

CASE NO.:
Special Leave Petition (civil) 63 of 2006

PETITIONER:
Shanti G. Patel & Ors.

RESPONDENT:
State of Maharashtra & Ors.

DATE OF JUDGMENT: 31/01/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
JUDGMENT
O R D E R

The petitioners herein before the High Court, inter alia, sought for issuance of a writ of or in the nature of mandamus declaring Section 37(1AA) of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the MRTTP Act') as violative of the Constitution of India and Items (1) and (2) of Twelfth Schedule thereof.

The High Court refused to enter into the aforementioned question holding, inter alia, that in absence of a comprehensive challenge by laying proper foundation therefor in the pleadings, as to how merely challenging the said provision would suffice when power to issue directions is conferred under the MRTTP Act and other provisions of the Maharashtra Metropolitan Planning Committee Act, it would not be proper to go thereinto.

It was furthermore observed :

"\005Section 37(1) read properly and as a whole confers an independent power on the State government to issue directions to the planning authority to set in motion the procedure for effecting modification of any part of, or any proposal made in the final development plan, provided, of course it is of such a nature that it will not change the character of the development plan. Section 37(1AA) although opening with a non obstante clause clearly postulates that if the State Government is satisfied that in public interest it is necessary to urgently carry out a modification of any part of, or any proposal made in a final development plan, then it can on it's own publish a notice in the Official Gazette and in such other manner as may be determined by it, to invite objections and suggestions from any person with respect to the proposed modification. Such notice would be served on the planning authority in addition to persons affected by the proposed modification. It is only to enable the Government to issue a notice for inviting objections and suggestions that the Government thought it fit to refer to and take recourse to the amended provisions\005"

It was, inter alia directed :

A) The challenge to Section 37(1AA) of Maharashtra Regional and Town Planning Act, 1966 is kept open for consideration in an appropriate case.

D) The issue as to what is the ambit and scope of Section 37(1) of Maharashtra Regional and Town Planning Act, 1966 vis-à-vis amendment to Development Control Regulations and further alteration of the percentage of open spaces/public amenities and public housing earmarked or determined thereunder is a change of the character and basic structure of the Development Plan is expressly kept open in the light of the above interpretation."

A Bench of this court has already heard appeals arising from the judgment of the Division Bench of the High Court dated 17.10.2005 passed in Writ Petition No. 482 of 2005 and has reserved judgment.

Mr. Shanti Bhushan, learned Senior Counsel appearing on behalf of the petitioners, submitted that the hallmark of Seventy-third and Seventy-fourth Amendments being democracy at the grass-root level; the Municipal Corporation having the popular mandate alone has the competence to make subordinate legislation as regard town planning, as would appear from Article 243W as also Item Nos.1 and 2 of the Twelfth Schedule of the Constitution of India.

In terms of Article 243Q of the Constitution of India, municipalities are to be constituted. A Municipal Corporation may be constituted for a larger urban area, in terms of the provisions of Article 243P of the Constitution. The Bombay Municipal Corporation, indisputably, is a body which answers the said description.

Presumably the election to the posts to be filled up in the Municipal Corporation had been carried out in terms of the constitutional mandate. Even if that has not been done, we are not called upon to determine the question as regard violation or otherwise of the constitutional mandate contained in Article 243R of the Constitution of India.

Article 243W whereupon great emphasis has been laid by the petitioners herein provides for an enabling clause so as to enable the State to endow by law the Municipality with such powers and authority, as may be necessary, to enable the State to make by law by endowing the Municipalities to function as institutions of self-government which may contain provisions of the devolution of powers and responsibilities subject to the conditions which may be specified in the Twelfth Schedule. The Twelfth Schedule of the Constitution referable to Article 243W, inter alia, provides for Urban planning including town planning, regulation of land-use and construction of buildings. Thus, Article 243W contains merely an enabling provision, and it does not mean that the State is obligated to provide for such a statute. The Constitution (Seventy-fourth Amendment) Act, in any event, does not envisage that the existing laws would become non-operative or a vacuum would be created in the matter of enforcement of existing laws relating to urban planning and/or regulation of land use and construction of buildings etc.

The existing provisions of the statutes which govern the field, in our opinion, unless a statute is enacted by the State Legislature in terms of Article 243W of the Constitution of India would continue to operate in the field. In view of the fact that the validity and/or interpretation of the MRTPL Act and/or the regulations framed by the State are otherwise pending consideration before this Court, entertaining this special leave petition at this stage, in our opinion, would not serve any fruitful purpose.

We have noticed hereinbefore that the petitioners had not laid any foundation on facts in the writ petition so as to comprehensively question the vires of the existing statutes in terms of the Constitution (Seventy-fourth

Amendment) Act and on the said ground alone, the High Court, in or opinion, has rightly refused to enter thereinto.

Even if we agree with the contention of the petitioners herein that the writ petition should have been entertained, the High Court or for that matter this Court could only issue a direction upon the State to pass an appropriate legislation in terms of the provisions of Article 243W and the Twelfth Schedule of the Constitution of India within a time frame. By no stretch of imagination the existing laws could have been struck down only on that premise.

We may notice that despite the time schedule provided for in the Constitution (Seventy-third Amendment) Act, in several states, elections in Panchayat Raj as also Municipalities have been held only pursuant to writ of mandamus having been issued and/or are yet to be held despite such writs having been issued by the several High Courts in this behalf.

As for example, we may notice that in the State Jharkhand Panchayat elections are yet to be held despite a writ having been issued by the Jharkhand High Court and elections in the Hyderabad Municipal Corporation have only been held only after a time schedule therefor was fixed by the High Court of Andhra Pradesh. [See Govt. of A.P., Municipal Administration and Urban Development (Election-II) Dept. v. C. Prakash Goud and Others [2001 (5) ALT 723]. If no election is held, conferment of any power upon the elected body to implement the law made by the State in terms of Article 243W or the Twelfth Schedule would not serve the purpose.

We have referred to non-holding or late holding the elections at the gram panchayat as also municipal level only for the purpose of showing that even in such a case, the operation of the existing statutes or implementation thereof has not been held to have ceased. Thus, unless an appropriate case is made out for issuing a direction upon the State to make a legislation in terms of Article 243W read with Twelfth Schedule of the Constitution of India, prima facie the provisions of the Act as also the rules and regulations framed under the MRTP Act relating to town planning as well as the land use or the building plans have not become otiose. As other questions raised by the petitioners are already covered by the earlier decision of the High Court, which is the subject matter of several special leave petitions pending judgment before this Court, we are of the opinion that no fruitful purpose would be served in entertaining the special leave petition at this stage, which is accordingly dismissed.