

BINABAI BHATE

v.

STATE OF MADHYA PRADESH AND ORS.

(Civil Appeal No. 4920 of 2011)

JULY 04, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 – ss. 17, 18, 19 and 23(A) – Publication of draft development plan which included some portion of appellant's land – Appellant filed objections – Resolution passed by the Committee in favour of the appellant – However, State Government included certain lands belonging to the appellant in the modified development plan – Review petition filed by the appellant u/s. 23(A) before the State Government rejected – Writ petition as also writ appeal dismissed – On appeal, held: Resolutions passed by the Committee cannot be said to be absolute, final and binding – State Government possesses the final authority in the matter of giving approval to the development plan – On facts, development plan was approved by the State Government without any modification and therefore, there was no question of inviting any further suggestions or giving any hearing to the appellant – There was no violation of the principles of natural justice – State Government issued a final plan and also invited objections from the persons who are likely to be affected by inclusion of their land to which the appellant did not submit any objection, therefore, the question of giving a hearing to the appellant at that stage did not arise – High Court was justified in holding that there could be no review to the order passed since no power of review is provided for under the provisions of the Act – Also, ss. 23 and 23A providing for review and modifications of the development plan or adjoining plan not applicable in the instant case since State Government has not made any

A *modification in the development plan – Thus, order passed by the High Court does not suffer from any infirmity.*

B Some portion of appellant's land was included in the draft development plan published under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, for the purpose of holding a Mela. The appellant submitted objections. The Committee decided that the appellant's land was not required and passed a resolution in favour of the appellant. However, by a Notification, the appellant came to know that the State Government had included certain lands belonging to the appellant in the modified development plan. The appellant filed a review petition under Section 23(A) of the Act before the State Government and the same was rejected stating that there is no provision for review of the order in the Act. The appellant then filed a writ petition and the same was dismissed. Thereafter, writ appeal was also dismissed by the High Court. Therefore, the appellant filed the instant appeal.

E Dismissing the appeal, the Court

F HELD: 1.1 Sections 17, 18 and 19 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 give a broad scheme laying down the procedure as to how a development plan is to be approved by the State Government as also the procedure as to when it becomes final and operational. The said scheme of the provisions clearly states that a recommendation of the Committee is only recommendatory and advisory in nature and such recommendations of the Committee are required to be considered by the State Government, but the absolute and final power is rested on the State Government to approve or reject the draft development plan or to approve the same with some modifications as it may deem appropriate. The resolutions passed by the Committee cannot be said to be absolute, final and

binding and the State Government possesses the final authority in the matter of giving approval to the development plan. [Paras 18 and 19] [39-C-G] A

1.2 In the instant case, the development plan as prepared under Section 14 was approved by the State Government without any modification and therefore there was no question of inviting any further suggestions as no modification was suggested to the said development plan. There was no question of giving any hearing to the appellant and therefore, the issue raised with regard to alleged violation of the principles of natural justice is without any merit. In any case, the State Government approved the draft plan without any modification and therefore provisions of sub-sections (2) and (3) of Section 19 are not applicable to the facts and circumstances of the instant case. Despite the said legal provision, the State Government in the instant case issued a final plan and also invited objections from the persons who are likely to be affected by inclusion of their land. Even thereafter the appellant did not submit any objection and therefore, the question of giving a hearing to the appellant at that stage did not arise. So the contentions of the appellant are not found to be worthy of acceptance. [Paras 17 and 19] [38-H; 39-A-B; E-G] B
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1.3 A power of review against an order passed is a creature of the statute and since no such power of review is provided for under the provisions of the Act, the High Court was justified in holding that there could be no review to the order passed. So far the review and modifications of the development plan or adjoining plan as provided in Sections 23 and 23A of the Act, are concerned, the said provisions are not applicable in the instant case for the State Government has not made any modification in the development plan. Besides, the said power is exclusively vested with the State Government F
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A and in an appropriate case, the State Government is empowered to exercise such power as and when deem proper. This is not a case where the State Government thought it fit to invoke such power. Therefore, there is no error in the judgment passed by the High Court. The
B impugned order does not suffer from any infirmity. [Paras 20 and 21] [39-H; 40-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4920 of 2011.

C From the Judgment & Order dated 29.8.2008 of the High Court of Judicature of Madhya Pradesh, Jabalpur in W.A. No. 1063 of 2006.

D Pramod Swarup, Sushma Verma, Pooja Sharma, Praveen Swarup for the Appellant.

Vikas Upadhyay (for B.S. Banthia) for the Respondents.

The Judgment of the Court was delivered by

E DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

F 2. This appeal is directed against the judgment and order dated 29.08.2008 passed by the High Court of Madhya Pradesh at Jabalpur, in Writ Appeal No. 1063 of 2003, whereby the High Court dismissed the said appeal filed by the appellant herein and upheld the order dated 16.04.2003 passed by the Single Bench of the High Court of Madhya Pradesh at Jabalpur.

G 3. The appellant is Bhuswami of certain lands situated at Tehsil Khandwa, District East Nimar, Madhya Pradesh. A draft development plan was published under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereafter referred to as "The Act"). The appellant came to know that the draft development plan included some portion of her land with the
H intention of making it available for Navchandi Mela. However,

the land was ancestral and he appellant intended to transfer it by a will duly registered and already executed. A

4. The Appellant submitted objections on 24.03.2000 and a committee was constituted consisting of Member of Parliament, Member of Legislative Assembly, Mayor, President Zila Panchayat, Sarpanch Gram Panchayat and Collector. The committee considered the objections and decided that the land was not required and the objections of the appellant and others were accepted stating that the land in question was not required. Accordingly, a resolution dated 26.05.2000 was passed by the committee in favour of the Appellant. B C

5. In spite of the resolution passed by the committee, by a notification dated 28.02.2001 published in Madhya Pradesh Raj Patra, the Appellant came to know that the State Government had included certain lands belonging to the appellant in the modified development plan. The Appellant filed review Petition under section 23(A) of the Act before the State Government which was rejected by order dated 24.07.2002 stating that there is no provision for review of the order in the Act. D E

6. The Appellant thereafter, filed Writ Petition in the High Court which was dismissed by the Learned Single Judge by order dated 16.04.2003. Since the Letter Patent jurisdiction was abolished, the appellant filed Special Leave Petition in the Supreme Court. During the pendency of the Special Leave Petition the provision of Letter Patent jurisdiction was revived. The Special Leave Petition was allowed to be withdrawn for filing Letters Patent Appeal in the High Court. F

7. The Appellant filed Writ Appeal before the High Court of Judicature, Jabalpur which was dismissed by order dated 29.08.08. The present appeal, as stated hereinbefore, is directed against the aforesaid order passed by the High Court. G

8. The learned counsel appearing for the appellant H

A submitted that after passing of the Resolution by the Committee constituted accepting the objections/suggestions of the appellant, the said resolution of the Committee should have been accepted by the Government as the same was binding, but instead the State Government without providing any opportunity of hearing to the appellant rejected the said recommendation of the committee and proceeded to acquire the land without giving any opportunity of hearing and thus the said action of the State Government is in violation of the principles of natural justice.

C 9. It was also submitted that the entire acquisition process was in colourable exercise of power and not for any public purpose and that it was done for extraneous consideration. It was also submitted by the learned counsel appearing for the appellant that the appellant had all along been assured that the land belonging to her will not be used for or utilised by the State Government for the purpose of holding a Mela and therefore, the acquisition of the said land came as a complete surprise to the appellant.

E 10. It was also submitted that as per the report of the Committee constituted of Member of Parliament, Members of Legislative Assembly, Mayor, President of Zila Panchayat, Sarpanch Gram Panchayat and Collector, the land, in question was not required and the objections of the appellant having been accepted there was no requirement of the land in question and therefore the action taken is a colourable exercise of power. It was also submitted that the High Court committed a serious error in interpreting the provisions of Section 23 of the Act and in holding that there was no provision given under the Act for review of orders.

G 11. On the other hand, the learned counsel appearing for the respondent submitted that the resolution passed by the aforesaid committee was not final and was only of recommendatory nature and that it was open for the State

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Government to take its own decision considering the facts of each case. It was also submitted that there was no violation of the principles of natural justice and that the appellant was provided sufficient opportunity of hearing. A

12. It was also stated that the appellant would be paid compensation as and when the land is acquired by the Municipal Corporation of Khandwa, and therefore, at the present moment, the possession of the land is with the appellant. It was also submitted that the decision is bona fide and was taken in accordance with law. B

13. Before the High Court also similar submissions were made by the appellant. In its order dated 16.4.2003 the High Court rejected the said submissions holding that they are without any merit. The High Court held that as per the scheme of Sections 17 and 18 of the Act, the recommendation of the Committee is not final, binding and conclusive and therefore it was open for the State to take its own final decision in accordance with law. It was also held by the High Court that a review of the order of the nature which was filed by the appellant before the High Court was not maintainable in terms of the provisions of Section 23A of the Act. C D E

14. In the order passed in the writ appeal dated 29.08.2008, the High Court while upholding its order dated 16.04.2003 observed that the State Government did not accept the recommendations made by the Committee, therefore it was not necessary for the State to issue a modified plan. For the final plan, the State Government did issue the plan, as per section 19(2) and had invited objections from the persons who are likely to be affected by inclusion of their land. The Court also observed that if the appellant was of the opinion that certain documents had been kept back by the State Government, then he could have always asked the learned Single Judge to issue directions to the State Government for the production of said documents. For failure to call for such documents, it cannot be held that the State Government accepted the recommendations F G H

A made by the Committee, did not include the land in the final
plan and all of a sudden issued the final plan against the interest
of the appellants.

B 15. In the light of the submissions made by the counsel
appearing parties, we have minutely perused the records as
also the orders passed by the High Court. On a careful reading
of the provisions of Section 17A, Section 18 and Section 19
of the Act, we become aware regarding the procedure and the
scheme provided for publication of a draft development plan
and also for approval and preparation of the final development
C plan.

16. Sub-section (2) of Section 17A of the Act makes it
crystal clear that the Committee has the power to consider the
draft development plan prepared by the Director under Section
D 14. It also has the power to suggest modifications and
alterations in the aforesaid draft development plan prepared.
The Committee has also been empowered to hear objections
after publication of the draft development plan under Section
18 and suggest modifications or alterations, if any, to the
E Director. It is, therefore, clearly established that the aforesaid
decision and resolution of the Committee is only suggestion
and recommendation which is required to be taken notice of
by the State Government. Once, the development plan is
submitted on completion of the procedure and process
F prescribed under Sections 17 and 18 of the Act, the State
Government is empowered under Section 19 of the Act either
to approve the development plan or to approve the same with
some modifications as it may consider necessary. A further
power is also vested on the State Government to return the
G same to the Director to modify the same or to prepare a fresh
plan in accordance with such directions as the State
Government may deem appropriate.

17. In the present case, the development plan as prepared
under Section 14 was approved by the State Government
H without any modification and therefore there was no question

of inviting any further suggestions as no modification was suggested to the said development plan. In view of the said position also, there was no question of giving any hearing to the appellant in the present case, and therefore the issue raised with regard to alleged violation of the principles of natural justice is without any merit.

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18. The aforesaid provisions namely Section 17, 18 and 19 of the Act give a broad scheme laying down the procedure as to how a development plan is to be approved by the State Government as also the procedure as to when it becomes final and operational. The aforesaid scheme of the provisions clearly states that a recommendation of the Committee is only recommendatory and advisory in nature and such recommendations of the Committee are required to be considered by the State Government, but the absolute and final power is rested on the State Government to approve or reject the draft development plan or to approve the same with some modifications as it may deem appropriate.

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19. The resolutions passed by the Committee cannot be said to be absolute, final and binding and the State Government possesses the final authority in the matter of giving approval to the development plan. In any case, in the present case, the State Government approved the draft plan without any modification and therefore provisions of sub-sections (2) and (3) of Section 19 are not applicable to the facts and circumstances of the present case. Despite the said legal provision, the State Government in the present case has issued a final plan and also invited objections from the persons who are likely to be affected by inclusion of their land. Even thereafter the appellant did not submit any objection and therefore the question of giving a hearing to the appellant at that stage did not arise. So from whatever angle the contentions of the appellant are examined, the same are not found to be worthy of acceptance.

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20. So far the power of review is concerned, the High Court

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- A does not have the power of review as such power of review has to be specifically provided for in the Act. A power of review against an order passed is a creature of the statute and since no such power of review is provided for under the provisions of the Act, the High Court was justified in holding that there
- B could be no review to the order passed. So far the review and modifications of the development plan or adjoining plan as provided in Section 23 and 23A of the Act are concerned, the said provisions are not applicable in the present case for the State Government has not made any modification in the
- C development plan, and therefore, the contentions appearing for the appellant are held to be without any merit. Besides, the said power is exclusively vested with the State Government and in an appropriate case, the State Government is empowered to exercise such power as and when deem proper. This is not a
- D case where the State Government thought it fit to invoke such power.

21. We, therefore, find no error in the judgment passed by the High Court. The impugned order does not suffer from any infirmity. The present appeal is, therefore, dismissed as without

E any merit. However, there shall be no order as to costs.

N.J.

Appeal dismissed.