
(2023) 04 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 321, 322 Of 2022, Interim Application No.1024,
1025 Of 2021

Jamshid Kersi Dalal And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 25-04-2023

Acts Referred:

Development Control And Promotion Regulation, 2034 — Regulation 16.8.1, 16.8.3
Maharashtra Regional And Town Planning Act, 1966 — Section 2(2), 22, 22(A), 26, 28,
28(2), 28(4), 30, 31, 31(1), 37, 162

Citation : (2023) 04 BOM CK 0044

Hon'ble Judges : Sunil B. Shukre, J;M.W. Chandwani, J

Bench : Division Bench

Advocate : A.V. Anturkar, Dormaan J. Dalal, Ranjit D. Shinde, A.V. Anturkar,
Dormaan J. Dalal, Rohit Chopra, Juris Corp, R.M. Shinde, Abhijit P. Kulkarni,
Sweta Shah, Aditya Mahadik, Krushna Jaybha, G.S. Godbole, Rahul Soman, Shon
D. Gadgil

Final Decision : Disposed Of

Judgement

Sunil B. Shukre, J

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. These petitions raise a common challenge to the legality and correctness of substantial modifications, modification nos.EPR-19 and EPR-39, in respect of proposed 12 mtr. D.P. Road made in Schedule-A, Part-C of the notification dated 17th February, 2018 issued by the State Government sanctioning a Draft Development Plan for the original limit of Pune Municipal Corporation.

4. The petitioners, in these petitions, are residents of Sopan Baug, Co-operative Housing Society, Ghorpadi, Pune and their houses are situated in Survey No.59

and 58 bearing CTS No.503. They claim that their Survey No. (old) 59 is abutting Survey No.61 and as the proposed 12 mtr. D.P. Road passing through Survey No.61 and 62 cuts through the Green Belt situated in Survey No.61 and 62 and has also a potential to block the adjoining Nala and cause more pollution, there is a legal injury to them and, therefore, they have a right to challenge the notification dated 17th February, 2018 to the extent it sanctions the substantial modifications to the Draft Development Plan for Pune city, namely, modification nos.EPR-19 and EPR-39. Background facts which led to sanctioning of the modification nos.EPR-19 and EPR-39 are as follows :-

(a) Pune Municipal Corporation (hereinafter called to as the "PMC" for short) by its Resolution dated 7th January, 2013 decided to publish revised Draft Development Plan for the original limit of PMC and accordingly, revised Draft Development Plan was published vide Maharashtra Government Gazette dated 28.03.2013. A Planning Committee appointed under section 28(2) of the Maharashtra & Town Planning Act, 1966 (hereinafter referred to as the "MRTP Act"), after considering the suggestions and objections to the Draft Development Plan, submitted its report to the PMC, the Planning Authority, on 13.02.2015.

(b) As the PMC did not take any decision on the report of the Planning Committee submitted to it, and did not submit the Draft Development Plan to the Government of Maharashtra for its sanction within the stipulated time limit, the Government of Maharashtra vide order dated 27.03.2015, appointed a Committee under Section 162 of the MRTP Act under the Chairmanship of Divisional Commissioner, Pune Division, Pune to complete the legal procedure by performing the duty of the Planning Authority. This Committee considered the report of the Planning Committee and also other relevant factors and made some modifications and changes to the Draft Development Plan under Section 28(4) of the MRTP Act. These modifications and changes made in the Draft Development Plan were published by the appointed Committee in the official Gazette dated 26th September, 2015.

(c) The Committee so appointed submitted for sanction the Draft Development Plan along with modifications to the Government of Maharashtra under Section 30 of the MRTP Act vide its letter dated 26th September, 2015.

(d) The Government of Maharashtra, in accordance with the provisions of Section 31(1) of the MRTP Act, sanctioned a part of the said Draft Development Plan, excluding the modifications of substantial nature, vide notification dated 5th January, 2017, duly published in the Government Gazette. The Government of Maharashtra, however, invited suggestions and/or objections from the general public vide its notice dated 5th January, 2017, in respect of the excluded parts from the Draft Development Plan which was partly sanctioned by the Government of Maharashtra.

(e) After following the procedure, the Government of Maharashtra in exercise of its power under Section 31(1) of the MRTP Act, sanctioned the excluded parts of

the revised Draft Development Plan for original limit of Pune City vide its notification dated 17th February, 2018, as specified in Schedule-A, appended thereto.

The notification dated 17th February, 2018 came into force after expiry of period of one month after the date of publication of the notification. By this notification, the excluded parts of the revised Draft Development Plan, which was partly sanctioned vide notification dated 05.01.2017 also came to be sanctioned with some modifications and out of those sanctioned excluded parts, modification nos.EPR-19 and EPR-39 are under challenge in these petitions.

5. Mr. A.V. Anturkar, learned Senior Advocate submits that the petitioners have substantial interest in the cause espoused by these petitions. He submits that by the sanction of impugned modifications, right of the petitioners as citizens to have greenery in city of Pune has been affected. Apart from that, he further submits that the proposed 12 mtr. D.P. Road is neither necessary nor is in public interest, rather, construction of the proposed 12 mtr. D.P. Road is likely to damage environment and create more pollution and congestion in the locality. He also submits that proper procedure as prescribed under Section 28 of the MRTP Act has not been followed while sanctioning the impugned modification EPRs, in the sense that no consideration was given to the objections taken by the petitioners, report of the Planning Committee was not properly considered and the time limit prescribed for publication of the modifications made by Planning Committee under Section 28(4) of the MRTP Act was followed. He further submits that since the proposed 12 mtr. D.P. Road cuts through Green Belt in Survey No. 61 and 62, Ghorpadi, it amounts to user of the land reserved as Green Belt in the 2007 D.P. Plan for a purpose not permissible under the Regulation 16.8.1 of the Development Control and Promotion Regulations (DCPR-2017) for city of Pune. He also submits that it would also amount to deletion of the reservation as Green Belt, which is a substantial modification to the Development Plant under Section 22(A) of the MRTP Act and, therefore, it could not have been done without initiating a fresh proposal for it's deletion in accordance with law.

6. Learned counsel for respondent No.9 – PMC, the main contesting party, submits that the petitioners do not have any locus standi to question the legality or otherwise of modification nos.EPR-19 and EPR-39 by filing these petitions, as their houses are situated in Survey No.59, Ghorpadi, which survey number has no concern with the proposed 12 mtr. D.P. Road, passing through the Survey No.61 and 62, Ghorpadi. He submits that all the land owners of Survey No.61 and 62, Ghorpadi, have not been joined as party respondents to these petitions except for respondent Nos.13 and 14 and, therefore, these petitions are not maintainable.

7. Learned counsel for respondent No.9 further submits that by the own admissions given by the petitioners, entire procedure as prescribed under Sections 28, 30, 31 of the MRTP Act has been followed and therefore, the

petitioners cannot challenge the modification nos.EPR-19 and EPR-39. He also submits that in any case, the proposal made for sanction of Draft Development Plan and its sanction by the Government is a matter of planning and it is not for the petitioners to say that the proposed 12 mtr. D.P. Road is not required and there would be congestion and pollution. He also submits that majority of the residents have not questioned the proposed 12 mtr. D.P. Road and it is only a few of persons having no concern with Survey Nos.61 and 62, Ghorpadi, who have questioned the sanctioned modifications to the Draft Development Plan of PMC. He submits that the preparation, submission and sanction of a development plan is a legislative process and sanctioned development plan is an instance of subordinate legislation and, therefore, unless any valid grounds are raised to challenge the legislative process, and making of the sub-ordinate legislation, the sub-ordinate legislation cannot be subjected to judicial review and this is a case wherein no such valid ground has been raised by the petitioners.

8. Learned counsel for respondent No.9 further submits that the petitions suffer from inordinate and unexplained delay and if the petitioners are saying that they learnt about the notification containing impugned modifications to the Draft Development Plan in February 2020, the petitioners must be put to strict proof thereof. He also submits that in any case, no reasonable explanation for the laches committed in filing of these petitions has been given by the petitioners and on the contrary, it appears that the petitioners were already knowing about the proposals made vide Draft Development Plan and the entire process which led to its sanction by the notification dated 17th February, 2018 containing impugned modifications. This would only falsify the stand of the petitioners that they were not aware of the process that was going on for sanction of the Draft Development Plan, so submits learned counsel for respondent No.9. Learned counsel for respondent No.9 further submits that the Final Development Plan resulting from the impugned notification dated 17th February, 2018 has already been acted upon by aligning 12 mtr. D.P. Road and now it is the fait accompli which the petitioners must accept. He also submits that there is no political interest or any motive involved in causing of any material gain to anybody in sanctioning the impugned modifications.

9. Learned counsel for respondent No.9 further submits that there is no deletion of any Green Belt and it is a misconception on the part of the petitioners that no activity whatsoever is permissible in the Green Belt. According to him, for preservation of the Green Belt which acts as a green cover, some allied activities are required to be undertaken one of which is of having an access road and, therefore, there was no need for deleting the reservation of Green Belt, for the purpose of construction of proposed 12 mtr. D. P. Road. He contends that the proposed 12 mtr. D.P. Road can even pass through Survey Nos.61 and 62 under reservation of Green Belt.

10. Learned Senior counsel for respondent No.14 submits that the petitioners do not have any locus standi to file these petitions as they are not residents of

Survey Nos.61 and 62 and thus have no concern with the proposed 12 mtr. D. P. Road passing through Survey Nos.61 and 62. He also submits that there is no sufficient explanation given by the petitioners for explaining the delay and laches which have occurred in the present case. He further submits that proper procedure has been followed in the present case in sanctioning the substantial modifications to the Draft Development Plan.

11. We would first consider the preliminary objection coming through the vehement opposition made by respondent Nos.9 and 14 to the maintainability of these petitions at the behest of the petitioners. They contend that none of the petitioners has any locus standi to file these petitions as they are not the persons who are aggrieved by sanctioning of the impugned modifications to Draft Development Plan by the State Government under Section 31 of the MRTTP Act vide its notification dated

17 th February, 2018. They also submit that owners of Survey Nos.61 and 62 have not been joined as party-respondents and that there are laches in filing the petitions.

12. Having regard to the fact that the petitioners have averred that being citizens of Pune and residents of nearby localities, which they indeed are, they have interest in preserving the greenery in Pune and so have a right to keep Green Belt reservation intact and not subjected to any impermissible use, in our view, there is a pleading about cause of action; about legal injury caused to them and, therefore, for redressal of the same, they do have a right to challenge the sanctioned modifications to the Draft Development Plan vide notification dated 17th February, 2018 by filing these petitions. If the petitioners have not joined as party-respondents all the owners of Survey Nos.61 and 62, though they have joined two of them, respondent nos.13 and 14, they need not, for the reason is that it is not their contention that legal injury is caused to them by actions of owners. Their submission is that legal injury is caused by actions of the State and PMC. Their cause of action is not against owners but against State and PMC, and they have made State and PMC as necessary parties. In the matter of planned development of a city, consent of land owners hardly matters in finalizing the Development Plan providing for user of land in terms of Section 22 of the MRTTP Act and it is the decision of the Planning Authority or the State, which is important. When these authorities take decision, they do so for and on behalf of the residents of that city, an indeterminate lot, and, therefore, it is enough that these authorities are made a party to an action brought to challenge their decision. Our conclusion gets support from the cases referred to in the ensuing paragraphs.

13. A challenge similar as one here was made in the case of Harijan Layout Sudhar Samiti and others Vs. State of Maharashtra and others, 1997(2) Mh.L.J. 98, wherein an open space of land admeasuring 2 Acres was shown in the Development Plan of the City of Nagpur as "Green Belt" and this Development Plan when submitted to the State Government was sanctioned by it making it

final and then the State Government by a subsequent resolution granted the said area admeasuring 2 Acres to a housing society for residential purposes. When the petitioners challenged the said allotment in public interest contending that area shown as Green Belt in the sanctioned plan could not have been allotted for housing purposes depriving the general public from a public utility, the challenge was found to be sustainable by the High Court and it held that once the space was earmarked and reserved in the plan, neither the Development Authority nor the State Government could amend the plan in such a way as to disturb its basic features, the reservation of land as Green Belt being one of the basic features. In doing so, the Division Bench relied upon the law laid down by the Apex Court in the case of S.P. Gupta Vs. President of India, AIR 1982 SC 149 and Bangalore Medical Trust Vs. B.S. Muddappa, AIR 1991 SC 1902.

14. In the case of S.P. Gupta (supra) the Supreme Court held that a member of the public having sufficient interest can certainly maintain an action challenging the legality of an act or omission of the State or the public authority, whereby resultant public injury causes a specific legal injury to individual or to a specific class or group of individuals.

15. In the case of Bangalore Medical Trust (supra), the Apex Court held that residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers and that even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law would raise substantial issue of accountability of those entrusted with responsibility of the administration.

16. In the present case also, there is a contention raised by the petitioners that the State Government, while sanctioning impugned modifications to the Draft Development Plan has committed breach of rule of law by providing for impermissible user of part of the land reserved as Green Belt. Such being the contention of the petitioners, we cannot but find that the petitioners have demonstrated their case of legal injury having been caused to them and, therefore, these petitions are maintainable. The objection taken to the maintainability of these two petitions on the ground of locus standi is rejected.

17. About the laches, we find that there is no reason for us to disbelieve contention of the petitioners that they had filed one of the petitions immediately after some of them learnt about the impugned notification in February, 2020. We may state here that Writ Petition No.322 of 2022 appears to be filed in March, 2020. Petitioners contend that they had been raising objections and protests all along and if this is so, there would have been no reason for the petitioners to waste time and approach this court at leisure. We, therefore, find that there is no apparent falsehood in their submission that they learnt about the impugned notification in February 2020. We thus find that there are no laches as such on the part of the petitioners.

18. Now, let us turn to merits of the petitions. The rival contentions made before us revolve around the objection that the State Government, while sanctioning Draft Development Plan could not have sanctioned it by making its own modifications in such a manner as to amount impermissible use of part of the Green Belt reserved as such in Survey Nos.61 and 62 of Ghorpadi, unless such user was permissible or made permissible by deletion of the reservation as Green Belt provided for in the Development Plan in respect of Survey Nos.61 and 62, Ghorpadi, Pune. In other words, the question that these contentions raise is –

Can State Government while sanctioning the Draft Development Plan in exercise of its power under Section 31 of the MRTP Act make such modifications to the Draft Development Plan as to propose a D.P. Road that passes through part of the Green Belt reservation provided for in the lands bearing Survey Nos.61 and 62 ?

19. The answer to the question would depend upon the kind of uses that are permitted in the relevant Regulations, here Regulation No.16.8.1 of the DCPR-2017 is relevant and whether insertion of a new road in the Draft Development Plan is a modification of substantial nature.

20. In the present case, it is seen from the impugned notification dated 17 th February 2018, that because of failure of the Planning Authority i.e. PMC to take its decision on the report of the Planning Committee, which was submitted to it after considering suggestions and objections to the Draft Development Plan proposed by PMC vide its Resolution dated 4th March 2013, the State Government appointed a Committee to complete the procedure relating to proposing, submitting and sanctioning the Draft Development Plan, in exercise of its power under Section 162 of the MRTP Act. It is further seen that this Committee considered the modifications and changes made to the Draft Development Plan by the Planning Committee under Section 28(4) of the MRTP Act before submitting the Draft Development Plan for its sanction to the Government under Section 30 of the MRTP Act. It is further seen that after the Committee submitted the Draft Development Plan with modifications and changes thereto to the State Government under Section 30 of the MRTP Act, the Government initially sanctioned a part of the Draft Development Plan by excluding therefrom some modifications of substantial nature and thereafter, upon following requisite procedure, also sanctioned the remaining excluded parts of the Draft Development Plan under Section 31(1) of the MRTP Act, vide it's notification dated 17th February, 2018. It is further seen from Part-C, Schedule-A to the notification dated 17th February 2018 that the proposal for sanction of Draft Development Plan sent to the Government did not include any user of Green Belt for the purpose of realignment of proposed 12 mtr. north-south road along Nala and Green Belt in Survey No.62 but, while giving it's sanction under Section 31(1) of the MRTP Act, the State Government ultimately sanctioned the Draft Development Plan with further modifications so as to propose a 12 mtr. north-south road passing along side Nala in Survey No.62 and partly through

Green Belt in Survey No.62 vide modification no.EPR-19.

21. Under Section 31(1) of the MRTP Act, no-one can doubt, the State Government has the power to sanction the Draft Development Plan submitted to it without modifications or subject to such modifications as it may consider proper. Under Section 31(1) of the MRTP Act, it also has the power to return the Draft Development Plan to the Planning Authority for modifying the plan in a manner as directed by it or refuse to accord sanction and direct the Planning Authority to prepare a fresh Development Plan. In the present case, the Draft Development Plan submitted to the State Government under Section 30(1) of the MRTP Act did not propose any such modification like 12 mtr. north-south road giving along Nala in Survey No.62 and partly through Green Belt. But, while giving its sanction to the Draft Development Plan, the State Government introduced a modification to the Draft Development Plan and permitted passing of 12 mtr. north-south road along Nala in Survey No.62 in a manner as a part of it would go through the Green Belt. It is also seen that while doing so, the State Government did not delete the Green Belt reservation to the extent the 12 mtr. north-south road would pass through part of the Green Belt in Survey No.62. This modification is EPR-19. However, we must mention here that while sanctioning the modification known as EPR-39, which is in respect of alignment of proposed 12 mtr. North-South road in Survey No.62, Ghorpadi along Green Belt and Nala, the State Government, though made a further modification by extending the road towards North side from East side of reservation No. HS-20 and PG-84, along Nala up to 18 mtr. East-West road, did not make any such modification as to propose alignment of the proposed 12 mtr. North-South road by further extending it into any Green Belt. For the sake of convenience, Part-C of Schedule-A to the notification dated 17th February 2018, containing proposals of Draft Development Plan submitted under Section 30 of the MRTP Act and substantial modifications made by the Government while sanctioning the Draft Development Plan under Section 31 of the MRTP Act is extracted as below :-

"SCHEDULE – A

SUBSTANTIAL MODIFICATIONS SANCTIONED BY THE GOVERNMENT

UNDER SECTION 31(1)

OF THE MAHARASHTRA REGIONAL & TOWN PLANNING ACT-1966.

(ACCOMPANIMENT TO THE GOVERNMENT NOTIFICATION NO.TPS-1815/209/
CR-69/15/DP-Pune/Sanction IUD-13, DATED 17/02/2018)

Substantial modifications in respect of Proposed Roads.

Sr.

No.

Sheet No.

Modifica

-tion No.

Proposals of Draft Develop- ment Plan published under Section 26 of the MR & TP Act,

1966

Proposals of Draft Develop- ment Plan submitted under Section 30 of the MR & TP Act,

1966

Substantial Modifications made by the Government while sanctioning the Draft Development Plan under Section 31 of the MR & TP Act, 1966(EP)

Substantial Modifica- tions Sanctioned by Govern- ment Under Section 31(1) of the MR & TP Act,

1966 (Eps)

1

2

3

4

5

6

7

Substantial Modification in Respect of Propose Roads- Non-Congested Area

9

7 &

10

EPR-19

HS-20, PG-

84 and Green Belt along Nala, Ghorpadi.

HS-20,

PG-84 and Green belt along Nala, Ghorpadi

12m North-South road along Nala in

S. No.62 Ghorpadi, is proposed to be connected to 18m East-West DP road at

the North side of PG-84 by new road
along Eastern Boundary of HS-20, PG-84 and partly in Green belt as
shown on Plan.

Sanctioned as Proposed.

39

10

EPR-39

Proposed 12m North- South road in S No. 62 Ghorpadi along green belt and
Nala.

Proposed 12m North- South road in S No.

62

Ghorpadi along Green belt and Nala.

i) Alignment of proposed 12m

North-South road in S No. 62 Ghorpadi, is proposed to be realigned towards
East of S No.62 along nala boundary. This 12m wide road is proposed to be
further extended

Sanctioned as proposed

towards North side from East side of Reservation No. HS- 20 and PG-84,
along Nala up to 18M East-West road as shown on Plan.

ii) 12m wide Road passing through S No.63 and 64 is

proposed to be widened to 18m. This road is further extended up to 18m East-
West road at the North through Reservation No. HS- 20 and PG-84 from West
side as shown on Plan.

iii) Part of 12m road at South side

along South boundary of Reservation No. HS- 20 is proposed to be deleted as
shown

on Plan.

22. The modifications made by the State Government to the Draft Development
Plan submitted to it under Section 30 of the MRTD Act, clearly show that it is only
the modification No.EPR-19, which proposes a 12 mtr. north-south road along
eastern boundary of HS-20 and PG-84 and "partly in Green belt", as shown in the
plan appended to notification dated 17th February, 2018. This is not so, however,
in respect of modification No. EPR- 39. It does not show anywhere that the State

Government while sanctioning the proposal regarding 12 mtr. north-south road in Survey No.62 along Green Belt and Nala has made any such modification as to lead to user of any part of Green Belt for the purpose of proposed realignment of 12 mtr. North-South road by stretching it towards East of Survey No.62 along Nala boundary. This would make it clear that out of two modifications, only one modification, modification no.EPR-19, which affects the Green Belt, and the other modification, modification no.EPR-39 does not affect the Green Belt. The question is whether there is any Green Belt reservation in the land in question? Reply of respondent no.9-PMC helps us find an answer.

23. Reply of respondent No.9 – PMC shows that there is no dispute about the fact that there is in existence a Green Belt reservation in the lands bearing Survey Nos.61 and 62 and that would mean that it is to be subjected to any such use as construction of a DP road, it would be a modification of Green Belt reservation of substantial nature. It is, however, the submission of the PMC that such user for making of a public road is permissible and necessary and also that forest and Green Belts are the facilities which cannot be maintained and preserved without providing any access road to them. It is further submitted by learned counsel for respondent No.9, PMC that making of road through a Green Belt does not amount to its user and it only amounts to providing of an amenity for preservation of a Green Belt. He relies upon definition of "Amenity" given in Section 2(2) of the MRTP Act. Alternatively, he also submits that the modifications in question sanctioned by the State Government while notification dated 17th February, 2018 themselves modify the Green Belt reservation to the extent of those modifications.

24. We have just now seen that out of two modifications, modification No. EPR-19 and EPR-39, sanctioned by the State Government, it is only one modification bearing No. EPR-19 which partly affects the Green Belt for the purpose of making of a proposed 12 mtr. north-south road in Survey No.62 and the other modification bearing No. EPR-39 does not affect in any manner the Green Belt. The modifications EPR-19 and EPR-39 also show as against what is contended by the petitioners, that they do not affect larger portion of the Green Belt reservation in Survey No.61 and 62, Ghorpadi Pune, rather, only one of the modifications i.e. modification No.EPR-19 which adversely affects the Green Belt in Survey No.62 and that too only for a part of it. The whole challenge in these petitions is centered on impermissible use of Green Belt without deletion of the reservation on the land as Green Belt. It is also an admitted fact that there is a Green Belt reservation in existence and although respondent No.9 has alternatively submitted that the modifications to the Draft Development Plan sanctioned vide notification dated 17th February, 2018 themselves amount to the deletion of the Green Belt to the extent necessary, the submission cannot be accepted for the reason that Green Belt is something for which every development plan must provide for under Section 22 of the MRTP Act along with the other proposals for use of the land for such purposes as residential, industrial, commercial, agricultural, recreational and other purposes as

prescribed in Chapter III of the MRTTP Act. Therefore, if any Green Belt reservation is proposed to be deleted, which would be a substantial modification, there must be a proper proposal made in the Draft Development Plan prepared under Section 26 or in the final Development Plan under Section 37 of the MRTTP Act and objections thereupon must be called and heard and the entire procedure contained in Chapter III of the MRTTP Act, as applicable, must be followed. After all, Green Belts serve as green lungs of the city. They supply oxygen necessary for survival of all living beings and also reduce air and sound pollution by absorbing toxic elements in air and acting as sound barriers. Apart from that, they improve moisture content of air, increase ground water table by recharging it and prevent soil erosion. They play key role in flood control and provide food, shelter and shade to all living beings including men. They also serve as renewable source of energy and raw material for myriad activities of humans, birds, animals and insects. Importance of Green Belts in cities bereft of trees and abounding in concrete and bitumen all over is felt even in a more emphatic way and, therefore, for removal of any reservation of Green Belt, a separate proposal must be moved and must be sanctioned by following the procedure as contained in Sections 26, 27, 28, 30 and 31 or Section 37 of the MRTTP Act. This procedure not having been followed in the present case, the contention that the modification No. EPR-19 sanctioned by the State Government vide its notification dated 17th February 2018 itself amounts to part deletion of the Green Belt reservation cannot be accepted and is rejected.

25. Now the question would be whether sanctioning of the proposed 12 mtr D.P. Road in a manner as to let it pass through the part of the Green Belt would amount to such user of the Green Belt as is not permissible under DCPR-2017, Pune, or not. According to respondent No.9, it is a permissible user inasmuch as it amounts to providing of an amenity and not user of Green Belt. The controversy can be resolved by considering relevant Regulation. Regulation 16.8.1 of DCPR-2017 is relevant. It gives list of permissible uses of Green Belt. For the sake of convenience, it is reproduced as below :-

"16.8.1 Following uses shall be permissible.

- i) Agriculture,
- ii) Tree Plantation, Gardens, Landscaping, public park Landscaping, Forestry and Nursery etc.
- iii) River front development by Municipal Corporation, or any institution authorised on behalf of Municipal Corporation.
- iv) Development of pedestrian pathways, Jogging track, Cycle track, Boat club etc.
- v) Swimming pool, club house, recreational facilities after leaving marginal distance of 15m. belt along river bank and 9.0m. from river and nalas, respectively subject to FSI of 10% with ground floor structure only.

vi) Public toilets as per requirement.

vii) Recreational open space of any layout/sub-division/development proposals, if submitted along with the developable land adjoining to such green belt, after leaving marginal distances of minimum 15m. and 9.0m. from river and nalas, respectively, (clarification – it is clarified that the FSI of the land under green belt zone shall be permissible to be utilized on the land adjoining but outside such green belt zone.)”

26. It would be clear from the above referred uses that making of a D.P. Road in Green Belt is not a permissible user. There is also another regulation, Regulation 16.8.3, which indicates that the land under Green Belt zone can be used by Municipal Commissioner for those public purposes, which are mentioned in Regulation 16.8.1 and for that purpose, duty is cast upon the land owner to hand over the possession of his land for the development and maintenance of the said public purposes. So, these regulations clearly show that making of a D.P. Road in Green Belt is not permissible in the first place and whatever use is permissible in Green Belt, it must be made by Municipal Commissioner and not by anybody else.

27. Having got an idea about permissible uses in Green Belt, we can now say that modification No. EPR-19, to the extent it proposes passing of a D.P. Road in Survey No.62 through part of the Green Belt is inconsistent with Regulation No.16.8.1 of DCPR-2017 for Pune City and, therefore, illegal and bad in law. No modification in a Draft Development Plan can be sanctioned in violation of Development Control and Promotion Regulations and therefore, to this extent modification No. EPR-19 cannot be sustained in the eye of law.

28. As regards the contention that by the proposed D.P. Road, only the access to Green Belt for the purpose of its maintenance and preservation has been provided. The contention is factually incorrect as the modification Nos. EPR-19 and EPR-39 suggest that a 12 mtr. north-south road along Nala in Survey No.62, Ghorpadi has been proposed not for providing access to Green Belt, but for providing access to 18 mtr. East-West D.P. Road at the north side of PG-84 and for realignment of proposed 12 mtr. north-south road towards east of Survey No.62 along Nala boundary. The contention is, therefore, rejected.

29. About the submission that providing of D.P. Road is like providing for an amenity and not user of any land, we must say that the submission is only in the nature of play of words and nothing more. If providing of a development plan is an amenity, it is indeed an amenity as per the definition under Section 2(2) of the MRTP Act, providing of a Green Belt is equally an amenity within the meaning of Section 2(2) of the MRTP Act, as it is capable of being covered by the expression “and includes other utilities, services and conveniences”. Then, making a provision for Green Belts is also a part of duty of the Planning Authority while submitting Draft Development Plan for it’s sanction to the State Government as they are amongst the essential ingredients of contents of Development Plan under Section 22 of the MRTP Act. The submission is rejected.

30. It is also argued on behalf of respondent no.9 that no legal ground is raised to challenge a subordinate legislation that a sanctioned Development Plan is. There is no merit in this submission, as the challenges that we have examined and found substance in upto now are only grounded in law. The argument is rejected.

31. The discussion thus far made would show that there is a Green Belt reservation provided for in Survey No.62 and the proposed 12 mtr. north-south road sanctioned vide modification No.EPR-19 partly passes through the Green Belt, which is part of Survey No.62. It further shows that the other modification No. EPR-39 does not affect the Green Belt in any manner. It further shows that there is no deletion of the Green Belt reservation to the extent it is affected by modification No.EPR-19 by making a fresh proposal and following the procedure prescribed in MRTP Act. To put it in different words, while the Green Belt reservation exists, there is part use of the Green Belt for making of 12 mtr. north-south road which is not permissible under Regulation 16.8.1 of DCPR-2017 for Pune Municipal Corporation. Thus, one of the impugned modifications, modification no.EPR-19, made to the Draft Development Plan while sanctioning it under Section 31(1) of the MRTP Act by the State Government vide notification dated 17th February 2018 is, in our opinion, without any authority of law and is liable to be quashed and set aside. This is, however, not so in respect of the sanctioned modification no.EPR-39 and to this extent, the challenge made in these petitions must fail.

32. The petitioners have also raised objections about sanctioning of impugned modifications on such grounds as non-consideration of objections and report of Planning Committee, not following prescribed time-lines, there being no necessity to have proposed DP Road and increasing of congestion and pollution. We, however, do not find any substance in these additional grounds of objections as there is nothing on record which shows that no proper procedure and no proper time-lines have been followed by the authorities, nor is there any data generated upon a field research made into the subject to support the apprehension of increase in pollution, crowding, congestion and no necessity.

33. It is contended that the impugned modifications have already been acted upon and there is also a process initiated for grant of TDR to the owners having their interest in Survey Nos.61 and 62. If the TDRs are already granted, as rightly submitted by learned Senior Advocate for the petitioners, the lands under Green Belt reservation would stand vested in respondent No.9 and then, we do not think that there would be any impediment for respondent No.9 to propose further modifications to the Development Plan and submit the same for sanction by following prescribed procedure to the State Government so as to remove the illegality committed by the State Government while sanctioning modification no.EPR-19. In this view of the matter, we find that these petitions deserve to be partly allowed.

34. The Writ Petitions are partly allowed and modification No. EPR-19 made to

the Draft Development Plan vide notification dated 17th February, 2018 to the extent it permits passing of 12 mtr. north-south road along Nala in Survey No.62, Ghorpadi, Pune particularly through Green Belt as shown in the Plan is quashed and set aside. Rest of the prayers made in the petition are hereby rejected.

35. Interim Application No.1025 of 2021 in Writ Petition No.321 of 2022 and Interim Application No.124 of 2022 in Writ Petition No.322 of 2022 are disposed of in the above terms.

36. Rule is made absolute in the above terms. No costs.

37. At this stage, at the request of Mr. Rahul Soman, learned counsel for respondent no.14, the effect and operation of this judgment is kept in abeyance for a period of six weeks from today and till that time, at the request of learned counsel for the petitioners, parties are directed to maintain status-quo in respect of the impugned modifications.