

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PIL PETITION NO. 22 OF 2021

- | | | | |
|----|---|---|--------------|
| 1. | Nishant Karsan Bhagat |) | |
| | Age: 37 years, Occ : Business |) | |
| | Carrying on business from |) | |
| | Bhumiraj Manor, Shop No.4, |) | |
| | Sector No14, Sanpada, Palm Beach, |) | |
| | Navi Mumbai – 400 705. |) | ..Petitioner |
| | V/s | | |
| 1. | The City and Industrial Development Corporation of Maharashtra Ltd. |) | |
| | A Government Company within the meaning of the Companies Act, 1956, |) | |
| | Having its registered office at 'Nirmal', |) | |
| | 2 nd Floor, Nariman Point, |) | |
| | Mumbai – 400 021. |) | |
| 2. | Navi Mumbai Municipal Corporation |) | |
| | A Municipal Corporation established under the provisions of |) | |
| | Maharashtra Municipal Corporations Act, 1949, having its office at Plot |) | |
| | No.1 Near Kille Gaothan, |) | |
| | Palm Beach Junction, CBD Belapur, |) | |
| | Navi Mumbai – 400 614. |) | |
| 3. | The State of Maharashtra |) | |
| | Through the Secretary, |) | |
| | Urban Development Department, |) | |
| | Mantralaya, Mumbai. |) | |
| 4. | Juhi Habitat Pvt. Ltd. |) | |
| | Having Office at 1605 /1606, |) | |
| | The Ambidance Court, Plot No.2, |) | |
| | Sector 19D, Navi Mumbai, |) | |
| | Vashi – 400 073. |) | |
| 5. | Neelkanth Infratech Co. |) | |
| | Having Office at Shop No. 14, |) | |

- Sunberry, Plot No.26,)
 Sector 08, Ghansoli,)
 Navi Mumbai – 400 071.)
6. Gami and Satyam Ventures Pvt. Ltd.)
 Having Office At B/3/31, 2-3,)
 Ashtvinayak Apartment,)
 Opp. Vijaya Bank, Sector 15,)
 Vashi – 400 703.)
7. Kamdhenu Green)
 Having office at Kamdhenu Realities,)
 75/76, 4th floor, Mahavir Centre,)
 Above Golden Punjab Restaurant.)
 Sector 17, Vashi,)
 Navi Mumbai – 400 703.)
8. Godrej Properties Ltd.)
 Having Office at Godrej One.)
 5th floor, Pirojshanagar Eastern Express)
 Highway, Vikhroli (E),)
 Mumbai – 400 079.)
9. Shelton Infrastructure Pvt. Ltd.)
 Having office at 31, Sakhar Bhavan,)
 Opp. Oberoi Shopping Centre, 230,)
 Nariman Point, Mumbai – 400 021.)
10. Tricity Reality LLP)
 Having office at 1001/1002,)
 Bhumiraj Costarica, Plot No. 1 & 2,)
 Sector 18, Sanpada (E),)
 Navi Mumbai – 400 705.)
11. Mansh Builder & Developers)
 Having office at 203, Nav)
 Nirman CHS. Plot No. 34,)
 Sector-11, Kharghar,)
 Navi Mumbai – 410 210.)
12. Anil Gami)
 Having office at B/3/31, 2-3,)

- Ashtvinayak Apartment,)
 Opp. Vijaya Bank, Sector 15,)
 Vashi – 400 703.)
13. Millennium Group)
 Having office at 57B, 23B, 35B & 36B,)
 Ashoka, S.V. Road,)
 Goregaon (W), Mumbai – 400062.) .. Respondents

WITH
PIL PETITION NO. 37 OF 2021

1. Mr. Sunil J. Garg)
 Age: 56 years, Occ.: Advocate,)
 R/at: A-7002, Olive Shallots,)
 Sector 16A, Sanpada,)
 Navi Mumai, 400705)
2. Mr. Chandra Mohan Bhatnagar)
 Age: 74 years, Occ.: Retired,)
 R/at: A-4004, Olive Shallots,)
 Sector 16A, Sanpada,)
 Navi Mumbai, 400705)
3. Mr. Vidyasagar Tyagi)
 Age.: 47 years, Occ.: Service,)
 R/at: A-6004, Olive Shallots,)
 Sector 16A, Sanpada,)
 Navi Mumbai, 400705)
4. Mrs. Bharti Ravikant Patil)
 Age 49 years, Occ.: Advocate,)
 R/at: A-7004, Olive Shallots,)
 Sector 16a, Sanpada,)
 Navi Mumbai, 400705)
5. Mr. Kamlesh Kumar Agarwal)
 Age: 47 years, Occ.: CA,)
 R/at: A-7003, Olive Shallots,)
 Sector 16A, Sanpada,)
 Navi Mumbai, 400705)

- | | | | |
|----|--|---|----------------|
| 6. | Mr. Shriram Amirchand Sehgal |) | |
| | Age.: 65 years, Occ.: Business, |) | |
| | R/at: A-12001, Olive Shallots, |) | |
| | Sector 16A, Sanpada, |) | |
| | Navi Mumbai, 400705 |) | |
| 7. | Mr. Hemant Shridhar Gokhale |) | |
| | Age: 63 years, Occ.: Engineer, |) | |
| | R/at: B-702, Olive Shallots, |) | |
| | Sector 16A, Sanpada, |) | |
| | Navi Mumbai, 400705 |) | |
| 8. | Mr. Ramdeen Gendu Choukikar |) | |
| | Age: 61 years, Occ.: Retired, |) | |
| | r/at: A-1002, Olive Shallots, |) | |
| | Sector 16A, Sanpada, |) | |
| | Navi Mumbai, 400705 |) | .. Petitioners |
| | Versus | | |
| 1. | State of Maharashtra through Urban |) | |
| | Development Department, 4 th floor, |) | |
| | Mantralaya, Madam Cama Road, |) | |
| | Hutatma Rajguru Chowk, Nariman |) | |
| | Point, Mumbai-32. |) | |
| 2. | Navi Mumbai Municipal Corporation, |) | |
| | having office at 115, Uran Road, |) | |
| | Sector 32, Seawoods, Navi Mumbai, |) | |
| | Maharashtra 400706. |) | |
| 3. | City and Industrial Development |) | |
| | Corporation of Maharashtra Ltd. |) | |
| | Government Company incorporated |) | |
| | under the Companies Act, 1956 by |) | |
| | State of Maharashtra, having its |) | |
| | registered office at 'Nirmal Building', |) | |
| | 2 nd floor, Nariman Point, |) | |
| | Mumbai- 400 021. |) | |
| 4. | The Director of Town Planning, |) | |
| | Maharashtra State, Pune Central |) | |
| | Building, Ground floor, Pune 411001. |) | |

5. Juhi Habitat Private Limited)
Having office at: 1605/1606, The)
Ambidance Court, Plot No. 2, Sector)
19D, Navi Mumbai, Vashi 400703.)
 6. Neelkanth Infratech Co)
Having office at : Shop No.14,)
Sunberry, Plot No. 26, Sector- 08,)
Ghansoli, Navi Mumbai-400701.)
 7. Gami And Satyam Ventures Private)
Limited. Having Office at:B/3/31,2-3)
Ashtvinayak Apartment opp Vijaya)
Bank, Sector-15, Vashi 400703.)
 8. Kamdhenu Green)
Having office at Kamdhenu Realities,)
75/76, 4th Floor, Mahavir Centre, Above)
Golden Punjab Restaurant, Sector 17,)
Vashi, Navi Mumbai – 400 703.)
 9. Godrej Properties Limited)
Having office at Godrej One, 5th Floor,)
Pirojshanagar Eastern Express Highway,)
Vikhroli (East), Mumbai 400079.)
 10. Shelton Infrastructure Private Limited)
Having office at:31, Sakhar Bhavan, opp)
Oberoi Shopping Centre 230, Nariman)
Point, Mumbai – 400021.)
- ..Respondents

Mr. Prasad K. Dhakephalkar, Senior Advocate, with Mr. Rajesh Datar with Mr. Akshay Kandarkar for Petitioner in PIL 22/2021.

Mr. Atul Damle, Senior Advocate, with Mr. Kamlesh Mali i/b. Mr. Nikhil Mhatre for Petitioner in PIL 37/2021.

Mr. Arshad Shaikh with Mr. Rohan Cama with Mr. Aditya Udeshi with Mr. Netaji Gawade i/b. Sanjay Udeshi & Co. for Petitioner in WP 2477/2021, WP 2478/2021 and WP 2479/2021 and for Respondent NO.6 in PIL 37/2021 and for Respondent No.7 in PIL 22/2021.

Mr. Girish Godbole with Ms. Shivani Samel i/b. Mr. Aditya Shirke for Petitioner in WP 2476/2021, WP 1214/2021 & for Respondent Nos.5 & 8 in PIL 37/2021 for Respondent No.7 in PIL 22/2021.

Mr. Ieshan Sinha with Mr.Aayesh Gandhi i/b. Wadia Gandhi & Co. for Petitioner in WP 2473/2021 and WP 2474/2021 and for Respondent Nos. 9 & 10 in PIL 37/2021.

Mr. G.S. Hegde with Ms. P.M. Bhansali for Respondent/CIDCO and Applicant in all IA.

Mr. P.P. Kakade, Govt.Pleader with Ms. R.A. Salunkhe, AGP for Respondent/ State.

Mr. Sandeep V. Marne for Respondent/Navi Mumbai Municipal Corporation.

**CORAM : DIPANKAR DATTA, CJ
& G. S. KULKARNI, J.**

**RESERVED ON : 11 MARCH 2022
PRONOUNCED ON : 30 AUGUST 2022**

JUDGMENT : (Per G.S.Kulkarni, J.)

The judgment has been divided into the following sections to facilitate analysis:

		para
A	Prelude	1-3
B	Factual Matrix	4-30
C	Prayers in PIL No.22 of 2022 & PIL No.37 of 2022	31
D	Respondent's Pleadings:	32-49
E	Submissions on behalf of the Petitioners	50
F	Submissions on behalf of Respondents	51-54
G	Questions for Determination	55
H	Relevant Provisions of the MRTP Act	56
I	Analysis and Conclusion	57-94

A) Prelude

1. These are two public interest petitions, which raise common issues of fact and law. The petitioners in both these proceedings claiming to be public spirited citizens, are before the Court, raising issues in regard to the proposed reservation of certain plots lands, by respondent No.2 - Navi Mumbai Municipal Corporation (for short “**NMMC**”), for public purpose, in a proposed Draft Development Plan, to be notified by the NMMC under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short “the **MRTP Act**”). These plots of land are vested with respondent No.1- City and Industrial Development Corporation of Maharashtra (for short “**CIDCO**”) as a New Town Development Authority as constituted for the Navi Mumbai Area. The petitioners contend that in view of the proposed reservation, these lands cannot be subjected to allotment by the CIDCO for residential/commercial purposes.

2. The opposition to such contentions of the petitioners is by the CIDCO and its allottee’s who are private respondents (respondents no.4 to 13). It is also by the State Government. The case of CIDCO is that the lands, which are proposed to be reserved by the Municipal Corporation, in fact, are lands which are vested with CIDCO, conferring on it an entitlement in law, namely under the provisions of MRTP Act, to develop and auction these lands.

CIDCO contends that by a public notice issued sometime in January 2021, CIDCO had invited bids to auction these lands for commercial and residential purposes. Consequent thereto, an auction was held between February 2021 and March 2021, which culminated into allotments of these plots in favour of respondent Nos.4 to 14, which have stood finalised. After such allotments were made in favour of these allottees (the private respondents), the present petitions were filed in or about 21 May 2021.

3. It is CIDCO's case that it was set up as a New Town Development Authority for designated sites to form new town area, namely, Navi Mumbai, which was by a notification dated 20 March 1971. This was much prior to the formation of the NMMC in the year 1991. CIDCO says that such plots cannot be subjected to reservation in any proposed development plan, and the authority and power vested in it to auction these lands for commercial and residential purposes, for which these lands were developed has remained undisturbed, even on the formation of the Municipal Corporation for the Navi Mumbai area namely the NMMC. CIDCO, thus, says that the recent action of the NMMC, to pass a resolution in its General Body Meeting held on dated 13 December 2019, by virtue of which under the garb of publishing a revised draft development plan, to include these plots/land vested with the CIDCO under such plan, and subjecting them to

reservation is bad and illegal. CIDCO says that the NMMC cannot take a position in law that CIDCO has no authority to deal with and make allotment for such lands. It is hence CIDCO's case that the action of the NMMC purporting to reserve such lands vested in CIDCO's in the Draft Development Plan amounts to an illegal exercise of power by the NMMC under the provisions of the Maharashtra Municipal Corporation Act, 1949 (for short "the **MMC Act**") and the MRTP Act. Such is the complexion of the disputes between the parties in the present petition.

B) Factual Matrix

4. The facts mostly comprise in relation to the different notifications in relation to the CIDCO; constitution of the Municipal Corporation (NMMC), and the notifications/circulars issued from time to time conferring powers on these statutory bodies, which essentially form the basis of the rival contentions. Such antecedents are as under:

5. On 17 March 1970, CIDCO was incorporated as a Government company under the provisions of the Companies Act, 1956. The share capital of CIDCO is wholly and exclusively held by the State Government and its nominees.

6. On 20 March, 1971, CIDCO was appointed as a New Town

Development Authority for Navi Mumbai by notification issued by the State Government under Sub-Section 3A of Section 113 of the MRTP Act.

7. CIDCO being designated as the New Town Development Authority, CIDCO was conferred powers and authority, by virtue of Section 118 of the MRTP Act, to dispose of by lease, lands acquired under Section 113A and vested in it by the State Government along with its own lands for development.

8. To canalize and regulate such powers, the Board of Directors of the CIDCO, with the previous approval of the State Government solicited under Section 159 of the MRTP Act, CIDCO framed '*The New Bombay Disposal of Lands Regulations, 1975*' and '*The Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008*'. These regulations are stated to represent *proprio-vigore* the terms and conditions of the lease of land executed or to be executed by CIDCO.

9. At the relevant time, when CIDCO was exercising powers on the lands vested in it by the State Government as the New Town Development Authority for the Navi Mumbai area, on 18 January 1980, the State Government sanctioned a Draft Development Plan in the form of a structural plan under Section 31(1) of the MRTP Act, as submitted by CIDCO to the State Government, qua this new town area. A Final

Development Plan came into force with effect from 1 March 1980, which has continued to remain in force till date. It is in respect of the revision of this plan, the recent developments have taken place and subject matter of the present proceedings as discussed hereafter.

10. On 17 December, 1991, after about 20 years of CIDCO functioning as the New Town Development Authority for Navi Mumbai, the Government of Maharashtra exercising its powers under Section 3(2) of the Bombay Provincial Municipal Corporations Act, 1949 constituted the NMMC for the 'City of New Bombay'. The 'City of New Bombay' or now 'Navi Mumbai' was originally notified to be comprising of 44 revenue villages. The NMMC commenced functioning as a duly constitution municipal corporation with effect from 1 January, 1992.

11. On 15 December 1994 the State Government in its Urban Development Department, issued a memorandum under Section 154 of the MRTP Act *inter alia* recording that in respect of 29 villages comprising an area of Navi Mumbai, both the NMMC and CIDCO were exercising its respective authorities. It was noticed that the NMMC shall act as a planning authority in respect of the developed nodes of areas Vashi, Sanpada, Nerul, CBD Belapur, Kopar Khairane, Airoli, comprising of the villages as shown in the Schedule of the notification in accordance with the provisions of

Sections 2(15)(a) and 2(19) of the MRTP Act. It was further directed that as a planning authority, the NMMC shall exercise all its powers under Chapter III and IV of the MRTP Act within its area from the date specified by the State Government is from 16 December 1994 and CIDCO will cease to exercise powers of the planning authority for such areas from that date in respect of the developed nodes of the villages as stated above. It was further directed that as considerable portion of the lands in such nodes/areas were still to be developed and disposed of by CIDCO, and in order to enable CIDCO to discharge its function as a New Town Development Authority, it would not be necessary for CIDCO to approach NMMC for development permissions in respect of areas/lands being developed by CIDCO. It was directed that for that matter, CIDCO would be covered within the exception under section 43(ii) of the MRTP Act. It was further directed that since CIDCO was having ownership of most of the land in the New Bombay project area and since CIDCO has framed regulations called 'New Bombay Disposal of Lands Regulations, 1975' under the provisions of Section 159 of the MRTP Act 1966, to enable the CIDCO to carry out its functions, it will be necessary for the NMMC to insist on the developers to obtain no objection certificate from CIDCO before giving development permissions, in so far as recovery of lease premium, delayed payment charges etc. to be recovered by CIDCO from the lessees. It was

also directed that at the time of giving occupation certificate, the NMMC should insist on obtaining NOC from the CIDCO so that the compliance of the Regulations is ensured.

12. On 4 February 1995, the State Government in its Urban Development Department, issued another Memorandum under Section 154 of the MRTP Act, conferring powers of a Planning Authority to be exercised by CIDCO inter alia in regard to unauthorised occupation/ unauthorised development on CIDCO lands and open spaces, etc. providing that the CIDCO shall have jurisdiction and authority to perform functions of a Planning Authority in areas of villages included in the development node shown in the Schedule appended to the said notification, wherein the NMMC had the powers to act as a Planning Authority and to exercise powers under Sections 52, 53, 54 and 55 of the MRTP Act to remove unauthorized occupation/unauthorised development over CIDCO lands as well open spaces, etc. It was notified that CIDCO shall also exercise powers under Sections 135, 139 and 142. The Municipal Corporation was also authorized to exercise said powers in respect of unauthorized constructions under the Development Control Regulations in areas on which it had a jurisdiction being a Planning Authority.

13. The case of the petitioners is to the effect that by virtue of establishment of the NMMC and with effect from 15 December 1994, the NMMC is the Planning Authority, under the provisions of Section 2(15) and 2(19) of the MRTP Act for the areas of 29 villages qua the developed nodes of Vashi, Sanpada, Nerul, CBD Belapur, Kopar Khairane, Airoli and Ghansoli. It is contended that by virtue of the said provisions, all powers of the Planning Authority stood vested with NMMC for the undeveloped areas /villages outside CIDCO developed nodes.

14. The petitioners contend that as the final Development Plan for the new town of Navi Mumbai had come into force with effect from 1 March 1980, as per the provisions *interalia* of Section 38 of the MRTP Act, at least once in 20 years, from the date on which such Development Plan had come into operation, the Planning Authority was required to revise the Development Plan either wholly or in parts, after carrying out, if necessary, a fresh survey and preparing an existing land use map of the area within its jurisdiction under the provisions of Sections 22 to 30 of the MRTP Act. It is thus contended that for the reasons that the First and Final Development Plan being brought into force on 1 March 1980 and as a period of 20 years, as postulated by Section 30 of the MRTP Act had expired , it was necessary for the NMMC, as also State Government to revise the Development Plan, for the Navi Mumbai Municipal area, as per the mandate of the statutory

provisions.

15. The petitioners have contended that the Final Development Plan, which was brought into force on 1 March 1980, was in the form of a structural plan as no micro level planning was made in the said Development Plan. The petitioners also contend that out of 15 revenue villages, which were outside the Development Plan, *{included in the sanctioned MMRDA (Mumbai Metropolitan Regional Development Authority) original plan}* at the time of its constitution, only one village, i.e. Adavali Bhutavali, was retained within the limits of the NMMC, hence, the Municipal Corporation, being the Planning Authority, was empowered to revise the Final Development Plan under Section 38 of the MRTP Act. It is hence contended that for such reasons the NMMC thought it expedient to prepare a fresh Draft Development Plan for only revenue village Adavali Bhutavali, as per the provisions of Section 21 of the MRTP Act. The petitioners contend that accordingly, in a General Body Meeting of the Municipal Corporation held on 22 August 2013, vide Resolution No.332, the General Body granted an approval to the appointment of a private agency for preparation of Revised Draft Development Plan, as also, proposals were made for minor changes in the earlier approved resolution. It is contended that however, such proposal to appoint a private agency did

not pass muster of the General Body, hence, in a meeting of the General Body held on 23 September 2016, a resolution was passed (Resolution No.1266) rejecting such proposal. Consequently, such proposal was resubmitted to the General Body and was approved in its meeting held on 24 July 2017 vide Resolution No.1850.

16. Thereafter, the State Government, by its Notification dated 31 October 2017, appointed CIDCO as Special Planning Authority for some of the lands within the limits of the NMMC. These lands comprised the villages of Digha, Ilthal, Tetavali, Rabale, Ghansoli, Mahape, Borivali and Karave *qua* certain survey numbers as contained in the said notification.

17. The petitioners have referred to the procedure, as contemplated under the provisions of Sections 21 to 23 as contained in Chapter III of the MRTP Act, being the provisions for declaration of intention, preparation, submission and sanction of the Development Plan.

18. The petitioners contend that the NMMC accordingly published a notice dated 14 December 2017, which was also published in the Maharashtra Government Gazette dated 15 December 2017 under Section 23(1) of the MRTP Act, whereby the NMMC declared its intention to prepare Development Plan for NMMC under Section 23(1) of the MRTP Act. The notification interalia sets out the details in regard to the Planning

position and the steps taken to declare the intention to prepare the Development Plan for the Municipal Corporation areas. Such notice also referred to the fact that Government vide Notification dated 23 October 2017 had appointed CIDCO as Special Planning Authority for some of the lands within the NMMC limits, the details of which were set out in Schedule B appended to the said notice. It is in the light of the antecedents, which were set out in detail in the said notice, the NMMC in exercise all its powers under Section 23(1) of the MRTP Act declared its intention to prepare a Development Plan excluding the areas in Schedule B from the areas shown in Schedule A, so as to prepare and publish Revised Draft Development Plan as per the provisions of Section 38 of the MRTP Act. Such notice stated that citizens who intend to submit any objection or suggestion about the boundaries of the proposed Development Plan limits, the same be submitted to the concerned officer to the address set out therein. The relevant extract of the areas as contained in said notification reads thus :

Schedule "A"

(Accompaniment to Notice No. NMMC/TPO/ADTP/5172/2017, Date:14/12/2017)

Revenue Villages within NMMC's Jurisdiction	
Sr. No.	Name of Revenue Villages
1.	Airoli (Part)
2.	Belapur (Shahabaj)
3.	Bonsar (Part)
4.	Borivali (Part)
5.	Chinchavali (Part)
6.	Digha (Part)

7. Diva
8. Darave
9. Ghansoli (Part)
10. Gothivali
11. Ilthan (Part)
12. Ju
13. Karave
14. Khairane (Part)
15. Kopar-Khairane (Part)
16. Kukshet (Part)
17. Mahape (Part)
18. Nerul
19. Pawane (Part)
20. Rabale (Part)
21. Sanpada
22. Sarsole
23. Savali (Part)
24. Shirawane (Part)
25. Sonkhar
26. Talavali (Part)
27. Tetavali (Part)
28. Turbhe (Part)
29. Vashi
30. Adavali-Bhutavali

Schedule "B"

(Accompaniment to Notice No. NMMC/TPO/ADTP/5172/2017, Date : 14/12/2017)

List of lands for which CIDCO has been appointed as Special Planning Authority
vide Government Notification No. TPS/1217/VOR-1/C.R. 102/17/UD-12,
Dated : 31 October 2017

Sr. No.	Name of Revenue Villages	Survey Nos.
1.	Digha	260,231
2.	Ilthan	100,99
3.	Tetavali	146
4.	Rabale	110
5.	Ghansoli	528
6.	Mahape	220A
7.	Borivali	94
8.	Karave	143,144,145,146,147,148,149, 150,151,152,153,154,155,156, 157,158,159,160,161,162,163, 164,165,166,167,168,169,170, 171,172,173,174,175,176,177, 221,222,223,230. (New Survey No. 290),256, 264B,224,297.

19. The petitioners have contended that NMMC's intention of preparing a Draft Development Plan by the above notice was communicated by the NMMC to the CIDCO vide its letter dated 22 December 2017, recording that a Draft Development Plan was being prepared taking into account the increase in the population and the use of the land for various purposes affecting the FSI. NMMC also pointed out that the NMMC was in need of open spaces by providing reservation for public purposes within the city, as it had no open spaces of its own and all spaces were owned by CIDCO, and since majority of the land was now developed, the open land belonging to CIDCO should be made available only for public utilities. The NMMC also stated that it was necessary for CIDCO to obtain prior sanction of the NMMC before auctioning open plots belonging to CIDCO which were falling within the municipal limits of the NMMC. It was stated that in view of the provisions of Section 43 of the MRTP Act, CIDCO without prior sanction of the NMMC cannot deal with the plots/lands as proposed to be reserved in the draft development plan for any purpose.

20. The petitioners contend that the Councillors of the Municipal Corporation made several representations to the CIDCO informing CIDCO about the intention of the NMMC to prepare and publish Development Plan,

wherein reservations were proposed to be made on certain plots of land belonging to CIDCO for different public purposes, putting CIDCO to a notice that it ought not to deal with the said plots which were subjected to reservation in the proposed development plan.

21. In furtherance of such intention of the NMMC, in a General Body Meeting of the NMMC held on 13 December 2019, interalia in relation with the preparation of a Draft Development Plan for the NMMC, there was an affirmation of the proposed reservations. However, the grievance of the petitioners is that despite such actions, the NMMC did not take appropriate steps to publish a Draft Development Plan and make the same available for inspection to the public at large as per the provisions of Section 26(1) of the MRTP Act. According to the petitioners, also a Draft Development Plan being not published was a setback to the General Body Resolution dated 13 December 2019.

22. The petitioners contend that on the above backdrop, they were surprised to come across public notices dated in and around January/February, 2021 issued by CIDCO inviting bids for auction of the plots of land as set out in the said notices, which according to the petitioners were proposed to be reserved for public utilities in the proposed draft development plan. It is stated that immediately, the Councillors of the

Municipal Corporation objected to the auctioning of the said plots by CIDCO by making representations, in which the Councillors brought to the notice of CIDCO the importance and need of these plots to be reserved for public purposes. In para 12 of the first PIL, the reservations *qua* the different plots as proposed in the Draft Development Plan have been referred.

23. The petitioners contend that in view of the outbreak of Covid-19 pandemic with effect from March, 2020, the General Ward Elections of the Municipal Corporation could not be held as the term of the municipal corporation had expired on 28 April 2020. It is stated that as a consequence thereof, the Commissioner of the NMMC was appointed as an Administrator to conduct the affairs of the NMMC. The petitioners contend that merely because the Municipal Corporation was administered through the Municipal Commissioner, the publication of a notice of the Draft Development Plan as contemplated under Section 26 of the MRTP Act could not be postponed indefinitely. The petitioners contend that CIDCO was taking undue advantage of the situation that the democratically elected body of the Municipal Corporation/NMMC was not in place, as CIDCO intended to proceed to allot the plots which would frustrate reservation as proposed in the Draft Development Plan.

24. It is, in these circumstances, the petitioners have approached this

Court by the present PILs *inter alia* praying for reliefs that the NMMC be directed to publish a Draft Development Plan in pursuance of the notice/notification dated 14 December 2017 published in the Maharashtra Government Gazette on 15 December 2017, and making the same available for inspection of the public at large. The second relief, prayed for, is to the effect that the plot auction notices issued by CIDCO be quashed and set aside. We set out the prayers as made in the PIL little later, as some amendments to the petitions and the prayers are required to be noted.

25. Subsequently, the petition was sought to be amended, as permitted to the petitioners by an Order dated 2 August 2021 passed by this Court, in the light of a statement as made on behalf of CIDCO as recorded in the said order, that the plots in dispute were already allotted by CIDCO. Also a statement, as made on behalf of the NMMC that the State Government is in the process of taking a decision on these issues, so that the disputes can be resolved, was recorded by the Court. The said order reads thus:

“1. In PIL No. 22 of 2021 as the petitioner intends to assail the order passed by the State Government under section 154 of the Maharashtra Regional and Town Planning Act, 1966, hence leave to amend. Let the amendment be carried out within one week from today and the amended copy be served on the respondents.

2. Respondents to file reply-affidavits within two weeks. Rejoinder thereto, if any, may be filed within one week thereafter.

3. An endeavour would be made to dispose of these petitions on the adjourned date.

4. Stand over to August 23, 2021. To be listed High on Board.

5. Ad-interim order, if any, shall continue to operate till August 31, 2021 or until further orders whichever is earlier.”

26. The petitioners have contended that learned Advocate for the Municipal Corporation forwarded a communication/email dated 14 June 2021 issued by the State Government, whereby the State Government in exercise of powers under Section 154 of the MRTP Act, directed that since a Draft Development Plan for the Municipal Corporation has not been published in accordance with Section 26 of the MRTP Act, reservation in respect of the plots of land vested with CIDCO was not applicable to the said plots, hence the auction process conducted by CIDCO, till the issuance of the said directive shall remain protected. It was also provided that the NMMC shall complete the procedure regarding the grant of additional FSI/building permission without raising any objection. Insofar as the allotment of the plots in question to respondent Nos.4 to 13 (private respondents) was concerned, CIDCO had issued allotment letters to the successful bidders in March 2021. CIDCO has also contended that majority of the allottees have made full payment of the lease premium, in pursuance of the allotment letters issued in their favour by CIDCO.

27. On such conspectus, the petitioners contend that as the 1980

sanctioned Development Plan prepared by CIDCO was a structural plan, in which, only the land use zones were shown, there was a need for an appropriate comprehensive- development plan, hence, for such reason a Development Plan which reserved land for public amenities, was being proposed by the NMMC in its Draft Development Plan. It is stated that the NMMC proposed such plan considering the projected population for next 20 years. The petitioners hence contend that without prior approval of the NMMC, CIDCO ought not to have changed the user of the plots/lands, as sought to be done by it, and take any steps to auction the lands/plots on which reservation was proposed. It is hence contended that the allotment of the plots in favour of the private respondents is in breach of the express provisions of Sections 23 and 40 of the MRTP Act, hence, liable to be quashed and set aside. It is for such reason, CIDCO allottees of the plot are also impleaded as party to this petition. The petitioners contend that for such reasons the orders of the State Government dated 14 June 2021 issued in exercise of powers conferred under Section 154 of the MRTP Act, are issued without any authority in law and are illegal. The petitioners case is to the effect that Section 154 merely confers a power on the State Government to issue directions and/or instructions to the Planning Authority for implementation or bringing into effect the Central or the State Government programmes, policies or projects or for efficient administration

of the Act or any larger public interest as the section itself provides. It is hence, contended that the said provision presupposes that the State Government follows the principles of natural justice by granting an opportunity of a hearing to the planning authority (NNMC) before issuing such directions. The petitioner contend that issuance of such directions by the State Government would also amount to a colourable exercise of power, prejudicial to public interest.

28. It is also the case of the petitioner that the action of the State Government in issuing the Section 154 directives is malafide inasmuch as an application dated 1 December 2020 of the NMMC under Section 148-A of the MRTP Act seeking extension of time for publication of Draft Development Plan under Section 26(1) of the MRTP Act was left undecided by the State Government, only with a view to stall the procedure to be followed by the NMMC under Section 26 of the Act. It is contended that on one hand, for no reason the State Government kept pending the application dated 1 December 2020 filed by the Municipal Corporation seeking extension of time for publication of Draft Development Plan, and on the other hand the State Government issued directives dated 14 June 2021 under section 154 of the MRTP Act, recording that the reservation proposed by the Municipal Corporation shall not apply to the plots of land put up by

CIDCO for auction till the issuance of the said directives. The petitioners contend that the State Government ignored that the time contemplated under Section 26 for publication of Draft Development Plan was yet to be over, hence the directives dated 14 June 2021 could not have been issued by the State Government. It is also contended that in any event, in view of the provisions of Section 21(4A), a notification issued under Section 23 of the Act would not lose its significance and the same would not lapse. The petitioners contend that, in fact, consequences of the provisions of Section 21(4A), 23, 24, 43, 44 and 148-A of the MRTP Act stand violated by the State Government, in issuing the impugned directives dated 14 June 2021. The petitioners hence contend that it was imperative for the State Government to decide NMMC's application dated 1 December 2020 made under Section 148 A of the MRTP Act, seeking extension of time to publish a Draft Development Plan. It is also contended that the directive dated 14 June 2021 also violate the express provisions of Article 243W of the Constitution, as inserted by the 74th Amendment to the Constitution.

29. The petitioners also contend that there is a reason to believe that the Draft Development Plan was not intentionally published in time as prescribed under Section 26 of the MRTP Act while the Municipal Corporation was functioning. It is contended that as the term of the

municipal corporation ended on 20 April 2020, hence, till the new elections were held, the Municipal Commissioner came to be appointed as an Administrator by the State Government, for the reason that the 'General Ward Elections' of the Municipal Corporation could not be immediately notified /held due to the outbreak of Covid-19 pandemic. It is hence contended that in the absence of a democratically elected municipal corporation, it was incumbent on the Municipal Commissioner/Administrator, who is an officer of the State Government, not to act contrary to the interest of the municipal corporation and infact the administrator was supposed to protect the interest/ welfare of the citizens of Navi Mumbai in preventing the State Government from issuing the Section 154 directives. It is, thus, imperative that CIDCO be restrained from allotting the plots, in question.

30. By an amendment to the petitions the petitioners have challenged another Notification dated 6 September 2021 issued by the State Government during the pendency of these petitions, again exercising powers under Section 154 of the MRTP Act, whereby the State Government *inter alia* directed that the authority of CIDCO in respect of allotment and lease of the plots/lands in question shall remain intact. It was provided that the reservations made by the Municipal Corporation on plots/lands

vested in CIDCO admeasuring less than 500 sq.mtrs. be retained in the draft layout and the NMMC shall not propose reservation on plots of CIDCO having area of more than 500 sq.mtrs. The petitioners contend that issuance of such notification under Section 154 during the pendency of this petition was objectionable and illegal, being contrary to the powers as conferred on the State Government under Section 154 of the Act as also violative of Article 243W of the Constitution.

31. On the above backdrop, the petitioners are before the Court praying for the following reliefs:-

C) Prayers in PIL 22/2022

“This Hon’ble Court be pleased to issue a Writ of mandamus or a writ of certiorari or a writ in the nature of mandamus or certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, thereby:

(a) directing Respondent No.2 to publish a draft Development Plan in pursuance of Notification dated 14th December, 2017 (Exhibit - ‘A’ hereto) published in the Maharashtra Government Gazette of 15th December, 2017 and make the same available for inspection of public at large;

(b) quashing and setting aside the auction notices issued by Respondent No.1 calling for bids for auctioning the plots of land mentioned in the said notices (Exhibit - ‘D’ hereto);

(c) quashing and setting aside impugned directives dated 14th June, 2021 issued by Respondent No.3 under the purported exercise of powers under Section 154 of the MRTP Act, 1966 (Exhibit - ‘F’ hereto);

(d) quashing and setting aside auctions of plots of land conducted by Respondent No.1 more particularly set out in Paragraph No.8 and 9 of Affidavit in Reply filed by Respondent No.1 to the above PIL;

(e) directing Respondent No.3 herein to decide application dated 1st

December, 2020 filed by Respondent No.2 herein under Section 148A of the MRTP Act, 1966 seeking extension of time to publish Draft Development Plan within such time as this Hon'ble Court may deem fit and proper;

(f) quashing and setting aside impugned directives dated 6th September, 2021 issued by Respondent No.3 under the purported exercise of powers under Section 154 of Maharashtra Regional and Town Planning Act, 1966 (Exhibit - "G" hereto);

(g) quashing and setting aside the advertisements published by Respondent No.3 for auction of plots for commercial and educational purposes, copies of which are annexed as Exhibit - "H" collectively to this PIL."

Prayers in PIL 37/2022

a. That this Hon'ble Court by issuing appropriate writ, order or direction may be pleased to quash and set aside the impugned Directive dated 14/06/2021 issued by Respondent No.1 under Section 154 of the MRTP Act, 1966;

aa. That this Hon'ble Court by issuing appropriate writ, order or direction, may be pleased to quash and set aside the impugned directives dated 06/09/2021 issued by Respondent No.1 under Section 154 of the MRTP Act, 1966.

b. That this Hon'ble Court by issuing appropriate writ, order or direction may be pleased to quash and set aside the auction process undertaken by Respondent No.3 for Allotment of Plot of Lands bearing Nos. 11 and 14, in Sector 18 pursuant to its Scheme bearing No. CIDCO/MM/03/2020-21 (Exhibit E-1 and F-1), Plot of lands bearing Nos. 8, 9 and 10 in Sector 18 and Plot Nos. 6, 7 and 8 in Sector 19 pursuant to Scheme bearing No. CIDCO/MM/05/2020-21 (E-2 and F-2) and Plot of lands bearing Nos. 9, 10 and 11 in Sector 19 pursuant to its scheme bearing No. CIDCO/MM/06/2020-21 (Exhibit E-3 and F-3);

c. That this Hon'ble Court may by issuing appropriate writ, order or direction may direct Respondent No.1 and 2 to prepare and publish the Development Plan pursuant to Notification dated 14/12/2017 (Exhibit A) for the area under Navi Mumbai Municipal Corporation in accordance with the provision of MRTP Act, 1966;

d. That this Hon'ble Court be pleased to direct Respondent No.4 to decide the application made by Respondent No.2 for extension of time under Section 26(1) of the MRTP Act, expeditiously;

D) Respondent's Pleadings**NMMC's Reply**

32. On behalf of the NMMC, a reply affidavit dated 14 July 2021 of Shri Hemant Thakur, Assistant Director of Town Planning, NMMC has been filed. The relevant contents of the reply affidavit are thus:- The NMMC is a local authority as well as a Planning Authority under Section 2(15) and 2(19) of the MRTP Act, constituted with effect from 1 January 1992. In two phases the State Government by its orders dated 15 December 1994 and 29 July 2008 have conferred powers of Planning Authority on the NMMC. Hence, with effect from 29 July 2008, NMMC is functioning as a Planning Authority for its entire jurisdiction. Thus, the powers under Chapters III and IV of the MRTP Act, which pertain to "Development Plan" and "Control of Development and Use of Land included in Development Plans", respectively, also stand vested with the NMMC.

33. It is stated that prior to the constitution of the NMMC, there was a sanctioned Development Plan (DP) for the entire Navi Mumbai area, which came into force with effect from 1 March 1980. Section 21 of the MRTP Act, makes it obligatory on the Planning Authority to prepare a Development Plan for its jurisdiction, accordingly an intention to prepare a Draft Development Plan, for its municipal jurisdiction was declared by the NMMC on 14 December 2017, as envisaged under Section 23 of the MRTP

Act. Notice of such intention was also published in Maharashtra Government Gazette on 15 December 2017. Since an intention to prepare Draft Development Plan was declared by NMMC on 14 December 2017, in view of the provisions of Section 43 of the MRTP Act, the NMMC vide its letter dated 22 December 2017, informed CIDCO that without the permission from NMMC, no sub-division, amalgamation or allotments of plots to individuals shall be granted by CIDCO.

34. NMMC's affidavit further states that in exercise of powers under Section 24 of the MRTP Act, the Joint Director Town Planning, Konkan Division, Navi Mumbai, by his letter dated 23 January 2018, appointed the Assistant Director of Town Planning (ADTP), NMMC, as the Town Planning Officer for preparation of the Development Plan. The Town Planning Officer, after completing the legal formalities as contemplated under Section 25 of the MRTP Act, prepared a Draft Development Plan and submitted the same to the General Body of the NMMC on 11 February 2019 for its approval so as to allow its publication and to invite suggestions/objections over it from the general public as contemplated under Section 26(1) of the MRTP Act.

35. It is stated that the General Body of the NMMC, in its meeting held on 13 December 2019, accorded sanction to the Draft Development Plan with major changes and further resolved to publish it by inviting

suggestions/objections from the general public as envisaged under Section 26(1) of the MRTP Act. The General Body resolution No.1516 dated 13 December 2019, was received by the Town Planning Officer on 28 February 2020. It is stated that the General Body resolution *inter alia* suggested reservations on various plots which were yet to be allotted by CIDCO. Hence, after incorporating major changes suggested by the General Body resolution, further process for publication of the Draft Development Plan by inviting suggestions/objections was required to be initiated. It is stated that however, on account of the Covid-19 pandemic and various lockdown restrictions imposed from time to time, the process of publication of Draft Development Plan and inviting suggestions/objections could not be undertaken. NMMC, accordingly, by its letter dated 1 December 2020, requested the Director of Town Planning, Maharashtra State, Pune, with whom the powers to grant extension for publication of Draft Development Plan were delegated by the State Government's order dated 1 December 2016, to grant extension of one year for publication of Draft Development Plan.

36. NMMC's affidavit further states that under the provisions of Section 148-A of the MRTP Act (as amended with effect from 14 September 2020 and brought into force from 23 March 2020), the period from 23 March 2020 to 5 July 2021 should be excluded while computing the statutory

period to complete the legal process as envisaged under Section 26(1) of the MRTP Act. It is stated that considering the provisions of Section 26(1) of the MRTP Act and amended provisions of Section 148-A, the last date for publication of the Draft Development Plan for inviting suggestions/objections from the general public was to be 22 July 2022 (including one year extension which can be granted by Director of Town Planning under the proviso to Section 26(1) of the MRTP Act).

37. It is next stated that most of the land within the NMMC limits (nearly 90% or more) was owned by CIDCO and the Draft Development Plan was prepared by NMMC taking into consideration the projected population for the next 20 years and the public amenities required for such projected population. Prior to such Draft Development Plan, there was sanctioned Draft Development Plan of CIDCO, which had come into force from 1 March 1980 and which was prepared for the entire Navi Mumbai area admeasuring 343.70 square kilometers (including NMMC jurisdiction) which was merely a structural plan, in which only the land use zones were incorporated and there were no Development Plan reservations for any public amenities.

38. The affidavit further states that the State Government had called for joint meeting with CIDCO and NMMC on 10 November 2020 in connection

with the Draft Development Plan. Minutes of said meeting were issued by the State Government on 19 November 2020. As per the Minutes of meeting, the Government directed NMMC to delete the proposed reservations to 12 plots of CIDCO as included in the Draft Development Plan in respect of which tenders were issued and directing that development of the said plots which have already been allotted by CIDCO be permitted. CIDCO was also directed by the State Government to submit the details of 12 plots to NMMC which were furnished by CIDCO to NMMC. After receipt of such directions from the State Government, CIDCO, vide its letters dated 1 February 2021 and 5 March 2021, requested NMMC as also the State Government to delete the proposed reservations from the Draft Development Plan of CIDCO on 300 plots. In such context, NMMC, vide its letter dated 12 April 2021, submitted its detailed report to the State Government whereby in protecting statutory rights of the NMMC as the Planning and Local Authority, NMMC sought permission from the State Government to allow NMMC to publish the Draft Development Plan. However, the State Government issued orders dated 14 June 2021 to the NMMC under Section 154(1) of the MRTP Act directing that CIDCO's plots which were put to auction before 14 June 2021, under the tender issued by CIDCO, cannot be reserved for any public purpose in the Draft Development Plan of the NMMC and accordingly, development permission shall be

granted by NMMC to such CIDCO plots as tendered. The order recorded that NMMC accordingly shall take necessary action, after the receipt of requisite information from CIDCO, such as the details of each tender plots (along with copy of lease agreement, tender notice with documentary evidence) which has been reserved in the Draft Development Plan of the NMMC. It is further stated that the Draft Development Plan as approved by the General Body of NMMC was hence required to be modified by deleting the reservations as per the directives of the State Government vide order dated 19 November 2020. It is stated that after effecting the required changes, NMMC would be in a position to publish the Draft Development Plan under the provisions of Section 26(1) of the MRTP Act, after extension of time is granted by the Director of Town Planning, Maharashtra State, Pune, as sought by NMMC, before expiry of stipulated time-limit including extended periods.

CIDCO'S REPLY

39. CIDCO has filed a reply affidavit of Mr. Prashant B. Bhangare, Marketing Manager (Plots). The relevant contents of the reply are:- CIDCO was constituted as a New Town Development Authority for New Bombay (now "Navi Mumbai") in terms of sub-section 3A of Section 113 of the MRTP Act read with Section 118 of the MRTP Act. It was conferred power and authority to dispose of, by lease, lands acquired under section 113A and

vested in it, by the State Government, along with its own lands for development. Under section 159 of the MRTP Act, CIDCO framed, the New Bombay Disposal of Land Regulations, 1975 and the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 for disposal of lands which were approved by the State Government. That the present PIL petitions are mainly filed for certain NMMC areas (namely, plots covered under Scheme 3, 5 and 6) which are already advertised and e-auctioned. The result of the e-auction conducted by CIDCO has already been declared in respect of Scheme 3, 5 and 6 in the month of February, 2021, as also allotment letters were issued to the successful bidders in the month of March, 2021. It is contended that majority of the allottee's have made full payment of lease premium for the plots as allotted to them, as per the allotment letters issued to them. In view thereof, the prayer of the petitioners to seek quashing of auctions notices have become infructuous. Setting out the background of the auctions it is stated that CIDCO had launched three schemes for lease of plots for residential, residential + commercial use in various nodes of Navi Mumbai through e-auction cum e-tender in the month of January and February, 2021. The details of each of these schemes, the names of the allottees along with the entire tender programme as also the details of the payments received are set out by CIDCO. It is stated that out of 19 allottees of the plots falling under the different schemes, 9 allottees have filed writ

petitions in this Court to resolve the NMMC reservations issues, interalia praying for an extension of time for payment of lease premium, on which interim orders are passed by this Court. It is contended considering the situation, the State Government had issued directions dated 14 June, 2021 under section 154 of the MRTP Act clarifying that since NMMC has not published the draft development plan, as contemplated under Section 26 of the MRTP Act, the NMMC would not have any authority to make reservations over the CIDCO plots, in respect of which an auction and allotment of plots has already been held by CIDCO. It is stated that as per the directions of State Government, the Municipal Corporation is required to grant all necessary permissions for development of the said plots.

40. CIDCO has next stated that it had prepared a nodal plan, in conformity with the sanctioned development plan/ Development Control Regulations (DCR's), assigned land uses and disposed plots as per the powers delegated under section 118 of the MRTP Act. It is stated that vesting of all lands with CIDCO, the flexibility to plan, assign land use, develop and use the land, as a resource to make the plan financially viable are the core provisions in Chapter VI of the MRTP Act. It is stated that accordingly, CIDCO has developed several nodes and after such

development was complete qua such nodes, it was felt by the State Government that the municipal functions should be transferred to an independent authority/body, accordingly by Government Resolution dated 17 December, 1991, the State Government had designated NMMC as a Municipal Corporation under BPMC Act, 1949, as also to be a Planning Authority under MRTP Act, 1966. It is contended that as a consequence of the said Government Resolution and due to functions of the planning authority being conferred on both the NMMC and CIDCO, some confusion was created. Hence, to remove such anomalies, the State Government issued directions under Section 154 of the MRTP Act dated 15 December 1994 whereunder the State Government categorically maintained CIDCO's role as 'New Town Planning Authority', even though the powers under Chapters III and IV were conferred on the Municipal Corporation. It is contended that the State Government, while acknowledging that CIDCO was appointed as the New Town Development Authority, it was categorically provided that considerable portion of land in the developed nodes was still to be developed and disposed of by CIDCO, and in order to enable the CIDCO to discharge its functions as a New Town Development Authority, it would not be necessary for CIDCO to approach the NMMC for development permissions in respect of areas/lands being developed by CIDCO. Accordingly, it was directed that CIDCO would be covered under the

exception under section 43(ii) of the MRTP Act.

41. Lastly, CIDCO has contended that CIDCO having already published the results of the allotment of plots under schemes no. 3, 5 and 6 respectively, even before the present petitions were filed, as also CIDCO having completed the e-auction process, the reliefs as prayed for the allotment of plots cannot be granted. It is contended that the State Government on 14 June, 2021 has issued directions under section 154 of the MRTP Act clarifying that as the NMMC has not published the Draft Development Plan as per the provisions of Section 26 of the MRTP Act, the NMMC shall have no powers of making any reservations over the plots, in respect of the auction/allotment of plots which are already undertaken by the CIDCO and as per such directions of the State Government, the NMMC is required to grant all necessary permissions for development of the said plot. It is, accordingly, prayed that the petitions be dismissed.

42. An additional affidavit dated 20 August, 2021 in reply to the amended petition has been filed on behalf of the CIDCO. In such affidavit CIDCO has contended that there is no public interest canvassed in the present petitions. CIDCO contends that pendency of the petition is depriving CIDCO of receiving premiums due to it, on allotment of plots to the private respondents. It is reiterated that CIDCO prepared a Development Plan

incorporating the different employment centres in MIDC, wholesale markets, Government offices and JNPT as industrial, warehousing and commercial land use zones with commensurate residential areas to support the population working therein as self sufficient nodes, spread along major transportation corridors. This was submitted to the Government in 1979 and sanctioned by the Government in 1979 and the same had become effective since March 1980. It is stated that such allocation had undergone about 20 modifications in accordance with the provisions of Section 37(1) of the MRTP Act. Also concurrently, the Development Control Regulations (DCR) were formulated and submitted to the State Government for its sanction which were first approved on 16 September, 1976 and published in the Government Gazette on 21 September, 1978 and subsequently the modifications on 10 October, 1986. It is stated that CIDCO had formulated a scheme for lease of residential cum commercial plots at Kharghar, Kalamboli and Sanpada nodes. Furthering such scheme, tenders in question were floated as per the scheme and bids were received and after adopting the procedure, plots were allotted to respondent nos. 5 to 10. It is stated that however, NMMC proposed to make reservations qua the Sanpada plots, for public purposes and based on this contention, respondent nos. 5 to 10, who are the allottees of the said plots, have filed various writ petitions in this Court contending that since NMMC had proposed reservations on such

plots, either the reservation should be deleted, or CIDCO should be directed to refund the money. CIDCO contends that by virtue of the interim orders passed by this Court on such writ petitions, the payment of balance premium to CIDCO by such allottees has been suspended. CIDCO has stated that in these circumstances, the State Government held a meeting in order to resolve the disputes between CIDCO and NMMC and accordingly, issued directives on 14 June, 2021 under section 154 of the MRTP Act ordering that in respect of the plots tendered by CIDCO till 14 June, 2021 the NMMC should not make any reservation and should grant development permission to the allottees which are also subject matter of challenge in the present petition.

43. Setting out the background facts relevant to CIDCO being constituted as a new town development authority, CIDCO contends that the whole intention of declaration of Navi Mumbai as New Town was with the object that a new city could be systematically planned and for this very reason, a Development Plan with broad land use zones was sanctioned by the Government, while entrusting CIDCO the authority of creating zones and assigning of land use at plot level through nodal plan. CIDCO had accordingly prepared nodal plans in conformity with the sanctioned Development Plan and DCR's, assigned land uses and disposed of plots as

per the powers delegated under section 118 of the MRTP Act. CIDCO contends that vesting of all lands with CIDCO, the flexibility to plan, assign land use, develop and use the land as a resource to make the plan financially viable being the core provisions in Chapter VI of the MRTP Act were assigned to it at the relevant time. It is stated that CIDCO had accordingly developed several nodes and after such development, the Government decided to transfer municipal functions to an independent authority, and accordingly, by a GR dated 17 December, 1991 the State Government designated the NMMC as a Municipal Corporation under the BMC Act 1949 (now Maharashtra Municipal Corporation Act, 1949). It is stated that in such situation, the State Government had issued directions under section 154 of the MRTP Act dated 15 December, 1994 wherein the State Government had maintained CIDCO's role as New Town Development Authority even though the powers under Chapters III and IV were conferred on the NMMC. It is stated that the State Government, however, was conscious and well aware that CIDCO had planned the 'new city' and was the owner of the land comprised in the designated areas of this new city, as also that several plots in the different nodes were vacant/undeveloped and for such reasons, the State Government in its directions issued under section 154 ordered that CIDCO shall continue to discharge its functions in respect of the underdeveloped lands/plots in the

said area.

44. CIDCO has next contended that the statutory position on CIDCO's authority is also clear. It is stated that under section 113 (8) of the MRTTP Act, the New Town Development Authority is vested with all powers and duties of a planning authority including powers and duties under Chapters III and IV. It is stated that such powers are comprehensive powers, as they pertain to the task of planning and developing the area, it is stated that the powers of a planning authority are subservient to the powers of the New Town Development Authority and hence the superior powers of CIDCO cannot be subjugated to the powers of NMMC. CIDCO states that the powers of the New Town Development Authority includes the power to own lands, make plans for development, dispose of lands and grant permissions for development. CIDCO contends that since all these powers are conferred upon the New Town Development Authority, CIDCO has absolute rights to exercise these powers, in respect of such undeveloped plots. It is stated that for such reason, the NMMC has no authority/power to make any reservation over the said plots which are undeveloped and which are owned by CIDCO. Hence, any reservations proposed by NMMC is illegal and beyond the purview of the powers of the NMMC. CIDCO has next contended that the State Government on 14 June, 2021 having issued

directions under section 154 of the MRTP Act, clarifying that since the NMMC has not published the draft development plan under section 26 of the MRTP Act, it is clear that the NMMC had no powers of making any reservations over the plots in respect of auctions/allotment of plots which are already undertaken by CIDCO and as per such directions, the NMMC is required to grant all necessary permissions for development of said plots.

45. CIDCO has also contended that in the general body meeting of the NMMC, certain reservations were proposed to be incorporated in the draft development plan of the NMMC which was yet to be published. It is stated that the NMMC had prepared the draft development plan proposals through its own town planning department and submitted the same to its General Body on 11 February, 2019 with a request to sanction a permission under section 26(1) of the MRTP Act for inviting suggestions/objections from the public at large. Such plan was approved in the General Body Meeting of the NMMC held on 13 December, 2019, however with no less than 224 modifications an approval was granted for publication of such plan as per the provisions of section 26(1) of the MRTP Act by inviting suggestions/objections from the public at large. It is stated that such draft development plan being not published and unless it was published under section 26(1), it would not have any legal sanctity. It is stated that from the

minutes of the General Body Meeting of the NMMC, it was apparent that the draft development plan proposal prepared and placed before the General Body of NMMC had not recommended any reservations on the plots subject matter of the petition. The General Body however had proposed 224 fresh/new reservations among which includes the plots allotted to respondent nos. 5 to 10.

State Government's Reply

46. On behalf of the State Government a reply affidavit of Mr. Jitendra Bhople, Joint Director of Town Planning, has been filed, opposing the relief as prayed for in the petitions. The affidavit states that as per the provisions of Section 113(3A) of the MRTP Act, the State Government had declared CIDCO as the New Town Development Authority for Navi Mumbai notified area (referred as "said area"). That CIDCO had accordingly acquired all the privately held lands within this notified area as per the provisions of Section 113A of the MRTP Act, consequent to which the lands were vested with CIDCO. It is stated that in compliance with the provisions of section 118 of the MRTP Act, CIDCO being the Development Authority for the Navi Mumbai area, it had prepared the land disposal regulations to dispose of the acquired lands vested in it. It is stated that CIDCO also prepared Development Plan for the said area which was a structural plan showing broad land use zones, with different nodes and proposed amenity plots

within such nodes. Such Development Plan for the Navi Mumbai area was sanctioned on 1 February, 1980 which is stated to be in operation till date. It is stated that the NMMC was constituted by the State Government, which came into existence with effect from 1 January, 1992. The State Government by its orders dated 15 December, 1994 and 29 July, 2008, granted powers of Planning Authority to the Municipal Corporation. Accordingly, NMMC is functioning as a Planning Authority for its entire jurisdiction with effect from 29 July, 2008. NMMC has declared its intention to prepare the development plan for its area as per the provisions of Section 23 as also complying with section 38 of the MRTP Act. Such intention was notified on 14 December, 2017. This declaration to prepare the Draft Development Plan was also published in the Official Gazette on 15 December, 2017. It is stated that the Draft Development Plan is yet to be published under Section 26 of the MRTP Act by the NMMC. The affidavit states that the NMMC by its letter dated 22 December, 2017 had informed CIDCO that as per the provisions of Section 43 of the MRTP Act, in view of the reservation in the proposed Draft Development Plan for Navi Mumbai area, the sale of vacant lands owned by CIDCO or change in user or development cannot be carried out without written permission of the Planning authority (NMMC) after the publication of the intent of the Development Plan. Such letter requested that a rearrangement or change of

Public Facility plots should not be made without prior consent of the NMMC. It is stated that the main concern of the PIL petitioners is in relation to vacant plots of land in sectors 18 and 19 at Sanpada, Navi Mumbai which were auctioned for residential/commercial complexes by CIDCO. It is stated that the case of the PIL petitioners is to the effect that such plots are proposed to be reserved for public utility purposes by NMMC pursuant to a declaration of intention to prepare development plan for Navi Mumbai area by NMMC, hence, the plots could not be auctioned by CIDCO for residential or commercial development. It is stated that the petitioners challenge being to the auction and tender process undertaken by CIDCO as also to the directions dated 14 June, 2021 issued by the State Government under section 154 of MRTP whereby CIDCO is allowed to auction the said lands is being dealt in the affidavit.

47. In addition to the factual antecedents as noted above the State Government in its affidavit, has stated that firstly on 15 December, 1994, directives were issued under section 154 of the MRTP Act to rule out any confusion qua the respective authorities of CIDCO and the NMMC regarding disposal and development of lands in the NMMC area *inter alia* clarifying that it will not be necessary for CIDCO to approach the NMMC for a development permission in respect of areas/lands being developed by

CIDCO and for such purpose, CIDCO would be covered by the exception under Section 43(ii) of the MRTP Act. It is stated that in furtherance thereof, the State Government has issued directives dated 14 June, 2021 under section 154 of the MRTP Act stating that for the area of NMMC and the Panvel Municipal Corporation, the plots drawn by CIDCO and tendered till 14 June, 2021, and the auction process undertaken by CIDCO shall remain protected for the reason that the respective Draft Development Plan of these areas were yet to be published by the Municipal Corporation under section 26 of the MRTP Act and hence the proposed reservations in the Draft Development Plan were not applicable to the plots being auctioned by CIDCO. It is stated that the State Government has accordingly directed the NMML as also the Panvel Municipal Corporation to complete the action regarding the increased carpet area/building permits in relation to the auctioned plots without raising any objection in that regard. The State Government has thus contended that the directives dated 14 June, 2021 issued by it under section 154 of the MRTP Act are appropriate and in accordance with law.

48. The State Government has next contended that since NMMC has published notice of declaration of its intention to prepare a development plan of the NMMC area on 15 December, 2017 under section 23 of the

MRTP Act, as per the provisions of Section 26(1) of MRTP Act, the NMMC has to prepare the Draft Development Plan and publish the Draft Development Plan for inspection of the public inviting their objections and suggestions within a period of two years from the date of the notice published under section 23 of MRTP Act. It is stated that on an application of the Planning Authority, the State Government may extend such period of publication for one year in aggregate, after the expiry of the period of two years from the date of a notice published under Section 23 of MRTP Act. It is stated that accordingly the extended stipulated time limit for publication of said Draft Development Plan under Section 26 of MRTP Act ended on 31 December, 2020 i.e. after a total stipulated period of three years from the date of the notice (15 December, 2017) published under Section 23 of the MRTP Act declaring intention to prepare a Draft Development Plan.

49. The State Government has stated that due the pandemic which had arisen on the outbreak of COVID-19, the Government of India had declared nationwide lockdown on 23 March, 2020 which was extended from time to time as applicable to the State of Maharashtra. It is stated that the State Government accordingly vide its order dated 14 September, 2020 amended the provisions of Section 148A of the MRTP Act whereby such lockdown period was excluded while computing the statutory period along with other

exclusive period due to enforcement of code of conduct for any elections. The amendment was effected retrospectively from 23 March, 2020. It is stated that as per the provisions of Section 26(1) read with section 148A of the MRTP Act, the NMMC made an application dated 1 December, 2020 to the Director of Town Planning, Maharashtra State seeking extension of period for publication of Draft Development Plan under Section 26 of the MRTP Act upto 18 December, 2021 which was computed after consideration of the total period of 79 days (from 10 March, 2019 to 26 May, 2019) of the Parliamentary Elections along with 37 days (from 21 September, 2019 to 27 October, 2019) in relation to State Assembly Elections and 253 days (from 23 March, 2020 to 30 November, 2020) due to the COVID-19 lockdown. Accordingly, the Director of Town Planning, Maharashtra State, had informed the NMMC vide letter dated 10 August, 2021 that the COVID-19 lockdown had come into force with effect from 23 March, 2020 and period of lockdown would be available for publication of Draft Development Plan. It is stated that according to the provision of Section 148A of the MRTP Act, as the extension of time sought by the NMMC for publication of the Draft Development Plan is inclusive of COVID lockdown period, hence there was no need of granting extension for that respective period. It is hence stated that the NMMC could go ahead with the stipulated legal procedure and complete necessary steps for publication of Draft Development Plan.

E) Submissions on behalf of the petitioners

50. Mr. Dhakephalkar, learned senior counsel for the PIL petitioner in PIL No. 22 of 2021 and Mr. Atul Damle, learned senior counsel for the PIL petitioners in PIL Petition No. 37 of 2021 have made the following submissions:

(i) Once there was a declaration of an intention to prepare and publish a Draft Development Plan for the NMMC area by the NMMC for which, a notice was published in the Government Gazette on 15 December, 2017, it was not permissible for CIDCO during the pendency of the finalization of the 'draft development plan' and its publication so as to be made available for inspection of the public at large, to make any changes in the user of the plots of land which were proposed to be reserved by the NMMC for various public purposes, and that too without the sanction of the NMMC. Such would be an obligation of CIDCO under section 43 of the NMMC Act.

(ii) The publication of the Draft Development Plan as per the provisions of Section 23 of the MRTP Act could not have been indefinitely postponed inasmuch as due to the outbreak of Covid-19 the General Ward elections of the NMMC could not be held after the term of the Municipal Corporation

expired on 28 April, 2020. Due to which the Commissioner of NMMC was appointed as administrator to conduct affairs of the NMMC. Thus, merely because the NMMC is administered by an administrator/the Municipal Commissioner, the publication of the Draft Development Plan cannot be postponed indefinitely. In these circumstances, the action on the part of the CIDCO to issue advertisement for auction and allotment of plots by publication of notices in January, 2021, is in violation of the provisions of Sections 23 and 43 of the MRTP Act. Such action on the part of CIDCO is mainly for profits and which ignores the welfare of the citizens of Navi Mumbai to have open space, this albeit the NMMC taking a position, also in the reply affidavit, stating that the Draft Development Plan could not be published by the NMMC due to Covid-19 pandemic and an application for extension of time as stated by the NMMC was already made to the State Government on 1 December, 2020.

(iii) That the 1980 sanctioned development plan of CIDCO was only a structural plan which merely provided land use zoning and there were no development plan reservations for the public amenities. It is submitted that this was sought to be remedied by the NMMC in its Draft Development Plan, considering the projected population for next 20 years and the need for the public amenities. Thus, the allotment of plots by CIDCO in favour of

the private respondents is required to be held illegal considering the express provisions of Section 23 of the MRTP Act.

(iv) The directives dated 14 June, 2021 of the State Government issued in exercise of powers under Section 154 of the MRTP Act are illegal as such directions cannot be issued under Section 154. The issuance of such directives amounts to a colourable exercise of power, more particularly when an application dated 1 December, 2020 was made by the NMMC under Section 148A of the MRTP Act, seeking extension of time for publication of the draft development plan under Section 26(1) of the MRTP Act, which was pending decision of the State Government. In these circumstances, the State Government could not have published the said directives to hold that the reservations proposed by the NMMC shall not apply to the plots of land being allotted by public auction by CIDCO.

(v) The State Government has completely overlooked and/or ignored that the time contemplated under Section 26 of the MRTP Act for publication of Draft Development Plan was yet to be over and hence directives dated 14 June, 2021 could not have been issued.

(vi) Also once an application for extension of time under Section 26 (1) of

the MRTP Act was made by the NMMC, in view of the provisions of Section 21(4A), the notification issued under Section 23 of the MRTP Act could not lose its significance and the same would not lapse. This would be for the reason, as the powers of NMMC, would then be exercised by the Officer as provided in the said provision. It was thus incumbent for CIDCO to obtain permission of the NMMC before proceeding to advertise and auction the plots in question, as section 43 of the MRTP Act would not permit such action to be taken by CIDCO. Hence permission of the Planning Authority/NMMC ought to have been taken by CIDCO as mandated under Section 43 of the MRTP Act.

(vii) The State Government has totally overlooked the express provisions of Section 21(4A), Section 23, Section 26, Section 43, Section 44, Section 148A of the MRTP Act in issuing the directives dated 14 June, 2021.

(viii) In any event, the State Government cannot exercise powers under Section 154 of the Act by overriding the said other statutory provisions of the Act.

(ix) Article 243(W) of the Constitution would also stand violated by the State Government as the NMMC as a Planning Authority would have exclusive powers to decide on the appropriate planning of the areas falling within its jurisdiction.

(x) The subsequent notification dated 6 September, 2021 issued by the State Government during the pendency of this Writ Petition which was again in exercise of powers under Section 154 of the MRTP Act to direct that all powers of CIDCO, in respect of all leases as land owners, shall remain intact and providing that the reservation by the NMMC on the CIDCO plots admeasuring less than 500 sq.m. shall be retained in the draft development plan and prohibiting the NMMC from proposing any reservation on plots of CIDCO having area more than 500 sq.m. was illegal and objectionable. For issuance of such directives during the pendency of this petition, leave of this Court ought to have been taken, before issuing such a notification. Further, Section 154 of the MRTP Act does not confer any power on the State Government to issue such directions and/or instructions to the Planning Authority.

(xi) The directives dated 6 September, 2021 also fall beyond the specific powers as conferred on the State Government under the said provisions. Hence, such directions are contrary to the provision of Section 154.

(xii) No directives under Section 154 of the MRTP Act can be issued by the State Government by which the power of the Planning Authority/Local Authority to impose reservations can be taken away. For such reason the

directives dated 6 September, 2021 are against the scheme of the MRTP Act, 1996 as also the provisions of the Maharashtra Municipal Corporation Act, 1949.

(xiii) The NMMC by adopting a democratic process had passed a resolution in a General Body meeting held on 13 December, 2019 proposing reservation for public amenities for the benefit of the citizens of Navi Mumbai. However, by the impugned directives such resolutions as passed by following the procedure in law, by an executive fiat, under Section 154 of the MRTP Act, has taken away the power of the Planning Authority/ NMMC on Urban Town Planning, as also depriving public participation in decision making on public amenities.

(xiv) The directives dated 14 June, 2021 issued by the State Government under Section 154 of the MRTP Act and the auction process initiated by the CIDCO, of which, the private respondent are beneficiaries is in contravention of Chapters III and IV of the MRTP Act. In supporting such submissions, the legislative scheme as postulated under Section 21(4A), Section 23, Section 26, Section 43, Section 44 of the Act has been referred to submit that the 1980 Development Plan was a structural plan and no micro level planning was shown on the final Development Plan which was

prepared taking into consideration the development for the next 20 years from 1980. It is hence submitted that as per Section 38 of the MRTP Act at least once in 20 years from the date on which Development Plan has come into operation the plan was required to be revised either wholly or in part after carrying out a fresh survey and upon the preparation of land use map of the area.

(xv) It is submitted that in view of Section 38 of the MRTP Act, the Development Plan of the City New Mumbai ought to have been prepared in the year 2000, however, it was delayed to such extent, despite the tremendous development in terms of residential/commercial premises. It was hence, imperative that public utilities ought to have been developed proportionately when the population has increased from 3 lakhs in the year 1980 to 22 lakhs in 2021.

(xvi) It is submitted that thus the petitions need to be allowed.

F) Submissions on behalf of Respondents

Submissions on behalf of CIDCO

51. Mr. Hegde, learned counsel for CIDCO has made the following submissions:

Mr.Hegde would submit that CIDCO was appointed as New Town

Development Authority for the Navi Mumbai area by notification issued by the State Government under section 113A of the MRTP Act. Referring to sub-section (5) and sub-section (8) of Section 113 it is submitted that CIDCO exercises all powers and carries out all the duties of a Planning Authority under the MRTP Act which would include all powers and duties under Chapter III and Chapter IV and all the powers under the MRTP Act relevant for carrying out its objects to be exercised in respect of the lands vested with the CIDCO. It is submitted that since the constitution of the CIDCO as the New Town Development Authority, it was the obligation of the CIDCO to allocate lands for various purposes and not for profits. Mr.Hegde submits that the CIDCO has accordingly planned the city of Navi Mumbai by providing various infrastructure facilities and by allocating lands for such purpose, namely, for Airport, Railways, Metro, Hospitals, Religious purpose, gardens and by allotment of plots for commercial and residential purposes. Hence, allotments of plots on payment of lease premium is the public purpose being achieved by the CIDCO in fulfillment of its objectives as a New Town Development Authority. It is submitted that CIDCO has handed over about 590 lands to the NMMC free of cost. It is submitted that CIDCO has planned requirements for the city and as CIDCO has number of public projects in hand, it requires revenue. Hence, the petitioner's contention that the auction of the plots of land in question, is for

profiteering, is wholly untenable. On such backdrop, it is submitted that NMMC has no power to make any reservation on the lands/plots vested with the CIDCO. Therefore, the reservation proposed by the General Body of the NMMC in its resolution dated 13 December, 2019 is illegal and non-est. It is submitted that the purported reservations being made by the NMMC are totally contrary to the provisions of the Act, as the same are made oblivious to the provisions of the MRTP Act, in regard to the duties, powers and functions of the New Town Development Authority, more particularly as conferred under Section 113 (5) and (8) read with section 120 and section 43(ii). It is next submitted that the State Government has rightly exercised its powers under section 154 of the MRTP Act by issuing the directives dated 14 June, 2021 and the subsequent directives dated 6 September, 2021, as this is clearly a case where the powers of two statutory bodies under the MRTP Act become a subject matter of concern for the rightful exercise of powers by these authorities. It is next submitted that the auction of the plots in question in favour of the private respondents, as impugned by the petitioners, is wholly without substance, apart from being legal and valid. It is submitted that a serious prejudice is caused to the CIDCO inasmuch as by virtue of the interim orders, the CIDCO is not in a position to demand payment of the balance consideration from the private respondents and which is affecting the revenue requirements of the CIDCO.

It is next contended that on a careful consideration of the provisions of Section 21,23, 26 read with section 43 and the other provisions as relied upon by CIDCO it is quite clear that as the draft development plan itself is not so far notified, there is no question of General Body of the NMMC proposing any reservation in respect of plots in question it is vested in it as the New Town Development Authority. Mr. Hedge has accordingly prayed for dismissal of the petition.

Submission on behalf of NMMC

52. Mr. Marne, learned counsel for NMMC has submitted that NMMC is bound by State Government directives dated 14 June 2021 and that subsequent directives dated 6 September, 2021 issued under Section 154 of the MRTP Act. He would submit that although the General Body of the Municipal Corporation had passed resolutions proposing to reserve the plots of land being allotted by the CIDCO to the private respondents, however, referring to the reply affidavit he would not dispute that the draft development plan has not been published as per the provisions of Section 26 of the MRTP Act. He would state that an application dated 1 December, 2020 made by NMMC seeking extension of time for publishing the draft development plan as per the requirement of Section 26 is yet to be decided by the State Government. Mr. Marne has reiterated the contentions of the NMMC as contained in the reply affidavit.

Submissions on behalf of State Government

53. Ms. Salunkhe, learned AGP has made submissions on behalf of State Government which are mainly contentions as contained in the reply affidavit filed on behalf of the State Government, the contents of which have been noted by us. She has extensively argued all such contentions. Her contention is that it was imperative for the State government to issue directives dated 14 December, 2021 as also the directives dated 6 September 2021 in exercise of its powers under section 154 of the MRTP Act so as to bring a sanctity to the actions being taken by the CIDCO to undertake allotment of the plots and to bring about a situation that there is no embargo on the powers of the CIDCO to complete the allotments of the lands in question by public auction, as being allotted by the CIDCO to the private respondents by following the lawful procedure. Ms. Salunkhe has accordingly justified the action taken by the State Government in submitting that no fault can be found in the CIDCO allotting the plots in favour of private respondents and which would be lawful exercise of its authority.

Submissions on behalf of the private respondents

54. On behalf on the private respondent, submissions are made by Dr. Sathe on behalf of respondent no. 9 and by Mr. Godbole, learned counsel

for respondent no.5 & 8 in PIL No. 37 of 2021 and for respondent no. 7 in PIL No.22 of 2021 and Mr. Arshad Shaikh, learned counsel for respondent no.6 in PIL No.37/2021 and for respondent no. 7 in PIL No.22/2021. It is their common submission that the private respondents have participated in the auction of the plots by subjecting themselves to the payment of earnest money deposit and other statutory charges. It is submitted that these respondents participated in the bidding process on the assumption that there is no reservation whatsoever and that the land would be available for development to their clients as proposed by the CIDCO in its tender notice and in the terms and conditions of such allotment. It is thus their contention that private respondents cannot be put in a prejudicial position that they have an allotment of a plot in their favour, for which valuable consideration has been paid by them to the CIDCO, which are not small amounts but crores of rupees, only to be subsequently told by the NMMC, that the plots cannot be developed as they are subjected to reservation by the NMMC. It is their submission that the commercial purpose and the intention of their clients to bid for the plots which were auctioned as open and freehold plots with a development potential cannot be frustrated by the unrealistic and distorted interpretation of the provisions of the MRTP Act by the petitioner, so as to label these plots being reserved, merely on a general body resolution passed by the NMMC. It is submitted that in the facts of the

case without the draft development plan being published it is totally untenable for the petitioners to contend that the plots as auctioned in favour of the private respondents are under reservation much less any valid reservation under the provisions of the MRTP Act. It is submitted that the State Government has rightly exercised powers under section 154 of the MRTP Act to clarify any conflicting version as portrayed by the petitioners, considering the General Body resolutions purporting to reserve the plots of land as allotted to the private respondents. It is submitted that the State Government has issued the impugned directions under section 154 in larger public interest. Hence, the issuance of such directions by the State Government, is required to be held, to be a valid exercise of power, by the State Government. It is submitted that the general body of the NMMC cannot abruptly reserve plots which are legally vested with the CIDCO. In such circumstances aforesaid, neither the CIDCO nor the NMMC can put the private respondents in a prejudicial position and deprive the private respondents of their legitimate entitlement and to the fruits of participation in the public auction. It is hence submitted that the petitions deserve to be dismissed.

G) Questions for Determination

55. The factual antecedents and the submissions as urged on behalf of the parties would lead us to determine the following questions:

- (i) Whether the General Body resolution of the NMMC proposing to reserve CIDCO plots of land for public amenities, in the absence of publication of a Draft Development Plan as per the provisions of Section 26 of the MRTP Act would create an embargo of a reservation?
- (ii) Whether passing of a resolution by the General Body of the NMMC proposing to reserve the plots/lands, can in any manner divest the rights of CIDCO to make allotment of the plots of land?
- (iii) Whether the directions issued by the State Government under section 154 of the Act dated 14 June, 2021 and subsequent directions dated 6 September, 2021 are in any manner illegal contrary to the provisions of the MRTP Act?

H. Relevant Provisions of the MRTP Act

56. In order to examine and answer the above questions, at the outset, it would be necessary to extract the relevant provisions of the MRTP Act as deliberated on behalf of the parties during the course of their arguments, which are as under:-

“2(8) “Development Authority” means a New Town Development Authority constituted or declared under section 113;

2(9) “Development plan” means a plan for the development or re-development of the area within the jurisdiction of a Planning Authority

and includes revision of a development plan and proposals of a special planning Authority for development of land within its jurisdictions;

2(15) “ local authority ” means—

(a) the Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act or the Nagpur Municipal Corporation constituted under the City of Nagpur Corporation Act, 1948¹, or any Municipal corporation constituted under the Maharashtra Provincial Municipal Corporations Act, 1949,

2(19) “ Planning Authority ” means a local authority; and shall includes,

(a) a Special Planning Authority constituted or appointed or deemed to have been appointed under section 40; and

(b) in respect of the slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act;

2(21) “ plot ” means a portion of land held in one ownership and numbered and shown as one plot in a town planning scheme;

2(23) “ Region ” means any area established to be a Region under section 3;

2(26) “ Regional Planning Committee ” means a committee appointed under section 10;

2(30) “ scheme ” includes a plan relating to a town planning scheme;

... ..

23. Declaration of intention to prepare Development Plan:

(1) A planning Authority shall, before carrying out a survey and preparing an existing-land-use map of the area as provided in section 21, by a resolution make a declaration of its intention to prepare a Development plan; and shall despatch a copy of such resolution with a copy of a plan showing only the boundary of the entire area proposed to be included in the Development plan to the State Government. The said officer shall also make a similar declaration and submit a copy thereof to the State Government. The Planning Authority or the said Officer, as the case may be, shall also publish a notice of such declaration in the Official Gazette, and also in one or more local newspapers in the prescribed manner, inviting suggestions or objections from the public within a period of not less than sixty days from the publication of the notice in the Official Gazette.

(2) A copy of the aforesaid plan shall be open to the inspection of the public at all reasonable hours at the head office of the Planning Authority and Local Authority.

¹ Repealed by Mah. 23 of 2012. s. 7.

... ..

25. Provision for survey and preparation of existing-land-use map.

After the declaration of intention of a Planning Authority or the said Officer to prepare a Development plan but not later than six months from the date of such declaration or not later than such further time as the State Government may from time to time extend, a Planning Authority or the said Officer shall carry out a survey of the lands within the jurisdiction of the Planning Authority and prepare an existing-land-use map indicating the existing use of land therein:

Provided that, the period so extended shall not in any case exceed one year in the aggregate.

26. Preparation and publication of notice of draft Development plan.

(1) Subject to the provisions of section 21, a Planning Authority, or the said Officer, shall, not later than two years from the date of notice published under section 23, prepare a draft Development plan and publish a notice in the Official Gazette, and in such other manner as may be determined by it stating that the Development plan has been prepared. The notice shall state the name of the place where a copy thereof shall be available for inspection by the public and that copies thereof or extracts therefrom certified to be correct shall be available for sale to the public at a reasonable price, and inviting objections and suggestions within a period of thirty days from the date of notice in the Official Gazette :

Provided that, in case of a Municipal Corporation having population of ten lakhs or more as per the latest census, the period for inviting objections and suggestions shall be sixty days from the date of notice in the Official Gazette:

Provided further that, the State Government may, on an application of the Planning Authority, by an order in writing, and for reasons to be recorded from time to time extend the period for preparation and publication of notice of the draft Development plan.

Provided also that, the period so extended shall not in any case, exceed-,

(i) twenty-four months, in the aggregate, in case of Municipal Corporation, having population of one crore or more, as per the latest census figures;

(ii) twelve months, in the aggregate, in case of Municipal Corporation or Planning Authority, as the case may be, having population of ten lakhs or more but less than one crore, as per the latest census figure ;
and

(iii) six months, in the aggregate, in any other case.

(2) The notice shall also state that copies of the following particulars

in relation to the draft Development plan are also available for inspection by the public and copies thereof, or extracts therefrom certified to be correct, are also available for sale to the public at a reasonable price at the place so named, namely :—

(i) a report on the existing-land-use map and the surveys carried out for the purpose of preparation of the draft plan ;

(ii) maps, charts and a report explaining the provisions of the draft Development plan ;

(ii-a) map showing the planning units or sectors unalterable till the Development plan is revised ;

(iii) regulations for enforcing the provisions of the draft Development plan and explaining the manner in which the permission for developing any land may be obtained from the Planning Authority or the said officer, as the case may be ;

(iv) a report of the stages of development by which it is proposed to meet any obligation imposed on the Planning Authority by the draft Development plan ;

(v) an approximate estimate of the cost involved in acquisition of lands required by the Planning Authority for the public purposes, and also cost of works, as may be necessary.

.... .

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 the 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 :

Provided that, no such permission shall be necessary—

(i) for carrying out works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance thereof except in case of heritage building or heritage precinct;

(ii) the carrying out of works in compliance with any order or direction made by any authority under any law for the time being in force ;

(iii) the carrying out of works by any authority in exercise of its

powers under any law for the time being in force :

(iv) for the carrying out by the Central or the State Government or any local authority of any works—

(a) required for the maintenance or improvement of a highway, road or public street, being works carried out on land within the boundaries of such highway, road or public street ;

(b) for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes, cable, telephone or other apparatus including the breaking open of any street or other land for that purpose ;

(v) for the excavation (including wells) made in the ordinary course of agricultural operation ;

(vi) for the construction of a road intended to give access to land solely for agricultural purposes ;

(vii) for normal use of land which has been used temporarily for other purposes;

(viii) in case of land, normally used for one purpose and occasionally used for any other purpose, for the use of land for that other purpose on occasions;

(ix) for use, for any purpose incidental to the use of a building for human habitation of any other building or land attached to such building.

... ..

45. Grant or refusal of permission.

(1) On receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing—

(i) grant the permission, unconditionally ;

(ii) grant the permission, subject to such general or special conditions as it may impose with the previous approval of the State Government ; or

(iii) refuse the permission.

(2) Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form.

(3) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(4) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days :

Provided that, the development proposal, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act :

Provided further that, any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorised development for the purposes of sections 52 to 57.

(6) The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or development plans to the Collector concerned.

46. Provisions of Development plan to be considered before granting permission:

The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan or proposal published by means of notice submitted or sanctioned under this Act.

Provided that, if the Development Control Regulations for an area over which a Planning Authority has been appointed or constituted, are yet to be sanctioned, then in considering application for permission referred to in sub-section (1), such Planning Authority shall have due regard to the provisions of the draft or sanctioned Regional plan, till the Development Control Regulations for such area are sanctioned:

Provided further that, if such area does not have draft or sanctioned Regional plan, then Development Control Regulations applicable to

the area under any Planning Authority, as specified by the Government by a notification in the Official Gazette, shall apply till the Development Control Regulations for such area are sanctioned.

... ..

113. Designation of site for new town.

(1) If the State Government is satisfied that it is expedient in the public interest that any area should be developed as a site for a new town as reserved or designated in any draft or final Regional Plan, it may, by notification in the Official Gazette, designate that area as the site for the proposed new town. The new town shall be known by the name specified in the notification.

(2) After publication of the notification under sub-section (1), for the purpose of acquiring, developing and disposing of land in the area of a new town, the State Government shall by another notification in the Official Gazette constitute a New Town Development Authority. The New Town Development Authority shall consist of a Chairman, a Vice-Chairman, two members representing the local authorities functioning in the Region and such number of other members not exceeding seven as in the opinion of the State Government have special knowledge or practical experience in matters relating to town and country planning, an officer to be called the Town Planning Officer and a Chief Executive Officer. The Chairman and the Vice-Chairman and all other members shall be appointed by the State Government.

(3) The Chief Executive Officer shall be the Secretary of the Development Authority constituted under sub-section (2).

(3A) Having regard to the complexity and magnitude of the work involved in developing any area as a site for the new town, the time required for setting up new machinery for undertaking and completing such work of development, and the comparative speed with which such work can be undertaken and completed in the public interest, if the work is done through the agency of a corporation including a company owned or controlled by the State or a subsidiary company thereof, set up with the object of developing an area as a new town, the State Government may, notwithstanding anything contained in sub-section (2), require the work of developing and disposing of land in the area of a new town to be done by any such corporation, company or subsidiary company aforesaid, as an agent of the State Government ; and thereupon, such corporation or company shall, in relation to such area, be declared by the State Government, by notification in the Official Gazette, to be the New Town Development Authority for that area.

(4) Every Development Authority shall be a body corporate with perpetual succession and a common seal with power to acquire, hold and dispose of property, both moveable and immoveable, and contract and sue or be sued by such name as may be specified in the

notification under sub-section (2).

(5) On the constitution of, or on the declaration of any corporation or company as, a Development Authority for any new town, the local authority or authorities functioning, within the area designated under this Act as a site for the new town, immediately before such constitution or declaration shall cease to exercise the powers and perform the functions and duties which the said Development Authority is competent to exercise and perform under this Act.

(6) The provisions of sections 5, 6, 7, 8, 9, 10 and 11 shall apply mutatis mutandis to a Development Authority constituted under sub-section (2) as they apply in relation to a Regional Board.

(7) The Development Authority shall have its office at such place as the State Government may appoint in this behalf.

(8) A Development Authority shall have all the powers and shall carry out all the duties of a Planning Authority under this Act (including all powers and duties under Chapters III and IV and also under other provisions of this Act) as may be relevant for carrying out of its objects and all the provisions in respect of procedure under this Act shall apply so far as may be necessary in this behalf.

113A. Power of State Government to acquire land for Corporation or Company declared to be New Town Development Authority.

Notwithstanding anything contained in this Act, or in any law for the time being in force, where any corporation or company is declared to be the New Town Development Authority under sub-section (3A) of section 113, the State Government Corporation shall acquire either by agreement or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (and such acquisition may have been commenced before the coming into force of this section) any land within the area designated under this Act, as the site of the new town, any land adjacent to that area which is required for the purposes connected with the development of the new town, and any land whether adjacent to that area or not, which is required for provisions of services or amenities for the purposes of the new town; and vest such land in such Authority for the purposes of this Chapter by an order duly made in that behalf.

114. Objects of Development Authority.

(1) The objects of a Development Authority shall be to secure the laying out and development of the new town in accordance with proposals approved in that behalf under the provisions of this Act, and for that purpose every such Authority shall subject to the provisions of section 113A have power to acquire, hold, manage and dispose of land

and other property to carry out buildings and other operations, to provide water, electricity, gas, sewerage and other services, amenities and facilities and generally to do anything necessary or expedient for the purpose of the new town or for purposes incidental thereto.

(2) Without prejudice to any provision of this Act requiring the consent of the State Government to be obtained for anything to be done by a Development Authority, the State Government may give directions to any such Development Authority for restricting the exercise by it of any of its powers under this Act, or for requiring it to exercise those powers in any manner specified in the directions :

Provided that—

(a) before giving any such directions, the State Government shall consult with the Chairman, or if the Chairman is not available, with the Vice-Chairman, of the Development Authority constituted under sub-section (2) of section 113, or as the case may be, with the officer or officers of the Development Authority declared under sub-section (3A) of that section who is or are duly authorised by such Authority, unless the State Government is satisfied that, on account of urgency, such consultation is impracticable ; and

(b) any transaction between any person and any such Development Authority acting in the purported exercise of their powers, under this Act shall not be void by reason only that it was carried out in contravention of such directions, unless that person had actual notice of the directions.

(3) For the avoidance of doubt, it is hereby declared that the provisions of sub-section (1) with respect to the powers of Development Authorities relate only to their capacity as statutory corporation; and nothing in this section shall be construed as authorizing the disregard by a Development Authority of any enactment or rule of law.

115. Planning and control of development in new towns.

Without prejudice to the provisions of sub-section (8) of section 113, the Development Authority shall from time to time submit to the State Government in accordance with any directions that may be given by the State Government in that behalf, its proposals for the development of land within the area designated under this Act as the site of the new town, and the State Government after consultation with the Director of Town Planning, may approve any such proposals either with or without modification.

... ..

118. Disposal of land by Development Authority.

(1) Subject to any directions given by the State Government under this Act, a Development Authority may dispose of any land acquired by it or vesting in it to such persons, in such manner, and subject to such terms or conditions as they consider expedient for securing the development of the new town in accordance with proposals approved by the State Government under this Act :

Provided that, a Development Authority shall not have power, except with the consent of the State Government, to sell any land or to grant a lease of any land for a term of more than ninety-nine years, and the State Government shall not consent to any such disposal of land unless it is satisfied that there are exceptional circumstances which render the disposal of the land in that manner expedient.

(2) The powers of a Development Authority with respect to the disposal of land acquired for it for the purposes of this Act shall be so exercised as to secure, so far as practicable, that persons who were living or carrying on business, or other activities on land so acquired shall, if they desire to obtain a plot or accommodation on land belonging to, or vesting in, the Development Authority and are willing to comply with any requirements of the Development Authority as to its development and use, have an opportunity to obtain a plot or accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

(3) Nothing in this Act shall be construed as enabling a Development Authority to dispose of land by way of gift, mortgage or charge, but subject as aforesaid, references in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease by the creation of any easement, right or privilege or otherwise.

... ..

120. Power to make agreement for provision of services.

A Development Authority may make any agreement or enter into any contract with any local authority, Planning Authority or statutory body in order to secure the provision of services, such as water-supply, drainage, including sewerage, electricity, gas within the area of the new town, subject to the power of the State Government to modify or disallow such agreement or contract.

... ..

148-A. Exclusion of time in certain cases.

In computing the period, in relation to any Development plan, Regional plan or scheme under the provisions of Chapters II, III, IV and V of this Act, the period or periods during which any action could not be completed under the said Chapters, due to any interim order of any Court or due to enforcement of any Code of conduct by the Election Commission of India or the State Election Commission in respect of any election or due to enforcement of any Guidelines or lockdown measures by the Government of India or the State Government, as the case may be, to prevent the spread of any pandemic or epidemic or disaster situation arising in the Country or State shall be excluded.

... ..

154. Control by State Government.

(1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions.

(2) If in, or in connection with, the exercise of its powers and discharge of its 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.”

I. Analysis and Conclusion

57. It is not in dispute that the State Government sometime in the year 1970 conceived a plan to set up a twin city across the Mumbai harbour at the relevant time popularly known as “New Bombay” and now “Navi Mumbai”. According to the provisions of Section 113 of the MRTP Act which falls in Chapter VI of the MRTP Act providing for “New Towns”,

specified sites came to be designated for setting up this new town of Navi Mumbai. Sub-section (3A) came to be inserted in Section 113 of the MRTP Act by Maharashtra Act 21 of 1971. The State Government, thereafter, issued a notification under sub-section (3A) of Section 113 of the MRTP Act, designating CIDCO as the New Town Development Authority, for the New Bombay area. Sub-section 3(A) of Section 113 of the MRTP Act categorically provides that having regard to the complexity and magnitude of the work involved in developing any area as a site for new town, the time required for setting up new machinery for undertaking and completing such work of development and the comparative speed with which such work can be undertaken and completed in public interest, if the work is done through the agency of a Corporation including a Company owned or control by a State or a subsidiary thereof set up with the object of developing an area as a new town, the State Government may notwithstanding anything contained in sub-section (2) can require the work of developing and disposing of land in an area of new town to be undertaken by any Corporation, company or subsidiary as an agent of the State Government and thereupon such corporation or company shall in relation to such area would be declared by the State Government by a notification in the official Gazette to be a New Town Development Authority. Thus, what is imperative is sub-section (3A) of Section 113, which not only provides for undertaking

and completing the work of development but also of disposing of land in the area of new town, to be undertaken by such authority to be designated as 'New Town Development Authority'. It is in this context, sub-section (5) of Section 113 becomes relevant which provides that on the constitution or on declaration of any corporation or a company as a new Town Development Authority, the "Local Authority or Authorities" functioning within the area designated under the Act as a site for new town, immediately before such constitution or declaration shall cease to exercise the powers and perform the duties, which the New Town Development Authority is competent to exercise and perform under the Act. Sub-Section (8) of Section 113 provides that a New Town Development Authority shall have all the powers and shall carry out all the duties of Planning Authority under the MRTP Act including all powers and duties under Chapters III and IV and also under the other provisions of the MRTP Act, as may be relevant for carrying out its objects and all the provisions in respect of procedure under the MRTP Act shall apply as may be necessary in that behalf. CIDCO accordingly as the New Town Development Authority stood vested with such powers conferred under sub-section (3A), sub section (5) and sub-section (8) of Section 113.

58. Almost after about twenty years of CIDCO being designated as the

new town development authority, the State Government by notification dated 17 December, 1991, issued under section 3 of the Bombay Provincial Municipal Corporation Act, 1949 (now the NMMC Act, 1949) constituted the NMMC for the areas of 44 revenue villages as specified therein w.e.f. 1 January, 1992. The State Government by its orders dated 15 December, 1994 and 29 July, 2008 conferred powers of a “planning authority” on the NMMC in two phases. Thus, NMMC also became the “planning authority” within the meaning of Section 2(19) of the MRTP Act in its capacity as the local authority as defined under section 2(15) of the MRTP Act, namely, a Municipal Corporation as constituted under the NMMC Act, 1949.

59. As noted above, the directions in the notification dated 15 December, 1994 issued by the State Government under Section 154 of the MRTP Act provided that NMMC was to act as Planning Authority in respect of the developed nodes of Vashi, Sanpada, Belapur, Kopar-khairne and Airoli as also was empowered to exercise all powers under Chapter III and IV of the MRTP Act. Such notification also provided that considerable portion of land in the said areas were still to be developed and disposed of by CIDCO, hence, in order to enable CIDCO to discharge its functions as the New Town Development Authority, it would not be necessary for CIDCO to approach the NMMC for development permission in regard to areas of land

being vested in and developed by CIDCO. For such purpose it was directed by the State Government that CIDCO would be covered under the exception as carved out by sub-clause (ii) of Section 43 of the MRTP Act. Section 43 provides for restrictions on development of land and ordains that after the date on which a 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 site for a new town is published in the Official Gazette, no person shall institute or change the use of land or carry out development of land without the permission in writing of the Planning Authority, however, with a provision that no such permission shall be necessary inter alia where the carrying out of works in compliance of any order or direction made by any authority under any order for the time being in force as Clause (ii) below the proviso to Section 43 would postulate. Thus, by virtue of this provision although the NMMC was constituted and designated as Planning authority, however, the mandate and authority vested with the CIDCO to exercise powers as the New Town Development Authority and accordingly to take all actions in regard to the portions of land to be developed and disposed of by CIDCO, continued to remain in operation and subsisted with CIDCO, despite the NMMC being constituted. There is no material placed before the Court either by the petitioners or by the NMMC that such

powers as maintained with CIDCO by virtue of notification dated 15 December, 1994 to deal and dispose of the lands vested with CIDCO to be developed by it, in any manner, were withdrawn or rescinded. This is the position which is brought about by such notification dated 15 December, 1994 issued by the State Government under section 154 of the MRTP Act. This is also not the case of either the petitioner or the NMMC. It thus clearly appears that the said notification continued to subsist and remain valid as also it was accepted by all the stakeholders including the NMMC, as such notification was issued and published after the NMMC became functional namely from 1 January, 1992.

60. Once such directives of the State Government issued under section 154 clearly provided in direction no. (iii) for recognition of CIDCO's rights and authority to discharge its functions as a New Town Development Authority so as to develop and dispose of lands vested in CIDCO and also for that purpose enjoying the exemption under clause (ii) in the proviso below Section 43 of the MRTP Act, a clear exception was carved out in respect of such lands vested with CIDCO to fall outside any embargo of a reservation under a draft development plan to be published by the NMMC. It was thus implicit that the restrictions as contemplated on development of land on the declaration of an intention to prepare a

development plan, were not applicable for such lands vested in CIDCO.

61. From the above conspectus, it is quite clear that for the Navi Mumbai area, there are two planning authorities under the MRTP Act, which have remained functional. The original authority being CIDCO with whom the functions of Planning and Development and of preparation of the development plan for the purpose of Town Planning was entrusted, being constituted as a New Town Development Authority under section 113 of the MRTP Act and within the meaning of Section 2(8) of the MRTP Act which defines “Development Authority” by virtue of the notification issued by the State Government under section 113(3A) dated 20 March, 1971. In the year 1980, CIDCO, in exercise of such powers, had prepared a Draft Development Plan which was submitted to the State Government. By notification dated 18 January, 1980, the State Government, in exercise of powers under section 31(1) of the MRTP Act, sanctioned the Draft Development Plan to be the final development plan which was in the form of a structural plan for the New Town area to be brought into force w.e.f. 1 March, 1980.

62. As noted above, after about 12 years from the publication of the said final development plan as prepared by CIDCO and notified for the Navi

Mumbai area, the State Government considering the increase in the population of the Navi Mumbai area decided to constitute Municipal Corporation (NMMC) for 44 revenue villages. Out of these 44 revenue villages within the NMMC limits, 29 revenue villages were included in the said 1980 final development plan. After a period of 15 years from the constitution of the NMMC, the State Government issued a further notification dated 8 June, 2007 under section 3(3)(a) of the NMMC Act, 1949 and altered the limits of the NMMC by excluding the areas of 14 revenue villages and retained only one revenue village outside the said new town, i.e., Adavali-Bhutavali in the limits of the NMMC and thus, total 30 revenue villages fell within the NMMC limits.

63. The heart of the issue, namely the powers as the MRTP Act would confer on each of these authorities to operate in their respective fields and as to whether there is any overlapping of such authority in the context of CIDCO dealing with its lands and the NMMC proposing reservations on the said lands of CIDCO, can now be discussed.

64. Insofar as CIDCO is concerned, CIDCO being appointed as the New Town Development Authority under sub-section (3A) of Section 113, the powers as conferred under sub-section (5) read with sub-section (8)

become relevant. Sub-section (5) of Section 113 *inter alia* would provide that on the constitution of CIDCO as the New Town Development Authority for the designated area, namely, Navi Mumbai, the local authority or authorities functioning within such designated area immediately before such constitution or declaration shall cease to exercise the powers and perform the functions and duties which the Development Authority is competent to exercise and perform under the MRTP Act. Sub-section (8) of Section 113 categorically provides that such Development Authority (CIDCO) shall have all the powers and shall carry out all the duties of a Planning Authority under the MRTP Act including all powers and duties under Chapters III and IV, namely in regard to the development plan and control of development and use of land included in development plan respectively and also under other provisions of the MRTP Act as may be relevant for carrying out its objects and all the provisions in respect of procedure under the MRTP Act shall apply so far as may be necessary in this behalf. Thus, a Development Authority like CIDCO was empowered to exercise all such powers under the Act including the powers under Chapters III and IV.

65. Accordingly, CIDCO has continued to function as the Development Authority. It also framed the New Bombay Disposal of Land Regulations, 1975 for disposal of the lands, as vested in it, by leases for

residential and commercial uses and the revenue which was received from the disposal of such land was being utilized by CIDCO for the Planning and Development of the new town. By such process, CIDCO had developed lands for various public purposes including to provide various amenities and by designating lands for bus depots, railways, gardens, playgrounds, airport, hospitals, commercial establishments and residential areas.

66. It is not the case that different nodes or the lands vested with CIDCO in different areas of Navi Mumbai were overnight and suddenly developed and made available for allotment for different purposes. It is not in dispute that the lands vested with CIDCO were being gradually developed and after such development, with the powers as vested in CIDCO as a Development Authority, CIDCO at all material times, had become entitled to make allotment of the plots by following the lawful procedure in its capacity as the Development Authority/New Town Development Authority.

67. On the other hand, by virtue of formation of the NMMC in the year 1992, what was vested with the NMMC were all powers of a Planning Authority under the provisions of the MRTP Act except those powers which already stood vested and continued to be exercised by CIDCO as the Development Authority. It is, however, not a situation that the

NMMC by its constitution would have powers of disposal of lands and more particularly, the lands which stood vested with CIDCO for the purpose of development of the new town, Navi Mumbai and as expressly recognized by Section 118 read with sub-section (3A) of Section 113. Moreover, it is not in dispute that these powers as vested with CIDCO at no point of time have been taken away.

68. Thus, by virtue of the powers as vested in CIDCO under sub-section (8) of Section 113, being the Development Authority, CIDCO enjoyed all powers and was under an obligation to carry out all duties of a Planning Authority under the MRTP Act including all powers and duties under Chapters III and IV of the MRTP Act providing for “Development Plan” and “Control of Development and use of Land included in Development Plan” respectively.

69. As there was certain confusion in regard to these two bodies (CIDCO & NMMC) functioning within the Navi Mumbai Municipal Area, and as both bodies had some powers, to deal with the issues of development and planning, however, in regard to the respective areas with which each of these two bodies were concerned, a clarificatory notification was required to be issued by the State Government by exercising powers under section

154 of the MRTP Act namely the notification dated 15 December, 1994 which came to be issued by the State Government clarifying the powers of the NMMC in respect of villages comprised in the “developed nodes” transferred by CIDCO to the NMMC. It would be imperative to note the contents of the said notification, which reads thus:

“Powers of Planning Authority to be exercised by Navi Mumbai Municipal Corporation in respect of villages comprised in the Developed Nodes transferred by CIDCO to NMMC Direction under Section 154 of the Maharashtra Regional and Town Planning Act, 1966

GOVERNMENT OF MAHARASHTRA
Urban Development Department
Memorandum No. NMMC-1692/1187/CR-138/92/UD-24
Mantralaya,
Bombay-4000 032
Dated 15th December, 1994.

READ:- Government order No. NMMC-1692/1187/CR-138/92/UD-20,
Dated 7th September, 1991.

Whereas the Navi Mumbai Municipal Corporation has been constituted under notification No. NBC 1091/140/CR-14/91/UD-20 dated the 17th December, 1991 under Section 3 of the Bombay Provincial Municipal Corporation Act 1949, and the Local areas of the revenue villages which will be comprised within the jurisdiction of the same corporation have been shown in the Schedule annexed to the said notification.

Whereas notification appointing CIDCO as a new Town Development Authority under Sub-section 3A of section 113 of the Maharashtra Regional and Town Planning Act-1966 has been issued under No. RPB 1173-II-RPC dated 16-08-1973 and New Town notified under No. RPB 1171-18124-LW. Dated 20-3-1971 and the revenue villages comprised within the new town also been shown in the Schedule annexed thereto;

Whereas under both notification mentioned above, there are about 29 villages having common jurisdiction of both NMMC and CIDCO;

Where the NMMC being the statutory Planning Authority of the areas corporated within its jurisdiction CIDCO ceases to exercise the functions of the Planning Authority over the areas in respect of revenue villages comprised within the developed nodes of Vashi-Sanpada, Nerul, Belapur-CBD, Airoli and Kopar khairane, in view of the provisions of Section 2(15)(a) as also 2 (19) of the Maharashtra Regional and Town Planning Act, 1966;

Whereas it is necessary to ensure that there will be no dual authority in respect of the revenue villages comprised within the above mentioned developed nodes for the purpose of exercising the functions of the Planning Authority.

And whereas, Government have decided to clarify the doubts between the NMMC and CIDCO with regard to the exercise of powers as Planning Authority and it is necessary to do so by issuing a directive under Section 154 of the M.R. & T.P Act, 1966;

Now, therefore, the State Government under the powers vested in it. Under Section 154 of the M.R. & T.P Act, 1966 is pleased to issue a directions as follows.

DIRECTIONS:-

i) NMMC shall act as planning Authority in respect of the developed nodes of Vashi – Sanpada, Nerul, Belapur-CBD, Kopar khairane and Airoli comprising of revenue villages (shown in the Schedule appended hereto) in accordance with the provisions of Section 2(15) (a) and section 2(19) of the Maharashtra Regional and Town Planning Act, 1966.

ii) NMMC as a Planning Authority shall exercise all the powers of the Planning Authority under chapter 3 & 4 of the M.R. & T.P Act, 1966 within its area from the date specified by the State Government in this behalf i.e. 16/12/1994 vide Government letter corrigendum No. NMC/1962/1187?CR- 138/92/UD-24 dated 29-11-1994. CIDCO will cease to exercise powers of the Planning Authority from that date.

iii) Considerable portion of land in the above mentioned developed nodes is still to be developed and disposed off by CIDCO. In order to enable CIDCO to discharge its functions as a New Town Development Authority, it will not be necessary for CIDCO to approach NMMC for development permissions in respect of areas / lands being developed by CIDCO. For that matter, it is hereby directed that CIDCO will be covered under the exception under (ii) under Section 43 of the Maharashtra Regional and Town planning Act, 1966.

iv) Since CIDCO is having ownership of most of the lands in the New Bombay Project area and since CIDCO has framed regulations called. The New Bombay Land Disposal Regulations, 1975 under the provisions of Section 159 of the M.R. & T.P. Act, 1966, in order to enable CIDCO to carry out its functions, it will be necessary for NMMC to insist on the carry out its functions, it will be necessary for NMMC to insist on the developers to obtain No objections certificate from CIDCO, before giving development permissions, in so far as recovery of lease premium, delayed payment charges etc. have to be recovered by CIDCO from the lessees. Similarly, at the time of giving Occupancy Certificate also NMMC should insist on obtaining the NOC from CIDCO so that the observance of the above mentioned Regulations is ensured.

v) NMMC will have to create an organization and administrative arrangements and ensure to equip itself with suitable technical staff at appropriate level for enabling it to exercise power as Planning Authority.

These directions are issued in modification of the Government Orders issued earlier under No. NMC/1692/1187/CR-138/92 UD 20 dated the 7th September, 1994.

By order and in the name of the Governor of Maharashtra.”

(emphasis supplied)

70. It is, thus, clear that CIDCO ceased to exercise functions of the Planning Authority over the areas in respect of revenue villages comprised within the “developed nodes” of Vashi – Sanpada, Nerul, Belapur-CBD, Kopar khairane and Airoli and so far as the lands which were still to be developed and disposed of by CIDCO, the Government clarified the doubts by issuing the said notification under section 154 of the MRTP Act by directing that the NMMC shall act as the Planning Authority in respect of developed nodes of the said areas in accordance with the provisions of Section 2(15)(a) and Section 2(19) of the MRTP Act. Also that the NMMC

as a Planning Authority shall exercise all powers under Chapters III and IV of the MRTP Act within its area and further that in regard to the considerable portion of land in the said developed nodes which were yet to be developed and disposed of by CIDCO, so as to enable CIDCO to discharge its functions as New Town Development Authority, it was not necessary for CIDCO to approach the NMMC for development permissions in respect of the areas/lands being developed by CIDCO and for that matter it was directed that CIDCO would be covered under the exception under Clause (ii) of Section 43 of the MRTP Act. Thus, the powers of CIDCO to discharge its functions as New Town Development Authority in regard to the lands which were yet to be developed and disposed of, were recognized by the State Government, as also accepted by the NMMC.

71. Such notification being issued under section 154 of the MRTP Act, there was no intention on the part of the State Government to divest CIDCO of the powers vested in it as a 'New Town Development Authority' by virtue of the notification issued under sub-section (3A) of Section 113 dated 20 March, 1971 which also recognized that under sub-section (8) of Section 113 CIDCO as a Development Authority shall have all powers and carry out all duties of a Planning Authority including all powers and duties under Chapters III and IV and under all other provisions of the Act as may be

relevant for carrying out its objects, hence, all the provisions in respect of the procedure under the MRTP Act would apply, so far as it may be necessary in that behalf.

72. Such complexioⁿ of powers as vested with CIDCO certainly brings about a legal consequence namely, that it was recognized by the State Government that CIDCO is not divested of its powers to develop the lands which are still to be developed and falling within the developed zones of Vashi – Sanpada, Nerul, Belapur-CBD, Kopar khairane and Airoli areas where the NMMC was permitted to exercise its powers as a Planning Authority. For such land, it was not within the jurisdiction and power of the NMMC to exercise its planning powers on CIDCO plots so as to create any obstruction or an impediment for CIDCO to deal with these lands much less any proposed reservation.

73. It is however required to be seen as to whether such intention of the State Government to keep the powers of both the said authorities compartmentalized, has been carried forward when we consider the issues in hand. The State Government issued a notification dated 31 October, 2017 in exercise of the powers conferred under section 160 of the MRTP Act which is a power vested with the State Government in regard to dissolution

of Regional Planning Board, Special Planning Authority and the New Town Development Authority, whereby acting on the requisition of CIDCO as made to the State Government by CIDCO's letter dated 19 December, 2016 and after making necessary enquiry with the "Director of Town Planning-Maharashtra State", the State Government deleted the lands as notified in the Schedule annexed to the said notification from the notified area thereby declaring that CIDCO shall cease to function as New Town Development Authority for these lands. The survey numbers of such lands along with names of the villages were set out in the said schedule and CIDCO was appointed as a Special Planning Authority for the deleted lands in exercise of its powers under section 40(1)(b) of the MRTP Act. However, what is interesting is to note the recital of the said notification, in which the State Government clearly recognises that CIDCO has continued to function as New Town Development Authority for the area comprising of the site of Navi Mumbai as specified in the notification referred to in paragraph 2 of the said notification. The notification dated 31 October, 2017 needs to be noted, which reads thus:

"GOVERNMENT OF MAHARASHTRA

**URBAN DEVELOPMENT DEPARTMENT
4TH Floor, Main Building, Mantralaya, Mumbai-400023.
Dated:- 31 October, 2017.**

NOTIFICATION No.TPS-1317/UOR-1/C.R.-102/17/UD-12,

Whereas, the Government of Maharashtra in Urban Development

Public Health and Housing Department, has in exercise of the powers conferred by Sub-section (1) of Section 113 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the said Act”) vide Notification No.RPB 117/18124/113/I-W, dated the 20th March,1971, as amended by Notification No. 1173/IRPC, dated the 16th August, 1973, designated the area specified therein as the site for a “New Town of Navi Mumbai”, (hereinafter referred to as “the said Notified Area”);

And whereas the Government of Maharashtra, Urban Development Public Health and Housing Department, has in exercise of the powers conferred by Sub-Section (3A) of the Section 113 of the said Act, vide Notification No. RPB 117/18124/113/II-W, dated the 20th March, 1971 and by Notification No. RPB 1`173/II RPC, dated the 16th August, 1973, declared City and Industrial Development Corporation of Maharashtra Limited (being a company owned and controlled by the Government of Maharashtra) (hereinafter referred to as “the said Corporation”) as the New Town Development Authority for the said area comprised in the site of Navi Mumbai as specified therein;

And whereas, the Corporation has not acquired some lands since these lands are undevelopable and no immediate development has been contemplated on these lands and hence requested the Government to denotify these lands and allow the concerned land owners to develop the same, vide letter dated 19th December, 2016 (hereinafter referred to as “the said land”);

And whereas, after making necessary enquiries and after consulting the Director of Town Planning, Maharashtra State, Pune, the Government is of the opinion that the said “lands, as communicated by the said Corporation to Government vide letter dated 14/9/2019 (hereinafter referred to as ‘the said lands’), are required to be deleted from the area of the New Town of Navi Mumbai and the said Corporation should be appointed as the Special Planning Authority for the said lands under section 40(i)(b) of the said Act;

Schedule

Accompaniment with the Government Notification No. TPS-1217/UOR-1/C.R.102/17/UD-12, Dated the 31st October, 2017

Phase-I List of lands		
Sr. No.	Name of Villages	Survey Nos.
1.	Dighe	260,231
2.	Uthan	100,99
3.	Tetavli	146

4.	Rabale	110
5.	Ghansoli	528
6.	Mahape	202A
7.	Borivali	94
8.	Padeghar	13/C, 130/3, 20A/1, 20A/2, 20D/1, 20D/2, 20D/3, 45B/1, 23, 45D, 45A(P), 45C(P)
9.	Manghar	68,67
10.	Chirle	(6A,C,D) (Forced)
11.	Jasal	117(P), 127(P), 131(P), 4C
12.	Vahal	427/1(p), 428, 429, 430, 431(1 TO 5), 432 (1&2), 433(1&2), 434, 435,436
13.	Nagaon	FOREST, Forest
14.	Chanje	Killa, 408, 23, 24, 25, 26
15.	Mhatali	18
16.	Karave	143,144,145,146,147,148,149, 150,151,152,153,154,155,156, 157,158,159,160,161,162,163, 164,165,166,167,168,169,170, 171,172,173,174,175,176,177, 221,222,223,230 (New Survey No.290), 256, 264B, 224, 297
<p>Notes:- 1. “(P)” indicates part Survey Numbers.</p> <p>2. Boundary of survey numbers mentioned as Part needs to be verified by site and it is subject to demarcation.</p> <p>3. Area falling under roads and various infrastructure proposals of CIDCO if any, in the above Survey numbers is to be excluded from identification as undevelopable.</p>		

Now therefore, in exercise of the powers conferred under section 160 of the said Act, and all other powers enabling it in this behalf, the Government of Maharashtra hereby;

1) Delete the said lands more specifically described in the Scheduled appended hereto from the said notified area and declares that City and Industrial Development Corporation of Maharashtra shall cease to function as New Town Development Authority for the same.

2) In exercise of the powers conferred under section 40(1)(b) appoints the City and Industrial Development Corporation of Maharashtra, as a Special Planning Authority for the said deleted lands more specifically described in the Schedule appended hereto-

02. This notification shall come into force with effect from the date of publication of this notification in the Official Gazette.

03. A copy of the plan showing the boundary of the lands mentioned in the Schedule appended with this notification shall be available for the general public during office hours on all working days at the following offices for the period of one month.

- (1) The Managing Director, CIDCO, CIDCO Bhavan, CBD Belapur, Navi Mumbai.
- (2) Joint Director of Town Planning, Konkan Division, Konkan Bhavan, Navi Mumbai.
- (3) Collector, Raigad.
- (4) Assistant Director of Town Planning, Raigad-Alibaug Branch, Dist. Raigad.”

(emphasis supplied)

74. It is thus seen from the said notification dated 31 October, 2017 issued under section 160 by the State Government that it did not bring about any change in the status of CIDCO being divested of its powers as the New Town Development Authority to dispose of lands as vested in it. However, in the light of the NMMC exercising its powers under Chapters III and IV to declare its intention to prepare development plan by its notice under Section 23(1) of the MRTP Act as published in the Maharashtra Government Gazette dated 15 December, 2017 so as to include plots vested with CIDCO and more particularly subject matter of public auction and the steps taken in pursuance thereto as noted above, creating a confusion

and/or a dispute on the powers of CIDCO to dispose of undeveloped lands in these developed nodes fell for consideration of the State Government and in such perspective, the State Government was required to issue two clarificatory notifications, firstly dated 14 June, 2021 and secondly, notification dated 6 September, 2021. It is necessary to note both these notifications, which read thus:

(Translation of a photo copy of Government Directions, typewritten in Marathi.)

Directions u/sec. 154 of the Maharashtra Regional and Town Planning Act, 1966.

Regarding reservation of proposed Plots of CIDCO in Navi Mumbai Municipal Corporation and Panvel Municipal Corporation Region.

Government of Maharashtra

Urban Development Department

4th Floor, Main Building, Mantralaya, Mumbai – 400 021.

Date – 14th June, 2021.

Number : TPS-1229/1039/M.No. 42/21/UD.-12

WHEREAS, the Government, under section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 (which is hereafter referred to as “the said Act”), has prepared Draft Development Scheme for the Navi Mumbai Region which includes the area of even the Navi Mumbai Corporation. The said scheme has been sanctioned as per the Notification bearing No. RPB-1175/635/BUD-5 dated 18.08.1979 read with Notification bearing No. RPB-1175/635/U.D.-5 dated 18.01.1980 of the Urban Development Department and Public Health Department of the Government and the same has come into force from the date 01.03.1980.

AND WHEREAS, under the Notification No. PNP-1914/VIP No. 301/M.No. 354/U.D.-23 dated 26.09.2016, some villages in the aforesaid Navi Mumbai Region, have been included in the Panvel Municipal Corporation Region.

AND WHEREAS, the aforesaid Municipal Corporation has not published the revised Draft Development Scheme under section 26 of the said Act, for the Navi Mumbai Municipal Corporation and Panvel Municipal Corporation (which shall be hereafter referred to as the aforesaid Municipal corporations) Region. Therefore, the said reservation

is not applicable to the plots put for auction by the CIDCO and the entire auction processes initiated by CIDCO till this day are protected and therefore, it is necessary to take further action in respect of the additional carpet area/construction permissions on these plots. Hence, the Government is of the view that it is necessary to give directions to the Navi Mumbai Municipal Corporation and Panvel Municipal Corporation to that effect.

Therefore, now, the Government, under section 154(1) of the Maharashtra Regional and Town Planning Act, 1966, gives below mentioned directions to the Navi Mumbai Municipal Corporation and Panvel Municipal Corporation to make applicable the said action with immediate effect.

DIRECTIONS

As the Draft Development Plan under section 26 of the said Maharashtra Regional and Town Planning Act, 1966, for the area of CIDCO included in Navi Mumbai Municipal Corporation and Panvel Municipal Corporation Region, has not yet been published by the concerned Municipal Corporation, the said reservations are not applicable to the plots put for auction by the CIDCO till this date. Hence, all the Auction processes initiated till this date, shall remain protected. The concerned Municipal Corporation should complete the further action regarding additional Carpet area/giving construction commencement permissions, without raising any objections in respect thereof.

By order and in the name of the Government of Maharashtra.

(Sanjay Banait)
Joint Secretary,
Government of Maharashtra

.....

(emphasis supplied)

(Translation of a photocopy of a Government Directions, typewritten in Marathi.)

Directions of the Government u/sec.
154 of the Maharashtra Regional and
Town Planning Act, 1966.

Regarding the Plot of CIDCO in Navi
Mumbai Municipal Region.

Government of Maharashtra
Urban Development Department
Number – TPB-4321/ 30/ M. No. 100/2021/ U. D. - 11
Mantralaya, Mumbai – 400 021.
Date – 6th September, 2021.

Read:- 1) Letters dated 01/02/2021 and 19/05/2021 of the Vice-Chairman and Managerial Director, CIDCO to the Urban Development Department of the Government.

2) Letters dated 26/01/2021 and dated 12/04/2021 of the Commissioner, Navi Mumbai Municipal Corporation, received by the Urban Development Department of the Government.

PREFACE:-

The above referred letters of the Vice-Chairman and Managerial Director, CIDCO, have been received by the Urban Development Department of the Government and in view of the CIDCO's request, the Navi Mumbai Municipal Corporation, vide the letters referred to hereinabove at Sr. No. 2, has submitted opinion togetherwith necessary information.

2) As per the Section 113 of the Maharashtra Regional and Town Planning Ac, 1966, although the CIDCO has been appointed as the New Town Development Authority for the Navi Mumbai Region, the Government has formed Navi Mumbai Municipal Corporation on the date 01/01/1992 for some developed Nodes from out of the same. However, at the time of the said formation, the identity of CIDCO as New City Development Authority has been retained. Therefore, as regards the part which is undeveloped or where there is a scope for development, the Node plan of such parts are prepared and by considering the 'Highest Bid' of the plot through tender, the same is allotted and the CIDCO receives revenue on a large scale from out of the same and with the said revenue. various infrastructure / Projects are developed. After establishment of Navi Mumbai Municipal Corporation, the Municipal Corporation had declared it's intention to prepare development scheme to the extent of its' region, under Section 23 of the aforesaid Act. Thereafter, the Navi Mumbai Municipal Corporation, under it's Letter dated 22/12/2017, had informed CIDCO that without the prior permission of the Navi Mumbai Municipal Corporation, the plots should not be allotted or sub-divided. It is the stand of the CIDCO that although the Government the time of establishment of Navi Mumbai Municipal Corporation has retained identity of CIDCO as the New Town Development Authority, as the reservations have been kept in Draft Development Scheme (Not yet published), the CIDCO has to lose huge revenue.

3) Development of most of the area under Navi Mumbai Municipal Corporation is completed and now Navi Mumbai Municipal Corporation has started looking after the work of the said area as "Planning Authority". After establishment of Navi Mumbai Municipal Corporation, development plan of the said area has not been published since 1994. Although the development plan of small cities and Nagar Panchayats in the State is published and the work of planned development is implemented accordingly, it is necessary to prepare development plan of big cities like Navi Mumbai, as early as possible.

4) Taking into account 74th constitutional amendment, it is necessary

to have control of only Municipal Corporation instead the control of both the institutions (bodies) viz. Navi Mumbai Municipal Corporation and CIDCO. CIDCO's role is over, and now, here, it is not expected of fulfilling any other responsibility by the CIDCO except that of being land owner (Lessor). CIDCO has fulfilled its object as set out by the Government for it, as per Section 114 (1) of Maharashtra Regional and Town Planning Act 1966 (M.R.T.P. Act). As the work of CIDCO Authority to develop new cities, as per Sections, 114, 116, 117 and 118 of the said Act (M.R.T.P) got completed, CIDCO's powers in respect of New Town Development Authority should be ceased from this area. CIDCO's all rights as land owner in respect of lease shall remain intact. However, the legal powers which have been entrusted as New Town Development Authority should now be ceased. As such, only one system shall exist from the view point of the functioning of the Municipal Corporation and it would become possible to bring required lucidity from the view point of people in general, this issue was under the consideration of the Government. Moreover,

5) As per the correspondence between Navi Mumbai Municipal Corporation and CIDCO, it has been mentioned that Navi Mumbai Municipal Corporation has proposed 211 reservations on total 300 plots of CIDCO and as there was no concurrence to the proposal of said 211 reservations, the same have been referred to the Government. The say of the CIDCO that all the plots herein are the part of financial planning of the CIDCO is correct. The development plan of the CIDCO depends upon the income to be received from the disposal of land. Therefore, the fact that if the reservations on income potential plots are proposed in such manner and if the income of CIDCO is affected, then there can be adverse effect not only on CIDCO, but also on the work of basic infrastructure to be carried out in this region, needs to be taken into consideration.

6) From the said correspondence we are not getting the answers of the questions such as whether Navi Mumbai Municipal Corporation will be acquiring the lands from CIDCO on which the reservations have been imposed on such a large scale, or else, Whether the Navi Mumbai Municipal Corporation has this much financial capacity? Whether the Navi Municipal Corporation has made the financial planning in respect thereof. Further,

7) While preparing the layout plans, the CIDCO has prepared the layout plans only after taking into consideration the reservations such as open spaces, play grounds and gardens. The stand of CIDCO that instead of proposing the reservation as per the basic infrastructure and public facilities to be made available for the future population and their requirements, to propose the reservations after considering only the available plots of CIDCO, is not co-herent with the planning process, needs to be taken into consideration.

8) Considering 211 reservations on the plot of CIDCO, mentioned in the aforesaid paragraph, it appears that 6 plots have been transferred to the Municipal Corporation. 42 plots are of less than 500 Square Meters.

Further, it is seen that the action of excluding the reservations on 5 plots, is going on separately as informed by the letter dated 19/11/2020 of the Government Urban Development Department (as per the decision taken in the meeting dated 10/11/2020). Reservations have not been proposed on 7 plots of CIDCO. Similarly, reservations are seen proposed on some plots in some items not fitting in the planning standards. Considering all these aspects, taking into account the fact that CIDCO would not get much financial earnings from the plots smaller than 500 Square Meters, the matter to inform regarding retaining the reservations imposed on the said plots smaller than 500 Square Meters, in draft plan, was under consideration of the Government. Similarly, the matter of not proposing even these reservations on those plots on which the action of excluding the reservations are going on, the plots which are transferred to the Municipal Corporation, the plots on which only the religious reservations are proposed (as there is no provision or method to keep such religious reservations), was under consideration of the Government.

Taking into account the aforesaid facts, belowmentioned directions are given to Navi Mumbai Municipal Corporation as well as to CIDCO as per Section 154 (1) of the Maharashtra Regional and Town Planning Act.

Directions

1) The role of CIDCO in Navi Mumbai Municipal Corporation Region has been completed and now it is not expected from the CIDCO to fulfill any other responsibility at this place excluding the land owner (Lessor). CIDCO has completed the objective planned by the Government under Section 114 (1) of the Maharashtra Regional and Town Planning Act. As per Sections 114, 116, 117 and 118 of the aforesaid Act, as the work of CIDCO Authority to develop the new cities, has been completed only to the extent of Navi Mumbai Municipal Region, the powers of New Town Development Authority (N.T.D.A.) for Navi Mumbai Municipal Corporation Region have been terminated. However, all the powers of CIDCO in respect of lease as a land owner shall remain intact.

2) The reservations imposed by Navi Mumbai Municipal Corporation on the plots of CIDCO, measuring less than 500 sq. mtrs. shall be retained in draft layout. Because CIDCO won't get much financial income from these plots. Moreover, the plots on which the action of excluding the reservations is going on, the plots which have been transferred to MNC and the plots on which only the religious reservations have been proposed, even such reservations should not be proposed. On comprehensively considering the same, excluding the plots of the area less than 500 sq. mtrs., the Municipal Corporation should not propose the reservations on any other plots of CIDCO.

3) Considering the aforesaid aspects and Government's directions, the Draft Development Plan should be published in accordance with Section 26(1) of the Maharashtra Regional and Town Planning Act.

By order and in the name of Governor of Maharashtra.

(Nirmalkumar P. Chaudhary)
Under Secretary,
Deputy Secretary,
Government of Maharashtra

(emphasis supplied)

75. It is thus clearly seen that in the notification dated 14 June, 2021, as issued under Section 154 of the MRTP Act, the State Government has stated that the Draft Development Plan under Section 26 of the MRTP Act for the CIDCO areas, included in the NMMC and Panvel Municipal Corporation areas was yet to be published by the concerned Corporations, hence, the reservations were not applicable to the plots as notified by CIDCO for public auction till issuance of the said notification. It is clarified that as a result the auction process which CIDCO had commenced would remain protected.

As noted above a further clarificatory notification under section 154 of the MRTP Act dated 6 September, 2021 was issued by the State Government, wherein the State Government inter alia directed that although the work of CIDCO to develop the areas of Navi Mumbai was completed and the plots were developed, however, all the powers of CIDCO to lease lands as the owner of the lands shall remain intact. It was further clarified and directed that the reservations imposed by NMMC on the plots

of CIDCO 'smaller than 500 sq. mtrs.' belonging to CIDCO should be maintained in the Draft Development Plan, as CIDCO will not get much financial benefits from such plots, as also plots 'excluding such smaller plots' having area of less than 500 sq. mtrs., no reservations shall be placed and considering such matter, the Draft Development Plan be published as per the provisions of Section 26(1) of the MRTP Act. Thus, by such clarificatory directives issued in exercise of Section 154 of the MRTP Act, the State Government has held that the plots having area more than 500 sq. mtrs. and belonging to CIDCO shall be kept out of the purview of any reservations in the Draft Development Plan to be published by the NMMC under section 26(1) of the MRTP Act.

76. On a cumulative reading of the different notifications as issued by the State Government under Section 154 of the MRTP Act and as discussed above, it is manifest that although the NMMC was constituted as a Municipal Corporation in exercise of the powers under section 3 of the NMMC Act, 1949, there was never an intention on the part of the State Government to divest CIDCO of any of its authority as a New Town Development Authority or a Development Authority within the meaning of Section 113(3A) read with Section 2(8) of the MRTP Act. Thus, CIDCO was within its power to develop the undeveloped lands even in the developed

nodes, which stood vested in it and allowed the said lands by exercising its statutory powers as conferred under section 118 of the MRTP Act along with other ancillary powers being exercised under the New Bombay Disposal of Land Regulations, 1975 and Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 for disposal of lands.

77. In these circumstances, it was not permissible for the NMMC to take any position to prevent CIDCO from exercising its statutory powers and duties as the New Town Development Authority to dispose of such lands by purporting to impose an embargo by foisting reservations on the plots of land being developed by CIDCO and now subjected to an allotment by public auction by virtue of the tender process as undertaken in the month of January, 2021 which already stands completed and the allottees, namely, the private respondents, are in the process of finalizing such allotments.

78. To our mind, it is quite clear that the roles of both CIDCO and the NMMC qua the Navi Mumbai area have been recognized by the State Government and completely within the parameters of the MRTP Act. Time and again by issuance of different notifications, the State Government has clarified the position that no conflict ought to be brought about in the functioning of both these bodies exercising their powers and

functions as conferred on them under the MRTP Act. Significantly, the intention of the State Government not only from its directives but also from the stand taken by the State Government in the reply affidavit appears to be quite clear, namely, to recognize the role of both these authorities which is quite compartmentalized. The State Government has categorically recognized that since the time CIDCO was constituted as the New Town Development Authority and till the constitution of the NMMC and for such period even after its constitution, CIDCO has discharged its functions as the Planning Authority by reserving lands for different public amenities and it is not the case as put up by the petitioners that the Navi Mumbai area was developed by CIDCO without being alive to the different public needs and purposes and in fact has allocated lands for large number of public purpose. Thus, the charge of the petitioners that the allotment in question in favour of the private respondents by CIDCO is only a revenue earning exercise, is totally untenable. Such revenue being earned by disposal of lands by CIDCO is also being utilized for the purpose of development of Navi Mumbai, which itself is a public purpose.

79. We next examine the petitioner's contention on the validity of the State Government's notification dated 14 June, 2021 and 6 September, 2021 issued under Section 154 of the MRTP Act. The petitioners contend

that it was beyond the powers of the State Government as conferred under section 154 of the MRTP Act to issue such notification. We are unable to subscribe to such contention of the petitioners. This is for the fundamental reason that the situation as confronted before the State Government arising out of two public bodies having independent statutory powers, is a classic situation. The petitioners did not have a quarrel to the two bodies, CIDCO and the NMMC, functioning within their spheres and as per the powers conferred on them under the statutory provisions as discussed above prior to the issuance of the notifications dated 14 June, 2021 and 6 September, 2021. In our opinion, such a situation is most appropriately falling within the purview of Section 154 of the MRTP Act, for the State Government to step in, in the wake of the subsequent developments, namely, to define and clarify the boundaries of the respective powers, duties and functions of both CIDCO and the NMMC to function as independent authorities under the MRTP Act for the Navi Mumbai area. It is hence not only an apt situation but also most deserving that such clarificatory orders were issued by the State Government under section 154. Moreover, to resolve any conflict internal to the working of the Act, which may be created between two or more authorities functioning within the MRTP Act by virtue of its different provisions being set into motion, the legislature thought it appropriate to make a provision such as Section 154 providing for 'control by the State

Government'. Much has been stated on behalf of the parties on the nature of powers which can be exercised by the State Government under section 154, such provision has been extracted above.

80. On a plain reading of Section 154, it is manifest that the provision overrides all other provisions of the MRTP Act or the rules and regulations made thereunder authorizing the State Government to exercise its powers inter alia for the efficient administration of the Act or in the larger public interest to issue from time to time such directions or instructions as may be necessary to the Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions. In our clear opinion, the nature of the directions as contained in the notification dated 14 June, 2021 and 6 September, 2021 are directions certainly for the efficient administration of the MRTP Act and undoubtedly in larger public interest and binding on the NMMC as also CIDCO. Thus, there is no gainsaying that such directions which are intended to remove any internal conflict in the NMMC and CIDCO exercising their respective powers, functions and duties can in any manner be said to be illegal or beyond the powers conferred on the State Government under Section 154. The decisions as relied on behalf of the parties where the issue in regard to the interpretation of Section 154 fell for

consideration of the Courts can be discussed.

(i) The first decision on which reliance is placed by Mr.Dhakephalkar is the decision of the Supreme Court in *Laxminarayan R. Bhattad & Ors. v. State of Maharashtra & Anr.*² We wonder as to how this decision would apply to the facts in hand. The Supreme Court was examining the appellants claim for grant of TDR (transferable development rights) considering a situation wherein statutory regulations in the form of Development Control Regulations for Greater Bombay 1991 were already brought into force. The question was whether the powers under Section 154 of the MRTP Act could be exercised by the State Government to undo or obliterate something which was provided for in the Development Control Regulations. The Supreme Court in this context observed thus:-

50. The said instructions were issued keeping in view the new Regulations in respect of the areas where finally sanctioned town planning scheme had come into effect without waiting for compliance in the proceeding of variation of the Town Planning Scheme Regulations. The directive of the State Government issued in terms of Section 154 of the 1966 Act clearly states that the development permission shall be strictly scrutinized in accordance with the sanctioned Development Control Regulations of Greater Bombay even in the area where finally sanctioned Town Planning Scheme is pending the procedure of variation of the Scheme.

51. The said Scheme does not refer to grant of any TDR and it will bear repetition to state that the development permission was required to be strictly scrutinized in accordance with the sanctioned Development Control Regulations. A direction of the State Government in terms of Section 154 of the Act cannot supersede the statutory provisions contained either in the main enactment or the statutory regulations. The State of Maharashtra had absolutely no jurisdiction to issue any directive contrary to the statute or the statutory regulations. Once the draft scheme became final, the

² (2003) 5 SCC 413

provisions thereof shall prevail over the provisions of the Regulations in terms of the proviso appended to sub-regulation (2) of Regulation 1 of the 1991 Regulations. In such event, the doctrine of “relating back” shall apply. As indicated hereinbefore, in terms of the provisions of the said Act the arbitrator’s award became final. The directive of the State Government could have been enforced till the Scheme received sanction and was made final but not thereafter. Furthermore, Regulations 33 and 34 of the 1991 Regulations provide for enabling provisions. No legal right to get additional TDR was created thereby. The appellants merely had a right to be considered. The said Regulations confer wide discretionary power on the part of the authorities. Each case was required to be considered on its own merit.

(ii) Mr.Dhakephalkar also placed reliance on the decision of the Supreme Court in *Director General (Road Development) National Highways Authority of India vs. Aam Admi Lokmanch* ³ Proceedings to the Supreme Court were carried from an order passed by the National Green Tribunal as also from the decision on a writ petition decided by the Division Bench of this Court. The issue in the case had arisen from an unfortunate incident which had taken place on 6 June 2013 in regard to one Vishakha Wadekar who was driving a car with her young daughter Sanskriti Wadekar and who were swept away by land slide resulting into her death on account of negligence on the part of respondent no.5 therein (referred as “Rathod”) who was granted licensing rights by the State Government to extract minor minerals and who was excavating part of adjoining hills for the purpose of road development contract being undertaken by the National Highway Authority of India. (NHAI). The National Green Tribunal (for short “NGT”) passed an order directing the State Government that it shall give

³ 2020 SCC OnLine 572.

instructions to the concerned Revenue Officials working within all districts to have regular vigil within their areas to verify whether fringes or nearby any hill or hill-top constructions are noticed and if found to be so, due inquiry may be made as to whether such constructions are authorized. It was further directed that the instructions may be issued to the Municipal authorities to ensure that no construction permission shall be given to any construction/development work, which is being proposed and is located at a distance may be of 100 ft. away from lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops, except for Bamboo cottages. The State Government acting under the directions of the NGT invoked the powers under Section 154 of the MRTP Act by issuing a notification/circular dated 14 November, 2017, directing that development (relating to construction) was impermissible in an area abutting hills up to 100 feet. In the orders passed by the High Court, it held that there was no denial that the power to issue such directions or circulars existed by way of the amended Section 154 and that such power was essential. It was also held that no individual or entity could claim any absolute right and contend that he could develop or construct anywhere and that the directions contained in the notification supplemented bye-laws and building codes already in place in Mumbai and Pune. The High Court also held that it did not agree with the petitioners that by such directions issued in exercise of the powers

conferred by sub-section (1) of Section 154, the Development Plan for the limits of the Municipal Corporations, namely Pune and Mumbai stood altered or modified. The High Court held that there no modification to the development plans was brought about by the directives as issued under Section 154 and in fact the directions therein complemented the provisions of the DC Regulations for the cities of Mumbai and Pune or the concerned Municipal Corporation/Municipal Council areas. Before the Supreme Court, the petitioners had made a grievance that such directions issued by the State of Maharashtra under Section 154 of the MRTP Act were required to be held to be bad as NGT would not have jurisdiction to issue sweeping and unilateral directions to the State Government especially considering the provisions of Section 14 and 19 of the NGT Act which would require stoppage and cessation in any manner of a building activity or developments within hundred feet of hill slopes. It was contended that such sweeping directions were illogical and were not based on any scientific study or analysis. It was argued that even the High Court fell in error and did not appreciate that the entire basis of the Directions/Resolution of 14 November, 2017 issued by the State Government, was in pursuance of the directions issued by the NGT. It is in such context, the Supreme Court examined the provisions of Section 154 of the MRTP Act and held that in the facts of the case recourse to Section 154 of the Act, amounted to a

modification of all plans - regional, development, etc., as by virtue of such directives an absolute prohibition on construction was imposed which was not preceded in any manner by a public consultation, much less previous invitation of objections or consideration of the views of affected parties. It is in such context in paragraph 92 of the decision the Supreme Court observed that the directions can be issued “notwithstanding” any other provisions of the Act, “for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time.” It was observed that no doubt, the non-obstante clause has an overriding effect on other provisions of the Act, however, if one keeps in mind that the preparations of regional and development plans are in terms of specific provisions which outline detailed procedures that have to be necessarily followed, in the absence of which, time and again Courts have intervened and held that such modifications without following prescribed procedure or without prescribed consultations, are illegal. The Court observed that the power has to be resorted to for good and adequate reasons. To conclude, it was held that the directions as included in the said case, on the face of it, were not premised on any Central or State Government programmes, policies or projects.

Certainly the facts in the present case are wholly incomparable to the

issues which fell for consideration of the Supreme Court in such case. In the present case it is not in dispute that the NMMC is at the stage where merely a notification under Section 23(1) of the MRTP Act declaring its intention to prepare “a draft development plan” was issued and admittedly further procedure in that regard as per the provisions of Section 26 of the MRTP Act has not taken place. Thus, in these circumstances, certainly it cannot be held that the directions of the State Government in question in the present case as issued under Section 154 can in any manner be said to have an effect to amend or modify a final Development Plan. In any case, the petitioner in relying on the said decision of the Supreme Court also cannot be oblivious and as more apparent from reading of paragraphs 92 and 95 of the report that the issue as canvassed before the Supreme Court pertained to the invocation of Section 154 to the extent such directions would pertain for efficient administration of the MRTP Act or any larger public interest. Thus, in our opinion, the reliance on this decision of the Supreme Court on behalf of the petitioner is wholly misplaced. The relevant extracts from paragraphs 92 and 95 of the decision are required to be noted which read thus:-

“92. Directions can be issued “notwithstanding” any other provisions of the Act, “for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time.” No doubt, the non-obstante clause has an overriding effect on other provisions of the Act. However, if one keeps in mind that the preparations of regional and development plans are in terms of specific provisions which

outline detailed procedures that have to be necessarily followed, in the absence of which, time and again courts have intervened and held that such modifications (without following prescribed procedure or without prescribed consultations) are illegal, the power has to be resorted to for good and adequate reasons. The direction, impugned in the present case, on the face of it, is not premised on any central or state government programmes, policies or projects. The impugned notification reads as follows:

GOVERNMENT OF MAHARASHTRA URBAN DEVELOPMENT DEPARTMENT Madam Cama Road Hutatma Rajguru Chowk Mantralaya, Mumbai 4000032 Government Resolution No. TPS-1817/ANS-90/97/UD-13 dated 14 November 2017 The Development schemes are prepared for area in jurisdiction of planning authorities under the Maharashtra Regional Development and Town Planning Act, 1966. In the context of unauthorised constructions undertaken by hill cutting, at Katraj Ghat District Pune, the Hon'ble National Green Tribunal, Pune has, by order dated 19 May 2015 in Application Number 4/2014, issued orders and instructed to inform all Mahanagar Palik/Nagarpalika in the state not to give any development permission for constructions on the hilltop and 100 feet distance from the hill slopes. A provision already exists in development control regulations that no development is permissible on the hilltop and no hill slopes having a gradient of more than 1:5. Considering the order dated 19 May 2015 of the Hon'ble National Green Tribunal in exercise of powers under section 154 of the Maharashtra Regional Town Development and Town Planning Act 1966 the following the directions were issued to all planning authorities in the state:

DIRECTIONS

1. The planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills upto 100 feet should be shown as No development/Open space Reservation.
2. In the event the 100 area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR.
3. In the event the 100 feet area abutting hills is under No Development Zone as per sanctioned Development plan, then while granting permission for Development for further 100 feet area abutting/contiguous thereto should be permitted only for non- buildable purposes such as open space, road etc.

In the name of and by order of the Hon'ble Governor State of Maharashtra”

.... .

95. In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14.11.2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in Para 17(e). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert.

Furthermore, even the impugned notification does not specify what constitutes “hills”, and how they can be applied in towns and communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the concerned authorities. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the state issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT’s orders, only underlines the lack of any application of mind on the part of the State, while issuing them.”

(iii) The next decision as relied on behalf of the petitioners is the decision in the case of **Bangalore Medical Trust vs. B.S. Mundappa and others**⁴ to contend that permitting CIDCO to allot plots of lands in question to be developed by the private respondents would adversely affect the rights of the residents of the locality as also it would be prejudicial or adversely affect the benefit of reservation to the society at large, since it would deprive the residents of facilities to be created by such reservation and for the enjoyment and protection of their health. The petitioners would contend that such action on the part of CIDCO and supported by the State Government would be ultra vires to the provisions of the statute. The Supreme Court in **Bangalore Medical Trust (supra)** considered the provisions of Section 65 of the Bangalore Development Authority Act, 1976 (**BDA Act**) which empowered the Government to give directions to the Bangalore Development Authority (**BDA**) as necessary or expedient for carrying out the purposes of the BDA Act which provided that it shall be the

⁴(1991) 4 SCC 54,

duty of the BDA to comply with such direction. The Court in such context observed that the power of the Government under Section 65 cannot be said to be unrestricted and that such power can be exercised to carry out the objects of the Act and not contrary to it, and only such directions as are reasonable or necessary or expedient for carrying out the object of the enactment can be issued as contemplated by Section 65. It was observed that if a direction was to be issued by the Government to lease out to private parties, areas reserved under the scheme for public parks and playgrounds, such a direction would not have the sanctity of Section 65. It was observed that any such diversion of the user of the land would be opposed to the statute as well as the object in constituting the BDA which was to promote a healthy development of the city and improve the quality of life. The Court observed that any repository of power- be it the Government or the BDA - must act reasonably and rationally and in accordance with law and due regard to the legislative intent.

There can be no dispute on such proposition that if powers are to be conferred on the State Government, they need to be exercised to aid the intention and object of the legislation and anything alien to it, cannot be the subject matter of such power to be exercised by the State Government. It is in such context the observations in regard to the purport of Section 65 of the BDA Act came to be made in paragraph 52 of the decision. This was

in the context of a case where the land which was reserved as an open space in a improvement scheme adopted under the City of Bangalore Improvement Act,1945. In pursuance of the orders passed by the State Government and consequent orders of the BDA such open spaces were allotted in favour of the appellant - a medical trust for the purposes of constructing a hospital which was the subject matter of challenge by the writ petitioners (respondents therein) who were the residents of the locality, on the ground it was contrary to the provision of the BDA Act and the scheme sanctioned thereunder.

Thus, the facts in the present case are completely distinct from the issue which fell for consideration of the Supreme Court in BDA's case. In the present case these are lands which have stood vested with CIDCO and at all material times and which were available to CIDCO as the New Town Development Authority to develop the same by making allotments as per the statutory powers and the mechanism thereunder as available to it. The NMMC, a Planning Authority, which was subsequently constituted after CIDCO being entrusted of such functions as a New Town Development Authority oblivious of its authority and powers under the MRTP Act, in a peculiar manner purported to deprive the benefits of such land to CIDCO by a special body resolution dated 13 December, 2019 and that too merely by declaration of its intention to publish a draft development plan and

subjecting these plots / lands of CIDCO to reservation. It is in such context, the State Government has taken a fair position and has issued directions under Section 154 by clarifying the authority and powers of the respective bodies and thereby recognizing the rights of CIDCO to make allotments of the plots in question. Thus, the decision in **Bangalore Medical Trust (supra)** is of no avail to the petitioners.

(iv) In **Sunil Balakrushna Telang vs. State of Maharashtra**⁵, the issue before the Division Bench of this Court had arisen from an order passed by the Hon'ble Minister in an appeal filed by respondent no.3- Sahyadri Devcon. Before the Hon'ble Minister a challenge was mounted to an order passed by the Municipal Corporation rejecting Sahyadri's proposal to undertake development of a land. However, such statutory appeal itself was time barred, hence could not be entertained by the Hon'ble Minister. However, peculiarly the Hon'ble Minister passed an order on such appeal, ordering that as the appeal could not be entertained being time barred, however, the same be converted into a representation, and considering the record, the Hon'ble Minister directed the Municipal Corporation to grant the proposal of Sahyadri in the manner as directed in such order passed by him. The petitioner, Sunil Balakrushna Telang considering himself to be a party prejudicially affected by such decision of the Hon'ble Minister filed the writ

⁵2019 (2) Mh.LJ 875

petition in question before this Court. A contention was urged before the Division Bench that the Hon'ble Minister could not have passed such order under the provision of Section 154 of the MRTP Act. It is in such context, the Division Bench considered the question whether the Hon'ble Minister was justified in taking the impugned decision, when the appeal was held to be time barred, and examined the powers of the State Government as conferred under Section 154 to hold that such power is conferred on the State Government notwithstanding the other provisions of the MRTP Act or the Rules or Regulations made thereunder for purposes of implementing or bringing into effect the Central or State Government programmes, policies or projects or for the efficient administration of the Act or in the larger public interest. The Division Bench also noting the decision in *Laxminarayan R. Bhattad and others* (supra) held that, it was not permissible for the Hon'ble Minister to take recourse to Section 154 to pass such order as impugned, as also Section 154 would not permit any such order to be passed considering its plain language. This decision would also not aid the petitioners. The Court in para 17 observed thus:

“ Thus considering the plain and unambiguous language of section 154 and the purpose and intention behind the provision, we cannot persuade ourselves to allow an interpretation as suggested by *Sahyadri* that Section 154 confers a power on the State Government to pass an order of the nature impugned in the petition that too on a statutory appeal under section 47 of the MRTP Act. The provision also cannot be read to confer any jurisdiction/power on the State Government to convert its appellate jurisdiction under section 47 of the MRTP Act by treating the appeal as a representation so as to pass

an order, alien to section 47 or any other orders which the State otherwise can legitimately pass under section 154 of the MRTP Act. Section 47 and section 154, in our opinion, operate in different fields. It is really astounding as to how considering an appeal under section 47, the powers under section 154 of the State Government, could at all and in any manner would be relevant or applicable. The statutory scheme of Chapter IV and Chapter IX would not permit such mixing of powers confer on the State Government under two independent provisions that too falling under different Chapters. Such intention of the legislature by no stretch of imagination can be gathered in the legislative scheme under which the provision stands. The petitioner's contention in regard to the application of section 154 is neither supported by the State Government nor by the planning authority. Thus the submissions of Sahyadri on the applicability of section 154 in supporting the impugned order deserves to be outrightly rejected."

81. Now we examine the next contention as urged on behalf of the petitioners on the issue of the time limits as prescribed by Section 26(1) for issuance of a notice for publication of the Draft Development Plan. The petitioners contend that it needs to be held that the NMMC was within the jurisdiction to publish a notice of a draft development plan within the time limits as prescribed by Section 26(1) of the MRTP Act, hence it was not appropriate for the State Government to observe in its Notification dated 14 June, 2021 that the NMMC was yet to publish a draft development plan, hence, the reservation as proposed on CIDCO plots would not be applicable. The issue is discussed hereunder.

82. Section 26 of the MRTP Act provides that a planning authority subject to the provisions of Section 21 "shall not later than two years from the date of notice published under Section 23", prepare a "draft development plan"

and publish a notice in the official gazette in that regard inviting objections and suggestions within a period of “thirty days” from the date of publication of notice in the official gazette. It is clear that these time limits as prescribed by sub-section (1) of Section 26 itself could not be fulfilled by the NMMC as although on 14 December, 2017 the NMMC had issued a notice under Section 23(1) as published in the official gazette declaring its intention to prepare a draft development plan, further steps were not taken. In our opinion, it appears to be quite correct that the two years period as contemplated under Section 26(1) of the MRTTP Act, for the NMMC to prepare a draft development plan and invite objections and suggestions was to come to an end on 13 December, 2019. By virtue of second and third proviso to Section 26, the State Government is authorised to extend the period for preparation and publication of notice of the draft development plan by the NMMC for a further period of twelve months, that is, upto 12 December, 2020. However, this eventuality also has not taken place in view of the pandemic which had gripped the nation from the month of March, 2020.

83. In our opinion, it is not possible to conceive a position that no further steps can be taken by the NMMC to move forward with its intention as declared under Section 23(1) of preparing a draft development plan. Such

intention cannot be held to be frustrated inasmuch as the legislature by a recent amendment to Section 148-A (vide Amendment Act No.19 of 2020 with effect from 23 March 2020) has amended such provision to incorporate for exclusion of time in computing the period in relation to the scheme under the provisions of Chapter III and IV, to take appropriate action under the provisions of the said Chapters, if due to enforcement of any guidelines or lock-down measures by the Government of India or the State Government, as the case may be, to prevent the spread of “any pandemic or epidemic” or disaster situation arising in the Country or the State. Admittedly, after coming into force of such amendment, on 1 December, 2020 a proposal for extension of time was moved on behalf of the NMMC. It also needs to be borne in mind that the pandemic continued almost upto October 2021 and for this entire period of pandemic, even the Supreme Court has passed an order extending the limitation. (**See:** Supreme Court order dt. 23 September 2021 (**2021 SCC OnLine SC 947**), and Order dt. 10 January 2022 in **Misc.Application No.21 of 2022 in M.A.No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020**). The State Government is yet to take a decision on the application as made by the NMMC for extension to be granted in that regard, albeit it has been clarified by the State Government in its affidavit that the NMMC can go ahead with the stipulated legal procedure and complete the necessary steps for publication

of the draft development plan, in view of the amendment to Section 148-A of the MRTP Act.

84. Thus, it would not be correct to assume that Section 23(1) notice as issued by the NMMC is a non sequitur. However, this would not alter the consequences as brought about from a cumulative reading of Section 26 and Section 43 of the MRTP Act in the facts of the present case, namely that Section 43 of the MRTP Act which imposes restrictions on development of land after the date on which a declaration of intention to prepare a Development Plan for any area is published in the Official Gazette, would not become applicable. This for the reason that such declaration of intention to prepare a development plan itself was not notified by the NMMC in the Government Gazette when CIDCO had published its notice inviting public bids to auction the plots in question i.e. in January-February 2021. Thus, the petitioners would not be correct in their contention that Section 43 applies with full force in the present facts and merely because a Section 23(1) notice was published, on 14 December 2017. This would amount to reading into Section 43 which is not provided for, as Section 43 is specific, as it takes effect only when a declaration of intention to prepare a development plan is published in the Government Gazette.

85. It is also not an acceptable proposition that merely because the NMMC has approached the State Government invoking the amended provisions of Section 148A of the MRTP Act seeking an extension of the time limits to publish a notification of the intention to prepare a development plan, Section 43 would get attracted in so far as it imposes restrictions on development of land. This would again amount to either misreading the plain language and purport of Section 43 and for reading something in the said provision which the legislature has not provided for.

86. As a sequel to this discussion the petitioners' contention that by virtue of Section 43 there was a restriction on CIDCO to deal with its plots/lands in question is wholly untenable, deserving of rejection.

87. In the context of the time lines as prescribed by Section 26 to publish a development plan, Mr. Godbole, learned Counsel for respondent Nos. 6 and 7 has placed reliance on the decision of the Division Bench of this Court in **Govind Bajirao Navpute vs. State of Maharashtra & Ors.**⁶, to contend that the time of two years from the date of notice prescribed under Section 23 to prepare a draft development plan as prescribed under Section 26(1) and to publish a notice in the Official Gazette stating that a development plan has been prepared and to invite objections and suggestions on such plan, having lapsed, considering the provision of sub-section 4A of Section 21 a deemed

⁶(2016 SCC OnLine Bom 5226)

consequence is brought about providing that if at any stage of preparation of the draft development plan, the time fixed under Sections 25, 26 and 30 for doing anything specified in the said section lapses, the Planning Authority shall be deemed to have failed to perform its duty imposed upon it by or under the provisions of the MRTP Act and any work remaining to be done upto the stage of submission of the draft development plan under Section 30 shall be completed by the Officers as designated in the said provision. It is provided that that the said officer shall exercise all the powers and perform all the duties of a Planning Authority necessary for the purpose of preparing a development plan and submitting it to the State Government for sanction. It is submitted that this is a situation of *fait accompli* and the petitioners cannot take a position that what was proposed by the NMMC under the Draft Development Plan which is yet to be notified as per the provision of Section 26(1) ought to be given effect. Mr. Godbole has thus submitted that the Division Bench in **Govind Balajirao Navpute's** case (supra) has categorically held that considering the intention of the legislature, the provisions of Section 26 of the MRTP Act prescribing the time frame are held to be mandatory as provided for in Section 21(4A) of the MRTP Act and the non observance of the time frame prescribed under Section 26(1) has already attracted the consequences provided under sub-section (4A) of Section 21. The Division Bench held thus:-

“49. It is argued on behalf of the respondents that grant of extension is merely a formality and such extension can be granted ex post facto. It is contended that there is no provision for prior sanction for extension of such time, as prescribed and that ex post facto sanctions are not only permissible but also do not violate any statutory provisions of law. In the instant matter, the application for grant of extension was also beyond the period prescribed in respect of grant of such extension under the proviso to Section 26. By then, the consequences provided under Section 21(4A) have already become operationalised. The statutory provision in respect of adherence to the time frame, as provided under Section 26 shall have to be construed as mandatory.

.....

50. Considering language of the statute so also intent of the legislation, the provisions of Section 26, prescribing the time frame as well as Section 21(4A) of the Act of 1966, shall have to be construed as mandatory. The non observance of the time frame prescribed under Section 26(1) attracts consequences provided under sub-section (4A) of Section 21, which is indicative of the fact that the provisions are mandatory. Apart from this, when the statute uses the word “shall”, prima facie, it is mandatory. The Court, in such circumstances, may ascertain real intention of the legislature by carefully examining the purpose of such provision and the consequences that may follow in the event of non observance thereof.”

(emphasis supplied)

88. Mr. Godbole would be correct in his contention in so far as what the said decision of the Division Bench holds. However, in our opinion, the facts before the Division Bench were quite different, as also the Division Bench has not come to a conclusion that the provisions of Section 21(4A) would cast any embargo on the State Government exercising its powers under the second proviso to Section 26 read with Section 148A of the MRTP Act, whereby power has been conferred on the State Government on an application being made by the Planning Authority to extend the periods for preparation and publication of notice of the Draft Development Plan. Admittedly, in the present case such an application for extension is pending

consideration of the State Government. In the event, such an application of the NMMC is rejected, then as rightly pointed out by Mr. Godbole, sub-section (4A) of Section 21 would get triggered so as to divest the Planning Authority from any further steps being taken, and it would be the authorities as contemplated by sub-section 4A, namely, the Additional Joint Director and Deputy Director of Town Planning etc. who shall exercise all the powers of the Planning Authority, necessary for the purpose of preparing a development plan and submitting it to the State Government for sanction. However, we have already held that in so far as CIDCO lands are concerned, as rightly opined by the State Government, as provided under sub-section (1) of Section 26, the planning authority within a period of two years from the date of publishing a notice under Section 23(1), did not prepare a draft development plan and published a notice in the Official Gazette that a draft development plan has been prepared. Thus, in such a situation, there was no question of any restrictions on CIDCO to make allotment of its plots/lands in question. Even otherwise as held by us, there was no embargo or any restriction whatsoever on CIDCO to deal with such plots/lands and hold the auction of which the beneficiaries are private respondents. In the circumstances as discussed above, the NMMC, in law, neither could impose such reservation on CIDCO plots/lands as it was outside its power and authority to do so nor the planning provisions as

contained in Section 23 read with Section 26(1) and Section 43 would permit the NMMC to do so.

89. Lastly it is also not possible for us to accept the petitioners case relying on Article 243W of the Constitution. It is the petitioners' contention that Article 243W of the Constitution which provides for "powers, authority and responsibilities of municipalities etc." stands breached, in the State Government failing to confer exclusive planning authority on the NMMC for the Navi Mumbai Area. Such contentions of the petitioner would in fact militate against the plain language of Article 243W of the Constitution which clearly recognizes that the power, authority, and responsibilities of the municipalities are required to be conferred by the State legislature "by law". Article 243W also leaves it to the discretion of the State legislature the nature of the powers which are to be conferred as seen from the clear language of the said provision when it uses the words "*such powers and authority*" *as may be necessary to function as institutions of self-government and "such law may contain" provisions for the devolution of powers and responsibilities upon municipalities, "subject to such conditions" as may be granted therein.* It thus cannot be held that Article 243W would not recognize the authority with the State to have a legislation providing for different authorities discharging functions and powers in the

sphere of planning and in tune as to what the MRTP Act would provide. There is no mandate in Article 243W recognizing any exclusive power of planning with the municipality. Thus in consonance with the requirements of Article 243W, the State legislature by law, i.e., under the MRTP Act, has conferred planning powers not only on the NMMC but also on CIDCO in the capacity as the New Town Development Authority. In any event, the petitioners have no quarrel on any of the legislative provisions under the MRTP Act, under which the New Town Development Authority is constituted and is conferred with the planning powers, as there is no challenge raised in the petition to the constitutional validity of any of such provisions. For such reason, the petitioners case referring to Article 243W is wholly untenable.

90. As a sequel to the above discussion, with certitude we conclude that CIDCO has rightfully auctioned lands in question for the purpose of their development at the hands of the allottees, namely, the private respondents.

91. In view of the above discussions, we answer question nos.(i) to (iii) as framed by us in paragraph 55 above in the negative.

92. In the light of the above discussion, we find no merit in the petitions.

The petitions are accordingly dismissed. Interim Orders stand vacated.

93. Consequently, CIDCO shall proceed to take further steps in regard to allotment of plots, in accordance with law.

94. No costs.

(G.S.Kulkarni, J.)

(Chief Justice)