IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1981 OF 2016

Govind Bajirao Navpute,
age: 57 years, Occ: Agriculture,
R/o Chikalthana,
Tq. and District Aurangabad. Petitioner

Versus

01 The State of Maharashtra,
through Urban Development
Department, Mantralaya,
Mumbai 400 032.

02 The Secretary,
Urban Development Department-1,
Mantralaya,
Mumbai-400 032.

03 The Director of Town Planning,
Central Building,
Pune.

04 Joint Director of Town Planning,
Aurangabad.

05 Dy. Director of Town Planning,
Development Plan Special Unit,
Aurangabad.

06 Aurangabad Municipal Corporation,
Aurangabad.

07 The Mayor,
Municipal Corporation,
Aurangabad.

08 The Municipal Commissioner,
Aurangabad Municipal Corporation,
Aurangabad. Respondents

Mr.D.P.Palodkar, advocate for the petitioners in W.Ps. No.1981, 1982, 3058 and 7435 of 2016.
Mr.V.D.Sapkal, advocate for petitioners in W.Ps. No.2398, 2399, 2400, 2401, 3248 of 2016.
Mr.Pradeep Deshmukh, advocate with Mr.Y.P.Deshmukh, advocate for petitioners in W.Ps. No.3579 and 3580 of 2016.
Mr.V.B.Kale, advocate for the petitioner in W.P.No.2930 of 2016.
Mr.A.B.Girase, Government Pleader for Respondents No.1 to 5.
Mr.Vijaysingh Thorat, Senior Counsel i/by Shri J.R.Shah, advocate for Respondents No.6 and 8.
Mr.A.M.Karad, advocate for Respondent No.7.

CORAM : R.M.BORDE &
K.L.WADANE, JJ.
Reserved on : 20th July, 2016
Pronounced on : 5th August, 2016.

JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 Respective petitioners are questioning legality and validity of the notification dated 04.02.2016 published in the *Official Gazette* under Section 21(1) of the Maharashtra Regional & Town Planning Act, 1966 (for short, "the MRTP Act"), calling objections in respect of draft Development Plan prepared and published by the planning authority within a period of sixty days from the date of the order. It is recorded in the notification that in view of Section 30 of the MRTP Act, revised development plan would be submitted for approval to the State Government and before its submission to the State Government, the objections and claims would be considered.

03 Petitioners are also questioning general body resolution adopted by the Municipal Corporation on 28.01.2016 thereby forming and approving revised proposals and submitting the same in the nature of draft development plan and resolving to submit the same for publication to the State Government. Petitioners are also seeking to quash notification dated 04.02.2016 and the resolution adopted by the General Body of the Municipal Corporation on 28.01.2016. Petitioners are also praying for setting aside of the orders dated 29.03.2016 issued by Respondent No.3 i.e. Director of Town Planning, Pune under delegated powers exercisable by the State Government granting extension for a period of one year in exercise of powers under sub-section (1) of Section 26 of the Act of 1966.

4 Before its conversion to the Municipal Corporation, there existed a Municipal Council for Aurangabad city and final development plan for Aurangabad Municipal Council area was published in the 1975, which was revised in the year 2002. Aurangabad Municipal Corporation came to be established vide Government notification dated 03.12.1982 with effect from 08.12.1982. At the time of establishment of the Municipal Corporation in the year 1982, 18 villages were included in the Municipal limits, which is an “additional area” forming part of the Municipal Corporation. A development plan for “additional area” came to be published in the *Official Gazette* on 15.10.1991 effective from 19.11.1991. At a later point of time, Cidco area was denotified and as a result thereof an area to the extent of 209.88 hectares was included within the jurisdiction of the Aurangabad Municipal

Corporation, and revision in respect of final development plan adopted in the year 1999 includes preparation of development plan for Cidco denotified area as well as Shivajinagar area. A declaration of intention under Section 23(1) read with Section 31 of the MRTP Act was published to prepare revised development plan for "additional area", Cidco denotified area, etc., on 20.01.2004 and 18.02.2006. On 01.09.2007, request was tendered to the State Government by Aurangabad Municipal Corporation to establish a special unit of Town Planning Department for preparation of revised development plan. A declaration under Section 23(1) read with Section 38 of the MRTP Act came to be published in the *Official Gazette* to prepare revised development plan for the area denotified by Cidco, Aurangabad and newly added Shivaji Nagar area on 14.10.2010. The State Government has consented for establishment of Special Planning Unit for the purposes of preparation of draft development plan. A special unit of Town Planning Department working at Sangli-Miraj-Kupwad Corporation after completion of work at the said place, came to be transferred for completion of job at Aurangabad Municipal Corporation.

5 A second declaration under Section 23(1) read with Sections 34 and 38 of the MRTP Act came to be published in the *Official Gazette* declaring intention to prepare Revised Development Plan for additional area i.e. Cidco denotified area and newly added Shivajinagar area, on 07.02.2013. On 05.02.2013, the Town Planning Officer came to be appointed for the purposes of preparation of development plan. A survey and preparation of existing-land-use map under Section 25 of the MRTP Act, was completed and submitted to Aurangabad Municipal Corporation on

01.08.2014.

6 It needs to be mentioned that under the provisions of Section 26(1) of the Act, time limit for preparation of development plan is prescribed as two years and since it was due to expire on 06.02.2015 and extension under the said provision was needed, the Town Planning Officer sent reminders to Aurangabad Municipal Corporation to seek extension, as required under Section 26 of the MRTP Act, for preparation of draft development plan and publishing notice thereof by issuing communications on 03.02.2015, 19.02.2015 and 01.08.2015. Although the draft development plan was ready, it was not published within prescribed limit. As such, writ petition came to be presented by one Suresh Uttamrao Pawar, being Writ Petition No.6660 of 2015, seeking a direction to publish the draft development plan under the provisions of the MRTP Act.

7 An affidavit-in-reply was presented in the said writ petition by the Town Planing authority on behalf of Respondents wherein assurance was given that the time limit, as provided under the Act would be strictly adhered to for publishing draft development plan. It was further submitted that the work of development plan is in progress and would be handed over to Aurangabad Municipal Corporation for publication within stipulated time limit. The writ petition ultimately came to be disposed of after the draft development plan came to be published in the Official Gazette on 06.02.2016. It is further contended in the petition that on 31.10.2015, draft development plan was actually handed over to Aurangabad Municipal Corporation for

publication by the Town Planning Officer i.e. Respondent No.5. The meeting of the General Body of Aurangabad Municipal Corporation was convened on 20.12.2015. It was pointed out that draft development plan prepared under Section 26(1) of MRTP Act is received in a sealed cover on 26.10.2015 and further steps are required to be taken. It was also noticed that time frame prescribed for publication of notice has already lapsed and, therefore, extension is required to be solicited from the State Government for a period of 07.02.2015 till 06.02.2016. The General Body meeting of the Corporation was adjourned without passing any resolution on Subject No.269 and adjourned meeting was held on 29.01.2016. The subject relating to draft development plan was discussed in the General Body. On perusal of the proceedings of the meeting, it is evident that draft development plan submitted by the Town Planning Officer was supplied to all the Corporators, public at large, media and objections raised by various individuals and Corporators were considered. Each Corporator carried out spot inspection of the areas, which are prescribed as reserved sites or affected by the development. The Members raised concern in respect of serious irregularities in the plan and the General Body was called upon to redress the grievances, to consider suggestions and objections and to prepare new plan in place of one submitted by the Town Planner. The modifications were suggested, which includes deletion of number of reservations, as proposed by the Town Planning Officer, reduction in the width of roads, etc. It was also resolved by the General Body to claim extension of time limit under Section 26 from the State Government for publication of notice. The General Body of the Municipal Corporation resolved to prepare a new development plan

in place of one submitted by the Town Planning Officer. It was resolved to include the reservations which were proposed to be deleted by the General Body in the residential zone. The mistakes occurring in the existing-land-use map were also directed to be corrected. It was also resolved to prepare altogether new draft development plan (Map and DP Report) and to publish the same in contemplation of grant of extension of period under Section 26 by the State Government from 07.02.2015 to 06.02.2016.

8 It is pointed out by the learned Counsel appearing for petitioners that the General Body of the Municipal Corporation proposed deletion of 361 reservations so also 43 roads and direct imposition of around 79 new reservations. A newly prepared draft development proposal together with a newly drawn map came to be prepared and intimation was given to the Government for publication of notice under Section 26(1) of the MRTP Act on 03.02.2016 in the *Official Gazette*. On 04.02.2016, notice under Section 26(1) of MRTP Act came to be published in the Official Gazette calling objections in respect of draft development plan from the concerned. After publication of the draft in the *Official Gazette*, an order came to be issued by the State Government on 29.03.2016 granting extension of period for preparation of draft development plan from 07.02.2015 to 06.08.2015 and by another order issued on the same date, the period was further extended from 07.08.2015 to 06.02.2016. The petitioner raises following objections:

(I) Whether the scheme of Chapter III of Maharashtra Regional & Town Planning Act, 1966 as

well as the legislative intent excludes elected representatives in the process of preparation of draft development plan;

(II) Whether the elected representatives of the Corporation can be permitted to substitute their own proposals in the draft development plan in place of the proposals forwarded by the authority appointed under the MRTP Act.

(III) The third objection is regarding lapsing of limitation. Whether the delegated authority can grant *ex post facto* extension for preparation and publication of draft development plan under Section 26 contrary to the provisions of the Act. The violation of prescription of time limit provides for the consequences and as such, it was impermissible for the delegated authority to grant extension thereby overlooking the mandatory provision prescribing adoption of different mode in the matter of preparation of draft development plan in the event of violation of prescription of time frame ; and

(IV) The fourth objection is in respect of potential impact on the development of the City as a result of tinkering of the development proposals in large scale at the instance of elected representatives. The tinkering is to such a large extent that 361 public amenities prescribed under the draft development proposals by the authority have been deleted, 43 proposals in

respect of roads made by the authority have been deleted. The alignment of 24 roads, which were prescribed by the authority in a particular mode have been substantially changed and 500 hectares land covered by Forest and Water bodies has been directed to be converted into yellow zone at the instance of Corporators and a departure, in that regard, has been made from the proposals prepared by the Town Planning Officer.

9 A preliminary objection has been raised on behalf of Respondents in respect of maintainability of the petition. It is contended that process of preparing development plan or any amendment thereof is held to be legislative process and the Court, under Article 226 of the Constitution, is enjoined to examine only compliance of legal provisions under the MRTP Act. The merits of development plan are best left to the mechanism provided under the Act. It is contended that the draft development plan proposal, at this stage, is incomplete and inchoate and is to undergo the process provided under Sections 28 and 31 of the MRTP Act. It is impossible, at this stage, to anticipate as to what the final product would be. The contentions raised by petitioners are at best speculative and need not be examined by this Court till draft development plan is finally sanctioned under Section 31 of the MRTP Act. It is contended that the planning authority is entitled to take into consideration suggestions and objections received from the public in response to publication of intention vide Rules 3 and 4 of the Maharashtra Development Plans Rules, 1970 and participation of the elected representatives cannot be excluded in

the process of preparation of draft development plan. In order to counter the objection relating to lapsing of limitation, it is contended that the period can be extended by the State Government and that there is no provision for prior sanction of extension of such time. At times, extensions are sought and granted and such *ex post facto* extensions are sought and granted after a considerable passage of time. Such *ex post facto* extensions are not only permissible, but also do not violate any statutory law. It is contended that the petitions are premature since the State Government, under Section 31 of the MRTP Act, can grant sanction to:

(i) To the whole plan or any part thereof;

(ii) Modify the plan either wholly or in part;

(iii) Return the draft development plan to the Planning Authority for modification;

(iv) Direct the planning authority to prepare fresh development plan;

10 It is contended on behalf of Respondents that Section 21 of the MRTP Act has no applicability to the case in hand and even otherwise, appointment of an officer under Section 21 of the MRTP Act, in any case, is a discretionary power vested in the State Government and no mandamus for issuance of such direction can be sought. It is an enabling provision and cannot be invoked since the extensions, as required, are granted. Lastly, it is contended

that preparation of development plan is a legislative process and it is not permissible to arrest it in the midst.

11 The Maharashtra Regional & Town Planning Act, 1966, is enacted with an object to make provision for planning the development and use of land in the Regions established for that purpose and for constitution of Regional Planning Boards therefor, to make better provisions for the preparation of development plans with a view to ensuring that the town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the Development plans and the purposes connected with the matters aforesaid.

12 Certain provisions of the MRTP Act need to be considered. Section 2(9) of the Act defines “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 jurisdiction. The “local authority”, as defined under Section 2(15) in relation to Aurangabad Municipal Corporation, would be the Municipal Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949. Section 2(19) defines “Planning Authority” means a local authority. Chapter III of the Act of 1966 includes provisions of Sections 21 to 42, referring to Development Plan. Chapter III (a) includes Sections 21 and 22, 22A, which refer to

Development plan and Contents of Development Plan as well as Modification of substantial nature. Whereas, Chapter III (b) is inclusive of Sections 23 to 31; and Chapter III {c} is inclusive of provisions of Sections 32 to 42. Chapter III (b) relates to Procedure to be followed in preparing and sanctioning Development Plans, whereas, Chapter III {c} relates to Provisions for preparation of interim Development Plans, plans for areas of comprehensive development, etc. and includes Section 38 relating to Revision of Development Plan, which Section is relevant for the purposes of these petitions. Section 21(1) is applicable with reference to preparation of development plan after commencement of the Act, whereas, sub-section (2) of Section 21 mandates that the Planning Authority constituted after the commencement of the Act, shall, not later than three years from the date of its constitution, declare its intention to prepare a draft Development plan, and publish a notice of such preparation in the *Official Gazette* and in such other manner, as may be prescribed and submit the draft Development plan to the State Government for sanction. Sub-section (3) of Section 21 provides that, on an application made by any Planning Authority, the State Government may, having regard to the permissible period specified in the preceding sections, from time to time, by order in writing and for adequate reasons to be specified in such order, extend such period. Sub-section (4) of Section 21 refers to consequences in the event of failure of the Planning Authority to declare the intention to prepare development plan under Section 23 or its failure to submit draft development plan to the State Government for sanction within the period specified or within extended period. Sub-section (4A) of Section 21 is relevant for the purpose of decision of this petition, which reads as under:

> **(4A)** 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 sections lapses, the Planning Authority shall be deemed to have failed to perform its duty imposed upon it by or under the provisions of this 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 concerned Divisional Joint Director or Deputy Director of Town Planning and Valuation Department or an officer nominated by him not below the rank of an Assistant Director of Town Planning, as the case may be. The said officer shall exercise all the powers and perform all the duties of a Planning Authority which may be necessary for the purpose of preparing a Development plan and submitting it to the State Government for sanction and may, notwithstanding anything contained in any other law relating to the funds of the Planning Authority, recover the cost thereof from such funds:
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> **Provided that**, the said Officer shall exercise all the powers and perform all the duties of the Planning Authority within such period as may be specified by an order by the Director of Town Planning, having regard to the stage of preparation of Development plan:
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> **Provided further that**, the period specified under the first proviso shall not exceed the original period stipulated under the relevant section.

13 Section 22 of the Act deals with Contents of Development Plan. Section 22A deals with Modification of a substantial nature, whereas, Section 23 provides for declaration of intention to prepare Development Plan. Section 23 reads thus:

> **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 dispatch 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.

14 Section 24 deals with Town Planning Officer, which reads as under:

24 Town Planning Officer:

Every Planning Authority shall, at the time of declaration of intention to prepare Development plan, resolve to appoint a person possessing such qualification as may be prescribed, to be the Town Planning Officer for carrying out survey of the area of a Planning Authority, preparing an existing-land-use map there of and formulating proposals of a Development plan of that area for submission to the Planning Authority. There after, the Planning Authority shall, with the previous sanction of the State Government, appoint such person as a Town Planning Officer.

15 Whereas, Section 26 relates to Preparation and publication of notice of draft Development Plan, which reads thus:

> **26 Preparation and publication of notice of draft Development Plan**:
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> (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.
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> **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.
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> **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.
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> **Provided also that**, the period so extended shall not in any case, exceed-
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> (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;
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> (ii) twelve months, in the aggregate, in case of Municipal Corporation having population of ten lakhs

or more but less than one crore, as per the latest census figures; 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 obligations 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.

16 Section 27 of the Act provides that the Provision of Regional Plan shall be considered while preparing draft Development Plan.

17 Section 28 of the Act deals with Objections to the draft Development Plan, which reads thus:

> **28 Objections to draft Development Plan**:
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> (1) Subject to the provisions of this Act, if within the time allowed under sub-section (1) of section 26 any person communicates in writing to the Planning Authority or the said officer any suggestions or objection relating to the draft Development plan, the Planning Authority or the said officer may, after considering the report of the Planning Committee under sub-section (2) and the suggestions or objections received by it or him, modify or change the plan in such manner as it or he thinks fit.
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> (2) The Planning Authority or the said Officer shall forward all objections and suggestions received by it to a Planning Committee consisting of three memberso f the Standing Committee of the Planning Authority and such additional number of persons, not exceeding four, appointed by the Director of Town Planning having special knowledge or practical experience of matters relating to town and country planning or environment or relating to both for consideration and report:
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> **Provided that**, where a Planning Authority is not a local authority, the Planning Committee shall consist of such members as the Planning Authority may determine:
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> **Provided further that**, where the Divisional Joint Director or Deputy Director of the Town Planning and Valuation Development or an Officer nominated by him under sub-section(4) of section 21, as the case may be, exercises the powers and performs the duties of the Planning Authority, then the Planning Committee may consist of such Divisional Joint Director or Deputy Director or, as the case may be, of such officer.
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> **Provided also that**, where the State Government or any person or persons appointed under section 162,

exercise the powers and perform the duties of a Planning Authority or Development Authority, then the Planning Committee may consist of the State Government or the person or persons so appointed:

Provided also that, the Planning Committee contemplated in the preceding provisos shall also consist of such additional number of persons, not exceeding four, appointed by the Director of Town Planning having special knowledge or practical experience of matters relating to town and country planning or environment or relating to both.

(3) The Planning Committee, shall, on receipt of objections and suggestions, make such enquiry as it may consider necessary, and give a reasonable opportunity of being heard to any person including representatives of Government departments who may have filed any objection or made any suggestions in respect of the draft Development plan, and after considering the same, the Planning Committee shall submit its report to the Planning Authority or as the case may be, the said Officer within a period of two months from the date of its appointment or within such extended period as the Planning Authority may sepcify.

(4) Not later than two months after the receipt of the report of the Planning Committee, the Planning Authority or the said officer shall consider the report including the objections and suggestions received by it or him and make a list of such modifications or changes and carry out the same in the draft Development Plan, as it or he may consider proper. The Planning Authority or the said officer shall publish, in the Official Gazette and in not less than two local newspapers, the list of modifications or changes made in the draft Development plan for information of the public.

18 Section 30 of the Act provides for Submission of draft Development Plan to the State Government. Section 31 of the Act

relates to sanction to the draft Development Plan by the State Government. The State Government is empowered under Section 31 to sanction the draft Development Plan submitted to it for the whole area and particularly for any part thereof either without any modifications or subject to such modification, as it may consider proper or return the draft Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development Plan.

19 Section 34 of the Act relates to Preparation of Development Plan for additional area. Whereas, Section 38 relates to Revision of Development Plan, which reads thus:

> **38 Revision of Development Plan**.
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> At least once in twenty years from the date on which a Development plan has come into operation, and where a Development plan is sanctioned in parts, then at least once in twenty years from the date on which the last part has come into operation, a Planning Authority may and shall at any time when so directed by the State Government, revise the Development Plan either wholly, or the parts separately after carrying out, if necessary, a fresh survey and preparing an existing land-use map of the area within its jurisdiction, and the provisions of sections 22, 23, 24, 25, 26, 27, 28, 30 and 31 shall, so far as they can be made applicable, apply in respect of such revision of the Development plan.

20 The first objection raised by the learned Senior Counsel, appearing for Respondents, is that preparation of development plan is a legislative process and as such, it is

impermissible to arrest the process and this Court, under Article 226 of the Constitution, is enjoined to examine only compliance of legal provisions under the MRTP Act. Reliance is placed on the judgment in the matter of **Sundarjas Kanyalal Bhatija & others Vs. Collector, Thane, Maharashtra & others**, reported in 1989 (3) SCC 396.

21 In the aforesaid matter, the State Government issued a draft notification under Section 3(3) of the Bombay Provincial Corporation Act, 1949, proposing to form a municipal corporation viz. 'Kalyan Corporation' by merging municipal areas of Kalyan, Ambarnath, Dombivali and Ulhasnagar. Several objections and representations against the proposal were made. Sindhis, who are predominant in Ulhasnagar, objected to the resolution and on consideration of the objection, the proposal was withdrawn and area of Ulhasnagar came to be excluded. Residents of Ambarnath Municipal area moved the High Court under Article 226, challenging the notification issued under Section 3(2) on the ground of violation of Article 14 of the Constitution. The Federation of Sindhis as well as some other interested persons were allowed to intervene. The High Court, in stead of quashing the notification under Section 3(2), directed the Government to publish the draft notification for reconsideration of the matter and given liberty to the interveners and other interested persons to submit their representations. Though neither the State Government nor the Kalyan City Corporation appealed against the judgment of the High Court, the interveners tendered appeals to the Supreme Court. While dealing with the issue raised in the matter, the Supreme Court, in paragraphs no.27 and 28 of the

judgment, has observed thus:

> "27 Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the court could say no more. In the present case, the government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs".
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> 28 Equally, the rule issued by the High Court to hear the parties is untenable. The government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the government to hear the parties who are not entitled to be heard under law."

22 In paragraph no.14 of the judgment, the Supreme Court has expressed displeasure in respect of decision of the High Court since it has disregarded a binding decision of the co-ordinate bench of the same Court as well as of the Supreme Court. In the matter of **Promoters & Builders Assn. Of Pune Vs. Pune Municipal Corpn. & others**, reported in (2007) 6 SCC 143, wherein challenge was in respect of Development Control Regulations. In paragraphs no.5 and 6 of the judgment, the Supreme Court has observed thus:

> "5 Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for 'such inquiry as it may consider necessary' by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India V. Cynamide India Ltd., SCC paras 5 and 27. See

> generally H.S.S.K. Niyami V. Union of India and Canara Bank V. Debasis Das.) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC V. Assn. Of Natural Gas Consuming Industries of Gujarat.) Therefore, the view adopted by the High Court does not appear to be correct.
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> 6 DCR are framed under Section 158 of the Act. Rules framed under the provisions of a statute form part of the statute. (See General Officer Commanding-in-Chief V. Dr. Subhash Chandra Yadav, SCC para 14.) In other words, DCR have statutory force. It is also a settled position of law that there could be no 'promissory estoppel' against a statute. (A.P. Pollution Control Board II V. Prof. M.V.Nayadu, SCC para 69, STO v. Shree Durga Oil Mills, SCC paras 21 and 22 and Sharma Transport V. Govt. of A.P., SCC paras 13 to 24.) Therefore, the High Court again went wrong by invoking the principle of 'promissory estoppel' to allow the petition filed by the respondents herein."

23 It is contended by learned Senior Counsel appearing for Respondents that the Development Control Regulations prepared by the Municipal Corporation are part of the draft Development Plan. Sub-section (2) of Section 26 provides that along with draft development plan, copies or extracts of the documents specified in clauses (i) to (v) of sub-section (2) are required to be made available to the public at reasonable price. Clause (iii) provides that regulations for enforcing the provisions of 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. In substance, the Development Plan Regulations are required to be

made available under sub-section (2) of Section 26 together with draft development plan for the public. It is, thus, contended that since the Development Control Regulations are specified in sub-section (2) of Section 26, it forms part of draft development plan, which is required to be finalised under Section 31 by the State Government. It is contended that since preparation of Development Control Regulations is held to be legislative process, the proposals included as draft development plans and its preparation shall also have to be construed as a legislative process.

24 In answer to the contentions raised as above, learned Counsel for petitioners, placing reliance on the judgment of the Supreme Court in the matter of **Union of India & another Vs. Cynamide Chemicals Limited and another**, reported in (1987) 2 SCC 720, contends that as laid down by the Supreme Court, two tests are required to be applied to ascertain whether the process is legislative. The distinction between the two has usually been expressed as 'one between the general and the particular'. A legislative act is the creation and promulgation of general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. It is contended that with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and

administrative functions, it has been said, is 'difficult in theory and impossible in practice'. In paragraph 7 of the judgment, the Supreme Court has laid down the proposition, which reads thus:

> "7 The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is 'difficult in theory and impossible in practice'. Though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. The distinction between the two has usually been expressed as 'one between the general and the particular'. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy'. Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases. It has also been said: "Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to

> specific individuals or situations". But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts. ....."

25 The development plan consists of (1) Plan, and (2) Development Control Rules. When the properties belonging to an individual are allocated for various purposes and uses, i.e. residential, industrial, agricultural, commercial and proposals for designation of land for various purposes i.e. reservation for public amenities, etc., such details are included and classified in "Plan". The preparation of Development Plan Rules is altogether a different process. Survey of lands, preparation of Existing-Land- Use Map is not required to be taken into consideration for framing Development Control Rules. The Development Control Rules relate to regulating grant of permissions, user of the property and the manner thereof.

26 In the instant matter, Development Control Regulations are not part of the proposals published by the Corporation as a draft Development Plan. The Development

Control Regulations have not been placed for inspection of the public, as provided under Section 26(2). Reliance placed by the Respondents on the judgment in the matter of **Vidarbha Heritage Society, Nagpur Vs. State of Maharashtra**, reported in 2006 (4) Bombay Cases Reporter 577, to contend that preparation of Development Plan is a legislative process, is misplaced since no such proposition has been laid down by the Division Bench. Similarly, there can be no parallel in the matter of **Sundarjas Kanyalal Bhatija** (cited *supra)* and in the instant matter. In the reported judgment, the challenge was in respect of formation of a Municipal Corporation, whereas, in the instant matter, the challenge raised is in respect of Draft Development Plan. There can be no parallel since the facts giving rise to the decision in **Sundarjas Kanyalal Bhatija's** matter are totally different and as such, ratio laid down therein cannot be applied to the instant matter.

27 Even otherwise, it would be within the frame work of Article 226 of the Constitution of India as well as within the jurisdiction of this Court to examine whether compliance of legal provisions under MRTP Act is made in making a draft Development Plan and publishing the same.

28 Firstly, what has been published can be said to be a draft Development Plan in observance of the provisions of Maharashtra Regional & Town Planning Act, 1966, is open for scrutiny. Whether the notification declaring the draft Development Plan on 6.02.2016 is outside competence of the Planning Authority and in consonance with the provisions of Act of 1966, is open for

scrutiny and to contend that the process is legislative one, will not be an impediment for considering whether the legal provisions under MRTP Act have been satisfied or not.

PRESCRIPTION OF TIME LIMIT UNDER SECTION 26 OF THE M.R.T.P. ACT AND SECOND PROVISO THEREUNDER WHETHER MANDATORY AND EX POST FACTO SANCTION EXTENDING THE TIME LIMIT, WHETHER WITHIN CONTEMPLATION OF LAW.

29 Section 23 of the Act directs the Planning Authority that before carrying out a survey and preparing an existing-land-use map of the area as provided under Section 21, by a resolution make a declaration of its intention to prepare a development plan and the said Resolution is necessary to be published in the Government Gazette and also in one or more local news paper with a view to invite suggestions and objections from public within a period not less than sixty days from publication of notice in the *Official Gazette*. Section 26(1) provides a time limit for the planning authority or the said officer from the date of notice published under Section 23 to prepare a draft Development Plan and to publish a notice, in that regard, in *Official Gazette*. The second proviso to Section 26(1) empowers the State Government on an application of the planning authority to grant extension by an order in writing and for the reasons to be recorded from time to time and such extension in case of Municipal Corporation having population of 10 lakhs and more can be up to twelve months. In the instant matter, notice, as contemplated under Section 23 of the Act, declaring the intention of the planning authority to prepare a

draft development plan was published under Section 23(1) and 38 of the MRTP Act, 1966 on 26.05.2010. The notice declares intention of the Planning Authority to prepare development plan for the area denotified by Cidco, Aurangabad, recently added Shivajinagar area and revised development plan of additional area of Aurangabad Municipal Corporation. According to the petitioner, once declaration is made under Section 23 by the Planning Authority, the period prescribed under Section 26 commences and as a result of failure of the planning authority to prepare development plan within two years, as provided under Section 26, the consequences provided under Section 21(4A) shall follow and further process of preparation of development plan and submission thereof to the State Government shall be carried out by the Authority prescribed under Section 21(4A).

30 It is the contention of Respondents that since there was no reference to Section 24 of the Act, which provides for preparation of development plan for additional area in the notice issued in the year 2010, the Municipal Corporation in its General Body meeting adopted a Resolution on 18.05.2011, to declare the intention to prepare a development plan under Section 23(1) read with Sections 34 and 38 of the MRTP Act and published its intention on 07.02.2013 in the *Official Gazette*. It is contended that due to technical reasons, no further process was undertaken in pursuance to declaration under Section 23 and Resolution was adopted for declaration of fresh intention and said Resolution adopted on 18.05.2011 has attained finality. There was no challenge to the said Resolution or the declaration of intention under Section 23 of the Act and as such, the said issue cannot be

raised to frustrate the whole process. In this context, reliance is placed on the judgment in the matter of **Raipur Development Authority Vs. Anupam Sahkari Griha Nirman Samiti and others**, reported in (2000) 4 SCC 357. In the reported matter, there were two notices published under Section 50 of the M.P. Town and Country Development Act, 1973, which provide for preparation of town development scheme. Sub-section (2) of Section 50 of the M.P. Act provides for declaration of intention to make a scheme and such declaration is required to be published in the *Official Gazette* not later than thirty days from the date of publication of such intention to make the scheme. In the reported matter, the declaration was published on 30.03.1985 and 06.09.1985. While dealing with the objection raised in respect of declaration of two intentions, the Supreme Court has observed that there would not be any ill consequential effect on account of two such publications. Even if after the publication of the first intention, either it is given a go-by or otherwise on rethinking, if another such intention is published, it would be a valid notice when it is published under sub-section (2). If that be so, the period of limitation would start from the latter such publication.

31 The publication under sub-section (3) of Section 50, which was made in the reported matter on 04.09.1987, was within a period of two years from the date of publication of intention dated 06.09.1985 under sub-section (2) of Section 50 and on that ground, the draft scheme was held not to be invalid.

32 In the instant matter, even if it is assumed that the decision taken by the Municipal Corporation of publishing a

declaration under Section 23 by adopting a Resolution on 18.05.2011, has attained finality and the consequent declaration issued on 07.02.2013 is held to be valid, whether prescription of time frame provided under Section 26 is adhered to and by virtue of not adhering to the time frame, the consequences provided under Section 21(4A) are attracted. Since the declaration of intention to prepare a draft development plan was published by the Corporation, in the instant matter, on 07.02.2013, the period prescribed in the preparation and publication of draft development plan and publication of notice in the *Official Gazette* stands lapsed on completion of two years in view of mandate of Section 26 (1) of the MRTP Act. The second proviso to Section 26(1) empowers the State Government, on an application of the Planning Authority, by an order in writing and for the reasons to be recorded from time to time, extend period of preparation and publication of notice of draft development plan. The third proviso, which came to be added by Maharashtra Act No.38 of 2014 with effect from 04.10.2013, provides that the extension, as provided, is permissible, however, it shall not exceed twelve months in aggregate, in case of Municipal Corporation having population of ten lakhs or more but less than one crore, as per the latest census figures. The provision, prior to amendment, provided for outer limit of six months. It is a matter of record that the Town Planning Officer reminded the Municipal Corporation of lapsing of period of two year, as provided under Section 26(1), on 06,.02.2015, by communications dated 03.02.2015, 19.05.2015 and 01.08.2015 and requested the Planning Authority to seek extension, as required under Section 26 from the State Government.

33 In Writ Petition No.6660/2015, presented by one Suresh Pawar, seeking directions for publication of the draft development plan, an affidavit-in-reply was presented on behalf of the Respondents contending therein that steps would be taken within the period prescribed under Section 26 of the Act and the draft Development Plan would be published. However, it appears from record that the General Body of the Municipal Corporation, for the first time, adopted a Resolution approving extension of period of one year from 07.02.2015 till 06.02.2016 for publication of the draft development plan. In fact, the law contemplates of making a request to the State Government for grant of such extension. However, on reading text of the Resolution, it appears that the General Body of the Municipal Corporation itself adopted a Resolution approving extension of the period for themselves. Even if it is assumed that there is some error in recording the minutes, for the first time, a request was made to the State Government i.e. the Director of Town Planning for grant of *ex post facto* sanction for draft development plan and publication of notice, on 18.03.2016 and pursuance of such request, there were two separate orders passed by the said authority granting extension of six months each i.e. total period of one year, on 29.03.2016. In the meanwhile, the draft development plan was published in the *Official Gazette* on 04.02.2016. It is, thus, evident that on the date of publication of the draft development plan, there was no extension granted within contemplation of provisions of Section 26(1) for preparation and publication of the draft development plan.

34 It is the contention of the Respondents that the State

Government is envisaged with the powers to grant extension of period and it would be permissible for the State Government to grant extension even after lapsing of period, as provided under Section 26(1). In substance, it is contended that it is permissible for the State Government to grant *ex post facto* sanction to the extension of period. Learned Counsel appearing for respondents contend that the prescription in the proviso relating to grant of extension shall have to be construed directory and it will not have an effect of nullifying proceedings of publication of draft development plan. There is no provision for prior sanction to the extension of time limit, as prescribed.

35 It is contended by the petitioner that legislative intent behind prescribing the time limit would be frustrated if the State or concerned Authorities are permitted to grant extension *ex post facto* without considering mandate of provisions of the Act. It is evident on reading text of the provisions of Section 26, that it mandates that the 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. No doubt, the second proviso empowers the State Government to grant extension of time, however, by virtue of third proviso, limitation is prescribed on the powers of the State Government in respect of grant of extension and outer limit of twelve months is prescribed in case of a Municipal Corporation having population of ten lakhs or more, but less than one crore. It is, thus, clear that the law mandates preparation and publication

of the draft development plan within a period of two years from the date of publication of intention under Section 21 and the said period can be extended by one year in aggregate. The provisions of Section 26 and the prescription of time limit provided therein for preparation and publication of draft development plan shall have to be read with Section 21(4A) of the MRTP Act. Section 21(4A) prescribes the consequences for failure of the Planning Authority to adhere to the time frame provided under Section 26. It is provided in Section 21(4A) 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 sections lapses, the Planning Authority shall be deemed to have failed to perform its duty imposed upon it by or under the provisions of this Act and any work remaining to be done up to the stage of submission of the draft Development plan under section 30 shall be completed by the concerned Divisional Joint Director or Deputy Director of Town Planning and Valuation Department or an officer nominated by him not below the rank of an Assistant Director of Town Planning, as the case may be. The said officer shall exercise all the powers and perform all the duties of a Planning Authority which may be necessary for the purpose of preparing a Development plan and submitting it to the State Government for sanction and may, notwithstanding anything contained in any other law relating to the funds of the Planning Authority, recover the cost thereof from such funds. It is, thus, clear that once the limitation provided under Section 26(1) for preparation and publication of notice of draft development plan lapses, the consequences, as provided under sub-section (4A) of Section 21 shall follow and it shall have to be deemed that the Planning Authority has failed to perform the

duties, imposed upon it and the work remaining to be done up to the stage of submission of draft development plan shall have to be transferred to the authority prescribed under sub-section (4A) of Section 21.

36 In the instant matter, notice under Section 23 of the Act, declaring the intention to prepare a development plan, was published on 07.02.2013 and as such, the period provided for preparation and publication of notice of draft development plan came to an end on 06.02.2015. Until this date, the draft development plan was not prepared by the Planning Authority. The officer appointed by the Planning Authority with the approval of the State Government, submitted the draft development plan in sealed cover to the Municipal Corporation for publication on 25.03.2015 i.e. after lapsing of the period provided under Section 26(1). The request for grant of extension of time, as provided under the second proviso, was itself tendered after lapse of the extended period i.e. application for extension was tendered to the Director of Town Planning on 29.03.2016. The Planning Authority sought extension under the proviso for a period commencing from 07.02.2015 to 06.02.2016. The said request for grant of extension was made after lapsing of extended period, which can be provided under the proviso to Section 26. In the meantime, the development plan was published by the Municipal Corporation on 04.02.2016. It is, thus, clear that even until lapsing of the extended period, as provided under the third proviso to Section 26, the Planning Authority did not make any request for grant of extension and proceeded to publish the draft development plan

without securing such extension. It must be recorded that grant of extension under Section 26 (second proviso) is not merely an empty formality. The State Government, on consideration of application of Planning Authority, by an order in writing and for the reasons to be recorded from time to time, is required to grant extension, as requested. The State Government is expected to apply its mind to the circumstances and thereafter grant extension on consideration of all relevant factors. Section 26(1) of the Act provides a mandate to prepare and publish the notice of draft development plan within a period of two years. The word used in sub-section (1) of Section 26 is “shall” and not “may”. There is a power with the State Government to grant extension, but the power is to be exercised after application of mind and by issuing order in writing and for the reasons to be recorded. If the facts of the instant case are considered, it is clear that for initial period of two years, as provided under Section 26(1), after publication of intention under Section 23, the notice in respect of preparation of the draft development plan was not published. It is permissible for the State Government to grant extension for a total period of twelve months in aggregate, however, until completion of extended period of one year from the date of publication of intention under Section 23 i.e. up to 06.02.2016, even a request was not made to the Director for grant of extension and such a request was made belatedly after publication of notice of the draft development plan. While interpreting provisions of Section 26, the consequences, as provided under Section 21(4A) for not adhering to the time frame prescribed under Section 26(1) cannot be overlooked. Sub-section (4A) of Section 21 also uses the word “shall” and as such, it shall have to be construed as a mandate. Sub-section (4A) of Section 21

provides that if the time frame provided under Sections 25, 26 and 30 for doing anything specified in the said sections lapses, it shall be presumed that the Planning Authority has failed to perform the duties imposed upon it and the work remaining to be done up to the stage of submission of draft Development Plan shall be done by the authority prescribed in the said section.

37 In the instant matter, it shall have to be deemed that on completion of period prescribed under Section 26 i.e. 06.02.2015, the Planning Authority has failed to perform its duties. It must be noted that even after lapsing of the period, up to which extension is permissible under sub-section (1) of Section 26, no request was made to the Director of Town Planning for grant of such extension. As such, the consequences provided under sub-section (4A) of Section 21 shall ensue and the work remaining to be done at the end of the period of two years shall automatically gets transferred to the authority prescribed under sub-section (1) of Section 21.

APPLICABILITY OF SECTION 21(4A) TO THE PROCEEDINGS IN RESPECT OF REVISION OF DEVELOPMENT PLAN UNDER SECTION 38 OF THE M.R.T.P. ACT.

38 It is emphatically contended by Respondents that Section 21 does not have applicability to the proceedings in respect of revision of development plan under Section 38 of the MRTP Act. Section 38 of the MRTP Act prescribes that at least once in twenty years from the date on which a Development plan has come into operation, and where a Development plan is sanctioned in parts, then at least once in twenty years from the date on which the last

part has come into operation, a Planning Authority may and shall at any time when so directed by the State Government, revise the Development Plan either wholly, or the parts separately after carrying out, if necessary, a fresh survey and preparing an existing land-use map of the area within its jurisdiction, and the provisions of sections 22, 23, 24, 25, 26, 27, 28, 30 and 31 shall, so far as they can be made applicable, apply in respect of such revision of the Development plan. It is contended that in respect of proceedings under Section 38 of the Act of 1966, provisions of Sections 22 to 31, except Section 29 would apply and the applicability of Section 21 has been specifically excluded. It is contended that prior to amendment, by virtue of Maharashtra Act No.6 of 1976, Section 21 was made applicable to the proceedings under Section 38 of the MRTP Act. However, since amendment to the provisions of the Act incorporated by virtue of Amending Act of 1976, Section 17(3) of the Act, directs deletion of figure "21" from the provisions of Section 38 of the MRTP Act. It is, thus, contended that even in spite of lapse on the part of Planning Authority to finalise the draft development plan within the stipulated period, the consequences enumerated in Section 21(4A) shall not ensue and since by virtue of inapplicability of Section 21 of the MRTP Act, prescription of limitation under Section 26 for finalisation of the draft development plan within a period of two years and the extended period of one year shall have to be considered as directory.

39 The argument though, *prima facie*, appears to be convincing, is not acceptable for various reasons. It shall be noted that Section 21 of the Act of 1966, initially, until incorporation of

the amendment by virtue of Maharashtra Regional and Town Planning (2nd Amendment) Act, 2010, enforced since 05.04.2011, was comprising of sub-sections (1) and (2). By virtue of (Second Amendment) Act, 2010, sub-section (3) was inserted, whereas, by virtue of Maharashtra Act No.5 of 2014, sub-section (4) has been inserted. Sub-section (4A) of Section 21 has been inserted by the Maharashtra Regional & Town Planning (second amendment) Act of 2010, enforced since 05.04.2011. Thus, in the year 1976, or prior thereto, there was no relevance for maintaining applicability of Section 21 of the proceedings in respect of revision of development plan contemplated under Section 38 of the Act. Since sub-sections (1) and (2) of Section 21 refer to preparation of development plan, after commencement of the Act and after constitution of the Municipal Corporation, respectively, it was logical to exclude applicability of Section 21 in respect of proceedings under Section 38 of the Act of 1966. At the relevant time, therefore, need was felt, and appropriately, to delete Section 21 thereby excluding its applicability to the proceedings under Section 38 of the Act of 1966. It shall have to be noted that the procedure prescribed in respect of preparation and publication of notice of the draft development plan prescribed under Section 26 is very much applicable while revising the development plan by taking recourse to Section 38 of the Act of 1966. Section 26, which is made specifically applicable to the proceedings under Section 38, makes a reference to Section 21. It is prescribed in sub-section (1) of Section 26, that:

> 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.
>
> (underline supplied)

40 The provisions of Section 26 and the time limit prescribed thereunder is subject to the provisions of Section 21 and that Section 26 has applicability to the proceedings under Section 38 in respect of revision of development plan. The provisions of Section 21(4A) does automatically get attracted and shall have to be made applicable to the proceedings under Section 38 of the Act of 1966. The legislative intent of inserting sub-section (4A) of Section 21 shall also have to be looked into. Although in 1976, when reference of Section 21 was deleted from Section 38 of the Act of 1966, at the relevant time, there was absolutely no rationale in maintaining such reference and making applicable the provisions of Section 21 in respect of proceedings under Section 38. However, sub-section (4A) of Section 21, which provides for consequences on failure of the Planning Authority to prepare a draft development plan within the time specified under Sections 25, 26 and 30 for doing anything specified in the said section, it is but logical and mandatorily required to apply the provisions of sub-section (4A) of Section 21 to the proceedings under Section 38 of the Act of 1966. Section 21(4A) is applicable in respect of lapsing of period under Sections 25 and 26 and as a consequence, the officer appointed by the State Government is required to be appointed to carry out remaining functions of town

planning authority for publication of notice under Section 26 till submission of the draft development plan under Section 30. It would be proper to refer to the Statement of Objects and reasons for introduction of the Maharashtra Regional & Town Planning (Second Amendment) Act, 2010, published in the *Official Gazette* on 15.12.2010, which reads as below:

STATEMENT OF OBJECTS AND REASONS

Section 21 to 31 of the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966) provide for preparation, submission and sanction of Development plan.

Development plans are prepared to ensure planned development of towns. It has been observed that, the procedure for preparation, submission and sanction of Development plan is too lengthy.

Urbanisation is rapidly increasing and needs of the society are changing fast. There is a dire need to match the pace of preparation of Development plan with the pace of urbanization.

It is, therefore, considered expedient to amend sections 21, 24, 26, 28, 31, 32 and 38 of the said Act and to substitute sections 22A and 24 with deletion of section 29 therefrom, with a view to curtail the time limit at various stages of preparation, submission and sanction of Development plan and to ensure effective implementation of the said Act.

The Bill seeks further to amend the Maharashtra Regional and Town Planning Act, 1966, to achieve the above objectives.

41 On reading the Statement of Objects and Reasons for introducing amendment and for inclusion of sub-section (4A) of Section 21, it is clear that the object is to curtail the time limit at

various stages of preparation, submission and sanction of development plan and to ensure effective implementation of the said Act. In paragraph no.3 of the Statement of Objects, it is recorded that Urbanization is rapidly increasing and needs of the society are changing fast. There is dire need to match the pace of preparation of Development plan with the pace of urbanization. The amended provisions are introduced with a view to curtail the time limit at various stages of preparation, submission and sanction of Development plan. Although, initially time limit was not prescribed, at a subsequent stage, though the time limit was prescribed, the consequences were not provided. The provision in respect of extension of time period under third proviso to Section 26 was amended by virtue of Maharashtra Act No.38 of 2014 providing powers to the State Government to grant extension up to twelve months in case of Municipal Corporation having population of 10 lakhs or more, but less than One crore. The earlier provision, which existed prior to 04.10.2013, provided for extension admissible within the powers of the Government up to six months in aggregate. It is, thus, clear that though Section 26 provides for outer limit of two years, for preparation and publication of notice of draft development plan, there is a power vested with the State Government to grant extension up to twelve months in case of Municipal Corporation having population of ten lakhs or more, but less than one crore. The second proviso to sub-section (1) of Section 26 provides that the State Government shall have to apply its mind before granting such extension since the proviso makes it obligatory for the State Government to pass an order in writing and for the reasons to be recorded. Grant of extension, thus, is not automatic but the power shall have to be exercised by the State

Government after due application of mind. The mandate of sub-section (1) of Section 26 is that the Planning Authority shall have to do the job of preparation and publication of notice of draft development plan within two years and the proviso is an exception which provides for extension of period in certain circumstances and on application of mind by the State Government to the facts of each case. There are consequences provided on account of lapses on the part of Planning Authority under sub-section (4A) of Section 21. It is, thus, clear that the proviso relating to prescription of time limit under Section 26 is mandatory. Section 38 of the Act of 1966, which relate to revision of development plan admits applicability of Section 26, which provision i.e. Section 26, in turn, is subject to the provisions of Section 21. As such, applicability of Section 21(4A) in respect of proceedings under Section 38 of the Act of 1966 cannot be excluded.

EX POST FACTO EXTENSION

42 The declaration of intention under Section 23 has been published on 07.02.2013 in the Official Gazette. The period of two years prescribed under Section 26 for preparation and publication of notice of draft development plan came to an end on 06.02.2015. Under the proviso to Section 26, the State Government is authorised, on consideration of an application of the Planning Authority, by an order in writing and for the reasons to be recorded from time to time, extend the period of preparation and publication of notice of the draft Development Plan. The proviso to Section 26 provides that the period so extended shall not, in any case, exceed twelve months, in aggregate, in case of Municipal Corporation having population of ten lakhs or more but less than One crore, as

per the latest census figures, which can be permitted by the State Government in addition to the original period of two years. The prescription of time limit provided under Section 26 shall have to be construed as mandatory since, in the event of failure to adhere to the time frame, the consequences are laid down under sub-section (4A) of Section 21 of the Act of 1966. In the instant matter, until completion of two years period, as prescribed under Section 26(1) of the MRTP Act, the Planning Authority failed to publish a notice in respect of preparation of the draft development plan. The draft development plan itself was submitted to the Planning Authority by the Officer appointed for the purpose of preparation of draft development plan in the month of October 2015. The Municipal Corporation applied for extension of time to the Director of Town Planning, who is authorised to exercise powers exercisable by the State Government only on 29th March, 2013, much after lapsing of the period, which can be granted under the second and third provisos to Section 26(1) of the MRTP Act. Until completion of the period provided under Section 26(1) as well as the extended period, (which was not granted and even not applied for), the Municipal Corporation did not tender request with the State Government.

43 In the meanwhile, the Municipal Corporation proceeded to publish a notice in respect of preparation of draft development plan under Section 26(1) in the *Official Gazette* on 04.02.2016. It was not within the powers of the Corporation to publish notice of preparation of draft development plan without seeking extension of the period from the State Government. It shall have to be taken note of that on 06.02.2015 itself, the period

prescribed under Section 26(1) of two years has already lapsed and the consequences provided under Section 21(4A) of the MRTP Act were already operationalised automatically. Considering scheme of the MRTP Act and consequences for not observing the time frame prescribed under Section 26(1) and the proviso provided under Section 21(4A), it cannot be conceived that *ex post facto* sanction can be granted for the extension even after lapse of the period provided under Section 26(1) or under the third proviso thereunder.

44 It shall also to be taken note of that the Director of Town Planning functions under the delegated authority of the State Government to grant extension. The State Government, under the second proviso to Section 26(1), on consideration of application to the Planning Authority and by an order in writing and for the reasons to be recorded, is required to grant extension for preparation and publication of notice of draft development plan. In the instant matter, the Director of Town Planning has issued two orders granting extension on one and the same day, on consideration of the applications tendered by the Planning Authority, on 29.03.2016, much after lapsing of period prescribed under the extension orders. The period covered by the two extension orders issued by the Director of Town Planning is from 07.02.2015 to 06.08.2015 and 07.08.2015 to 06.02.2016. Considering mandate of provisions of Section 26, it was impermissible for the Director of Town Planning to exercise the powers on an application tendered by the Planning Authority much after the period covered by the extension orders is lapsed. This itself indicates that the orders have been issued by the Director of

Town Planning without application of mind to the record of the case and in a mechanical manner. Such action frustrates the legislative intent behind prescribing time limit.

45 Reliance can be placed on a judgment in the matter of **Babu Verghese Vs. Bar Council of Kerala,** reported in 1999 AIR SC 1298. In paragraphs 30 and 31 of the judgment, the Supreme Court has observed thus:

> "30 It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor (1875 I Ch.D. 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor 63 Indian Appeals 372 = AIR 1936 PC 253 who stated as under :
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> " WHERE a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."
>
> 31 THIS rule has since been approved by this court in Rao Shiv Bahadur Singh & Anr. v. State of Vindhya Pradesh 1954 SCR 1098 – AIR 1954 SC 322 and again in Deep Chand v. State of Rajasthan 1962 1 SCR 662 = AIR 1961 SC 1527. These cases were considered by a Three-Judge bench of this court in State of Uttar Pradesh v. Singhara Singh & Ors. AIR 1964 SC 358 = 1964 I SCWR 57 and the rule laid down in Nazir Ahmads case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a

salutary principle of administrative law."

46 Similarly, in the matter of **Babaji Kondaji Garad and others Vs. Nasik Merchants Co-operative Bank Ltd., Nasik,** reported in AIR 1984 SC 192, it is observed by the Supreme Court in paragraph 12 of the judgment, thus:

> "12 When statute requires a certain thing to be done in a certain manner, it can be done in that manner alone unless a contrary indication is to be bound in the statute. If the Legislature uses the expression 'if no such persons are elected' it indubitably suggests that primarily the reserved seats are to be filled in by election. Failing the election, one can resort to appointment or co-option. The chronology of the methodology by which seats are to be filed in as set out in S. 730B clearly manifests the legislative intention. The first and the foremost pride of place is accorded to election. It ought to be so because a representative institution ordinarily must be democratically elected. The section therefore, speaks 'if no such persons are elected' which would mean that the authorities charged with a duty to hold election must proceed to arrange for holding the election. If election is held giving out information that there are reserved seats and no candidate is forthcoming to contest for the reserved seats, the Legislature in its wisdom provided that the seats shall not remain vacant but can be filed in by two subsidiary methods such as appointment or co-option which cannot be put on par or equated with election which is universally recognised method by which representative institutions are set up.

> Therefore, the language and the chronology of the methodology of filing in reserved seats employed in S. 73-B provide a clue to its correct construction and there should be no doubt that opportunity must be provided for filing in seats by election. It is the failure of the election machinery to fill in the seats which would enable the concerned authority to fill in the seats by appointment or co-option. The condition precedent to filing in reserved seats by appointment or co-option is holding of the election and failure to elect such persons would permit resort to other methods of filing in the reserved seats."

47 In the instant matter, when the statute requires the Municipal Corporation to act in a particular manner, it is not permissible for the Corporation to act in deviation of the legislative mandate and in such event, the consequences provided under Section 21(4A) become operationalised.

48 Learned Counsel appearing for Respondents has referred to an order passed by the Division Bench at the principal seat in Writ Petition No.240 of 2013 decided on 7th April, 2014. The PIL raising challenge to the proposed draft development plan prepared by Phaltan Municipal Council has been turned down by the Division Bench holding the petition to be premature. The petition has been dismissed summarily. The facts in detail have not been recorded. Even otherwise, in the instant matter, the draft development plan itself cannot be stated to be in consonance with the mandatory provisions of the law and as such, cannot be termed as a draft development plan within the framework of MRTP Act of 1966. The order of the Division Bench cited *supra* does not

have applicability to the facts of this case.

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 became operationalised. The statutory provision in respect of adherence to the time frame, as provided under Section 26 shall have to be construed as mandatory. In this context, reliance can be placed on the judgment in the matter of **Mackinon Mackenzie and Company Ltd. vs. Mackinnon Employees Union,** reported in AIR 2015 Supreme Court 1373. In paragraphs no.30 to 33, the Supreme Court has observed thus:

> 30 The learned senior counsel appearing for the respondent-Union has rightly placed reliance upon the judgments of this Court, namely, the State of Uttar Pradesh and others v. Babu Ram Upadhya, (AIR 1961 SC 751), State of Mysore and Ors. v. V.K. Kangan and Ors. (AIR 1975 SC 2190) and Sharif-Ud-Din v. Abdul Gani Lone, (AIR 1980 SC 303), all referred to supra, wherein this Court while referring to certain statutory provisions, consistently held that the statutory provisions of the statutory enactment are mandatory and not directory and that they are required to be rigidly complied with.

The relevant paras from the decision of this Court in the case of Babu Ram Upadhya (supra) are extracted hereunder:

"28. The question is whether Rule I of para 486 is directory. The relevant rule says that the police officer shall be tried in the first place under Chapter XIV of the Criminal Procedure Code. The word "shall" in its ordinary import is "obligatory"; but there are many decisions wherein the courts under different situations construed the word to mean "may". This Court in Hari Vishnu Kamath v. Syed Ahmad Ishaque, (AIR 1955 SC 233) dealt with this problem at p. 1125 thus :

"It is well established that an enactment in form mandatory might in substance be directory and that the use of the word 'shall' does not conclude the matter."

It is then observed :

"They (the rules) are well-known, and there is no need to repeat them. But they are all of them only aids for ascertaining the true intention of the legislature which is the determining factor, and that must ultimately depend on the context."

The following quotation from Crawford on the Construction of Statutes, at p. 516, is also helpful in this connection :

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the

consequences which would follow from construing it the one way or the other ?."

This passage was approved by this Court in State of U.P. Manbodhan Lal Srivastava, (AIR 1957 SC 912). In Craies on Statue Law, 5th Edn., the following passage appears at p. 242:

"No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."

A valuable guide for ascertaining the intention of the Legislature is found in Maxwell on The Interpretation of Statutes, 10th Edn., at p. 381 and it is :

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

This page was accepted by the Judicial Committee of the Privy Council in the case of Montreal Street Railway company v.

Normandin, (AIR 1917 PC 142) and by this Court in State of U.P. v. Manbodhan Lal Srivastava.

29. The relevant rules of interpretation may be briefly stated thus : When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute.

For ascertaining the real intention of the Legislature of the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

31 Further, the relevant paras 4 and 10 from the case of V.K. Kangan and Ors., (AIR 1975 SC 2190). (supra) are extracted hereunder:-

"4. The only point which arises for consideration is whether the provisions of Rule 3(b) were mandatory and therefore the failure to issue the notice to the department concerned as enjoined by the rule was fatal to the validity of the notifications under Sections 4 and 6 of the Act.

XXX XXX XXX

10. In determining the question whether a provision is mandatory or directory, one must look into the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. No doubt, all laws are mandatory in the sense they impose the duty to obey on those who come within its purview. But it does not follow that every departure from it shall taint the proceedings with a fatal blemish. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the law-maker. And that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other. We see no reason why the rule should receive a permissible interpretation instead of a pre-emptory construction. As we said, the rule was enacted for the purpose of enabling the Deputy Commissioner (Land Acquisition Collector) to have all the relevant materials before him for coming to a conclusion to be incorporated in the report to be sent to the Government in order to enable the Government to make the proper decision. In Lonappan v. Sub-Collector of Palghat 1 the Kerala High Court took the view that the requirement of the rule regarding the giving of notice to the department concerned was mandatory. The view of the Madras High Court in K.V.Krishna Iyer v. State of Madras is also much the same.

(Emphasis laid by this Court)

32 Further in the case of Sharif-Ud-Din

(AIR 1980 SC 303) (supra) it was held as under by this Court :-

"9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus : The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the

act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."

(Emphasis laid by this Court)

33 Apart from the said decision, this Court has followed the Privy Council of 1939 and Chancellor's decisions right from the year 1875 which legal principle has been approved by this Court in the case of Rao Shiv Bahadur Singh and Anr. v. State of Vindhya Pradesh and the same has been followed until now, holding that if a statutory provision prescribes a particular procedure to be followed by the authority to do an act, it should be done in that particular manner only. If such procedure is not followed in the prescribed manner as provided under the statutory provision, then such act of the authority is held to be null and void ab initio in law. In the present case, undisputedly, the statutory provisions of section 25FFA of the L.D. Act have not been complied with and therefore, consequent action of the appellant-Company will be in violation of the statutory provisions of Section 25FFA of the L.D.Act and therefore, the action of the Company in retrenching the concerned workmen will amount to void ab initio in law as the same is inchoate

and invalid in law."

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.

51 The petitioner points out that the proposals in respect of draft development plan were handed over to Municipal Corporation for publication under section 26(1) by the Town Planning Officer under the directions of Joint Director of Town Planning, Aurangabad Region, on 09.09.2015. It does appear that thereafter a General Body meeting of the Municipal Corporation was held on 28.12.2015 and, in the proceedings of the meeting, it is recorded that the proposals in respect of draft development plan have been received from respondent no. 5 in sealed cover on 31.10.2015 and by adopting resolution in the General Body meeting, those are required to be forwarded to the State Government. A General Body meeting, however, came to be adjourned to 28.01.2016. In the meantime, it does appear, on consideration of resolutions and deliberations, that have taken place in the meeting, that the copies of the proposals forwarded by

the Town Planning Officer for publication as draft development plan were circulated amongst the Corporators, public at large, Media, etc. and suggestions and objections from all the concerned were taken into consideration and certain modifications were carried out in the proposal. The modifications are to such a large extent that the General Body of Corporation recommended deletion of 361 reservations prescribed for public purposes under the proposal, 43 roads were also directed to be deleted from the proposal, as included by the Town Planning Officer. About 114 reservations sanctioned under the previous development plan were also directed to be deleted. The impact is to such a large extent that it completely upsets the whole town planning exercise conducted by the expert body. The proposals, as suggested by the Corporators in the General Body Meeting relates to deletion of about 64 play grounds and have added only 4 play grounds. Most shocking example is in case of exhibiting MGM Golf Court admitting 23.20 hector as a play ground, MTDC Golf Court admitting 60 hector is proposed to be a play ground under the new proposal. The proposals forwarded by the Corporators recommended deletion of 33 gardens, apart from diminishing the reservations prescribed for Primary Schools, Play Grounds, Libraries, Dispensaries, Maternity Homes, etc. The proposals recommended by the Corporators in its General Body Meeting related to diminishing of 43 roads, deviation of 5 roads, changing alignment of 22 roads and shrinking width of number of roads in the city. The proposals forwarded by the Corporators do not spare even the airport since the area surrounding airport, which was prescribed to be maintained as a green belt, has been recommended under the revised proposal for Commercial Zone. There is no sparing of water bodies, forest lands

which have shrunk 29.22 hectors and 469.97 hectors, respectively.

52 The task of preparation of the development plan is a job of experts. In the matter of **Manohar Joshi Vs. State of Maharashtra & others,** reported in **(**2012) 3 Supreme Court Cases 619, in paragraph no. 54 and 199, the Supreme Court has observed thus :

> 54 The planning process under the MRTP Act is quite an elaborate process. A number of town planners, architects and officers of the Planning Authority, and wherever necessary those of the State Government participate in the process. They take into consideration the requirements of the citizens and the need for the public amenities. The planners consider the difficulties presently faced by the citizens, make rough estimate of the likely growth of the city in near future and provide for their solutions. The plan is expected to be implemented during the course of the next twenty years. After the draft development plan is prepared, a notice is published in the Official Gazette stating that the plan is prepared. Under Section 26(1) of the Act the name and place where copy thereof will be available for inspection to the public at large is notified. Copies and extracts thereof are also made available for sale. Thereafter suggestions and objections are invited. The provisions of the regional plan are given due weightage under Section 27 of the Act and then the plan is finalised after following the detailed process under Section 28 of the Act. This being the position, Chapter III of the MRTP Act on

development plans requires the sanctioned plan to be implemented as it is.

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

53 In the instant matter, the methodology adopted by the General Body of the Municipal Corporation in modifying the proposals, as received from the Town Planning Officer, to such an extent that the whole plan itself gets substituted, is severely criticized by the petitioner. It is true that the scheme of the MRTP Act provides for consideration of objections and claims by the Town Planning Committee under Section 28 of the Act after publication of draft development plan. There is no room for consideration of the proposals and objections either from the Corporators, general public, builders or developers or any other section of the society by the General Body of the Corporation before publication of the draft development plan and the function of consideration of objections rests with only the Planning Committee constituted under Section 28 of the MRTP Act. It does appear that this procedure prescribed under the scheme of MRTP Act of 1966 has been deviated. There is replacement of the draft development proposals by the elected body of the Corporation i.e. elected Corporators by adopting a resolution in the General Body meeting on 21.08.2015. The Town Planning Officer was appointed after declaration of intention to prepare a draft development plan and was entrusted with the task of preparation of draft development plan in the year 2013. It took more than two years for the office comprising of 15 experts to tender draft development proposals to the Planning Authority. The General Body of the Corporation, in its meeting, made a declaration to prepare a new development plan and substituted proposals on wholesale basis by new proposals and submitted it to the State government without there being any valid extension of time prescription under Section 26(1) of the MRTP Act. It does appear that the expert took about two years for conducting a job in

a particular manner which has been modified and submitted as a new proposal which was prepared hardly during the period of twelve days. There appears to be large scale deviation from the proposal and scheme within contemplation of the MRTP Act of 1966.

54 Apart from the deviations and irregularities, as pointed out above, this petition is liable to be allowed on the ground of non observance of mandatory and statutory provisions, as has been recorded in detail in above noted paragraphs.

55 For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. The notification dated 4.2.2016, published in the *Official Gazette*, relating to preparation of draft development plan, purportedly under Section 26(1) of the MRTP Act, is quashed and set aside. The orders passed by the Director of Town Planning under the delegated authority, granting extension, dated 29.03.2016, are also quashed and set aside. It is hereby declared that the Planning Authority shall be deemed to have failed to perform the duty imposed upon it by or under the provisions of the MRTP Act and the work remaining to be done up to the stage of submission of draft development plan under Section 30, shall be completed by the concerned Divisional Joint Director or Deputy Director of Town Planning and Valuation Department or an officer nominated by him not below the rank of an Assistant Director of Town Planning, as the case may be. The said officer shall exercise all the powers and perform all the duties of a Planning Authority which may be necessary for the purpose of preparing a Development plan and submitting it to the State

Government for sanction and may, notwithstanding anything contained in any other law relating to the funds of the Planning Authority, recover the cost thereof from such funds. The provisions of sub-section (4A) of Section 21 of the MRTP Act shall operate.

56 Rule is accordingly made absolute to the extent specified above. There shall be no order as to costs.

K.L.WADANE
JUDGE

R.M.BORDE
JUDGE

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