SUPREME COURT OF INDIA

Girish Vyas & Anr.

Vs.

State of Maharashtra & Ors.

C.A.No.198-199 of 2000

(R.V.Raveendran and H.L.Gokhale,JJ.,)

12.10.2011

JUDGMENT

H.L.Gokhale,J.,

1. What is the nature and significance of the planning process for a large Municipal town area? In that process, what is the role of the Municipal Corporation, which is the statutory planning authority? Can the State Government interfere in its decisions in that behalf and if so, to what extent? Does the State Government have the power to issue instructions to the Municipal Corporation to act in a particular manner contrary to the Development Plan sanctioned by the State Government, and that too a number of years after the Municipal Corporation having taken the necessary steps in consonance with the plan? Can the State Government instruct a Municipal Corporation to shift the reservation for a public amenity such as a primary school on a plot of land, and also instruct it to grant a development permission for residential purposes thereon without modifying the Development Plan? Could it still be considered as an action following the due process of law merely because a provision of Development Control Rules is relied upon, whether it is applicable or not? Or where the Municipal Corporation is required to take such contrary steps, supposedly on the instructions of the concerned Minister / Chief Minister, for the development of a property for the benefit of his relative, would such instructions amount to interference/mala fide exercise of power? Is it permissible for the landowner and developer to defend the decision of the Government in their favour on the basis of a provision in the erstwhile Town Planning Scheme as against the purpose for which the land is reserved under the presently prevalent Development Plan? Is it permissible for the landowner and developer to explain and justify such a favourable Government decision by relying upon the authority of the Government under another section of the statute which is not even invoked by the Government? What inference is expected to be drawn in such a situation with respect to the role played by the ministers or the municipal officers? What orders are expected to be passed when such facts are brought to

the notice of the High Court in a Public Interest Litigation? These are some of the issues which arise in this group of Civil Appeals in the context of the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short MRTP Act) concerning a property situated in Pune Municipal area.

2. These appeals arise out of two writ petitions in public interest leading to concurrent judgments and a common order dated 6th - 15th March 1999 passed by a Division Bench of the Bombay High Court. These writ petitions bearing nos.4433 and 4434 of 1998 were filed respectively by one Vijay Krishna Kumbhar, a journalist and one Nitin Duttatraya Jagtap, a Municipal Corporator of Pune. The petitions pointed out that a particular plot of land bearing Final Plot No.110 (F.P. No. 110 for short), and admeasuring about 3450 sq. meters, situated on Prabhat Road in the Erandwana area of the city, was initially reserved for a public purpose namely, a garden/playground, and subsequently for a primary school. They further pointed out that a number of years after the Pune Municipal Corporation (hereinafter referred to as PMC) took all the necessary steps to acquire this particular plot of land, the landowner one Dr. Laxmikant Madhav Murudkar appointed M/s Vyas Constructions, a proprietary

concern of one Shri Girish Vyas (the appellant in Civil Appeal No.198-199 of 2000) as the developer of the property. Shri Girish Vyas is the son-in-law of Shri Manohar Joshi who was the Chief Minister of Maharashtra from 14.03.1995 till January 1999. The petitioners contended that only because of the instructions from the Urban Development Department (UDD for short) which was under Shri Manohar Joshi, that in spite of the reservation for a primary school, the plot was permitted to be developed for private residences flouting all norms and mandatory legal provisions. They sought to challenge the building permission which was issued by the PMC under the instructions of the State Government, by submitting that these instructions amounted to interference into the lawful exercise of the powers of the Municipal Corporation, and the same was mala fide. After hearing all concerned, the petitions were allowed, and an order has been passed to cancel the Commencement (of construction) certificates, and Occupation Certificate, and to pull down the concerned building which has been

constructed in the meanwhile. The State Government has been directed to initiate criminal investigation against Shri Manohar Joshi, Shri Ravindra Murlidhar Mane, the then Minister of State for UDD, and the then Pune Municipal Commissioner Shri Ram Nath Jha.

3. Being aggrieved by this order, the present group of appeals have been filed:

(i) Civil Appeal Nos. 198- 199/ 2000 are filed by the developer Shri Girish Vyas and his proprietary concern M/s Vyas Constructions. Civil Appeal No. 2450 of 2000 is filed by the landowner Dr. Laxmikant Madhav Murudkar (since deceased) to challenge the judgments and the order in their entirety. Their submissions by and large are similar.

(ii) Civil Appeal Nos. 2102-2103 of 2000 are filed by Shri Manohar Joshi, the then Chief Minister, Civil Appeal Nos. 2105-2106 of 2000 are filed by Shri Ram Nath Jha who was the then Pune Municipal Commissioner, and Civil Appeal No.

2120 of 2000 is filed by Shri Ravindra Murlidhar Mane, the then Minister of State, UDD. These appeals seek to expunge the adverse remarks against the appellants, and the order directing criminal investigation against them.

(iii) Civil Appeal Nos. 196-197 of 2000 are filed by Maruti Raghu Sawant and others who were the tenants in this property. They contend that in the scheme prepared by the developer, they were to become owners of their tenements whereas under the original reservation, they were to be evicted.

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We may note at this stage that though the PMC accepts the judgment, it has no objection to the tenants continuing as tenants of PMC in the building which is constructed for accommodating them on a portion of the very plot of land. The tenants, however, contend that if the plot of land is taken over by PMC, they will remain mere tenants as against the ownership rights which were assured to them by the developer and the landlord, and are, therefore, continuing to maintain their appeals.

4. All these appeals are opposed and the impugned judgment and order are defended by the original petitioners as well as by the PMC and the State Government. It is relevant to note that the State of Maharashtra as well as PMC had opposed the writ petitions in the High Court, but they have not filed any appeals and have now accepted the judgment and order as it is. Since, all these appeals are arising out of the same judgment and order, they have been heard and are being decided together, by treating the appeals filed by Shri Girish Vyas as the lead appeals.

Facts leading to these appeals

Reservation on F.P. No. 110 for a garden

5. Dr. Laxmikant Madhav Murudkar (since deceased), appellant in Civil Appeal No. 2450 of 2000 (hereinafter referred to as landowner) owned the property bearing F.P. No. 110. The Government of Maharashtra sanctioned a Development Plan for Pune City by publishing a notification dated 7.7.1966 in the

official gazette dated 8.7.1966, which fixed 15.8.1966 as the date on which the said plan shall come into force. (The said plan is hereinafter referred to as 1966

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D.P. Plan). Under the said 1966 D.P. Plan, F.P. No. 110-112 were reserved for a garden. The Plan was sanctioned in exercise of the power of the State Government under Section 10 of the then prevalent Bombay Town Planning Act 1954 (1954 Act for short). This notification stated that the PMC had passed the necessary resolution of its intention to prepare a Development Plan, carried out the necessary survey, considered the suggestions received from the members of the pubic under Section 9 of the Act, and after modifying the Plan wherever found necessary, submitted it to the Government, and thereafter the Government having consulted the Director of Town Planning, had in exercise of its power under Section 10 (1) and (2) of the Act, sanctioned the Development Plan.

6. Subsequently, the 1954 Act was repealed and replaced by the

MRTP Act with effect from 11.01.1967. However, by virtue of Section 165 (2) of MRTP Act, the 1966 D.P. Plan was saved. Consequently, when the landowner applied for the sanction of a layout in F.P. No.110, the same was rejected by PMC. Therefore, the landowner served on the State Government a notice dated 8th May 1979 under Section 49 (1) of the MRTP Act, calling upon it to purchase the land and to "commence the proceedings for acquisition". The notice stated that the F.P. No.110 was not acquired within the period of 10 years granted to the Planning Authority to implement the D.P. (for the Pune Municipal area, PMC is the Planning Authority). It further stated that as per his understanding, the D.P. was under revision but the reservation on petitioner's F.P. No.110 had not been changed, and `the reservation will never be cancelled and the final plot will

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never be handed back' to him. The State Government confirmed the purchase notice under Section 49 (4) of the Act by its letter dated 5.12.1979. The Government's letter informed the landowner that necessary instructions have

been issued to the PMC, and he may approach their office.

Steps for acquisition of F.P. No. 110

7. The standing committee of the PMC thereafter passed a resolution on 5.1.1980 to initiate the proposal for acquisition. The PMC then forwarded the proposal to the Collector of Pune on 9.5.1980 to take the steps for acquisition. On 27.8.1981, the State Government notified the land for acquisition under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act 1894 (for short L.A. Act). A Special Land Acquisition Officer (S.L.A.O. for short) was appointed to perform the functions of the Collector. A notice informing the initiation of the proceedings under the L.A. Act as required under Section 9 thereof was issued on 8.9.1981 seeking claims for compensation. The landowner replied to the notice, but did not challenge the acquisition. He filed his claim statement during the acquisition proceeding, and demanded the compensation at the rate of Rs. 480 per sq.m, and also that the material

removed after demolition of the temporary structures (of the tenants) on the property should be given to him. Twenty four tenants filed a common claim statement and objected to the acquisition, but did not seek any compensation. They specifically stated that `there will not be any objection if they are provided with alternative accommodation on the land to be acquired'. The S.L.A.O. passed his award under Section 11 of the L.A. Act on 12.5.1983. He rejected the

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objections of the tenants, and awarded the compensation of Rs. 100 to each of the 25 tenants. He determined the compensation payable to the landowner at Rs. 6,10,823/-. On 15.3.1985 the landowner withdrew the amount of compensation by furnishing necessary security, though under protest.

8. After the Award was made by the S.L.A.O. on 12.5.1983 as stated earlier, a notice under Section 12 (2) of the L.A. Act was given, to take possession of the land on 20.5.1983. Once again, only the tenants objected thereto. They filed a suit on 19.5.1983 in the Court of Civil Judge, Senior

Division, Pune, bearing Suit No. 966 of 1983, to challenge the acquisition and the Award. The landowner was joined therein as defendant No. 3. The Court granted an interim injunction on 19.6.1983, restraining the authorities from taking possession. However, after hearing the parties, an order was passed on 9.2.1984 vacating the injunction, and returning the plaint for failure to give the mandatory notice required under Section 80 of the Code of Civil Procedure. The tenants filed an appeal to the District Court against that order, but the same was also dismissed. Thereafter, the tenants made a representation to the then Minister of State for UDD, pointing out their difficulties, which persuaded him to pass an administrative order restraining the authorities concerned from taking possession of F.P. No. 110.

9. It is pertinent to note that all along, the landowner did not challenge the acquisition of his land in any manner whatsoever. On the other hand, he sought a Reference under Section 18 of the L.A. Act for enhancement

of the compensation. The District Court dismissed that Reference bearing No.

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273 of 1983 by order dated 15.4.1988, but enhanced the solatium and additional amount payable under Section 23(2) and 23(1A) of the L.A. Act. The amount payable under the order of the District Court was collected by the landowner, though under protest, but he did not prefer the appeal permissible under Section 54 of the L.A. Act.

Revision of the D.P. Plan for Pune under the MRTP Act and change of utilisation of F.P. No. 110 to a Primary school

10. In the meanwhile, the process of revising the Development Plan of Pune city under the provisions of MRTP Act was going on. The PMC as the planning authority had passed a resolution on 15.3.1976 declaring its intention to prepare a Revised Development Plan under Section 23 (1) read with Section 38 of the MRTP Act. The State Government appointed the Director of Town Planning to be the Special Officer for that purpose under Section 162 (1) of that Act.

After observing all the legal formalities, the said Director published in the official gazette on 18.9.1982 the Revised Draft Development Plan under Section 26 (1) of the Act. In that plan F.P. No. 110-112 were initially reserved for children's play-ground, but subsequently the reservation was changed to primary school. After inviting the objections and suggestions, and after considering them, the State Government sanctioned the Revised D.P. Plan on 5.1.1987 (though with a few modifications), to be effective from 1.1.1987 (hereafter referred as 1987 D.P. Plan for short) as also the Development Control Rules (D.C. Rules for short). In the sanctioned D.P. Plan of 1987, the purpose of utilization of these three plots was, as stated above changed to primary school.

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The modification with respect to these three plots was as follows:-

"Reservation continued. Development allowed as per note 4".

Note 4 reads as follows:-

"Sites designated for Primary Schools from Sector I to VI as may be decided by the Pune Municipal

> Corporation may be allowed to be developed by recognized public institutions registered under Public Charitable Trust Act, working in that field or the owners of the land."

Thus by virtue of this note, the purpose could also be effectuated either by the owner of the land, or by a recognized charitable institution.

11. It is relevant to note at this stage that a school for the handicapped children has come up in the adjoining F.P. No. 111. Besides, a primary school was set up by Symbiosis International Cultural and Educational Centre (`Symbiosis' for short) on F.P. No. 112. It is stated that Symbiosis and another educational institution viz. Maharashtra Education Society (MES) had sought these plots since they were in need of land for extension of their educational activities. The then Chief Minister of Maharashtra had recommended the proposal of MES by his letter dated 9.4.1986, and the society had applied to the then Commissioner of Pune by its letter dated 29.4.1986. That was, however, without any effect.

12. The S.L.A.O. gave one more notice to take possession of F.P.

No.110 on 1.3.1988. It led to the filing of Regular Civil Suit bearing No. 397 of 1988 by some of the tenants in the Court of Civil Judge, Senior Division, Pune against the State Government and PMC, once again challenging the award of the

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S.L.A.O., and seeking an injunction to protect their possession. The Court granted the interim injunction as sought. Thereafter the landowner, who was one of the defendants in the suit, applied for transposing himself as a plaintiff, which prayer was allowed on 2.4.1988. The Court accepted the contention of the tenants that the acquisition had lapsed due to the change of purpose of reservation from what it was in 1966 viz. a garden by the time the award was made, and, therefore, decreed the suit by its order dated 23.4.1990.

13. The PMC preferred a first appeal against that decree to the Bombay High Court on 7.1.1991, but the Additional Registrar of the High Court returned the appeal by his order dated 21.4.1992 for presentation to the District Court on

the basis of the valuation of the suit, and the provision for jurisdiction as it then existed. Accordingly, the PMC filed the appeal before the District Court immediately on 29.4.1992, but the District Court in turn, by its order passed two years later on 7.4.1994 returned the appeal for re-presenting it to the High Court, on the ground that the suit was valued above Rs. 50,000/- and as per the rules then existing the appeal would lie to the High Court. PMC once again filed the appeal in the High Court being F.A (Stamp) No. 18615 of 1994 on 18.7.1994, alongwith an Application for condonation of delay for the reasons as stated above. This Appeal remained pending till it was withdrawn on the direction of the State Government on 18.8.1998, in the circumstances which will be presently pointed out. It is, however, relevant to note that this appeal was withdrawn at a point of time when the two public interest petitions were filed on 12.8.1998, and were pending in the High Court. The impugned order of the Division Bench on

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these petitions has directed the PMC to move an Application before the High

Court for reviving the First Appeal (Stamp No.18615 of 1994), and pursuant thereto the PMC has already moved the necessary Application on 13.1.2000. Be that as it may.

Steps taken by the landowner after Shri Manohar Joshi took over as the Chief Minister of Maharashtra

14. It is material to note that after the decision of the Reference Court, the landowner entered into an agreement of sale of the concerned land with one Shri Mukesh Jain on 17.8.1989, though no steps were taken thereafter by either of the parties on the basis of that agreement. It so happened that consequent upon the elections to the State Assembly, a new Government came in power in the State of Maharashtra in March 1995, and Shri Manohar Joshi took over as the Chief Minister (hereinafter referred as the then Chief Minister). He retained with himself the UDD portfolio. The earlier referred Shri Ravindra Mane became the Minister of State for UDD (hereinafter referred to as the then Minister of State). On 20.10.1995 the landowner entered into a Development agreement with M/s

Vyas Constructions by virtue of which the landowner handed over all rights of development in the property to them for a consideration of Rs. 1.25 crores, a flat of 1500 sq. feet area and an office space of 500 sq. feet in the building to be developed on F.P. No. 110. The agreement stated that it was being entered into to solve the practical difficulties. Para 7 thereof stated that the developer shall follow the procedure or process of de-reservation of the said property. Para 20 and 21 stated that `after de-reservation of the property, the developer agrees to

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get the clearance under the Urban Land (Ceiling and Regulation) Act 1976 which may be necessary,' and for that purpose he was authorised to get any scheme sanctioned. M/s Vyas Constructions is stated to have settled the claim of above referred Shri Mukesh Jain. On the same day, the landowner executed an irrevocable Power of Attorney in favour of Shri Girish Vyas for the development of F.P No. 110. (He is referred hereinafter as the developer). The landowner simultaneously executed another Power of Attorney in favour of one Shri Shriram

Karandikar on 26.10.1995, authorising him to take necessary steps concerning the development of that land.

15. Thereafter, on 1.11.1995 the architect of the landowner submitted to PMC a building layout for permission for residential use of F.P. No. 110. The City Engineer of PMC rejected the proposal by his reply dated 6.11.1995 under Section 45 of the MRTP Act read with Section 255 of the Bombay Provincial Municipal Corporations Act 1949 (BPMC Act for short) and D.C. Rule No. 6.7.1, since the plot had been reserved for a primary school, and hence such a permission could not be granted. It was however pointed out in this reply of the City Engineer that the development of the land was permissible in the manner indicated in the note No.4 published in the gazette which has been referred to hereinabove (i.e. putting up a primary school either by the landowner or by a charitable trust).

16. At this stage, landowner's Attorney holder, Shri Shriram Karandikar

wrote to the Minister of State for UDD on 20.11.1995 seeking a direction to the Municipal Commissioner to sanction landowner's aforesaid application dated

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1.11.1995 for development of the property for residential houses. He relied on the decree of Civil Judge Senior Division in Civil Suit No.399 of 1998 and prayed for correcting the Development Plan also. From here onwards starts the role of the then Minister of State, the Municipal Commissioner, and the then Chief Minister.

Processing of the application dated 20.11.1995 on behalf of the landowner at the level of the State Government

17. In their petitions to the High Court, the writ petitioners made the allegation of mala fides on the part of the then Chief Minister and the Minister of State for UDD in entertaining the application made on behalf of the landowner. It, therefore, became necessary for the Division Bench of the High Court to call for the original record from the State Government as well as from the PMC. The

application dated 20.11.1995 made by Shri Karandikar on behalf of the landlord narrated the developments until the date of that application including the judgment and decree of the Civil Court setting aside the acquisition of the property. It was, thereafter, submitted that the Municipal Commissioner be directed to sanction the development permission as per the application of the architect of the landowner. It is relevant to note that as far as this application of Shri Karandikar is concerned, it was not addressed to the State Government or to the Secretary of the concerned Department, but directly to the Minister of State for UDD, which fact is noted by the Division Bench in its judgment. The application did not bear any inward stamp of UDD. In the margin of the application, there was a noting by the Private Secretary of the Minister of State

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for UDD, recording that the Minister had directed the Deputy Secretary, UDD, to call a meeting on 19.1.1996. The record further shows that although the Under Secretary of UDD Shri P.V. Ghadge accordingly called the initial meeting, by

addressing a letter to the Director, Town Planning and the Municipal Commissioner, the same was adjourned to 22.1.1996. On that date, the meeting was attended by the Director of Town Planning, the Deputy City Engineer of PMC, Deputy Director of Town Planning, Pune, as well as by Shri Karandikar and his advocate, but what happened in that meeting is not reflected in this file.

Initial Stand of Urban Development Department and PMC

18. The Under Secretary (Shri P.V. Ghadge) prepared a preliminary note dated 2.2.1996 for the subsequent meeting. At the outset, the note mentions in a nutshell the background for the meeting which was sought on behalf of the landlord. Thereafter it gives the initial opinion of the U.D. Department at the end of the note, which is as follows:-

> "In this regard it is the advice of the department that, acquisition has been done after taking action on the purchase notice. The compensation amount has been accepted. Even if the reservation of the plot is changed, it does not make any difference. Directions be given to the Pune Municipal Corporation to immediately present this matter in the Bombay High Court. The question of returning the plot to the land owner does not arise."

19. On the background of this departmental note containing its advice, a meeting was held on 3.2.1996 presided over by the Minister of State for UDD, and the minutes of the meeting are part of the record placed before the High Court. Apart from Shri Karandikar and his advocate, high ranking officers such

as (i) Secretary, UDD, (ii) Director, Town Planning, (iii) Commissioner, PMC, (iv) City Engineer, PMC and (v) Under Secretary, UDD were present in the meeting. The minutes of the meeting are recorded by the Under Secretary.

20. These minutes record that in this meeting the advocate of the applicant explained the facts leading to his client's application, justifying as to why the reservation on the land may be deleted. He referred to the Court proceedings, the fact that 25-30 tenants were residing on the property for many years, and that on the adjoining property a school was running. He therefore submitted that the reservation on the land be deleted.

21. The note records a preliminary query raised by the Secretary, UDD as to whether the advocate was pleading on behalf of the tenants or the landowner, to which the Advocate replied that he was pleading for the landowner. The Secretary, UDD raised two more queries viz. (i) if the land was not useful for reservation because of the tenants, then how will it be available to the landowner, and (ii) whether the landowner had ever objected to this reservation, to which the advocate replied in the negative.

22. The City Engineer, PMC pointed out during the meeting that consequent upon the property owner issuing the purchase notice, the PMC had acquired the land, the award was made, the property owner had accepted the compensation, and that he never objected to the change in reservation due to the revision of the D.P. Plan during the entire period of revision i.e. 1982-87. With respect to the proceedings initiated by the tenants, he pointed that PMC

had filed an Appeal in the Bombay High Court against the judgment of the Civil Court, and the matter was sub-judice. He specifically asked whether the hearing given to the applicant was on an appeal under Section 47 of the MRTP Act, or was it on his application. He pointed out that the property was under reservation, and it could not be de-reserved in an appeal under Section 47. It required an action in the nature of modification under Section 37 of the MRTP Act. If it was an appeal, then it may be rejected, and if it was an application for modification then a decision cannot be taken as the matter was sub-judice. On these queries it was stated on behalf of the landowner that his application was a request and not an appeal.

Directions by Minister of State and report made by the Municipal Commissioner in pursuance thereof

23. It was thereafter pointed out on behalf of landowner that on the adjoining two plots, schools had been developed, and the Corporation may not need this land. The note records that in view of this submission, the Minister of

State, UDD asked the Municipal Commissioner to examine whether the PMC really needed the concerned property. He also suggested that it be examined, if PMC can keep some portion of the land under reservation, and release the remaining to the landowner. If such a compromise is to be arrived at, then the property owner will have to accommodate the tenants on a portion of property released to him. If PMC did not have any objection to reduce the area under reservation, Government will issue the necessary direction to take action under Section 37. The note records at that stage, that the Municipal Commissioner pointed out that the permission of the Municipal Corporation (meaning the

general body) was necessary to either delete the reservation, or to reduce the area under reservation.

24. The file shows that accordingly the Under Secretary wrote to the Municipal Commissioner on 14.2.1996 requesting him to examine the possibility regarding any settlement after a site inspection, and to forward his opinion. He

was also asked to inform as to when had the PMC filed its appeal in the Bombay High Court, and about its status.

25. The file shows that at this stage, the landowner changed his stand. Shri Karandikar wrote another letter dated 23.3.1996 to the Minister of State that his application be treated as an appeal under Section 47 of the MRTP Act.

26. The Municipal Commissioner replied Government's letter dated 14.2.1996 by his letter dated 17.4.1996. He pointed out that the development permission for this particular plot had been rejected because the property was under reservation. Then he reiterated the position of PMC as stated in the meeting of 3.2.1996. Then he added -

> "On 3.2.1996 we took the same stand which was taken by us in various counts and administrative levels regarding dispute for the development of property, and that if any change is proposed in the use of the said property, permission has to be taken from the Pune Municipal Corporation. The Hon'ble Minister of State for urban development ordered us to survey the subject property and also ordered to explore the options of changing or reducing the area of the reservation."

27. The Municipal Commissioner then stated that before considering

the various options as directed by the State Government, it was necessary to

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note the background of the subject property; viz. that as per the 1966 D.P. Plan, it was reserved for a garden, and subsequently the reservation was changed to a Primary School in the draft D.P. Plan of 1982 confirmed in 1987. He referred to the litigation initiated by the tenants, the fact that the PMC had filed an appeal to the High Court against the decision in the Civil Suit No. 397/1988, and that the High Court sent back the matter to the District Court and it was pending there. He placed on record the fact that though full price of the land was paid to the owner, procedure of taking actual possession by the PMC was still pending for last 13 years, because of which it was not possible to make appropriate use of the land. The Minister had asked him to survey the subject property, and to explore the possibility of changing or reducing the area of reservation. The commissioner pointed out that a survey was carried accordingly. He recorded that on inspection following facts were mainly noted:-

"1. There are about 36 temporary Houses on the land.
2. Out of the total area nearly half is encumbered.
3. Two Educational Institutions in the vicinity of the School.
4. There are 11 Educational Institutions in the vicinity of the School.
5. Except the temporary Houses on this property the development of the area is planned and corporation has control over it."

The Commissioner however, did not specify as to which area of the city was considered by him when he spoke about `vicinity' in item No. 4 above.

28. The land was to be developed either by PMC or the owner or by a Charitable Trust as per the D.P. Note 4 referred to above. The Municipal Commissioner then gave his opinion that development of a primary school on

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that plot by a charitable institution appeared impossible due to various factors such as the order of the Civil Court, litigation concerning this plot, the requirement of rehabilitation of the tenants on that plot, and existence of near-by schools. Besides, the area being a higher middle class area, the response to

a municipal school was doubtful. He then added as follows - `considering the funds available, the PMC is inclined to develop school on some other plot reserved for school'. As we have noted earlier two well-known educational institutions, viz. MES and Symbiosis had already sought this plot also. The PMC had however replied to them that it was not possible for it to give them this plot, since it was not in the possession of PMC. The Municipal Commissioner failed to bring these very relevant facts to the notice of the Government. Having noticed these facts, the Division Bench has observed in para 143 of its judgment that the Commissioner's statement in this behalf in his report was "far from truth".

29. The Commissioner then recorded that in view of the direction of the State Government to suggest alternatives for settlement, he had in the meanwhile, held discussions with Shri Karandikar, and that Shri Karandikar had expressed readiness to give alternate unencumbered land within suburbs of Pune admeasuring 5000 to 10000 sq. feet free of cost. Thereafter, in view of the direction of the State Government and proposals from Shri Karandikar, the

Commissioner recorded two suggestions:-

"1. Presently reserved area is about 3541 sq.mtrs out of which nearly 50% area is occupied by occupants and remaining area is open. The land owner after excluding the area occupied by the existing houses, to transfer the remaining area to the Pune Municipal Corporation for school. However, since the land owner

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has accepted compensation for the entire area, for the area to be transferred, he should refund the amount to the Pune Municipal Corporation at the rate suggested by the Director of Town Planning.

2. To get transferred land admeasuring 3000 sq.mtrs elsewhere at a convenient place in Pune City with school admeasuring 500 sq.mtrs constructed thereon free of cost as per specifications of the Pune Municipal Corporation, and for that purpose it is necessary to get executed a proper agreement. But land to be given elsewhere should not be reserved in development plan for school or some other purpose."

Thereafter his letter stated as follow:-

"If first proposal is to be accepted for developing school on remaining area question regarding decision of Civil Judge, Senior Division would arise. In this situation it is necessary to have the support of the land owner and tenants for this proposal. For implementing both the aforesaid proposals suggested by us it would be appropriate if the following things are complied with:-

1. The Pune Municipal Corporation administration to take permission from the Pune Municipal Corporation before releasing rights in respect of the subject property.

2. For deleting reservation on the property taking action under Section 37 of M.R.T.P.

3. For acquiring new site as per Proposal No.2 permission of concerned Departments of the Pune Municipal Corporation will have to be taken.

Then the Commissioner added:-

Prior to this since no such settlement matters have taken place regarding the development plan of Pune Municipal Corporation, the experience of Pune Municipal Corporation in this regard is limited. Till the next order is received from the State Government the Pune Municipal Corporation is continuing the judicial procedure in respect of this land."

30. After the receipt of the letter dated 17.4.1996 from the Municipal

Commissioner, the file shows the following noting dated 24.4.1996:-

" Mantralaya, Bombay 400 032

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Date 24/4/1996

According to the instructions of Shri Chavan, Private Secretary of the Hon'ble Chief Minister, please forward a copy of the report of the Pune Municipal Corporation in the matter of Shri Karandikar for the perusal of the Hon'ble Chief Minister.

Shri Ghadesaheb
Under Secretary

Sd/-
Private Secretary

N.V. Minister of State for Finance,
Planning and Urban Development

Government of Maharashtra"

31. On receiving the above reply dated 17.4.1996 from Municipal Commissioner, Shri Ghadge, the Under Secretary once again put up a detailed note thereon. In first 8 paragraphs of that note he recorded the previous developments, including and upto the letter sent by the Municipal Commissioner. Thereafter in paragraph 9, 10 and 11 he put up the proposal of the department:-

> "9. Considering the entire aforesaid circumstances, it is firstly pointed out that applicant Shri Karandikar has approached the Government on behalf of the land owner but the land owner has already taken the price of the said property in the year 1983. Though the physical possession of the said property is not received to the Municipal Corporation still however, legally Municipal Corporation has become owner of the said property. Therefore, the Land Owner does not have any right to demand return of the said property by deleting reservation. Now considering the tenants, they have approached the Court and therefore, it is not necessary to consider that aspect till the matter is decided by the Court. If the said matter is decided against the Municipal Corporation still the said persons shall be tenants and the land owner shall be Municipal Corporation and further that the tenants have requested for allotment of the land for developing it.
>
> 10. Still however considering the fact that no way out will be available if the matter is kept pending as it is, and further considering that there are numerous schools in the vicinity of the said property, there should be no objection to consider and

approve on government level the alternative No.1 suggested by

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the Municipal Commissioner. However, for the said purpose the tenants will have to withdraw their proceedings from the Court and they will have to pay to the Municipal Corporation the cost price of the 50% portion to be released for the said tenants as may be determined by the Director, Town Planning. If the said alternative is acceptable to the land owner, the Pune Municipal Corporation be informed about the orders of the Government to initiate proceedings u/s 37 for the purposes of deletion of 50% property from reservation and to forward the said proposal to the Government.

11. Second alternative does not deserve any consideration since for shifting the reservation the alternative property should have the same area like that of the original one and that it is necessary that such property should be in the vicinity of approximately 200 mtrs. from the property under reservation. So also the matters like approach road and level of the land are also required to be similar. (MARGINAL REMARK - Rule No.13.5 of Pune Development Control Rules).

12. Proposal in paragraph 10 submitted for approval."

The note was countersigned by Shri Deshpande, Deputy Secretary, Town Planning on 4.6.1996, and by the Senior Chief Secretary (NV i.e. Nagar Vikas or Urban Development). Thus the Urban Development Department did not accept the second proposal of the Municipal Commissioner to remove the reservation on the plot in its entirety, but recommended the acceptance of the

first proposal to reduce the reservation on the plot to 50% of its area. The Minister for State however did not sign the note and he ordered a further discussion on the subject on 12.6.1996.

32. Thus there was once again a discussion with the Minister of State, UDD on 12.6.1996 when Shri Karandikar, Shri Harihar, City Engineer, PMC, Shri Deshpande, Deputy Secretary, Town Planning and Shri Ghadge, Under Secretary were present. Shri Ghadge made a note of the meeting and signed it on

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13.6.1996, and which note is also signed by Shri Deshpande and the Additional Chief Secretary. The note records that on behalf of the applicants it was stated that it was not possible for them to accept the alternative no.1, and Municipal Corporation should consider the second alternative. The note further records that thereupon the City Engineer suggested that if the applicant shows some other alternative properties, the Municipal Corporation will inspect all of them and then consider as to which of them is possible to be accepted. The note

thereafter records as follows:-

> "In the event such alternative property is selected by Municipal Corporation, then action to be taken for shifting the reservation from the subject property as per Rule No. 13.5 of Pune Development Control Rules can be considered. However, it was clarified by the Department that for that purpose the condition of 200 mtr. Distance will have to be relaxed and for which the permission of Hon. Chief Minister will have to be obtained".

The PMC was thereafter asked to submit its response in the light of above discussion. Shri Ghadge recorded this suggestion in his letter dated 20.6.1996 addressed to the Municipal Commissioner.

33. The Municipal Commissioner then wrote back to the Under Secretary, UDD by his letter dated 15.7.1996, pointing out that the applicant had shown four sites from which one at Lohegaon Survey No.261 H.No.1/2 admeasuring 3000 sq.meter was suitable for a primary school, but it was in the Agricultural zone as per the approved D.P., and if it was to be converted to Residential zone, the approval of the State Government will have to be obtained for such a modification.

34. On receiving this letter from the Municipal Commissioner, Shri Ghadge once again put up a detailed note and at the end of para 8 thereof stated as follows:-

> "Considering the above circumstances and especially `A" on 12 T.V. and B on 14 T.V., there could be no objection in granting permission for shifting reservation under Rule 13.5 of the D.C. Rules by relaxing the 200 meter condition and accordingly directions can be given to the PMC for taking the following necessary action:-
>
> 1. The Pune Municipal Corporation should recover the amount of compensation paid earlier, for acquisition of final plot No.110 at Earndwane together with the structures, with simple interest.
>
> 2. The State Government should issue directions to the Pune Municipal Corporation for getting the plot at Lohegaon, Pune Survey No.261 Hissa No.1/2 from Agricultural zone into residential zone by following the procedure under Section 37(1) of the Maharastra Regional and Town Planning Act, 1966 and thereafter submitting the proposal to the State Government for sanction.
>
> 3. The Commissioner Pune Municipal Corporation should take action for shifting the reservation for Primary School on Final Plot No.110 in the Development Plan of Pune City under Rule 13.5 of the Development Control Rules, Pune to Lohegaon, Survey No.261, Hissa No.1/2 and for that purpose the permission of the Corporation is not necessary as intimated earlier by the State Government in another case [Survey No.39/1, Kothrud, Pune].
>
> 4. After complying with (1) and (3) above, the Pune Municipal Corporation should enter into an Agreement for transfer of

the land at Lohegaon Pune and thereafter give development permission for the plot at Erandwane. However the Completion Certificate for that place should not be issued unless the construction of School at Lohegaon is completed."

Below that note there are signatures as follows:-

"Sd/-
26/7/96
(P.V. Ghadge)
Under Secretary

Sd/-
26/7/96
(Shri Deshpande)

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Deputy Secretary Town Planning

Sd/-
26/7/96
Additional Chief Secretary, (U.D.)

Sd/-
30/7/96
Hon'ble Minister of State (U.D.)

Received
31/7/96

All action be taken in accordance with law. No objection.

Sd/-
21/8/96
Hon. Chief Minister"

35. In view of the above decision signed by the Chief Minister on

21.8.1996, the Deputy Secretary, UDD sent a letter/order dated 3.9.1996 to the Commissioner containing exactly the above four conditions. The letter stated that he had been ordered by the State Government to inform those four directives, and after quoting those four directives the letter further directed the Corporation to act as per the above State Government directives and report compliance. The letter reads as follows:-

"ENGLISH TRANSLATION OF STATE GOVERNMENT LETTER DATED 03/09/1996

(MAHARASHTRA STATE)

No.TPS-1896/102/Matter
No.7/96/U.D.-93
Urban Development Department
Mantralaya, Mumbai 400 032

Date : 3rd September, 1996

To,
The Commissioner
Pune Municipal Corporation

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Pune

Sub: Development Permission of T.P. Scheme No.1, Final Ploat No.110.

Ref: Request Application dated 20/11/95 by Shri Shriram Karandikar to Minister of State for Urban Development for Development in the subject matter.

Sir,

I have been ordered by the State Government to communicate to you the following directives.

1. The Pune Municipal Corporation should recover from the land owner according to the land acquisition law the principal amount paid for acquisition of Final Ploat No.110, Erandwane along with construction, with interest thereon at 12%.

2. S.No.261 Hissa No.1/2 Lohegaon, Pune which is in agricultural zone should be included within residential zone in the Development Plan. For doing this you are directed that Pune Municipal Corporation should complete the entire legal action under Section 37 (1) of the Maharashtra Regional and Town Planning Act, 1966 and send the proposals to the State Government for sanction.

3. The Commissioner, Pune Municipal Corporation should take steps to shift the reservation of primary school in accordance with Rule 13.5 of the Development Control Rules from Final Plot No.110, Erandwane to Lohegaon S. No.260 Hissa No.1/2. For this purpose no sanction is required from the Pune Municipal Corporation as has been earlier communicated to you in another matter (S.No.39/1 Kothrud).

4. After action as stated in (1) and (3) above is completed,

appropriate agreement be entered into by Pune Municipal Corporation with land owner about transferring the Lohegaon plot and thereafter Development permission be granted in respect of the Plot at Erandwane, however no completion certificate for that place be granted unless the construction of school at Lohegaon is complete.

Corporation to act as per the above State Government directive and submit report regarding compliance to the Government.

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Yours faithfully,

Sd/-
Vidyadhar Deshpande
Deputy Secretary"

Notings from the Municipal Files:-

36. Thereafter we have the notings from the Municipal files which show that consequently the City Engineer has written to landowner on 27.9.1996 to return the amount paid to him for acquisition of final Plot No.110 T.P. Scheme, No.1 with interest at the rate of 12%, and secondly to transfer concerned land bearing survey No.261 Hissa No.1/2 at Lohegaon free of cost and without any encumbrances. The letter further stated that only after compliance of the above

two conditions he will be given permission for development of F.P. No.110. It then stated that building completion certificate will be given only after the procedure under Section 37 (1) of the MRTP Act for deleting Survey No.261 Hissa 2/1 at Lohegaon, Hadapsar from the agricultural zone, and reserving it for primary school is completed, and sanctioned by the State Government.

37. Thereafter there is one more note of the Municipal Commissioner dated 21.9.1996 which records the opinion of the Senior Law Officer that the permission of the general body of PMC will be required for entering into an agreement for deleting the reservation of plot at Erandawana. With respect to the same the commissioner has recorded as follows:-

> "However, since the State Government has given clear orders to take action under Rule 13.5 of the Development Control Rules of Pune for complying with the subject matters and since

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> directives have been given for making such change, no permission of the Pune Municipal Corporation is necessary".

Subsequent Developments

38. Consequently, the subsequent steps have been taken. The landowner has returned the amount as sought, a deed of settlement has been entered into between the landowner and the PMC, and Commencement Certificates have been issued on 28.11.1996 and 3.5.1997 for the two buildings proposed to be constructed. An Occupation Certificate dated 20.12.1997 was also given for a part of the building completed thereafter namely, B Wing containing 24 flats for the tenants. It is however interesting to note that PMC instructed its counsel on 19.11.1996 to withdraw its first appeal in the High Court as directed by the Government even before the landowner returning the amount of compensation with interest on 22.11.1996.

39. It has so transpired that though the land at Lohegaon was handed over to PMC as proposed, subsequently the Municipal Corporation found that there was not so much need of a school at Lohegaon, but a school was needed

at Sinhagad Road, Dattawadi. The procedure for changing the zone of the land at Lohegaon as required under Section 37 of the MRTP Act was also taking its own time at the municipal level. Once again there was a correspondence between the PMC and the Government in this behalf. The Commissioner wrote to the Dy. Secretary, UDD on 28.5.1998 for a modification in the conditions in the Government letter dated 3.9.1996 to get the school constructed at Dattawadi (instead of Lohegaon) in lieu of the school reservation on plot no. 110

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at Prabhat road. At this stage for the first time we have the letter from the developer dated 15.7.1998 addressed to the City Engineer of PMC signed by Shri Girish Vyas for the Vyas Constructions, stating that he was prepared to offer an alternative site admeasuring 3000 sq. meters at Mundhwa within PMC area which is in residential zone. This was to avoid the difficulty concerning the change of zone. Additionally he was prepared to deposit an amount with PMC equivalent to the cost of construction of 500 sq. meters as per PMC's standard

specifications, and PMC may construct the school whenever and wherever it required. He further sought that on his doing so, the final completion certificate be issued so that the flat purchasers can occupy their flats in the building on F.P. No.110 which was almost ready.

40. The Government file contains one more note made by the Under Secretary Shri Rajan Kop and signed by Shri Deshpande on 22.7.1998. It is clearly recorded below the note that it was marked for the Additional Chief Secretary to the Chief Minister, and also for the Chief Minister. The note mentions that there has been substantial criticism in local newspaper about this matter. It is stated that the issue was raised in the general body of PMC, and it was represented that an amenity in the area is being destroyed by deleting the reservation for a primary school. The Commissioner had defended the decision by contending that although 3450 sq. meter area of reservation of F.P. No.110 was being deleted, reservation on 8219 sq. meters on adjoining two plots was being maintained. It was also pointed out by the Commissioner that an

additional amenity was being created in another area. The note further records

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that in the meanwhile the proposal to shift the reservation on the plot at Lohegaon had been filed (i.e. disapproved) by the Standing Committee of PMC.

Last para of this note states as follows:-

> "Senior Chief Secretary of Hon. Chief Minister has issued instructions to put up a self explanatory note in this entire matter for perusal of Hon. Chief Minister. It is further instructed to include the matters wherein the Government has taken a decision in this matter as also in another matter prior thereto, the information provided and points suggested by Municipal Corporation with respect to the matters of deletion of reservation from Pune City Development Plan, etc., Such note containing the full background, factual and other aspects of the matter would be useful for Hon. Chief Minister if certain questions are raised with respect to the said matter in the current session of Legislative Assembly."

41. On receiving the developer's letter dated 15.7.1998, the Commissioner once again wrote to Under Secretary UDD on 23.7.1998 suggesting acceptance of the two proposals of the developer, but seeking orders of the government therefor. It is material to note at this stage that in the Government file there is a clear noting of the Principal Secretary UDD dated

24.7.1998 that the application of Rule 13.5 in the matter under question was not legal. As the note states:-

> ".....With due respect to the persons then, doing interpretation of the said decision of the Government and Rule No. 13.5, I feel that application of Rule No. 13.5 in the matter under question is not legal. Upon plain reading of the said rule it is clear that this rule can be applied when the reservation is to be shifted within a distance of 200 mtrs. Government or the Commissioner do not appear to be empowered for such shifting beyond the distance of 200 mtrs. It would have been much appropriate that the action for change as contemplated in Sec. 37 of the Maharashtra Regional and Town Planning Act, 1966 would have been taken....."

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42. In view of Commissioner's letter dated 23.7.1998 however, once again a departmental note was prepared containing following opinion, still seeking to resort to Rule 13.5.

> "..... After considering this issue the following opinion is being expressed on the proposal of Pune Municipal Corporation.
>
> (1) Commissioner, Pune Municipal Corporation to take action to cancel the action earlier taken of shifting reservation at Lohegaon as per Rule No. 13.5 and the action of shifting the said part reservation to Mundhawa be initiated afresh under Rule 13.5.
>
> (2) Prior to taking action as stated in (1) above, even though it is stated by the Commissioner that the land at Mundhwa admeasuring 3000 sq. mtrs., suggested by the Promoter is suitable, still however, it is necessary that the Commissioner , Pune Municipal Corporation should get himself satisfied about the 12 mtr. wide approach being

available to the said land. After satisfying itself the legal action for taking the said Mundhwa land in possession of the Pune Municipal Corporation be completed. After completing these actions only, it is necessary to take action as stipulated in (1) above.

(3) As per the earlier instructions, the Pune Municipal Corporation got executed agreement for construction of 500 sq.mtrs. Since the action with respect to Lohegaon land had remained incomplete, the Municipal Corporation could not grant permission to construct school therein. This construction could have been got done on Mundhwa land. However, from the letter of the Commissioner, Pune Municipal Corporation it is seen that he has not yet decided as to whether the school is to be constructed on the said land or not. On the other hand he has asserted that since the Promoter is ready to pay such amount of construction no loss would be caused to Municipal Corporation by getting deposited such amount. Considering this issue, principally there appears to be no objection on the part of the Commissioner in accepting the proposal of promoter as recommended by him with a view to get available the necessary amenity for the school as per their requirements. However, it would be binding upon the Commissioner to spend the said amount for the construction at such place which may be found necessary and as may be recommended by the Education Committee.

(4) Since the actions to be taken as stipulated in point No. (3) above, are between the Pune Municipal Corporation Education Committee and Commissioner, Pune Municipal Corporation, there is no reason to suspend the action of granting completion certification to the Promoter therefore. Therefore, the Government shall have no objection if the completion certificate is granted by Municipal Corporation to the

Promoter after completing the actions as stipulated in para No. 1 and 2 subject to the rules and provisions in that behalf.

If the aforesaid issues are approved, the proposal of the Commissioner in the present circumstances being FOR superior purpose than these contained in the earlier directives of the Government there should be no reason to object the proposal submitted by the Commissioner and the same ought to be principally approval subject however, to the conditions mentioned in the aforesaid discussion. In accordance hereof the draft or letter to be

sent to Pune Municipal Corporation is put up at Page No. _____/PV.
The above proposal will be issued on the same being approved.

Submitted for orders.

Sd/-
27.7.98
(Vidyadhar Deshpande)
Dy. Secretary.
Sd/-27.7.1998"

43. Below this note however, the Additional Chief Secretary to the Chief Minister put up a remark as follows and signed below it:-

"In this matter the developer and Hon. Chief Minister being related, it is requested that the Hon. Minister of State should take proper decision as per rules".

Thereafter there is the order of the Minister of State which is as follows:-

`Proposal of Department approved. Orders be issued':-

"Sd/-
28.7.98
N.V.V."

44. The Deputy Secretary thereafter sent a reply dated 29.7.1998 to the letters of the Municipal Commissioner dated 28.5.1998 and 23.7.1998. In para 1 thereof he referred to the Commissioner's letter dated 28.5.1998 seeking to shift reservation on F.P. No. 110 under DC Rule 13.5 to Mundhawa instead of

Lohegaon. Thereafter he stated in para 2 as follows:-

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> ".....Now the Developer has shown his readiness to make available land at Mundhawa. Therefore, in your letter you have sought approval to recover the proper amount required for the construction of 500 sq.mtrs, after taking action stated in preceding paragraph. Upon due consideration of your request, I have orders to inform you that after recovering such proper amount from the Developer, the said amount be utilized for construction of primary school at such place as may be required and recommended by the Education Committee of Pune Municipal Corporation. Because of this order request made by you in your letter dt. 28.5.98 automatically becomes redundant.
>
> In your letter dt. 23rd July 98 you have sought guidance on the issue of grant of occupancy certificate to the Developer. After taking the action as stated in paragraph 1 and 2, there is no reason for the Government to have objection if in furtherance thereof the Pune Municipal Corporation issues the occupancy certificate subject to the other provisions of the Rules in that behalf."

45. In view of the directions dated 3.9.1996 issued by the State Government, the PMC issued (i) Commencement Certificate (C.C. for short) in the name of the landowner dated 28.11.1996 for constructing a building to rehabilitate the tenants, (ii) the second C.C. dated 3.5.1997 for constructing the other residential buildings consisting of ground plus ten floors (named as

Sundew Apartment by the developer), and (iii) the Occupation Certificate (O.C. for short) in part dated 20.12.1997 for the tenants' building. Thereafter, the developer signed a confirming agreement with the landowner and his family members on 16.1.1998 to once again confirm the terms of the earlier referred development agreement entered into between the developer and landowner on 20.10.1995. It is at this stage, that two petitions bearing no. 4433/1998 and 4434/1998 were filed on 12.8.1998 and 14.8.1998 respectively. A Division Bench first issued Rule Nisi without any interim order. In as much as the construction

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had started from March 1997 and was substantially completed, only a direction was given in Writ Petition No.4434/1998 not to create any third party interest. The PMC was already directed not to grant completion certificate in respect of the ten storey building. Subsequently, the petitions were heard finally, and the Division Bench consisting of Hon'ble Justice B.N. Srikrishna and Justice S.S Parkar, rendered two concurrent judgments on 6th-15th March 1999, and a

common order which have been challenged in the present group of appeals.

Justification of the shifting of reservation under D.C. Rule 13.5:
Is it in consonance with the statute?

46. As we have noted, the State Government directed the PMC to shift the reservation on F.P. No. 110 under DC Rule 13.5. The question therefore comes up as to whether the action by the State is in consonance with the statutory scheme, and that apart whether such an action is permissible under DC Rule 13.5? If we look to the scheme of the Act it gives importance to the implementation of the sanctioned plan as it is and it is only in certain contingencies that the provision thereunder is permitted to be modified, and that too after following the necessary procedure made in that behalf.

Signification of the Sanctioned Plan and the provisions for the modification thereof

47. The Planning process under the MRTP Act is quite an elaborate process. A number of town planners, architects and officers of the Planning

Authority, and wherever necessary those of the State Government participate in the process. They take into consideration the requirements of the citizens and

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the need for the public amenities. The planners consider the difficulties presently faced by the citizens, make rough estimate of the likely growth of the city in near future and provide for their solutions. The plan is expected to be implemented during the course of the next twenty years. After the draft Development Plan is prepared, a notice is published in the official gazette stating that the plan is prepared. Under Section 26(1) of the Act the name and place where copy thereof will be available for inspection to the public at large is notified. Copies and extracts thereof are also made available for sale. Thereafter suggestions and objections are invited. The provisions of regional plan are given due weightage under Section 27 of the Act and then the plan is finalised after following the detailed process under Section 28 of the Act. This being the position, Chapter-III of the MRTP Act on Development Plans requires the

sanctioned plan to be implemented as it is. 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 22A 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)

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no longer requires the designated land for the particular public purpose, and seeks deletion of the reservation thereon.

48. The Government's action to shift the reservation on F.P. No. 110 is

under DC Rule 13.5 and not under Section 37 of the MRTP Act. We may therefore refer to DC Rule 13.5 and Section 37.

DC Rule 13.5 reads as follows:-

> "13.5 If the land proposed to be laid out is affected by any reservation/s or public purpose/s authority may agree to adjust the location of such reservation/s to suit the development without altering the area of such reservation. Provided however, that no such shifting of the reservation/s shall be permitted.
>
> (a) beyond 200 m. of the location in the Development Plan.
>
> (b) beyond the holding of the owner in which such reservation is located, and
>
> (c) unless the alternative location is at least similar to the location of the Development Plan as regards access, levels etc.
>
> All such alterations in the reservations/alignment of roads shall be reported by the Planning Authority to Govt. at the time of sanctioning the layout."

49. As can be seen from the D.C. Rule 13.5, shifting of the reservation thereunder has to be without altering the size of the area under reservation. Besides it is permissible only on three conditions namely, that (1) it cannot be beyond 200 metres of the original location in the Development Plan, (2) it has to be within the holding of the owner in which the reservation is located, and (3)

the alternative location ought to have a similar access and land level as the original location. Obviously the shifting of the reservation from F.P. No. 110 to a far off place could not be justified under D.C. rule 13.5.

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Minor Modifications

50. Section 37 of the MRTP Act, reads as follows:-

"37. Modification of final Development Plan

(1) Where a modification of any part of or any proposal made in, a final Development plan is of such a nature that it will not change the character of such Development plan, the Planning Authority may, or when so directed by the State Government [shall, within sixty days from the date of such direction, publish a notice] in the Official Gazette [and in such other manner as may be determined by it] inviting objections and suggestions from any person with respect to the proposed modification not later than One month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction.

[(1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government shall issue the notice, and thereupon the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.]

[(1AA) (a) Notwithstanding anything Contained in sub-sections (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development Plan of such a nature that it will not change the character of such Development Plan, the State Government may, on its own, publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.

(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the Government.

(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after

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making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modifications with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the Official Gazette, the final Development Plan shall be deemed to have been modified accordingly.]

[(1-B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971(Mah. XXV-III of 1971) is satisfied that a modification of any part of, or any proposal made in, a final Development Plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act,

then, it may publish a notice in the Official Gazette, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification, and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction.]

(2) The State Government may, [make such inquiry as it may consider necessary] and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification * * * with or without such changes, and subject to such conditions as it may deem fit or refuse to accord sanction. If a modification is sanctioned, the final Development Plans shall be deemed to have been modified accordingly."

51. As seen from this Section, the minor modification under Section 37

(1) has to be such that it will not change the character of the Development Plan. The section indicates that for setting the procedure under Section 37 into motion, the Planning Authority has to firstly form an opinion that the proposed modification will not change the character of the Development Plan. Such an opinion has to be formed by the Planning Authority meaning the general body of the Municipal Corporation, since this function is not permitted to be delegated to

anybody else under Section 152 of the Act. Thereafter the Planning Authority has to publish a notice in the official gazette inviting the objections and

suggestions from the public with respect to the proposed modification. It is also required to give a notice to all the persons affected by the proposed modification. Sub-section (1A) lays down that if the Planning Authority does not give the notice, the State Government is required to issue the notice as stated above. The notice to the affected persons in our case will mean notice at least to the two institutions which had applied for developing a Primary school on this very plot of land. Thereafter they have to be heard, and the proposed modification with amendments if any, is to be submitted to the State Government for sanction. Subsequently, after making appropriate enquiries and after consulting the Director of Town Planning the State Government may under sub-section (2) sanction the modification with or without appropriate changes, or subject to such conditions as it may deem fit or refuse to grant the sanction.

52. Sub-section (1AA) of Section 37 lays down the power of the State Government where it feels the urgency for carrying out any such modification.

In that case the State Government may publish the notice in the Official Gazette, and follow the similar procedure, but subsequently it has to place the proposal before the general body of the Planning Authority for its say, and thereafter only it may sanction the modification after consulting the Director of Town Planning in a similar manner. This shows that in the event of a minor modification the general body of the Planning Authority has a say in the matter. The Government has to invite the objections and suggestions from the public at large by

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publishing the notification in the Official Gazette, plus it has to issue a specific notice to the persons affected by the proposed modification, and last but not the least it has to consult the Director of Town Planning before arriving at its decision. In the present case nothing of the kind has been done.

53. In the instant case the officers of the Urban Development Department as well as of the PMC took the stand (until it was possible), that the procedure under Section 37 will have to be followed. This was because what

was contemplated was a modification of a proposal made in the Development Plan. A reservation for an amenity was sought to be shifted (which will in fact mean it was sought to be deleted) from the place where it was provided. If that was the official view of UDD and PMC, what was required was a compliance of the procedure under Section 37(1) and (2). Ultimately, since the direction was given by the State Government, (and if the State Government thought that there was an urgency), it was necessary for it to act under Section 37 (1AA), and to publish a notice in the Official Gazette to invite objections and suggestions from the public at large, and also from the persons affected by the proposed modification. Thereafter the State Government was required to send the proposal to PMC for its say and then it had to consult the Director of Town Planning.

Modifications of a substantial nature

54. Where the modification is of a substantial nature, a different

procedure is prescribed under Section 22A of the Act. This Section reads as follows:-

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" 22A. Modifications of a substantial nature

In section 29 or 31, the expression "of a substantial nature" used in relation to the modifications made by the Planning Authority or the officer appointed by the State Government under sub-section (4) of section 21 (hereinafter referred to as "the said Officer") or the State Government, as the case may be, in the Draft Development Plan means,--

(a) reduction of more than fifty per cent., or increase by ten per cent. in area of reservations provided for in clauses (b) to (i) of section 22, in each planning unit or sector of a draft Development Plan, in sites admeasuring more than 0.4 hectare in the Municipal Corporation area and 'A' Class Municipal area and 1.00 hectare in 'B' Class and 'C' Class Municipal areas;

(b) all changes which result in the aggregate to a reduction of any public amenity by more than ten per cent of the area provided in the planning unit or sector in a draft Development Plan prepared and published under section 26 or published with modification under section 29 or 31, as the case may be;

(c) reduction in an area of an actually existing site reserved for a public amenity except for marginal area upto two hundred square meteres required for essential public amenity or utility services;

(d) change in the proposal of allocating the use of certain lands from one zone to any other zone provided by clause (a) of section 22 which results in increasing the area in that other zone by ten per cent. in the same planning unit or sector in a draft Development Plan prepared and published under section 26 or published with modification under section 29 or 31, as the case may be;

(e) any new reservation made in a draft Development Plan which is not earlier published under section 26, 29 or 31, as the case may be;

(f) alternation in the Floor Space Index beyond ten per cent. of the Floor Space Index prescribed in the Development Control Regulations prepared and published under section 26 or published with modification under section 29 or 31, as the case may be.]."

Additional requirement of notice in local newspapers before effecting modifications of substantial nature:-

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55. The modification under Section 22A requires following of the procedure under Section 29 of the MRTP Act. It lays down that apart from a notice in the official gazette, a notice will have to be published in the local newspapers for the information at the public at large, so that they may make their suggestions or file objections thereto if they so deem it fit. Section 29 reads as follows:-

"29. Modification made after preparing and publishing notice of draft Development plan.

Where the modifications made by a Planning Authority or

the said Officer in the draft Development plan are [of a substantial nature], the Planning Authority or as the case may be, the said Officer shall publish a notice in the Official Gazette and also in the local newspapers inviting objections and suggestions from any person with respect to the proposed modifications not later than sixty days from the date of such notice; and thereupon, the provisions of section 28 shall apply in relation to such suggestions and objections as they apply to suggestions and objections dealt with under that section."

56. As seen from this Section 22A, it treats modifications of six types as substantial modifications. They are as follows:-

(a) if a plot is admeasuring more than 0.4 hectare (i.e. 4000 sq. metres) in the Municipal Corporation area or an A class Municipal area a reduction of more than 50 per cent would be considered as a substantial modification. In B & C class Municipal Areas such a plot has to be of one hectare.

(b) secondly, under sub-section (b) all changes which result in the aggregate to a reduction of any public amenity by more than ten per cent of the area provided in the planning unit are considered a substantial change.

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(c) where there is an actually existing site reserved for a public amenity,

except for marginal area upto two hundred square metres required for essential public amenities or utility services their reduction will be a substantial modification.

(d) shifting of the allocation of use of land from zone to zone which results in increasing the area in the other zone by ten per cent in the same planning unit will be a substantial modification.

(e) any new reservation made in a draft Development Plan which is not earlier published will be a substantial modification, and

(f) alternation in the Floor Space Index beyond ten per cent will be a substantial modification.

Importance given to the spaces reserved for public amenities

57. As we have noted, all such substantial modifications can be effected only after following the additional requirement laid down in Section 29 viz. a notice in the local newspapers inviting objections and suggestions within sixty days from the public at large with respect to the proposed modification.

Sub-section (a) deals with reduction of more than fifty percent in area provided in clauses (b) to (i) of Section 22 which sub-sections are concerned with proposals for designation of land for public purposes such as schools, colleges, markets, and open spaces, playgrounds, transport and communications, water supply, drainage and sewerage and other public amenities. It can be seen that sub-sections (b) and (c) of section 22A give importance to retention of places reserved for public amenities. Sub-section (b) deals with a reduction of any

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public amenity by more than ten per cent of the area reserved in the planning unit. Sub-section (c) deals with any reduction in an actually existing site reserved for a public amenity (other than marginal area upto 200 sq. metres required for essential public amenities or utility services for e.g. road widening). Both are treated as substantial modifications. Section 2 (2) of the MRTP Act defines what is an "amenity". It is relevant to note that this definition of amenity includes primary and secondary schools and colleges and polytechnics. It reads

as follows:-

> "2 [(2). "amenity" means roads, streets, open spaces, parks recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences]."

58. In the present case we have a situation where the reservation for a Primary school on a plot of an area of 3450 sq. metres is deleted. Would it not amount to a substantial modification under sub-section (b) of Section 22A since it results into deletion of a public amenity in the entire planning unit? Would it not mean that in view thereof it was necessary to follow the procedure required under Section 29 of the Act which provides for a public notice in the Official Gazettee and also in the local newspapers inviting objections and suggestions? Would it not mean that thereafter it was necessary to follow the procedure to deal with the suggestions and objections laid down while finalizing the draft Development Plan under Section 28 of the Act? Whether the shifting of this

reservation is covered under Section 37 or Section 22A is a moot point to

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consider. One thing is however very clear, that it could not be justified under D.C. Rule 13.5. If the statute provides for doing a particular act in a specified manner, it has got to be done in that manner alone, and not in any other manner.

Alleged Conflict between D.P. Plan and the erstwhile T.P. Scheme canvassed for the first time in the High Court - Can a provision in the erstwhile T.P. Scheme be relied upon in the face of a contrary reservation in the subsequent D.P. Plan?

59. In as much as the action of the State Government could not be defended under D.C. Rule 13.5, the appellants came up with the submission for the first time in the High Court and then in this Court that under the erstwhile Town Planning Scheme, this F.P. No. 110 could be developed for residential purposes, and that purpose subsisted in spite of the subsequent reservation for a

public purpose on that plot of land under the D.P. Plan.

60. It was pointed out that a Town Planning Scheme was framed under the then Bombay Town Planning Act of 1915 for Pune City to become effective from 1.3.1931. Regulation 14 of the Principal scheme framed under that Act provided for the areas included in the scheme which were intended mainly for residential purposes wherein this plot was included as original plot No. 230/C. It was subsequently allotted F.P. No. 110. There was no reservation on this plot for any public purpose. The 1915 Act was repealed and replaced by the Bombay Town Planning Act 1957 w.e.f. 1.4.1957 whereunder the concept of a Development Plan was introduced. However, by virtue of Section 90 of the 1954

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Act the previous schemes were saved. The erstwhile Town Planning scheme as varied, was sanctioned by the State Government w.e.f. 15.8.1979, and thereunder the permissible user of F.P. No. 110 continued to be residential. In the meanwhile, in exercise of its power under the 1954 Act, the State

Government sanctioned the Development Plan of Pune City w.e.f. 15.8.1966 whereunder F.P. No. 110-112 were reserved for a garden. The 1954 Act was repealed and replaced by the MRTP Act 1966 w.e.f. 11.1.1967. By virtue of Section 165 of the MRTP Act, however, the erstwhile Principal T.P. scheme (as varied), as well as the D.P. Plan were both saved. Subsequently, when the D.P. Plan of Pune City was revised in 1982 and finalized in 1987 under the provisions of the MRTP Act, the reservation on the plot was initially proposed to be changed for a play-ground, but ultimately shifted for a primary school in the final 1987 DP Plan.

61. It is contended on behalf of the landowner and the developer that the permission for the user of the concerned plot of land for residential purposes under the T.P. Scheme effective from 15.8.1979 continued to survive by virtue of the saving clause under Section 165(2) of the MRTP Act, and, therefore, the order passed by the Government on 3.9.1996 as well as the commencement certificates were valid even on that count. It is submitted that until the Town

Planning scheme is varied under Section 39 read with 92 of MRTP Act, the proposals in the Final Development Plan of 1987 cannot have any effect on the land covered by the erstwhile Town Planning scheme. The Development Plan and Town Planning scheme will both have their independent operation until the

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Town Planning scheme is varied to bring it in accord with the Development Plan. As noted earlier that right from 8.5.1979, when the landowner issued purchase notice, and led the State Government and PMC to acquire the plot of land, this plea was never raised (and the High Court would have been within its rights not to entertain this plea on the ground of acquiescing into the change of user under the D.P. Plan). The plea having been considered and rejected in the impugned judgment, is canvassed once again in this Court. To consider this plea, it becomes necessary to examine the relevant provisions of the Act.

Relevant provisions of the Act in the context of the D.P. Plan as

against the erstwhile T.P. Scheme

62. The preamble of the MRTP Act shows that this is an Act to make provisions for:

(1) planning the development and use of land in regions established for that purpose and for constitution of regional planning boards therefor,

(2) to make better provisions for the preparation of development plans with a view to ensuring that T.P. Schemes are made in the proper manner and their execution is made effective,

(3) to provide for the creation of new towns by means of development authorities,

(4) to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans, and

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(5) for purposes connected with the matters aforesaid.

63. (i) Chapter I of the Act contains the Preliminary provisions. Chapter II of the Act is concerning the Regional Plans. Chapter III is about the Development Plan, and Chapter IV about Control of Development and Use of Land included in Development Plans. Chapter V is about the T.P. Schemes.

(ii) Section 3 of the Act permits the State Government to establish any area in the State to be a Region. A Regional Plan is supposed to be prepared for various subjects which are mentioned in Section 14 of the Act. The `Development Plan' is defined under Section 2 (9) of the Act as a plan for the development or re-development of the area within the jurisdiction of a planning authority. Section 2 (19) defines the Planning Authority to mean a local authority, and it includes some other specified authorities also. There is no dispute that the development plan has to be prepared `in accordance with the provisions of a Regional plan' which is what is specifically stated in Section 21 (1) of the Act.

(iii) It is, however, disputed by the developer that the T.P. scheme which is normally supposed to be a detailed scheme for a smaller part of a Municipal Area has necessarily to be in consonance with the development plan. As against this submission we have the mandate of Section 39 of the Act, which reads as follows:-

> "39. Variation of town planning scheme by Development Plan.
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>
> 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."

This Section states that the T.P. scheme shall be suitably varied to the extent necessary wherever the final development plan contains proposals which are in variation or modification of the proposals contained in the T.P. Scheme. In the instant case, we are concerned with the final development plan of 1987 which contains the reservation for a Primary School on F.P. No.110 as

against the plot being placed in a residential zone in the final T.P. scheme of 1979. It is submitted by the appellant that the planning authority may take steps to vary the T.P. scheme suitably to bring it in consonance with the D.P plan, but until that is done, the provisions in the T.P. scheme will survive. The High Court has rejected this submission by holding that the D.P. plan overrides the T.P. Scheme.

64. As noted above, Section 39 lays down that the T.P. Scheme is to be varied suitably in accordance with the D.P. Plan under Section 92 of the Act. Section 92 appears in Chapter V which is on Town Planning schemes. The first section in this chapter V is Section 59. Section 59 reads as follows:-

> "59. Preparation and contents of Town Planning Scheme
>
> (1) Subject to the provisions of this Act or any other law for the time being in force-
>
> (a) a Planning Authority may for the purpose of implementing the proposals in the final Development Plan, prepare one or more town planning schemes for the area within its jurisdiction, or any part thereof;

(b) a town planning scheme may make provision for any of the following matters, that is to say-

(i) any of the matters specified in section 22;

(ii) the laying out or re-laying out of land, either vacant or already built upon, including areas of comprehensive development;

(iii) the suspension, as far as may be necessary for the proper carrying out of the scheme, of any rule, by-law, regulation, notification or order made or issued under any law for the time being in force which the Legislature of the State is competent to make;

(iv) such other matter not inconsistent with the object of this Act, as may be directed by the State Government.

(2) In making provisions in a draft town planning scheme for any of the matter referred to in clause (b) of sub-section (1), it shall be lawful for a Planning Authority with the approval of the Director of Town Planning and subject to the provisions of section 68 to provide for suitable amendment of the Development plan."

As can be seen, Section 59 states two things: firstly the opening part of sub-section 1 of Section 59 states that the T.P. scheme is to be prepared "subject to the provisions of this Act". Thereafter, Sub-section 1(a) of this section specifically states that the planning authority is to prepare one or more T.P. schemes for the area within its jurisdiction "for the purpose of implementing the proposals in the final Development Plan". Thus, Section 39 read with Section 59 do indicate the approach of legislature, namely, superiority of the D.P. plan over

the T.P. scheme.

65. The learned senior counsel for the developer, Shri Naphade relied on the provisions contained in Section 59 (1) (b) (i), and 59 (2) of the Act in support of his arguments. Section 59 (1) (b) (i) provides that a town planning scheme may make provision amongst others for any of the matters specified in

Section 22 of the Act. Section 22 lays down as to what ought to be the contents of a Development Plan. Section 59 (2) states that in making the draft T.P. scheme for any of the matters referred to in sub-section 1 (b), it shall be lawful for a planning authority to provide for suitable amendments of the Development Plan. It is, therefore, submitted that there is no primacy between the Development Plan and the T.P. scheme. It is contended that if the purpose of the T.P. Scheme is only to implement the Development Plan, it will militate against the plain reading of Section 51 (2) and 59 (1) (b) and that, in such a case, Section 59 (1) (b) will become otiose. Shri Naphade, therefore, submitted

that the D.P. Plan and the T.P. Scheme both are of equal strength.

66. While examining this submission, we must note that Section 39 requires the T.P. scheme to be varied to the extent necessary in accordance with the final Development Plan. The provision in Section 59 (1) (b) (i) is infact made to see to it that there is no conflict between the T.P. scheme and the Development Plan. Otherwise, the question will arise as to what meaning will be given to Section 59 (1) (a) which specifically states that the T.P. scheme is to be prepared for the purpose of implementing the proposals in the final Development Plan. Merely because Section 59 (1) (b) provides that the T.P. scheme may make provision for any of the matters specified in Section 22, the T.P. scheme cannot be placed on the same pedestal as a Development Plan. Section 59 (2) is only an enabling provision. It may happen that in a given situation a suitable amendment of the Development Plan may as well become necessary while seeing to it that the T.P. scheme is in consonance with the Development Plan.

Section 59 (2) will only mean that the legislature has given an elbow room to the planning authority to amend the Development Plan if that is so necessary, so that there is no conflict between the T.P. Scheme and the D.P. Plan. In fact what is indicated by stating that "it shall be lawful to carry out, such an amendment" is that normally such a reverse action is not expected, but in a given case if it becomes so necessary, it will not be unlawful. Use of this phrase in fact shows the superiority of the D.P. Plan over the T.P. scheme. Besides, the phrase put into service in this sub-section is only `to provide for a suitable amendment'. This enabling provision for an appropriate amendment in the D.P. plan cannot therefore, be raised to the level of the provision contained in Section 39 which mandates that the planning authority shall vary the T.P. scheme if the final D.P. Plan is in variation with the T.P. Scheme sanctioned before the commencement of the MRTP Act. It also indicates that subsequent to the commencement of the Act, a T.P. Scheme will have to be inconsonance with the D.P. Plan. Similarly, Section 59 (1) (b) (i) cannot take away the force of the

provision contained in Section 59 (1) (a) of the Act. As noted above, Section 39 specifically directs that the planning authority shall vary the T.P. scheme to the extent necessary by the proposal made in the final Development Plan, and Section 59 (1) (a) gives the purpose of the T.P. scheme, viz. that it is for implementing the proposals contained in the final Development Plan. Under Section 31 (6) of the act, a Development plan which has came into operation is binding on the planning authority. The Planning Authority cannot act contrary to D.P. plan and grant Development permission to defeat the provision of the D.P.

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plan. Besides, it cannot be ignored that a duty is cast on every planning authority specifically under Section 42 of the Act to take steps as may be necessary to carry out the provisions of the plan referred in Chapter III of the Act, namely the Development Plan. Section 46 of the Act also lays down specifically that the planning authority in considering an application for permission for development shall have "due regard" to the provisions of any

draft or any final plan or proposal submitted or sanctioned under the Act. It indicates that the moment a Draft Plan is proposed, a permission for a contrary development can no more be granted, since it will lead to a situation of conflict. Section 52 of the Act in fact provides for penalty for unauthorised development or for use otherwise then in conformity with the development plan. Thus, when it comes to the development in the area of a local authority, a conjoint reading of the relevant sections makes the primacy of the Development Plan sufficiently clear.

67. Much emphasis was laid on Section 69 (6) which reads as follows:-

> "(6) The provisions of Chapter IV shall, mutatis mutandis, apply in relation to the development and use of land included in a town planning scheme in so far as they are not inconsistent with the provisions of the Chapter."

It was, therefore, submitted that thus the provisions of Chapter IV which are about the Control of Development and use of land included in the Development Plan, are mutatis mutandis applicable to the development and the

use of land included in the T.P. scheme, and therefore the D.P. plan and T.P. scheme are on par.

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68. Now, it is material to note that sub-sections (1) to (5) of Section 69 operate when the draft T.P. scheme is under preparation. Sub-section (6) will have to be read on that background because this sub-section itself states that provisions of Chapter IV will apply in relation to the development of the land included in a T.P. scheme "in so far as it is not inconsistent with the provision of this Chapter", i.e. Chapter V on Town Planning Schemes wherein Section 69 is placed. Chapter IV is on control of Development and use of land included in Development Plans. And as noted above, Section 59 (1) (a) which is the first section of Chapter V clearly contains the direction that the T.P. scheme is to be prepared for the purpose of implementing the proposals in the final Development Plan. Therefore, merely because by incorporating the provisions of Chapter IV those provisions are made applicable to T.P. schemes, the mandate of Section 59

(1) (a) cannot be lost sight of.

69. It is then submitted by the appellant that the Development Plan and the T.P. scheme operate independent of each other, and, until the State Government exercises its power of eminent domain under the Development Plan, and acquire the land, the landowner can develop his property as per the user permitted under the T.P. scheme. In view of the scheme of the relevant sections and particularly Section 46 which we have noted above, this submission cannot be accepted. It will mean permitting a development contrary to the provisions of the Development Plan, knowing fully well that the user under the T.P. scheme is at variance with the Development Plan. Any such interpretation will make provisions of Section 39, 42, 46 and 52 meaningless.

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70. There is one more aspect of the matter. Section 43 of the Act lays down that after the date on which the declaration of intention to prepare a Development Plan is published, no person shall carry out any development on

land without the permission of the Planning Authority. The principal part of this section reads as follows:-

> "43. Restrictions on development of land
>
> After the date on which the declaration of intention to prepare a Development plan for any area is published in the Official Gazette [or after the date on which a notification specifying any undeveloped area as a notified area, or any area designated as a site for a new town, is published in Official Gazette] no person shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning Authority."

71. This section will have to be read along with the requirement provided in Section 39. Section 39 provides for a T.P. Scheme sanctioned and subsisting prior to the Development Plan. The section mandates that such a prior scheme shall be varied to the extent necessary by the proposals made in the final Development Plan. Section 43 provides that once the declaration of intention to prepare a Development Plan is gazetted, no development contrary thereto can be permitted. As provided under Section 59 (1) (a), the town planning scheme is to be prepared for the purpose of implementing the

proposals in the final Development Plan. Therefore, even if such a variation as directed under Section 39 does not take place, the land cannot be put to use in any way in contradiction with the provision in the D.P. Plan. In the instant case, we have a provision of the T.P. Scheme effective from 15.8.1979 as against the D.P. Plan containing a contrary provision which was notified on 18.9.1982. Shri

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Dholakia, learned senior counsel appearing for the State Government, therefore, rightly submitted that in view of Section 165 of the MRTP Act, if the construction was completed, partly started or plans were submitted, or any such appropriate steps were taken prior to 18.9.1982, the same could have been permitted. Once the State Government published the draft Development Plan on 18.9.1982, providing for the reservation for a primary school, any construction contrary thereto could not be permitted. This can only be the interpretation of the provisions contained in Section 39 read with Section 43 and Section 165 of the MRTP Act. For convenience, we may refer to Section 165 (1) and (2), which

read as follows:-

"165. Repeal and saving.

(1) The Bombay Town Planning Act, 1954 and sections 219 to 226A and clause (xxxvi) of sub-section (2) of section 274 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, are hereby repealed.

(2) Notwithstanding the repeal of the provisions aforesaid, anything done or any action taken (including any declaration of intention to make a development plan or town planning scheme, any draft development plan or scheme published by a local authority, any application made to the State Government for the sanction of the draft development plan or scheme, any sanction given by the State Government to the draft development plan or scheme or any part thereof, any restriction imposed on any person against carrying out any development work in any building or in or over any land or upon an owner of land or building against the erection or re-erection of any building or works, any commencement certificate granted, any order or suspension of rule, bye-law, regulation, notification or order made, any purchase notice

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served on a local authority and the interest of the owner compulsorily acquired or deemed to be acquired by it in pursuance of such purchase notice, any revision of development plan, any appointment made of Town Planning Officer, any proceeding pending before, and decisions of, a Town Planning Officer, any decisions of Board of Appeal, any final scheme forwarded to, or sanctioned, varied or

> withdrawn by the State Government, any delivery of possession enforced, any eviction summarily made, any notice served, any action taken to enforce a scheme, any costs of scheme calculated and any payments made to local authorities by owners of plots included in a scheme, any recoveries made or to be made or compensation awarded or to be awarded in respect of any plot, any rules or regulations made under the repealed provisions shall be deemed to have been done or taken under the corresponding provisions of this Act, and the provisions of this Act shall have effect in relation thereto."

72. The learned senior counsel Shri Virendra Tulzapurkar appearing for the tenants went to the extent of contending that by provisions in the T.P. Scheme are superior to those in the D.P. Plan. In support to his submission he relied upon the judgment of a Division Bench of Gujarat High Court in Gordhanbhai Vs. The Anand Municipality & Ors. reported in XVI (1975) Gujarat Law Report 558 which was under the Bombay Town Planning Act 1954 (the 1954 Act for short) as applicable to Gujarat. The petitioner therein was aggrieved by the development permission granted by the Anand Municipality to the respondents Nos. 4 to 12 to put up a structure on the plot adjoining to his plot. One of the objections raised by the petitioner was that the disputed

construction did not observe the margins prescribed in the regulations framed under the Development Plan (comparable to the D.C. regulations in the present

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case). The respondents pointed out that the regulations which were published and sanctioned by the State Government as a part of the T.P. scheme specifically provided that no margin should be imposed on the particular final plot of the respondents Nos. 4 to 12. In view thereof, the Division Bench in para 6 of its judgment referred to Section 18 (2) (k) of the 1954 Act which specifically provided that the Town Planning scheme may provide for the suspension, so far as may be necessary for the proper carrying out of the scheme of any rule, by-law, regulation, notification or order made or issued under any Act of the State Legislature. Since that had been done, the permission for construction in the particular case could not be faulted. It was in this context that the Division Bench observed that the provisions of the scheme which are contrary to those regulations shall prevail over the same. It is material to note that this provision in

Section 18 (2) (k) of the 1954 Act is pari-materia to Section 59 (1) (b) (iii) of the MRTP Act. It is also material to note that like Section 59 (1) (a) of the MRTP Act, Section 18 (1) of the 1954 Act provides as follows:-

> "Making and contents of town planning scheme
>
> 18. Subject to the provisions of this Act or any other law for the time being in force:-
>
> (1) a local authority for the purpose of implementing the proposals in the final development plan may make one or more town planning schemes for the area within its jurisdiction or any part thereof;"

Section 18 of the 1954 Act as well as Section 59 of the MRTP Act provide for suspension of the regulations in a given case by making a specific

provision in the T.P. scheme, which is basically with the object of implementing the proposals in the Final Development Plan. This judgment cannot therefore be relied upon to canvass a general proposition that the provisions in the Town Planning scheme are superior to the Development Plan.

The need for a holistic interpretation

73. The provision of a statute are required to be read together after noting the purpose of the Act, namely that there should be an orderly development in the region, local authority as well as in the town area. The MRTP Act does not envisage a situation of conflict. Therefore one will have to iron out the edges to read those provisions of the Act which are slightly incongruous, so that all of them are read in consonance with the object of the Act, which is to bring about an orderly and planned development. The provision of Section 165 can not be read to mean a right to carry out a development contrary to the Development Plan, and in any case without a valid development permission particularly when the landowner had not taken any step in pursuance to the erstwhile T.P. scheme nor had objected to the changes brought in by the authorities by following the due process of law. The submissions of Shri Naphade and Tulzapurkar with respect to the alleged conflict between T.P. and

D.P. can not, therefore, be accepted.

74. The observations of O. Chinnappa Reddy J. in para 33 of the Judgment in Reserve Bank of India Vs. Peerless Corpn. reported in [AIR 1987 SC 1023 = 1987 (1) SCC 424] are instructive in this behalf -

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> "33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."..... (emphasis supplied)

75. The counsel for the landowner criticised the impugned judgment

for accepting the observations of another Division Bench of Bombay High Court in Rusy Kapadia v. State of Maharashtra reported in [1998 (2) ALL MR 181], In that matter certain private land was reserved in the D.P. plan of Pune for a public park. The landowner had no objection to the same, but the land was not acquired. The landowner sold the land to some other persons, who moved the Government for de-reservation of the land to use it for residential purpose. The Government invited objections under Section 37 of the MRTP Act and thereafter issued the notification granting de-reservation. At that stage some other citizens filed this PIL challenging that notification on the ground that the land was ear-marked for environmental purposes and should not be de-reserved. It was submitted in that matter on behalf of the purchasers of the land that in

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the T.P. scheme the use for residential purpose was permissible, and since the T.P. scheme was sanctioned subsequent to the development plan, it shall prevail. Rejecting that argument, the Division Bench observed in para 8 of its judgment

as follows:-

> "..... We heard and also perused the provisions with the assistance of the Ld. Counsel for the parties. Town Planning Scheme is provided and dealt with by Chapter V of the Act. This Chapter has beginning with Section 59 and opening of the section itself refers that the provisions of this Chapter are subject to the provisions of the Act. The provisions precedent to section 59 are from section 1 to section 58 which include section 31, sub-section (6) which proclaims that the Draft Plan is final and binding on the Planning Authority. As such the binding force would carry even when they anyway deal with the Town Planning Scheme. Besides this section 39 and section 42 of the Act unequivocally indicate that the Development Plan has to definitely prevail over anything and everything including the Town Planning Scheme. In view of this the submission is without any merit."

76. The Division Bench deciding Rusy Kapadia's case (supra) referred to para 25 of the Judgment of this Court in Bangalore Medical Trust Vs. B.S. Muddapa reported in [1991 (4) SCC 54] to emphasize the importance of protecting environment. The High Court quashed the decision of the Government granting de-reservation but kept it in abeyance for a period of two years, and directed that if during this period the private respondents (i.e. purchasers of the land) provided adequate green area as envisaged in the development plan, this order will not operate. This order of the High Court in Rusy Kapadia (supra) was challenged by those private respondents, the judgment in which Appeal is

reported in the case of Raju S. Jethmalani Vs. State of Maharashtra reported in [2005 (11) SCC 222]. This Court in the case of Raju Jethmalani

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noted that the observations in Bangalore Medical Trust were in the context of Section 38 (A) of that Act. The Court also noted that though the development plan provided the area for the garden, no proceedings for acquisition of the concerned plot had ever been initiated. In that context, the court observed that there is no prohibition for preparing the development plan comprising the private land, but the plan cannot be implemented unless the said private land was acquired. It was for this reason that the court allowed the appeal and set aside the order in Rusy Kapadia's case, but this time directed the petitioners of the PIL (i.e. Rusy Kapadia & Ors.) to raise funds in six months if they wanted the park to be maintained, in order to assist the Government to acquire the land, failing which it will be open to the appellants to develop the land. This direction was given because the State Government and PMC had expressed inability to

raise the necessary funds to acquire the concerned plot of land. It is material to note that in Raju Jethmalani's case this Court did not deal with the controversy concerning the superiority of the Development Plan vis-a-vis the T.P. scheme, nor can the Judgment be read as laying down a proposition that development contrary to the D.P. plan is permissible. The observations in the case of Rusy Kapadia as quoted above are approved in the presently impugned judgment, and have been once again reiterated by another Division Bench of the Bombay High Court in Indirabai Bhalchandra Bhajekar Vs. The Pune Municipal Corporation and Ors., reported in [2009 (111) Bom LR 4251].

Having noted the inter-relation amongst the various sections of the statute, in

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our view, it cannot be said that the T.P. scheme is either superior or of equal strength as the Development Plan.

77. The counsel for the developer then relied upon the judgment of

this Court in Laxmi Narayan Bhattad Vs. State of Maharashtra reported in [2003 (5) SCC 413] for further supporting the submission in this behalf. The appellant in this case was allotted an alternative plot of land and monetary compensation under an award when part of his land was acquired to implement the T.P. scheme finalized in 1987. The appellant however wanted additionally the Transferable Development Rights (TDR) as provided under Development Control Regulations framed later in 1991. This Court declined to accept the submission of the appellant. It was held that the appellant will be eligible only for the benefits under the T.P. scheme, since the acquisition of his land was to implement the same. The D.C. Regulations of 1991 had come subsequently. There was no provision for TDR under the T.P. scheme and therefore, the appellant could not get T.D.R which are provided subsequently in the D.C. Regulations of 1991. This judgment also cannot be read as laying down that the T.P. scheme will prevail over or is of equal strength as the D.P. plan.

78. Thus from the analysis of the relevant provisions and the

judgments it is clear that the right claimed under the erstwhile T.P. scheme could not be sustained in the teeth of the reservation for a Primary school under the 1987 D.P. plan. The submission in this behalf cannot be accepted.

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Additional submissions in this Court in defence of the Government Order:-

79. The appellants came up with some more submissions in this Court. They submitted that the shifting was protected under Rule 6.6.2.2, and the reference to Rule 13.5 in the Government's order dated 3.9.1996 was erroneous. Now, this Rule 6.6.2.2 reads as follows:-

> "6.6.2.2 In specific cases where a clearly demonstrable hardship is caused the Commissioner may by special written permission
>
> (i) Permit any of the dimensions/provisions prescribed by these rules to be modified provided the relaxation sought does not violate the health safety, fire safety, structural safety and public safety of the inhabitants, the buildings and the neighborhood. However, no relaxation from the set back required from the road boundary or FSI shall be granted under any circumstances.
>
> While granting permissions under (i) conditions may be imposed on size, cost or duration of the structure abrogation of claim of compensation payment of deposit and its forfeiture for non-compliance and payment of premium."

As can be seen from this Rule it provides for variations with respect to dimensions and structural requirements. This rule 6.6.2.2 is a part of Rule 6 which contains the `Procedure for obtaining building permission/ commencement certificates'. It does not deal with shifting of a particular reservation from one plot to another which is covered under Rule 13.5 (with certain restrictions) to which we have already referred. Thus Rule 6.6.2.2 has no application at all.

80. The request of the landowner was to shift the reservation of a primary school from F.P. No. 110, and to grant him the permission for development under Section 45 of the Act. It is also material to note that though subsequent to the Government orders, Commencement Certificates were issued,

there was no order specifically setting aside the earlier order of the City Engineer of PMC passed under Section 45 of the MRTP Act rejecting the building permission by his letter/order dated 6.11.1995. We are, therefore, required to

infer from the Commencement Certificate which refers to Section 44 and 45 (alongwith other sections) that the appeal against the order of the City Engineer is impliedly allowed under Section 47 of the Act. This is because there is no such specific mention of reversal of the order dated 6.11.1995 even in the aforesaid order of the State Government dated 3.9.1996.

81. It was therefore contended on behalf of the developer that the order passed by the Government made a reference to a wrong provision of law. It was submitted that Section 47 was erroneously relied upon, and the order was in fact an order passed under Section 50 of the Act.

Section 50 reads as follows:-

"50. Deletion of reservation of designated land for interim draft of final Development Plan.

(1) The Appropriate Authority (other than the Planning Authority), if it is satisfied that the land is not or no longer required for the public purpose for which it is designated or reserved or allocated in the interim or the draft Development plan or plan for the area of Comprehensive development or the final Development plan, may request--

(a) the Planning Authority to sanction the deletion of such designation or reservation or allocation from the interim or the draft Development plan or plan for the area of

Comprehensive development, or

(b) the State Government to sanction the deletion of such designation or reservation or allocation from the final Development plan.

(2) On receipt of such request from the Appropriate Authority, the Planning Authority, or as the case may be, the State Government may make an order sanctioning the deletion of

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such designation or reservation or allocation from the relevant plan:

Provided that, the Planning Authority, or as the case may be, the State Government may, before making any order, make such enquiry as it may consider necessary and satisfy itself that such reservation or designation or allocation is no longer necessary in the public interest.

(3) Upon an order under sub-section (2) being made, the land shall be deemed to be released from such designation, reservation, or, as the case may be, allocation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land, under the relevant plan."

As can be seen, Section 50 provides for deletion of a reservation at the instance of an Appropriate authority (other than the planning authority) for whose benefit the reservation is made. Such is not the present case. Under sub-section (1) of Section 50, the appropriate authority has to be satisfied that

the land is not required for the public purpose for which it is reserved. "Appropriate authority" is defined under Section 2 (3) of the Act to mean a public authority on whose behalf the land is designed for a public purpose in any plan or scheme and which it is authorised to acquire. In the instant case, the acquiring body is PMC, and it will mean the general body of PMC. Assuming that the section applies in the instance case, the general body has to be satisfied that the land is no longer required for the public purpose for which it is designed or reserved. In the instant case, it is on the direction of the Minister of State that the Municipal Commissioner has given a report which has been used by the State Government to pass an order of shifting the reservation from F.P. No.110. The officers of the Planning Authority as well as of the concerned Government

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department were not in favour of deleting the reservation. The Commissioner's opinion could not have been treated as the opinion of PMC. Under certain circumstances the Municipal Commissioner can act on behalf of the Municipal

Corporation, and those sections are specifically mentioned in Section 152 of the MRTP Act. Section 50 is not one of those sections and, therefore, the State Government could not have made any such order sanctioning the deletion of reservation on the basis of the report of the Municipal Commissioner. Section 50 is, therefore, of no help to the appellants.

82. One of the sections which was pressed into service to defend the directions of the State Government dated 3.9.1996 and 29.7.1998 and the actions of the Municipal Commission was Section 154 (1) of the MRTP Act. This section reads as follows:-

> "154. Control by State Government
>
> (1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.
> (2) If in, or in connection with, the exercise of its powers and discharge of it functions by any Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final."

It was submitted that the State Government was thus entrusted with the over-all control in the interest of efficient administration, and its directions had to be followed by the Planning Authority, and such directions could not be faulted on any count. In a similar situation in Bangalore Medical Trust (supra), a

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reservation for a public park was sought to be shifted for the benefit of a private nursing home. Amongst others Section 65 of the Bangalore Development Act, 1976 was sought to be pressed into service which authorised the Government to issue directions to carry out the purposes of the act. This Court observed in para 52 of that judgment that the section authorises the Government to issue directions to ensure that provisions of law are obeyed and not to empower itself to proceed contrary to law. In the present matter, it is to be seen that the section provides for directions or instructions to be given by the State Government for the efficient administration of the Act. This implies directions for that purpose which are normally general in character, and not for the benefit of

any particular party as in the present case. The provisions of law cannot be disregarded and ignored merely because what was done, was being done at the instance of the State Government. Consequently, Section 154 cannot save the directions issued by the State Government or the actions of the Municipal Commissioner in pursuance thereof.

83. Thus, the reliance on these provisions is of no use to the appellants. It was submitted that while passing the order the Government has referred to a wrong provision of law and reference to a wrong provision of law does not vitiate the order if the order can be traced to a legitimate source of power. Reliance was placed on the judgment of this Court in PR Naidu v. Government of Andhra Pradesh (reported in AIR 1977 SC 854) = [1977 (3) SCC 160] and VL and Co. v. Bennett Coloman and Co. [AIR 1977 SCC 1884] = [1977 (1) SCC 561]. In the instant case, however, the order of the

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Government dated 3.9.1996 cannot be traced to any legitimate source of power,

and therefore, the situation cannot be remedied by reference to other sources of power. The Division Bench has therefore, rightly commented on this submission in paragraph 180 of its judgment that `the rub is that the action taken by the Planning authority was otherwise not legal and justified'. It could not therefore be justified by reference to other provisions of law because basically the decision itself was illegal.

84. Thus the submission canvassed on behalf of the appellants is that although the landowner never objected to the reservation either for a garden or a primary school during the process of the revision of the D.P. Plan during 1982 to 1987, and although he had received the compensation for its acquisition, he retained the right to develop the property for residential purposes merely because under the erstwhile Town Planning scheme residential use was permissible, and it is supposed to be saved under Section 165 (2) of the MRTP Act. However, as seen from the conjoint reading of Section 39, 42 and 46, and the scheme of the Act, such a submission cannot be accepted. That apart,

ultimately it was contended on his behalf the deletion of the reservation of a primary school on this plot u/s 37 of the MRTP Act is not necessary, and the order passed by the State Government in his favour can be explained u/s 50 of the MRTP Act read with D.C. Rule 6.6.2.2. As we have seen Section 50 as well as D.C. Rule 6.6.2.2. have no application to the present case, nor can the power of the State Government under Section 154 of the Act help the appellants. Besides, independent of one's right either under the D.P. Plan or the T.P.

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Scheme, one ought to have a permission for development granted by the planning authority traceable to an appropriate provision of law. In the present case there is none. The appellants are essentially raising all these submissions to justify a construction which is without a valid and legal development permission. The appellants have gone on improving and tried to change their stand from time to time with a view to justify Government's order in their favour. However, "Orders are not like old wine becoming better as they grow older" as

aptly stated by Krishna Iyer J. in para 8 of Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi reported in 1978 (1) SCC 405. The submissions of the appellants in defence of the decision of the State Government are devoid of any merit and deserve to be rejected.

Legality of the acquisition of the land:

Whether the acquisition lapses on account of change of purpose of acquisition

85. As seen earlier, the letter of the landowner had led to the subsequent steps for acquisition. The landowner was interested in good return for his land. The tenants were interested only in the rehabilitation on the same plot of land. That was their stand until the award dated 12.5.1983. The Civil Court has held the acquisition for the changed purpose under the D.P Plan as bad in law on the ground that the initially designated public purpose for acquisition was changed. Was the civil suit maintainable? Was the view taken

by the Civil Court a correct view? We are required to go into that question also,

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since the order of the Civil Court is sought to be defended by the landowner as well as by the developer.

86. The Learned Civil Judge Senior Division set aside the award by his judgment and decree dated 23.4.1990 on the ground that though the land was initially proposed to be acquired for a garden, it was ultimately to be used for another public purpose i.e. setting up a primary school. It was contended on behalf of the developer that in the instant case the declaration under Section 6 of the L.A. Act was issued when the land was reserved for a garden, and the purpose of acquisition must subsist as initially designated until the possession of the land is taken. The Court accepted the contention that the acquisition had lapsed due the change of purpose of reservation by the time the award was made. In the instant case, the award was made on 12.5.1983, but pursuant to the award the possession of the plot was not taken in the circumstances

mentioned earlier. According to the appellant the acquisition was not complete, and the jurisdiction to further continue with the acquisition was no longer available.

87. Two judgments of Bombay High Court were relied upon on behalf of the appellants i.e. Industrial Development & Investment Company Pvt. Ltd. Vs. State of Maharashtra reported in 1988 Mh.LJ 1027 (which was relied upon by the Learned Civil Judge Senior Division also), and Santu Kisan Khandwe Vs. Special Land Acquisition Officer No. 2 Nasik & Ors reported in 1995 (1) Mh.LJ 363, in support of the proposition that the purpose of acquisition must subsists till vesting. As far as the first judgment of the High

Court in the case of Industrial Development Company is concerned, the same is about the provisions of MRTP Act, and it has been specifically overruled by this Court in Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. Pvt. Ltd. & Ors. reported in 1996 (11) SCC

501. It was a case where the concerned parcel of land situated in Dharavi, Mumbai was acquired by the Municipal Corporation under the MRTP Act initially for the setting up of a Sewage Purification Plant, but subsequently the land was sought to be used for the residential and commercial purposes of its employees, since this Sewage Treatment Plant was shifted to another parcel of land. This utilisation was held to be completely valid and permissible by K. Ramaswamy, J.

88. The appellants before us contended that Majmudar, J., the other Learned Judge deciding the I.D.I Co's. case had taken a different view on the issue of change of user, and therefore, the issue remained undecided, and that the view taken by the Bombay High Court in the above referred two judgments deserved acceptance. The appellants submitted that Majmudar, J. agreed with K. Ramaswamy, J. only to the extent that the petition filed by the respondents in the High Court deserved to be dismissed on the ground of delay and laches. As far as the ground of change of purpose is concerned, Majmudar J., expressed his different opinion in the following few sentences:-

"33. Even though the proposal under Section 126(1) is for acquisition of land for a specified public purpose, if the planning authority wants to acquire the land subsequently for any other public purpose earmarked in the modified scheme as has happened in the present case that is if the appellant-Corporation which had initially proposed to acquire the land for extension of sewerage treatment plant wanted subsequently to acquire the same land for its staff quarters then such a purpose must be specifically indicated in the plan meaning thereby that the land must be shown to be reserved for the staff quarters of the Corporation and then the Special Planning Authority which had become the appropriate planning authority, i.e., BMRDA would be required to issue a fresh proposal under Section 126(1) read with Section 40(3)(e) and Section 116 of the MRTP Act and follow the gamut thereafter. So long as that was not done the earlier proposal under Section 126(1) and the consequential notification by the State Government under Section 126(2) which had lost their efficacy could not be revitalised....."

89. The appellants relied upon the judgment of this Court in Special Land Acquisition Bombay Vs. M/s Godrej & Boyce reported in AIR 1987 SC 2421, in support of their contention, that the purpose for acquisition must continue until possession is taken. In that matter this Court held that the title to the land vests in the Government only when the possession is taken. It is however, material to note that this judgment is concerning Section

16 of the L.A. Act. As far as this submission is concerned, as held by K. Ramaswamy J., in I.D.A Co's case (supra), one must note that the scheme of MRTP Act is different from that under the L.A. Act. In para 11 and 12 of his judgment in I.D.I Co's. case (supra) he has specifically held that Section 126 (1) of the MRTP Act is a substitute for the notification under Section 4 of the L.A. Act. A declaration under Section 126 (2) is equivalent to a declaration under Section 6 of the L.A. Act. The objections of the persons concerned are considered before such land gets earmarked for public purpose in the plan. Therefore, there is no need of any enquiry as under Section 5A of the L.A. Act. Section 126 (1) (c) specifically states that when an application is made to the State Government for acquiring the land under the L.A. Act, the land vests absolutely with the Planning
Authority. Therefore, it was held that in the scheme of the MRTP Act, it is not necessary that the original public purpose should continue to exist till the award was made and possession taken.

90. The observations of K. Ramaswamy, J. in paragraph 11 of the judgment in I.D.A. Co's case (supra) are relevant in this behalf. This para reads as follows:-

"11. If we turn to Chapter III of the MRTP Act, we find that the entire machinery is provided for preparation, submission and sanction of development plan proceeding from Section 21 and ending with Section 31. These provisions, in short, provide for preparation of draft development plant by the planning authority inviting objections of persons concerned against such proposals, hearing of objections filed by the objectors as per Section 28 sub-section (3) by the Planning committee and then submitting its report to the planning authority which ultimately gets the proposals approved by the State Government under Section 30. All these provisions do indicate that requirement, designation, reservation or earmarking of any land for acquisition for any specified public purpose as indicated in the plan has already undergone the process of hearing after the objections of the persons concerned were considered and then such land gets earmarked for public purpose in the plan. It is after that stage, therefore, when need to acquire such earmarked, designated or reserved land for public purpose under the plan arises, that Section 126(1) proposal gets issued by the planning authority concerned and which itself becomes a substitute for Section 4(1) notification under the Act. It would thus, appear that the scheme of acquisition of earmarked land under the plan for a specified public purpose thereunder, is a complete scheme or code under the MRTP Act. It is a distinct and independent scheme as compared to general scheme of acquisition under the Land Acquisition Act."
(emphasis supplied)
91. In this connection, we must note Section 126(1) of the MRTP Act provides for three modes of acquisition of land for public purposes specified in the plan. The third mode is by making an application to the State Government
for acquiring such land under the L.A. Act, and thereafter the land so acquired vests absolutely in the Planning Authority. Sections 126(1) and (2) are extracted herein below for ready reference.
"126 - Acquisition of land required for public purposes specified in plans (1) Where after the publication of a draft Regional Plan, a Development or any other plan or Town Planning Scheme, any land is required or reserved for any of the public purposes specified in any plan

or scheme under this Act at any time the planning Authority, Development Authority, or as the case may be, [any Appropriate Authority may, expect as otherwise provided in section 113A] [acquire the land,--
(a) by agreement by paying an amount agreed to, or
(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894(I of 1894), Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or
(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894(I of 1894),and the land (together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894(I of 1890), as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.] (2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for
the public purpose therein specified, or [if the State Government (except in cases falling under section 49 [and except as provided in section 113A)] itself is of opinion] that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894(I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:
[Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.] (3) .....
(4) ....."
92. Section 128 of the MRTP Act strengthens the view that we are taking. Section 128 deals with a situation where the land is sought to be acquired for a purpose other than the one which is designated in the plan or the scheme. In that case provisions of the L.A. Act apply with full force. This Section reads as follows:-
"128. Power of State Government to acquire lands for purpose other than the one for which it is designated in draft plan or scheme.
(1) Where any land is included in [any plan or scheme] as being reserved, allotted or designated for any purpose therein specified or for the purpose of Planning Authority or Development Authority or Appropriate Authority and the State Government is satisfied that the same land is needed for a public purpose different from any such public purpose or purpose of the Planning Authority, Development Authority or Appropriate Authority, the

State Government may, notwithstanding anything contained in this Act, acquire such land under the provisions of the Land Acquisition Act, 1894(I of 1894).
[(1A) Save as otherwise provided in this Act or any other law for the time being in force where any land included in any
plan or scheme as being reserved, allotted or designated for any purpose therein specified or for the purposes of a Planning Authority or Development Authority or Appropriate Authority, is being acquired by the State Government under the provisions of the Maharashtra Industrial Development Act, 1961(Mah. III of 1962), for the Maharashtra Industrial Development Corporation (being the Special Planning Authority deemed to have been appointed as such under sub-section (1A) of section 40), the provisions of sub-sections (2) and (3) of this section shall mutatis mutandis, apply to such acquisition proceedings.] (2) In the proceedings under the Land Acquisition Act, 1894(I of 1894), the Planning Authority, or Development Authority or Appropriate Authority, as the case may be, shall be deemed to be a person interested in the land acquired; and in determining the amount of compensation to be awarded, the market value of the land shall be assessed as if the land had been released from the reservation, allotment or designation made in the [any plan or scheme] or new town, as the case may be, and the Collector or the Court shall take into consideration the damage, if any, that Planning Authority or Development Authority or Appropriate Authority, as the case may be, may sustain by reason of acquisition of such land under the Land Acquisition Act, 1894(I of 1894), or otherwise, and the proportionate cost of the Development plan or town planning scheme or new town, if any, incurred by such Authority and rendered abortive by reason of such acquisition.
(3) On the land vesting, in the State Government under sections 16 or 17 of the Land Acquisition Act, 1894(I of 1894), as the case may be, the [relevant plan or scheme] shall be deemed to be suitably varied by reason of acquisition of the said land."
Sub-section (1) of this Section states that in such situations the provision of L.A. Act will apply notwithstanding anything contained in the MRTP Act, and sub-section (3) specifically states that in such an event the vesting will take place under Section 16 and 17 of the L.A. Act as the case may be. That is not the case with respect to the acquisition under Section 126 of the MRTP Act, where the vesting takes place in the three circumstances mentioned thereunder.
In the present case also the acquisition is resorted to by issuing a notification
under Section 126 read with Section 6 of the L.A. Act. The vesting therefore takes place at that stage.

93. After the declaration is made under Section 126 (2) of the MRTP Act, the proceedings to determine the compensation follow the procedure as laid down under the L.A. Act until Section 11 thereof. A notice is given to the interested persons as required under Section 9 of the L.A. Act to lodge their claims to compensation for all the interests in such land. Thereafter, they are heard in the inquiry made by the Collector or the S.L.A.O., and after following the requirements as laid down in Section 11, the compensation is arrived at. The change of purpose of utilisation of the land acquired under Section 126 of the Act does not make any difference in this behalf. There is no prejudice caused to the landowners since the award is made only after affording them full hearing concerning their claims for compensation.

94. (i) When it comes to urgency also, there is a separate provision in the MRTP Act, distinct from the one in the L.A. Act. Section 129 of the MRTP Act contains provisions different from Section 17 of the L.A. Act. Under sub-Section (2) of Section 129 there is the requirement of paying to the owner of the land concerned, an interest @ 4% per annum on the amount of compensation, from the date of taking possession of the land until the date of payment.

(ii) Thus the MRTP Act contains a separate scheme in Chapter VII of the Act distinct from the one in L.A. Act. This is because MRTP Act is a special
act enacted for the purpose of planned development and the provisions concerning land acquisition are made therein in that context.

95. We may mention at this stage that recently a Constitution Bench of this Court has also held in the context of Section 11A of the L.A. Act (providing for two years period to make the award) in Girnar Traders (3) Vs. State of Maharashtra & Ors. reported in 2011 (3) SCC 1, that only the provisions with respect to the acquisition of land, payment of compensation and recourse of legal remedies under the L.A. Act can be read into Chapter VII of the MRTP Act concerning Land Acquisition, and Section 11A of the L.A. Act will not apply thereto. It held that in the scheme of the MRTP Act, the provisions of Land Acquisition Act would apply only until the making of the award under Section 11 of the Act. The Court held that MRTP Act is a self contained code and Sections 126 to 129 thereof clearly enunciate the intention of the framers that substantive provisions of L.A. Act are not applicable to MRTP Act. In para 129 of the judgment the Constitution Bench has specifically held:-

"129. ..... Vesting, unlike Section 16 of the Land Acquisition Act which operates only after the award is made and compensation is given, whereas under the MRTP Act it may operate even at the initial stages before making of an award, for example, under Sections 126(1)(c) and 83."

96. The appellants herein have contended, and so had the respondents in I.D.A. Co's case (supra) contended that the original public purpose should continue till the award was made and possession taken. While dealing with this proposition, K. Ramaswamy, J. took an overview of the leading judgments in this behalf. The Learned Judge in arriving at his conclusions referred to the law laid
down by this Court in Ghulam Mustafa Vs. State of Maharashtra reported in 1976 (1) SCC 800, Mangal Oram Vs. State of Orissa reported in 1977 (2) SCC 46 , State of Maharashtra Vs. Mahadeo Deoman Rai reported in 1990 (3) SCC 579 , Collector of 24 Parganas Vs. Lalit Mohan Mullick reported in 1986 (2) SCC 138, and Ram Lal Sethi Vs. State of Haryana reported in 1990 Supp. SCC 11.

97. It is relevant to refer to these judgments. Ghulam Mustafa (supra) & Mangal Oram (Supra) were both cases concerning the acquisition under the Land Acquisition Act. In the case of Ghulam Mustafa, V.R. Krishna Iyer J., observed as follows:-

".....once the original acquisition is valid and title has vested in the municipality how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration."

In Mangal Oram (supra) a bench of three Judges specifically held that use of land after a valid acquisition for a different public purpose will not invalidate the acquisition. In Collector of 24 Parganas (supra) the notification under Section 4 of the West Bengal Land Development and Planning Act was issued for settlement and rehabilitation of displaced persons. Subsequently the land was utilised for establishment of a Hospital for crippled children, which was held to be not vitiated. In Union of India Vs. Jaswant Rai Kochhar reported in 1996 (3) SCC 491 land acquired for housing scheme was utilised for commercial purpose i.e. a District Centre. This Court held in that matter that it is

will settled law that land sought to be acquired for one public purpose may be used for another public purpose. In State of Maharashtra Vs. Mahadeo Deoman Rai reported in 1990 (3) SCC 579 yet another Bench of three Judges had held that requirement of public purpose may change from time to time but the change will not vitiate the acquisition proceeding. The opinion rendered by K. Ramaswamy J. is in conformity with this line of judgments. Following this law, K. Ramaswamy, J. held in para 22 as follows:-

"22. It is thus well-settled legal position that the land acquired for a public purpose may be used for another public purpose on account of change or surplus thereof. The acquisition validly made does not become invalid by change of the user or change of the user in the Scheme as per the approved plan..... It would not, therefore, be necessary that the original public purpose should continue to exist till the award was made and possession taken."

This being the position, there is no difficultly in stating that the two judgments of the Bombay High Court which are relied upon by the appellants (viz. in the cases of I.D.I. Co. (supra) and Santu Kisan Khandwe (supra) do not lay down the correct position of law. We are in respectful agreement with the opinion rendered by K.Ramaswamy J. in I.D.I. Co's Case. The acquisition of the land in the present case cannot said to be invalid on account of change of purpose during acquisition.

98. That apart, there is also the question as to whether the Civil Court had the jurisdiction to entertain a suit to challenge the acquisition after the award was rendered. This is because when it comes to acquisition, the L.A. Act provides for the entire mechanism as to how acquisition is to be effected, and

the remedies to the aggrieved parties. In State of Bihar Vs. Dhirendra Kumar & Ors. reported in 1995 (4) SCC 229 this Court in terms held that since the Act is a complete code, by necessary implication the power of the Civil Court to take cognizance of a case under Section 9 of the CPC stands excluded, and Civil Court had no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, which could be done only by the High Court in a proceeding under Article 226 of the Constitution. In view of this dictum the civil suit itself was not maintainable in the present case.

Conduct of the Landowner/Developer

99. The facts as narrated earlier can be placed into proper prospective if we note the conduct of the landowner and the developer appointed by him as it emerges from stage to stage which is as follows:-

(a) The landowner never raised any objection when the F.P. No. 110 was sought to be reserved for a public purpose, viz. either for a garden/playground or subsequently for a primary school.

(b) On his issuing the purchase notice to the Government to purchase the land and to commence the proceedings for acquisition, the State Government responded by confirming the purchase notice under Section 49 (4) of the Act by its letter dated 5.12.1979.

(c) When SLAO started the acquisitions proceedings, and when the notice under Section 9 of the L.A. Act was issued, the landowner replied the same but
did not challenge the acquisition as such. He merely demanded compensation at a rate of Rs. 480 per sq.m, and demanded that the material removed after demolition of the temporary structures (of the tenants) on the property be handed over to him.

(d) After the SLAO rejected the objections of the landowner as well as the tenants, and gave his award dated 12.5.1983, the landowner accepted the compensation on 15.3.1985, though under protest.

(e) After the Reference Court enhanced the solatium and the special component by its order dated 15.4.1988, the landowner accepted the enhanced amount, once again under protest. However, he did not file the statutory appeal available to him under Section 54 of the L.A. Act.

(f) When the notice to take possession was given, it is the tenants alone who filed a suit to challenge the acquisition.

(g) After the injunction in that suit No. 966 of 1983 was vacated, the tenants represented to the Minister of State for UDD, pointing out their difficulties. The landowner did not challenge the acquisition in any manner whatsoever.

(h) After the Development Plan under the MRTP Act was sanctioned, though the reservation was continued, the purpose of utilization of the land was changed in the 1987 D.P. plan from garden to primary school. Thereafter, when the SLAO gave one more notice to take possession on 1.3.1988, some of the tenants filed another Civil Suit bearing No. 397 of 1988 in the Court of Civil
Judge, Senior Division Pune. It was at that stage that the landowner who was a defendant in that suit, applied for transposing himself as a plaintiff which application was allowed on 2.4.1988. The Civil Court having held that the acquisition had lapsed due to the change of purpose of acquisition (from what it originally was in 1966), the PMC filed an Appeal which is pending thereafter.

(i) After Shri Manohar Joshi took over as the Chief Minister on 14.3.1995, the landowner entered into a Development agreement with M/s Vyas Constructions on 20.10.1995. Besides, he executed two powers of attorney, one in favour of its proprietor Shri Girish Vyas on 20.10.1995 for carrying out development on F.P. No. 110, and another in favour of Shri Shriram Karandikar on 26.10.1995 to take necessary steps concerning this development. Thereafter the follow-up steps were taken by Shri Karandikar, until the last stage when Shri Girish Vyas stepped in.

(j) After the City Engineer, Pune rejected the proposal of the Architect of the landowner for building permission by his reply dated 6.11.1995, the above referred Shri Karandikar straightaway wrote to the Minister of State for UDD on 20.11.1995, and sought a direction to the Municipal Commissioner to consider landowner's application for development of the property. This application was not addressed to the State Government or to the Secretary concerned, but straightaway to the Minister of State for UDD, and did not bear any inward stamp of the department. The noting of the Private Secretary of the Minister of State in UDD in the margin of the application showed that it was directly received at the Minister's level. Thereafter as directed by the Minister of State,
the Under Secretary of UDD immediately called a meeting of high ranking officers such as Secretary UDD, Director Town Planning, Commissioner of PMC, City Engineer of PMC, and Under Secretary UDD, which meeting would not have been possible unless one had a clout with the Ministry.

(k) The initial stand of the administration was clearly reflected in the notings, and in the record of the meeting held on 3.2.1996. The preliminary note dated 2.2.1996 from the department clearly stated that the land had been acquired after taking the necessary action on the purchase notice, and the compensation had been accepted. The question of returning of the plot to the landowner therefore did not arise.

(l) During the meeting held on 3.2.1996 the City Engineer of PMC also pointed out that landowner had never objected to the reservation on the plot, or the change in the purpose of its utilization from 1982 to 1987, i.e. during the entire process of revising the development plan. If the proceeding before the Minister of State was in the nature of an appeal under Section 47 of the MRTP Act (against the rejection of the proposal of development) under Section 45, the same could not be entertained, and the appeal had to be rejected. If it was an application for de-reservation then it had to be considered under Section 37 of the MRTP Act and not otherwise.

(m) The landowner initially took the stand that it was not an appeal, but subsequently wrote a letter on 23.3.1996 through Shri Karandikar that it was an
appeal under Section 47 of the MRTP Act. The landowner and the developer have been changing their stand from time to time.

The conduct of the Minister of State for UDD, the then Chief Minister, and the Municipal Commissioner

100. We may now refer to the conduct of the then Minister of State for UDD, the then Chief Minister and the then Municipal Commissioner.

(a) As stated above the application of the landowner was received directly at the level of the Minister of State and immediately a meeting of high ranking officers was called, which is normally not done.

(b) In spite of a clear initial stand taken by the City Engineer PMC, as well as by the senior officers of UDD such as its Secretary, in view of the landowner submitting that on the adjoining plots schools had been developed, the Minister of State for UDD asked the Municipal Commissioner to survey the property and make a report, whether the PMC really needed the concerned property. The note of the meeting dated 3.2.1996 shows that initially the Minister of State for UDD was also of the view that if necessary a direction may be issued under Section 37 of the Act, and only a part of F.P. 110 could be released if PMC did not have any objection to reduce the area under reservation.

(c) In view of the direction of the Minister of State, the Municipal Commissioner who is the Chief Executive of PMC and an I.A.S. officer of a high rank was asked to make a report after personally making a site inspection. A
direction to a high ranking officer to make a site inspection is not expected in such a case, and is quite unusual and disturbing to say the least.

(d) In his letter dated 17.4.1996 the Municipal Commissioner reiterated the earlier stated stand of PMC to begin with, and then gave the report about the schools in the vicinity. However, he volunteered to add thereafter that private institutions may not come to this plot to set up a primary school, and PMC may as well spend its funds elsewhere. This was not correct since the applications of two reputed educational institutions for this very plot were pending with the PMC, and this fact was not stated by the Commissioner in his report.

(e) In view of the direction of the State Government, the Commissioner held discussions with Shri Karandikar, who offered to give an alternate unencumbered plot of land of about 5000 to 10,000 sq. feet free of cost. Thereafter the Commissioner recorded in his letter the two proposals given by Shri Karandikar, and observed that if the school was to be shifted from F.P. No. 110, an action under Section 37 of the MRTP Act as well as the permission from PMC will be required.

(f) On 24.4.1996 there is a noting (which is subsequent to the letter of the Municipal Commissioner dated 17.4.1996) that the file was called by the then Chief Minister for his perusal. Thus the Chief Minister had kept himself fully abreast with the developments in this matter.

(g) The UDD department did not accept the proposal of shifting the school from F.P. No. 110 to a place far away, as seen from the note prepared by the
department (signed by the Deputy Secretary on 4.6.1996) recording that if the school was to be shifted from F.P. No. 110, it had to come up in the vicinity of approximately 200 metres

as per rule 13.5 of Pune D.C. Rules. The note suggested acceptance of the proposal of reduction of 50% of the area under reservation by resorting to the procedure under Section 37 of MRTP Act.

(h) The Minister of State did not approve this note dated 4.6.1996, and in view of Shri Karandikar insisting on shifting the school from F.P. No. 110, the subsequent note dated 13.6.1996 recorded that if the condition of 200 metres is to be relaxed, orders will have to be obtained from the Chief Minister (which power is disputed by the Principal Secretary, UDD in his subsequent note dated 24.7.1998).

(i) Thereafter, the developer offered another parcel of land at Lohegaon (which is a far off place), on which proposal the department prepared a note to give four directions to PMC which have been referred earlier. Under that proposal, Lohegaon land was to be exchanged for the concerned F.P. No. 110 which was to be released by invoking DC Rule 13.5, and the landowner was to return to PMC the amount of compensation received. This note was approved by the Chief Minister on 21.8.1996 and accordingly a direction was given to the Municipal Commissioner on 3.9.1996 to accept the proposal of the developer and issue the development permission for F.P. No. 110.

(j) The Senior Law Officer of the PMC recorded an objection that such permission will require the approval of the general body of the Municipal
Corporation, but the Municipal Commissioner overruled him on 21.9.1996, in view of the direction of the government to act under DC Rule 13.5 as stated above, and ignored the mandatory provision of Section 37 of MRTP Act.

(k) Thereafter the commencement certificates have been issued on 28.11.1996, and an occupation certificate for the tenants' building was also given on 20.12.1997.

(l) At this stage, the land developer Shri Girish Vyas had written on 15.7.1998 to PMC on learning that according to PMC the Lohegaon land was not suitable for a school. He offered to handover another parcel of land in a residential zone at Mundhwa (which is also a far off place), and to deposit whatever amount that was required for the construction of a school of 500 sq. feet area at Mundhwa or elsewhere, but the Completion Certificate for the building for the other occupants of F.P. No. 110 (named as Sun-Dew Apartment) be issued.

(m) There is a clear office note dated 22.7.1998 on record which shows that there was already a criticism of this matter in the newspapers and in the General Body of PMC, that one educational amenity in that area was being destroyed. The note recorded that Sr. Chief Secretary of Chief Minister had issued instructions, to put up a self-explanatory note for the perusal of the Chief Minister, to enable him to answer the probable questions in the assembly. This note dated 22.7.1998 was specifically marked for the Chief Minister.

(n) The Principal Secretary UDD had opined on 24.7.1998 that resort to DC Rule 13.5 will not be legal, and an action be taken under Section 37 of MRTP Act. Yet, in view of the

favourable indication of the Municipal Commissioner in his letter dated 17.4.1996, a note was prepared on 27.7.1998 to continue to maintain the decision under DC Rule 13.5.

(o) When Shri Girish Vyas had entered into the picture through his above referred letter, the Additional Chief Secretary made a note that since the developer is related to the Chief Minister, the Minister of State may take proper decision as per the rules. It is only because of this note that the Minister of State had signed the papers approving the proposal of the department, and directing that the necessary orders be issued to the PMC. Accordingly, the Deputy Secretary of UDD issued the consequent letter dated 29.7.1998 to the Municipal Commissioner, permitting him to accept the land at Mundhwa or elsewhere, as well as the amount to construct a school building of 500 sq. feet, and to issue the occupancy certificate for the Sundew Apartments.

(p) Thus it has got to be inferred that not only the then Chief Minister was fully aware about this matter right from April 1996, until the last direction of UDD dated 29.7.1998, but was associated with the decision making process and the directions issued all throughout.

101. The events in this matter disclose that although the officers of UDD and the PMC initially took the clear stand opposing the proposal on behalf of the landowner to put up a residential building in place of a Primary School, the
Minister of State for Urban Development asked the Municipal Commissioner to personally carry out a survey of the property, on the ground that two schools had come up in the near vicinity, ignoring the fact that they had so come up as per the provision in the D.P. Plan itself. Thereafter when it was pointed out that the permission of the general body of the Municipal Corporation will be required for the modification, that submission was by-passed. The provision of DC Rule 13.5 requiring alternate land to be provided for the same purpose within 200 meters was also given a go-bye, and this rule was utilized to accept the proposal to shift the school to a very far off place. The mandatory provision for modification under Section 37 of the MRTP Act was totally ignored. Ultimately only an amount for constructing a school building elsewhere and the land therefor was offered to the Municipal Corporation, for getting a reserved plot of land in a prime area of the city released from a public amenity. Last but not the least, the Municipal Corporation was instructed to withdraw the First Appeal which it had filed to challenge the decision of the District Court in favour of the landowner in the matter of acquisition.

102. It is material to note that after the Municipal Commissioner sent his report dated 17.4.1996, the Private Secretary to the then Chief Minister Shri Manohar Joshi had called for the file for his perusal. After all necessary directions were decided, the Chief Minister placed on record his approval on 21.8.1996 with an apparently innocent remark `All actions be taken in accordance with law', though he did not forget to record "No objection". Thus, the decision of the Government dated 3.9.1996 to shift the reservation of a
primary school from F.P. 110 under D.C. Rule 13.5 was under his order dated 21.8.1996. Subsequently, when his son-in-law Shri Girish Vyas wrote the letter dated 15.7.1998 that money be received for constructing a school somewhere else, it became obvious on the record that the son-in-law of the then Chief Minister was behind the project. At that stage

also the Chief Minister had to be pointed out by the Addl. Chief Secretary that the developer is related to him, and therefore, the necessary decision may not be taken by him, but by the Minister of State. Therefore, the file went to the Minister of State for UDD on whose direction the last necessary letter has been sent to PMC by the Deputy Secretary UDD on 29.7.1998. However this subsequent decision is in continuation to the initial decision of the Chief Minister dated 21.8.1996, and therefore the responsibility for the clearance of this disputed construction squarely lies on his shoulders.

A brief summary

103. This is not a case where the landowner or his developer have approached the appropriate authority on the basis of their allegedly subsisting rights under the erstwhile T.P. scheme contending that setting up of a primary school on that plot contrary thereto would be affecting their right to develop the property and is therefore illegal. It is also not a case where they have approached the appropriate authority pointing out that there are sufficient number of schools in the near vicinity with supporting information and, therefore, sought deletion of reservation on the concerned plot. This is a case where the landowner never raised either of the two pleas to begin with. He was
conscious of the fact that the land was reserved for a public garden in the 1966 D.P. Plan and, therefore, gave a purchase notice in May, 1979 which was confirmed by the State Government in December, 1979. When the D.P. Plan was revised during 1982-1987, he never raised any of the above two submissions. He did not even challenge the subsequent reservation for a primary school finalized in 1987. Only in 1995 when Shri Manohar Joshi became the Chief Minister, he appointed his son-in-law as a developer and another power of attorney Shri Karandikar to approach the Ministers directly. He pointed out that two schools had come up on the adjoining plots (which was in fact as per the D.P. Plan itself), and the Minister used this information to get a report from the Municipal Commissioner who suppressed the fact that applications for this very plot from two educational institutions were pending with PMC. Then also the order of deletion was not passed either under Section 37 (leave aside Section 22A), or Section 50 of the Act which was invoked for the first time in this Court (and which otherwise also could not be applied). The order of deletion was passed under D.C. Rule 13.5 which had no application.

104. The effect of what has been done is this: that a landowner accepts compensation for his land when acquisition proceedings are initiated at his instance. The landowner does not challenge either the acquisition proceedings or the amount of compensation, but in fact collects the amount. When the tenants challenge the acquisition, the land owner joins the same subsequently. When the award is set aside by the civil court, and the Municipal Corporation files the appeal, the landowner approaches a close relative of the Chief Minister,
who happens to be a property developer. The development permission is granted by-passing the objections of the concerned department of the Government and the Municipal Corporation, and flouting all relevant provisions of law. The Municipal Corporation is asked to withdraw the appeal against the judgment holding that acquisition has lapsed. When the actions are challenged in a public interest litigation, the landowner contends that he had a subsisting right under the erstwhile T.P. Scheme, in spite of a subsequent reservation for a

public amenity in the D.P. Plan holding the field, and that the construction is permissible though its legality cannot be traced to any provision of law.

105. Present case is not one where permission was sought for the construction under erstwhile T.P. scheme, or under Section 50 of the MRTP Act. This is a case where the personal relationship of the developer with the Chief Minister was apparently used to obtain permission for construction without following any due process of law. This is a case of rules and procedures being circumvented to benefit a close relative of the Chief Minister. It is a clear case of mala fide exercise of the powers and, therefore, the High Court was perfectly justified in canceling the development permission which was granted by the State Government. The development permission could not be defended either under Rule 6.6.2.2 or under Section 50. The MRTP Act requires a valid development permission under chapter IV of the act, and in the instant case there is none. Consequently, the construction put up on the basis of such permission had to be held to be illegal. In the circumstances, we uphold the judgment of the Division Bench as fully justified in law and in the facts of the case.

Impugned Order passed by the Division Bench

106. (i) As seen above, the Division Bench in the impugned judgment came to the conclusion that the disputed construction by the developer was totally illegal, and also concluded that there was nothing wrong with the acquisition of F.P. No.110. Having held so, it passed the impugned order which can be split into two parts. The first part of the order is arising out of the determination concerning the legality of the construction, and it can be seen in sub-paragraphs

(a) to (d) of para 227 of the judgment. The order pertaining to costs is connected with this part and it is in sub-paragraph (f). The second part of the order is regarding appropriate criminal investigation which is in sub-paragraph

(e).

(ii) In the first part of its order the Division Bench directed:-

(a) the cancellation of the commencement certificate dated 20.8.1996, 3.5.1997 and 3.7.1998, and occupation certificate dated 20.12.1997,
(b) the PMC and its Commissioner to call upon the landowner and the developer to restore F.P. No.110 to the position prior to the date of the earliest of the commencement certificates, failing which these authorities will take action to demolish the disputed construction, and collect the cost of such action from the landowner and the developer,
(c) the PMC to move an application for restoration of First Appeal (stamp no.18615 of 1994), and
(d) rejected the prayer to revive first appeal without the demolition of the structure.
(f) the Division Bench directed payment of cost of Rs. 10,000/- each by the State of Maharashtra, the PMC, the then Chief Minister, the then Minister of State, the developer and the Municipal Commissioner to the petitioners.

107. In view of the gross illegality in the order of the State Government and PMC in granting the development permission, the direction (a) for cancellation of Commencement Certificates and Occupation Certificate had to be issued and the same can not be faulted. As far as the direction (c) is concerned, it was noted by the High Court that the PMC had been forced by the State Government to apply for withdrawal of its First Appeal so that the judgment of the Civil Court remains undisturbed. Since the High Court came to the conclusion that there were nothing illegal about the acquisition, the First Appeal had to be restored. The direction is therefore fully justified. We may note that PMC has already filed an application for restoration of the First Appeal.

Direction to demolish the disputed building, and rejection of the objection based on alleged delay and laches

108. The direction (b) in the impugned order was issued basically on two grounds. Firstly, the development permission had no legal validity
whatsoever, and secondly it was clearly a case of showing favouritism by going out of the way and circumventing the law. Besides, since the challenge to acquisition was being rejected, it would not have been proper to postpone the demolition of the disputed construction on the ground of pendency of the First Appeal, since the construction was absolutely illegal. Hence, the High Court issued direction (d) as above.

109. The demolition was objected to by the appellants amongst others on the ground that there was delay and laches in moving the petitions to the High Court. It was submitted that if the petitioners were vigilant, they could have seen the building coming up from November 1996 onwards, but the petitions have been filed only in August 1998. According to them by the time the petitions were filed, the tenants' wing was complete, and even the other wing of Sundew Apartments was nearing completion The Division Bench has rejected this submission in paragraph 220 of its judgment by observing that merely because a construction is coming up, a citizen cannot assume that it is illegal or that the developer had obtained the construction permission in a manner contrary to law. Besides, when the petitioner in Writ Petition No. 4434 of 1998 (who is a Corporator) sought the information about the construction, he was informed by PMC that the same could not be made available under the relevant rules, though no such rules were shown to the Division Bench. The High Court has on the other hand noted that as a matter of fact even the construction of the building meant for the tenants was actually said to have commenced in March 1997 only. Hence, in the facts of the present case it could not be said that the writ petitions
suffered on account of delay or laches, and therefore the High Court was right in rejecting that contention.

110. With respect to the direction for demolition, we may note that similar direction was given way back in the case of Pratibha Cooperative Housing Society Vs. State of Maharashtra reported in 1991 (3) SCC 341. The appellant society situated in a prime area in Mumbai had added eight upper floors in excess of the F.S.I. permissible, and the Municipal Corporation directed removal of those floors. The petitioner society challenged the order of the Municipal Corporation. A Division Bench of the Bombay High Court dismissed the Writ

Petition, but permitted the society to give proposals to reduce the area of construction upto the permissible limit. During the pendency of the appeal from the judgment of the High Court, the proposal of the society was examined by the Municipal Corporation and was found unacceptable. While dismissing the appeal, this Court noted in the aforesaid judgment that `the tendency of raising unlawful construction by the builders in violation of the rules and regulations of the Corporation was rampant' in the city of Mumbai. Thereafter it observed in para 6 of the judgment:-

"We are also of the view that the tendency of raising unlawful construction and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands.
Having noted so it upheld the demolition of the upper eight floors and further observed in the last para of the judgment ` "Before parting with the case we would like to observe that this case should be a pointer to all the builders that making
of unauthorised constructions never pays and is against the interest of the society."

111. The observations of the Court however, have had no effect. In M.I Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors. reported in 1999 (6) SCC 464, the issue was with respect to the retention of a public amenity viz. a park in a congested area of city of Lucknow. The park was of historical importance and also an environmental necessity. The Lucknow Mahapalika had permitted the appellant builder to put up a shopping complex and a parking facility thereon. The appellant was permitted to do so without calling any bids and for hardly any monetary gain to the Municipal Corporation. This was also a case where the construction was on the basis of an agreement with the builder which agreement amounted to a fraud on the powers of the Mahapalika, and a clear case of favouritism, as in the present case. This Court dismissed the appeal and directed the demolition of the disputed construction and observed as follows in para 73 of its judgment:-

"73. ..... This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law....."
(emphasis supplied)
112. In the present case, one would have thought of retaining the building and utilising it for a school. The PMC had shown its willingness to consider such a proposal. But the developer wanted to retain half of the flats of this ten storey building which would have been contrary to the provision in the Development Plan, and hence the proposal fell through. That apart, such a compounding would have been contrary to the above dicta in M.I Builders case (supra). There is no redeeming feature whatsoever in the present case. It is clearly a case of misuse of one's position for the benefit of a relative leading to an action which is nothing short of fraud on one's power and also on the statute.

There is no reason for us to interfere in the order passed by the High Court directing the demolition of the disputed buildings.

113. The building constructed for the tenants is meant for accommodating them, and it has been stated on behalf of the developer that he is not interested in dis-housing them. The learned senior counsel for PMC Shri R.P. Bhat has also stated on instructions, that PMC has no objection to the retention of the building constructed for the erstwhile occupants of the plot, however these occupants will now have to continue in that building as tenants of PMC. As far as these occupants are concerned, their status at the highest was that of tenants of the landowner. They claim to have been residing on this plot for over fifty years, and appear to be belonging to economically weaker section of the society. Their only request during the acquisition proceedings was that they should be accommodated on this very plot of land. It is another matter that in the High Court and in this Court they supported the landowner and the developer, in view of the promise given to them that in the event the landowner and the developer succeed, the tenants will get ownership rights. Now that the plea of the landowner and the developer is rejected, the best that can happen to these occupants is to get the tenancy rights on this very plot of land. That apart, in view of their long stay on this plot, they had to be rehabilitated. The offer of PMC to accommodate them on the very plot of land is more than fair, and deserves acceptance. Since, the tenants were already in possession of a part of the plot for residential purpose, they are being continued to remain on that plot for that very purpose. In that event, the tenants may not be entitled to receive any monetary compensation since this offer is as per their original demand and it very much compensates them. However, since the amount of compensation awarded to them was too meagre, if they have collected it, they need not return the same to PMC. This being the position, in our view, the main operative order passed by the High Court needs to be modified appropriately. In the circumstances, we modify and restrict the operative order of demolition only to the extent it directs the removal / demolition of the building meant for the persons other than these tenants (i.e. the ten storey building named as Sundew Apartments).

114. We may as well mention at this stage that as far as this building viz. Sundew Apartments is concerned, no one, except a bank had come forward to claim any third party rights, or prejudice on account of the order of demolition passed by the High Court in spite of the well publicised litigation of this matter. The concerned bank had advanced a loan to the developer against the security of two flats in that building, and it intervened only at the last stage of passing of the order. The Division Bench has rightly rejected the claim of the bank in paragraphs 224 to 226 of its judgment by observing that the court could not accept the contention of the bank that it was not aware of the illegality on the part of the developer. The court did not accept the bank's plea of innocently advancing the money, since the mortgage was executed on 13.8.1998, whereas the allegations concerning the illegality of this transaction had appeared in the newspapers right from March 1998. The bank should have considered the matter in depth before advancing the loan. In any case the demolition will only extinguish its security though its claim against the developer may remain.

Adverse remarks, and the direction for criminal investigation

115. The second part of the operative order in the impugned judgment was based on the adverse inferences drawn by the Division Bench against the then Chief Minister, the Minister of State and the Municipal Commissioner. The petitioners had infact sought a prosecution against all of them. However, after considering the facts and circumstances of the case the court was not inclined to grant that relief, without appropriate prior investigation. Therefore, with respect to this prayer the Court passed an order which is contained in paragraph 227 (e) in two parts as follows:

(i) to direct the State of Maharashtra to make appropriate investigation against the then Chief Minister, the Minister of State and the Municipal Commissioner by an impartial agency, and

(ii) if satisfied that any criminal offences have been committed by the aforesaid respondents in the discharge of their duties, to take such action as is warranted in law.

These three appellants have therefore made two fold prayers viz. expunging the adverse observations, and setting aside the direction for appropriate investigation to be followed by such action as is warranted in law.

Adverse remarks by the Division Bench against the Municipal Commissioner, Minister of State and the then Chief Minister:- Adverse remarks against the Municipal Commissioner

116. Apart from other allegations, it has been specifically alleged in Writ Petition 4434 of 1998 that the then Municipal Commissioner "wilted under the pressure of the Chief Minister.....", "acted in flagrant disregard to the provisions of the law", and "with a view to favour his son-in-law Shri Girish Vyas acted illegally and mala fide". As we have seen from the notings on the file, initially he did take a stand which could be said to be as per the record, and in consonance with law. In his affidavit before the High Court, he took the stand that he acted under the directions of the Minister, and hence, he should not be blamed for the ultimate decision. Shri Narshima, learned senior counsel appearing for him drew our attention to the Maharashtra Government Rules of Business framed under Article 166 of the Constitution in this behalf. He also tried to defend the Commissioner's action by invoking Section 154 of the MRTP Act which lays down amongst others that the Planning Authority has to carry out the directions and instructions of the State Government for the efficient administration of the act. The Division Bench declined to accept this explanation. We have already dealt with this submission and recorded our reasons as to why we also cannot accept this reliance on Section 154.

117. (i) It was submitted on behalf of the Commissioner that he brought the correct legal position to the notice of the Minister of State to begin with, but ultimately had to give up due to the instructions from the Minister of State, meaning thereby that he cannot be blamed since he was acting under the directions of his superiors. Reliance was placed in this behalf on the proposition in paragraph 16 of Tarlochan Das Vs. State of Punjab & Ors reported in 2001 (6) SCC 260 to the following effect:-

"No government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior."
(ii) This defence cannot help him much if we see his actions atleast on two occasions. Firstly, when he made his report dated 17.4.1996 to the Minister of State, he overlooked the fact that the reservation on this plot was for a primary school, and not merely for a municipal primary school. As has been noted by the Division Bench, two private schools had already come up on the adjoining plots as per the D.P. provision itself. Besides, two renowned educational institutions had applied way back for this plot of land for running of schools thereon. The Commissioner did not place this very vital information before the Minister of State in his report. On the other hand he stated that Prabhat Road being a higher middle class area, a municipal school may not get adequate students. The Division Bench has therefore, observed in paragraph 143 of its judgment, that
his report was "far from truth". Secondly, he bypassed the general body of the Municipal Corporation in the matter of deleting the reservation on F.P. No. 110 inspite of being aware of the correct legal position, and his attention having been specifically drawn thereto by the senior law officer of PMC.

118. Both these acts on the part of the Municipal Commissioner clearly amounted to failure on his part to discharge his duty correctly for which he cannot blame anybody else. This is the least that is got to be stated about his conduct by this Court. The Division Bench has commented that he acted "as a loyal soldier perhaps more loyal to the king than king himself", which was "with a view to please his bosses". It is true that in the first meeting called by the Minister of State for UDD, it was pointed out on behalf of PMC that the land had been acquired. The Commissioner had also pointed out that if the reservation was to be reduced or to be deleted, the permission of the Municipal Corporation will have to be obtained. His report of 17.4.1996, cannot however be said to be fully satisfactory and he failed in his duty when he permitted the by-passing of the Municipal Corporation in the matter of deletion of reservation on F.P. No.110, which he claims to have done in view of the direction from the Chief Minister under the D.C. Rules. We can say that a high ranking IAS Officer was expected to show his mettle, and he failed to come up to the expectations, but noticing that he had no personal interest in the matter, and he was acting under the directions of his superior, the Division Bench could have avoided making the particular remarks against him.

The conduct of the Minister of State

119. In paragraph 3 of Writ Petition 4434 of 1998, there is a specific allegation against the then Minister of State as well as the then Chief Minister of "the blatant misuse of executive powers", "with a sole objective of ensuring a substantial monetary benefit for M/s Vyas Constructions. The defence of the Minister of State was that he tried to find out a workable solution, and acted on the advice of the officers of his department. As we have seen from the notings and as observed by the Division Bench that initially the Minister of State was also of the view that Section 37 of the MRTP Act should be followed. In this connection, it is relevant to note that after receiving the letter dated 17.4.1996 from the Municipal

Commissioner, the UDD department prepared its note in which it specifically recommended that only half the area of the concerned plot be released to the landowner, and that he should accommodate the tenants in his development of the property on that portion of land, and an action under Section 37 be taken for that purpose. Thus, the departmental note was in fact as per the initial stand taken by the Minister of State, yet strangely enough, he declined to approve the note. He contended in his affidavit before the High Court that he was persuaded to accept the suggestion to act under the D.C. Rule 13.5 under which a similar action had been taken in Kothrud, Pune. No particulars of that Kothrud precedent were however, placed before the Court.

120. The Minister of State also tried to contend that until the last he had no knowledge of Shri Murudkar's connection with the son-in-law of Chief Minister. In view of the facts which have emerged on the record, it was just not possible to accept this contention. The Division Bench has given its reasons for
the same and has commented on his conduct as follows at the end of paragraph 140:-

".....It is difficult to account for the anxiety of the Minister of State, UDD, to find out some solution to either reduce the area of reservation or shift it to a new place. Only tenable explanation is that it was a design to ensure that the representation made by Murudkar on November 20, 1995 was allowed. It is not being suggested by any one that respondent No.6 was personally interested in the proposal or that he had any particular interest in seeing that this proposal was sanctioned. We, therefore, have to fall back on the inference that respondent No.6 was under pressure from respondent No.5."
121. In this behalf it is relevant to note the conduct of the Minister of State from stage to stage.

(i) Firstly, he entertained the application of Shri Karandikar directly at his own level, and thereafter immediately called a meeting of high ranking officers to take a decision thereon. Would such other applications receive such a direct and expeditious attention?

(ii) Secondly, he directed the Municipal Commissioner, a very high ranking officer, to carry out a personal inspection and to make a report. Would he issue such directions in the case of other similar applications?

(iii) Thirdly, after the Commissioner's report, the UDD department supported the initial view of the Minister of State that only a part of F.P.No. 110 be released, and that too under Section 37. Why did he not approve that note?

(iv) He acted as if he was waiting for the Commissioner to state that two schools had come up in the adjoining plots, so that he can release F.P. No. 110 from the reservation for a Primary school. Did he not realise that those schools had come up as per the Development plan itself?

(v) He relied upon an alleged precedent of release of the land at Kothrud under D.C. Rule 13.5 without having the particulars thereof on record.

(vi) He tried to put the blame on the Municipal Commissioner and the Municipal Officers for the decision arrived at. It is true that the Commissioner failed in his duties to place full facts on record. At the same time the fact that the Minister of State ignored the initial notes of his own department and of PMC, which were in accordance with law, and went on acting and instructing as per the suggestions of Shri Karandikar, which led to the convenient reports cannot be lost sight of. He acted clearly against the provisions of law though he was fully informed about the same. Would he have acted in such a manner on any other similar application?

(vii) Would he not be aware that the file was called by the Chief Minister after receiving the report from the Municipal Commissioner, and for what purpose? The natural inference which flows from all this conduct is that right from the beginning, the Minister of State was aware about Shri Murudkar's connection with the son-in-law of Chief Minister, and therefore he acted for the benefit of the developer, obviously at the instance of the then Chief Minister as inferred by the Division Bench. We have no reason to disagree.

Observations against the Chief Minister

122. (i) The two Writ Petitions contain serious allegations against the then Chief Minister at various places. Thus in paragraph 2 of the Writ Petition 4433 of 1998, it is alleged that the then Chief Minister misused his executive powers and
authority for the purpose of securing benefits for his near relatives, and in paragraph 3 it is specifically stated that this was for ensuring a substantial monetary benefit for M/s Vyas Constructions. A specific averment in paragraph 2 in this behalf is as follows:-

"It is the claim of the petitioner that on account of this close relationship, the executive powers vested in the State of Maharashtra have either been misused and/or actions which cannot be taken in exercise of the executive powers under the Act are presumably take in purported exercise of such executive powers with a full knowledge that the actions are illegal and ultra vires the provisions of the Act."
(ii) As we have noted earlier, on 24.4.1996 the initial report made by the Municipal Commissioner dated 17.4.1996 was called for the perusal of the then Chief Minister. The basic order dated 21.8.1996 granting no objection, thereby approval to the release of the reservation on F.P. No. 110 was that of the then Chief Minister. The disputed permission dated 3.9.1996 was issued in pursuance thereto. There is a note dated 22.7.1998 on record which was meant for the perusal of the then Chief Minister to enable him to answer the probable questions concerning this matter in the assembly. The last order proposed at the Government level was also brought to his notice, and he was going to sign it, but for the advice of the Additional Chief Secretary that since his son-in-law had written a letter by that time to the Commissioner, the papers be sent for the signature of the Minister of State. Thus it is quite clear that he was aware about the developments in the matter, and the orders therein were issued with his approval and knowledge. He cannot therefore, escape the responsibility for all the illegal actions in this matter.

(iii) The learned senior counsel for the then Chief Minister Shri Shyam Diwan objected to the language used in paragraphs 111 and 131 of the judgment which accused him of "pettifogging or obfuscation of facts". It is stated in the judgment that the then Chief Minister "furtively" sought a copy of the report dated 17.4.1996 on the basis of the file note dated 24.4.1996 prepared by his private secretary to the Minister of State for Urban Development calling for the file for the then Chief Minister's perusal. It was submitted that there was no need for the then Chief Minister to act secretively. In our view, there is no use in taking umbrage behind the language used by the Court. The question is whether the inference that the Chief Minister had called for the file for his perusal can be disputed. A private secretary will not make such a note unless the file is required by the Chief Minister. In our view the inference was fully justified. It was also sought to be contended that the petitions were politically motivated and one of the petitioners did not have clean antecedents. We are concerned in the present case with respect to serious allegations against the then Chief Minister misusing his office for the benefit of his son-in-law and in that process destroying a public amenity in the nature of a primary school. Such submissions cannot take away the seriousness of the charge, and the Chief Minister must squarely explain and justify his actions.

123. (i) With respect to the Chief Minister calling the file for his perusal, the Division Bench has posed a question as to whether it was an idle curiosity. "Why were the Chief Minister and the Minister of State interested in one particular case? What momentous public policy decision was sought to be taken in this
matter?" Shri Murudkar was not someone for whom the administration could have moved so fast. It was very clear that the Chief Minister was very much interested in knowing the progress of the case all throughout. The obvious inference was that the then Chief Minister and the Minister of State took keen interest in the matter only because Shri Murudkar had appointed the son-in-law of the Chief Minister as his developer.

(ii) The Division Bench has dealt with the affidavit of the then Chief Minister, some of the relevant events in this behalf and then held that the conduct of the then Chief Minister definitely leads to the conclusion that he was very much interested in knowing the progress of the case pertaining to F.P. No.110, and he wanted to apprise himself of report dated 17.4.1996 made by the Commissioner of PMC. Therefore, the Division Bench held at the end of para 131 as follows:-

"We are afraid, unless the Court is naove and its credulousness is stretched to the extreme, the inference has to be that, not only was there an attempt on the part of respondent No.5 to `concern' himself with the file even prior to August 1996, but also that respondent No.5 had taken an active interest in the case."
124. (i) Then we come to the merits of the disputed permission dated 3.9.1996 which was in pursuance to the order of the Chief Minister dated 21.8.1996 viz. "All actions be taken in accordance with law. No objection". It was sought to be contended on his behalf that he had clearly stated that all actions be taken in accordance with law. But we cannot ignore that he had simultaneously stated in his remarks of approval, "no objection" to the note containing the proposal which had been put up before him, and which was not in

accordance with law. The note clearly stated that the reservation on the land at Lohegaon be shifted from agricultural zone to residential zone by following the procedure under Section 37 of the MRTP Act. But as far as shifting of reservation from F.P. No. 110 was concerned, a different yardstick, namely that of D.C. Rule 13.5 was applied for which there was no explanation whatsoever. Thus he gave no objection to an illegal proposal as proposed in the note, and directed that all actions be taken in accordance with law which will only mean that the proposal be somehow fitted in four corners of law.

(ii) The letter dated 17.4.1996 from the Municipal Commissioner had already been forwarded for his perusal. This report had clearly stated to begin with that the departmental permission had been rejected because the property was under reservation. The report of the Municipal Commissioner also stated that in case the change was proposed in the use of the property, permission had to be taken from the Pune Municipal Corporation. Could not the Chief Minister understand that D.C. Rule 13.5 could not be applied to F.P. No.110 in the manner in which it was suggested? Could he not understand that the permission of Municipal Corporation was required as per the law? In the teeth of these legal provisions he gave no objection to the proposal to shift the reservation of F.P. No. 110 under D.C. Rule 13.5, and to shift the reservation of the plot at Lohegaon under D.C. Rule 37. In between there is a noting of 22.7.1998 which recorded that the Chief Minister had to be briefed about this matter appropriately for him to answer the questions in the legislative assembly. The note has also recorded that there was a criticism about this matter in the local newspaper.
Subsequently, thereafter when the land at Mundhwa or elsewhere was sought to be exchanged in place of Lohegaon, the letter of Shri Girish Vyas was already on the file of the PMC and the Government. Still he was going to sign note of approval but for the advice of the Additional Chief Secretary. This shows the keen interest of the then Chief Minister in the matter and it can certainly be inferred that he was so acting for the benefit of his son-in-law.

125. According to Shri Naphade, the learned counsel appearing for the developer, the inference of mala fides is misconceived, as it is contrary to the material on record. He submitted that the Municipal Commissioner's report dated 17.4.1996 was not found to be untrue or false by any authority. He emphasized that as per the report (i) There are about 36 structures on the land which are occupied by tenants; (ii) Half the area of the plot is encumbered; (iii) There are two educational institutions in the vicinity of the plot and 11 educational institutions in the area; (iv) The acquisition of the plot has been declared illegal by the Court; (v) The locality in question is inhabited by higher middle class people and there may not be an appropriate response to a Primary School; (vi) Considering the funds available the Pune Municipal Corporation is inclined to develop school on some other plot reserved for school. He defended the decision of the then State Government and the actions taken in pursuance thereof by submitting that (i) There is no detriment to Public Interest, as no Municipal Primary School was required in the locality. (ii) The Appellant made alternative plot available at his own cost in the locality where a Municipal Primary School was required. (iii) The developer paid a sum of Rs. 25 lakhs to the PMC
for construction of Municipal Primary School wherever it wanted to put it up. (iv) Tenants occupying dilapidated structures were rehabilitated on the very plot and were to get the ownership right free of cost.

126. These arguments are based on an erroneous premise that the plot was reserved for a Municipal Primary school. It was reserved for a Primary school and not merely a Municipal Primary school. It is on this false premise that the Commissioner had opined that this being a higher middle class area, a Municipal Primary school may not get an appropriate response. The two adjoining plots were also reserved for Primary schools as per the D.P. plan, and thereon two private schools had already come up. That cannot be a ground to say that this plot be released from reservation. The Municipal Commissioner had failed to place on record a very material information that one renowned educational institution had sought this very plot for educational activities way back in 1986. The Municipal Commissioner had not specified as to what he meant by the particular area when he stated that eleven educational institutions had come up therein. The plot had been reserved for a Primary school after an elaborate planning process wherein the requirements of the particular area are appropriately considered. This is not the first case where there would be three adjoining plots reserved for Primary schools. There are many such schools and educational complexes which always require adjoining plots and are developed accordingly. The submission that the acquisition had been declared illegal by the Court was also a very convenient submission ignoring that the Municipal Appeal therefrom was pending in the High Court. There was no reason for the Corporation to be deterred by the encumbrances on the plot, since the compensation therefor had already been arrived at as per the law, and it did not cast much burden on the Corporation. The report of the Municipal Commissioner was clearly made "to please the bosses" as observed by the Division Bench, and could not be accepted as the basis for a valid legal action. The acceptance of the offer of the developer would mean that whenever anybody wants to delete a reservation of a public amenity in a prime area, he can throw the money to the Municipal Corporation and say that let the amenity come up elsewhere, but the reservation be deleted. Such an approach will mean destruction of the entire planning process and deserves to be rejected. None of these arguments can whitewash the material on the record which clearly leads to the inference, that the impugned actions were motivated to benefit the son-in-law of then Chief Minister.

127. (i) The learned counsel for the then Chief Minister objected to the inference drawn by the Division Bench that the then Chief Minister had pressurized the officers into taking an illegal action. It was submitted that the notings on the file indicated that there were deliberations on issues involved in the matter at the government level on a number of occasions. The course of action suggested in the PMC note dated 26.7.1996 was approved at several levels of authority before the same coming to the then Chief Minister. The Deputy Secretary in the UDD Shri Vidyadhar Despande has also stated in his affidavit that there was no pressure from the office of the Chief Minister or for himself. That apart there were cogent factors explaining why there was no need for yet another primary school in the locality and generally the thinking was that public interest would gain from the proposed course of action.

(ii) As far as this latter submission about there being no need of one more primary school, one may immediately note the scant respect that the then Chief Minister had for the cause of education and the method of planning. One fails to see as to what public interest was going to

be achieved by preventing a primary school from coming up on a designated plot. There is no use stating that instead a primary school will come up in another area. It will of course come up in that area if it is so required. But there is no need to tinker with a school in another area, provided by a proper planning process.

(iii) We have already noted the manner in which the matter had been handled. The application of the developer was entertained directly at the level of the Minister of State. Immediately a meeting of high ranking officers was called. Inspite of a clear stand taken by the offices of UDD as well as by PMC, the Minister of State asked the Commissioner, a high ranking officer to make a personal site inspection and then a report, only because the developer submitted that two schools had come up on the adjoining plots. Was it not clear to the Minister of State that those two schools had come up as per the provisions of the D.P. plan? The Municipal Commissioner in his report, and thereafter the officers of the UDD, initially submitted that if deletion of reservation was to be resorted, the action will have to be initiated under Section 37 of the Act. It is only because of the insistence of the developer that the resort to D.C. Rule 13.5 was adopted. During the course of all these developments the file had been called by

the Secretary to the Chief Minister. Were these not clear signals to the officers as to what was the interest of the then Chief Minister? There will never be any direct evidence of the officers being pressurized, nor will they say that they were so pressurized. Ultimately one has to draw the inference from the course of events, the manner in which the officers have acted and changed their stand to suit the developer and the fact that the son-in-law of the then Chief Minister was the developer of the project. As we have noted earlier the affidavit of the Commissioner clearly indicated that he tried to place the correct legal position initially but ultimately had to give in from the pressure from the superiors. Unless one is naove one will have to agree with the conclusion which the Division Bench had drawn in para 136 of its judgment to the following effect:-

"We are left with only one conclusion which we have to draw from the facts on record and, to quote the words of the petitioners, "the conduct of respondent No.5 itself indicates that he had `pressurized' the officials into taking an illegal action" and this, in our view, is certainly misuse of executive powers."

128. The learned senior counsel who had appeared for the then Chief Minister in the High Court had relied upon amongst others on the judgment of this Court in E.P. Royappa vs. State of Tamil Nadu [AIR 1974 SC 555] . Krishna Iyer J. had observed in paragraph 92 of his judgment in that matter that "we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility." Shri Royappa, while challenging his transfer had made allegations of mala fides against the then Chief Minister of Tamil Nadu, and this Court had refused to accept those allegations. The Division Bench

noted in the presently impunged judgment that Shri Royappa was a Chief Secretary, and hardly any Chief Secretary of a State Government was known who would be in any way hamstrung, or stopped from getting information or documents on the basis of which he

makes out the case of mala fides against the officer holding a public office. The Division Bench rightly observed at the end of para 129 as follows:-

"We do agree with Mr. Salve that a finding of mala fides against public authority, that too of the rank of Chief Minister of the State, should not be lightly drawn. It is quite a serious matter. But, if the Court is required to draw such an inference after examining the record, we feel that the Court cannot flinch from its duty."

129. In one earlier case i.e Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi [1987 (1) SCC 227], a single Judge of the Bombay High Court had held that in the facts of that case it could be reasonably held that the marksheet of the M.D. Examination was tampered to benefit the daughter of Shri Shivajirao, the then Chief Minister of Maharashtra. The Division Bench of the Bombay High Court took the view that the circumstances relied on clearly formed a reasonable and cogent basis for the adverse comments on the conduct of Shri Shivaji Rao. The Division Bench had noted that the single Judge had followed the tests led down by this Court earlier in State of U.P. Vs. Mohammad Naim [AIR 1964 SC 703] which were as follows:-

"10. .....(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, an in integral part thereof, to animadvert on that conduct. It has also been

recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

Having approved the approach of the High Court this Court held in the facts of Shri Shivajirao's Case as follows:-

"50. There is no question in this case of giving any clear chit to the appellant in the first appeal before us. It leaves a great deal of suspicion that tampering was done to please Shri Patil or at his behest. It is true that there is no direct evidence. It is also true that there is no evidence to link him up with tampering. Tampering is established. The relationship is established. The reluctance to face a public enquiry is also apparent. Apparently Shri Patil, though holding a public office does not believe that "Ceaser's wife must be above suspicion....."

130. The facts of the present case are stronger than those in the case of Shri Shivajirao Nilangekar (supra). Here also a relationship is established. The basic order dated 21.8.1996 in this matter granting no objection to an illegal action is signed by the then Chief Minister himself. That was after personally calling for the file containing the report dated 17.4.1996 sent by the Municipal Commissioner much earlier. The entire narration shows that the then Chief Minister had clear knowledge about this particular file all throughout, and the orders were issued only because the developer was his son-in-law, and he wanted to favour him. Ultimately, one has to draw the inference on the basis of probabilities. The test is not one of being proved guilty beyond reasonable doubt, but one of preponderance of probabilities.

Appropriate actions taken in a Public Interest Litigation

131. It was contended before the High Court that the rule as to the construction of pleadings should be strictly applied in the present case and that the material as contained in the petitions did not justify any further probe. The High Court rightly rejected that argument. There was a sufficient foundation in the petition for the further steps to be taken by the High Court. The petitions before the High Court were in the nature of public interest litigation. The purpose in such matters is to draw the attention of the High Court to a particular state of facts, and if the Government action is found to be contrary to law or affecting the rights of the citizen, the court is required to intervene. There was a specific plea in paragraph 10 of Writ Petition No. 4433 of 1998 to the effect that "the fundamental and legal right of the citizens of Pune of submitting objections and suggestions to any modification in the Final Development Plan u/s 37 of the act has been infringed", and that was solely on account of the developer being a close relation of the then Chief Minister who was also the Minister for Urban Development which controls the appointments of a Municipal Commissioner to a Corporation established under the B.P.M.C Act 1949. A prima facie case had been made up in the petitions which got supported when the High Court in exercise of its Writ Jurisdiction rightly called for the relevant files from the State Government and the PMC to explain and defend their decisions.

132. Public Interest Litigation is not in the nature of adversarial litigation, but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful as observed by this Court in paragraph 9 of Bandhua Mukti Morcha Vs. Union of India [AIR 1984 SC
802]. By its very nature the PIL is inquisitorial in character. Access to justice being a Fundamental Right and citizen's participatory role in the democratic process itself being a constitutional value, accessing the Court will not be readily discouraged. Consequently, when the cause or issue, relates to matters of good governance in the Constitutional sense, and there are no particular individuals or class of persons who can be said to be injured persons, groups of persons who may be drawn from different walks of life, may be granted standing for canvassing the PIL. A Civil Court acts only when the dispute is of a civil nature, and the action is adversarial. The Civil Court is bound by its rules of procedure. As against that the position of a Writ Court when called upon to act in protection of the rights of the citizens can be stated to be distinct.

133. It was submitted on behalf of the appellants that inference should not be drawn merely on the basis of the notings in the file, and the remarks made by the Division Bench ought to be expunged. In this connection we may profitably refer to the observations of this Court in P.K. Dave Vs. Peoples' Union of Civil Liberties (Delhi) & Ors. reported in 1996 (4) SCC 262. A Writ Petition by way of a PIL was filed before the Delhi High Court alleging commission of gross financial irregularities by the Director of Govt. Hospitals in Delhi. Notings in the office file produced by the Government showed that despite suggestions made by the Health Secretary and Chief Secretary to the Delhi Administration, Lt. Governor of the Administration had refused to take any action against the Director. The High Court had passed strictures against the Lt. Governor. The learned senior counsel Shri Venugopal appearing on behalf of the

appellant Lt. Governor had submitted that the strictures based on the basis of the notings should be expunged. Rejecting the submission this Court observed in paragraph 8 as follows:-

"8. ..... Where the relevant departmental files were produced before the court by the Government and the court on scrutiny of the same came to the conclusion that the decision has not been taken fairly, then the court would be entitled to comment on the role of such person who took the decision..... In such circumstances if the contention of Mr. Venugopal is accepted then no administrative authority and his conduct would come under the judicial scrutiny of the court. That an administrative order is subjected to judicial review is by now the settled position and no longer remains res integra. This being the position we fail to appreciate the contentions of Mr. Venugopal that the notings in the file or the orders passed by the Secretary and Chief Secretary as well as the Governor should not have formed the basis of the strictures passed against the appellant."

134. Reliance was placed on the judgment of this Court in Jasbir Singh Chhabra Vs. State of Punjab reported in 2010 (4) SCC 192 to submit that the issues and policy matters which are required to be decided by the Government are dealt with by several functionaries, some of whom may record notings on the files, and such notings recorded in the files cannot be made basis for a finding of mala fides. There can be no dispute with the preposition when policy matters are involved as in that case where the question was whether the State Government's refusal to sanction change of land use from industrial to residential was vitiated due to mala fides claimed to be arising out of such notings. In the present case we are concerned with the notings not concerning with any policy matter, but with respect to the application on behalf of an individual landowner to delete the reservation of a primary school on his land, where the developer is the son-in-law of the Chief Minister. The notings in the present case are quite clear and the inference of mala fides therefrom is inescapable.

135. We have noted the observations and the conclusions arrived at by the High Court with respect to the conduct of the then Municipal Commissioner, the Minister of State and the then Chief Minister. The High Court has drawn its inferences and made the remarks after following the dicta in State of U.P. Vs. Mohd. Naim (supra). Having seen the totality of facts and guidelines laid down by this Court in P.K. Dave's case (supra), we do not see that we can draw any other inference then the one which was drawn by the Division Bench. We will be failing in our duty if we do not draw the inference which clearly arises from the notings on the file, the affidavits filed by the persons concerned and the law with respect to drawing such inference. In the circumstances, we refuse to expunge any of these remarks rendered by the Division Bench.

Orders for Criminal Investigation

136. Having drawn the above inferences, and having made the adverse remarks about the conduct of the then Chief Minister, Minister of State and Municipal Commissioner the impugned judgment has directed the State of Maharashtra to initiate appropriate investigation against them through an impartial agency, and if satisfied that any criminal offence has been committed to take such action as warranted in law.

137. Now, as far as this direction is concerned, we have to note that as far as the Municipal Commissioner is concerned, though the Division Bench did
not approve his conduct and squarely criticized him for being more loyal to the king then the king himself, yet in terms it observed in paragraph 144 of the judgment, that it did not attributive any motive to him for his actions. This para reads as follows:-

"144. While we may not attribute any motive to respondent No.10 for his actions, we cannot approve of the actions taken by him. We have already pointed out that the action of withdrawing the appeal was wrong. In our view, respondent No.10 would have served the interests of the PMC better if he had placed his dilemma before the PMC and sought a resolution thereof, particularly when he believed that the Government was issuing him instructions contrary to law, which he believed to exist. But, perhaps, this might not have been clear to him at the time when he acted to please his masters. While holding that the actions taken by the tenth respondent were contrary to the provisions of the BPMC Act, MRTP Act and Development Control Rule No.13.5, we find it difficult to accept the suggestion in the writ petitions that he was a willing party to the process of abuse of executive powers."
That apart, Shri Narsimha, learned senior counsel appearing for the Municipal Commissioner drew our attention to Section 147 of the MRTP Act which provides that no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or entitled to be done under this Act or any rules or regulations made therein. Reliance was also placed on Section 486 of the B.P.M.C. Act 1949 which is also to the similar effect. The Division Bench has also clearly stated that it did not accept the suggestion in the writ petitions that the Commissioner was willingly a party to the process of abuse of executive powers. This being the position, in our view it would not be correct to direct any criminal investigation against the then Municipal Commissioner, and in our view to that extent the order of the Division Bench requires to be corrected.

138. As far as the Minister of State is concerned also, the Division Bench commented adversely on his conduct in paragraph 140 of its judgment. Yet it also observed in paragraph 142 that there was nothing on record as suggested that he had any personal motive in the matter. The relevant observation at the end of paragraph 142 reads as follows:-

".....All that we can say is that there is nothing on record to suggest that he had any other personal motive in the matter. We, therefore, infer that respondent No.6 must have done it to oblige his senior colleague i.e. the then Chief Minister, respondent No.5."
The Division Bench has thus specifically inferred that whatever he has done, was done to oblige his senior Minister i.e. the then Chief Minister and he had no personal motive in the matter. In the circumstances, he is entitled to a benefit of doubt and, therefore, the direction for criminal investigation against him also can not be sustained.

139. As far as the Chief Minister is concerned, however, it is very clear that he was fully aware about the application made by Shri Karandikar who was a camouflage for his son-in-law. He had called for the file after the Municipal Commissioner sent his report in April,

1996. But for his personal interest, the Government and the Municipal officers would not have taken the stand and put up the notes that he wanted to be on record. The shifting of the reservation from F.P. No.110 was clearly untenable under D.C. Rule 13.5. The by-passing of the Municipal Corporation and ignoring the mandate of Section 37 was also not expected, yet he gave "no objection" to a contrary and totally unjustified order. The earlier part of his order viz. "all action be taken in accordance with law"
therefore becomes meaningless, and is nothing but a camouflage. The conduct on the part of the then Chief Minister prima-facie amounts to a misfeasance and Shri Wasudev, learned senior counsel appearing for the original petitioners submits that such a conduct ought to be sternly dealt with.

140. The learned counsel for the Chief Minister on the other hand pointed out that there were no prayers for prosecution in the Writ Petitions, and the direction contained in paragraph 227 (e) was beyond the prayers. The question therefore, is whether the operative order passed by the High Court in this behalf is legally tenable. The direction given by the High Court in paragraph 227 (e) is as follows:-

"(e) As far as prayer for directing prosecution against Respondent Nos. 5, 6 and 10 is concerned, after considering the facts and circumstances of the case we are not inclined to grant this relief. ..... Nonetheless, we direct the first respondent to make appropriate investigations through an impartial agency and, if satisfied that any criminal offences have been committed by the aforesaid respondents in the discharge of their duties, to take action as is warranted in law."
Respondent Nos. 5, 6 and 10 were the then Chief Minister, the then Minister of State and the then Municipal Commissioner.

141. In this context we have to take note of the judgment of a bench of three Judges of this Court in this behalf on a review petition in the case of Common Cause, A Registered Society Vs. Union of India & Ors. reported in 1999 (6) SCC 667. The Minister concerned in that matter had committed the misfeasance of allotment of retail outlets of petroleum products out of the discretionary quota in an arbitrary and mala fide manner. Such allotments had been set aside by a bench of two Judges by its judgment between the same
parties reported in 1996 (6) SCC 530. The Court had thereafter passed an order that the Minister concerned shall show cause within two weeks why a direction be not issued to the appropriate police authority to register a case and initiate prosecution against him for criminal breach of trust of any other offence under law. This Court held in paragraph 174 of its judgment on the review petition as follows:-

"174. The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if any offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various

decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21."
142. It could be perhaps argued that the misfeasance on the part of the then Chief Minister and the Minister of State amounts to a criminal misconduct also under Section 13 (1) (d) of the Prevention of Corruption Act, 1988. In the present case however, there is neither any such reference to this section nor any prima facie finding in the impugned judgment rendered way back in March 1999. In the circumstances in view of the proposition of law enunciated by a larger bench in the above case it is difficult to sustain the direction to make appropriate investigations through an impartial agency, and if satisfied that any criminal offence has been committed by the aforesaid respondents in the discharge of their duties, to take action as is warranted in law.

Epilogue Approach Towards the Planning Process

143. The significance of planning in a developing country cannot be understated. After years of foreign rule when we became independent, leaders of free India realized that for advancement of our society and for an orderly progress, we had to make a planned effort. Infact, even prior to independence the leaders of the freedom struggle had applied their mind to this aspect. The leaders of Indian Freedom Movement and particularly Pandit Jawaharlal Nehru, our first Prime Minister always emphasised democratic planning as a method of nation building and economic and social upliftment of Indian society. In March, 1931, the Indian National Congress at its Karachi Session passed a resolution to the effect that the State shall take steps to secure that ownership and control of the material resources of the community are so distributed as best to subserve the common good. Pandit Nehru drafted this resolution in consultation with Gandhiji and described it as a very short step in a socialist direction. In 1938, the National Planning Committee of the Congress was set up under the Chairmanship of Pandit Nehru who has been aptly described as "the Architect of democratic planning in India". The Economic Programme Committee of the Congress under his Chairmanship made a recommendation of setting up a permanent Planning Commission in 1947-48.

144. Shri H.K. Paranjape, (1924-1993) an eminent Economist and a former Member of Monopolies and Restrictive Trade Practices Commission and
former Chairman of Railway Tariff Committee, in his monograph "Jawaharlal Nehru and the Planning Commission" (published by Indian Institute of Public Administration in September, 1964) notes that Nehru linked up the work of Planning Commission directly to the Fundamental Rights and the Directive Principles enunciated in the Constitution. Nehru always wanted to make sure that the objectives of the Planning Commission were well defined and well understood. In this article, the author further records as follows:-

"When the National Development Council was discussing the Draft Outline of the Third Plan in September, 1960, he emphasized the importance of remembering "what our objectives were and not to lose ourselves in the forest of details that a Plan had to deal with. Because, always when one considered the detail, one must look back on the main thing, how far it fitted in with the main issue; otherwise, it was out of place".

Nehru believed in participation of different sections of society in framing of the Plan. The emphasis has always been amongst others to put land to the best use from the point of the requirements of our society, since land is a scarce resource and it has to be used for the optimum benefit of the society

145. As stated above, we adopted the model of democratic planning which involves the participation of the citizens, planners, administrators, Municipal bodies and the Government as is also seen throughout the MRTP Act. Thus when it comes to the Development Plan for a city, at the initial stage itself there is the consideration of the present and future requirements of the city. Suggestions and objections of the citizens are invited with respect to the proposed plan, and then the planners apply their mind to arrive at the plan which is prepared after a scientific study, and which will be implemented during
the next 10 to 20 years as laid down under Section 38 of the MRTP Act. The plan is prepared after going through the entire gamut under Sections 21 to 30 of the Act, and then only the sanction is obtained thereto from the State Government. That is why the powers to modify the provisions of the plan are restricted as noted earlier. If the plan is to be tinkered for the benefit of the interested persons, or for those who can approach the persons in authority, then there is no use in having a planned development. Therefore, Section 37 which permits the minor modifications provides that even that should not result into changing the character of the development plan, prior whereto also a notice in the gazette is required to be issued to invite suggestions and objections. Where the modification is of a substantial nature, then the procedure under Section 29 of the Act requiring a notice in the local newspapers inviting objections and suggestions from the citizens is to be resorted to. Even the deletion of reservation under Section 50 is at the instance of the appropriate authority only when it does not want the land for the designated purpose.

146. The idea is that once the plan is formulated, one has to implement it as it is, and it is only in the rarest of the rare cases that you can depart therefrom. There is no exclusive power given to the State Government, or to the planning authority, or to the Chief Minister to bring about any modification, deletion or de-reservation, and certainly not by a resort to any of the D.C. Rules. All these constituents of the planning process have to follow the mandate under Section 37 or 22A as the case may be if any modification becomes necessary. That is why this Court observed in paragraph 45 of Chairman, Indore Vikas
Prodhikaran Vs. Pure Industrial Coke & Chemicals Ltd. & Ors. reported in 2007 (8) SCC 705 as follows:-

"45. Town and country planning involving land development of the cities which are sought to be achieved through the process of land use, zoning plan and regulating building activities must receive due attention of all concerned. We are furthermore not oblivious of the fact that such planning involving highly complex cities depends upon scientific research, study and experience and, thus, deserves due reverence.
(emphasis supplied) Role of Municipalities
147. The municipalities which are the planning authorities for the purpose of bringing about the orderly development in the municipal areas, are given a place of pride in this entire process. They are expected to render wide ranging functions which are now enumerated in

the constitution. They are now given a status under Part IX A of the Constitution introduced by the 74th Amendment w.e.f. 1.6.1993. Article 243W lays down the powers of the Municipalities to perform the functions which are listed in the Twelfth Schedule. For performing these functions, planning becomes very important. This Twelfth Schedule contains the following items:-

"TWELFTH SCHEDULE [Article 243W]
1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and, commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle ponds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries."
The primary powers of the Municipal Corporations in Maharashtra such as PMC (excluding some Municipal Corporations which have their separate enactments) and of the Standing Committees of the Corporations are enumerated in the BPMC Act. Coupled with those powers, the Municipal Corporations have their powers under MRTP Act. These are the statutory powers, and they cannot be bypassed.

The Responsibility of the Municipal Commissioner and the Senior Government Officers

148. The Municipal Commissioner is the Chief Executive of the Municipal Corporation. It is his responsibility to act in accordance with these laws and to protect the interest of the Corporation. The Commissioner is expected to place the complete and correct facts before the Government when any such occasion arises, and stand by the correct legal position. That is what is expected of the senior administrative officers like him. That is why they are given appropriate
protection under the law. In this behalf, it is worthwhile to refer to the speech of Sardar Vallabhbhai Patel, the first Home Minister of independent India, made during the Constituent Assembly Debates, where he spoke about the need of the senior secretaries giving their honest opinions which may not be to the liking of the Minister. While speaking about the

safeguards for the Members of Indian Civil Service (now Indian Administrative Service), he said-

"...To-day, my Secretary can write a note opposed to my views. I have given that freedom to all my Secretaries. I have told them `if you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary.' I will never be displeased over a frank expression of opinion. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are patriotic, as loyal and as sincere as myself."
(Ref: Constituent Assembly Debates. Vol.10 p. 50) Now unfortunately, we have a situation where the senior officers are changing their position looking to the way the wind is blowing.

Expectations from the Political Executive

149. Same are the expectations from the political executive viz. that it must be above board, and must act in accordance with the law and not in furtherance of the interest of a relative. However, as the time has passed, these expectations are belied. That is why in the case of Shri Shivajirao Nilangekar (supra) this Court had to lament in paragraph 51 of the judgment as follows:-

"51. This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The
pollution in our values and standards in (sic is) an equally grave menace as the pollution of the environment. Where such situations cry out, the courts should not and cannot remain mute and dumb."
150. People of a state look up to the Chief Minister and those who occupy the high positions in the Government and the Administration for redressal of their grievances. Citizens are facing so many problems and it is expected of those in such positions to resolve them. Children are particularly facing serious problems concerning facilities for their education and sports, quality of teaching, their health and nutrition. It is the duty of those in high positions to ensure that their conduct should not let down the people of the country, and particularly the younger generation. The ministers, corporators and the administrators must zealously guard the spaces reserved for public amenities from the preying hands of the builders. What will happen, if the protectors themselves become poachers? Their decisions and conduct must be above board. Institutional trust is of utmost importance. In the case of Bangalore Medical Trust (supra) this court observed in paragraph 45 of its judgment that "the directions of the Chief Minister, the apex public functionary of the State, was in breach of public trust, more like a person dealing with his private property than discharging his obligation as head of the State administration in accordance with law and rules". Same is the case in the present matter where Shri Manohar Joshi, the then Chief Minister and Shri Ravindra Mane, the Minister of State have failed in this test, and in discharge of their duties. Nay, they have let down the people of the city and the state, and the children.

Importance of the spaces for public amenities

151. As we have seen, the MRTP Act gives a place of prominence to the spaces meant for public amenities. An appropriately planned city requires good roads, parks, playgrounds, markets, primary and secondary schools, clinics, dispensaries and hospitals and sewerage facilities amongst other public amenities which are essential for a good civic life. If all the spaces in the cities are covered only by the construction for residential houses, the cities will become concrete jungles which is what they have started becoming. That is how there is need to protect the spaces meant for public amenities which cannot be sacrificed for the greed of a few landowners and builders to make more money on the ground of creating large number of houses. The MRTP Act does give importance to the spaces reserved for public amenities, and makes the deletion thereof difficult after the planning process is gone through, and the plan is finalized. Similar are the provisions in different State Acts. Yet, as we have seen from the earlier judgments concerning the public amenities in Bangalore (Bangalore Medical Trust (supra) and Lucknow (M.I Builders Pvt. Ltd. (supra), and now as is seen in this case in Pune, the spaces for the public amenities are under a systematic attack and are shrinking all over the cities in India, only for the benefit of the landowners and the builders. Time has therefore come to take a serious stock of the situation. Undoubtedly, the competing interest of the landowner is also to be taken into account, but that is already done when the plan is finalized, and the landowner is compensated as per the law. Ultimately when the land is reserved for a public purpose after following the due process of law, the interest of the individual must yield to the public interest.

152. As far as the MRTP Act is concerned, as we have noted earlier, there is a complete mechanism for the protection of the spaces meant for public amenities. We have seen the definition of substantial modification, and when the reservation for a public amenity on a plot of land is sought to be deleted completely, it would surely be a case of substantial modification, and not a minor modification. In that case what is required is to follow the procedure under Section 29 of the Act, to publish a notice in local newspapers also, inviting objections and suggestions within sixty days. The Government and the Municipal Corporations are trustees of the citizens for the purposes of retention of the plots meant for public amenities. As the Act has indicated, the citizens are vitally concerned with the retention of the public amenities, and, therefore deletion or modification should be resorted to only in the rarest of rare case, and after fully examining as to why the concerned plot was originally reserved for a public amenity, and as to how its deletion is necessary. Otherwise it will mean that we are paying no respect to the efforts put in by the original planners who have drafted the plan, as per the requirements of the city, and which plan has been finalized after following the detailed procedures as laid down by the law.

Suggested safeguards for the future

153. Having noted as to what has happened in the present matter, in our view it is necessary that we should lay down the necessary safeguards for the future so that such kind of gross deletions do not occur in the future, and the provisions of the Act are strictly implemented in tune with the spirit behind.

(i) Therefore, when the gazette notification is published, and the public notice in the local newspapers is published under Section 29 (or under Section

37) it must briefly set out the reasons as to why the particular modification is being proposed. Since Section 29 provides for publishing a notice in the `local newspapers', we adopt the methodology of Section 6 (2) of the L.A. Act, and expect that the notice shall be published atleast in two daily newspapers circulating in the locality, out of which atleast one shall be in the regional language. We expect the notice to be published in the newspapers with wide circulation and at prominent place therein.

(ii) Section 29 lays down that after receiving the suggestions and objections, the procedure as prescribed in Section 28 is to be followed. Sub-section (3) of Section 28 provides for holding an inquiry thereafter wherein the opportunity of being heard is to be afforded by the Planning Committee (of the Planning Authority) to such persons who have filed their objections and made suggestions. The Planning Committee, therefore, shall hold a public inquiry for all such persons to get an opportunity of making their submission, and then only the Planning Committee should make its report to the Planning Authority.

(iii) One of the reasons which is often given for modification/deletion of reservation is paucity of funds, which was also sought to be raised in the present matter by the Municipal Commissioner for unjustified reasons, in as much as the compensation amount had already been paid. However, if there is any such difficulty, the planning authority must call upon the citizens to contribute for the project, in the public notice contemplated under Section 29, in as much as these
public amenities are meant for them, and there will be many philanthropist or corporate bodies or individuals who may come forward and support the public project financially. That was also the approach indicated by this Court in Raju S. Jethmalani Vs. State of Maharashtra reported in [2005 (11) SCC 222].

Primary Education

154. Primary education is one of the important responsibilities to be discharged by Municipalities under the Bombay Primary Education Act 1947. Again, to state the reality, even after sixty years after the promulgation of the Constitution, we have not been able to attain full literacy. Of all the different areas of education, primary education is suffering the most. When the Constitution was promulgated, a Directive Principle was laid down in Article 45 which states that the State shall endeavour to provide, within the period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years. This has not been achieved yet. The 86th Amendment to the Constitution effected in the year 2002 deleted this Article 45, and substituted it with new Article 45 which lays down that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. The amendment has made Right to Education a Fundamental Right under Article 21A. This Article lays down that the State shall provide free and compulsory education to all children

of the age of six to fourteen years in such manner as the State may, by law, determine. In the year 2009 we passed the Right of Children to
Free and Compulsory Education Act 2009. All these laws have however not been implemented with the spirit with which they ought to have been. We have several national initiatives in operation such as the Sarva Shiksha Abhiyan, District Primary Education Programme, and the Universal Elementary Education Programme to name a few. However, the statistical data shows that we are still far away from achieving the goal of full literacy.

155. Nobel laureate Shri Amartya Sen commented on our tardy progress in the field of basic education in his Article `The Urgency of Basic Education' in the seminar "Right to Education-Actions Now" held at New Delhi on 19.12.2007 as follows:-

"India has been especially disadvantaged in basic education, and this is one of our major challenges today. When the British left their Indian empire, only 12 per cent of the India population was literate. That was terrible enough, but our progress since independence has also been quite slow. This contrasts with our rapid political development into the first developing country in the world to have a functioning democracy."
The story for Pune city is not quite different. Since the impugned development permission given by the Municipal Corporation was on the basis of no objection of the Chief Minister dated 21.8.1996, we may refer to the Educational Statistics of Pune city, at that time. As per the Census of India 1991, the population of Pune city was 24,85,014, out of which 17,14,273 were the literate persons which comes to just above 2/3 of the population. The percentage of literacy has gone up thereafter, but still we are far away from achieving full literacy and from the goal of providing quality education and facilities at the primary level.

156. There is a serious problem of children dropping out from the primary schools. There are wide ranging factors which affect the education of the children at a tender age, such as absence of trained teachers having the proper understanding of child psychology, ill-health, and mal-nutrition. The infrastructural facilities are often very inadequate. Large number of children are cramped into small classrooms and there is absence of any playground attached with the school. This requires adequate spaces for the primary schools. Even in the so called higher middle class areas in large cities like Pune, there are hardly any open spaces within the housing societies and, therefore, adequate space for the playgrounds of the primary schools is of utmost importance. Having noted this scenario and the necessity of spaces for primary schools in urban areas, it is rather unfortunate that the then Chief Minister who claims to be an educationist took interest in releasing a plot duly reserved and acquired for a primary school only for the benefit of his son-in-law. It also gives a dismal picture of his deputy, the Minister of State acting to please his superior, and so also of the Municipal Commissioner ignoring his statutory responsibilities.

Operative order with respect to the disputed buildings

157. We have held the direction given by the State Government for the deletion of reservation on Final Plot No.110, and the commencement and occupation certificates issued by the Pune Municipal Corporation in favour of the developer were in complete subversion

of the statutory requirements of the MRTP Act. The development permission was wholly illegal and unjustified. As far as the building meant for the tenants is concerned, the developer as well as PMC have indicated that they have no objection to the building being retained. As far as the ten storied building meant for the private sale is concerned, the developer had offered to hand over half the number of floors to PMC, provided it permits the remaining floors to be retained by the developer. PMC has rejected that offer since the plot was reserved for a primary school. The building must therefore be either demolished or put to a permissible use. The illegal development carried out by the developer has resulted into a legitimate primary school not coming up on the disputed plot of land. Thousands of children would have attended the school on this plot during last 15 years. The loss suffered by the children and the cause of education is difficult to assess in terms of money, and in a way could be considered to be far more than the cost of construction of this building. Removal of this building is however not going to be very easy. It will cause serious nuisance to the occupants of the adjoining buildings due to noise and air pollution. The citizens may as well initiate actions against the PMC for appropriate reliefs. It is also possible that the developer may not be able to remove the disputed building within a specified time, in which case the PMC will have to incur the expenditure on removal. It will, therefore, be open to the developer to redeem himself by offering the entire building to PMC for being used as a primary school or for the earmarked purpose, free of cost. If he is so inclined, he may inform PMC that he is giving up his claim on this building also in favour of PMC.

158. The High Court has not specified the time for taking the necessary steps in this behalf. Hence, for the sake of clarity, we direct the developer to
inform the PMC within two weeks from today whether he is giving up the claim on the ten storied building named `Sundew Apartments' apart from the tenants' building in favour of PMC, failing which PMC will issue a notice to the developer within two weeks thereafter, calling upon him to furnish particulars to PMC within two weeks from the receipt of the notice, as to in what manner and time frame he proposes to demolish this ten storied building. In the event the developer declines or fails to do so, or does not respond within the specified period, or if PMC forms an impression after receiving his reply that the developer is incapable of removing the building in reasonably short time, the PMC will go ahead and demolish the same. In either case the decision of the City Engineer of PMC with respect to the manner of removal of the building and disposal of the debris shall be final.

159. As far as the ownership of the plot is concerned, the same will abide by the decision of the High Court in First Appeal Stamp No. 18615 of 1994 which will be decided in accordance with law. The old tenants will continue to occupy the building meant for the tenants.

160. The PMC and the State Government have fairly changed/reviewed their legal position in this Court, and defended their original stand about the illegality of the construction. We therefore, absolve both of them from paying costs to the original petitioners. The order with respect to payment of cost of Rs. 10,000/- against the then Chief Minister and the Minister of State to each of the original petitioners however remains. Over and above we add Rs. 15,000/- for each of them to pay to the two petitioners separately towards the cost of these

appeals in this Court. Thus, the then Chief Minister and the Minister of State shall each pay Rs. 25,000/- to the two petitioners separately.

161. The spaces for public amenities such as roads, playgrounds, markets, water supply and sewerage facilities, hospitals and particularly educational institutions are essential for a decent urban life. The planning process therefore assumes significance in this behalf. The parcels of land reserved for public amenities under the urban plans cannot be permitted to be tinkered with. The greed for making more money is leading to all sorts of construction for housing in prime city areas usurping the lands meant for public amenities wherever possible and in utter disregard for the quality of life. Large number of areas in big cities have already become concrete jungles bereft of adequate public amenities. It is therefore, that we have laid down the guidelines in this behalf which flow from the scheme of the MRTP Act itself so that this menace of grabbing public spaces for private ends stops completely. We are also clear that any unauthorised construction particularly on the lands meant for public amenities must be removed forthwith. We expect the guidelines laid down in this behalf to be followed scrupulously.

The conclusions in nutshell and the consequent order

162. In the circumstances we conclude and pass the following order -

(i) We hold that the direction given by the Government of Maharashtra for the deletion of reservation on Final Plot No. 110, at Prabhat Road, Pune, and the consequent Commencement and Occupation certificates issued by the Pune Municipal Corporation (PMC) in favour of the developer were in complete
subversion of the statutory requirements of the MRTP Act. The development permission was wholly illegal and unjustified.

(ii) The direction of the High Court in the impugned judgment dated 6/15.3.1999 in Writ Petition Nos. 4433 and 4434/1998 for demolition of the concerned building was fully legal and justified.

(iii) The contention of the landowner that his right of development for residential purposes on the concerned plot under the erstwhile Town Planning scheme subsisted in spite of coming into force of Development Plan reserving the plot for a primary school, is liable to be rejected.

(iv) The acquisition of the concerned plot of land was complete with the declaration under Section 126 of the MRTP Act read with Section 6 of Land Acquisition Act and the same is valid and legal.

(v) The order passed by the High Court directing the Municipal Corporation to move for the revival of the First Appeal Stamp No. 18615 of 1994 was therefore necessary. The High Court is expected to decide the revived First Appeal at the earliest and preferably within four months hereafter in the light of the law and the directions given in this judgment.

(vi) The developer shall inform the PMC whether he is giving up the claim over the construction of the ten storied building (named `Sundew Apartments') apart from the tenants' building in favour of PMC, failing which either the developer or the PMC shall take steps for demolition of the disputed building (Sundew Apartments) as per the time frame laid down in this judgment.

(vii) The former occupants of F.P No. 110 will continue to reside in the building constructed for the tenants on the terms stated in the judgment.

(viii) The corporation will not be required to pay any amount to the developer for the tenants' building constructed by him, nor for the ten storied building in the event he gives up his claim over it in favour of PMC.

(ix) The strictures passed by the High Court against the then Chief Minister of Maharashtra Shri Manohar Joshi and the then Minister of State Shri Ravindra Mane are maintained. The prayer to expunge these remarks is rejected. The remarks against the Municipal Commissioner are however deleted.

(x) The order directing criminal investigation and thereafter further action as warranted in law, is however deleted in view of the judgment of this Court in the case of Common Cause A Registered Society Vs. Union of India reported in 1999 (6) SCC 667

(xi) The then Chief Minister and the then Minister of State shall each pay cost of Rs. 15,000/- to each of the two petitioners in the High Court towards these ten appeals, over and above the cost of Rs. 10,000/- awarded by the High Court in the writ petitions payable by each of them to the two writ petitioners.

(xii) The State Government and the Planning authorities under the MRTP Act shall hereafter scrupulously follow the directions and the suggested safeguards with respect to the spaces meant for public amenities.

All the appeals stand disposed of as above.