a public project of constructing houses for economically weaker section of the society under the Central Government Scheme (PMAY) has committed any illegality or contravened any statutory provision. We are, thus, not persuaded to interfere in the impugned order of allotment.

28. There is yet another reason which dissuades us from interfering in the impugned allotment order dated 18th June 2018 and other consequential actions on behalf of the State authorities and the reason can be found in the purpose for which impugned allotment of land has been made. It is not in dispute that the impugned order allotting the land to respondent No.4 – Corporation has been passed by the Collector for the subject land being utilized for a public purpose under the Central Government Scheme viz. PMAY for providing affordable housing

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to the economically weaker section of the society. Accordingly, since the impugned allotment has been made for achieving a larger public interest and public purpose, we do not find ourselves in agreement with the submissions made by Shri Anturkar, learned Senior Advocate representing the petitioners who insisted for interfering in the impugned allotment order and other consequential actions.

29. So far as the submission made by Shri Anturkar, that the Collector, while passing the impugned allotment order, has surrendered his discretion to the diktats of the State Government is concerned, we do not find any force in the said submission.

30. As already observed above, the State Government is vested with almost absolute power to dispose of any land or property of the Government on the terms and conditions to be determined by it. A perusal of the impugned order shows that the State Government, in the Department of Revenue and Forest, vide its letter dated 26th April 2018, only informed the Collector that the Government had received a proposal to transfer the subject land to respondent No.4 – Corporation for

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developing the houses under the PMAY for economically weaker section. By the said letter dated 26th April 2018 the State Government only directed that the Collector should take appropriate decision at his level regarding providing subject land to respondent No.4 – Corporation on appropriate terms or on such terms and conditions as the Collector may deem it appropriate, for the purposes of constructing houses for economically weaker section and low income group beneficiaries under the PMAY. Thus, what was provided for by the State Government in its letter dated 26th April 2018 was that on the proposal to transfer the subject land in favour of respondent No.4, "the Collector should take appropriate decision at his level". Therefore, the contents of the letter dated 26th April 2018 of the State Government cannot be termed, in any manner, as any kind of the diktat to the Collector; rather the Collector was only asked to consider the proposal and take decision at his level, meaning thereby the discretion of the Collector was not taken away by the State Government. In our opinion, the letter dated 26th April 2018 of the State Government cannot be construed to mean that the same contained any kind of diktat from the State Government which would have compelled the

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Collector to surrender his discretion.

31. In view of the discussion made above, we conclude that no interference in the impugned order of allotment passed by the Collector, dated 18th June 2018 allotting subject land in favour of respondent No.4 – Corporation and also in the consequential actions is called for by the Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

32. Resultantly, the petition fails, which is hereby dismissed.

33. Costs made easy.

34. Interim application(s), if any, stands disposed of.

(AMIT BORKAR, J.) **(CHIEF JUSTICE)**

35. After pronouncement of the judgment, learned Counsel for the petitioners prays that interim order passed by the Court on 3rd September 2020 may be extended for four weeks.

36. However, in view of the reasons given by the Court dismissing the writ petition, we are unable to accede to the said prayer, which is refused.

(AMIT BORKAR, J.) **(CHIEF JUSTICE)**

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