2020 INSC 262

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1998 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 26834 OF 2017)

MADHYA PRADESH HOUSING
AND INFRASTRUCTURE DEVELOPMENT
BOARD AND ANOTHER ..... APPELLANT(S)

VERSUS

VIJAY BODANA AND OTHERS ..... RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

Leave granted.

2. First appellant, Madhya Pradesh Housing and Infrastructure Development Board, is a statutory board established under the Madhya Pradesh Housing and Infrastructure Development Board Act, 1972 for the purpose of taking measures to deal with and for satisfying the need of housing accommodation in the State of Madhya Pradesh and matters connected therewith.

3. Impugned judgment dated 26th July 2017 by the Indore Bench of the High Court of Madhya Pradesh allows Writ Petition No. 7666 of 2015 preferred by the first and second respondents before us,

Vijay Bodana and Ravindra Bhati, by quashing and setting aside the order dated 12th May 2008 of the Commissioner, Ujjain and the order dated 24th September 2008 of the Deputy Director, Town and Country Planning, Ujjain (for short "T&CP") approving the change in the layout plan of Indira Nagar, Ujjain. The lease deeds executed by the appellant-board in favour of third-party purchasers were declared null and void and not to be acted upon. The land in question, it was directed, would be used as per the original layout plan.

4. The appellant-board had developed the colony 'Indira Nagar' over an area of 32 hectares in Ujjain, as per the layout plan sanctioned by the T&CP on 11th September 1981. After the colony had been in existence for about 23 years, in 2004 the appellant-board had made an application for changing the land use of 1.52 hectares earmarked for commercial shopping complex in the original layout plan to residential accommodation. However, the request for amendment was rejected by the Deputy Director, T&CP vide order dated 27.12.2004 and the appeal under Section 31 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short, "the Adhiniyam") before the Commissioner, Ujjain was also dismissed vide order dated 25th July 2005. On the revision petition under Section 32 of the Adhiniyam, the State Government vide

order dated 28th September 2006 clarified the legal position that the appellant-board had not asked for a change in land use and had asked for a modification of the layout plan approved by the T&CP which was permissible under the provisions of the Adhiniyam. The appellant-board, it was directed, could submit the proposal for modification before the Commissioner, Ujjain for reconsideration. Thereupon, the Commissioner, Ujjain vide order 12th May 2008 had directed the Deputy Director, T&CP to re-examine the request for modification and pass appropriate orders. Pursuant to this order, the Deputy Director, T&CP approved the modified layout plan vide order dated 24th September 2008.

5. The impugned judgment allows the writ petition, which was preferred by the first and second respondents after nearly seven years in 2015, *inter alia* holding that the Adhiniyam stands enacted with the object to prevent unplanned and haphazard development and that layout plans for residential schemes are prepared to provide for open spaces for various purposes like roads, gardens, playgrounds and facilities like schools, hospitals, community centres, shopping complex etc. Developers like the appellant-board charge extra money for plots at preferential locations adjacent to or facing public amenities such as parks, roads, water body, shopping complex, etc. The allottees accordingly pay

extra/higher charges at the time of purchase with an expectation to avail and enjoy the advantages of such amenities. Therefore, the developer cannot be permitted to change the status of land to 'deceive' the allottees. Applying the principle of promissory estoppel, it has been held that the appellant-board must develop the land according to the original plan shown to the allottees at the time of purchase. Further, Ujjain Municipal Corporation was not heard and had no opportunity to represent the case as to the change in the layout plan.

6. It is an undisputed position that the State Government vide order dated 28th September 2006, while partly allowing the revision petition, had directed the appellant-board to file a revision application before the Commissioner, Ujjain observing that the application moved by the appellant-board was not for a change in land use but for a change in the 'approved' plan. The appellant-board as permitted had filed the revision application on which the Commissioner, Ujjain vide order dated 12th May 2008 had asked the Deputy Director, T&CP to consider the request for modification of the layout plan. The Deputy Director, T&CP after examination vide order dated 24th September 2008 had allowed the application approving the modified layout plan. Modifications, as noticed below, are in conformity and in accord with the parameters of the

development control norms. The impugned judgment does not hold that the procedure prescribed by and under the Adhiniyam was violated. It has not been held, or even contended before us, that the modification of the layout plan as approved by the Deputy Director, T&CP pursuant to the order of the Commissioner, Ujjain, is contrary to the Adhiniyam. This Court in ***Chairman, Indore Vikas Pradhikaran*** v. ***Pure Industrial Coke & Chemicals Ltd and Others***[1] delineating the legislative scheme of the Adhiniyam had observed that town and country planning involving development of land in towns and cities is achieved through the process of land use, zoning plan and regulating building activities. This is a highly complex exercise undertaken by experts on the basis of study, experience and scientific research, which has to be given due reverence. Urban planning often reconciles varied concerns and interests, both public and private, and thus ensures better living conditions. A clear distinction was drawn amongst the regional development plans, town development or zonal plans and layout plans of a colony. Elucidating the manner in which each plan guides the development and use of land, it was held:

> "37. When a planning area is defined, the same envisages preparation of development plan and the manner in which the existing land use is to be implemented. A development plan in some statutes is also known as a master plan. It lays down the broad objectives and parameters wherewith the development

[1] (2007) 8 SCC 705

> plan is to deal with. It also lays down the geographical splitting giving rise to preparation and finalisation of zonal plans. The zonal plans contain more detailed and specific matters than the master plan or the development plan. Town planning scheme or layout plan contains further details on plotwise basis. It may provide for the manner in which each plot shall be dealt with as also the matter relating to regulations of development.
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> xxx xxx Xxx
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> 72. Land use, development plan and zonal plan provided for the plan at macro-level whereas the town planning scheme is at a micro-level and, thus, would be subject to development plan. It is, therefore, difficult to comprehend that broad based macro-level planning may not at all be in place when a town planning scheme is prepared."

Therefore, the development plan, zonal plan and town planning schemes of the land are distinct and each have a different objective and purpose. The difference between the three in terms of the Adhiniyam was highlighted by this Court in ***Rajendra Shankar Shukla and Others*** v. ***State of Chhattisgarh and Others***[2] in the following words:

> "67. The town development scheme is always subservient to the master plan as well as the zonal plan, as provided under Section 17 of the 1973 Act, which reads as under:
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> > "17.Contents of development plan. — A development plan shall take into account any draft five year and annual development plan of the district prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995 (19 of 1995) in which the planning area is situated…."

[2] (2015) 10 SCC 400

68. Master plan falls within the category of broad development plans and is prepared only after taking into account the Annual Development Reports prepared by constitutionally elected bodies of local panchayats and municipalities, etc. A zonal plan is mandated to be prepared only after the publication of the development plan. Section 20 of the Act reads thus:

> "20. Preparation of zonal plans.—The local authority may on its own motion at any time after the publication of the development plan, or thereafter if so required by the State Government shall, within the next six months of such requisition, prepare a zoning plan."
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> Further, Section 21 of the Act reads thus:
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> "21. Contents of zoning plan.—The zoning plan shall enlarge the details of the land use *as indicated in the development plan*…."
> (emphasis supplied)

Thus, it is evident from the language of Sections 20 and 21 of the Act, that a zonal plan can be prepared only in adherence to the development plan which in the present case is the Raipur Master Plan of 2021.

69. Next, Section 49 of the Act which provides for the provisions for which a town development scheme can be prepared, has to be read along with Section 21 of the Act, which clearly mentions that the land required for acquisition by the Town and Country Development Authority for the purpose of any development scheme has to be laid down in the zonal plan.

70. Therefore, a combined reading of Sections 17, 21 and 49 lays down that the development plan is the umbrella under which a zonal plan is made for the city. The zonal plan in turn allocates the land which could be acquired for town development schemes.

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72. The importance of zonal planning lies in its distinguished characteristic which lays down with sufficient particularity the use to which a particular

> piece of land could be put. The object and purpose of the 1973 Act itself foresees that zonal plan is necessary for implementation of a town development scheme. The preamble of the Act clearly discloses that a town development scheme is at best a vehicle to implement the development plan and zonal plan. The object and purpose of the Act reads thus:
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> > "An Act to make provision for planning and development and use of land; *to make better provision for the preparation of development plans and zoning plans with a view to ensuring town planning schemes are made in a proper manner* and their execution is made effective, to…."
> >
> > (emphasis supplied)
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> Therefore, the object and purpose of the Act also provides that a town development scheme can be prepared in the presence of a zonal plan which in turn has to be prepared for the implementation of the development plan."

If the aforesaid aspects and the difference amongst the plans are kept in mind, it is lucid that the High Court has misconstrued and misdirected itself by relying upon the principle of promissory estoppel to hold that once the layout plan is prepared the same cannot be modified or changed. Change or modification is permitted under the Adhiniyam, provided the modification/change is in accordance with law i.e., as per the procedure, and satisfies the development norms and conditions of the development plans, zonal plans and town planning schemes. The modification cannot be struck down when the law permits such change which is in terms of the statute and the plans that

have the force of law. As long as the layout plans conform to the development control norms, the court would not substitute its own opinion as to what principle or policy would best serve greater public or private interest. It is not the case of the first and second respondents that the procedure prescribed by the Adhiniyam was not followed or the parameters and norms prescribed by the Adhiniyam, the development plan or the zonal plan have been violated. In this background, we fail to understand how the modification in the layout plan which is in accordance with the Adhiniyam could have been struck down.

7. On facts and justification for change of land use from commercial to residential, the impugned judgment ignores and glances over the earlier position that the area was earmarked for development and for construction of a shopping complex with 131 shops and not earmarked as an open area, park or playground. It notices the contention of the appellant-board that as per Rule 49 of the Madhya Pradesh Bhumi Vikas Rules, 1984, the area required to be earmarked for commercial purposes is 0.4 hectares whereas the area reserved in the original layout plan was 1.52 hectares. It is an undisputed position the land earmarked for the shopping complex had not found demand and takers despite efforts. The area was lying idle for more than 20 years, albeit more than 150

shops had already come up in the residential area. As per the appellant-board, construction of 131 shops would have caused congestion and would have adversely impacted the density of people living and using the area. We have highlighted these aspects and facts which are vastly distinct, for the courts normally frown upon, adversely comment and do strike down changes in the land use from residential to commercial or industrial use for obvious reasons.

8. The writ petition challenging the orders dated 12th May 2008 and 24th September 2008 was filed in 2015, nearly seven years after the approval for modification was granted. In the meanwhile, 42 out of 52 plots had been sold to third parties for consideration. The impugned judgment notices that many of these bonafide owner-purchasers had completed the construction and some houses were in advanced stages of construction. While the High Court has noticed and recorded these facts, it has failed to give due credence to the delay, the change in position and creation of third-party rights by wrongly applying the principle of promissory estoppel and lis pendens. Innocent plot owners on whom the brunt had fallen were not even heard before they were deprived and denied their rights by the adverse order. Considerable delay and laches of nearly seven years in approaching the court had

resulted in change in position as third-party rights had been created. In view of delay and laches, the High Court should not have entertained the writ petition as 42 plot owners who had paid money would suffer adverse consequences for no fault of theirs. In ***Karnataka Power Corporation Ltd. and Another v. K. Thangappan and Another***,[3] this Court, after citing ***State of M.P. and Others*** v. ***Nandlal Jaiswal and Others***,[4] had observed:

> "9. It was stated in *State of M.P. v. Nandlal Jaiswal* that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

9. The Ujjain Municipal Corporation was not made a party and had no opportunity to represent their stand on the change in the layout plan. If required and felt necessary, the High Court could have issued notice to the Ujjain Municipal Corporation and obtained their opinion. Stand of the State Government of Madhya Pradesh

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[3] (2006) 4 SCC 322. This judgment was later cited in ***Yunus (Baboobhai) A. Hamid Padvekar v. State of Maharashtra and Others***, (2009) 3 SCC 281.

[4] (1986) 4 SCC 566

and the authorities under the Adhiniyam, supporting the modification, was on record. Normally opposition and prejudice should not be presumed, unless there are grounds and reasons. Given the fact that the change in the present case was from commercial to residential, there was no ground and reason that would suggest objection or opposition from the Ujjain Municipal Corporation.

10. During the course of hearing before us, the appellant-board had produced the original layout plan of Indira Nagar in which the land in question was shown as reserved for a major shopping complex. Adjacent to this land is the land earmarked for a primary school. There are areas earmarked for a park/garden. Therefore, while we allow the present appeal and uphold the modification of the layout plan, we deem it proper to direct the appellant-board and the authorities to ensure that the areas/land earmarked for the primary school and park/garden are not converted into residential plots. We also direct the appellant-board and respondent authorities not to allot and sell any unsold residential plots. These plots which are yet to be sold would be utilised for general public amenities like park, garden, playground etc. The appellant-board and the authorities would act accordingly.

11. The appeal is accordingly allowed in the above terms without any order as to costs.

.....CJI.
(SHARAD A. BOBDE)

.....J.
(S. ABDUL NAZEER)

.....J.
(SANJIV KHANNA)

NEW DELHI;
MARCH 04, 2020.