



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2693 OF 2024

Raj Realtors

.. Petitioner

Versus

1. The State of Maharashtra
2. The Collector,
At Raigad, Alibaug
3. The Divisional Commissioner,
Town Planning Department
4. The Tahsildar, (NA Department)
At Raigad, Alibaug

.. Respondents

Mr. Suresh Sabrad *a/w. Mr. Jeetendra Sachhdev, Abubakar Patel & Pournima Sawant i/b. JS Legal, Advocates for Petitioners.*

Ms A.I. Patel, Addl.G.P. *a/w. Ms P.M.J. Deshpande, AGP for Respondent Nos.1 to 4-State.*

**CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

Reserved on : November 26, 2024

Pronounced on : December 9, 2024

JUDGMENT : (Per, Somasekhar Sundaresan J.).

1. Rule. Rule is made returnable forthwith. Respondents waive service. By consent, heard finally.

Factual Background:

2. This Petition seeks a declaration that the refusal to issue an Occupation Certificate (“OC”) by the Tahsildar, Alibag, (Respondent No. 4), in respect of ten buildings constructed by the Petitioner pursuant to development permissions granted by the Collector (Respondent No. 2), is illegal, and also seeks a direction that the OC be issued to the Petitioner.

3. The Petitioner is a partnership firm, which has constructed ten buildings pursuant to development permissions and commencement certificates issued from time to time in respect of land admeasuring 7 Hectares, 90.2 Ares, situated at Mouje Pashane, Taluka Karjat, District Raigad, bearing Survey Nos.8/2A/1, 8/2A/2, 8/3A/1, 9/1A, 10/5, 10/7, 11/1A/2, 11/1A/3, 168/2B/3C, 168/3D and 170/1 (“**Subject Land**”). The buildings contain seven storeys above the ground floor, and comprise 446 residential units and 20 commercial units under the project name *Tulsi Vivaan* on the Subject Land.

4. The facts relevant for adjudication of this Petition, as discerned from the pleadings and submitted by counsel, may be summarized as follows:-

a) On March 7, 2014, the Gram Panchayat issued a No-

Objection Certificate for carrying out the construction in question;

- b) In 2016, boundaries for the Subject Land were fixed, and on December 19, 2016, the Petitioner applied to the Collector, Raigad (Respondent No.2) for permission to classify the Subject Land as non-agricultural land, and to accord development permission for the project;
- c) Meanwhile, on March 22, 2017, the Regional Planning Board passed a resolution for publication of the Draft Regional Plan (“*DRP*”) for development of Thane-Palghar-Raigad regions;
- d) On April 4, 2017, the Collector granted permission for the Subject Land to be treated as non-agricultural land and also accorded development permission for the project, after consideration of various reports received from the Tahsildar, Zilla Parishad and the Assistant Director, Town Planning, Raigad, Alibaug;
- e) On April 5, 2017, the *DRP* was published in the Official Gazette;
- f) The Petitioner commenced construction, and on October 31, 2017 applied for grant of a revised development permission;

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- g) On January 6, 2018, the DRP was sanctioned by the Government of Maharashtra;
- h) On March 6, 2018, the sanctioned regional plan came into force;
- i) On April 21, 2018, the revised development permission as sought by the Petitioner was granted by the Collector;
- j) On February 2, 2020, the Government of Maharashtra sanctioned the Unified Development Control and Promotional Regulations (“*UDCPR*”), to administer the provisions of the Maharashtra Regional Town Planning Act, 1966 (“*M RTP Act*”). The UDCPR would take effect from December 2, 2020;
- k) Based on the permissions received from time to time, including the development permissions, the Petitioner completed construction of the ten buildings. It is the Petitioner’s case that 381 residential units and 20 commercial units have been sold, and that the purchasers have availed of loans from various financial institutions to finance their purchase of such units;
- l) On May 10, 2023, the Petitioner applied to the Collector for grant of the OC;
- m) On August 21, 2023, the Collector sought an opinion from

the Divisional Office as to whether the UDCPR, in particular, Regulation 5.1.3 would enable issuance of the OC; and

- n) On October 18, 2023, the Tahsildar communicated to the Petitioner that the application for the OC has been disposed of without issuing it since no opinion had, until then, been received from the Divisional Office.

5. It is against such backdrop that the Petition is filed, asserting that the entire development had been effected on the basis of the permissions given by the State authorities and that it was unfair to withhold the OC. An affidavit-in-reply dated April 18, 2024 has been filed on behalf of the Collector and the Tahsildar. Another affidavit dated July 2, 2024 has been filed on behalf of the State of Maharashtra and the Divisional Commissioner, Town Planning Department.

Analysis and Findings:

6. We have heard Mr. Suresh Sabrad, Learned Counsel on behalf of the Petitioner and Mr. A.I. Patel, Learned Additional Government Pleader on behalf of the Respondents. With their assistance, we have examined the record and the provisions of the UDCPR and the MRTTP Act. The key reason for the non-issuance of the OC by the Tahsildar, and which motivated his request for an opinion from the Divisional

Office, is that the Subject Land falls within land earmarked for agricultural purposes in the Regional Plan. Doubts had arisen as to whether Regulation 5.1.3 would apply to the development in question as a “committed development” prior to the Regional Plan.

7. It is to be noted that the DRP was published in the Official Gazette on April 5, 2017. The approval granted to the Petitioner for the change of use of the Subject Land from agricultural to non-agricultural purpose and the development permission was issued one day earlier i.e. on April 4, 2017. The DRP eventually was finalised and published as the final Regional Plan on January 6, 2018, and was brought into force on March 6, 2018. After the notification of the Regional Plan and its taking effect, a revised development permission too had been granted on April 21, 2018.

MRTP Act:

8. It is important to examine the scheme and scope of the MRTP Act in the context of the aforesaid factual background. Section 14 of the MRTP Act stipulates the contents of a Regional Plan, which includes allocation of land for different uses and reservation of areas for specific purposes. Under Section 15, the proposed Regional Plan must be submitted to the State Government for approval. The State Government may either approve, with or without modifications, or

reject the proposed Regional Plan.

9. Under Section 16, before submission of the Regional Plan for approval of the State Government (under Section 15), the Regional Planning Board must prepare a DRP and publish a notice of the same in the Official Gazette stating that such a plan has been prepared. Upon the publication of such notice, the public would be entitled to inspect the same, take copies and extracts and give its suggestion and objections, for which, a period of at least four months is to be provided. After such inputs are received in the course of public consultation, the Regional Planning Committee must give reasonable opportunity of being heard to all persons affected by the DRP and submit a report to the Regional Planning Board. It is after consideration of such report, that the DRP must be submitted to the State Government for its approval.

10. The statutory restrictions on change of use and on development activity in the course of the aforesaid process, is contained in Section 18 of the MRTP Act. Extracts of the relevant provisions are set out below :-

“18. Restriction on change of user of land or development thereof

(1) No person shall, on or after the publication of the notice that the draft Regional plan has been prepared or the draft Regional plan has been approved, institute or change the use of any land for any purpose other than agriculture or carry out any development in respect of any land without the Previous permission.

(i) in case the land is situated in the limits of a Municipal Corporation

or a Municipal Council, or a Nagar Panchayat or a Special Planning Authority or any other planning authority, of such Municipal Corporation or Municipal Council, Nagar Panchayat or Special Planning Authority or other planning authority, as the case may be, or

(ii) in case the land is situated in the gaathan, within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966, of the village panchayat concerned, or

(iii) in case the land is situated in areas other than those mentioned in clauses (i) and (ii) above, of the Collector of the District:

Provided that, the Collector may delegate his powers under this clause to an officer not below the rank of Tahsildar.

Explanation.- For the removal of doubt, it is hereby declared that, no such permission of the Collector shall be required in the gaathan area of a revenue village within the meaning of clause (10) of section 2 of the Maharashtra Land Revenue Code, 1966.

(2) to (3) *****”

[Emphasis Supplied]

11. From a plain reading of the foregoing, it would be evident that the restriction on change of use and on development of land would commence upon publication of a notice that the DRP has been prepared. This is the earliest point of time at which the restriction would commence under Section 18 of the MRTTP Act. The reason for this is not far to seek because only once the DRP is published would the public know if their land is affected by the DRP. In the facts of the present case, the restrictions would have commenced on April 5, 2017. The permission for change of use and for development had been issued to the Petitioner one day earlier i.e. on April 4, 2017. Therefore,

arguably, the permission for the development of the Subject Land appears to have been conceived and approved even before the DRP was put up for public consultation.

12. The authorities who may issue the permission for change of use and for development after the publication of the DRP have also been stipulated in Clauses (i), (ii) and (iii) of Section 18(1). Both Mr. Sabrad and Mr. Patel are unanimous in their submission that the Subject Land does not fall under either Clause (i) or Clause (ii) of Section 18(1), and consequently, the authority to grant the permission to change the use and to develop the land would be the Collector. In the facts of this case, it was the Collector who granted the permission for change of use of the Subject Land from agriculture to non-agricultural purpose and granted the development permission (on April 4, 2017) after applying his mind to various reports received from the relevant authorities. Consequently, the framework for the change of use and the development of the land as set out in Section 18(1) had been complied with, and that too before the publication of the DRP i.e. on April 5, 2017.

UDCPR:

13. However, there is another hurdle for the Petitioner to overcome. The provision in the UDCPR that deals with the issue of pre-committed

development is contained in Regulation 5.1.3, which is extracted below :

“5.1.3 Committed Development

i) Any development permission granted or any development proposal for which tentative or final approval has been recommended by the concerned Town Planning Office and is pending with the concerned Revenue Authority for demarcation or for final N.A. permission before publication of draft RP (date of resolution of the RP Board for publication) shall be continued to be valid for that respective purpose/use irrespective of approved Floor Space Index. Provided that, it shall be permissible for the owner either continue with the permission in toto as per such earlier approval or apply for grant of revised permissions under these regulations. However, in such cases of revision, the premium, if any, shall not be applicable, for approved permissions (including tentative). This provision shall not cover the cases mentioned in 5.1.3 (iii) below.

ii) The layout already approved/development permission already granted for residential purpose and which are valid as per the provisions of UDCPR shall be entitled for development subject to use of earlier permission. This shall also be applicable to cases where sale permission for N.A. use has been granted prior to the date of sanction of these Regulations, for the same use as the one for which sale permission was granted.

iii) The layout already approved/development permission already granted for the uses permissible in agricultural or such restrictive zone and which are valid as per the provisions of UDCPR shall be entitled for development subject to use and FSI of respective use granted in earlier permission.”

[Emphasis Supplied]

14. It will be seen from the foregoing that Regulation 5.1.3(i) of the UDCPR brings in an element of change to the date of publication of the DRP, from what is stipulated under Section 18 of the MRTP Act. While the earliest date for commencement of the statutory restriction on change of use and development, contemplated under Section 18 of the MRTP Act, is the date of publication of the DRP, in Regulation 5.1.3(i) of the UDCPR, by using the words in parenthesis after the words

“before publication of the draft RP”, the starting date for triggering the prohibition on development is stretched to an even prior date i.e. the date on which the Regional Planning Board passes a resolution approving the publication of notice of the DRP.

15. In the facts of this case, it was on March 22, 2017 that the Regional Planning Board resolved to publish the DRP, which was published on April 5, 2017. The approval for change of use and the development permission in the instant case was accorded on April 4, 2017. Therefore, such approval had been issued one day prior to the publication of the DRP, but after the date of the resolution passed by the Regional Planning Board. This creates the need to interpret the interplay between Regulation 5.1.3 of the UDCPR and Section 18 of the MRTP Act.

16. Having examined the provisions, it is apparent to us that any development permission granted, or any development proposal for which tentative or final approval has been recommended by the Town Planning Office and was pending with the relevant Revenue Authority before the date of passing the resolution would continue to be valid under Regulation 5.1.3(i). However, in the instant case, the approval on April 4, 2017 is after the date of the resolution by the Regional Planning Board.

17. However, such a requirement would not apply to cases covered by Regulation 5.1.3 (iii). In terms of that provision, development permissions '*already*' granted for uses permissible in agricultural or restrictive zone shall be valid for carrying out development in accordance with the approved terms. This would call for interpretation the word '*already*', which would necessarily need to have reference to a point of time.

18. As regards Regulation 5.1.3(ii), here too the development permission '*already*' granted for residential purpose shall be valid in accordance with its terms. However, where the change of use to non-agricultural purpose has been granted prior to the sanction of the UDCPR (this date is December 2, 2020), the same use as the one for which the permission was granted, would be valid.

19. While the OC was applied for after the UDCPR came into effect (upon completion of development), the approval of the change of use and the development permission for the project had been granted on April 4, 2017, well before the UDCPR came into effect. Even the revised development permission had been granted on April 21, 2018 i.e. well before December 2, 2020. Therefore, it is evident that under Regulation 5.1.3(ii), so long as the Petitioner has complied with the terms of the change of use and the development of the land contained in the

approvals and permissions that had been granted to him, the buildings would qualify for issuance of the OC.

20. In any case, before the UDCPR came into existence, it was Section 18 of the MRTP Act alone that held the field. As seen above, the previous permission of the Collector was taken for the development in question, thereby complying with Section 18 of the MRTP Act.

21. Besides, having examined the scheme of Section 18 of the MRTP Act and of Regulation 5.1.3 of the UDCPR, we have no doubt that the latter has to be read and understood in a manner that is consistent with the former. It is trite law that should two views be possible in interpreting the subordinate legislation, the view that would render the interpretation to be *intra vires* the parent statute must prevail over the view that would render it *ultra vires*. The framework under Section 18(1) of the MRTP Act makes it clear that the restriction on change of use and on development of land would commence when notice of the DRP is published (in this case, April 5, 2017). Now, even if one were to regard Regulation 5.1.3(i) of the UDCPR as stretching such date further back to the date on which the Regional Planning Board passed a resolution approving such notice (in this case, March 22, 2017), for purposes of reading the term “already granted” used in Regulation

5.1.3(ii), one cannot lose sight of either the essential scope of Section 18 of the MRTP Act or the fact that the UDCPR itself was notified well after the permissions under Section 18 had already been granted.

22. As stated earlier, the restriction on change of use and development of land is a restriction on such action without the previous permission of the relevant authority (in this case, the Collector). A change of use and the development of land could have indeed been effected under Section 18 of the MRTP Act provided such action has the previous approval of the Collector.

23. Therefore, even if we were to take the date of resolution passed by the Regional Planning Board (March 22, 2017) as the date on which the restrictions commenced, the necessary corollary would be that the change of use and the development effected by the Petitioner, was with the previous permission of the Collector, who was a designated authority under Section 18 of the MRTP Act, having jurisdiction to approve such action in relation to the Subject Land. In the instant case, that is precisely what has transpired. The Collector granted permission on April 4, 2017 for the change of use and for the development. The change of use and the development activity carried out by the Petitioner is after such permission and pursuant to such permission. In fact, the revised development permission that was granted in April 21, 2018

approved the application made on October 31, 2017, which too was before the UDCPR came into effect. Such permissions granted by the Collector can only mean that the conscious decision of the Collector was taken (on April 4, 2017) before the Regional Plan was published (on April 5, 2017) and the subsequent revised development was with the “previous permission” of the Collector under Section 18 of the MRTP Act, after the Regional Plan was published. In any case, all of the activity of permissions was before the UDCPR was brought into effect, which would entitle the Petitioner to seek the OC pursuant to Regulation 5.1.3(ii) of the UDCPR.

24. In the result, in our opinion, it is quite evident that in the peculiar facts of this case, there is no basis to hold up the grant of the OC in relation to the Petitioner’s project developed on the Subject Land. The change of use and the development, being consistent with Section 18(1) of the MRTP Act before the commencement of the UDCPR, and read with Regulation 5.1.3 of the UDCPR after its commencement, we dispose of this Petition by directing the Respondents to issue the OC in accordance with law, without holding it up on the ground of any perceived inability due to Regulation 5.1.3 of the UDCPR. So long as all the development carried out by the Petitioner is in accordance with and compliant with the previous permissions granted by the Collector for the development of the project

on the Subject Land, in our opinion, there would be no impediment on the issuance of the OC.

25. We direct that the grant of the OC shall be completed within a period of eight weeks from today.

26. Rule is made absolute in the aforesaid terms. The Writ Petition is disposed of accordingly. Since the Writ Petition is finally disposed of, nothing would survive in any interim application connected with this Writ Petition and those would also stand disposed of finally.

27. Although we have disposed of the above Writ Petition, we place it on Board for reporting compliance on February 3, 2025.

28. All actions required to be taken pursuant to this judgement shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.] [B. P. COLABAWALLA, J.]