



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA

ON THE 19TH SEPTEMBER, 2024

WRIT PETITION No. 10968 of 2024

NILESH JAIN AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Vishal Baheti, Advocate for the petitioners.

Shri Sudeep Bhargava, Dy. Advocate General for the respondent/State.

Shri Mohan Sharma, Advocate for the respondent No.4.

***Reserved on* : 17.08.2024**

***Pronounced on* : 19.09.2024**

ORDER

Per: Justice Sushrut Arvind Dharmadhikari

This petition under Article 226 of the Constitution of India has been filed by the petitioners being aggrieved by the order No. F12-48/2021/18-5 (Annexure P/26) dated 06.04.2023 whereby the respondent



No.1 has refused to change the land use of the petitioners' land from recreational to residential under Section 23 of the M.P.Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as the Adhiniyam, 1973).

The following reliefs have been sought by the petitioners in this petition :

- (a) Issue an appropriate writ, order of direction in the nature of a writ of Certiorari to quash Rule 15(14) of the M.P.Nagar Tatha Gram Nivesh Rules, 2012 (hereinafter referred to as the Rules, 2012) which has imposed an arbitrary condition for moving and consideration of an application for rectification of an apparent mistake in the Master Plan and hence is ultravires Article 14 and 300A of the Constitution of India.
- (b) Issue an appropriate writ, order of direction in the nature of a writ of Certiorari to quash and set aside the order dated 06.04.2023 (Annexure P/26) passed by the Respondent No.1 by a writ of Mandamus direct the respondent State Government to consider the case of the petitioner's subject land under Section 23A(1)(a) of the Adhiniyam, 1973 in the light of the findings already recorded by the Ld. Single Judge in his order dated 13.04.2018 and confirmed by the Division Bench in its order dated 07.04.2022.
- (c) Issue an appropriate writ, order of direction that the case of the petitioner be considered by the respondent State Government under Section 18 read with Section 23A as was done and implemented in the case of *State of M.P. vs.*



Vallabhbhai (W.A. No. 157 of 2016) and in the case of Ghanshyamdas Sanghi Memorial Charitable Trust (W.P.No. 2785 of 2016, W.A.No. 1178 of 2018).

- (d) Any other relief or reliefs or order or orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be kindly passed.

Facts in brief :

2. Petitioners are the owners of the land bearing Survey No. 26/2, 27, 28, 29/3, 29/5, 29/2/K, 29/3/K, 30/2 and 31/2 admeasuring 1.874 hectares in village Pipliarao, Tehsil and District Indore. In the 1991 Development Plan, the subject land was designated for "Recreational" use. In absence of any plan for recreational purpose by the respondents, the aforesaid land has been lying unutilized for the past 49 years. The respondent No. 2 Director, TNCP published a draft plan for the forthcoming Indore Master Plan 2021 in terms of Section 14 of the Adhinyam, 1973. A committee was constituted under Section 17-A of the Adhinyam, 1973 inviting objections and suggestions from the general public/impacted landowners. In the Draft Plan, since the land in question was earmarked for residential purposes, therefore, the petitioners had no reason or occasion to raise any objection in respect of land use before the committee. The recommendations of the committee along with comments of the Director T&CP was forwarded to the State Government for



approval under Section 19 of the Adhiniyam, 1973 and thereafter, the final plan 'Indore Master Plan 2021' was published and notified in the Gazette on 01.01.2008 when the petitioners came to know that the land in question has been designated for 'City Park' i.e. "Recreational" purpose in the final Master Plan.

3. Being aggrieved by the arbitrary act of the respondents, the petitioners filed Writ Petition No. 1299/2008 before this Court which was disposed of along with other bunch of petitions by the learned Single Judge vide order dated 17.06.2008 with direction to all the landowners to submit an objection as required under Section 19(2) of the Adhiniyam, 1973 with a further direction to the State Government to consider all the objections and pass appropriate order in this regard. Review petition filed by the respondents against the said order was dismissed vide order dated 21.11.2008. Thereafter, the State Government preferred Writ Appeal No. 805/2009. The Division Bench of this Court vide order dated 18.02.2010 modified the order dated 17.06.2008 and constituted a committee under Section 17-A of the Adhiniyam, 1973 to consider the objections at the stage of Section 18(2) of the Adhiniyam, 1973. Being aggrieved, the State Government preferred Special Leave Appeal (Civil) No. 22768/2010 which was dismissed by the Apex Court on 20.05.2010 declining to interfere with the order of the Writ



Court as the same was passed with the consent of the parties. Subsequently, a 15 member committee has considered all the objections and forwarded its report to the Director, T&CP. As per the report, 11 out of 15 members of the committee recommended changing the land use of the petitioners to 'Residential'. However, the Government of M.P. Vide order dated 27.08.2010 decided that the land in question shall remain 'Recreational' as the Director has given a proper reason for rejection of the recommendations.

4. Being aggrieved, the petitioners filed W.P.No.4896/2013 which was allowed vide order dated 13.04.2018 by placing reliance on the judgment passed in case of *Ghanshyamas Sanghi Memorial Charitable Trust vs. State of Madhya Pradesh (supra)*. It was held that the surrounding area of the subject land in question has already been developed as residential, hence, the land in question cannot be treated as Recreational Park in the Development Plan, 2021. Against the said order, the State Government/respondent preferred Writ Appeal No. 952/2018 which was disposed of vide order dated 07.04.2022. The operative part of the order is reproduced hereunder :

20.The Government has neither acquired the land nor removed illegal construction to make it usable for recreational purposes. Looking to a practical point of view the small piece of land surrendered by the residential area cannot be used for recreational purposes, especially when within a five-meter distance a huge park has been developed by the Indore



Development Authority by spending crores of rupees, therefore, in the Draft Plan, this land was rightly reserved for residential purpose. The statutory Committee constituted under Section 17-A of the Adhiniyam, 1973 has also recommended that it should be retained for residential purposes, therefore, the Government has wrongly accepted the recommendation of the Director without assigning any reason. Under Section 18 (3) of the Adhiniyam, 1973 can only send its comments to the Government along with the Draft Plan and recommendations of the Committee, thereafter the State is required to apply its mind independently in each and every case.

24. In view of the above, both the Writ appeals are partly allowed, the impugned orders passed in respective Writ Petitions are modified to the extent that the appellant No.1/ Government of M.P. shall consider the application of the writ petitioner under section 23-A of the Adhiniyam, 1973 for changing the designation of "the land in question" from 'recreational purpose' to 'residential' as per law and as discussed above within 60 days from the date of receipt of Certified Copy of this order.

5. Being aggrieved by the aforesaid order, petitioners filed SLP (C) No. 17315/2022 before the Apex Court which was disposed of vide order dated 21.10.2022 with a direction to the State Government to take appropriate decision under Section 23-A of the Adhiniyam, 1973. Petitioners submitted a representation dated 07.11.2022 (Annexure P/26) to the respondent No. 1 for taking action in accordance with the findings of this Court as well as the Apex Court. However, the case of the petitioners has not been considered for the reason that the subject land of the petitioners falls below the threshold limit of 6 hectares as prescribed for taking a decision under Section 23A(1-b) and vide impugned order dated 06.04.2023, respondents have refused to



change the land use to "Residential". The petitioners moved M.A.Diary No. 47073/2023 before the Apex Court for revival of the SLP. However, the same was dismissed with liberty to challenge the aforesaid order before this Court in accordance with law. Hence, this petition.

6. Learned counsel for the petitioners submitted that while the State Government steadfast refuses to exercise its suo-moto powers under Section 23A(1)(a) of the Adhiniyam, 1973, Rule 15(14) of the Rules, 2012 prevents an application to be preferred by the person being aggrieved even for an apparent mistake at the end of the Government. The provision of Rule 15(14) of the Rules, 2012 prevents rectification of errors and hence perpetuates such mistakes and illegality which is arbitrary and violative of Article 14 of the Constitution. He further contended that despite the subject land having been earmarked for "Recreational" use since 1975, the respondent No. 1 has till date not taken any step to develop the land nor specified any plausible recreational use. As a result of which the land is lying unutilized for the past 47 years. Further, the Division Bench of this Court vide order dated 07.04.2022 had upheld the finding of the learned Single Judge in favour of the petitioners that the classification of the petitioners' land in the Master Plan ought to be "Residential". The designation of the subject land as "Residential" is as per the unanimous recommendation of the committee constituted under



the provisions of the Act and was duly noted by the learned Single Judge as well as the Division Bench. Hence, the mistake deserves to be corrected by the authorities themselves and therefore, the petition deserves to be allowed.

7. Per contra, learned counsel appearing for the respondents have opposed the application and contended that in compliance of the various orders passed by the High Court and the Apex Court, the State Government has constituted the committee under Section 17-A of the Adhiniyam, 1973 for consideration of all objections. Although 11 out of 15 members recommended changing the land use of the subject land to 'Residential', however, it is for the Government whether to accept the report or not. Further, once the Master Plan is approved and notified by the Government under Section 19 of the Adhiniyam, 1973, the same can be modified only under Section 23-A of the Adhiniyam, 1973. The objection raised by the petitioners seeking change of land use of the subject land to residential was rejected by the State Government vide order dated 26.06.2017. In compliance of the orders passed this Court and the Apex Court in various rounds of litigation, the respondents have considered the application of the petitioners dated 09.11.2022 under Section 23-A(1-b) Adhiniyam, 1973 read with Rule 15(14) of the Act of 2012.

8. Learned counsel for the respondents contended that Section 23-A (1-b)



of the Adhiniyam, 1973 categorically provides that the State Government may on application of any person for modification of development plan or zonal plan, make such modification in the Master Plan as may be deemed necessary in the circumstances of the case. However, such application for modification under Section 23A(1-b) of the Adhiniyam, 1973 has to be in accordance with the Rules 15(14) of the Rules of 2012 which provides that, 'in case the modified land use is residential, the application for modification under Clause (b) of Sub Clause (1) of Section 23-A shall be accepted for consideration only if the total area of the land over which the land use modification is applied for is not less than 6 hectares. The application of the petitioners was considered by the authorities in accordance with the Act and Rules and subject land being 1.874 hectare does not fulfill the condition precedent for consideration, hence the same was dismissed by the State Government vide order dated 06.04.2023.

9. Learned counsel for the respondents has further contended that the petitioners have not substantiated the lack of legislative competence to make the Rule 15(14) of the Rules of 2012, however, the challenge has been made in mechanical manner just to support the application for modification. The Apex has categorically held that the Court cannot examine the wisdom, officiousness or reasonableness of the Rules. In view of the aforesaid, the



application seeking modification filed by the petitioners has rightly been rejected vide order dated 06.04.2023 and same calls for no interference by this Court and as such, the petition deserves to be dismissed.

10. Heard learned counsel for the parties. Perused the order impugned.

11. The present case involves question of applicability as well as difference between Section 23(1-a) and 23(1-b) of the Act of 1973 which reads as under:

S.No.	Section 23 A(1-a)	Section 23 A(1-b)
1	<p>The State Government may on its own motion or on the request of a Town & Country Development Authority, make modification in the Development plan or the Zoning Plan for any proposed project of the Government of India or the State government and its enterprises or for any proposed project related to development of the state or for implementing a scheme of a Town and country Development Authority, and the modification so made in the development plan or zoning plan shall be an integral part of the revised development plant or zoning plan.</p> <p>Note – Such power can only be exercised in case the State government of Development Authority is the applicant.</p>	<p>The State Government may, on application from any person or an Association of persons for modification of development plan or Zoning plan for the purpose of undertaking an activity or scheme which is considered by the State Government or the Director, on the advice of the Committee constituted by the State Government to the society, make such modification in the development plan or Zoning plan as may be deemed necessary in the circumstances of the case and the modification so made in the development plan or zoning plan shall be an integral part of the revised development plan or zoning plan.</p> <p>Note – This power can be exercised only on the application filed by any person or an association or persons.</p>
2	<p>No Criteria for minimum Area or Maximum Area for modification of plan.</p>	<p>Though the act prescribes no eligibility condition for maintaining an application, the respondent has by way of Rules put up an arbitrary condition requiring that the applicant must be concerned with a Minimum Area of 6 hectare land for maintaining an</p>



		application under Section 23A(1)(b).
3	No fees to be paid for Modification of development plan.	The rules provide submission of 8% of the market value of the colony within the vicinity of 2 kms of the subject land. Note – Highest rate of any colony taken into consideration.

12. In the present case, it is crystal clear that the subject land was designated for "Recreational" use in the Indore Vikas Yojna 1991 ("1991 Development Plan"). Despite the fact that the subject land was earmarked for 'Recreational' use since 1975, respondent No. 1 has till date not taken any steps to develop the same for the said purpose due to which it is lying vacant and unutilized for the past 49 years. Since the land was not utilized, the petitioners have been deprived of their constitutional right of Right to Property for a period far in excess of the timeline contemplated in the proviso to Section 21(1)(a) of the Adhinyam, 1973.

13. Section 21(1)(a) of the Adhinyam, 1973 provides as under :

21. Contents of zoning plan.

(1) The zoning plan shall enlarge the details of land use as indicated in the development plan and shall,-

(a) indicate the land liable to acquisition for public purpose for the purposes of the Union Government, the State Government, a Town and Country Development Authority, a, Special Areas Development Authority, a local authority, a public utility or any other authority established by or under any enactment for the lime being in force :



Provided that no land shall be so designated unless the acquisition proceedings are likely to be completed within ten years of the preparation of the plan;

(emphasis supplied)

14. On 06.07.1984, the respondent No.4/Indore Development Authority notified the development Scheme No. 95 in which provision for acquiring the subject land was made under Section 50(7) of the Adhiniyam, 1973. Later on the scheme was deemed unfeasible. The decision of respondent No. 4 to cancel the Scheme no. 95 was upheld by the Coordinate Bench of this Court vide judgment dated 14.07.1998 in W.P.No. 1012 of 1995 wherein it was observed that the scheme was rightly annulled since out of 120 hectares of land, majority of land stood released or was under the stay orders passed by this court. The cancellation of the Scheme No. 95 as well as the failure of the respondents to propose any other plan for the subject land indicate that neither there is any will nor any proposal for development of the subject land for the recreational use. It is pertinent to mention here that the land use of land bearing Survey Nos. 21/1/1, 22/1/1, 23/2m, 24/2m, 25 and 26/1/1 (total 1.416 hectare) situated adjacent to the subject land was changed by respondent No.1 from 'Recreational' to PSP (Public Semi-Public) by Gazette notification dated 28.04.1999 and thereafter, school and hostel has been constructed over the adjacent land, therefore, now it has become impossible



to develop any Regional Park on the subject land. As per the Indore Development Plan for the year 2021, the minimum extent of land required for development a city or Regional Park is 7.5 hectares and as per the record of the present case, a Technical Consultant was appointed on 13.11.2010 that after conversion of the adjacent plots of land, it is not possible to construct city park on the subject land. However, the IDA has already developed a Regional Park in the city of Indore which is situated within 500 mtr. distance of the subject land. Therefore, either the said park can be extended or the subject land shall be converted to PSP.

15. In the SLP (C) No. 17315/2022 filed by the petitioners before the Apex Court, the Apex Court has directed the respondents to *suo motu* exercise power to modify the designation of land use Section 23-A of the Adhiniyam, 1973. The operative part of the order reads as under :

"We are in complete agreement with the view taken by the High Court. However, at the same time, considering the fact that the land in question is kept under reservation for more than 2-4 decades and even as observed by the Division Bench the same is not put to use by the Corporation as recreational ground, we direct the State Government to take appropriate decision under Section 23-A of the Act and to take an appropriate decision whether to modify the master plan or not. The aforesaid exercise be completed within a period of three months from the date of receipt of the present order.

The Special Leave Petitions stands dismissed/disposed of in terms of the above."



16. Pursuant to the aforesaid order, petitioners then submitted a representation dated 07.11.2022 to the respondent No.1 requesting to take appropriate action in the light of findings of this Court as well as the Apex Court. The respondents, vide impugned order dated 06.04.2023, has not considered the case of petitioners stating that the subject land of the petitioners falls below the threshold limit as prescribed for taking a decision under Section 23A(1-b).

17. In spite of the orders of the Apex Court directing the respondents to take appropriate decision in respect of modification of master plan regarding change of land use from 'Recreational' to 'Residential' on its own motion, the respondents vide impugned order dated 06.04.2023 refused to change the designated land-use to 'Residential' on the ground that the land of the petitioner is below the threshold limit of 6 hectares which is required under Rule 15(14) of the Rules of 2012. It is very much clear that the respondents are in agreement with the findings and directions of this Court and the Apex Court but the only constraint is the threshold limit prescribed in the Rules of 2012.

18. Thus, it is apparent that the respondents misinterpreted the orders passed by the Courts and classified the case of the petitioners under Section 23A(1-b) of the Act of 1973 whereas they should have passed an order under



Section 23A(1-a) read with Section 18 of the Act. To pass any order under Section 23A (1-b), first there should be an application by the land owner but in the instant case, there is no such application filed by the petitioners.

19. Once a mistake has been pointed out, the same deserves to be corrected by the authorities themselves and the mistake cannot be permitted to perpetuate by rejecting the representation of the petitioners on the ground that the error can be rectified only if the area of subject land is beyond a particular threshold limit. Though there was clear direction of the Courts to change the land use under Section 23A and correct the mistake with regard to subject land, the respondents arbitrarily dealt the case under Section 23A(1-b) read with Rule 15(14) of the Rules of 2012 where the land-owner applies for change of land-use. Since, there is a threshold limit of land area for applying change of land use, the order of respondents does not apply in the present case.

20. In view of the foregoing discussion and considering the orders passed by the respondents in case of *Vallabhbhai Patel (supra)* and *Ghanshyamdas Sanghi Memorial Trust (supra)* wherein land use has been changed to residential under Section 18 read with Section 23A of the Adhinyam, 1973, the case of the present petitioners fall under Section 23A(1-a) of the Adhinyam, 1973 and the respondents are bound to change the land use in



question from "Recreational" to "Residential". Therefore, the provisions of Section 23A(1-b) is not applicable to the case of the petitioners. Thus, the question of challenging the validity of the said provision does not arise in the present case. Petitioners have not filed any application for change of land use under Section 23A(1-b) of the Adhiniyam, 1973.

21. Accordingly, the impugned order dated 06.04.2023 deserves to be and is hereby set-aside. Consequently, the State Government is directed to pass appropriate orders under Section 23A(1-a) read with Section 18 of the Adhiniyam, 1973 in respect of change of land-use of subject land from "Recreational" to "Residential" in the light of the orders passed in case of *Vallabhbhai Patel (supra)* and *Ghanshyamdas Sanghi Memorial Trust (supra)*. The aforesaid exercise be completed within a period of two months from the date of receipt of certified copy of this order.

22. With the aforesaid, this petition is allowed.

No order as to cost.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(DUPPALA VENKATA RAMANA)
JUDGE