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**(1989) 09 BOM CK 0074**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 1452 and 1963 of 1989

Bombay Environmental Action Group and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision :** 13-09-1989

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

Maharashtra Regional and Town Planning Act, 1966 — Section 31, 47

**Citation :** (1989) 3 BomCR 295

**Hon'ble Judges :** S.M. Daud, J

**Bench :** Single Bench

**Advocate :** A.M. Setalwad, N.H. Seerwai, Atul Rajadhyakhsa, S.A. Divan and G.S. Patel, instructed by M.V. Jaykar and Co. in W.P. 1452/89 and S. Radhakrishnan and C.M. Jha, in W.P. 1963/89, for the Appellant; A.H. Desai, R.A. Dada, Aspi Chinoy and R.A. Gaonkar for respondents 1 to 3 in W.P. 1452/89, D.M. Trivedi, for respondents 4 and 5, A.H. Desai, R.A. Dada, Aspi Chinoy and M.R. Gaonkar for respondents 1 to 4 in W.P. 1963/89 and D.H. Mehta, instructed by Haridas and Co., in W.P. 1963/89, for the Respondent

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## Judgement

S.M. Daud, J.—These petitions under Article 226 challenge what is described as illegal and unconstitutional "de-reservation" of a large number of plots of land in Greater Bombay.

2. The Maharashtra Regional and Town Planning Act, 1966 (Act or MRTP Act) is legislation providing for the planned development and use of land in regions established for that purpose. The Act has been brought into force in various parts of the State including Greater Bombay. The first Development plan for Greater Bombay was sanctioned by the State Government in 1966. Rules to control the development (DCR) were framed and sanctioned the next year. The Bombay Municipal Corporation (BMC) which is the Planning Authority (P.A.) declared on 13-1-1977 its intention to revise the plan aforementioned. The revised draft plan together with the revised, DCR were submitted for sanction to the State Government in 1985. Sanction has not yet been accorded. Pending consideration

of the draft revised plan, the State Government has directed the BMC to permit variations in the use of different plots the number whereof is said to range between 285 to 600. The variations span extremes covering total release to minor changes in the administering department gives near about 12 species of change of user. These are:---

(1) Provision of basic amenities to slum-dwellers under slum improvement programmes implemented with aid received from the World Bank and the Prime Minister's Grant Project (PMGP).

(2) Construction of houses for economically weaker sections through aid provided by the World Bank.

(3) Reconstruction of old and dilapidated structures through the MHADA with money coming from the PMGP.

(4) Construction by the BMC of a water reservoir to serve the needs of South Bombay.

(5) Construction of a Receiving Station by BEST.

(6) Development of Sassoon Fishing Harbour by BPT.

(7) Construction of a new passenger terminal at Kurla by Central Railway.

(8) Reserve Bank of India permitted to develop land for an Institute of Development and Research named after the late Prime Minister Mrs. Indira Gandhi.

(9) Enabling All India Radio to develop their won lands for their purposes.

(10) Hydrographer, P.W.D., Maharashtra to construct a storehouse near their Jetty.

(11) Tata Electric Co. being permitted to put up on their land the 6th unit of their thermal power station.

(12) Permit charitable trusts to develop lands for various charitable or community purposes. It is further averred that the changes have been permitted in 1983 and in many cases the permissions have been acted upon and the sanctioned development completed. The omnibus expression dereservation can hardly fit all these variations. Petitioners however have used that expression and I will adhere to the same for convenience though making it that it is far from correct.

3. Petitioners take exception to the directions given by the Governments to the BMC. It is contended that the directions pending the finalisation of the revised plan are illegal, without and in excess of jurisdiction vide the MRTP Act as also Article 14 of the Constitution. The directions amount to modifications of a substantial nature in the draft revised plan and the DCR. This attracts section 31(1) of the Act and in particular its 2nd Proviso. No notice inviting objections

and suggestions had been given whether in the gazette or local newspapers. The impugned directions could not be defended u/s 154 as that section was not intended to negate the other provisions of the Act. Large scale dereservations would set at naught the very object of planned development as the directions would deprive the public of the stature conferred right to participate in the planning process. An oft-quoted justification for the de-reservation about the BMC not having adequate resources was clearly false. Bombay was overcrowded and existing public amenities like playgrounds, hospitals and schools etc. were inadequate to meet even the existing needs of the residents. Any further release of plots would gravely affect the life and comfort of millions. The dereservations were patently arbitrary as the State Government had left itself free to pick and choose plots for dereserving or refusal to dreserve. This was violative of Article 14. The reliefs sought are declarations that the impugned directions to dereserve are permit development are ultra vires the MRTP Act an Article 14 of the Constitution and injunctions restraining the Government from issuing such directions and the BMC acting in pursuance thereto. Pending the disposal of the petition the respondents be restrained from making illegal dereservations and permitting the directed developments Also sought in the same vein is a direction to give a list of plots dereserved with the names and addresses of the owners thereof. Both the petitions are about identical, though there are some differences in regard to instances of plots de-reserved and the joinder of two of the alleged beneficiaries in W.P.No. 1963 of 1989.

4. The State Government and M/s. Essel Amusement Parks (respondent No. 7 in Writ Petition No. 1963 of 1989) have filed returns to oppose the admission of the petitions. Counsel representing the petitioners, the State Government and respondent 7 have been heard at great length. The short question which I have to address myself to is whether the petitions disclose a justiciable cause ? The legal aspect will require a detailed discussion which will have to be considered after the factual mala fides part of the averments have been appraised. This requires an answer to the question as to whether the impugned directions comply with the condition that the power thus exercised is so exercised honestly, bona-fide and reasonably Petitioners in Writ Petition No. 1452 of 1989 have specifically withdrawn the averment of factual mala fides in Para 15(e) of their petition. A portion of the para has been marked A to indicate the retraction and it covers the assertion that the decision is a transparent ruse to permit builders and landholders to profit and profiteer through construction activity to the immeasurable prejudice of the general public and the city itself. Petitioners in Writ Petition No. 1963 of 1989 have given illustrations of some dereservations which they aver "smack of mala fides". These illustrations together with those cited in the other petition require consideration in the light of the reply to be found in the returns. The appraisal is made plot-wise and commences with CTS No. 725 "D" Ward Malbar Hill Division. The Government acquired this land for the Police Department and a part thereof has police quarters. A slum has come up on some portion of the plot which plot was proposed to be reserved for the housing

of the dishoused. Carrying out this project would have meant evicting the slum people. The administering department plus the Home Department which handle police affairs have jointly suggested a change in the proposal to permit regularisation and improvement of the slum under the Prime Minister's Grant Project (PMGP). This is to be done apart from using some part of the land for police housing. The PMGP is a time bound project and variations being consistent with ground realities and public interest cannot be said to be in bad faith. CTS No. 610 Malad-P/North Ward variation is to permit a part of land reserved as a play ground for rehabilitating evictees from a slum in General Bhosale Marg area. Again, this decision cannot be said to be dishonest or unreasonable. Plot CTS No. 105/195 of Kiroli-the variation is to regularise less than 1/6th of a recreation ground which houses slum-dwellers evicted from the Tardeo area. This again is acceptance of a fait accompli and a bona-fide decision. Gorai plot in the draft plan is marked as a "No Development Zone" (NDZ). M/s. Essel as the grantees of the plot for an amusement park are said to secure a tremendous benefit. The terms of the grant apart, even the 1967 DCR did not completely prohibit any commercial or non-recreational activity in ND Zones. Rule 31 permitted the NDZ to be used as a public park and for recreation of all types. There is an embargo on putting up buildings except of a temporary nature for ancillary or accessory uses. Amusement parks are specifically sought to be covered by the draft revised DCR. It was argued that the terms of the permission given to Essels were so wide that they could build on land measuring 1,20,480 square metres. As said earlier the ban on construction activity in ND Zones is partial. The exact terms of the permission not being germane to these generalised petitions, cannot be gone into when the limited question is, as to the good faith of the whole affair. An amusement park, whatever the views of the elite, is a necessary adjunct of city life for the hoi polloi. In the instant case there may be some excesses. That however could be the subject of a separate action. Plot bearing CTS No. 3/124 Mazagaon Division was in the residential zone as per the 1966 development plan. In the draft of the revised plan it has been earmarked for a dispensary. Excluding area surrendered for road widening, the remaining land has an old building housing, an office and store of Exel Oil Co. That company objected to the change in the draft revised plan and the BMC's Planning Committee agreed to the deletion. This decision was reversed by the Administrator but restored by the Government. The dispensary is now to be built upon in a neighbouring plot which is reserved for municipal use. This gain cannot be termed dishonest or irrational plot bearing CTS No. 868 in Bandra H/West Ward was proposed for a dispensary and library in the draft of the revised plan. In the 1966 plan it was shown as reserved for residential purposes. The owner lodged an objection to the proposed use vis-a-vis the draft of the revised plan. The objection was sustained by the BMC and accepting that body's recommendation, the Government accepted the deletion. Again the dereservation was because the locality was not such as to warrant the belief that a dispensary or library would be patronised. This is not shown to be a dishonest or unreasonable conclusion. Writ Petition No. 1963 of 1989 gives three examples which include the Gorai plot considered above. Of the

remaining two, one pertains to a plot at "D" Ward near Navjivan Society This was designated in the 1966 plan for recreation, housing, maternity home and dispensary. But even prior to 1966 the plot had many industrial sheds. No efforts were made to acquire the land. In the draft of the revised plan the BMC recommended that activity being carried on, be permitted to continue. This recommendation was turned down and the old designation was accepted. It was not correct to say that this was done to benefit respondent No. 8 i.e. Pratiksha Builders. Continuation of the old reservation could not per se be termed dishonest or unreasonable. Last there is CTS No. 893. In the 1966 plan the plot was shown to be a garden. According to the return of the Government there never was a garden on the plot. In the draft of the revised plan the BMC showed it to be an existing recreation ground. The variation is to permit utilisation of less than one-fourth of the land for putting up a Police Station. This is in response to a long felt need while the remaining area continues to be a recreation ground. Again, the variation cannot be said to be dishonest or unreasonable.

5. An examination of the examples given by the petitioners in the two petitions shows nothing remiss in the sense of an impropriety. In an appraisal of this nature it is well to remember that the Court is not an appellate forum where the correctness of an order the Government could be canvassed. As said in *S. Pratap Singh Vs. The State of Punjab*, the Courts have no jurisdiction to substitute their view in place of that of the Government. There of course remains the point of contravention of the law said to vitiate the impugned directions. This will be looked into presently, Petitioners contend that the very number of dereservations create a legitimate sense of disquiet which compels a deeper look into the matter. To enable a proper consideration the first step is a full disclosure of the plots dereserved with the names and addresses of the concerned owners. After all the returns do not deny that a large number of modifications have taken place. In fact the Government asserts that it has the power to make unpublicised deviations between the scrutiny of a draft and finalisation of a development plan. This vests in public spirited persons the right to demand a scrutiny. Mr. Setalvad relies upon the decision of a Division Bench of this Court in Writ Petition No. 2733 of 1986 decided on 7-10-1986 and the Supreme Court's order dated 13-10-1986 in SLP 1129 of 1986. These recognise his clients position as a group interested in environmental protection. The right to information of Government functioning is not something which can be ruled upon in the abstract. In the decisions relied upon, the petitioners were held entitled to information so as to be in a position to exercise their duties as an environmental group more effectively. Here, the information is sought to collect material for the prosecution of a petition. Learned Counsel presses into service the well-known *S.P. Gupta Vs. President of India and Others*, on the right to information in relation to administrative functioning. The observations relied upon have to be read in the context of the challenge to Government of India's policy of transfer of High Court Judges and the desirability or otherwise of continuing Additional Judges as such Judges etc. etc. Privilege was claimed in regard to the production of correspondence on the subject

exchanged between high dignitaries. The object was the resolution of an issue that arose viz. the continuance of S.N. Kumar as a High Court Judge and the transfer of various Chief Justices from one High Court to another. These issues arose on the existing pleadings and the correspondence for which privilege was claimed, had a bearing on them. Here the petitions allege impropriety to support which illustrations are given. The illustration cannot stand scrutiny unless of course petitioners succeed on the legality issue. In proper cases a direction for further and better particulars can have to be given. That however does not mean the giving of such a direction for the mere asking. The number of the plots dereserved or possibility of stumbling upon some irregularity or impropriety is not a good reason to direct a revelation of the nature claimed. Individuals and groups litigating in the name of public interest may not be limitable to the category of "applicant aggrieved" vide section 47 of the Act. Even so, no principle permits such people to seek discovery or particulars because of the off-chance that some impropriety or illegality is likely to be discovered.

6. The directions are dubbed violative of the law by the petitioners for the following reasons. The three pillars on which the Act rests are people's participation in the planning process, publicity to measures contemplated or taken under the Act and the different stages of planning and revision being time-bound. This tripod is said to inhere in sections 21 to 31 which deal with the preparation and finalisation of a development plan as also section 38 which pertains to revisions thereof. Thus section 21 requires notice of preparation of the first draft development plan in the Official Gazette and in such other manner as may be prescribed. This is to be within three years of the commencement of the Act. Section 23 requires the P.A. to make and publish a declaration of intent to prepare a Development Plan. This publication is to be in the Official Gazette and one or more local newspapers the object being to invite objections and suggestions. These objections and suggestions are to be sent within 60 days of publication. Though in the skeleton stage as only the boundary of the area to be in the plan is to be depicted, a copy of the same is required to be kept open for public inspection at the office of the P.A.. Section 26 lays down preparation of the draft development plan (D.D.P.) and the intimation of such preparation in the gazette and such other manner as may be determined. Copies of the D.D.P. are to be made available for inspection and for sale at reasonable prices. The intimation's avowed purpose is to invite objections and suggestions. Section 28 requires the P.A. to consider suggestions and objections received and if necessary modify or change the D.D.P. The objections and considerations are to be submitted to Planning Committee (PC). This Committee is to give a reasonable opportunity of being heard to the persons who have lodged objections and suggestions. The PC's report is to be considered by the P.A. who is to finalise the D.D.P. and submit the same to the Government all this within 12 months of the publication of the section 26 notice. Mr. Setalvad argues that all these provisions indicate a clear adherence to the three basic features of publicity, a time-frame and the active involvement of the public in the planning

process. It is in the light of this background that section 31 should be construed. This section needs reproduction and is worded thus:--

"31. (1) Subject to the provisions of this section, and not later than one year from the date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development plan submitted to it for the whole area, or separately for any part thereof, either without modification or subject to such modifications as it may consider proper, or return the draft Development plan to the Planning Authority or as the case may be the said Officer for modifying the plan as it may direct, or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan:

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not extend from time to time, by a notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period as may be specified in the notification:

Provided further that, where the modifications proposed to be made by the State Government are of a substantial nature, the State Government shall publish a notice in the Official Gazette and also in local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of sixty days from the date of such notice.

(2) The State Government may appoint an officer of rank not below that of a Class I Officer and direct him to hear any such person in respect of such objections and suggestions and submit his report thereon to the State Government.

(3) The State Government shall before according sanction to the draft Development plan take into consideration such objections and suggestions and the report of the officer.

(4) The State Government shall fix in the notification under sub-section (1) a date not earlier than one month from its publication on which the final Development plan shall come into operation

(5) If a Development plan contains" any proposal for the designation of any land for a purpose specified in clauses (b) and (c) of section 22, and if such land does not vest in the Planning Authority, the State Government shall not include that in the Development plan, unless it is satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition not later than ten years from the date on which the Development plan comes into operation.

(6) A Development plan which has come into operation shall be called the final Development plan and shall, subject to the provisions of this Act, be binding on

the Planning Authority."

7. Section 31(1) stipulates that the Government within one year of the receipt of the D.D.P. from the P.A. after consulting the Director of Town Planning accord sanction thereto. The sanction may be for the whole area or separately for any part thereof. It may be with or without modifications. It may return the D.D.P. with a direction to the P.A. to modify it in the manner indicated or may direct the P.A. to prepare a fresh plan. Any step taken by it in the above setting has to be notified in the Official Gazette. Any extension of the one year period for according or refusing to accord sanction is required to be notified in the gazette (Proviso 1). The 2nd Proviso lays down that where the proposed modifications of the State Government are of a substantial nature, it shall invite objections and suggestions to the same by a notice in the gazette and also in the local newspapers. Within the expiry of 60 days from the publication of the notice, the proposed modifications remain that. sub-section (2) provides for the appointment of an officer to hear the said objections and suggestions. Thereafter he is to submit a report. The Government has then to consider the objections and suggestions along with the report. In the notification bringing the final plan into operation, the Government has to fix a date which shall not be earlier than one month from the date of publication. The D.D.P. in so far as it designates any land for purposes mentioned in clauses (b) and (c) of section 22 shall be acceptable only if the P.A. can acquire the same by private agreement or compulsory acquisition in 10 years. The plan that has come into operation will be binding on the P.A. and shall be known as the final development plan (F.D.P.).

8. Petitioners submit that until a D.D.P. is under scrutiny, directions to change of permit the change of land user cannot be given. Assuming that such directions can be given, that can be done only after a notification has been issued u/s 31(1), objections and suggestions invited, considered ruled upon and overruled in the form of an F.D.P.. There is no provision in the Act permitting the Government to effect changes in the land use vis-a-vis the D.D.P., pending grant of sanction. Section 154 of the Act does not permit such actions as the section is meant for the efficient administration of the Act and not its nullification by circumvention of mandatory requirements. Respondents reliance upon section 154 is half-hearted and rightly so. When section 154 permits the Government to issue directions for the efficient administration of the Act, the direction has to have a connection with the power conferred on it under the Act. Development at variance with the D.D.P. pending its finalisation cannot be said to have any connection with Act's administration-efficiency apart. To revert to the petitioners' contention is any and every variation from the D.D.P. incapable of implementation until the process suggested above, is gone through? This argument is sought to be supplemented by recourse to sections 50 and 37. The latter permits the modification of an F.D.P. while it is in operation, but at option of Govt. compels the inviting of objections and suggestions from the public before action in compliance with the modification can be taken. Similarly section 50 though permitting release of land designated for public use, whether in the

D.D.P. or F.D.P., requires that the initiative come from the authority who is to put the land to the designated use. The taking of an initiative by this authority is not enough. The P.A. and the Government may carry out an enquiry to ascertain the genuineness or otherwise of the request. Sections 37 and 50 deal with situations basically different than that arising for consideration in the instant petitions. Here the D.D.P. is lying with the Government for sanction. The statute vests Government with the last word on the plan. This is of course hedged in with conditions. But if no restrictions are applicable, it cannot be suggested that they must be read into section 31(1) for sections 28,29,37 and 50 indicate the great prominence given to publicity, public participation and a time-frame to the planning process. Section 31 requires publicity and calling of objections and suggestions but only in the below given cases:---

- (i) In according of sanction to the D.D.P. for the whole area or separately for any part thereof .
- (ii) In extending the period for sanctioning the plan or refusing to accord sanction.
- (iii) Inviting objections and suggestions where the modifications proposed to be made by the Government are of a substantial nature.
- (iv) Notifying a date on which the F.D.P. shall come into operation.

Inviting of objections and suggestions is at only one stage viz. Where the modifications proposed to be made are of a substantial nature. If this is read together with Clauses (i) and (iv) we get the following positions viz. that pending finalisation, publicity is required to be given only once i.e. when the Government proposes modifications of a substantial nature in the D.D.P.. After finalisation, the said finalisation has to be publicised. The sanction may be to the plan for the whole area or separately for any part thereof.

9. Mr. Setalvad submits that the words "separately for any part thereof" embrace the case of even one single plot, leave alone so many as 285 as is the case here. Mr. Desai for the respondents disputes this submission. On a plain reading the words underlined have to be read as being in contradistinction to the preceding words "for the whole area". This is made more explicit by the use of the last word "thereof". The area spoken of by the section would be the area within the jurisdiction of the P.A. as is clear from section 21. In the context of section 31 the area of the BMC is Greater Bombay. Thus considered a part thereof would include an individual plot, only if that plot had significance by virtue of its size, location or such like factor. To repel this inference Mr. Setalvad relies on Pendse, J. 's decision in Writ Petition No. 2032 of 1983 decided on October 9, 1984. The facts of that case were that land bearing plot No. 148 was in the green belt meant for use as a garden. Subsequently there was a proposal to put up a building on this plot to provide additional accommodation to Ministers of State. The BMRDA which was the special planning authority opposed the proposed change. Pendse, J., observed that the State Government could not issue

directions to the original P.A., the BMC, or, the BMRDA to alter the user of the land reserved in the D.D.P. until the same was modified in the manner prescribed by section 31 of the MRTP Act. Mr. Desai apart from contending that Pendse, J's decision does not apply, relies on a Division Bench decision in Civil Applications Nos. 2710 and 2712 of 1986 and others in Writ Petition No. 1274 of 1988 in support of the view that where deletion (synonymous with dereservation) does not affect the rights of any individuals, it would be doubtful if such deletion would necessitate inviting of objections etc. It is argued on behalf of the petitioners that the Division Bench's expression of doubt at an interlocutory stage cannot prevail over the considered view of Pendse, J., at the final hearing stage. It is not possible to accept this argument. The view of Pendse, J., was not cited before the Division Bench. There is however no uncertainty as to the view it took being contrary to that taken by Pendse, J. That it was taken at an interlocutory stage would not weaken its authority. With respect to Pendse, J., there appears to be nothing in the language of section 31(1) to warrant the inference that development at variance with the designated uses in a D.D.P., irrespective of the nature, character or scope of variation and the land-affected, stands frozen until objections and suggestions are invited by notice, considered and overruled in the form of a F.D.P..

10. Petitioners again rely on Pendse, J's decision to contend that a single plot dereservation attracts the 2nd proviso to section 31(1) of the Act Says Pendse, J.---

"It hardly requires to be stated that if user of one plot, out of the entire area is to be altered , then it is the modification of a substantial nature of the D.D.P. and objections will have to be invited from the public before adopting such a course."

In the context of the facts of the case before him perhaps the proposed modification may have amounted to a change of a substantial nature. The Division Bench in the aforementioned civil applications held that the 2nd Proviso was not attracted to cases of deletions from a D.D.P. falling u/s 31(5). There are deletions necessitated by lack of finances with the P.A. to acquire land reserved for public use. If this exception to the need for inviting objections and suggestions is accepted, there cannot be a different conclusion vis-a-vis any dereservations pursuant to the same not being of a substantial nature. The second Proviso's applicability or otherwise depends not merely on the number of plots figuring in the proposed modification. Involvement of a single plot in given case may occasion change of a substantial nature. An example of this would be conversion of any well-known playground of Bombay into a marketing complex. On the other hand use of stretches of uninhabited marshy plots may be proposed to be drastically altered without this constituting a modification of a substantial nature. The proviso's application would depend on the facts and circumstances of each case and would depend neither on mere numbers nor such like isolated feature. The argument that the State Government itself has understood the law to be in the sense expounded by Pendse, J., is sought to be supported by

notification of proposed plot-wise dereservations in regard to plans relating to Pune, Matheran and Mahableshwar etc. A better guide to the requirement of any statute, is , what its language prescribes. Thus viewed, the 2nd proviso requires publicity to proposals for modifications of a substantial nature- not any and every proposal for modification.

11. It was argued that if Government is given the power to dereserve during the period after submission of the D.D.P. and before it accords sanction, great harm can ensue for the Government would delay finalisation and in the meantime change the very character of the D.D.P.. Taking of extreme examples is a technique oft-used and rightly so, to test the validity of the constructions canvassed. But in the present case the safeguard provided by the 2nd proviso is there. Wherever it be shown that a direction of the Government to change land user involves departure of a substantial nature vis a vis the D.D.P. and that the requirement of publicity has not been followed, Courts can and will interdict the direction . The figure of 285 or even 600 for that matter furnishes no answer to the applicability or otherwise of the 2nd proviso. In a given case it may be shown that the direction seeks to circumvent the 2nd proviso. That is far different case from the one pleaded by the petitioners. In fact the examples given in the two petitions are no illustrations of a change of a substantial nature.

12. There is intrinsic evidence in the enactment militating against the submission advanced on behalf of petitioners. Chapter IV of the Act deals with control of development and use of land included in development Plans. Section 43 does not impose a total ban on instituting or changing the use of any land or carrying out any development. Written Permission of the P.A. can remove the embargo Section 44 regulates the making of an application for permission to develop. Section 45 deals with grant or refusal of permission by the P.A.. Section 46 requires the P.A. in deciding the application to have due regard to the (i) provisions of any draft or final plan or (ii) proposals published by means of notice, submitted or sanctioned under the Act. Clause (i) would cover a draft plan submitted u/s 30 and F.D.P. notified u/s 31(4) after the same has come into operation. Clause (ii) takes into its sweep the proposed modifications spoken of in section 31 whether published under sub-section (1) or under the proviso to the sub-section whether published or even submitted, and last, if sanctioned. This would indicate no dead end in the process of planning as begun from an intention to prepare a plan and its finalisation. An applicant aggrieved has the right to appeal to the Government u/s 47. The much criticised Government directions are i pursuance of a power lodged in section 31 of the Act. The P.A. after the D.D.P.'s submission can act u/s 46. The power of the Government is greater for after all the final decision is that of the Government. Being the final arbiter it is the appropriate authority to be approached when the D.D.P. is pending scrutiny at its level. The State Government u/s 31 is expected to sanction the D.D.P. within 12 months after its receipt. But the first proviso permits extension from time to time, and this, whether the 12 months have expired or not. This is another clue to the permissibility of a case-by-case

variation. Unless there be a change of a substantial nature which affects the totality of the plan for the whole area or even a significant part thereof, no notice is required to be given. Its directions are natural seeing that the P.A. has submitted the D.D.P. and is not expected to be aware of the modifications which the Government may be contemplating.

13. One last ground canvassed by the petitioners is the absence of any guiding principle to the policy of dereservation. Government has not proclaimed any guidelines and its policy of pick and choose is bereft of any principle. This violates Article 14. The Act contains sufficient guidelines as to what factors are to be taken into consideration for regional and town planning. In relation to deletion of land from designated user there cannot be any rigid and inflexible principle. The criteria would change from time to time and area to area. The guiding principle is to check unregulated development of cities and urban agglomerations and ensure civic amenities and comfort in proportion to increase in population and economic growth. To co-ordinate all these factors sufficient latitude has to be given to the agencies operating at different levels. Every exercise of power cannot be pushed into a preconceived strait-jacket of equality or reasonableness

14. A fervent plea has been made of the need to admit the petitions. The argument is that these raise issues of great public importance and that the same are not frivolous or vexatious. The law is said to warrant admissions of petitions moved bona fide and making out a case requiring investigation. But the discussion in the preceding paragraphs cannot be overlooked. Petitioners i Writ Petition No. 1452 of 1989 have withdrawn the charge of dereservation being actuated by an intent to permit landholders and builders to profit at the expense of the general public. Examples of alleged wrong-doing in the two petitions have not been substantiated to merit admission of generalised actions. The claim for a full disclosure of the plots dereserved and the names and addresses of their owners cannot be acceded to In fact a list of the plots dereserved has been furnished by the BMC in response to a short notice question posed by a Municipal Councillor A copy of this list has been placed on record. The challenge on the legality issue is out tenable. In the face of all this, it will not be possible to admit the petitions framed as they are. Petitioners will be testing this verdict in a higher forum and fairness demands that sufficient time be given to enable them to do so. Hence the order.

#### ORDER

Petitions are rejected with parties being left to bear their own costs. Status quo to continue for four weeks hereafter.