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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7354 OF 2021

1.	Kishor Manohar Kamble, Aged about 37 years, Currently residing at Survey No.131/1, Panmala Singhar Road, Pune – 411 030.	
2.	Meghraj Uttam Nimbalkar, Currently residing at Survey No.133/B, Final Plot No.587/3, Flat No.801/A, E Wing, Laxminarayan Towers.	...Petitioners
	...Versus.....	
1.	Pune Municipal Corporation, Through its Commissioner, Office of the Municipal Commissioner, 4 th Floor, PMC Bhavan, Main Building, Shivaji Nagar, Pune – 411 005.	
2.	Deputy Commissioner (Vigilance), Office of the Municipal Commissioner, 4 th Floor, PMC Bhavan, Main Building, Shiva Nagar, Pune 411 005.	
3.	State of Maharashtra through the Urban Development Department, Mantralaya Building, 4 th Floor, Madam Kama Road, Mantralaya, Mumbai – 400 032.	
4.	Director of Town Planning, Maharashtra State, Pune Central Offices, Old Building, Pune – 411 001.	
5.	Slum Rehabilitation Authority, Pune and Pimpri Chinchwad Area, Muttha Chambers, Senapati Bapat Road, Pune – 411 016.	
6.	Naiknavare Developers, 1204/4, Ghlore Road, Shivaji Nagar, Pune 411 004.	... Respondents

Ms.Gayatri Singh with Ms.Veda Thakkar, i/b. Ms.Meenaz Kakalia for the Petitioners.

Mr.A.A. Kumbhakoni, Advocate General with Mr.P.P. Kakade, Government Pleader, Mr.A.I. Patel, Additional Government Pleader and Mrs.M.S. Bane, A.G.P. for the – State Respondent.

Mr.Vishwanath Patil with Mr.Kewal Ahya and Mr.Ankit Lodha for the Respondent Nos.1 and 2.

Mr.Deepak R. More with Mr.S.A. Gawade for the Respondent No.5.

Mr.Jaydeep Deo with Mr.Onkar Gawade for the Respondent No.6.

CORAM : R.D. DHANUKA &

M.G. SEWLIKAR, JJ.

DATE OF RESERVE : 21ST JULY, 2022.

DATE OF PRONOUNCEMENT : 13TH SEPTEMBER, 2022.

ORAL JUDGMENT (Per R.D. Dhanuka, J.) :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of certiorari for quashing and setting aside the approval granted by the respondent no.1 Corporation dated 5th November, 2020 for carrying out a change in the alignment of the Ambil Odha (stream) and also approval for carrying out a change in the alignment of the Ambil Odha dated 25th August, 2020 granted by the respondent no.2. By consent of parties, the writ petition was heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner no.1 claims to be a Social Worker and the

President of Bahujan Ekta Parishad. The petitioner no.2 is the resident of Pune and runs a printing business. It is the case of the petitioners that Ambil Odha originates in the hilly area of Magadewadu and flows in a south to north direction through the city of Pune. Its final outfall is in the river Mutha. The total length of the Ambil Odha is 11.85 kms. According to the petitioners, the said Ambil Odha flows through survey no.135, final plot no.28 in a "C" shape, or horse-shoe shape, which is the natural course of the stream.

3. On 4th March, 2013, the Pune Municipal Corporation published a Draft Development Plan for the original limit of Pune Municipal Corporation under section 26(1) of the Maharashtra Regional Town Planning Act, 1966 (for short "the MRTP Act"). It is the case of the petitioners that the Draft Development Plan showed the course of the Ambil Odha flowing through survey no.135, final plot no.28 as horse-shaped or "C" shaped and did not indicate any plan to re-align the stream. After considering the objections and suggestions received on the Draft Development Plan, the Planning Committee submitted its report to the Planning Authority on 13th February, 2015 in accordance with section 28(2) of the MRTP Act.

4. It is the case of the petitioners that at that stage, no objections were received by the Planning Committee with regard to the alignment of the Ambil Odha. On 5th January, 2017 the State Government accorded sanction to the Development Plan along with the Development Control Regulations of the Pune Municipal Corporation. A notification came to be issued on 5th January, 2017 by which the Urban Development Department of the State Government accorded sanction to the Development Plan. According to the petitioners, the course of the Ambil Odha in the final development remained the same as what was indicated in the draft Development Plan.

5. According to the petitioners, the said notification dated 5th January, 2017 contained a Note stating that the Municipal Commissioner may correct draftsman's errors on the Development Plan in respect of typographical errors in the boundaries of land parcels, errors in showing alignment of existing river canal, lake and like water bodies etc. by taking into account revenue / land records of the concerned Town Planning Scheme.

6. On 6th October, 2017, the respondent no.5 i.e. the Slum Rehabilitation Authority, Pune and Pimpri Chinchwad Area addressed

a letter to the Pune Municipal Corporation referring to a representation received from the respondent no.6. The said letter stated that the Development Plan contains drafting errors with respect to, *inter-alia* the demarcation of the Ambil Odha waterbody.

7. The Slum Rehabilitation Authority requested the respondent no.1 Corporation to shift those demarcations outside of survey no.135, Town Planning Scheme No.3, final plot no.28. It is the case of the petitioners that the survey no.135, final plot no.28 has been transferred to the respondent no.6 who is implementing the slum rehabilitation scheme on the said land.

8. On 14th June, 2019, the respondent no.1 submitted a proposal requesting approval to carry out corrections in the Development Plan of 2017 with respect to survey no.134, final plot no.2B and survey no.135, final plot no.28 and further to correct the nalla alignment. The respondent no.1 also sought permission for tearing down the existing nalla retaining the wall and for construction of new retaining wall.

9. On 21st November, 2019, the respondent no.6 addressed a letter to the Chief Executive Officer of SRA and requested that the issue with regard to the change of alignment of nalla in the

Development Plan be pursued so that the land could be utilized for the slum rehabilitation scheme.

10. On 3rd December, 2019, the Standing Committee of the respondent no.1 Corporation passed a resolution recommending transfer of 2789 sq.mtrs. of land owned by the respondent no.1 Corporation at the Town Planning Scheme No.3, final plot no.28 for the slum rehabilitation scheme proposed to be implemented by the respondent no.6 developers.

11. On 27th January, 2020, the Deputy Commissioner, Vigilance (Respondent No.2) addressed a letter to the respondent no.1 stating that it would be essential to obtain the opinion of the Director, Town Planning as per Regulation 6.5.5 of Development Control & Promotions Regulation, 2034 (for short "DCPR") with respect to the proposed change in alignment of the nalla.

12. On 25th August, 2020, the respondent no.2 addressed a letter to the respondent no.1 and sought permission to correct the alignment of nalla in terms of the Town Planning Scheme. On 5th November, 2020, the respondent no.1 Corporation endorsed a letter dated 25th August, 2020 and accorded sanction for change in the

nalla alignment.

13. The petitioners sought details about the permissions that have been received for carrying out change in the alignment of Ambil Odha. In response to the said application made under the provisions of Right to Information Act by the petitioners, on 3rd September, 2021 issued by the respondent no.1 Corporation, it was alleged that the final permission for carrying out changes in the alignment of the nalla had been granted.

14. On 18th March, 2021, the Deputy Engineer of the respondent no.1 addressed a letter to the Executive Engineer of the Sewerage Maintenance and Repairs Department requesting him to commence repairs on the Ambil Odha in terms of the permission granted by the respondent no.1.

15. Some time in the month of September, 2021, the work of straightening of nalla commenced on 3rd December, 2021. Unified Development Control & Promotion Regulations, 2020 (for short "UDCPR") framed by the State Government comes into force. Regulation 1.2 of the said UDCPR provided that all other Development Control Regulations that were in operation ceased to

operate. According to the petitioners until such time, DCPR, 2017 for Pune city was in force, under which the opinion of the Director, Town Planning had to be sought before correcting any alleged error in the Development Plan. On 12th October, 2021, this petition is filed.

16. On 23rd December, 2021, the UDD Department clarified that where the sanctioned Development Plans contain a note regarding drafting errors which can be corrected by the concerned Chief Officer of the planning authority with prior approval of the Director of Planning, such provision will not stand repealed under Regulation 1.2 of the UDCPR. This matter appeared on board on 10th December, 2021 when this Court directed the office to issue notice to the respondent no.6, returnable on 20th December, 2021 and directed the parties to file affidavit in reply.

17. On 23rd December, 2021, this Court passed an order adjourning the matter to 10th January, 2022 and directed *status-quo* as on the date of the said order in respect of straightening the alignment of the stream to be maintained until the next date. By an order dated 11th January, 2022, this Court adjourned the matter on 9th February, 2022 with a direction to place the said matter for directions and continued *ad-interim* order till then. The writ petition was adjourned from time to

time on one or other ground. *Ad-interim* relief granted by this Court came to be continued. On 26th April, 2022, this Court directed the respondent no.4 to file affidavit in reply and deal with the writ petition parawise and clarify the position whether in the Draft Development Plan of 2013 and Sanctioned Development Plan of 2017 of Pune city, the Ambil Odha stream (nalla) flowing through a portion of survey no.135, final plot no.28, is shown as “straight” or “curved”.

18. This Court further directed that the affidavit in reply shall indicate whether there is any draftsman's error in the Development Plans as contended by the respondent no.1 Corporation. This Court requested the learned Advocate General to appear in the matter having regard to controversy and public interest involved. On 6th May, 2022, this Court after considering the affidavit in reply filed by the Director of Town Planning and valuation Department refused to continue the *ad-interim* order passed by this Court earlier and vacated the said *ad-interim* order.

19. Being aggrieved by the said order dated 6th May, 2022 passed by this Court, the petitioners preferred Special Leave Petition No.10339 of 2022. By an order dated 2nd June, 2022, Supreme Court directed to issue notice upon the parties, returnable on 4th August,

2022 and directed that *staus-quo* in the meantime which was operating before passing of the order dated 6th May, 2022 to continue. Supreme Court directed this Court to decide this writ petition on its own merits either on the dates fixed for listing i.e. 23rd June, 2022 or any subsequent date expeditiously. In pursuance of the order passed by the Supreme Court, the matter was heard finally.

20. Ms.Gayatri Singh, learned senior counsel for the petitioners invited our attention to various exhibits annexed to the writ petition, affidavit in reply and various documents tendered across the bar. It is submitted that the respondent no.1 has sought to make changes in the alignment of Ambil Odha by straightening of its original "C" shape contrary to the sanctioned Development Plan and without following due process of law and more particularly the provisions of MRTP Act. She submitted that the entire action on the part of the respondent no.1 to straighten the nalla is with a view to make more land available for development of survey no.135, final plot no.28 for the benefit of the respondent no.6 and at their request.

21. It is submitted that the respondent no.6 is implementing the SRA scheme on final plot no.2-B and part of plot no.28. Plot no.28 only on which horse-shoe waterbody is situated, covers area of

24544.23 sq. mtrs. belonging to the respondent no.1. Out of the said area of 24544.23 sq. mtrs., 2789.73 sq. mtrs. is to be developed by the respondent no.6. She relied upon the letter dated 27th January, 2020 issued by the Vigilance Department and also upon proposal letter dated 25th August, 2020. She submitted that the original width of the canal is 15 sq.mtrs. The remaining part of the waterbody in plot no.28 is to be developed by another builder Kedar Associates,

22. Learned senior counsel for the petitioners submits that the plan of straightening the alignment of the Ambil Odha is not reflected in the sanctioned Development Plan of 2017 currently in operation. She submitted that the respondent no.1 did not follow any procedure as set out under section 22-A or section 37 of the MRTP Act, which includes publishing the draft maps for objections and suggestions, required to be followed for seeking any modification to be effected in the final Development Plan. The draft maps were not published for inviting objections and suggestions by the respondent no.1. She also relied upon section 37,(1AA) and (1B) in the case of SRA schemes.

23. It is submitted by the learned senior counsel that the maps relied upon by the parties would clearly indicate that the area covered by the "C" shape waterbody is to be deleted, straightened and shifted

and the said area will be converted for residential purposes. She submitted that straightening of Ambil Odha stream is being done simultaneously with the alteration in the boundaries of the plots.

24. It is submitted that any change in the gradient of the waterbody will result in an increase in the velocity of the water and may result in flooding downstream which is a densely populated area, where the petitioner no.2 resides. She submitted that under section 22(j) of the MRTP Act, a Development Plan is to provide for measurements of flood control. The canal running through final plot no.28 in a "C" shape form cannot be shifted from its natural alignment by straightening it. Learned senior counsel relied upon DPT prepared by the Consultant appointed by the respondent no.1 and submitted that even the said DPT recommended that the natural course on Ambil Odha should not be diverted. It suggested long-term measures in the said DPT 3 to "avoid diverting natural nallas / streams and to keep nalla bed natural in order to percolate water".

25. It is submitted by the learned senior counsel that in the year 1975, a proposal to straighten the nalla was approved by the Arbitrator appointed under section 72 of the MRTP Act. The plan was not only reflected in the Development Plan prepared in the year 1987

but also in the Town Planning Scheme that came into force on 15th September, 1989.

26. Learned senior counsel for the petitioners submitted that in a fresh Development Plan proposed in the year 2013 which came to be published on 28th March, 2013, plan to straighten the alignment of the Ambil Odha was not indicated. The existing natural alignment of the Ambil Odha was indicated in a “C” shape. The position of the Ambil Odha remained unchanged in the Final Development Plan that was published in the year 2017. It is submitted that the legend of the Development Plan of 2017 clearly indicated that the straight Grey line shown below plot no.28 is the High-Capacity Mass Transit Route or (HCMTR) and does not indicate the proposed straightening of the nalla as canvassed by the respondents in the affidavit in reply.

27. Learned senior counsel invited our attention to the avements made in the affidavit in reply filed by the respondent no.1 and the respondent no.4 and submitted that the words “nalla” appears to be on the right of the final plot no.28 and not directly below it, with no blue legend outlining the waterbody. The respondents have admitted that there is no blue line running along the HCMTR, what is indicated below plot no.28 is simply a Grey straight line which according to the

legend of the DP map, is the HCMTR.

28. It is submitted that if the contention of the respondents raised in the reply that the stream is actually present beneath the HCMTR and that it cannot be seen because it is a 2 D photo is accepted, there ought to have been a blue line on either side of the HCMTR. The boundary between 2B and 585 alone is not being altered but part of the stream is also sought to be shifted. She submitted that this is not the case of mere modification of the alignment of the boundary but an alteration in the natural stream. The blue color portion in the final plot no.585 is sought to be deleted. The boundary of final plot no.585 is clearly visible along the HCMTR in the sanctioned Development Plan. She submitted that the "C" shaped waterbody is shown both on the draft Development Plan and final Development Plan. This position is admitted by the respondent no.4 in its affidavit in reply.

29. It is submitted that the plan to straighten the portion of Ambil Odha flowing through survey no.135, final plot no.28 as indicated in the Development Plan of 1987 and the Town Planning Scheme of 1989 was abandoned as no such plan was indicated in either the Draft Development Plan published in 2013 nor the Final Development

Plan of 2017. Straightening of the waterbody continued to be shown in the draft Development map, it was not possible for the citizens to raise any objections to this proposal. The citizens including the petitioners were deprived of their statutory right to raise any objections in accordance with the provisions of the MRTP Act, 1966.

30. It is submitted that the said 2017 Development Plan superseded the Development Plan prepared in 1987 and any development work that is to be carried out must be in accordance with the Development Plan of 2017 and not the Development Plan of 1987. She submitted that it is clear from the averments made by the respondents in their reply that all changes are being undertaken after 2017 Development Plan was sanctioned.

31. It is submitted by the learned senior counsel that the Development Plan of 2017 does not reflect any plan to straighten the alignment of the Ambil Odha. In support of this submission, learned senior counsel invited our attention to the letters addressed by the respondent no.5, the respondent no.6 requesting the respondent no.1 to make suitable changes to the alignment of Ambil Odha in 2017 Development Plan so that the land would become available for the proposed SRA scheme being developed by the respondent no.6.

The correspondence was in respect of both the final plots i.e. no.2B and 585 as well as final plot nos.2B and 28. Learned senior counsel also placed reliance on the letter dated 6th October, 2017 from the Slum Rehabilitation Authority and the Developer annexed at page no.59 of the writ petition and submitted that the Development Plan admittedly was at variance with the Town Planning Scheme and the nalla needs to be straightened.

32. Learned senior counsel placed reliance on the proposal by the City Engineer on 14th June, 2019 and would submit that even the said proposal clearly stated that the respondent no.6 Developer was not able to do any further work because of waterbody and that the nalla needs to be corrected. In support of this submission, she also relied upon a letter dated 25th August, 2020 issued by the Deputy Commissioner (Vigilance) annexed at Exhibit "G" at page 67 of the writ petition suggesting to correct the errors in the Development Plan of 2017 with respect to the alignment of the Ambil Odha.

33. Learned senior counsel also placed reliance on the letters dated 15th April, 2017 from the respondent no.6 Developer to the Joint Director, Town Planning requesting for rectification in the shape of the waterbody as shown in the Development Plan of 2017. She

also placed reliance on the letter dated 5th June, 2020 from the Slum Rehabilitation Authority to the respondent no.1 requesting that the canal alignment in final plot no.28 should be straightened and the horse-shoe or “C” should be removed.

34. It is submitted that the corrections of boundaries as canvassed by the respondents are not merely rectification of the boundaries but amounts to removal of parts of the waterbody which is not permissible unless requisite procedure required for modification of the Development Plan is followed. She submits that it is clear from the Development Plan map that the respondent no.6 Developer is seeking extra land from the waterbody. She submitted that the documents produced by the parties would clearly indicate that both the issues i.e. changing boundary alignment and the straightening of nalla are interlinked. In support of this submission, she also placed reliance on the letter of the Vigilance Department dated 27th January, 2020 annexed at Exhibit “G” to the petition and submitted that there has been no response to the said letter of the Vigilance Department by the respondent no.1.

35. It is submitted that the stand taken by the respondent no.1 that the Ambil Odha flowing from survey no.135, final plot no.28 is shown

as straight from its “former ‘C’ shape” in both the Draft Development Plan dated 28th March, 2013 and the final Development Plan dated 5th January, 2017 is contrary to the stand taken by the Director of Town Planning Department in its additional affidavit dated 2nd May, 2022. It is submitted that the stand now taken by the respondent no.1 that the proposed straightening of the alignment of Ambil Odha is reflected in the sanctioned plan of 2017 and that the work is being carried out in accordance with the said Development Plan is an after-thought.

36. It is submitted that the stand now taken by the respondent no.1 is contrary to the correspondence exchanged between the respondents which clearly reflected that the natural “C” shape or “horse-shoe” of the Ambil Odha was sought to be re-aligned to bring in conformity with the Town Planning Scheme of 1989. It is submitted that the office of the City Engineer for the Commissioner while seeking approval on the basis of the proposal submitted by the respondent nos.5 and 6 was that the corrections be carried out, *inter-alia* in survey no.135, final plot no.28 as per the Town Planning Scheme.

37. Learned senior counsel relied upon the averments made by the respondent no.1 in its affidavit stating that vide order dated 5th

November, 2020, directions were given for carrying out construction as per the decision in the Town Planning Scheme of 1989. She also relied upon a letter dated 5th June, 2020 from the Chief Executive Officer, SRA of the respondent no.1 requesting to straighten the alignment of the stream according to the Town Planning Scheme, 1989. She submitted that the respondent no.6 in its affidavit has taken an erroneous stand that the Town Planning Scheme prevails over the Development Plan.

38. It is submitted by the learned senior counsel that it is not the case of the respondents in their correspondence that the straightening of the Ambil Odha was being carried out in accordance with the Development Plan of 2017. On the contrary, the respondent nos.5 and 6 sought changes in the Development Plan to bring out in conformity with the Town Planning Scheme of 1989. She submits that the Town Planning Scheme cannot override the provisions of the sanctioned Development Plan. The Town Planning Scheme is devised to effectuate the provisions of a Development Plan. The Town Planning Scheme of 1989 was prepared under the 1987 Development Plan. A new Development Plan being the Development Plan of 2017 has been published.

39. It is submitted that while the Development Plan of 1987 included a proposal to straighten the Ambil Odha which was consequently reflected in the Town Planning Scheme of 1989, the Development Plan of 2017 does not reflect any plan to straighten the course of the Ambil Odha and both the draft Development Plan of 2013 and final Development Plan of 2017 show nalla alignment as "C" shaped. She submits that since there is conflict between the provisions of the Development Plan and the Town Planning Scheme, the Development Plan would prevail over the Town Planning Scheme.

40. It is submitted that since the Ambil Odha flows through final plot no.28 which is sought to be developed by the respondent no.6 under the SRA scheme, the respondents sought change in the Development Plan to straighten the course of the Ambil Odha in a manner that would ensure that it falls outside the boundaries of the property sought to be developed by the respondent no.6 and to make more land available at the final plot no.28 in alleged compliance of 1989 Town Planning Scheme.

41. Learned senior counsel invited our attention to the impugned proposal dated 25th August, 2020 and the order dated 5th November,

2020 passed by the Commissioner of the respondent no.1 along with rectification of the errors in alignment of the boundaries. She also relied upon the public notice dated 26th March, 2021 published in "Sakal" newspaper and submitted that the said public notice also clearly indicated that the straightening of the waterbody was being carried out pursuant to the permission granted by the Commissioner dated 5th November, 2020. The public notice stated that there was discrepancy in the nalla route as shown in the Development Plan and the Town Planning Scheme and stated that the Commissioner has by an order dated 5th November, 2020 had granted approval to rectify this discrepancy.

42. It is vehemently urged by the learned senior counsel that the respondent no.1 has circumvented the provisions of the MRTP Act dealing with modifications of the sanctioned Development Plan by characterizing it as a "draftsman's errors". No notice inviting objections and suggestions to the proposed change was published by the respondent no.1. No notice on the persons affected by the proposed modification for hearing was issued by the planning authority in this case. The procedure prescribed under section 37(1) and 37(1B) of the MRTP Act has not been followed. The planning authority is required to submit a proposed modification to the State

Government for sanction.

43. It is submitted that the respondent no.1 has voluntarily made the modification in the Development Plan characterizing it as “draftsman’s errors” in order to bring it within the scope of the Note contained in the notification dated 5th January, 2017. She submits that the respondents could not have relied upon the said Note containing any notification dated 5th January, 2017. She submits that in any event the respondent no.1 has not annexed any document to show the procedure under the Note was followed or explaining the alleged error. The affidavit of the respondent no.4 merely admitted that there was a “draftsman’s error” and that the Note in the notification dated 5th January, 2017 was applied . No speaking order is passed by the Commissioner. The provisions of Regulation 6.5.5 of the DCPR of 2017 has not been complied with.

44. Insofar as the issue of locus raised by the respondents in the affidavit in reply is concerned, it is submitted by the learned senior counsel that the petitioners reside along the alignment of the Ambil Odha and are affected due to floods that occurred on 25th September, 2019. Any change sought to be carried out in the flow of the nalla is bound to affect the area that fell along the alignment of the nalla. The

straightening of the nalla will lead to an increase in the velocity of the flow of water which will inevitably affect the life and property of the petitioners. She submitted that the Manual on Storm Water Drainage Systems prepared by the Central Public Health & Environmental Engineering Organization (CPHEEO) suggesting that the maximum velocity of storm water drains should be 3 m/s. She submits that the entire exercise of changing the alignment of Ambil Odha irreversibly altered its course tainted by the *malafides* and runs contrary to the mandate of law.

45. It is submitted by the learned senior counsel that the National Green Tribunal cannot go into the MRTP issues but can decide only environmental issue in the proceedings filed by the petitioners. In the suit, the Civil Court has not dealt with the MRTP issues but has dealt with only the slum issue.

46. **Ms.Gayatri Singh, learned counsel for the petitioner relied upon the following of judgments :**

1. Judgment of the Supreme Court in the case of ***Manohar R. Joshi vs. State of Maharashtra & Ors. (2012) 3 SCC 619,***
2. Judgment of the Supreme Court in case of ***Vijay***

Krishna Kumbhar vs. State of Maharashtra, 1999

SCC OnLine Bom. 176,

3. Judgment of the Supreme Court in case of **Bangalore Medical Trust vs. B.S. Muddappa & Ors. (1991) 4 SCC 54,**

4. Judgment of this Court in case of **Iqbal & Brothers, Pune vs. State of Maharashtra & Ors., 2012 (4) Mh.L.J. 716**

5. Judgment of the Supreme Court in case of **Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd. & Ors. (2007) 8 SCC 705,**

6. Judgment of the Supreme Court in case of **Rajiv Mohan Mishra vs. CIDCO & Ors. (2018) SCC OnLine Bom.4132.**

47. Learned Advocate General for the State submitted that three plots are involved in this case i.e. plot nos.2B, 28 and 585. Plot nos.2B and 585 belongs to the private party. The respondent no.6 is developing plot nos.2B and 585. Plot no.28 belongs to the respondent no.1 Corporation and is covered by slum. The SRA scheme is being implemented by the Corporation itself. Plot no.28 is

not being developed by the respondent no.6. Even if horse-shoe "C" shape is deleted, the respondent no.6 would not be benefited by the said deletion.

48. It is submitted that the straightening of nalla is being done under the impugned order. Even if the impugned orders are set aside, the straightening of nalla will still take place. The straightening of nalla is being done while implementing the Town Planning Scheme. He said Town Planning Scheme having been not challenged, has become final and is binding on all the parties. He submits that the nalla is factually on plot no.28 and not on plot no.2B.

49. It is submitted that the Bombay Town Planning Act, 1954 had been repealed by the Maharashtra Regional Town Planning Act, 1966. The Arbitrator on the suggestions and objections received with him gave a decision on 9th April, 1975 regarding final plot nos.29, 28, 27 and 2 of the Town Planning Scheme. He relied upon paragraph 2 of the said decision taken by the arbitrator which mentioned "that the draft scheme proposal of straightening of the nalla through survey no.135 is confirmed. He submitted that the proposal of nalla designed has formed an integral part of the Town Planning Scheme.

50. It is submitted that the draft planning scheme has been sanctioned by the Government vide notification dated 15th July, 1989 and the same has come into force with effect from 15th September, 1989. He submits that diversion of nalla for straightening the same is a component of Final Town Planning Scheme, which has already come into force. The proposal of nalla straightening has been continued in the subsequent proposals in the sanctioned draft plan in the year 1987 and 2017. The said proposal of straightening of nalla in the sanctioned plan in the year 1989 and the proposal of Development Plan of 2017 are in consonance with each other and there is no variation in the Development Plan of the year 2017 with respect to the proposal of the sanctioned Town Planning Scheme insofar as straightening of nalla is concerned. He submits that the submission of the learned senior counsel for the petitioners that the Development Plan of 2017 would override the Town Planning Scheme of 1989 is irrelevant.

51. It is submitted by the learned Advocate General that insofar as the boundaries between plot nos.2B and 28 is concerned, the position of existing nalla in the sanctioned Development Plan of 2017 is not correctly shown. The respondent no.1 accordingly sought correction in the position of nalla *qua* the boundaries between final

plot nos.2B and 28 per per the provisions of Note no. 1 of the notification of the sanctioned plan of 2017. He invited our attention to the google image annexed to the affidavit in reply filed by the respondent no.4 showing the alignment of the existing nalla.

52. It is submitted by the Advocate General that the said Note no.1 is the integral part of the notification of the sanctioned plan of 2017 empowering the Commissioner of the respondent no.1 Corporation to rectify such error. In such circumstances, the provision of Regulation 6.5.5 of then DCPR 2017 are not attracted. In support of this submission, learned Advocate General placed reliance on the letter dated 23rd December, 2021 addressed by the State Government to the respondent no.4. There is no deviation sought by the Pune Municipal Corporation in the alignment. The State Government was not required to comply with the procedure prescribed for modification of the Development Plan under section 37 or the MRTP Act. He relied upon section 90 (1) of the MRTP Act and submits that it is the mandatory duty on the part of the planning authority to seek proposal of the final sanctioned Town Planning Scheme. The respondent no.1 Corporation which is the planning authority is executing the same.

53. It is submitted by the Advocate General that in the sanctioned

Town Planning Scheme as well as the sanctioned Development Plan in the year 1987, the proposed alignment of the said nalla is shown straight and not curved. However, in the sanctioned Development Plan in the year 2017, both the alignments of nalla i.e. existing horse-shoe shape as well as proposed Town Planning Scheme have been shown. There was no propriety in showing the existing (horse-shoe) alignment of the said nalla in the sanctioned Development Plan of 2017, such errors can be rectified by the Commissioner as per Note no.1 of the notification of the sanctioned Development Plan of 2017. He relied upon Note no.1 to the said sanctioned notification.

54. It is submitted by the learned Advocate General that it is not the case of the petitioners that by virtue of the impugned action of the Corporation, the alignment of the nalla in the sanctioned Development Plan of 2017 is getting changed, inasmuch as the straightening of the nalla is concerned. It is submitted that since such errors can be rectified only to ensure that the ground elements are represented on the sanctioned Development Plan as they exist as per revenue / land records / sanctioned Town Planning Scheme, these do not amount to modifications under section 37 of the MRTTP Act.

55. It is submitted by the learned Advocate General that the contention of the petitioners that the proposal of the straightening of the nalla was not shown in the draft Development Plan of 2013 published under section 26 of the MRTP Act is contrary to the facts on record. A detail perusal of the said published plan clearly indicated that the said proposal of the straightening of nalla is shown. Due to overlapping of HCMTR over that of nalla, the petitioners seem to have misinterpreted. He submitted that a close look of the Development Plan reflects that the text "NALLA" is written in the said portion which confirms the existence of the proposal of nalla straightening. He submitted that the contention of the petitioners that the citizens are deprived from raising objections is based on an erroneous premise.

56. It is submitted by the learned Advocate General that the respondent no.1 Corporation had published a Draft Development Plan for the original limit of PMC under section 26(1) of the MRTP Act on 4th March, 2013. The Planning Committee submitted its report, after considering the objections and suggestions received on the draft plan to the Planning Authority on 13th February, 2015 in accordance with section 28(2) of MRTP Act. The Government in the Urban Development Department Plan had accorded sanction to the

Development Plan along with the Development Control and Promotion Regulations of the Pune Municipal Corporation (DCPR of PMC) vide notification dated 5th January, 2017 which came into force with effect from 12th January, 2017.

57. It is submitted that the proposal of straightening of the alignment of the said nalla as shown in the sanctioned Development Plan of 2017 is the same as that in the sanctioned Town Planning Scheme of 1989. The respondent no.1 Corporation is intending to execute the same. All technical requirements suggested by the concerned expert organization in the said field are required to be complied with in respect of the execution of the nalla straightening proposal.

58. It is submitted by the learned Advocate General that the Ambil Odha stream (nalla) is flowing through the portion of survey no.135, final plot no.28 is proposed as straight and not curved. Since there is draftsman's error in the sanctioned Development Plan of 2017 in as much as boundaries between final plot no.223 and 28 is concerned, such draftsman's error are capable of correction as per the provisions of Note no.1 of modification of the sanctioned Development Plan of 2017 and thus the provisions of Regulation

6.5.5 of DCPR 2017 are not attracted in the said case. He submitted that since there is no change in the proposal of the straightening of the alignment of nalla, modification to the sanctioned Development Plan of 2017 as per procedure prescribed under section 37 of the MRTTP Act is not required. He submitted that since the proposal of the straightening of nalla shown in the Town Planning Scheme of 1989 and that shown in the sanctioned Development Plan of 2017 being the same, the question of Development Plan overriding T.P.Scheme or vice versa does not arise.

59. It is submitted that the position of the existing nalla in the sanctioned Development Plan of 2017 in the context of boundaries between plot no.2B and 28 is not shown as per revenue / land records / sanctioned Town Planning Scheme which is sought to be corrected under Note no.1 of notification of the sanctioned Development Plan of 2017.

60. It is submitted that the said nalla was never on plot of the respondent no.6 (hatched portion). The respondent no.6 had sought clarification of "x y z" hatched portion and requested for deletion of that hatched portion of the land and not the whole nalla. He relied upon paragraphs 4 and 5 and the decision taken by the Arbitrator

regarding final plot no.28 and other plots. The Town Planning Scheme has not been challenged. The straightening has to be executed at the spot. The portion of nalla is being corrected in the context of boundaries. He invited our attention to the averments made by the respondent no.6 in the affidavit in reply dated 20th February, 2022 and more particularly paragraphs 5, 7 and 21.

61. It is submitted by the learned Advocate General that the petitioners have no locus to file this writ petition. None of the petitioners stay in the area where the proposed work of straightening of nalla is to be carried out. The petitioners have not mentioned that the petitioners would be affected due to the straightening of nalla. If the nalla is straightened, it will go straight and would not affect anybody.

62. Learned Advocate General tendered an ariel photographs showing how nalla is shown. It is submitted by the learned Advocate General that it is not the case of the State Government that in case of any conflict between the Development Plan and the Town Planning Scheme, the Town Planning Scheme will prevail. The case of the State Government is that the draftsman's error about boundary line which can be corrected according to the procedure prescribed in Note

no.1 after the boundaries are corrected. The notice to those hutment structures who may be affected are already issued. It is vehemently urged that due to stay order obtained by the petitioners, the respondents are prevented from implementing the purposes mentioned in the Town Planning Scheme which has become final and thus this petition shall be dismissed with exemplary costs and the interim order shall be vacated.

63. Mr.More, learned counsel for the respondent no.5 – SRA submitted that the petitioners have not demonstrated as to how the straightening of nalla would affect the petitioners in any manner whatsoever. He invited our attention to the prayers in the writ petition and submitted that none of the prayers as sought by the petitioners can be granted by this Court.

64. Mr.Vishwanath Patil, learned counsel for the respondent nos.1 and 2 adopted the submissions made by the learned Advocate General and made additional submissions. He submitted that the petitioners have no locus to file this petition. He submitted that the entire petition of the petitioners is based on an erroneous premise that the final Development Plan under section 31 of the MRTP Act does not indicate any re-alignment (straightening) of the natural

course of Ambil Odha from its existing “horse shoe” or “C” shaped stream. He submitted that since there was draftsman's error, the respondent no.1 Corporation has carried out the alignment of Ambil Odha without following the procedure contemplated under the MRTTP Act by resorting to the Note appended to the notification dated 5th January, 2017 which permits draftsman's error to be corrected.

65. It is submitted that the Ambil Odha flows from South to North in the city of Pune flows through the survey no.135 (final plot no.28) and is a “C” or “horse shoe” shape natural course of stream. He submitted that even in the draft Development Plan even under the MRTTP Act, there was a proposal for straightening / alignment of “C” or “horse shoe” shape. The State Government has already sanctioned the draft Development Plan which came to be published in the Official Gazette of 1987 in which the proposal for straightening / aligning “C” or “horse shoe”, the Ambil Odha was shown flowing from survey no.135 i.e. final plot no.28 was sanctioned. The alignment was reinstated as per the published plan of section 26 of the MRTTP Act. He submits that the plan attached by the petitioners at Exhibit “A” is not a draft Development Plan but is the sanctioned Development Plan with modification. All the suggestions and objections with regard to the said Ambil Odha were considered by the Town Planning

Authority before sanctioning the draft Development Plan.

66. It is submitted that on the basis of the letters dated 6th October, 2017 and 10th April, 2018 addressed by the respondent no.5 and the letter dated 17th April, 2018 from the respondent no.6 to the respondent no.1, the respondent no.1 submitted a proposal on 14th June, 2019 to the Commissioner for approval. The respondent no.1 applied for corrections in the Pune Peth Parvati TP Scheme No.3, survey no.134, final plot no.2B, survey no.133, final plot no.585, survey no.135, final plot no.28 in Sadashiv Peth plots and nalla by alignment as per the plans.

67. It was proposed that the area of the final plots be maintained as per TP Scheme. Out of the Development Plan scheme, Primove and proposed area, maximum area be maintained for nalla. Area of 15209.73 sq. mtrs. Depth 2.5 mtr. The Commissioner vide resolution no.6/463 dated 5th November, 2020, approved the proposal marking it as "Y" and "X" respectively. He submits that in the Town Planning Scheme of 1989, a decision was taken for straightening of nalla through survey no.135 i.e. final plot no.28. The Municipal Corporation has already appointed "Primove Infrastructure Development Consultant" for conducting survey and for preparing

detailed report for remedies to be done to avoid any further floor like situation. The said Consultant has already submitted its report and has been considered and is being implemented by the respondent no.1 Corporation.

68. Mr. Jaydeep Deo, learned counsel for the respondent no.6 also raised an issue of locus of the petitioners in filing this petition and submitted that none of the petitioners have been staying in the locality of the area from where the Ambil Odha passes or are affected by the work being carried out by the respondent no.1 Corporation. He adopted the submissions made by the learned Advocate General for the State. It is submitted that the Ambil Odha has been reduced to a stream carrying sewage water from the locality surrounding it till the river Mutha.

69. It is submitted that due to the meandering (horse shoe shape) of the nalla, the flow of the water of the nalla is considerably slowed down. During the rainy season when the water of the nalla swells, because of the velocity of the flow in the horse shoe shape reduces, the same causes flooding of the Ambil Odha / nalla upstream. With a view to cure this defect, the town planning authority undertook the Town Planning Scheme in the year 1989 wherein an award was

passed whereby it was decided that the horse shoe shape of the nalla would be straightened with a width of 15 m through survey no.135 i.e. final plot no.28 so that the water would flow rapidly and the same would prevent flooding of the Ambil Odha. However, for the last 30 years the decision of straightening of the nalla has remained on papers.

70. It is submitted by the learned counsel that the nalla shown in the draft Development Plan as well as final Development Plan is shown in the blue colour. High Capacity Mass Transport System (HCMTR) shown in grey colour also overlaps the nalla at many places. It is submitted that the respondent no.6 had addressed several letters to the respondent no.1 with respect to the realignment of the nalla touching the final plot nos.28, 2B and 585. After deliberation of various officers of the respondent no.1, the respondent no.2 sent a proposal dated 25th August, 2020 recommending the correction of drafting error by realignment of nalla boundaries between final plot nos.28, 2B and 585 as per the Town Planning Scheme and also recommending that since plot no.28 is now under the respondent no.5 SRA, the decision with respect to the same can very well be taken by the respondent no.5.

71. The respondent no.1 vide the impugned order dated 5th November, 2020 has approved only 1st part of the proposal i.e. realignment of boundaries between final plot no.2B and 585 as per the Town Planning Scheme. He submitted that in the existing land use, the course of Ambil Odha is shown as flowing through survey no.135, final plot no.28 as horse shoe of "C" shape however, straightening of nalla as per Town Planning Scheme which was incorporated in the final Development Plan.

72. It is submitted that the course of Ambil Odha flowing through survey no.135, final plot no.28 as horse shoe or "C" shape was already shown for straightening in the Town Planning Scheme and included in the Development Plan and no objections were received by the Planning Authority with regard to the same. The State Government accorded sanction to the Development Plan on 15th January, 2017 and the course of Ambil Odha in the final Development Plan remained as what was indicated in the draft Development Plan and Town Planning Scheme.

73. It is submitted that there was incorrect alignment having occurred due to drafting error as is evident from the fact that the nalla is erroneously shown as in the Development Plan, seems to be

flowing from Lal Bahadur Shastri road and not within the piers under the Dandekar bridge. It is submitted that the impugned order, only allows the boundaries of the final plot no.2B and 585 directed to be aligned as per the Town Planning Scheme. There is no order with respect to boundaries between plot no.2B and 28 or with respect to straightening of horse shoe shape of nalla. Horse shoe shape is already straightening in the Town Planning Scheme as well as Development Plan of 2017. There was thus no requirement from the respondent no.1 to pass a separate order for the same.

74. It is submitted that the procedure set out under section 37(1) and 37 (1B) of the MRTTP Act was not required to be followed in this case as no modification in the Development Plan is being made. The respondent no.1 has only sought to rectify the draftsman's error by rightly relying upon Note no.1. It is submitted that the appeal has been already filed before the National Green Tribunal seeking identical reliefs and with identical averments. National Green Tribunal has already appointed a Committee with a direction to submit a report. The petitioners have copied the averments and the reliefs sought by a party in the said proceedings before the National Green Tribunal in this writ petition. The entire project is at halt for more than nine months.

75. In her rejoinder arguments, learned senior counsel for the petitioners submitted that even if Note no.1 applies, the condition of note are not complied with by the respondent no.1 and the State Government. She tendered written submissions. She submitted that this case is not a case of alignment of nalla or rectification of the alleged error but is also the case of removal of waterbody. Since it amounted to modification of the provisions made in the final Development Plan, the State Government could not have carried out such modification without following the mandatory provisions under section 37 or section 22A of the MRTP Act. The respondent no.1 has given additional land to the respondent no.6 by reallocating the boundaries of plot no.585. It is submitted that the respondent no.1 cannot be allowed to say that Regulation 6.5.5 does not apply to the facts of this case.

76. Learned senior counsel invited our attention to the prayers in the writ petition and submits that each and every prayer is maintainable and deserves to be granted. She tendered compilation of judgments. She also relied upon section 39 of the MRTP Act and submitted that if there is variance in the Town Planning Scheme with the Development Plan, then the Town Planning Scheme cannot be

modified in accordance with the Development Plan. The Development Plan prevail over the Town Planning Scheme. She also relied upon section 59 of the MRTP Act. She submits that if the Town Planning Scheme is contrary to the Development Plan, the Development Plan has to be modified and not the Town Planning Scheme. She submitted that the hutments are already demolished illegally by the respondent no.1. The buildings are shifted however, nalla still exists. Learned Advocate General at this stage states that after the stay order vacated by this Court, the Municipal Corporation has carried out certain work.

REASONS AND CONCLUSIONS :

77. We have heard the learned counsel for the parties and have considered their rival submissions. Following questions fall for consideration of this Court :-

- (a) Whether the petitioners have locus to file this writ petition ?
- (b) Whether correction of boundaries as canvassed by the respondents is merely rectification of the boundaries or amounts to removal of parts of the waterbody falling under section 37 of the MRTP Act or not ?
- (c) Whether proposal of straightening of nalla in

the sanctioned plan in the year 1989 and the proposal of Development Plan of 2017 are in consonance with each other and there is no variation in the Development Plan of the year 2017 with respect to the proposal of the sanctioned Town Planning Scheme ?

(d) Whether there was any draftsman's error in the boundaries which could be corrected by applying the directions under Note no.1 to the Development Plan ?

(e) Whether the provisions of Regulation 6.5.5 of the DCPR 2017 were at all attracted in the facts of this case ?

78. Learned senior counsel for the petitioners, learned Advocate General for the State and the other counsel appearing in the matter invited our attention to various exhibits annexed to the writ petition and the averments in the various affidavits filed by the respondents in support of their rival contentions. Our attention is also invited to various copies of the plans annexed to the writ petition and to the affidavits tendered across the bar by the learned counsel for the parties.

79. A perusal of the record indicates that the arbitrator on the suggestions and objections received by him, gave a decision on 9th April, 1975 regarding the final plot nos.29, 28, 27 and 2 of the Town Planning Scheme. The decision of the arbitrator clearly provides that the draft scheme proposal of straightening of the nalla through survey no.135 is confirmed. The said proposal of nalla design had formed an integral part of the Town Planning Scheme. It is not in dispute that the draft planning scheme had been sanctioned by the State Government vide notification dated 15th July, 1989 and the same has come into force with effect from 15th September, 1989.

80. In our view, the said diversion of nalla for straightening was a component of Final Town Planning Scheme, which had already come into force. The Final Town Planning Scheme had not been impugned by the petitioners and had attained finality. The proposal of nalla straightening had been continued in the subsequent proposals of the sanctioned draft plan in the year 1987 and 2017. The said proposal of straightening of nalla in the sanctioned plan in the year 1989 and the proposal of Development Plan of 2017 are in consonance with each other. In our view, there is no variation in the Development Plan of the year 2017 with respect to the proposal of the sanctioned

Town Planning Scheme insofar as straightening of nalla is concerned.

81. We are inclined to accept the submission made by the learned Advocate General that insofar as the boundaries between plot nos.2B and 28 is concerned, the position of existing nalla in the sanctioned Development Plan of 2017 is not correctly shown. The respondent nos. 5 and 6 accordingly requested for seeking correction in the position of nalla *qua* the boundaries between final plot nos.2B and 28 by invoking the provisions of Note no. 1 of the notification of the sanctioned plan of 2017. The respondent no.1 rightly applied for corrections in the position of the nalla *qua* the boundaries of two plots by invoking the provisions of Note no. 1 of the notification of the sanctioned plan of 2017. The google image vehemently relied upon by the learned Advocate General annexed to the affidavit in reply by the respondent no.4 clearly shows the alignment of the existing nalla.

82. It is clear that the said Note no.1 is an integral part of the notification of the sanctioned plan of 2017 empowering the Commissioner of the respondent no.1 Corporation to rectify the draftsman's error. A perusal of the record clearly indicates that the Pune Municipal Corporation has not applied for any deviation in the alignment. The plans and the google map produced for consideration

of this Court would clearly indicate that in the sanctioned Town Planning Scheme as well as the sanctioned Development Plan in the year 2017, the proposed alignment of the said nalla was shown straight and not curved. However, in the sanctioned Development Plan in the year 2017, both the alignments of nalla i.e. existing horse-shoe shape as well as proposed Town Planning Scheme have been shown. Since there is no propriety in showing the existing horse-shoe alignment of the said nalla in the sanctioned Development Plan of 2017, such errors can be rectified by the Commissioner as per Note no.1 of the notification of the sanctioned Development Plan of 2017.

83. In our view, the learned Advocate General is right in his submission that it is not the case of the petitioners that by virtue of the impugned action of the Corporation, the alignment of the nalla in the sanctioned Development Plan of 2017 is getting changed, inasmuch as the straightening of the nalla is concerned. In our view, the respondent no.1 Corporation has rightly proposed to rectify the draftsman's error by invoking Note no.1 of the notification of the sanctioned Development Plan of the 2017 to ensure that the ground elements are represented on the sanctioned Development Plan as they exist as per revenue / land records / sanctioned Town Planning Scheme. These rectifications of the draftsman's error do not amount

to modification under section 37 of the MRTP Act. Since there is no modification of the Development Plan as sought to be canvassed by the learned senior counsel for the petitioners, the respondent no.1 or the State Government were not required to follow any mandatory procedure prescribed under section 37 of the MRTP Act for carrying out any rectification in the draftsman's error.

84. In our view, the submission of the learned senior counsel for the petitioners that the proposal of the straightening of the nalla was not shown in the Draft Development Plan of 2013 published under section 26 of the MRTP Act is factually incorrect and contrary to the facts on record. We have perused the plan produced by both the parties for consideration of this Court which clearly indicate that the said proposal of straightening of nalla was clearly shown. Due to overlapping of HCMTR over that of nalla, the petitioners appear to have misinterpreted the same while raising such plea. We have minutely perused the Development Plan and are clearly of the opinion that on a closer look of the Development Plan, "NALLA" is written in the said portion which confirms the existence of the proposal of nalla straightening.

85. Learned senior counsel for the petitioners could not dispute that

the respondent no.1 Corporation had published a Draft Development Plan for the original limit of the Pune Municipal Corporation under section 26(1) of the MRTP Act on 4th March, 2013. The objections and suggestions were invited by the Planning Committee before submitting its report to the Planning Authority on 13th February, 2015 in consonance with section 28(2) of the MRTP Act. The State Government accordingly accorded sanction to the Development Plan along with the Development Control and Promotion Regulations of the Pune Municipal Corporation (DCPR of the PMC) vide notification dated 5th January, 2017 effecting from 12th January, 2017. It is not in dispute that all the technical requirements suggested by the concerned expert organization in the said field are required to be complied with in respect of the execution of the nalla straightening proposal.

86. In our view, the draftsman's error are capable of correction as per the provisions of Note no.1 of the modification of the sanctioned Development Plan of 2017 in as much as boundaries of final plot no.2B and 28 is concerned. Regulation 6.5.5 of the DCPR 2017 are thus not attracted in the facts of this case. There is no merit in the submission made by the learned senior counsel for the petitioners that any portion of the waterbody was taken away by the respondent

no.1 so as to give larger plot to the respondent no.6 or otherwise. In our view since the proposal of the straightening of nalla is shown in the Town Planning Scheme of 1989 and shown in the Development Plan 2017, there is no merit in the submission of the learned senior counsel for the petitioners that the Development Plan in this case overrides the Town Planning Scheme or vice versa.

87. We are inclined to accept the submission of the learned counsel for the respondents that since the position of the existing nalla in the sanctioned Development Plan of 2017 in the context of boundaries between plot nos.2B and 28 is not shown as per revenue / land records / sanctioned Town Planning Scheme, the same was rightly sought to be corrected by invoking Note no.1 of notification of the sanctioned Development Plan of 2017. The said nalla was not on the plot of the respondent no.6. The respondent no.6 had only requested for clarification of "x y z" hatched portion and requested for deletion of that hatched portion of the land and not the whole nalla. The petitioners never challenged the sanctioned Town Planning Scheme.

88. We have also perused the ariel photographs tendered by the learned Advocate General showing the position of the nalla. The

learned Advocate General fairly pointed out that it was not the case of the State Government that in case of conflict between the Development Plan and the Town Planning Scheme, the Town Planning Scheme would prevail. On the contrary it was the case of the State Government as well as the other respondents that the draftsman's error about boundary line can be corrected according to the procedure prescribed in Note no.1. There is no substance in the submission made by the learned senior counsel for the petitioners that even if the said Note no.1 is applicable, the respondent no.1 has not followed the procedure prescribed in the said Note no.1 while collecting the alleged draftsman's error.

89. Insofar as the submission of the learned senior counsel for the petitioners that the petitioners have locus to file this petition is concerned, a perusal of the record clearly indicates that the petitioners could not point out any prejudice alleged to have been caused to the petitioners in view of the proposal of the respondent no.1 to correct the draftsman's error by invoking Note no.1. Since the petitioners are not presently affected in any manner whatsoever by the decision proposed to be taken by the respondent no.1, the petitioners have no locus to file this writ petition. Be that as it may, this Court has dealt with the arguments advanced by the petitioners

on merit also irrespective of the fact that the petitioners have no locus to file this petition.

90. Insofar as the judgment of Supreme Court in case of ***Bangalore Medical Trust*** (supra) relied upon by the learned senior counsel for the petitioners on the issue of locus is concerned, since the petitioners have failed to demonstrate any prejudice caused to the petitioners themselves or even otherwise to the members of public, the judgment of the Supreme Court in case of ***Bangalore Medical Trust*** (supra) would not advance the case of the petitioners and is clearly distinguishable on facts. The petitioners could not demonstrate that the straightening of the nalla will lead to an increase in the velocity of the flow of water which will affect the life and property of the petitioners or any member of the public.

91. Though the learned senior counsel vehemently urged that the entire exercise of changing the alignment of Ambil Odha irreversibly altered its course tainted by the *malafides* and runs contrary to the mandate of law to file the respondent no.6 or otherwise, no such *malafide* on the part of the respondent no.1 could be demonstrated by the petitioners during her lengthy arguments. Learned senior counsel for the petitioners could not dispute that the respondent no.6 is

developing plot nos.28 and 585. Plot no.28 belongs to the respondent no.1 Corporation and is covered by slum. The SRA scheme is being implemented by the Corporation itself.

92. Learned senior counsel for the petitioners could not dispute that even if horse-shoe “C” shape is deleted, the respondent no.6 would not be benefited by such deletion. Even if the impugned orders are set aside, the straightening of nalla will still take place which is being done while implementing the Town Planning Scheme. We are inclined to accept the submission of the learned A.G.P. that the said nalla is factually on plot no.28 and not on plot no.2B as is apparent from the google map and produced for consideration of this Court by these parties. In our view, the entire petition is based on erroneous premise that the final Development Plan under section 31 of the MRTP Act does not indicate any re-alignment (straightening) of the natural course of Ambil Odha from its existing “horse shoe” or “C” shaped stream.

93. Learned senior counsel for the petitioners could not dispute that during the rainy season when the water of the nalla swells, because of the velocity of the flow in the horse shoe shape reduces, the same

causes flooding of the Ambil Odha / nalla upstream and with a view to cure this defect, the town planning authority undertook the Town Planning Scheme in the year 1989. The arbitrator made an award whereby it was decided that the horse shoe shape of the nalla would be straightened with a width of 15 meter through survey no.135 i.e. final plot no.28 so that the water would flow rapidly and the same would prevent flooding of the Ambil Odha. Since last 30 years the decision of straightening of the nalla was not implemented.

94. The State Government sanctioned Development Plan on 15th January, 2017. The course of Ambil Odha at the final Development Plan remained as identical in the draft Development Plan and Town Planning Scheme. Learned senior counsel for the petitioners did not dispute that an appeal has been already filed before the National Green Tribunal seeking identical reliefs and with identical averments. The National Green Tribunal had already appointed a committee with a direction to submit a report on this.

95. There is no substance in the submission made by the learned senior counsel for the petitioners that the respondent no.1 has given additional land to the respondent no.6 by reallocating the boundaries of plot no.585. In our view section 39 of the MRTP Act pressed in

service by the learned senior counsel for the petitioners, would not apply in the fact situation of this case in view of there being no variance in the Town Planning Scheme with the Development Plan on the existence of nalla.

96. Judgment of Supreme Court in case of **Manohar R. Joshi** (supra) was delivered in the year 2012, i.e. before the 2014 amendment. It was held that there are only two methods by which modifications of the final development plan can be brought about. One is where the proposal is such that it will not change the character of the development plan, which is known as minor modification and for which the procedure is laid down under section 37 of the Act. The other is where the modification is of a substantial nature which is defined under section 22-A of the Act. In that case the procedure as laid down under section 29 is required to be followed. There is also one more analogous provision though it is slightly different i.e. the one provided under section 50 of the Act, for deletion of the reservation where the appropriate authority (other than the Planning Authority), no longer requires the designated land for the particular public purpose, and seeks deletion of the reservation thereon.

97. It is further held by the Supreme Court that the minor

modification under section 37(1) has to be such that it will not change the character of the development plan. The planning authority has to firstly form an opinion that the proposed modification will not change the character of the development plan. In this case, the planning authority has rightly held that there is no change whatsoever in the development plan. The question of following the exhaustive procedure by the respondent no.1 under section 37 of the MRTP Act read with other provisions of the said Act did not arise. There is no dispute about proposition of law laid down by the Supreme Court in case of **Manohar R. Joshi** (supra). However, since in this case, the respondent no.1 had proposed to only carry out the rectification of the draftsman's error by exercising power under Note no.1, the judgment pressed in service by the learned senior counsel for the petitioners in case of **Manohar R. Joshi** (supra) would not advance the case of the petitioners and is clearly distinguishable on facts.

98. In our view, section 39 of the MRTP Act which provides that where a final Development plan contains proposals which are in variation, or modification of those made in a town planning scheme, which has been sanctioned by the State Government before the commencement of this Act, the Planning Authority shall vary such scheme suitably under section 92 to the extent necessary by the

proposals made in the final Development Plan also would not apply to the facts of this case in view of there being no variation insofar as alignment of nalla is concerned. On this issue also, the judgment in case of **Manohar R. Joshi** (supra) would not advance the case of the petitioners.

99. Insofar as judgment of this Court in case of **Iqbal & Brothers, Pune** (supra) relied upon by the learned senior counsel for the petitioners is concerned, there is no dispute that the purpose of preparing Town Planning scheme is for implementation of the proposal for final Development Plan. The Development Plan is not for the purpose of implementing the provisions in Town Planning Scheme but it is the Town Planning Scheme which is supposed to be prepared for implementing proposal as made in the final Development Plan. It is not the case of the respondents that the Development Plan in this case is for the purpose of implementing the provisions in the Town Planning Scheme. It is the case of the respondents that there is conformity in the Development Plan as well as in the Town Planning Scheme insofar as alignment of nalla is concerned and thus this judgment of this Court in case of **Iqbal & Brothers, Pune** (supra) pressed in service by the learned senior counsel for the petitioners would not advance the case of the petitioners.

100. Insofar as the judgment of Supreme Court in case of **Chairman, Indore Vikas Pradhikaran** (supra) pressed in service by the learned senior counsel for the petitioners is concerned, it is held by the Supreme Court that the land use, development plan and zonal plan provided for the plan is at macro level whereas the town planning scheme is at a micro level and, thus, would be subject to development plan. There is no dispute about this proposition of law. It is not the submission of the respondents that the Town Planning Scheme is not subject to the development plan. The said judgment in case of **Chairman, Indore Vikas Pradhikaran** (supra) does not advance the case of the petitioners.

101. Insofar as the judgment of this Court in case of **Rajiv Mohan Mishra** (supra) pressed in service by the learned senior counsel for the petitioners is concerned, it is held that the Planning Authority cannot grant a development permission which is contrary not only to a sanctioned Development Plan, but to a notified draft Development Plan. It does not permit any development including erection or re-erection of structures or a layout or subdivision of a land contrary to a Development Plan. In our view, the said judgment also thus would not advance the case of the petitioners.

102. Learned senior counsel for the petitioners invited our attention to the stand taken by the respondent nos. 1 to 4 in various correspondence through their officers on question of law is inconsistent with the stand now taken in the affidavit filed before this Court, in our view, even if there is any concession in law made by any of the officer based on erroneous interpretation of the provisions of law, such erroneous interpretation contrary to law, cannot bind any authority.

103. We do not find any infirmity in the approval granted by the respondent no.1 Corporation dated 5th November, 2020 for carrying out a change in the alignment of the Ambil Odha (stream) and also approval for carrying out a change in the alignment of the Ambil Odha dated 25th August, 2020 granted by the respondent no.2. In our view, writ petition is totally devoid of merits .

104. We accordingly pass the following order :-

a). Writ petition is dismissed. Rule is discharged.

b). No order as to costs. Parties to act on the authenticated copy of this judgment.

(M.G. SEWLIKAR, J.)

(R.D. DHANUKA, J.)

105. At this stage, Ms.Gayatri Singh, learned counsel for the petitioners seeks continuation of the *ad-interim* protection granted by the Hon'ble Supreme Court in this writ petition, which is vehemently opposed by the learned Advocate General and other counsel appearing for the respondents.

106. Application for continuation of the *ad-interim* protection is rejected.

(M.G. SEWLIKAR, J.)

(R.D. DHANUKA, J.)