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2014
CMIN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 651 OF 2013

- 1 Wadhwa Residency Private Limited
a company registered under the provisions
of the Companies Act, 1956, having
its registered office at 301,
Platina, C/59, B. K. C. Bandra (East),
Mumbai 400 051
 - 2 Mr. Manohar M. Chhabria, Age 64,
having his office at 301,
Platina, C/59, B. K. C. Bandra (East),
Mumbai 400 051
- Petitioners

vs

- 1 Municipal Corporation of Greater
Mumbai, a statutory Corporation
constituted under the provisions of the
Mumbai Municipal Corporation Act,
1886, having its office at Mahapalika
Bhavan, Mahapalika Marg, Mumbai 400 001
- 2 Municipal Commissioner,
Municipal Corporation of Greater
Mumbai having its office at
Mahapalika Bhavan, Mahapalika Marg,
Mumbai 400 001
- 3 Chief Engineer,
Municipal Corporation of Greater
Mumbai, Development Plan,
having his office at Municipal Head
Office, 5th Floor, Annexe Building,

having his office at Mahapalika Bhavan,
Mahapalika Marg, Mumbai 400 001

- 4 Chief Engineer,
Municipal Corporation of Greater
Mumbai, Development Plan,
having his office at Municipal Head
Office, 5th Floor, Annexe Building,
having his office at Mahapalika Bhavan,
Mahapalika Marg, Mumbai 400 001
- 5 Executive Engineer,
Municipal Corporation of Greater
Mumbai, Development Plan,
having his office at Municipal Head
Office, 4th Floor, Annexe Building,
having his office at Mahapalika Bhavan,
Mahapalika Marg, Mumbai 400 001
- 6 State of Maharashtra,
through Urban Development Department,
having its office at Mantralaya, Mumbai
- 7 Principal Secretary,
Urban Development Department,
having its office at Mantralaya, Mumbai Respondents

Dr. Milind Sathe, Senior Advocate with Mr. S. U. Kamdar,
Senior Advocate, Mr. Parimal K. Shroff, Mr. Chirag Balsara
with Mr. D.V. Deokar, with Mr. Sachin Pandey, Advocates i/by
M/s. Parimal K. Shroff & Co. for the petitioners.

Mr. D. H. Mehta with Ms. Trupti Puranik for respondents 1 to
5.

Mr. Milind More, AGP for respondents 6 and 7.

**CORAM: ANOOP V. MOHTA AND
A. A. SAYED, JJ.**

RESERVED ON : February 11, 2014

PRONOUNCED ON: March 13, 2014

JUDGMENT (Per Anoop V. Mohta, J.):

The property could not be developed because of inordinate delay in granting a permission to the Petitioners, to change and utilise the "railway reservation" as the "amenities" under The Development Control Regulations for Greater Bombay, 1991 (for short, "DC Regulations"). Therefore, this Petition.

2 The Petitioners are the owners of plot No. 50, 50/1 to 50/7 and 50/35 to 50/44 of village Vikhroli at LBS Road, Ghatkopar admeasuring 71145.10 sq. meters. It is situated in Special Industrial Zone (I-3 Zone) in N-Ward of Municipal Corporation as per the sanctioned development plan. Respondent Nos. 1 to 5 are the authorities under the provisions of the Mumbai Municipal Corporation Act, 1888 (for short, "MMC Act") and the Maharashtra Regional and Town

Planning Act, 1966 (for short, MRTP Act). Respondent No. 6 is the State of Maharashtra and Respondent No.7 is the functionary of Respondent No.6.

3 The Petitioners main prayers are as under:-

“(a) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents :

(I) to forthwith sanction Petitioners plans for development of the subject property in terms of permission dated 24th February, 2010 granted by allowing the Petitioners the benefit of adjustment of reservation against amenities as provided in DC Regulation 57(4)(c)(ii) and Note II in respect of Railway Reservation / DP Road Reservation by granting all consequential benefits including

TDR;

(II) to process and sanction Petitioners plans in terms of sanction dated 24th February, 2010 by granting benefit to the Petitioners by setting off of reservation against public amenities as provided in DC Regulation 57(4)(c)(ii) and Note II in respect of Railway Reservation/DP Road Reservation by granting all consequential benefits including TDR without waiting for clearance from the State Government as has been granted to various neighbouring plot owners.”

4 The relevant provisions of MRTP Act are as under :

“Section 37 - [Modification] of final Development plan. -

[(1) Where a modification of any part of or any proposal made in, a final Development plan is of such a nature that it will not change the character of such Development plan, the Planning Authority may, or when so directed by

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

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

(2) The State Government may, [make such inquiry as it may consider necessary] and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit or

refuse to accord sanction. If a modification is sanctioned, the final Development Plans shall be deemed to have been modified accordingly.

Section 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.

Regulation 2 (7) of DC Regulations defines "Amenity". It reads thus:

"Amenity" means roads, streets, open spaces, parks, recreational grounds, play grounds, gardens, water supply, electric supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences."

"Amenity" also defined in MRTP Act which reads thus :

2 (2) "amenity" means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and

polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences;]”

A notification dated 5.8.2008 for changing the reservation of 15.25 meters wide Railway Reservation to DP Road Reservation was issued under the above provisions.

5 On 14.05.2007 Notification was issued under Section 37(2) of the MRTP Act whereby the Government of Maharashtra sanctioned the amendment to DC Regulations for Greater Mumbai and various other Municipal Corporations vide DC Regulation 57(4)(c)(i) it was provided that for conversion of industrial zone to residential/commercial zone NOC from Labour Commissioner, State of Maharashtra would be required.

6 The relevant DC Regulation 57 contemplates change of user from 1-3 (Zone) to residential and commercial on the

terms set out which reads as under :

“57. Special Industrial Zone (1-3 Zone) :

(1) General conditions governing the uses permitted in an 1-3 Zone – The Special Industrial Zone (1-3 Zone) includes any building or part of a building which is used for the storage, handling, manufacturing or processing or highly combustible or explosive materials or products which are liable to burn with extreme rapidity of which may produce poisonous fumes or explosions; for storage, handling, manufacturing or processing which involve highly corrosive, toxic or various alkalis, acids or other liquid, or chemicals producing flames, fumes and explosive, poisonous, irritant or corrosive gases; or for the storage, handling or processing of any material producing explosive mixtures of dust or which result in the division of matter into fine particles capable of spontaneous ignition. Examples of buildings in this class are those used for :

(a), (b)....., (c)...., (d)....., (2)....., (3)....., (4), (a)....., (b)....

(c) With the previous approval of Commissioner, any

open land or lands or industrial lands in the Special Industrial Zone (1-3 Zone) (including industrial estate), excluding lands of cotton textile mills, may be permitted to be utilized for any of the permissible users in Residential Zone (R-1 Zone) or the Residential Zone with shop line (R-2 Zone) or for those in the Local Commercial Zone (C-1 Zone) subject to the following :

(i) The conversion of Industrial Zone to Residential / Commercial Zone in respect of closed industries shall not be permitted unless NOC from Labour Commissioner, Maharashtra State, Mumbai stating that all legal dues have been paid to the workers or satisfactory arrangement between management and workers have been made, is obtained. Provided that where conversion has been permitted on the basis of this Certificate, occupation certificate will not be given unless a no dues certificate is granted by Labour Commissioner. However, in respect of any open land in the industrial zone, where industry never existed, NOC from Labour Commissioner is not required.

The layout or sub division of such land shall be approved by the Commissioner, who will ensure that 5% land for public utilities and amenities like electric, sub-station, bus-station, sub-post office, police out post and such other amenities, as may be considered necessary, will be provided therein.

(ii) In such layouts or sub divisions having areas more than 2 ha, but less than 5 ha; 20 per cent land for public utilities and amenities like electric, sub-station, bus-station, sub-post office, police out post, garden, playground, school dispensary and such other amenities shall be provided.

In such layout or sub division each more than 5 ha. In area, 25% land for public utilities and amenities like electric, sub-station, bus-station, sub-post office, police out post, garden, playground, school dispensary and such other amenities shall be provided.

Provided that at least 50% of the amenity space

shall be designated as open space reservation.

These areas will be in addition to the recreational space as required to be provided under regulation No. 23.

(iii) The required segregating distance as prescribed under these regulations shall be provided within such land intended to be used for residential or commercial purposes.

(iv) Such residential or local commercial development shall be allowed within the permissible FSI of the nearby residential or commercial zone.

(v) Provision for public utilities, amenities and open space shall be considered to be reservation in the development plan and Transferable Development Rights as in Appendix VII or FSI of the same shall be available for utilization on the remaining land.

Provided that public utility and amenity plots shall not be developed as per Regulation 9.

Note :

I. Conversion from industrial zone to residential / commercial zone shall be applicable to the part area of land holding subject to the condition that total area of the entire land holding shall be considered for deciding the percentage of and to be reserved of the said part area of land for public amenity spaces, as per the said Regulation. However, necessary segregating distance shall be provided from industrial use.

II. In the layout, where Development Plan has provided any reservations.

A. If the area under Development Plan reservation is less than the required area of public amenity space as per the said Regulation, then only the difference between the area shall be provided for public amenity spaces.

B. If the area under Development Plan reservation is more than the required area of public amenity spaces as per the said regulation, then the provision for public

amenity spaces is not necessary.

- III.** Out of the total floor area proposed to be utilized for residential development, 20% of the same shall be built for residential tenements having built up area upto 50 sq.mt.”

7 The plain reading of the rule and considering the scope and purpose of it, the Planning Authority/the Commissioner of the Corporation can permit such changes in view of declared policy/Notification. The Supreme Court recently in **Oswal Agro Mills Limited v. Hindustan Petroleum Corporation Limited and others**¹, dealt with MRTP Act, DC Regulations, referring to permission and change of land use. It is observed that “The MRTP Act being an Act to provide for planned development, the provisions of the DCRs will have to be read purposively and harmoniously, and not disjunctively.”. The plain reading of the Regulations, nowhere contemplates prior permission or sanction from the State and/or it is subject to such permission. Therefore, this

¹ (2014) 2 SCC 491

additional condition, only for the Petitioners is also unacceptable reason to delay the sanction.

8 On 5.08.2008 Notification was issued proposing modifications to the reservation of Railway Reservation to DP Road Reservation and objections and suggestions were invited to the said amendment.

9 On 23.11.2009/24.12.2009, the Petitioners' Architect, Space Age Consultant made an application to Mumbai Municipal Corporation to allow residential user in respect of the Petitioners' property situated at village Vikhroli at L.B.S. Road, Ghatkopar (W), Mumbai.

10 On 15.02.2010, the Mumbai Municipal Corporation addressed a letter to the Principal Secretary, Urban Development Department seeking clarification whether the area of 15.24 meters wide Railway Reservation which is proposed to modify the new DP Road by Urban Development Department where 37(1) and also 37(1A) is already issued by

Urban Development Department and also suggestions/objections in this respect have been invited by D.D.T.P can be adjusted against Amenity open space required as per modification Regulations 57(4)(c) of DC Regulations 1991 Notification dated 14 May, 2007; and whether DP Road can be treated as reservation and can be adjusted against Amenity open space.

11 On 24.02.2010 a letter was addressed by the Chief Engineer Executive Engineer (D.P) ES to the Petitioners informing the Petitioners that the application made on behalf of the Petitioners for allowing residential user on 1-3 Zone was granted subject to the terms and conditions set out therein.

12 On 9.06.2010, Application/representation was made by Architect Messers. Daisaria & Associates, in respect of another property, requesting the Respondent Municipal Authorities to treat the proposed change of user from Railway to DP Road as reservation. On 21.06.2010, the Municipal Officials prepared a Note on the said basis. On 17.07.2010,

the Respondents/Corporation granted the development permission, in respect of another similarly situate plot, by adjusting the amenity open space against DP Road Reservation subject to the set out conditions.

13 On 29.01.2011, the Municipal Corporation addressed a communication to the Petitioners' Architect and the DP Remarks were issued and further remarks were to be obtained by the concerned Authorities. On 21.05.2011, Respondent No.5 issued Circular dated 21 May, 2011 and expressly considered effect and validity of sanctioned Development Plan or Development Control Regulations and implementation of the proposed provisions in the Development Control Regulations. By the said Circular Respondent No.5 directed that implementation of the proposed provisions or changes in the Development Control Regulations will be contrary to the law, till the final sanction for the modification proposal initiated under Section 37 for implementation is granted by the Government.

14 On 21.06.2011, the Petitioners Architect addressed a letter to the Municipal Commissioner seeking permission to allow residential user on the Petitioners plot by adjusting the DP Road Reservation against amenities space. On 26.11.2012, the Petitioners' Architect addressed a letter to the Chief Engineer and requested the Municipal Authorities to sanction Petitioners' plans on the basis of DC Regulation 57(4)(c) by considering the DP Road proposed reservation as reservation and set it off against public amenities as has been done in various other cases. There is no response from the Municipal Corporation.

15 The Respondents have already granted permission by communication dated 24.02.2010 for development in question. However, no benefits of adjustment of reservation against amenities as required are granted to the Petitioners, under DC Regulation 57(4)(c)(ii) and Note appended thereto. The Petitioners, therefore, challenge arbitrary, unreasonable and discriminatory action of Respondents by this petition in March 2013.

16 The Respondent/Corporation by affidavit dated 7 January 2014 resisted the prayers and the relief so sought by the Petitioners mainly on the ground that they have sought clarification from U.D. Department of Respondents 5 and 6 on 15.02.2010 under Regulation 62(3) of DC Regulations which is reproduced as under :

“If any question or dispute arises with regard to interpretation of any of these regulations the matter shall be referred to the State Govt which, after considering the matter and if necessary after giving hearing to the parties, shall give a decision on the interpretation of the provisions of these regulations.”

There is no question of any dispute or interpretation required in view of action taken by the Respondents pending the alleged letter/clarification. The rules are clear and so it's interpretation.

17 The submission, therefore, is also made that the decision of the Government on the interpretation of these regulations shall be final and binding on the concerned parties. The clarification was sought on the following issues :-

(i) Whether the area of 15.24 mt wide railway reservation which is proposed to modify to new DP Road by U.D. Dept where 37(1) and 37(1A) is already issued by U.D. Dept and also suggestions/ objections in this respect have been invited by Dy. Director (Town Planning) Greater Mumbai can be adjusted against the amenity open space required as per modification regarding 57(4)(c) of DCR 1991 and notification u/s 37(2) of MRTP Act u/n TPB-4340/2770/CR-312/04/UD-11 dt.14.05.2007 and

(ii) Whether DP Road can be treated as reservation and can be adjusted towards amenity open space as per modification notification no. TPB-4340/2770/CR 312/04/UD-11 dt. 14.05.2007. The clarification from U.D. Dept is

however still awaited.

18 Another clarification was sought on 1.1.2014 which is also as under :

(I) Whether the area of 15.24 m wide railway reservation can be adjusted against the amenity open space required as per regulation 57(4)(c) of DCR 1991

(II) Whether DP Road can be treated as reservation and can be adjusted against amenity open space as per the provision of DCR 1991.

19 Therefore, only for the Petitioners, based upon the above communication and for want of alleged clarification, no relief as prayed was granted to the Petitioners and even opposing the present Petition. However, no justification whatsoever given and/or provided in the reply with regard to the grant of similar reliefs to M/s. Daisaria & Associates in respect of similarly situated and adjacent property which was admittedly granted even after seeking first clarification.

20 In spite of clarification so sought if relief granted then to say now that they cannot grant the benefits for want of clarification of Respondents 6 and 7, is unacceptable submission, specifically when there is nothing on record to show that they have taken any action and/or passed any order withdrawing the said benefit and/or cancelling the same.

21 There is no case of disturbing and/or tinkering with required amenities. The case of non-grant of reservation benefits as per unamended regulations and policy which are clear. There is no clarification sought or required by the Petitioners. The Respondent-Corporation themselves, sought clarification/opinion but pending the same, granted the railway reservation benefits to the adjacent owner. Therefore, no question of any doubt or dispute with regard to the plain reading of regulation 57(4)(c), specially when they have already sanctioned plan of the Petitioners in the year 2010 itself. No justification is given on record for not giving any clarification and/or decision by the State of Maharashtra on such letters, only at the instance of the Respondents. This is nothing but

to avoid the benefits only to the Petitioners. The Respondents cannot act in such matters, in such fashion. The action is, therefore, arbitrary, discretionary and violative of Article 14 of the Constitution of India, specially when there is even no issue with regard to the calculation of amenities, area in view of the details provided on record and which is also not in dispute and so also the rights/entitlement of the Petitioners.

22 This Court, on various occasions granted time to the Respondents to seek clarification and/or file reply since June 2013. The matter was kept high on board for reply, as well as, for clarification on 17 December 2013. On 8 January 2014, also the matter was kept high on board and at the request of AGP again adjourned to 15 January 2014, however, again it was adjourned to 20 January 2014 high on board for the same. On 20 January 2014, the matter was adjourned. On 3 February 2014 the matter was listed for final disposal and again adjourned to 10 February 2014, for the same. On 11 February 2014, after hearing all the parties, the Court has closed the matter for judgment and directed to be listed on 28

February 2014. However, it was made clear that "Respondent Nos. 6 and 7, (State of Maharashtra and Principal Secretary, Urban Development Department, respectively) are still free to take a decision clarifying the position as sought by the Respondent-Corporation before the date of judgment, as the same is pending with them since 2011. On 28 February 2014, in spite of above, no decision whatsoever communicated and/or taken by the concerned Respondents. The Court, therefore, observed that *"we are proceeding to pass judgment as it appears that the Respondent-State is not willing to take decision in the matter."*

23 The above events show that the concerned Respondents themselves have already acted upon, on the basis of existing Rules and therefore, there was no question for any further clarification and/or waiting for the clarification as they themselves, pending the clarification, granted the permission to the similarly situated person/land. It appears that, therefore, Respondent Nos. 6 and 7 do not want to express their opinion in view of above, apart from the fact that

the rules and regulations are clear and there is no confusion and/or doubt. However, this inaction on the part of the Respondents, is ultimately preventing the Petitioners to utilize the plot at the earliest.

24 We have also noted a Government of Maharashtra Urban Development Department's letter dated 21 May 2011 on which strong reliance was placed while supporting their stand for asking the opinion by the Corporation. The Circular nowhere deals with the situation like of the Petitioners. That was with regard to the grant of FSI under the DCR from 1.0 to 2.5 for specific purposes. This issue and letter in any case, cannot be utilized to refuse the permission at the stage of development. It may be subject to the condition and/or requisite undertaking, if any.

25 Considering the totality of rules and regulations even otherwise, it is clear to us that the prayers so made by the Petitioners are well within the purview of policy and the law. There is no question of any illegality and/or any breach of

provisions of existing regulations, if similar permission granted to the Petitioners as prayed for. The Respondents action will be well within the framework of law and the policy. This is also specially for the reason that nothing is even suggested in the affidavit-in-reply filed by the Respondent-Corporation that if such a permission granted to the Petitioners, it would be against the law, as they themselves granted similar permission pending the clarification and till this date, not revoked the same.

26 In the present case, the counsel have read and referred the pleadings, as well as, the Regulations and the correspondences of the parties. The plain reading of the Regulation shows that "*any reservation*" means and includes all reservations including railway reservation in question. The land as falls in the industrial zone and partly residential zone. The requisite amenities/reservation including for the BEST Bus Depot, D.P. Roads, railway reservation, welfare centers, schools etc., all fall within the ambit of reservation and amenities. All these reservation/amenities are part of the

development and, therefore, bound to be a part of such reservation/amenities, subject to requisite conditions, but there is no question of denial and/or delaying the entitlement/grant as prayed. However, there cannot be any doubt that all these amenities, open space/reservation are subject to the declared policy and other changes, permission/sanction and relocation as required.

27 The aspect of lapse of such proposed reservation also cannot be overlooked and so also "no decision" by the department for so many years (Since 2009). No denial of the area and/or representation so made and the suggested situation so expressed, apart from their legal entitlement. The withholding, therefore, is nothing but a case of discrimination and reflects arbitrariness, misuse of powers by the Authority and treating it unequally, therefore, violates Article 14 of the Constitution of India.

28 In similarly situated position, where the Respondents like local bodies refused to sanction plan, mainly

on the ground that they are awaiting opinion of the Central Government and as the same was pending, refused to sanction the plan/grant permission for development of pending project. This Court in number of matters inspite of pendency of such opinion directed the authorities that Respondents to grant permission/sanction in accordance with law. In **Rustomjee Realty Private Limited & Anr. Vs. Union of India & Ors.**² this Court in similarly situation, where inspite of Court's order, the concerned Respondents in the matter, failed to take decision and therefore, this Court passed the order directing the Respondents to grant the reliefs as prayed. In the present case also, no reply filed/no decision taken till this date. The same is pending since 2009/2011. Therefore, once the railway reservation is treated as reservation as contemplated, entitlement/adjustment covers the case of amenities required i.e. 25% of the net plot area in question. In totality the Petitioners, therefore, are entitled for the reliefs so prayed in view of last representation dated 26 November 2012 read with earlier representation dated 23 September 2009.

² WP No. 647/2012 dated 25 March 2013.

29 There is no specific denial also to the following averments in the Petition :

“(G) The Petitioners further submit that the Respondents although in terms of Section 46 are entitled to take into consideration the draft development plan published by way of Notification in view of the judgment of the Hon'ble Supreme Court in the case of SN Rao vs. State of Maharashtra – 1988 (1) SCC 586 and in the case of T. Vijayalaxmi vs. Town Planning Member – 2006 (8) SCC 502 where the Supreme Court has observed as follows : “having regard to the facts of the case this Court is of the opinion that the contention that the planning authority has to take into consideration the draft Regulations of 1989 and therefore the Appellant would not be entitled to additional FSI could not be accepted and is hereby rejected”. On this basis the Petitioner submits that refusal on the part of the Respondents to grant to the Petitioners benefit of adjustment of Railway reservation / DP Road Reservation as reservation against public amenities is arbitrary, unreasonable

and discriminatory.

(H) The Petitioners submit that in case of DP Road Reservation the Petitioners would be entitled to hand over the said road as land as well as construct the road and ask for 1 FSI for the land and 1 FSI for the construction of road in terms of the judgment of the Supreme Court in the cases of Godrej vs. State of Maharashtra - 2009 (5) SCC 24 and MCGM vs. Yeshwant Vaithi - 2011 (11) SCC 88 and therefore the difference between amenities and reservation is of no significance in the instant case and the Petitioners are entitled for benefit under Note II appended to DC Regulation 57(4) and such benefits must be made available to the Petitioners. The Petitioners have worked out computation on considering 15.24 meter road as reservation; 15.25 Railway Reservation and deletion of the said 15.25 meter Railway Reservation or DP Road. The Petitioners have also worked out certain computation in respect of neighbouring plot owners who have been granted benefit of treating the DP Road Reservation as reservation for setting off against public amenities in terms of

DC Regulation 57 which is denied to the Petitioners. The Petitioners crave liberty to refer to and rely upon the Charts for demonstrating the discrimination meted out to the Petitioners.”

30 The Respondent-Urban Development Department themselves proposed to change the railway reservation to D.P. Road while deciding change the use of same, industrial to residential.

31 In view of possible objection of Railway Department about the de-reservation of Railway reservation on the plot of land, in case of Petitioners the area (5868.31 sq. meters), the development only of the Petitioners should not be kept in abeyance for the alleged opinion/sanction. The Petitioners' case needs to be treated as “reservation” and adjust the amenity under DCR 57(4)(c), and the policy and allow the area to be developed for residential or such user, under Development Plan of the City of Mumbai. “Any reservation” includes and covers “any area” and/or “a plot of land” reserved

for public purpose including the area of public amenity space as per the regulations in question. All are interlinked and interconnected for every purpose including the required calculations and for deciding the percentage of land/area.

32 For the reasons recorded above, we are inclined to pass the following order:-

ORDER

- a) The Petition is allowed in terms of prayer clause (a).
- b) For the same reason, as the application /representation of the Petitioners is pending since 2010, therefore, we are inclined to observe that the Respondent-Corporation to take decision as early as possible, preferably within 60 days from the date of receipt of this Judgment/order.
- c) There shall be no order as to costs.
- d) The parties to act on an authenticated copy of this Judgment.

(A. A. SAYED, J.)

(ANOOP V. MOHTA, J.)