IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6512 OF 2024

1. M/s. Sandeep Dwellers Private Limited,
through its Director Shri Gaurav A.
Agrawala, office at 3C Gulmohar
Temple Road, Civil Lines, Nagpur

2. Shri Ashok Agarwala,
aged about 69 yrs, r/o 601,
Silver Oak, Raj Nagar,
Nagpur 440 013

3. Smt. Reena Agarwala,
aged about 67 yrs, R/o 601,
Silver Oak, Raj, Nagar,
Nagpur 440 013

4. Shri Anil Agarwala,
aged about 61 yrs, r/o. 502,
Silver Oak, Raj Nagar,
Nagpur 440 013

5. Smt. Smita Agarwala,
aged about 59 yrs, R/o 502,
Silver Oak, Raj Nagar,
Nagpur 440 013

6. Shri Gaurav Agarwala,
aged about 45 yrs, r/o. 501,
Silver Oak, Raj Nagar,
Nagpur 440 013

7. Smt. Akansha Agarwala,
aged about 46 yrs, R/o. 501,
Silver Oak, Raj Nagar,
Nagpur 440 013

8. Shri Rahul Agarwala,
aged about 40 yrs, R/o. 601,
Silver Oak, Raj Nagar,
Nagpur 440 013

9. Subhaskumar Ashokumar HUF,

10. Ashok Agarwala & Sons HUF,

11. Anil Agarwala HUF,

12. Gaurav Agarwala HUF,

13. Kalyani Education Society,
Registration No. S/ND/510/2014,
Resp. Nos. 9 to 13 Office at 3C,
Gulmohar Temple road,
Civil Lines, Nagpur
through Power of Attorney
Holder Shri Gaurav A. Agarwala,
aged about 45 yrs, having its
office at 3-C, "Gulmohar",
Temple Road, Civil Lines,
Nagpur .....**PETITIONERS**

.....Versus.....

1. The State of Maharashtra
through Chief Secretary,
Mantralaya, Mumbai

2. State of Maharashtra
through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai

3. Director, Towon Planning,
Urban Development Department,
Government of Maharashtra,
Pune,

4. Commissioner,
Nagpur Metropolitan Region
Development Authority,
Kingsway, Sadar Nagpur

5. Assistant engineer-I,
Nagpur Metropolitan Region Development
Authority, Kingsway, Sadar,
Nagpur .....RESPONDENTS

Mr. Kartik Shukul with Mr. Raghav Bhandarkar, Advocate for petitioners.
Ms. T.H. Khan, AGP for Respondent Nos. 1 to 3/State.
Mr. Girish Kunte Advocate for Respondent Nos. 4&5.

CORAM:- ANIL S. KILOR, &
RAJNISH R. VYAS, JJ.

DATED : 27.10.2026

ORAL JUDGMENT (Per : Rajnish R. Vyas)

Heard learned counsels for the respective parties.

2. The issue involved in this petition is regarding demand of Infrastructure cost by the Nagpur Metropolitan Regional Development Authority (hereinafter, would be referred as "NMRDA", for the sake of brevity) for development of the land in question. A

prayer is also made for refund of the amount deposited under protest by the petitioners. The petitioners 1 to 13 claims to be the owners of the land in question. The petitioner No. 6 is the Power of Attorney, Petitioner No. 1 is the private company incorporated under the provisions of the Companies Act and deals in the work of construction of buildings.

3. According to the petitioners, a Draft Development Control Regulation of NMRDA, for the year 2012-2032 came to be published in the year 2015. The land i.e. Khasara Nos. 73(part) and 74, at Mouza Lawa, District Nagpur, admeasuring 11.41 HR, out of which 9.86 HR land was reserved for affordable housing purpose. Under Draft Development Control Regulations 2012-32, the land was classified in various zones as Residential Zone-R1, Residential Zone-R2, Residential Zone-R3 and Residential Zone-R4. The relevant sheet of the Development Plan which bears Sheet No. 70 shows that the land owned by the petitioners to be reserved for affordable housing bear Reservation No.WESTB-MAH001. Out of the total land holding of the petitioner of 111700 SqMtr (5,100 SqMtr in Khasara No. 73/2 and 1,06,600 SqMtr in Khasara No. 74), NMRDA on 25.5.2017, had

sanctioned 12,851.25 SqMtr for an Educational institute. It was contended that the layout clearly shows that out of 111700 Sq.Mtrs, land reserved for affordable housing reservation is 98,600 Sq.Mtr. So far as balance 12851.25 Sq.Mtr sanctioned land was given for an Educational institute. The said reservation was on Khasara No. 74(Part) and not for Khasara No. 73 owned by the petitioners.

4. The petitioners then contended that the Development Control and Promotion Regulation for NMRDA was published on 5.1.2018 and under Chapter 25(1), the earlier classification of Residential Zone of the land were merged into one Common Residential Zone. Thus, earlier residential zones R1, R2, R3, and R4 were put in one zone. Under the said regulations, the merged Common Residential Zone was then classified into purely residential Zone R1 and Residential Zone R2.

5. It is the case of the petitioners that on 21.2.2019, the final Notification with sanctioned modification of excluded part of Development Plan of NMRDA came to be published under the land reservation (WEST-B)MAH001 was finalized as residential land. The

Development Plan for Sheet No. 70 showing sanctioned modification was published and land of the petitioners was shown as Residential Land and consequently the reservation on the said land came to be deleted.

6. In the aforesaid background, the petitioners contended that they had applied for sanction of lay out of Khasara Nos. 73 and 74 in April 2022 and the authorities have considered area of the land of the petitioners as per the city survey record which was 1,14,094.126 Sq.Mtr. for sanctioning the layout. In the application submitted, an area of 27,893.04 Sq.Mtr out of the aforesaid land was shown as educational land and according to the petitioners, same could not be part of the residential layout as a special case, under the separate head, a separate sanction was required.

7. On 13.9.2022, the plan was given tentative approval by the NMRDA. According to them, Unified Development Control Promotion Regulation (UDCPR) for the Maharashtra State was published on 2.12.2020 and revised UDCPR on 30.1.2022. Chapter 4.2(I)(v), states that (Residential Zone R1, Residential Zone and

Shop Line R-2, General Residential Zone-R2), Residential Zone R3 and R-4 with payment of "Infrastructure cost as decided by the authority…." were treated as equivalent to the Residential Zones.

8. It was the case of the petitioners that a request was made by one of the petitioners in a capacity of General Secretary of Confederation of Real Estate Development Association of India to the Metropolitan Commissioner, NMRDA, to issue clear direction to not to charge the Infrastructure charges for deleted reservation by classifying them in R3 and R4 zones which is already converted to Residential Zone through Government Notification. In reply, Respondent No. 4 Commissioner of NMRDA vide communication dated 15.2.2023 stated that the NMRDA, while granting permission in the zones by considering the land and treating them as Predominant zone so also is imposing Infrastructure cost accordingly.

9. It is then contended by the petitioners that without considering their representation dated 3.1.2023, respondent No. 4 issued two demand notices to the petitioners on 11.4.2023 and 21.6.2023 asking to pay Infrastructure cost and Development charges

in respect of Khasara Nos. 73 and 74.

10. At this juncture, it is necessary to mention here that demand notice dated 11.4.2023 pertains to Survey Nos. 73 and 74 and demand of Infrastructure cost is Rs. 90,37,332/- whereas demand notice which pertains to Survey No.74/1, 74/2, 73/1/2/3 shows Infrastructure cost as Rs. 2,79,29,448/-. The petitioners then contended that deposit on 20.7.2023 of Infrastructure cost and Development charges raised in notice dated 21.6.2023 was under protest.

11. It would be apt to mention here that payment in pursuance to the notice dated 21.6.2023 was made and thereafter, the protest was submitted. Same is with the demand notice dated 11.4.2023 as the protest was made on 20.7.2023 whereas payment was made much prior to it.

12. It is in this background, learned counsel for the petitioners has argued that the act of the respondent authorities in raising a demand for Infrastructure cost and Development charges is totally

contrary to the law. He submits that since the demand of Infrastructure cost vide demand notice dated 11.4.2023 was not huge, it was deposited and the objection or protest was not raised immediately though raised in the month of July, 2021. He further submitted that de-reservation of the land resulted in its reclassification as Residential land and thus, there was no basis for demanding the Infrastructure charges on the portion of dereserved land. He further submitted that at the time of reservation, only two residential zones existed namely purely residential zone and the residential zone and therefore, the de-reserved land ought to have been classified based on the zoning and classification, at the relevant time. He submitted that residential Zone R-4 was not in existence when the demand was raised.

13. He further submitted that the dispute regarding demand of Infrastructure and Development cost pertains to the land admeasuring 9.86 HR and he is ready to pay the aforesaid charges for 1.55 HR. According to him, as the project of the petitioners was governed by the Maharashtra Real Estate Regulatory Authority Act which was to be completed within certain period, in order to avoid

any unpleasant action, the Infrastructure cost and Developmentcost was deposited. Khasara No. 74 was de-reserved in the year 2019 at which time only two zones existed i.e. purely residential zones i.e. R-1 and R-2. Thus, the land under reservation could not have been termed as Residential R-4 as per the earlier categorization.

14. He then referred to nature and form of entries in Schedule B of Notification dated 21.2.2019 by which modifications were allowed, in order to contend that same would show that land is for residential use only and no specific zone like R-1 and R-2 are specified in said entry EP 63. Whenever the Government intended for entries to be specific they have to categorically stated so. One of the examples was given by the petitioners is regarding EP 191 in order to contend that the Government had shown its intention whenever it had decided to treat the land as in adjoining land. The illustration further given pertains to agricultural piece of land wherein the Government, while changing the nature, had specifically put the converted land into specific category i.e. EP 195.

15. Finally, he contended that demanding Infrastructure cost

and Development charges for conversion of de-reserved land from R-4 to purely residential zone was illegal and arbitrary, as it is clear from demand notes dated 11.4.2023 and 21.6.2023. Once, the reservation for affordable housing was deleted, it logically followed that the land was required to be placed in purely residential land category as per the prevalent categories and could not be categorized as R-4 zone as existed earlier.

16. By way of an additional affidavit dated 14.12.2024, the petitioners reiterated the stand earlier taken that as on 21.2.2019, R-1 and R-4 did not exist.

17. The respondent Nos. 4 and 5 appeared in pursuance of the notice issued by this Court and contended that since policy decision is challenged, the petition itself is not maintainable. They contended that the land of the petitioners comes under R-4 zone as due to zoning of adjacent lands, it also comes under R-4 zone. It was their case that as per the Development Plan published under Section 26(1)of the Maharashtra Regional and Town Planning Act ("MRTP Act"), the user of said land is R-4(Residential). Thus, as per

modification sanctioned by the Government, under Section 31(1) of the MRTP Act charges are required to be recovered while granting development permission as decided by the authority in terms of Development Agreement dated 10.11.2023.

18. For providing infrastructure facility, the cost of Rs. 246/- per Sq.Mtr. was decided by the committee headed by the Hon'ble Chief Minister and others, vide Resolution dated 20.8.2018 which is a policy decision. According to them, in subsequent Resolution also, the amount per square meter was decided. Respondent Nos. 4 and 5 stated that Section 22(m) of the MRTP Act if perused would reveal that the power to recover Infrastructure cost flows from it.

19. According to respondent Nos. 4 and 5, as the land comes under residential zone i.e. R-4 area which is currently rural in character where development is to be carried out, but which is in proximity to other planned urban uses, which are the zones under R-4. It was further contended that in pursuance with the demand raised, the amount was already deposited by the petitioners and petitioners had received final sanction and therefore, the

development agreement was also executed by which more than 20% plots of the sale deed were also released by NMRDA on 9.5.2024. Hence, stand taken by the petitioners is not at all maintainable.

20. He pointed out that as per Development Plan use of the adjoining land Khasara No. 74 is Residential R-4 and the land used is residential under EP-63 and therefore, considering predominant zone of adjoining land, Infrastructure cost was divided on Residential R-4 part. He submitted that subsequent submission of protest on 21.7.2023, is noting but an attempt made by the petitioners to take a chance. It is further submitted that the petitioners had suppressed the material facts regarding consenting terms of sanction lay out of Khasara Nos. 74/1, 74/2, 73/1/2/3 vide notice 7.11.2023, 5.01.2024 along with indemnity bond submitted. Learned counsel for the respondents contended that the issue involved in the petition is no more *res integra* and Coordinate Bench of this Court in Writ Petition No. 4828/2022 along with connected petitions, has settled the issue. He thus, prayed for dismissal of the petition.

21. In this background, we have given our thoughtful

consideration to the arguments advanced and the pleadings of the case.

22. Since, the question raised is regarding payment of Infrastructure cost, the purpose will have to be seen for imposition of the same. Infrastructure charge/cost contemplates the over all development of the entire locality including integration of sewer, water, electricity, road, storm, water drains between several layouts to form a homogeneous network and therefore, is a charge.

23. The source of power to impose the Infrastructure cost flows from the following statutory provisions i.e. Section 22 of the MRTP Act, which is reproduced as under :-

> *22. A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,—*
> *(a) to (l) ……*
>
> *(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority 1[including imposition of fees, charges and premium, at such rate as may be fixed by the State Government or the planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of*

discretionary powers under the relevant Development Control Regulations, and also for imposition of] conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act.

And Section 31(1) is reproduced as under :-

31.(1) Subject to the provisions of this section, and not later than [six months] from the date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, * * * the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development plan submitted to it for the whole area, or separatley for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft Development plan to the Planning Authority, or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan :*

[Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto,
by such further period not exceeding,—

(i) twenty-four months, in the aggregate, in case, the area of such Development plan falls in the jurisdiction of a Metropolitan Planning Committee constituted under the Maharashtra Metropolitan Planning Committee (Constitutions and Functions) (Continuance of Provisions) Act, 1999 ;

(ii) twelve months, in the aggregate, in any other case, as may be specified in such notification.]

[Provided further that, where the modifications proposed to be made by the State Government or submitted by the Planning Authority under section 30 and proposed to be approved by the State Government without any further change are of a substantial nature with respect to the draft Development plan published under section 26, the Government shall publish a notice in the Official Gazette and also in not less than two local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of one month, from the date of such notice.]

[This proviso was substituted for the second proviso, by Mah. 10 of 2011, s.9 (1)(c) (w.e.f. 05-04-2011).]

And modification SM-1 by the State Government on 05/01/2028 contains following clause :

"Residential Zone viz. R-1, R-2, R-3 and R-4 proposed in the submitted draft Development Plan is merge into Common Residential Zone ®. The development in this common Residential Zone is permissible as per the Development Control and Promotion Regulations sanctions for the NMRDA area. However, the Infrastructure Cost as decided by the Authority shall be recovered while issuing development permission in R-3 and R-4 Zone."

24. It is not in dispute that the demand to deposit the Infrastructure cost was raised on 11.4.2023 which was deposited on 8.5.2023 and further demand notice dated 21.6.2023 was complied with by the petitioners and the Infrastructure cost was deposited though on 20.7.2023, a protest was submitted. It is also not in dispute that the petitioners have submitted an affidavit so also the

indemnity bond. The affidavit is at page 191 whereas, the indemnity bond is at page 193 as regards Khasara No. 73/2, 74, 73/3 and as regards Khasara No. 74/1,74/2,73/1,73/2,73/3 the affidavit is at page 196 and indemnity bond is at page 198. If the affidavit is perused, petitioner Shri Gaurav Agrawal has categorically stated in paragraph No. 3, as under:

> *"That the deponent has already accepted the terms and conditions of sanction of lay out. The same are accepted and is binding upon him".*

25. The affidavit is dated 7.11.2023. The affidavit at page 196 is dated 5.1.2024 which incorporates the same statement which is stated above. The terms and conditions for sanction of lay out are at page 168. Nothing has been brought on record by the learned counsel for petitioners to show that surrounding land is not R-4 land. It is the specific case of respondents that the land in question is surrounding R-4 zone and therefore, the petitioners were required to pay the Infrastructure cost on account of per-dominent zone in development plan.

26. The contention of the petitioners that there was no reservation on Khasra No.73 and it was only Khasra No.74, and

therefore, the demand notice issued to the petitioner demanding infrastructure cost on their de-reserved residential plan is contrary to the law, is liable to be rejected since if the provision of Section 22 and 31(1) and the sanction modification SM-1 dated 05/01/2018 are co-jointly taken into consideration then, it would be crystal clear that the petitioner was under an obligation to pay the infrastructure cost.

27. As already stated, execution of affidavit and the indemnity bond clearly shows that the petitioner had agreed to terms and condition and on the basis of the documents, stated above, 20% of the plots are already released in favour of the petitioner. Thus, the petitioners cannot be permitted to blow hot and cold.

28. The principle which can be applied to the case in hand is the person cannot be permitted to take advantage of the particular document and at the same time, ignored the same while questioning the same. Raising of the protest only after the payment of the demand amount also shows that the petitioners had taken all advantages under the document.

29. The contention of the petitioners that the project was

governed by the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA) and, therefore, they had no option but to deposit the amount, cannot be accepted in the absence of specific pleadings and supporting material to that effect. In any event, before registering the project under RERA, the petitioners ought to have considered all the legal aspects of the matter. As per its own pleadings, petitioner No.1 is one of the most reputed construction companies in the city of Nagpur. Therefore, the contention of the petitioners that the project was registered under RERA does not appear to be convincing. The petitioners cannot rely upon the registration of their project under RERA as a defence to justify their objection to the infrastructure cost.

30. The petitioners contend that they had applied for sanction in respect of the land in question, which was never subject to residential reservations system (under R-1, R-2, R-3 or R-4) and, therefore, they are not liable to pay the infrastructure charges as demanded. The petitioners have ignored the fact that their land falls predominantly within the R-4 zone, which is rural in character and intended to accommodate only low- to very-low-density development

in the future, while being in proximity to other planned urban uses. The respondents have specifically contended that the lands situated in the vicinity of the land in question fall within the R-4 zone, which has not been countered with material by the petitioners.

31. There is one more aspect of the matter, the tentative and final approval dated 11.08.2022 and 21.09.2023 was given with a condition to charge the infrastructure cost from the applicant and therefore, the agreement dated 10.11.2023 was executed (record page 177). Clause (f) of the said agreement dated 10/11/2023 reads as under :-

> *"(f) Party No.02 shall have to deposit non refundable Infrastructure Cost to Party No.1 as per the Modification No.1 sanctioned by Government under section 31(1) of MRTP Act, 1966 of Development Plan of NMA on total land as per the rate decided by the NMRDA."*
>
> *Accordingly, Party No.02 has deposited Rs.2,79,29,448/- vide receipt No.20231003828 with Party No.1.*

32. The said agreement has been signed by all the petitioners. It cannot be ignored that, as per the Development Plan, the proposed land use of the subject land, bearing Khasra Nos. 74/1 and 74/2, falls within the residential zone (R-4). Accordingly, Khasra Nos. 74/1 and 74/2 would also be included in the permanent residential zone (R-4).

Further, under Regulation 4.2(1)(v), the proposed R-3 and R-4 zones are to be treated as equivalent to the residential zone, subject to the payment of infrastructure costs as determined by the competent authority. The Unified Development Control and Promotion Regulation are sanctioned by the State Government of Maharashtra. The residential zones R-1 and R-2 are situated in proximity to existing developments, whereas the R-3 and R-4 zones are located at a greater distance from such developments. Therefore, the Planning Authority would have to incur the necessary expenditure for providing basic amenities to the residents of the R-3 and R-4 zones. This appears to be the rationale behind incorporating the said provision in the Building Bye-laws.

33. It cannot be ignored that under the provisions of Maharashtra Regional Town Planning Act more particularly Section 31, the State Government is the repository of the exclusive power to either accord sanction to the Draft Development Plan submitted by the Planning Authority or to return it with direction to modify it or even refuse the sanction with direction to prepare a fresh plan. Thus, sanctioned modification under Section 31(1) of the MRTP Act

empowers the authority to recover the infrastructure cost.

34. It is not even the case of the petitioners that while entering into an agreement any fraud was played or coercion was adopted by the parties to the agreement. Knowing fully well implications of the executing the agreement, voluntarily have entered into the contract. Now by seeking a prayer in this petition, the petitioners cannot call upon the Court to alter the terms and conditions of the contract, which would not lie within writ jurisdiction of this Court. Learned counsel for the respondents has rightly relief upon the judgment delivered by the Coordinate Bench of this Court in Writ Petition No.4828/2022 along with connected petitions, in which the similar issue was raised which was decided by this Court. The Coordinate Bench has taken into considerations judgments cited by the respondents and we concur with the findings given by the Coordinate Bench. Further illustrations given by the petitioners would not be enough to say that respondents have no power to demand infrastructure cost.

35. The deletion of the reservation has resulted in the conversion of the land to residential use within the surrounding R-4

zone. Therefore, the demand for infrastructure charges was rightly raised. The aspect of predominant zone cannot be ignored at all.

36. We reiterate that infrastructure charges contemplates over the development of the entire locality, which would indicate integration of sewerage, water, electricity, road etc. between several layouts to form homogeneous network and therefore, no interference is required at the behest of the petitioners. As per the provisions made in the sanctioned modification for charging Infrastructure cost meant for peripheral development and source of power flows from Section 22(m) read with Section 31(1) of the MRTP Act along with UDCPR 2020 by regulation 4(i)(2) and therefore, no interference is required.

37. In that view of the matter, we do not find merit in the case of the petitioners. Hence, the petition is liable to be dismissed and accordingly, dismissed. No order as to costs.

[RAJNISH R. VYAS, J.] [ANIL S. KILOR, J.]