

(1998) 12 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No's. 2773, 2247 and 3041 of 1997

Bombay Environmental Action Group and another	APPELLANT
Vs	
State of Maharashtra and others	RESPONDENT

Date of Decision : 04-12-1998

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 1, 43, 63, 63IA, 87
Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules, 1979 — Rule 9(1)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, 9
Constitution of India, 1950 — Article 15, 19, 21, 226, 38
Environment (Protection) Act, 1986 — Section 3
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 47(2)
Maharashtra Land Revenue Code, 1966 — Section 36A, 44
Maharashtra Regional and Town Planning Act, 1966 — Section 113, 113, 159, 2(23), 2(25)

Citation : (1999) 1 BomCR 455 : (1999) 2 MhLj 747

Hon'ble Judges : P.S. Patankar, J; Ashok A. Desai, J

Bench : Division Bench

Advocate : I.M. Chagla, J.D. Dwarkadas, K.S. Cooper, Shiraz Rustamjee, Ms. Vidya Udas, Vijay A. Thorat and Vineet B. Naik, for the Appellant; D.J. Khambata, G.S. Patel, M.S. Doctor, Ms. Renu Parekh, instructed by . Hariani and Co., Smt. Kiran Bagalia and Mrs. Lalita Panchakshri, K.K. Singhvi, D.R. Zaiwala, Navnit Shah, R. Dharmadhikari, Markand C. Gandhi, instructed by . Markand Gandhi and Co., C.J. Sawant, A.G., Shekhar Naphade, S.C. and U.G. Kerkar, A.G.P., for the Respondent

Judgement

P.S. Patankar, J.—All these three petitions under Article 226 of the Constitution of India can be disposed of by this common Judgment as they involve common questions.

2. Writ Petition No. 2773 of 1997 and Writ Petition No. 3041 of 1997 are filed by the same Environment Group from Bombay as public interest litigation. The prayer in W.P. No. 2773 of 1997 is for declaring Notifications dated 26-11-96 and 25-11-97 issued by the Government of Maharashtra as void and illegal. W.P. No.

3041 of 1997 is for setting aside the letter of Intent dated 7th January, 1997 issued by the State Government in favour of Sahara India Housing Ltd. (hereinafter referred to as Sahara) and to restrain Sahara from carrying out any development on that basis. W.P. No. 2247 of 1997 is also filed as a public interest litigation by an Association from Pune. The prayer made is to declare the Government Notification dated 26-11-96 as null and void. There is also intervention made on behalf of 36 tribals praying for getting back their lands alleged to be presently in possession of Sahara. There is also intervention on behalf of three Sarpanchas of the concerned villages supporting the State Government and Sahara.

3. We shall state the facts: Regional Plan for Pune Metropolitan Region was sanctioned by Government Notification dated 27-2-1976 under the Maharashtra Regional & Town Planning Act, 1966 (MRTP Act for short) for 1970-1991. By Government Notification dated 18-5-1990, Pune Metropolitan Region was redefined. Entire Revenue District of Pune was included for preparation of Regional Plan. By the said Notification, Pune Regional Planning Board was constituted u/s 4(1)(2) and section 20(1) of M.R.T.P. Act. The said Board prepared existing land use map of the region and published Draft Regional Plan for Pune on 13-9-1993. Mr. Mohan Dharia, one of the petitioners, was a member of the said Board. This was for the period 1990-2011. After considering the suggestions and objections, the Draft Regional Plan was modified and submitted to the Government for sanction on 30-1-1995. The Government sanctioned it by notification dated 25-11-1997 and brought into force the Regional Plan for 1990-2011 for Pune region on 10-2-1998. There is a Schedule to the said notification of modifications containing six modifications. MPR 3 thereof included 8 villages of Mulshi Taluka, District Pune with which we are concerned.

4. On 24-7-1991, Government of India, Ministry of Industries, issued Policy Statement. It recognised Tourism as one of the industries for automatic approval for foreign technological arrangements, etc. This was clarified on 25-11-91 to include beach resorts and tourism complexes. The Central Government finally issued its Policy resolution on 27-6-1997 describing tourism as industry. The Government of Maharashtra also in the meanwhile in 1993 published its Tourism Policy declared Tourism as industry. Under the said policy, areas were divided into (1) Central sponsored and (2) State sponsored special tourism. State sponsored tourism areas included Mulshi Taluka. The 8 villages with which these petitions concern fall in this Taluka. The State Government also passed a resolution dated 30-10-93 declaring "the Package Scheme of Incentives for Tourism 1993". It provided for exemption from payment of Sales Tax, Octroi, Luxury Tax, etc.

5. 69 persons purchased on different dates and separately during 1992 to 1996 agricultural lands from the 8 villages of Mulshi Taluka. They purchased 3736 acres of land and the purchases continued thereafter. The purchasers have executed a General Power of Attorney in favour of Sahara at the time of purchase

permitting it to develop the land. We are told that the target of Sahara is 5000 acres and Sahara has already started development since March 1995.

6. On 27-9-1993, Sahara applied to the Collector, Pune District, to convert some lands into non-agricultural for making construction of farm houses. It was rejected on 25th January, 1994. Sahara filed appeal to the Divisional Commissioner, Pune Division, on 15th April, 1994. On 17th January, 1995, the Deputy Conservator of Forests pointed out to Sahara that prior permission to fell trees is necessary under the Maharashtra Felling of Trees (Regulation) Act, 1964. 6A In view the pamphlet published by the State under caption "Investment opportunities in tourism sector in Maharashtra", Sahara wrote to M.T.D.C. applying for granting NOC for its project for lake city at Mulshi. On 9-3-95, M.T.D.C. granted NOC. From March 1995, Sahara started construction work or development work of the project though there was no permission with a hope to get it regularised. The Gram Panchayat issued No Objection Certificate to Sahara during 14-3-95 to 21-3-95 for its construction or development. Sahara applied to the State Irrigation Department for construction of two water bodies. On 3-4-95, Sahara applied to the Deputy Conservator of Forests for NOC for development. NOC was granted subject to giving an undertaking that there will be no violation of Forest (Conservation) Act, 1980 and Maharashtra Felling of Trees (Regulation) Act, 1964. On 5-5-95, the Chief Engineer, Irrigation Department, granted permission to Sahara to construct two water bodies. On 19-6-95, Sahara applied to the Maharashtra Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 for granting NOC for setting up Sahara Lake City. On 20-7-95, the Ministry of Defence granted permission to Sahara to have helipad. On 27-7-95, the Commissioner, Pune Division, remanded to the Collector the matters relating to granting of Non-Agricultural (N.A.) permission for reconsideration. On 31-7-95, Maharashtra Pollution Control Board granted permission to Sahara to have Holiday Resort on 413 acres of land. Sahara applied for converting 413 acres of land as N.A. to the Collector, Pune. However, the Collector rejected the said permission by order dated 29-9-95. The State Government granted permission to Sahara for setting up two water ponds on 2-9-95. Similarly, on 21-11-95, the Telecommunication Department granted No objection Certificate to Sahara to set up high tech. communication centre.

7. On 27-10-95 Sahara submitted a reminder for environmental clearance to the State Government along with Environment Impact Assessment Report for 413 acres of land. Pursuant to the application by Sahara, P.W.D. Department granted conditional permission to Sahara to lay down a 30 inch diameter pipeline to draw water from the Pawna Lake and Dam. MSEB sanctioned power of 15/20 MVP to Sahara and Sahara deposited an amount of Rs. 563.5 lakhs with MSEB on 15-7-96.

8. On 3-9-96, Draft Special Regulations for development of Tourist Resort/Holiday Home/Township in the Hill Station Type Area were notified and published. Objections and Suggestions as per section 20(3) of M.R.T.P. Act were invited.

They came to be filed on behalf of the petitioners as well as by Sahara. Petitioners representative attended the finalisation of the Draft Regulations. Special Development Control (Hill Station) Regulations dated 26-11-96 came to be notified u/s 20(4) of the M.R.T.P. Act. On 7-1-97, Letter of Intent was issued by the State Government to Sahara in respect of its project. It is at a height of about 750 mtrs. and falls in TDZ Zone. The State Government also assured Sahara that it would act as facilitator for its project.

9. On 18-1-97 Sahara applied to the Ministry of Environment and Forests for environmental clearance for a "full scale establishment of lake city in the form of a hill station". Similarly, application came to be made to Maharashtra Pollution Control Board for lake city of 5000 acres on 19-2-97. The Additional Collector wrote a letter dated 26-2-97 to the Personal Secretary, Revenue Minister, State of Maharashtra, inter alia, pointing out various illegalities committed by Sahara in land purchases, development without necessary permissions, etc. On 5th March, 1997, the Environment Department granted NOC for Sahara Project. On 13-5-95, the Government of Maharashtra appointed the principal Secretary, Revenue Department Mr. Warty, to investigate the Sahara Project. On 26-5-97, the Collector, Pune issued notice and directed Sahara to stop the construction work. On 27-6-97, the Forest Department wrote to Sahara to stop carrying on non-forest activities on forest land. It was denied by Sahara by letter dated 27-11-97 that any forest land was involved. But the Forest Department reiterated its stand by letter dated 29-11-97. Hence, Sahara filed Writ Petition No. 328 of 1998 against the State Government and its officers. The said writ petition came to be disposed of by this Court by Minutes of Order on 9-3-98. Sahara was to apply to the Collector for deciding the question as to whether the said lands were forest land or not. Accordingly, an application has been filed and the matter is pending for decision by the Collector. We are told that nearly 507 acres of Sahara land is involved in it.

10. On 3-3-98, S.D.O. served notices on Sahara for making three constructions without N.A. permission and ordering demolition thereof Sahara filed Regular Civil Suit No. 438 of 1998 in the Court of Civil Judge, Senior Division, Pune challenging it and it is pending before the said Court.

11. On 4-3-1908, Maharashtra Pollution Control Board granted permission to Sahara for its entire project of 5000 acres. On 27-3-98, the State Government wrote to Sahara making it clear that Sahara's proposal was not yet finally accepted by the Government.

12. During the pendency of instant petitions, the State Government first appointed a Committee headed first by Mr. Ajit Warty and then by Mr. Ranganathan to enquire into Sahara's affairs. They have submitted the reports.

13. We may point out, at the outset, that the learned Advocate General made it clear that the State Government is prepared to impose conditions upon the owner/developer of the Hill Town to protect public interest as suggested by the

Court before finalising the letter of intent to Sahara. He invited our attention to para 35 of the interim order passed by this Court on 11-9-97 by which it was stated that the Government was prepared to impose conditions upon the developer in respect of certain free and paid public amenities.

14. In view of the prayers in the petitions, the abovementioned facts and the arguments advanced extensively, three main questions arise for our consideration-

(i) Whether the Government Notifications dated 26-11-96 and 25-11-97 are illegal and void?

(ii) Whether the Letter of Intent issued to Sahara by the State Government dated 7th January, 1997 is illegal and void?

(iii) Whether the Court can suggest to the Government in public interest to impose additional conditions for the developer/owner before letter of intent is issued?

15. The notification dated 26-11-96 and notification dated 25-11-97 are challenged on the same grounds.

16. The learned Counsel for Sahara submitted that petitioners have no locus standi to challenge the notifications and the Letter of Intent issued to it on the ground of violations of various enactments. He relied upon State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, . In that case, the residents in the hilly State of Himachal Pradesh were affected by denial of proper roads and non-availability thereof. The question arose whether there was locus standi with the suffering hill men to maintain the petition for direction to the State Government for constructing those roads. It was held that High Court cannot impinge upon the judgment of executive in this respect, it was held that the Court can make recommendation to the legislature or give a direction to the executive to favourably consider the demand for such construction. It was observed: ---

"39. Affirmative action in the form of some remedial measure, in public interest, in the background of the constitutional aspirations as enshrined in Art. 38 read with Arts. 19 and 21 of the Constitution by means of judicial directions in cases of executive inaction or slow action is permissible within the limits...."

This cannot support the submission of the learned Counsel for Sahara. On the contrary it shows that writ petition is maintainable, but there are limitations on the power of the Court in giving directions.

17. The learned Counsel for petitioners have rightly relied upon Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, . In the said case, Marriage-cum-Lecture Hall sought to be converted into Cinema Hall in violation of the Town Planning Scheme. Thus, there was a breach of statutory provisions affecting the public. One of the questions involved was whether the

public interest litigation can be entertained. It was observed-

"29. The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction."

The learned Counsel for petitioners have also rightly relied upon *Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others*, . It was held by the Full Bench that for the purpose of locus standi to file the petition as public interest litigation what is really relevant is the substance of the breaches of law or Constitution complained of and not antecedents or the status of the person who conveys the information to the Court. It was held that while protecting its jurisdiction, authority and time from abuse of process, the High Court at the same time should not abdicate its role as Sentinel Qui Vive of the rights and liberties of the citizens. Hence, we hold that the petitioners have locus standi to file the petitions.

18. It is submitted by the learned Counsel for petitioners that the notifications are invalid as they take away the role of the State Government as planning authority and confer it upon the private developer to develop the hill station as commercial venture. It is submitted that the Government has in effect abdicated its regulatory, planning and controlling functions in respect of large track of land and it is contrary to the provisions of MRTTP Act. As against this, it is submitted by the learned Advocate General that Government was well within its powers to issue such notifications after following necessary procedure laid down under MRTTP Act. The Government first published a draft notification on 3-9-96 proposing "Special Development Control Regulations" for development of 13 regions in the State. This was in respect of 13 regional plans mentioned in Schedule "A". Schedule "B" mentions these draft Regulations. The notification was to apply to revised Regional Plans for the entire Districts of Pune and Nagpur after they were sanctioned by the State Government. This required modification to Regional Plans u/s 20(2) of the MRTTP Act. Hence, suggestions and objections were called u/s 20(3). Draft notification contained various details of those regulations regarding planning and regulation of the development of the tourist resort townships in hill station type areas. They laid down the various regulations meant for the purpose of proper planning which are contained in any Development Control Regulations. Regulation No. 2 specified that area development complex would be 400 hectares to 1000 hectares. Various parties filed objections and suggestions including the petitioners and Sahara. Thereafter final notification u/s 20(4) of the MRTTP Act was issued dated 26-11-96 sanctioning the Regulations. Certain changes were made and one of them was to increase the area of the complex from 1000 hectares to 2000 hectares. Thus, it is clear that the procedure contemplated by law was followed. The powers of the

planning authority vested in the Collector and the State was the final arbiter regarding interpretation of these Rules. When all the detailed Regulations are made subject to which development can be made by any party, it is not possible to accept that the State has abdicated its powers of planning or regulation of development. The planning is to be overseen by the State Government. The internal planning was only left to the developer or owner. In addition, Development Control Regulations as incorporated in the Development Plan of "C" Class Municipal Council are made applicable except those expressly provided under the Notification.

19. The Special Development Control Regulations as mentioned in Schedule B to the notifications were to be inserted in the Development Control Regulations of the sanctioned Regional Plan. Regulation 3 provided for Roads, Storm Water drains, Water lines, Drainage lines, Electrical lines, Effluent treatment etc. shall be provided by the owners or developers. Regulation No. 4 required the developers/owners to develop the source for drinking water such as water reservoir/ dam. Arrangement was also to be made by the developers/owners for treatment of sewage and solid waste. By Regulation No. 5 the complex was to have 33% of the total area under development as Garden/Open Space/Parks excluding the forest area. The residential plots were to be of minimum 500 sq. mtrs. size. Regulation 10 provided for certain amenities such as Shopping Malls, Club Houses, Hotels/Motels, Schools, Colleges, Cultural Centre, S.T. Stand, Hi-Tech Communication Centre, Golf Course, etc. Under Regulation 11, 15% of the area was to be reserved for recreation purpose. Detailed conditions regarding that were laid down. Regulation 12 provided that 10% of the entire holding shall be reserved for common facilities and in every plot including the amenity plots 15 trees per 1000 sq. mtrs. were to be planted. Regulations 13 and 26 provided for FSI or built up area. Regulations 17, 18, 19 and 20 deal with granting of certain permission or waiver of certain conditions. Regulation 21 provided that development contemplated shall not cause any damage to ecology and it would be mandatory for the owners/ developers to submit Environmental Impact Assessment Report to the Government. Provisions regarding Environment Protection Act, 1986 and the rules made thereunder were made applicable. It was also made specific that there shall be no cutting of mountains. Regulation 23 provided that trees shall be planted at the rate of 500 trees per hectare and those shall be fruit bearing type trees normally grown in the surrounding area which suit the local climate. They were to be planted in consultation with the Forest Officer. Regulation 24 provided that permission to build shall be granted after one year of plantation if the saplings of two years old are used in the plantations and if the saplings of 3 years old and height of at least 1 meter are used initially then after getting the certificate of their survival from nearest forest officer. Regulation No. 25 is as under:

"25. This development shall be treated as if an industry."

Appendix "A" provided in detail how the FSI is to be calculated for construction

and the user thereof. User of the land has been divided into 5 types and different FSI provided. Similarly, Regulation 27 provided what should be the maximum width of any layout road and there shall be no access to the forest land without prior approval of the Forest Department.

20. From what is stated above, it is amply clear that the Regulations provided for the conditions subject to which the planning or the development could be undertaken. Many of them are to be found in any Development Control Regulations. Therefore, it cannot be accepted that the State Government has abdicated its role as a planner in favour of developer or owner of the land. Internal development is always left to the developer/owner and there can be no dictation by an authority. In our opinion, the reliance placed by learned Counsel for petitioners on *The Municipal Corporation for Greater Bombay and Another Vs. The Advance Builders (India) Private Ltd. and Others*, is misplaced. The observations in para 12 thereof are relied upon. They are as under:

"12. It is clear, therefore, on a consideration of the provisions of the Bombay Town Planning Act, 1954 and especially the sections of that Act referred to above, that the Corporation is exclusively entrusted with the duty of framing and implementation of the Planning Scheme and, to that end, has been invested with almost plenary powers. Since development and planning is primarily for the benefit of the public, the Corporation is under an obligation to perform its duty in accordance with the provisions of the Act....."

In that case, the Apex Court was dealing with the question regarding the duty of the Corporation to remove unauthorised structures situated on the private plot of the owners in view of the provisions of the Bombay Town Planning Act, 1955.

21. It is next submitted that it is nothing but revision of the Regional Plan as contemplated by section 20(1) of the M.R.T.P. Act and could only be done by the Regional Board. It is submitted that this is not modification as Special Regulations came to be added to the Regional Plans by the said notification. Section 14 of the M.R.T.P. Act deals with contents of Regional Plan. The said section requires the Regional Board to specify the land user of every land in the designated region. u/s 18, no person without prior permission of the Municipal Corporation or the Municipal Council can change the user of the land. It is submitted that the impugned notification permits such change and this could only be done by Regional Board. Reliance is placed on *T. Damodhar Rao and Others Vs. The Special Officer, Municipal Corporation of Hyderabad and Others*. It was held that the nature of user of land fixed under the development plan is binding and compulsory acquisition can have no effect on binding nature of the plan. It was observed that the land used contained in the development plan are neither pious aspirations nor empty promises as they impose legal obligations on the land owners and the public authorities and are necessary to enforce them. In the said case, it was held that user of the land by the Life Insurance Corporation and the Income Tax Authority, reserved for the purpose of recreational park, for the purpose of constructing residential complexes was illegal. It was held that

modification to the approved development plan cannot be made except for substantial reasons and after following the necessary procedure. It was also observed that protection of the environment is not only the duty of the citizen, but it is also the obligation of the State and all other organs of the State. This was held to be as part of right to life guaranteed by Article 21 of the Constitution and therefore the State is enjoined to enforce the development plan and prohibit upsetting the environmental balance. This has no application here. The learned Single Judge of A.P. High Court made observations in the facts of that case. However, in our case, when the notification dated 26-11-96 was issued there was only draft regional plan for Pune. It was sanctioned on 25-11-97, Thus, after the Draft Regional Plan came into operation the State wanted to modify the plan by adding those Special Regulations. This was done after following the procedure as it was necessary for the balanced development of the region as contemplated by section 20(2) of the M.R.T.P. Act. It is clear that the State Government has taken the policy decision generally in respect of 13 regions and we shall point out subsequently how it was necessary considering the various relevant aspects. It was not necessary to have fresh Regional Board and it cannot be said that the State was incompetent in issuing this notification. The notification, on the contrary, contemplates planned development of the area.

22. It is next submitted that the development plan as contemplated by section 21 falling under Chapter II! should have been prepared giving details of the contents thereof u/s 22 and not the Special Development Regulations in this manner as an addition to the Regional Plan. We reject this contention. Regional Plan and modification thereof is in Chapter II. Section 2(25) of the M.R.T.P. Act defines Regional Plan as under :

"2(25) "Regional Plan" means a plan for the development or re-development of a Region which is approved by the State Government and has come into operation under this Act :"

"Region" is defined in section 2(23) to mean any area established to be a Region u/s 3. Section 2(9) defines "Development Plan" as under -

"2(9) "Development Plan" means a plan for the development or redevelopment of the area within the jurisdiction of a Planning Authority (and includes revision of a development plan and) proposals of a special planning Authority for development of land within its jurisdictions."

Section 2(7) deals with the meaning of "development" as carrying out any building, engineering, meaning or other operations on the land. Section 2(19) defines "Planning Authority" to mean a local authority and includes a Special Planning Authority, etc. "Local authority" is defined u/s 2(15). The relevant part thereof is as under :-

(15) Local authority means

"(c)(i) a Zilla Parishad constituted under the Maharashtra Zilla Parishads and

Panchayat Samitis Act, 1961,

(ii) the authority constituted under the Maharashtra Housing and Area Development Act, 1976;

(iii) the Nagpur Improvement Trust constituted under the Nagpur Improvement Trust Act, 1936"

which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act."

It is clear from the above definition of the "local authority" that it is not the entire area which falls within the Zilla Parishad is automatically constituted as local authority, but the area in which it is permitted by the State Government to exercise the powers of a Planning Authority. It is not the case of the petitioners and it has not been pointed out that Pune Zilla Parishad is permitted by the State Government to exercise the powers of a Planning Authority under the Act in case of this area.

23. Section 14 deals with the contents of the Regional Plan which are similar as provided by section 22 for Development Plan. For modifying Regional Plan and for providing Development Regulations, it was not necessary to prepare Development Plan first. Section 2(27) of the M.R.T.P. Act defines Regulation as under :-

"2(27) "Regulation" means a regulation made u/s 159 of this Act and includes zoning and other regulation made as a part of a Regional Plan, Development Plan, or Town Planning Scheme :"

This clearly includes Regulations made as a part of Regional Plan. Chapter II of the M.R.T.P. Act provides for preparation of Regional Plan. Chapter III for preparation of Development Plan and Chapter V for the preparation of Town Planning Scheme. They are clearly separate and no provision requires preparation of Development Plan first to have such Regulations.

24. It is submitted that these Regulations are violative of Article 14 of the Constitution of India as they give unguided, uncontrolled and arbitrary power of planning to private developer/owner. We have already pointed out the nature of these Regulations and how they are to be implemented. They clearly provide enough guidelines and parameters. The developer/owner cannot carry out development as per its choice.

The learned Advocate General is right in relying upon K.L. Gupta and Others Vs. The Bombay Municipal Corporation and Others, . In that case Constitutional validity of sections 4, 9, 10, 11, 12 and 13 of the Bombay Town Planning Act, 1955 was upheld. It was held that section 13 did not give an uncontrolled and uncanalised power to the local authority to refuse a commencement certificate. There is no arbitrariness in it. It was held that if the provisions of the Act were borne in mind and the rules framed thereunder complied with, there was little or

no scope for the local authority acting arbitrarily u/s 13. It was found the Act and the Rules give enough guidance to the Municipal Commissioner to come to a conclusion as to whether a particular commencement certificate should be granted or not and power exercisable under the section was neither uncanalised nor arbitrary. We have already pointed out how these Regulations control the development in a planned manner.

25. The learned Counsel for petitioners relied upon *Maneklal Chhotalal and Others Vs. M.G. Makwana and Others*, . In that case the question was whether the Bombay Town Planning Act, 1955 imposes restrictions which are reasonable in nature considering Article 19(1)(f) of the Constitution. Our attention is invited to the observations made in para 46 which are as under :-

".....The reasonableness of a restriction shall be tested both from substantive and procedural aspects. If an uncontrolled or unguided power is conferred, without any reasonable and proper standards or limits being laid down in the enactment, the statute may be challenged as discriminatory .

But this is of no assistance and cannot further the submission of petitioners.

26. It is next submitted that these regulations are contrary to sections 113 and 115 of the M.R.T.P. Act. Section 113 deals with designation of a site for new town. Section 113(1) is as under :-

"113(1) If the State Government is satisfied that it is expedient in the public interest that any area should be developed as a site for a new town as reserved or designated (in any draft or final Regional Plan) it may, by notification in the Official Gazette, designate that area as a site for the proposed new town. The new town shall be known by the name specified in the notification."

It gives power no doubt to the State Government to designate and develop any area as a site for new town in public interest. Similarly, section 115 provides for planning and control of development in new towns. The said section 115 permits Development Authority to submit to the State Government proposals for development of any area designated as the site of new town and the State Government is to approve the same after consultation with the Director of Town Planning. However, that does not take away the power of the State Government to modify Regional Plan and to provide for such Special Regulations. Similarly, the contention that new town should have been declared under Chapter XXVII of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 is also rejected as the said Chapter came to be deleted by Maharashtra Act 41 of 1994.

27. It is submitted that the Regulations enact a new section in the M.R.T.P. Act and it is against the spirit of the said Act. It is no doubt true that these are new Regulations and they have been introduced with a view to develop new tourist spots/centres. There is no dispute that there is great pressure on the existing hill stations in view of the increasing trend in tourism, local and foreign.

In the affidavit-in-reply filed and sworn by Mr. Vidyadhar Waman Deshpande, Deputy Secretary, Urban Development Department, Government of Maharashtra, has pointed out about the Report on "Saving Mahabaleshwar's Environment" and in paragraph 2(a) it has been stated that Maharashtra Tourism Development Corporation should consider developing alternative areas as hill stations which would ease the existing situation in Mahabaleshwar and in Matheran hills. How the tourism has now become a major industry in the country and how the many fold increase has taken place in the people visiting tourist stations has also been mentioned. It has been pointed out how the Government of India and the State Governments have accepted the role of private enterprises in the development of infrastructural facilities for hill stations. It has been pointed out that the Special Development Control (Hill Stations) Regulations notified and published on 25-11-1996 contain some novel provisions which would take care of the problems of unauthorised developments, congestion in hill stations, the degradation of ecology and environment. In the affidavit filed by the same officer dated 10th June, 1998, he has pointed that large investment is required for developing infrastructural facilities like road, water supply, electricity, sanitation and drainage for a hill station and the Government is not able to spend all that for the purpose of developing a new hill station and hence the Government has welcomed the private enterprises. The Mahal Mira Hill Station Report in respect of Raigad Region which was prepared in 1992 has noted about the preparation of new Model Plan for the hill stations. Clause 15.0 thereof mentions that "There is no single such model available for planning a new hill station, however the trends in the development and the spatial development pattern of existing hill stations of Maharashtra will provide some base to the planning process. It is principally assumed that depriving the hill station of the forest belts and disfigurement of the hill tops by indiscriminate felling and building activities will not only spoil the scenic beauty of the landscape but will also adversely affect the quality of the climate. It is imperative that while formulating physical development plan for this hill station, no-development zones may have to be deliberately delimited and identified as controlled areas prohibiting development and building activities."

The said Model Plan was clearly before the Government while framing these Regulations. We have already pointed out that they lay down the parameters and the conditions under which the development is permissible. It is, therefore, not possible to accept that these Regulations add some sections to the M.R.T.P. Act or that they are against the spirit of the said enactment.

28. It is submitted that both the notifications are malafide and meant to favour Sahara by allowing it to develop large track of land for its own commercial benefit and it is genuinely for developing a planned hill station meant for all. At the outset, we may state that the allegations of malafides are quite vague. It has been pointed out by the State Government and it cannot be disputed that all the existing hill stations in the State on account of population pressure and unauthorised constructions and developments, are facing environmental and ecological problems and hence it was necessary to have new hill station sites for

proper and regulated development. The Special regulations aim at that. These regulations in effect provide for keeping 75% of the total area as open land for tree plantation, etc., 14% for roads, and only 11% can be used for the purpose of construction of residential complexes, hotels, etc. as per the F.S.I. provided.

29. We have already pointed out how tourism is recognised as industry by the State Government and Central Government. Tourism is a thriving industry in the State and the idea is to generate a concerted action between the public and the private sector for developing tourism and tourist centres in Maharashtra. The popular hill stations like Matheran, Mahabaleshwar and Panchgani have reached a saturation point due to unplanned growth with shortage of amenities like water supply and electricity and indiscriminate felling of trees is causing major problems. Hence, it is necessary to have eco-friendly new hill stations. The draft regional plan and sanctioned regional plan recognise Tourism Development zone in the concerned villages except some areas around lakes as afforestation zone.

30. Chapter II of the Draft Regional Plan for Pune for 1990-2011 has recognised that tourism has become a major industry and local people get employment and Government gets foreign exchange. In 1989, nearly 13 lakhs foreign tourists visited India. The number increased by 5.3% in 1990. India also made considerable progress in local tourism in 1989. Nearly 5 crores Indian reported to have taken tours to various places throughout the country. Clauses 11.2 and 11.3 of the said Chapter mentions Mawal-Mulshi area is full of natural scenic spots amidst lakes and valleys. The said Region is having great potential for tourism and recreation. Due to heavy tourist traffic the facilities available at Lonavla-Khandala and Karla-Bhaja fail much short of the requirement and therefore, it is necessary to provide improved tourism infrastructure and establish alternative tourism centres at appropriate new locations. Pune Regional Planning Board requested the M.T.D.C. to undertake comprehensive survey and to ascertain the tourism development potential and accordingly, M.T.D.C. selected 10 major lakes in the first phase. One of them is Mulshi. Clause 6.2.2 (Chapter VI) mentions that it is necessary to encourage growth of tourism and provide for it on a planned basis. Clause 6.3(a) mentions what area around the lakes should be considered as special tourism Development Zones and the development of tourist resort and facilities are to be permitted in that area. Afforestation Zone is also specified. Clause 6.5 mentions about Regional Plan Proposals and 6.5.1 states that M.T.D.C.'s concept of Tourism Development Zone around the lakes is perfectly sound and there" is no hesitation in accepting it. It mentions that confining tourism activities around lakes to well defined areas and locations would ensure ease in the provision of organised facilities and would also help in the preservation of environment and prevention of pollution of the lakes. Clause 6.5.2 refers to Development Control Rules for Tourism Development. It mentions about permissible users of buildings in the Tourism Development Zones (T.D.Z.). One of them is hotels including cottages for tourists. Clause 6.7 provides for certain suggestions for Eco-Conservation and mentions Mulshi & Maval Talukas of the Pune District as extremely sensitive areas from the

environmental point of view. Chapter VIII deals with housing. Clause 2.6.2 thereof mentions about Development Control Rules for Tourism Development. It states about the permissible users in the T.D.Z. There is a table annexed to it. It mentions about afforestation zone. Clause 2.6.3 points out permissible users in afforestation zone. In addition, we find that there is affidavit filed on behalf of the State Government which mentions that Talukas of Maval and Mulshi are identified as Tourism Development Zone. Considering all these aspects, in our opinion, it cannot be said that the notifications were issued mala fide or with a view to confer benefit upon Sahara. Any developer has to carry out the development within the parameters identified and approved.

31. It is then submitted that a common notification for all the 13 Regional Plans could not have been issued. It is submitted that such a notification does not take into consideration the different situations and regional variations i.e. ecological and environmental aspects, etc. Hence, it is submitted that it cannot be said to be for balanced development of the area and cannot fall within section 20 of M.R.T.P. Act. It is not possible to accept this. These are general regulations meant for controlled development of a hill resort. The ecological and environmental aspects are to be considered by the State Government when any owner/developer proposes to develop the site as a hill station and impose conditions suitable for it. These Regulations are for identifying the locations and Regulation No. 1 clearly speaks about this.

32. It is submitted that the notifications are violative of various provisions of enactments. It is submitted that in effect they amend various Acts and these Regulations cannot modify the statutory provisions. It is particularly submitted that Clauses 17,18, 19,20 and 25 of the Notification dated 26-11-96 directly impinge on the various enactments or by pass them. These Clauses are as under :-

"17. Government in Revenue Department shall grant permission to the Owner/ Developer of such project, to purchase the Tribal lands if any in the project area, as per the provisions u/s 36-A of the M.L.R. Code subject to the condition that the Owner/Developer shall take the responsibility of the rehabilitation of the affected Tribals by way of providing Employment in the project or allotment of shops etc.

18. The condition that only the agriculturist to buy the agricultural land shall be waived in such areas.

19. There shall be no ceiling limit for holding agricultural land to be purchased by the Owner/Developer for such project.

20. The area declared as Hill Station shall not require N.A. Permission as in the case of Industrial Development as per New Industrial Policy of the Government. However, the prerequisite as contemplated in the amendment of the M.L.R. Code shall be adhered to before commencing any development.

25. This development shall be treated as if an industry."

33. It is submitted that Clause 17 of the Notification is contrary to the provisions of section 36-A of the Maharashtra Land Revenue Code, 1966. It is further submitted that the said provision is not in consonance with Article 15 and Article 46 of the Constitution of India. It is no doubt true that u/s 36-A of the Maharashtra Land Revenue Code, no occupancy of tribal can be transferred after the commencement of the Maharashtra Land Revenue Code and Lands (Amendment) Act, 1974 in favour of non-tribal by sale etc. except on an application of such non-tribal and except with the previous sanction of the concerned authority. There is no dispute that the lands purchased by Sahara do not fall in scheduled area as contemplated by the Constitution of India. Reply has been filed on behalf of Sahara sworn by Mr. O.P. Dixit, its Principal Officer, dated 6th August, 1997. It is mentioned that there is no land purchased by Sahara from a tribal. However, there is intervention on behalf of 36 tribals in these petitions stating that their lands have been illegally and unauthorisedly taken by Sahara. However, they have not stated which lands were belonging to them or when the said lands were taken from them. The learned Counsel appearing for those interveners has only stated that the tribals are poor and illiterate and hence unable to give all the details. Further, we may mention that the Government has appointed One-man Committee of Additional Chief Secretary, Shri S.V. Ranganathan. He has considered violations of various enactments noticed by him in respect of Mulshi and Haveli Talukas. His report shows that some land belonging to tribals has been transferred and a direction is given to re-consider those transfers by the Competent Authority. However, he has mentioned that Sahara is not concerned with those transfer. But a tribal by name Tukaram S. Pawar has filed an affidavit dated 27-7-98 stating that Sahara has taken nearly 1000 acres tribal land. In view of this and for doing justice to tribals and considering the spirit of Articles 15 and 46 of the Constitution of India, we would like to give an opportunity to the tribals to challenge the transfers of their lands before the Competent Authority within a period of one month. We would further like to direct Sahara not to carry on any development on the lands covered by their applications until they are decided. But we find that Regulation No. 17 of the Notification dated 26-11 -96 is not illegal or violative of section 36-A. Collector is already having power to grant permission for transfers. Further under Regulation No. 17 the permission is to be granted subject to rehabilitation of the concerned tribal by giving him employment in the project. The obligation is upon the State to see that such a tribal gets employment and the obligation is fulfilled by the developer not only in letter but in spirit.

34. The learned Counsel for petitioners relied upon Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde and Another, . There was a Government policy to allot agricultural lands to the tribals. It was held to be for rendering socio-economic justice and part of distributive justice. It was for economic empowerment of tribals, Dalits and poor and it was held to be a facet of right under Article 21 of the Constitution of India. To transfer such a land prior

permission of Competent Authority was a condition precedent and the Competent Authority was required to enquire before granting such a permission. Permission was refused in that case on the ground that pursuant to the agreement to purchase the agricultural land allotted to the tribal, the agricultural land was sought to be used for non-agricultural purposes. The refusal to grant permission was held to be justified being in consonance with the Directive Principles contained in Articles 38, 39 and 46 of the Constitution. Reliance is also placed upon *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, . The question involved in the said case was whether Rule 9(1) of the Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules conferring upon the Corporation power to terminate the service of a permanent employee by giving him 3 months notice in writing or in lieu thereof to pay him the equivalent of 3 months basic pay and defames allowances was valid or not. It has held to be invalid as conferring absolute and arbitrary power upon the Corporation. While discussing this, the Apex Court noted the principle of distributive justice as explained by it in its earlier decision reported in *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, . The observations made in the said case came to be reproduced. The material part for our purpose is -

".....The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle....."

Considering the broader aspects, we are inclined to give certain directions in case of lands of tribals.

35. As regards Regulation No. 25, when the tourism has been recognised as an industry by the Central Government and the State Government as mentioned above, Regulation No. 25 also cannot be said to be invalid or volatile of any provision of law.

36. It is next submitted that Sahara is using the land for non-agricultural purpose without getting the said land converted to non-agricultural use and this is in violation of section 44 of Maharashtra Land Revenue Code and Maharashtra Land Revenue (Conversion of use of land to non-agricultural assessment) Rules, 1969 and Maharashtra Land Revenue (Restriction on use of land) Rules, 1968. We would like to point out that by Maharashtra Act 26 of 1994, section 44-A was introduced. The relevant part of section 44-A is as under :-

"44-A. No permission required for bonafide Industrial use of land.-

(1) Notwithstanding anything contained in section 42 or 44, where a person desires to convert any land held for the purpose of agriculture or held for a particular non-agricultural purpose situated -

(1) within the industrial zone of a draft or final regional plan or draft, interim or final development plan or draft or final town planning scheme, as the case may be, prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force or within the agricultural zone of any of such plans or schemes and the development control regulations or rules framed under such Act or any of such laws permit industrial use of land; or

....."

In the Draft Regional Plan, this land is mentioned as falling under the Tourism Development Zone (and some area around the lake in Afforestation Zone). Further, tourism is already recognised as an industry. Therefore, the land is clearly used bonafide for industrial use and it is also a permissible user under the sanctioned Regional Plan. In view thereof, it cannot be said that there is any violation of section 44 or the Rules mentioned above. Hence, it cannot be said that Regulation 20 is illegal.

37. It is next submitted that Regulation 18 of the Notification is violative of sections 43 and 63 of the Bombay Tenancy & Agricultural Lands Act, 1948. The learned Counsel for petitioners relied upon *Jogibhai Mangalbhai Tandel and Others Vs. Mamlatdar and Agricultural Land Tribunal, Pardi and Another*, . In that case, section 63 and definitions contained in section 2(2), (5), (6), (20) and (21) of the Bombay Tenancy and Agricultural Lands Act, 1948 were for consideration. Restriction was imposed by the Gujarat Government on purchases of land beyond the radius of 5 miles from the villages. It was held that on a conjoint and harmonious reading of section 63 and the definitions, it would appear that the purpose of the Act is an agrarian reform restricting holding of the land by an agriculturist who cultivates the land in the manner defined under the Act. It was held that the object of the restriction is to prohibit even by a permanent resident of the Gujarat State to purchase the lands beyond radius of five miles from the village. It was held that the reason was to discourage concentration of large holding in the hands of a few individuals and for distribution of the material resources of the community to subserve the common good as envisaged under Article 39(d) of the Constitution.

In our view this is of no help to the petitioners in the present case.

38. We may point out that section 63-IA has been introduced in the Bombay Tenancy and Agricultural Lands Act in 1994. The relevant part thereof reads as under:

"63-IA. Transfer to non-agriculturist for bonafide Industrial use -

(1) Notwithstanding anything contained in section 63, it shall be lawful for a person to sell land, without permission of the Collector, to any person who is or is not an agriculturist and who intends to convert the same to a bonafide industrial use, where such land is located within,-

(i) the industrial zone of a draft or final regional plan or draft interim or final

development plan or draft or final town planning scheme, as the case may be, prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force, or the agricultural zone of any of such plans or schemes and the Development Control Regulations or Rules framed under such Act or any of such laws permit industrial use of land; and

.....

a) the expression "bona fide" industrial use" means the activity of manufacture, preservation or processing of goods, or any handicraft, or industrial business or enterprise, carried on by any person, and shall include construction of Industrial buildings used for the manufacturing process or purpose, or power projects and ancillary industrial usage like research and development, godown, canteen, office building of the industry concerned, or providing housing accommodation to the workers of the industry concerned, or establishment of an industrial estate including a co-operative industrial estate, service industry, cottage industry, gramodyog units or gramodyog vasahts."

No doubt, section 63 says no sale of land, etc. shall be valid in favour of a person who is not an agriculturist, etc. and the proviso thereof permits the Collector or any officer authorised by the State Government to grant permission for such sale etc. However, section 63-IA permits transfer to a non-agriculturist agricultural land for bonafide industrial use. Therefore, notwithstanding anything contained in section 63, without permission of the Collector, land can be transferred to a non-agriculturist for any bonafide industrial use. Since tourism is recognised and declared as industry, the lands purchased for that purpose squarely fall within the expression "bonafide industrial use" under the said proviso.

39. However, the position u/s 43 of the Bombay Tenancy Act is different. It lays down restrictions on transfer of land purchased under the Bombay Tenancy Act. Rangnathan Committee Report mentions about violation of the provisions of the Bombay Tenancy Act. It mentions about one land in this respect i.e. Gat No. 230 and suggests an action to be taken u/s 84(c). We have no doubt that in view of the Rangnathan Committee Report, the necessary action will be taken in that respect. In the affidavit filed on behalf of Sahara sworn by Shri O.P. Dixit, he stated that Sahara has not committed violation of any of the provisions of Bombay Tenancy Act. In this respect he has stated that in view of section 88(1)(b), sections 1 to 87 are not applicable. Section 88(1)(b) reads as under:-

"88(1) Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act shall apply

.....

(b) to any area which the State Government may, from time to time, by notification in the Official Gazette, specify as being reserved for non-agricultural or industrial development;"

Prima facie, it cannot be said that the land falling in TDZ or afforestation zone is

reserved for non-agricultural or industrial development. It is necessary to limit the said regulation No. 18 only to those lands which are not purchased under Bombay Tenancy Act.

40. It is next submitted that there is violation of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971. However, no Government land is involved and hence it cannot be said that there is violation of those Rules.

41. It is submitted that Regulation No. 19 violates the provisions of Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961 (hereafter called "Ceiling Act"). First we may note that the Rangnathan Committee Report has pointed out violations of the provisions of the said Act in para 10 of the said Report. He has mentioned that the Sub-Divisional Officer was not competent to grant any permission under the said Act and it is necessary to reconsider the same by the Additional Commissioner. Further the Additional Collector, Pune in his letter dated 26-2-97 to the Principal Secretary, Revenue Department, Maharashtra State, has pointed out that 17 persons have purchased lands in violation of the Ceiling Act. Clause 19 says that there shall be no ceiling limit for holding of agricultural land to be purchased by the owner or developer for the project. The Government and the Sahara tried to support this u/s 47(2)(c) of the Ceiling Act. Section 47(2)(c) is as under :--

"47(2) Subject to any rules made in this behalf, the State Government may, after such inquiry as it deems fit, by an order in the Official Gazette, exempt from the provisions of this Act, any of the following lands on such terms and conditions including the extent of area to be exempted as may be specified in the order, namely,

.....

(c) land which is held, or to be acquired in any manner, by an industrial undertaking for a bonafide industrial or other non-agricultural use. In considering whether such land is so held or to be acquired, the State Government shall have regard to the following considerations, that is to say,-- (i) the extent and location of the land, if any, already held by the undertaking (including any land which it may already hold for industrial or non-agricultural use);

(ii) the extent of land held by the person from whom it is to be acquired."

42. Section 47 deals with the exemption of lands from provisions of the Ceiling Act. It is clear that the State Government is having the power to exempt lands from the provisions of the Act. However, u/s 47(2)(c), land which is held or acquired by an industrial undertaking for industrial or non-agricultural use can be exempted. Section 2(14) defines "to hold land" as under :-

"2(14) "to hold land", with its grammatical variations and cognate expressions, means to be lawfully in actual possession of land as owner or as tenant; and "holding" shall be construed accordingly:"

In the present case, admittedly, Sahara has not purchased the lands. There are 69 different persons who have purchased lands. It cannot be said that Sahara holds those lands. It cannot also be said that it has acquired the lands as those 69 persons have admittedly only executed general power of attorney in favour of Sahara for development of lands. Therefore, the provisions of section 47(2)(c) are not attracted in this case. The Regulation No. 19 lifts the ceiling limit in the case of land purchased by any owner/developer. Thus, the said Regulation adds one more exemption. This cannot be legally done. The learned Counsel for the petitioners has invited our attention to Senior Superintendent of Post Offices, Allahabad and Others Vs. Izhar Hussain, . The question involved was whether Liberalised Pension Rules (1950) can be amended by executive instructions. It was held that a statutory rule cannot be modified or amended by executive instructions. The executive instructions can only supplement and not supplant the rule.

In view of section 47(2)(c) such regulations can only operate in the case of owner/tenant which is an industrial undertaking. If it is held to apply to any owner/developer, then it would create two classes of persons, one which can purchase beyond ceiling limit and one which cannot, though both the classes are similarly situated. This would be discriminatory and violative of Article 14 of the Constitution. This condition is, therefore, not valid in law. But this can be separated from the rest of the notification. In view of this, it is necessary to hold inquiry under the provisions of Ceiling Act in respect of the persons who have purchased these lands and particularly those who are referred in the Rangnathan Committee Report. In our opinion, Sahara cannot carry on development until the decision in that respect is given by the Competent Authority.

43. It is also clear from the declaration that the Ceiling Act is introduced for giving effect to the Policy of the State towards securing principles specified in Clauses (b) and (c) of Article 39 of the Constitution of India and they are for providing the ownership and control of the resources of the community so distributed as best to subserve the common good, and also that the operation of the agricultural economic system does not result in the concentration of wealth and means of agricultural production to the common detriment. Considering this declaration and the object of the enactment, it is necessary to see that the exemptions which are contemplated by section 47 of the said Act are strictly confined only to those cases.

44. It is next submitted that the notification is in violation of the provisions contained in the Indian Forests Act, 1927, Forest Conservation Act, 1980 and Maharashtra Forest (Acquisition) Act, 1975 and hence invalid. It is submitted that the notification permits Sahara to carry out non-forest activity in the forest area and hence it is invalid. The petitioners relied upon M.C. Mehta Vs. Kamal Nath and Others, . The case was relating to the lease granted by the State Government of riparian forest land for commercial purpose to a private company having a Motel located on the bank of river Beas. Motel management was

interfering with natural flow of river by blocking natural relief/spill channel of the river. Against that background, the Supreme Court considered import of Articles 21 and 39 of the Constitution of India and held that the State Government has committed breach of public trust and the Doctrine of the Public Trust rests on the natural resources such as river, forest, sea-shore, air, etc. for the purpose of protecting eco system. It was held that the sanction granted by the Government of India in favour of the said Motel was illegal and quashed. Further as the Motel was polluter of river water, it was held to be liable to compensate for damaging environment and ecology of the area. The petitioners then relied upon *Om Prakash Bhatt and others Vs. State of U.P. and others*, . It was a case where the State agency has set up camp tourist resort on mountain slopes of Garhwal area causing ecological imbalance. It was held that there was violation of section 3 of the Environment (Protection) Act, 1980 and the resort was ordered to be closed down and the contention raised on behalf of the State of huge investment of money for construction thereof was negated and the allotment of pastures and meadows for such purposes was prohibited. In *T.N. Godavarman Thirumulkpad Vs. Union of India and others*, , considering the provisions of Forest (Conservation) Act, 1980, it was held by the Supreme Court that running of Saw Mills of any kind including veneer or ply-wood mills and mining were held to be non-forest activity. It was held that for doing such activity in forest prior permission of Central Government was necessary and the States were directed to ensure total cessation of any such unapproved activity forthwith.

45. In the reply filed on behalf of Sahara it is stated that no forest land is involved as far as the project of Sahara is concerned. It is pointed out that the lands on which the project of Sahara is coming up is divided as follows:-

(i) Area under cultivation of rice, nachni, and varai is 4.02%; (ii) area where grass grow naturally (Gavatpad) is 76.86%; (iii) total area under Potkharaba is 18%; (iv) There are some trees spread over the entire area and the plantation trees can be stood on 1.03%. The land use map prepared by Pune Regional Planning Board in 1992 shows major part of land at Mulshi is (Gavatpad) grass growing. But we may note that the State Government has earlier appointed a Committee headed by the Principal Revenue Secretary by name Shri Warty. In the Rangnathan Committee Report, there is a reference made to it and it is pointed out that Forest Department has claimed Gat No. 33 admeasuring 163 G, 53R being acquired by the Forest Department under the Maharashtra Private Forest (Acquisition) Act, 1975. He has also noted in it that Sahara has filed Writ Petition No. 328 of 1988 in this Court and the order was passed on 9th March 1998. In the said writ petition, this Court has held that there is serious question as to whether or not the lands in question are private forest, as Sahara has denied that there was any forest land involved. It was held that this question was required to be decided by the Collector u/s 6 of the said Act. Sahara was directed to approach the Collector in that respect. The said writ petition was filed by Sahara and some other owners of the land. This was because the Forest Department has claimed large land as acquired by it under the Maharashtra

Private Forest (Acquisition) Act, 1975. In fact, the Forest Department has given notice to Sahara in that respect on 27th June, 1997 which was repeated on 29th November, 1997. We are told at the Bar that the land involved is about 508 acres. The matter is pending before the Collector and we do not want to make any comments about it. However, in the public interest, the petitioners can be permitted to make their written submissions before the Collector within a period of one month and if such submissions are made, then the Collector can be directed to consider the same before passing final order. This is because the Collector has not so far decided the matter and at the time of hearing of these petitions, we asked the learned Advocate General to instruct the Collector, Pune, not to pass final order in the matter till these petitions are decided.

46. We appreciate that forest occupies prime place in ecology. It is a national asset and national heritage. Deforestation causes ecological imbalance and leads to environmental deterioration. It is, therefore, absolutely necessary to maintain and improve the forest cover. It is in public interest see that forest cover is not reduced which has already dwindled in this country considerably. Further it is much less compared with other countries. One of us (A.A. Desai, J.) has written a Book "Environmental Jurisprudence". He has observed as under:--

"Eco-tourism is a culture of the affluent. The national policy has encouraged the same as a means to educate people, and promote interaction with the people of different parts. Tourism has received maximum public approval and support. Tourism has invaded practically every part. Tourist spots are located mostly in or close to forests. Bearing capacity of the tourist spot needs to be assessed. Eco-touring needs to be regulated by subordinate legislation to prevent adverse impact on the environment, which is in the surrounding of the tourist spot."

The author has also suggested an integrated approach for preserving forest cover after taking into consideration the ecological and economic needs of the society. In the present case considering all this and provisions of Art. 48A of the Constitution, we would like to permit the petitioners to approach the Collector with written submissions.

47. We may also point out that the learned Advocate General has stated that the Government is not going to permit any developer to violate the statutory provisions of the Indian Forests Act, 1927, Forest Conservation Act, 1980 and the Maharashtra Felling of Trees Act. It is stated that the State Government is not going to permit any reduction of forest cover. However, the learned Advocate General and also the learned Counsel appearing for Sahara have pointed out that the notification requires undertaking of afforestation programme and imposes obligation upon the developer to plant trees. No doubt, details regarding it are to be found in it. Regulation No. 11(f) deals with plantation of trees in residential and commercial complexes. Regulation No. 23 provides for planting 500 fruit bearing trees per hectare acre. Regulation No. 24 says what type of tree sapling should be planted before seeking permission to build. However, it is necessary for the Government to see that such trees are planted and not mere ornamental

plants and creepers for the purpose of counting the number and we hope that the Government Officials shall take the necessary precaution in that respect.

48. It is next submitted that Regulation No. 1 of the draft notification dated 3-9-96 and of the final notification dated 26-11-96 is very vague and it lacks specificity. The same reads as under:-

"1) Any suitable area at appropriate height and suitable topographical features can be declared by Government in Urban Development Department for purpose of development as Hill Station."

It is submitted that the petitioners could not effectively file their objections u/s 20(S) of the MRTP Act due to vagueness. It is also submitted that this gives vast unguided power to the Government to declare any area in the region as a tourist resort or hill station. It is not possible to accept this. The notification is essentially for laying down the general conditions for granting the necessary permission to a party for developing the tourist resort or the hill station. It is in respect of 13 regions from 13 Districts. The Notification laid down general parameters for identification of the area suitable for development as hill resort or hill station. Therefore, it cannot be accepted that the petitioners were not able to submit their objections effectively or that the notification was void on this count.

49. It is next submitted that the development undertaken by Sahara is ecologically and environmentally harmful. We may say that the allegations made in the petitions in that respect are vague. It is true that ecologically sensitive area is involved, but that by itself is not sufficient to say that development undertaken by Sahara would bring ecological imbalance or environment degradation. The Apex Court emphasised environmental and ecological factors in development. From *Samatha Vs. State of A.P. and Others*, our attention is invited particularly to the observations made in para 236 which read as under: -

"236. The aforesaid Act (hereinafter referred to as the Environment Act) was enacted by the Parliament as it was thought necessary to protect and improve the environment and to prevent hazards to human beings other living creatures, plants and property. A decision in this respect had been taken in June 1970 at the United Nations Conference on the Human Environment held at Stockholm in June, 1972 and India had participated in the said Conference. The Objects and Reasons of the Act indicates that the decline in the environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risk of environmental accidents and threats to life support systems and, therefore, world community is resolved to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on Human Environment held in Stockholm in June, 1972. Though in India there were several legislations for environmental protection but a need for a general legislation became increasingly evident and, therefore, an enactment was passed....."

50. The learned Counsel for petitioners next relied upon M.C. Mehta Vs. Union of India (UOI) and Others, . It was observed that the functioning of ecosystems and the status of environment cannot be the same in the country and preventive measures have to be taken keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. It was held that Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi and the two expert opinions by the Central Pollution Control Board and by the NEERI make it clear that the large-scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology. The recommendation by the NEERI to have green belt at one km. radius all around the two lakes was accepted. It was further observed

".....The "Precautionary Principle" has been accepted as a part of the law of the land. Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes."

There is no dispute about the propositions. But we have already pointed out how any developer has to undertake planned and controlled development under the Regulations. There is no reason to consider that Sahara "shall be an exemption to it.

51. On behalf of Sahara, affidavit sworn by Mr. O.P. Dixit, its Principal Officer, dated 6th August, 1997 has been filed and he has annexed three expert reports who have evaluated the likelihood of impact on environment by virtue of establishment of the Amby Valley Project of Sahara. One is by Dr. T.N. Khoshoo, former Secretary, Government of India, Ministry of Environment and Forest and Winner of United Nations Award for contribution to the field of environment. His study showed that the project is ecologically fit and viable provided permanent green cover is raised and maintained. Another report is by Dr. K.K. Khatu from Natural & Human Resources Development. He has opined about the viability of the project. The third one by Dr. H.K. Srivastava, Associate Director of the Central Institute of Medicinal and Aromatic Plants, New Delhi. He has given a detailed report on all aspects. He has pointed out that he has visited 2000 hectares site of Amby Valley Sahara Lake City Project. He has stated that the project is planned with care for nature conservancy and making use of sound and environmentally friendly science and technology for sustainable development. He has mentioned that both economic growth and environment protection are essential for resolving various social problems and it is necessary to maintain the

balance between the two. He has pointed out that major land involved is rocky waste land. He has pointed out how the project could not damage Biodiversity and should be encouraged and promoted for implementation of sound and well balanced nature conservation. He has also pointed out "there is a close connection between economy and ecology. The former emanates from the ecological assets (the earth capital) with the help of science and technology and all these are interrelated, interconnected and interdependent." He has pointed out that in the Amby Valley Project over 70 % of the area is earmarked for giving eco intent and there shall be no depletion of forest when more than 70 % of the land is to be used for the purpose of tree plantation. He has also stated that there shall be sustainable water development considering additional green cover and afforestation which is bound to enhance the rainfall in the area.

52. Mr. V.W. Deshpande, in his affidavit filed on behalf of the State dated 20th August, 1997, has pointed out that the project is not going to cause any reduction of or cause damage to water resources or that there shall be any reduction in the water available to the agriculturists of the lower region. He has pointed out that catchment area of Mulshi Lake is about 75,000 acres. Even if the permission for five water bodies of Sahara is granted, it would require quite insignificant water. The permission granted for two ponds is having total capacity of 15 m.ft. Two water bodies would require only 1% of the spilling discharged water. He has given details regarding the discharged water in the Arabian Sea maintained by Irrigation Department, He has also pointed out that no permission has been granted to Sahara to lift water from Pawna Lake or from any river. He has stated that the result of the construction of water bodies by Sahara would benefit the public and the water going to Arabian Sea would be used for human consumption. The water table in the surrounding area would go up and benefit the neighbouring lands. There shall be more plantation of trees. The Government would also get revenue. The storage of water not create any salinity problems. Sahara has pointed out that the total annual yield of the water in catchment area of Mulshi is about 37,400 m.c.ft. The capacity of the reservoir of Mulshi is about 18,461 m.c ft. and for the project only 70 m.c.ft. would be the consumptive use of water. There is no reason to reject this.

53. According to us, the Notification dated 26-11-1996 is essentially a policy decision of the Government. Considering the notification as a whole one can say that the Government was alive to various considerations and has arrived at a conscious decision considering those factors. The tourism is developing and increasing rapidly and it is absolutely necessary to ease the pressure on existing hill stations. For developing hill stations lot of investment is required to be made in infrastructure etc. In the present case, the approximate investment for the infrastructure such as roads, water sources, drainage, tree plantations, etc. required to be made has been pointed out in the affidavit filed on behalf of the Government. The Investment in this respect for roads Rs. 43.12 crores, water supply Rs. 11 crores, drainage Rs. 37.40 crores and electricity Rs. 1 crore per 200 hectares. The State is not able to make such huge investment and hence

invited private participation, it is a new concept introduced and in consonance with the global trend. This reminds us what Francis Beckon has said "He that will not apply new remedies must accept new evils for time is the greatest innovator." We cannot forget that these Regulations contemplate 75% of the area as open and can be used for tree plantation. The development of new hill stations is the need of the hour. It is necessary to have controlled and planned development in a hill station. Infrastructure facilities are required to be developed without burdening the exchequer. Under the Regulations, fruit-bearing trees are required to be grown, there shall be additional income and employment opportunities for the residents of the locality. The Report on Mahabaleshwar & Matheran Hill Stations shows that there is lot of depletion of forest cover by unscrupulous developers and private parties for grabbing the land for construction of buildings etc. The new concept might overcome this evil. It is no doubt necessary to maintain balance between ecological aspects and economic needs of the society. If a man is able to transform deserts in oases, he is also leaving behind deserts in the place of oases. In India, as elsewhere in the world, uncontrolled growth and consequent environment deterioration are fast assuming menacing proportions. These new Special Development Regulations for Hill Stations etc. envisage controlled and regulated development and attempt to maintain ecological; balance. The various clauses, by imposing obligations upon developer/owner, are clear pointer to this direction. The Appendix to the said notification also lays down the F.S.I. that can be used for construction and types of users.

54. The notification regarding Special Development Regulations is assailed by the petitioners on the ground that this has been issued to suit Sahara and is tailor-made. It is pointed out that Regulation No. 2 of the Draft Special Development Regulations dated 3-9-1996 mentions 1000 hectares as maximum area. But in the Final Special Development Regulations dated 26-11-96, it is increased to 2000 hectares. It is submitted that it was the target of Sahara and hence this has been done. It is not possible to accept this. The Regulations are general in nature. This was the result of consideration of various objections and suggestions made by the various parties including Sahara. In fact, Mr. Samir Mehta, one of the petitioners, while submitting his objections u/s 20(3) of the M.R.T.P Act, has stated about Regulation No. 2 that "the area is too small for hill station". Now the petitioners are contending otherwise.

55. The learned Counsel for Sahara has rightly invited our attention to Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, . In the said case, the Government land was allotted on lease to a private party for construction of five star hotel i.e. Taj Group of Hotels which was preceded by negotiations between the parties over a long period of time. The lease was executed after considering the relevant factors. The same was challenged. The Supreme Court observed-

"50. It is only when courts are apprised of gross violation of fundamental rights

by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self imposed restraint on public interest litigants."

56. We find that Government has bestowed good deal of consideration before issuing these regulations. We find no reason whatsoever to declare them entirely as illegal or violative of any provision of the Constitution.

57. In addition, we find that there is intervention made by 3 village sarpanchas on behalf of the concerned 8 villages by filing affidavit. It has been pointed out how the region is going to be benefited. It has been pointed out that Sahara has already constructed a road connecting Lonavla. In the past the villages were not connected by road. It is also pointed out how Sahara has constructed primary medical centre, school etc. for the local residents. It is pointed out how the local population is getting employment in the project and that it would stop young people going to urban centres as more would find employment locally. In view of this, we find that there is no substance in this contention that development would affect environment and ecology or that it is against public interest.

58. The learned Advocate General has stated that the Government is open for suggestions made by the Court or petitioners in public interest.

In the affidavit filed on behalf of the State sworn by Mr. V.W. Deshpande dated 10th June, 1998 it is stated that "I say that the Government at all material times was open and even now is open to consider any suggestions which may be made either by the petitioners or by this Hon'ble Court or by other non-governmental organisations which are concerned with the question of environment." At the time of interim order passed by this Court on 11th September, 1997, this Court noted about the public amenities. The notification dated 26-11-96 mentions about various amenities proposed in the township. This Court suggested at the interim stage to classify some as free amenities and some as paid amenities. They are as under :--

"FREE AMENITIES

(i) The Government shall identify certain amenities like roads, parks and play ground etc. as public amenities. The members of public who pay hill station entrance fee can use such amenities without payment of any additional charges to the developer or any authority or person. The amount of hill station entrance fee shall be decided by the Collector of the District.

PAID AMENITIES

(ii) The Government may identify some amenities like facilities for playing badminton, tennis, table tennis, water sports or any other game or facilities for swimming or other facilities for entertainment, amusement and/or recreation. The members of public shall be entitled to use such public amenities on payment of reasonable charges as may be determined by the Collector of the District in consultation with the developer."

Considering the above position, we enquired with the learned Counsel appearing for the petitioners. However, the learned Counsel appearing for the Bombay Environment Action Group declined to make any suggestion for including some additional condition on the developer for improving environment and ecology. However, the learned Counsel appearing for petitioners (Shankar Brahma Samajvijnam Granthalaya in Writ Petition No. 2247 of 1997), submitted that this Court may permit the said petitioner to make its submissions before the Government regarding the letter of intent dated 7-1-1997 issued to Sahara.

It is submitted that the letter of intent dated 7th January, 1997 issued to Sahara is illegal and void. It is submitted that this is nothing but an attempt to regularise the illegal development carried out by Sahara. We find much force in this submission.

59. Sahara has its registered office at Calcutta. 69 persons, not known to Pune District since 1992 individually began to purchase pieces of agricultural land in 8 villages of Mulshi Taluka. Purchases were separate and independent. Curiously enough, each purchaser at the time of sale deed separately, but in an identical manner, executed a power of attorney in favour of Sahara. This authority has been principally for developing the farm houses on their lands. By 1996, those 69 purchasers purchased land around 3736 acres. Sahara is not the owner of the land. At best it could be an agent of individual owners engaged to develop their individual lands for the purpose of farm houses. Sahara has admittedly started various constructions since March 1995 and that too without any permission. Then followed the Notification dated 3rd September, 1996-Draft Special Regulations to develop tourists resorts/holiday homes and the final Notification dated 25-11-1996 Special Development (Hill Stations) Regulations was issued. It seems that Sahara decided to take benefit of the Notification and floated the Scheme of Sahara Lake City called "Amby Valley" on the same pieces of land purchased by the individuals. The land is not a combined or a consolidated one. It is not the case of Sahara that owners have executed any power of attorney in its favour for developing such a project. It is clear that individual interest of the owner purchaser is completely obliterated by the Scheme. It is the case of Sahara that purchasers have no grievance for development of such a Lake City. Prima facie, it seems that those individual purchasers are only ostensible owners and purchases benami in nature. The Additional Collector on 26th February, 1997 lodged a complaint about the illegality in the purchase of land. The Warty Commission was also directed to investigate into the Sahara Project. Considering these aspects, it is necessary for the Government to make a thorough probe first

into the land deals in question to find out the real nature of the transactions before granting any letter of intent to Sahara.

60. The Notification dated 26th November, 1996 lays down that the Government shall declare suitable area at an appropriate height. We have already reproduced Regulation No. 1 dealing with it. There is no dispute that no such declaration of the area has been made so far. Undisputedly, Sahara is merely a Power of Attorney holder of individual purchasers of the land. In such a situation, the letter of intent dated 7th January, 1997 could not have been issued to Sahara at all. No doubt, it mentions that it is subject to certain conditions laid down therein. One of them is that Sahara has to produce evidence regarding ownership of the land in its possession and the other being clearances from the Environmental Department and Forest Department. According to the Government such a letter of intent has been issued to facilitate Sahara in securing the requisite clearances from the Forest Department of the State as well as the Central Government. The State interestingly wants to play the role of facilitator in implementing such a project. Though it is stated that the Company has again to submit to Government the requisite compliances for granting final sanction to the project and hence it is provisional in nature, if could not have been issued at all unless declaration have been issued as per Regulation 1 of the Notification dated 25.11.1996.

In addition neither the Ceiling Act nor Bombay Tenancy Act or M.R.T.P. Act recognise anything like developer. Owner alone could be a developer. He/She may do the development personally or engage a contractor or an agent therefore. Developer, other than the owner was not known to the Planning Statue. Clause 19 of the Notification dated 26th November, 1996 granting Exemption to the Project from ceiling on holding an agricultural land also makes it explicit that the person must be a holder. It does not approve in any manner an entity of a developer. Further, Sahara started constructions since March, 1995 without any permission but with an ardent belief of its regularisation, this clearly conveys that it expected governmental blessings and hence the Government has undertaken the exercise of issuing the letter of intent to suit the mission of Sahara.

61. The further thrust of the argument of the petitioners that the said letter of intent ought not to have been issued as Sahara has carried out various developments so far without obtaining necessary permissions also assumes importance. It shows that it was issued to benefit a party who has carried out unauthorised constructions. No doubt, we have already pointed out that Sahara has obtained certain permissions from Electricity Board or permission for construction of helipad from the Defence Department, the Maharashtra Pollution Control Board etc. It is also the case of Sahara that the work carried out is only preparatory in nature and in the bonafide belief that it could be regularised and cannot be called as illegal. But we note that even the learned Advocate General has submitted that the said letter of intent does not authorise Sahara to carry

out any development activities. It is also pointed out by the petitioners from photographs that massive construction activity has taken place. But the stop work notice has been issued to Sahara on 26-5-1997 by the Additional Collector, Pune. The matter regarding granting of N.A. permission for construction on the lands is pending before the Collector, Pune for consideration in view of the remand order passed by the Divisional Commissioner, Pune Division. The Sub-Divisional Officer, Maval Taluka has also issued demolition notice to Sahara in respect of three structures on 3rd March, 1998. Sahara challenged the same by filing a suit in Pune District Court. In view of the order passed in Writ Petition No. 328 of 1998, the matter regarding the claim made by the Forest Department about involvement of its land in the project is pending before the Collector, Pune. In view of the above, we are refraining from making any comments about the development carried out. But if it is not legally done, it cannot be said to be in public interest or to promote public policy. It is all the more to further the interest of Sahara and some others operating behind the curtain.

62. In view of the above discussion, we pass the following order :-

(A) We quash and set aside the letter of intent dated 7-1-97 issued to Sahara.

(B)(1) The State Government is directed to carry out probe regarding the land deals of Sahara.

(2) The tribals are permitted to approach the Competent Authority/Court for establishing that their lands have been taken by force and without making any payment, etc.

(3) The petitioners are permitted to make written submissions before the Collector, Pune in the pending matters to show that some land covered by Sahara Project is forest land and legally it cannot be developed by Sahara. If such written sub- missions are filed within a period of one month from today, the Collector to consider the same and pass final order in the matter which is pending before him. If the Collector, Pune, comes to the conclusion that forest land is involved, then the Government to take necessary action against Sahara.

(4) The suggestion made in respect of public amenities mentioned above to be put as a condition before letter of intent is issued to any party.

(5) The Government shall put conditions in respect of plantation of trees very clearly. It shall be made clear that as per the notification dated 26-11-96, party has to plant fruit bearing trees and not mere creepers or ornamental/decorative plants. Government should see that there is no escape route for any party in this respect as otherwise it would affect the environment and green cover.

(6) The Regulation No. 19 embodied in the notification dated 26-11-96 relating to ceiling for holding agricultural land purchased by owner/developer for such project is set aside. State Government to take necessary steps in this respect. However, it is made clear that the Government is free to replace it in view of the discussion made above.

(7) Regulation No. 18 not to apply in case of land purchased u/s 43 of the Bombay Tenancy Act.

63. Rule made absolute accordingly.

ASHOK A. DESAI AND P.S. PATANKAR, JJ.

Date: 4-12-1998.

Shri K.K. Singhvi, learned Counsel appearing for Sahara India Housing Ltd. orally prays for grant of eight weeks" time as they want to file S.L. P. in the Supreme Court.

Eight weeks time is granted. Sahara, in the meanwhile, shall not carry on any construction or development activities on the land in question Stay of the operative portion of the order subject to undertaking by Sahara that they shall not carry on any construction or development activities on the land in question.

Certified copy expedited.

64. Petition allowed partly.