
(2001) 08 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 3498 of 2000 with Civil Application No's. 8320, 9246, 9248-50 of 2000 and 50, 51 and 210 of 2001

M.A. Panshikar

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 258
Maharashtra Regional and Town Planning Act, 1966 — Section 154, 21, 21(2), 21(5), 22

Citation : (2002) 5 BomCR 318 : (2001) 4 BOMLR 662

Hon'ble Judges : B.P. Singh, C.J.;Ranjana Desai, J

Bench : Division Bench

Advocate : G.E. Vahanvati, A.G., N.P. Deshpande, Assistant Government Pleader, S.G. Aney, S.M. Oak and R.S. Apte, V.M. Thorat, for P.N. Patil, Shekhar Naphade, for A.A. Kumbhakoni, Y.S. Jahagirdhar, for A.A. Kumbhakoni and P.K. Dhakephalkar, S.V. Pitre;A.V. Anthurkar, for the Appellant;

Final Decision : Dismissed

Judgement

B.P. Singh, C.J.—In this writ petition, the petitioner has prayed for quashing and setting aside three Notifications issued by the Urban Development Department of Respondent No. 1, the State of Maharashtra, all dated 4th October, 1999. The Notifications have been annexed to the Writ Petition as Exhibit "Q" (Colly) (hereinafter referred to as "the first, second and third Notifications"). By the first Notification, the State Government, in exercise of powers conferred by Sub-section (1) of Section 31 of the Maharashtra Regional and Town Planning Act, 1966 ("M.R.T.P. Act", for short), has sanctioned the Draft Development Plan submitted by Respondent No. 2, Thane Municipal Corporation, subject to certain modifications. The State Government, by the impugned Notification, has not granted sanction to the entire Draft Development Plan as submitted by Respondent No. 2- Corporation, because it was of the view that some modifications in the said plan are necessary, which were of substantial nature,

requiring re-publication u/s 31 of the M.R.T.P. Act. The Plan submitted by Respondent No. 2- Corporation, excepting the modifications by the Government, which are considered to be of substantial nature, has been sanctioned. The Petitioner has impugned this Notification on the ground that the congested area sanctioned in the Development Plan does beyond the limits of Gaothan as shown in the Draft Development Plan. In other words, the Development Plan as sanctioned has congested area beyond the limits of Gaothan area.

The second Notification issued by the State Government is under Sub-section (1) of Section 31 of the M.R.T.P. Act sanctioning the Draft Development Control Regulations submitted by Respondent No. 2-Corporation specifying that the congested area shall be as shown in the Development Plan as sanctioned by the State Government by its first Notification, and that permissible F.S.I. (Floor Space Index) in congested area shall be 1.5 for purely residential use, and in case of mixed residential and commercial use additional F.S.I, shall be 0.5. for the commercial use only, and provision made in paragraph N.1. 1.2, (b), (c), N.1.1.3, N.1.1.4, N.1.1.5, shall be applicable for development in congested area. The Petitioner impugns this Notification on the ground that there is an increase in F.S.I, for the congested area which is a modification of a substantial nature as enumerated in Section 22A of the M.R.T.P. Act, and the said modification has been sanctioned without following the procedure laid down in the second proviso of Section 31(1) of the M.R.T.P. Act.

The third Notification had been issued by the State Government in exercise of powers conferred by Sub-section (2) of Section 37 of the M.R.T.P. Act, whereby the proposal for modification of the Final Development Plan made by the Planning Authority, viz., Respondent No. 2-Corporation, after following the necessary legal formalities u/s 37 of the M.R.T.P. Act, has been sanctioned. The Petitioner impugns this Notification on the ground that additional F.S.I, has been illegally given for the reconstruction/redevelopment schemes relating to dilapidated buildings.

2. The case of the Petitioner is that before Respondent No. 2-Corporation was established, there was the erstwhile Thane Municipal Council. The Development Plan for the erstwhile Thane Municipal Council, along with the Development Control Rules, was sanctioned by the Government by a Notification dated 3rd October, 1974, which came into force with effect from 4th November, 1974. Under the said Development Control Rules of 1974, the F.S.I. : 1.33 was prescribed for the Gaothan area as shown in the Sanctioned Development Plan of 1974. For the lands falling outside the Gaothan, the F.S.I, permissible was F.S.I. : 1. Respondent No. 2-Thane Municipal Corporation was established by Government Circular dated 1st October, 1982 for the area falling within the jurisdiction of the erstwhile Municipal Council, to which 32 villages were added. After its establishment. Respondent No. 2-Corporation followed the provisions of the Sanctioned Development Control Rules of 1974 in the matter of grant of development permission under the M.R.T.P. Act. Respondent No. 2-Corpora-Uon

carried out modifications in the said Sanctioned Development Control Rules, 1974 and published the same on 1st July, 1985. The said published Draft Development Control Rules also provided F.S.I. : 1.33. for the Gaothan area as shown in the Sanctioned Development Plan of 1974 and F.S.I. : 1 for other lands falling outside the Gaothan. After considering the objections and suggestions received from the public, the general body of Respondent No. 2-Corporation on 2nd May, 1988 resolved to send the revised Draft Development Control Rules, 1985 to Respondent No. 1, State of Maharashtra, for sanction, and the same was actually sent to the State Government on 29th July, 1988.

3. The case of the Petitioner is that several owners, developers and architects submitted their respective development proposals to Respondent No. 2-Corporation under the provisions of the M.R.T.P. Act between the years 1988 and 1992. On the basis of letters issued by the District Inspector of Land Records, they claimed lands which really did not fall within the Gaothan area as lands falling within the Gaothan. On such misrepresentation, they got sanctioned development proposals. Though the permissible F.S.I. in respect of the lands was only 1, they were granted F.S.I. : 2, even though for the Gaothan area, the permissible F.S.I., was only 1.33. Similarly, the developers of lands falling within the Gaothan also obtained development permission claiming the F.S.I.: 2, instead of 1.33 permissible under the Development Control Rules. Such development permissions with F.S.I.: 2 were fraudulently obtained and granted against which the Petitioner represented to the officers of Respondent No. 2-Corporation who, however, justified the development permissions granted to the aforesaid developers. The Petitioner, thereafter, brought this fact to the notice of the Settlement Commissioner and Director of Land Records, Pune, Maharashtra State, who addressed a letter to Respondent No. 2- Corporation informing it that while granting development permission to lands falling outside the Gaothan area, such permission was granted by wrongly treating the lands as falling within the Gaothan. The Petitioner brought this fact to the notice of the Secretary, Urban Development Department, Government of Maharashtra, who directed the Collector of Thane and the Commissioner of Respondent No. 2 hold an enquiry in the matter of development permissions granted and obtained pursuant to a fraudulent plan. The Collector of Thane did make an enquiry, and thereafter wrote to the State Government to re-consider sanction of the development permissions with respect to the lands which really fell outside the Gaothan area, but which were granted permissions treating them as falling within the Gaothan area. The Petitioner also represented to the Consolidation Officer, Thane, who wrote a letter dated 31st July, 1992 to Respondent No. 2-Corporation directing that all the certificates issued by the District Inspector of Land Records with respect to the list of lands falling outside the Gaothan area be treated as cancelled, as the same had been issued illegally. When the scandal came to public notice, the new Commissioner of Respondent No. 2- Corporation, exercising powers u/s 258 of the Bombay Provincial Municipal Corporations Act and Section 51 of the M.R.T.P. Act, issued show cause notices on 5th August,

1992 to 10 developers who had got their development proposals sanctioned by misrepresenting that the said lands fell within Gaothan.

The show cause notices were challenged by some of the developers by way of civil suit, and they got the show cause notices stayed. Respondent No. 2-Corporation, thereafter, challenged the orders staying the show cause notices in this Court, which stayed the order of stay of show-cause notices dated 5th August, 1992 passed by the Civil Court, Thane. Thereafter, on 3rd November, 1992, the Commissioner of Respondent No. 2-Corporation directed the demolition of the illegal buildings constructed by such developers after revoking development permissions granted to them. Ultimately, the High Court directed the Commissioner of Respondent No. 2 to examine the entire issue again, and dispose of the same by passing a speaking order.

4. Respondent No. 2-Corporation appointed the Deputy Municipal Commissioner to hold an enquiry into 6 scandalous Development Permissions granted by Respondent No. 2-Corporation. After investigation, the Deputy Municipal Commissioner came to the conclusion that the development permissions had been fraudulently obtained by the developers by misrepresenting facts. It is not necessary to refer to the facts stated by the Petitioner in the Writ Petition regarding the various representations made by him to the authorities of Respondent Nos. 1 and 2 and the action taken by them. It may, however, be noted that under the directions of this Court, the Commissioner of Respondent No. 2-Corporation re-examined the development permissions granted in respect of 6 lands which fell outside the Gaothan area, but by Order dated 16th April, 1993, he held that those 6 lands were Gaothan lands. However, the Petitioner again represented to the State of Maharashtra, pursuant to which representation, the State of Maharashtra issued directions u/s 154 of the M.R.T.P. Act to the then Commissioner of Thane Municipal Corporation, Respondent No. 2. The said directions have been annexed as Exhibit "J".

5. The Petitioner has further stated that pursuant to the directions, Exhibit "J", in the month of May, 1993, the Commissioner of Respondent No. 2-Corporation issued notices to the owners, developers and architects, who had raised illegal constructions, for violation of the Development Rules.

6. The case of the Petitioner is that by Notification dated 19th June, 1993 (Exhibit "L") issued by the State of Maharashtra. Respondent No. 1 sanctioned the modifications of the Development Control Regulations, 1985. This Notification also clarified which lands were to be treated as Gaothan, and further clarified that the F.S.I. to be allowed to the Gaothan was 1.33, and for the rest of the lands only 1. Accordingly, the show cause notices were issued to the owners, developers and architects to re-submit their plans consistent with the Notification dated 19th June, 1993. Some of the developers challenged the notices issued to them by filing a suit, and obtained orders in their favour. Respondent No. 2, however, challenged the directions and orders passed in the suit filed by the developers, but the said Appeal was dismissed by this Court.

7. The Petitioner has further stated that Respondent No. 2, after following the legal formalities under Sub-section (1) of Section 30 of the M.R.T.P. Act, firstly, submitted the Draft Development Control Regulations of 1994, and thereafter, on 19th September, 1994, as per the directions of Respondent No. 1, the revised Draft Development Control Regulations, 1994 for sanction u/s 31 of the M.R.T.P. Act. By Notification dated 28th April, 1995, the State of Maharashtra sanctioned the said revised Draft Development Control Regulations, 1994 excluding sanctions to Regulations in respect of development/redevelopment of congested area, grant of Transferable Development Rights and development around hazardous industries. The F.S.I, continued to be 1.33 for Gaothan and 1 for rest of the land. The aforesaid Notification dated 28th April, 1995 has been annexed as Exhibit "O".

8. On 16th December, 1994, Respondent No. 2-Corporation submitted its Draft Development Plan to the State Government for sanction. The said Draft Development Plan was returned by the State Government, and after complying with all the formalities, the revised Draft Development Plan was re-submitted to the Government on the 19th February, 1996. In this revised Draft Development Plan, the congested area was shown as Gaothan. Under the revised Draft Development Plan also, the F.S.I, to be allowed to the congested area was 1.33 and for the rest of the land 1. The Petitioner has produced at Exhibit "P" the Resolution of Respondent No. 2-Corporation dated 27th October, 1995 by which Respondent No. 2 resolved to send the said revised Draft Development Plan to Respondent No. 1 u/s 31 of the M.R.T.P. Act.

9. By the first Notification dated 4th October, 1999, the revised Draft Development Plan with modifications was sanctioned by the State of Maharashtra. According to the Petitioner, Respondent No. 1, State of Maharashtra, inter alia, extended the congested area as shown by Respondent No. 2-Corporation by adding lands which are non-agricultural lands.

On the same day, by the second Notification dated 4th October, 1999, the State of Maharashtra raised the F.S.I, in respect of congested area. The third Notification of the same date modified the sanctioned Development Control Rules, 1994, and raised the F.S.I, for dilapidated buildings to a maximum of F.S.I. : 3.

10. The Petitioner has challenged the three Notifications issued on the 4th October, 1999 on various grounds. According to the Petitioner, the State Government was not Justified in extending the congested area to the lands which did not fall within the Gaothan area as shown in the revenue records. This was done contrary to the Resolution of Respondent No. 2-Corporation dated 27th October, 1995. This was also inconsistent with the Government's earlier Notification of 19th June, 1993, Exhibit "L". The same was also contrary to the Guidelines issued by the State of Maharashtra on 3rd July, 1993, which clearly directed all local Planning Authorities in the State that the congested area should be confined to the Gaothan area, and, in fact, to exclude certain areas within the

Gaothan which were not congested by determining portions of the congested area.

11. The second Notification has been challenged on the ground that the increase in F.S.I, for lands falling within the congested area was done mala fide with an intention to protect and shield the illegal and unauthorised constructions made by the developers. In view of the second Notification, the constructions which were illegal will now be protected, and become authorised under the second Notification. It was, indeed, surprising that having taken action against such developers who had obtained Development Permissions by practising fraud, the State of Maharashtra wanted to favour them by increasing F.S.I, so as to legalise the constructions which were earlier illegally raised. The Notification did not seek to achieve the objective of the M.R.T.P. Act of removing congestion. On the contrary, it added to the congestion by granting increased F.S.I.

As noticed earlier, the Development Control Regulations submitted in September, 1994 were only partially sanctioned, excluding sanction to Regulations in respect of development/redevelopment of congested area, grant of Transferable Development Rights, and development around hazardous industries. In the meantime, the revised Development Plan u/s 30(1) of the M.R.T.P. Act was submitted to the Government of Maharashtra for sanction by Respondent No. 2 on 19th February, 1996. After considering all aspects of the matter, and after consulting the Director, Town Planning, the Government decided to sanction the Draft Development Control Regulations in respect of development/ re-development in congested area in the following terms :

"(A) Congested area shall be as shown on Development Plan sanctioned vide Government Notification No. TPS. 1297/1319/cr 148/97/UD-12, dated 4th October, 1999.

(B) Permissible F.S.I. in congested area shall be 1.5 for purely residential use and in case of mixed residential and commercial use additional F.S.I, shall be 0.5 for the commercial use only shall be permitted.

(C) Provisions made in para N.1. 1.2, (b). (c), N.1.1.3, N.1.1.4, N.1.1.5, shall be applicable for development in congested area."

This decision of the Government to sanction the Draft Development Control Regulations relating to congested area is contained in the second impugned Notification of 4th October, 1999.

It is also contended that modifications of substantial nature are required to be dealt with under second proviso of Section 31(1) of the M.R.T.P. Act, which requires publication of notice in the Official Gazette and also in local newspapers inviting objections and suggestions in respect of the proposed modifications. Section 22A of the M.R.T.P. Act, particularly Clause (f) thereof, was attracted, since the modifications were substantial modifications within the meaning of Section 22A of the M.R.T.P. Act, as the F.S.I, was increased beyond 10% of the

F.S.I, prescribed in the Development Control Regulations. The procedure laid down u/s 31(1) of the M.R.T.P. Act ought to have been followed by Respondent No. 1 -State of Maharashtra if such modifications were proposed.

As regards the third Notification, the case of the Petitioner is that Respondent No. 1 -State of Maharashtra ought not to have exercised powers u/s 37 of the M.R.T.P. Act, since the modifications changed the character of the Development Plan. There was, in fact, no necessity of granting additional F.S.I, for the reconstruction of dilapidated buildings, and this was done without considering any relevant material on the question. As a result, for re-construction of dilapidated buildings, the builders will now get the F.S.I, up to 3, resulting in erection of multi-storeyed towers in an already congested area. All this has been done contrary to the procedure laid down by the M.R.T.P. Act for carrying out modifications.

12. The learned Advocate-General, who appeared on behalf of the State of Maharashtra, submitted that the writ petition proceeds on incomplete facts, and, therefore, gives a very distorted picture. If all the relevant facts are noticed, it would appear that no illegality has been committed by the State of Maharashtra in the issuance of the three Notifications. It is submitted that though not expressly stated in the Writ Petition, all the relevant facts are on record, and he, in particular, referred to the recitals contained in the impugned Notifications, as also the earlier Notifications, Exhibit "L", dated 19th June, 1993, and Exhibit "O" dated 29th April, 1995, filed by the Petitioner. He also submitted that the Writ Petition seems to mix up the two issues that arise for consideration. The first pertains to the challenge to the two Notifications dated 4th October, 1999, the first of which sanctions the Development Plan u/s 31(1) of the M.R.T.P. Act, and the second sanctions the Draft Development Regulations in respect of congested area. The second issue pertains to the third Notification of the same date which sanctions the modifications to the Development Control Regulations in respect of dilapidated buildings u/s 37(2) of the M.R.T.P. Act. According to him, these two issues must be dealt with separately, and should not be mixed up, because the former is in exercise of powers u/s 31(1) of the M.R.T.P. Act, while the second issue relates to exercise of powers u/s 37(2) of the M.R.T.P. Act.

Before noticing the facts as narrated by the Advocate-General, we may first examine the scheme under the M.R.T.P. Act for the preparation and sanction of the Development Plan.

13. Under the M.R.T.P. Act, "Planning Authority" has been defined to mean a local authority, including a Special Planning Authority constituted or appointed u/s 40, and a Slum Rehabilitation Authority appointed u/s 3A of the Maharashtra Slum Area (Improvement, Clearance and Re-development) Act, 1971.

"Local authority" has been defined to mean the Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act, and the Nagpur Municipal Corporation or any Municipal Corporation under the Bombay Provincial

Municipal Corporations Act, 1949, as also a Municipal Council constituted under the Maharashtra Municipalities Act, 1965. It is not necessary to refer to the rest of the definition of "Local authority".

"Development Plan" has been defined to mean 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 proposal of a Special Planning Authority for development of land within its jurisdiction.

14. Chapter 111 of the M.R.T.P. Act deals with the Preparation, Submission and Sanction to Development Plan.

Section 21 of the M.R.T.P. Act, shorn of unnecessary details, mandates that any Planning Authority shall carry out a survey, prepare an existing land-use-map and prepare a Draft Development Plan for the area within its jurisdiction, in accordance with the provisions of a Regional Plan, and submit the plan to the State Government for sanction. Sub-section (2) of Section 21 provides that every Planning Authority constituted after the commencement of the M.R.T.P. Act, shall, not later than three years from the date of its constitution, prepare a Draft Development Plan, and publish a notice of such preparation in the Official Gazette, and submit the Draft Development Plan to the State Government for sanction. Sub-section (5) provides that every local authority, which is a Planning Authority, if converted into, or amalgamated with, any other local authority or is sub-divided into two or more authorities, the Development Plan prepared for the area by that Planning Authority so converted, amalgamated or sub-divided, shall with such alterations and modifications, as the State Government may approve, be the Development Plan for the areas of the new Planning Authority or Authorities into or with which the former Planning Authority is converted, amalgamated or sub-divided.

Section 22 relates to the contents of Development Plan. A Development Plan shall indicate the manner in which the use of land in the area of the Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. Clauses (a) to (m) of Section 22 specify the matters relating to which provision should be made in the Development Plan. It is not disputed that the Development Control Regulations or Development Control Rules framed by the Planning Authority, and sanctioned by the State Government, are also part of the Development Plan. Section 22A, which was inserted by Maharashtra Act 39 of 1994-with effect from 17th August, 1994, explains what is meant by the expression "modifications of a substantial nature" used in Section 29 or 31 of the M.R.T.P. Act in relation to the modifications by the Planning Authority or the State Government in the Draft Development Plan.

15. The planning process begins with the Planning Authority making a declaration of its intention to prepare a Development Plan. Section 23 requires the Planning Authority to pass a resolution making such a declaration of its intention, and to

send a copy of such resolution, with a copy of a plan showing only the boundary of the entire area proposed to be included in the Development Plan, to the State Government. Notice of such declaration is required to be published in the Official Gazette, and also in one or more local newspapers in the prescribed manner, inviting suggestions and objections from the public. After such a declaration is made and published, the Planning Authority is required to appoint an officer as the Town Planning Officer with the previous sanction of the State Government. The said Town Planning Officer has to carry out surveys of the area and perform other duties enumerated in Section 24 of the M.R.T.P. Act. Thereafter, u/s 25, the Planning Authority is required to carry out survey of the lands within the jurisdiction of the Planning Authority, and prepare an existing land-use map indicating the existing use of land therein. u/s 26, the Planning Authority is required to prepare the Draft Development Plan, and publish a notice in the Official Gazette and in such other manner as may be determined by it stating that the Development Plan has been prepared. The Development Plan shall be made available for inspection by the public, and copies thereof or extract therefrom shall be available for sale to the public at a reasonable price. The notice shall invite objections and suggestions within a period of 60 days from the date of notice in the Official Gazette. In preparing the Draft Development Plan, the Planning Authority is required, by Section 27, to have regard to and be guided by the proposals made in any Draft Regional Plan or any Final Regional Plan, as the case may be.

16. After the preparation and publication of notice of Draft Development Plan u/s 26 inviting objections and suggestions, any suggestion or objection relating to the Draft Development Plan received by the Planning Authority has to be considered by it along with the report of the Planning Committee, and thereafter it may modify or change the plan in such a manner as it deems fit. Sub-section (2) of Section 28 provides for the constitution of a Planning Committee, which is required to consider the objections and suggestions received by the Planning Authority, and make enquiries as it may consider necessary and after giving reasonable opportunity of being heard to the various persons, submit its report to the Planning Authority. After the Planning Committee submits its report to the Planning Authority, it is required to consider the report, including objections and suggestions received by it, and make such modifications or changes in the Draft Development Plan as it may consider proper. u/s 28(4) the Draft Development Plan so modified shall be published in the Official Gazette and in such other manner as may be prescribed.

17. u/s 29, where modifications are proposed by the Planning Authority in the Draft Development Plan of a substantial nature after preparation and publication of notice of Draft Development Plan (under Section 26), the Planning Authority is required to publish notice in the Official Gazette and also in the local newspapers inviting objections and suggestions from any person with respect to the proposed modification, and thereafter to follow the procedure as laid down in Section 28.

18. Reading Sections 28 and 29 together, it would be apparent that at the initial stage while the plan is being prepared, the Planning Authority is required to invite objections and suggestions to the Draft Development Plan. After such objections and/or suggestions are received, it is required to forward the same to the Planning Committee which is required to consider such objections and suggestions, and to give an opportunity of hearing to all concerned parties. The Planning Committee is authorised to make enquiries, and then to submit its report to the Planning Authority. The Planning Authority, after considering the report of the Planning Committee, and the objections and suggestions received, may approve the Draft Development Plan and/or make such modifications or changes as it may consider proper.

In case any modification is to be made to the Draft Development Plan after the issuance of notice u/s 26, if the modifications proposed are of a substantial nature, the same have to be notified in the Official Gazette inviting objections and suggestions, and are thereafter required to be considered in the same manner as objections are considered u/s 28 of the M.R.T.P. Act.

19. u/s 30, the Planning Authority is required to submit the Draft Development Plan to the State Government for sanction. After the State Government receives the Draft Development Plan from the Planning Authority u/s 31, it is required to consult the Director of Planning, and thereafter to 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. It may then 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. In case the State Government proposes modification of a substantial nature to the Draft Development Plan, it is required to 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. For the purpose of considering such objections and suggestions and hearing such persons, the State Government is required to appoint an officer of rank not below that of a Class I officer, and direct him to hear any such person, and submit his report to the State Government. After taking into account the report of such officer and taking into consideration such objections and suggestions, the Government may accord its sanction to the Draft Development Plan, and fix in the Notification a date, not earlier than one month from its publication, on which the final Development Plan shall come into operation. The Development Plan which comes into operation is the final Development Plan.

It would, thus, appear that when the Draft Development Plan is being considered by the State Government, any modification proposed by the State Government of a substantial nature is required to be notified, inviting objections and suggestions, and only after the same is considered along with the report of the officer appointed under Sub-section (2) of Section 31, the State Government

may sanction such modifications to the Draft Development Plan.

Section 32 of the M.R.T.P. Act provides for Interim Development Plan pending preparation of a Draft Development Plan.

Section 37 of the M.R.T.P. Act provides for the procedure to be adopted for modification of a final Development Plan, It provides that where a modification of any part of, or proposal, made in a final Development Plan is of such a nature that it will not change the character of such Development Plan, the Planning Authority may, or when so directed by the State Government, shall, within sixty days from the date of such direction, publish a notice in the Official Gazette inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice upon all persons affected by the proposed modification, and after giving a hearing to any such person, submit the proposed modification (with amendments, if any) to the State Government for sanction. Thereafter, the State Government may, after making such enquiry, and if it considers necessary, after hearing persons and with the consent of the Planning Authority, and after consulting the Director of Town Planning, by notification in the Official Gazette, publish the approved modification with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. If a modification is sanctioned, the final Development Plan shall be deemed to have been modified accordingly.

It may be worth noticing that the third Notification issued by the State Government has been issued in exercise of power u/s 37, as it involves the modification of the sanctioned Development Control Regulations in relation to the dilapidated buildings.

20. It would, thus, appear that the scheme envisaged under the M.R.T.P. Act provides for objections and suggestions at the Initial stage and also at subsequent stages, if any modification of a substantial nature is sought to be made either by the Planning Authority, or by the State Government while considering the grant of sanction to the Draft Development Plan. If the procedure prescribed under the M.R.T.P. Act is not followed, the decision taken by the State Government sanctioning a Draft Development Plan or modification to the Draft Development Plan can be assailed on the ground that it has been done without taking into account the relevant material, and without following the prescribed procedure.

21. In the background of the statutory scheme of preparation and sanction of the Draft Development Plan, we shall now proceed to consider the facts of this case.

Before the establishment of Respondent No. 2-Thane Municipal Corporation, the erstwhile Thane Municipal Council was the local authority, and the Planning Authority in respect of a major part of the area which subsequently fell within the jurisdiction of Respondent No. 2-Corporation. The Development Plan of the erstwhile Thane Municipal Council along with the Development Control Rules had

been sanctioned by the Government by Notification dated 3rd October, 1974. On 16th July, 1980, the Government, by Notification of the same date, prescribed Standardised Building Bye-laws and Development Control Rules for the areas within the jurisdiction of various Municipal Corporations. On that date, the Respondent-Corporation had not come into existence, as it was subsequently established by Government Circular dated 1st October, 1982 for the areas falling within the jurisdiction of the erstwhile Municipal Council. Section 154 of the M.R.T.P. Act provides that every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of the M.R.T.P. Act. The State of Maharashtra, therefore, in exercise of authority u/s 154 of the M.R.T.P. Act read with Section 37, issued directions to Respondent No. 2- Corporation by its Memorandum dated 21st December, 1982 to adopt the said Standardised Building Bye-laws and Development Control Rules to be made applicable to the area within the jurisdiction of the Thane Municipal Corporation in place of the Development Control Rules earlier sanctioned along with the Development Plan, and also to follow the procedure prescribed u/s 37 of the M.R.T.P. Act. Pursuant to the directions issued by the State Government, the Thane Municipal Corporation, vide its Resolution dated 1st July, 1985, resolved to initiate minor modification u/s 37(1) of the M.R.T.P. Act to replace the sanctioned Development Control Rules by the Standardised Building Bye-laws and Development Control Rules. The procedure prescribed by Section 37 was followed by Respondent No. 2- Corporation, whereafter the Thane Municipal Corporation, by its Resolution dated 2nd May, 1988, resolved to accept the amendment to the original text of the Draft Development Control Rules, and to submit the said minor modification to Government for sanction along with the amendment. The said minor modification proposal was submitted to the State Government for sanction on 29th July, 1988.

22. While the minor modification proposal was pending for sanction by the State Government, on 21st December, 1991, Respondent No. 2- Corporation published the revised Draft Development Plan in terms of Section 26 of the M.R.T.P. Act.

On 23rd April, 1993, certain directions were issued by the Government u/s 154 regarding admissible F.A.R. in Gaothan area. The directions were issued pending consideration of the Draft Development Control Regulations submitted by Respondent No. 2- Corporation to the Government. The directions issued by the State Government have been annexed as Exhibit "J". from which it appears that the following directions were issued :-

"(a) Till the Draft Development Control Regulations submitted to Government by the Thane Municipal Corporation in 1988 are finally sanctioned, the Municipal Corporation shall follow the provisions of sanctioned Development Control Regulations for "Goathan Areas".

(b) The "Gaothan Area" shall be taken as only that area which is shown on the map of the sanctioned Development Plan of Thane Municipal Council Area.

(c) As regards the development permissions granted by the Municipal Corporation after 1988 for the areas outside the Gaothan Area as shown on the sanctioned Development Plan of Thane Municipal Council, permission for further development is to be withheld and no Occupation Certificates are to be issued until further orders.

(d) In case of plots where commencement certificate has been issued with additional F.S.I, for Gaothan, the Municipal Corporation may initiate action u/s 51 of the M.R.T.P. Act, 1966 and revoke permissions after following procedure prescribed under the law.

(e) Till the Revised Development Control Regulations are finally sanctioned by Government, Municipal Corporation of Thane shall follow the stricter provisions of 4 rules, viz., sanctioned rules of 1974, Standard Bye-laws sent by Government in 1981. rules published u/s 37 in 1985 and Draft Revised D.C.R. published in Dec., 91.

(f) Due permission from the Railway Authority would be needed where Development Permission is to be granted by the side of railway properties. In the absence of the suitable regulations in the present Development Control Rules, the Thane Municipal Corporation may follow the Development Control Regulations prescribed in Development Control Regulations for Greater Bombay, 1991."

23. While considering the minor modification proposal for modifying the Development Control Rules, the State Government partially modified the directions issued on 23rd April, 1993 (Exhibit "J"), and directed that in cases where the Thane Municipal Corporation has sanctioned the development permissions with F.A.R : 2.00 after May, 1988, in accordance with the Resolutions passed by the said Corporation in June, 1988, the excess F.A.R. over and above 1.33, so allowed shall not exceed 2.00 or the F.A.R. actually consumed as on 23rd April, 1993, whichever is less, in the Gaothan areas as per the modified Regulation for Clause No. N. 2.1.1, Appendix-N, of the modified Schedule. This is contained in Exhibit "L" dated 19th June, 1993.

Having so modified its earlier directions dated 23rd April, 1993. the State Government, in exercise of its powers u/s 37(2) of the M.R.T.P. Act, sanctioned the Draft Building and Development Control Regulations, 1985, subject to the modifications referred to in the Schedule, and for that purpose, amended the Government Notification dated 3rd October, 1974 as follows :-

"The Development Control Rules applicable for the erstwhile Thane Municipal Council sanctioned by the Government Notification, Urban Development and Public Health Department No. TPS- 1272/70693/RPC, dated 3rd October, 1974 shall be replaced by Development Control Regulations sanctioned with modifications by Government, Urban Development Department by Notification No. TPS-1292/1702/ CR-194/92/UD-12, dated 19th June, 1993 which shall be applicable to the entire area within the jurisdiction of Thane Municipal

Corporation with immediate effect.

By the aforesaid Notification dated 19th June, 1993, after Clause N.2.1.1, the following notes were inserted :-

"Note 1 :- The extent of area to be treated as "Gaothan", shall be strictly confined to":

(i) that area shown as "Gaothan" in the Development Plan of Thane (for old Municipal Council limits) sanctioned by Government vide Notification No. TPS-1272/70693/RPC, dated 3rd October, 1974, and

(ii) that area shown as "Gaothan" in village Form No. I of Revenue Record and held on Gaothan tenure without payment of N. A. Assessment of villages now included in the limits of Thane Municipal Corporation vide Government Resolution No. TMC-3082/1172/UD-21, dated 1st October, 1982.

Note 2 :-Provided that, in cases (out of Gaothan as defined in Note 1 above only) where Thane Municipal Corporation has sanctioned F.S.I, equivalent to 2.00 after May, 1988, in accordance with the Resolution passed by the Corporation in June, 1988, the excess F.S.I, over and above 1.33 shall be allowed. The excess F.S.I, so allowed shall not exceed 2.00 or the P.S.I, actually consumed as on 23rd April. 1993 whichever is less

All these facts noted above find mention in the Notification, Exhibit "L" dated 19th June, 1993. whereby modification to the Development Control Regulations was sanctioned by the State Government u/s 37 of the M.R.T.P. Act.

It will be noticed that as on 19th June, 1993, when Notification, Exhibit "L", was published, the Thane Municipal Corporation had not submitted to the Government its Draft Development Plan, though the same had been "published u/ s 26 of the M.R.T.P. Act.

24. On the 8th August, 1994, the Draft Development Control Regulations, as finalised by the Respondent - Corporation was published u/s 28(4) of the M.R.T.P. Act. The said Draft Development Control Regulations contained Appendix R (Regulation No. 171), which were the Regulations for reconstruction of buildings destroyed by fire, collapsed, demolished, etc.. The Draft Development Control Regulations were submitted to the Government for sanction on 19th September, 1994, even though the Draft Development Plan had not been submitted. It was not disputed before us that even though the Development Control Regulations are a part of the Development Plan, it is not necessary to get the Development Control Regulations sanctioned along with the Draft Development Plan.

25. It was on the 18th December, 1994 that the Draft Development Plan was submitted by Respondent No. 2- Corporation to the Government for sanction. The Draft Development Plan was returned by the Government to the Corporation to comply with certain formalities. The Government, however, proceeded to consider the Draft Development Control Regulations received by it in September,

1994 for sanction. After making necessary enquiries and after consulting the Director of Town Planning and after carefully examining the provisions of the said Development Control Regulations, the Government decided to sanction the Draft Development Control Regulations, excluding sanction to regulations in respect of -

- (i) Development/Re-development of congested area;
- (ii) Grant of Transferable Development Rights to Owners/Developers; and
- (iii) Development around hazardous industries.

Accordingly, the Draft Development Control Regulations were sanctioned by the State Government by Notification dated 28th April, 1995, Exhibit "O" subject to certain modifications and changes considered necessary as set out in the Schedule. The Final Development Control Regulations were to come into force on the 1st day of June, 1999. The Notifications also provided that till the time the Regulations in respect of development/re-development of congested area are sanctioned along with the said Development Plan, the Regulations sanctioned by the Government vide Notification dated 19th June, 1993 shall be applicable for the Gaothan areas. By the same Notification, Appendix R was replaced as follows :-

"1.(a) These provisions shall be applicable to following proposals :-

- (I) Reconstruction/redevelopment schemes undertaken by the Corporation/Owners for the existing residential developments.
- (II) Reconstruction/redevelopment of buildings destroyed by fire, collapsed, demolished, etc.

Reconstruction in whole or in part of a building (not being a building wholly occupied by warehousing user) existing on or before reference date as specified in (c) below and which has ceased to exist in consequence of accidental fire, natural collapse or demolition for the reason of the same having been declared unsafe by or under a lawful order of the (Municipal) Commissioner.

(b) The F.S.I, to be allowed for such proposals shall be the F.S.I, permissible under these regulations or the F.S.I, consumed by the existing building whichever is more. In addition to this 15 per cent additional F.S.I. shall be allowed as an incentive to the owner.

(c) The reconstruction under (a) above shall be allowed only in respect of the buildings existing prior to the dates as mentioned below :-

4th November 1974 -- The date of coming into force of For the areas covered under the sanc- the sanctioned Development of Thane. tioned Development Plan of the erst- while Municipal Council limits. 16th August 1973 -- The date of coming into force of the For the remaining areas included in sanctioned Regional Plan of the Bombay the Corporation limits." bay Metropolitan Region.

This Notification dated 28th April, 1995. which had the effect of granting 15%

additional F.S.I, as an incentive in respect of dilapidated buildings, was never challenged by anyone. In this manner, the Development Control Regulations were finalised in all respects, except in respect of the three matters, including development or redevelopment of congested area, which was to be sanctioned along with the Development Plan.

26. The Draft Development Plan was again submitted to the Government for sanction on 19th February, 1996, and the same was ultimately partially sanctioned by the first impugned Notification dated 4th October. 1999, excluding modifications of a substantial nature.

27. As noticed earlier, the Draft Development Control Regulations were sanctioned on 28th April, 1995, and came into force with effect from 1st June. 1995. The said Development Control Regulations contained Appendix R, which provided for the F.S.I, to be allowed in case of reconstruction of buildings destroyed by fire, collapsed, demolished, etc. The Planning Authority, Respondent No. 2 Corporation, was of the opinion that the provisions of Regulation No. 165 of the Regulations and the corresponding Appendix R needed modification so as to give effective implementation to the safety of existing building and to solve the problem of re-housing the tenants of the existing dilapidated buildings as the provisions of Regulation No. 165 and Appendix R thereunder were inadequate. Regulation No. 165 in the finalised Development Control Regulations corresponds to Regulation No. 171 in the Draft Development Control Regulations, 1994, which has been noticed earlier. Accordingly, Respondent No. 2-Corporation. under its letter dated 10th March, 1997, informed the Government to re-consider the necessary changes in the contents of Regulation No. 165 and Appendix R thereunder. In response thereto, and with a view to give relief to the existing dilapidated buildings, and the tenants residing therein, by letter dated 27th October, 1997, the Government directed Respondent No. 2-Corporation, the Planning Authority, to initiate the proposal of modification to Regulation No. 165 and Appendix - R thereunder u/s 37(1) of the M.R.T.P. Act. and to submit the same to the Government for sanction after following the legal procedure. Accordingly, the Planning Authority submitted the proposal for sanction after following the necessary legal formalities u/s 37 of the M.R.T.P. Act vides its letter dated 25th August. 1998. This proposal has been sanctioned by the State Government by the third impugned Notification of 4th October, 1999.

28. In the background of facts narrated by us, and which are evident from the record before us. we now proceed to consider the submission advanced before us in respect of the aforesaid three Notifications.

29. By the first Notification, the State Government has sanctioned the Draft Development Plan submitted by the Respondent-Corporation, ft is evident from a mere perusal of the Notification that the Draft Development Plan, as submitted by the Respondent-Corporation, has not been sanctioned in its entirety, because the Government was of the view that some of the modifications proposed to be

made by it to the Draft Development Plan were of substantial nature requiring re-publication u/s 31 of the M.R.T.P. Act. By the first Notification, therefore, only that part of the Draft Development Plan has been sanctioned with modifications which were not considered to be of substantial nature. The grievance of the Petitioner is to the congested area as shown in the Draft Development Plan, and he contends that by sanctioning the Draft Development Plan with some modifications, the Government has, in fact, increased the Gaothan area beyond the limits of the Gaothan.

Mr. Aney, appearing on behalf of the Petitioner, submitted that while submitting the Revised Development Plan, the Planning Authority had recommended that the congested area be confined to the Gaothan as shown in the Revenue Records. Reliance is placed on the Resolution of the General Body of the Corporation dated 27th October, 1995 in this regard. He further submitted that while sanctioning modification to the Development Control Rules by Notification dated 19th June, 1993 (Exhibit "L") u/s 37 of the M.R.T.P. Act, the Government itself had clarified that the extent of area to be treated as Gaothan shall be strictly confined to the area shown as "Gaothan" in the Development Plan of Thane (for old Municipal Council limits) sanctioned by the Government by Notification dated 30th October, 1974. and in relation to that area shown as "Gaothan" in Village Form No. 1 of Revenue Record, and held on Gaothan tenure without payment of N. A. Assessment of villages now included in the limits of Thane Municipal Corporation. He submitted that by implication the Government directed that the congested area must be the same which was within the limits of Gaothan. According to him, the extent of Gaothan shown in the sanctioned Development Plan is in excess and, therefore, contrary to the guidelines issued on the 3rd July, 1993 by the State of Maharashtra that the congested area should not exceed the limits of Gaothan and those areas which were not congested should be excluded from Gaothan. He, therefore, submitted that the congested area as determined by Respondent No. 1. State of Maharashtra beyond the limits of Gaothan cannot be stated to be Gaothan as it fell outside the Gaothan. Such areas which did not fall within the Gaothan were developed in accordance with the rules and Land Revenue Code and thereafter under different Planning Acts prevailing at the relevant time. That is why the Respondent-Corporation, while submitting the revised Plan, had shown the congested area within the limits of Gaothan. He, therefore, submitted that the inclusion of any area beyond the Gaothan limits in the congested area as forming part of congested area under the sanctioned Development Plan is illegal, and has, in fact, resulted in extending the Gaothan limits.

30. The learned Advocate-General, appearing on behalf of the State, has submitted before us an "area statement" relating to the congested area from which it would appear that the delineation of the Gaothan area itself has not been very clear, and has changed from time to time. The Planning Authority in the Draft Development Plan, published on 21st December, 1991 u/s 26 of the M.R.T.P. Act, had shown extensive area as covered by the expression "congested

area", which was to the extent of 602.55 Hectares as against 131.43 Hectares in the first Development Plan of 4th October, 1973. Thereafter, when the Draft Development Plan was submitted u/s 29 of the M.R.T.P. Act on 16th December, 1994, the congested area was shown to the extent of 293.11 Hectares. Again, when the Draft Development Plan was re-submitted u/s 30 of the M.R.T.P. Act on 19th February, 1996, the Gaothan area was reduced to 181.33 Hectares. It would, thus, appear that there was considerable confusion as to the extent of the Gaothan area. He submitted that the first impugned Notification, whereby the Government had sanctioned the Draft Development Plan limits the congested area to 144.05 Hectares. It cannot, therefore, be said that the congested areas, in fact, been increased. On the contrary, it has been decreased.

31. Mr. Apte, appearing on behalf of the Respondent-Corporation, submitted that under the Draft Development Plan, the term used is "congested area", and that was so because the concept of Gaothan under the Land Revenue Code had a different connotation. The Collector, by issuing Notifications, included lands in the Gaothan, and in due course agricultural lands surrounding the original habitations were also included. The Gaothan as then understood meant the original village site along with surrounding areas brought within the village site by the Collector. For purpose of planning, certain relaxations were considered necessary for proper development of Gaothan or village settlements, and with that in view, in the year 1974, some relaxation in F.S.I., was given to Gaothan in the sanctioned Development Plan of 1974. The F.S.I., prescribed for the Gaothan was 1.33, whereas for the rest of the area, it was only 1. In the year 1982, when the Thane Municipal Council ceased to exist and Thane Municipal Corporation came into existence, difficulties arose when the Corporation was directed by the State Government to apply the Standardised Building Bye-laws and Development Control Rules. There were conflicting interpretations of the Standardised Building Bye-laws and Development Control Rules, and while the builders claimed benefit of F.S.I.: 2 in respect of all lands which were shown as Gaothan, a contrary view was also agitated, viz., that the benefit of F.S.I., should only be extended to lands specified in the Plan. In the Standardised Building Bye-laws and the modifications suggested by the Corporation, the words "as specified in Plan" were not there, and, therefore, extensive areas were considered as Gaothan. It was on account of this controversy that some proposals were sanctioned on the basis of communications received from Revenue Authorities that the proposals related to lands which fell within the Gaothan. On account of such controversy, the Government considered it necessary to demarcate the Gaothan. Counsel, therefore, wanted us to consider Exhibit "J", directions issued by the Government u/s 154 of the M.R.T.P. Act on 23rd April, 1993. He emphasised that the directions issued under Exhibit "J" were tentative and, as expressly stated, operated till the Draft Development Control Regulations submitted to the Government by the Thane Municipal Corporation in 1988 were finally sanctioned.

Referring to the Notification dated 19th June, 1993 (Exhibit "L"), counsel submitted that while sanctioning the Draft Building and Development Control

Regulations. 1985 u/s 37(2) of the M.R.T.P. Act, the Government inserted notes after Clause N-2.1.1., and note (1) provided for the extent of area to be treated as "Gaothan". He further submitted that the change of nomenclature in the Draft Development Plan is significant, and instead of the word "Gaothan", the words "congested areas" have been used. He, therefore, submitted that no illegality has been committed in issuance of the first Notification. The Government sanctioned the Draft Development Plan in part after complying with all the requirements of the M.R.T.P. Act.

32. We are of the view that reliance placed by the Petitioner on the Notification dated 19th June. 1993 (Exhibit "L") is misplaced. At that stage, the Government was only considering the modification to the 1974 Development Control Rules by the Development Control Regulations submitted by the Corporation in 1988. By that time, the Draft Development Plan had not even been submitted to the Government for its approval, though the same had been published by the Respondent-Corporation u/s 26 of the M.R.T.P. Act. The question which the Government was then considering was the question of modification of the Development Control Rules after the Thane Municipal Corporation had been constituted. The Draft Development Plan was submitted much later for Government's sanction on 16th December, 1994, which was returned for complying with statutory requirements, and thereafter re-submitted on 19th February, 1996.

Learned Advocate-General rightly emphasised the fact that the planning process really started in December. 1991 by the publication of the revised Draft Development Plan on 21st December, 1991. At that point of time, the Government was only considering proposal for minor modifications to the Development Control Regulations submitted by the Corporation in July, 1988. which were ultimately approved by the Notification dated 19th June, 1993 u/s 37 of the M.R.T.P. Act. The earlier minor modification of the Development Control Regulations did not have any effect on the Draft Development Plan which was submitted later. It cannot be contended on behalf of the Petitioner that the Gaothan area should be frozen at the 1974 level for all times. It was, therefore, open to the Planning Authority to make changes in the Gaothan area which it has done. Moreover, the congested area sanctioned, is in fact, less than the congested area shown in the Draft Development Plan re-submitted by the Respondent-Corporation.

We find considerable force in the submission. The Respondent -Corporation took up the task of framing a new Development Plan, which it was obliged to do. The Plan was submitted to the Government, and sanctioned by the Government in part after fully complying with the provisions of the M.R.T.P. Act. Reliance placed on the directions issued by the State Government on 23rd April. 1993 u/s 154 of the M.R.T.P. Act could have no effect on the Draft Development Plan which was submitted later for Government's sanction. Moreover, those directions were expressly made tentative till the Draft Development Control Regulations

submitted to the Government by the Thane Municipal Corporation in 1998 were finalised, and which were ultimately finalised on the 19th June, 1993. We, therefore, find no merit in the challenge to the first Notification. The Planning Authority was competent to frame the Development Plan for the area within its Jurisdiction after the Thane Municipal Corporation came into existence. u/s 21(2) of the M.R.T.P. Act, every Planning Authority constituted after the commencement of the M.R.T.P. Act is required to prepare a Draft Development Plan and publish a notice of such preparation in the Official Gazette not later than three years from the date of its constitution. The Thane Municipal Corporation was established on 1st October, 1982, and, therefore, it was required to prepare Development Plan. Under Sub-section (5) of Section 21, if any local authority, which is the Planning Authority, is converted into any other local authority, the Development Plan prepared for the area by that Planning Authority so converted shall with such alterations and modifications, as the State Government may approve, be the Development Plan for the areas of the new Planning Authority. Thus, the old Development Plan sanctioned for the Thane Municipal Council continued to be in force with such alterations and modifications as the State Government approved. This was subject to the proposed Draft Development Plan by the Thane Municipal Corporation. Exhibit "J" dated 23rd April, 1993, containing directions issued by the Government u/s 154 of the M.R.T.P. Act, and Exhibit "L" dated 19th June, 1993, sanctioning minor modifications in the Development Control Regulations by the State Government u/s 37(2) of the M.R.T.P. Act, must be understood in this background. All this was subject to the final Development Plan, which was to be prepared in accordance with the provisions of the M.R.T.P. Act by the Respondent-Corporation, and sanctioned by the State Government. It is not disputed before us that the provisions of the M.R.T.P. Act, insofar as they relate to the preparation of a Draft Development Plan, and for its sanction by the State Government, have been strictly observed. There is nothing in the M.R.T.P. Act which prevented the Planning Authority from extending the Gaothan area for the purpose of planning, or inhibited the Planning Authority from framing a plan in relation to what is described as "congested area", instead of "Gaothan". The Planning Authority, after taking into account all the relevant facts and circumstances, submitted the revised Draft Development Plan to the Government, which has been sanctioned by the Government in the exercise of power vested in it u/s 31(f) of the M.R.T.P. Act. We, therefore, find no ground to quash the first notification.

33. We shall now consider the challenge to the second Notification issued by the State Government in exercise of powers conferred by subsection (1) of Section 31 of the M.R.T.P. Act sanctioning the Draft Development Control Regulations in respect of development or redevelopment in congested area. By the said Notification, the Government has sanctioned the Draft Development Control Regulations in respect of congested area providing that the congested area shall be as shown on Development Plan sanctioned vide Notification dated 4th October, 1999 (first Notification). It further provides that the permissible F.S.I, in

congested area shall be 1.5 for purely residential use, and in case of mixed residential and commercial use, additional F.S.I. : 0.5 for the commercial use only shall be permitted. It further makes the provisions made in paragraphs N.1.1.2, (b), (c). N.1.1.3, N.1.1.4. N.1.1.5. applicable for development in congested area.

In sum and substance, the sanctioned Draft Development Control Regulations, insofar as they relate to congested area, provide for a maximum F.S.I. : 2, viz., 1.5 for purely residential use and additional F.S.I. : 0.5 for commercial use.

34. Mr. Aney. appearing on behalf of the Petitioner, submitted that the effect of the sanctioned Draft Development Control Regulations is that the F.S.I, which was earlier 1.33 under the Development Plan sanctioned for the Municipal Council of Thane, has been increased to F.S.I. : 2. and, therefore, the provisions of Section 22A of the M.R.T.P. Act are attracted. Such an increase in F.S.I., being a modification of substantial nature, could not be permitted without following the procedure laid down in the second proviso to Section 31(1) of the M.R.T.P. Act, in view of the provisions of Section 22A of the M.R.T.P. Act. The submission proceeds on the assumption that the State Government, while sanctioning the Draft Development Control Regulations, has increased the F.S.I, from 1.33 to F.S.I : 2, thereby bringing about a modification of substantial nature.

35. Counsel for the Respondents, on the other hand, contend that the submission proceeds on a factually incorrect assumption, and in the facts and circumstances of this case, the provisions of Section 22A of the M.R.T.P. Act are not at all attracted, because the Government has sanctioned the F.S.I. provided in the Draft Development Control Regulations as framed by the Thane Municipal Corporation and as published u/s 28 of the M.R.T.P. Act without any modification, only adding a clarification. F.S.I.: 2 was proposed in the Draft Development Control Regulations framed by Thane Municipal Corporation, and that has been approved by the State Government with the only clarification that F.S.I. : 1.5 will be permitted in the case of residential use and F.S.I. : 0.5 for commercial use only in cases of mixed user of a building.

36. Before advertng to the facts of the case, we may briefly notice the legal provisions and the implications thereof.

Under Section 21 of the M.R.T.P. Act, the Planning Authority is required to prepare the Draft Development Plan of which the Draft Development Control Regulations is a part. Section 22A deals with modification of a substantial nature. This provision was inserted in the M.R.T.P. Act by Maharashtra Act 39 of 1994 with effect from 17thAugust. 1994. The aforesaid section enumerates in Section 22A(a) to (f) the modifications, which come within the expression "of a substantial nature" in Sections 29 and 31 of the M.R.T.P. Act. Reliance was placed on Clause (f), which provides that alteration in the F.S.I, beyond ten per cent of the F.S.I, prescribed in the Development Control Regulations prepared and published u/s 26 or published with modifications u/s 29 or 31 shall be considered

to be modifications of a substantial nature. In express terms. Section 22A in its application is confined to modifications made by the Planning Authority u/s 29 of the M.R.T.P. Act or by the State Government u/s 31 of the M.R.T.P. Act.

Section 29 provides for modifications made by a Planning Authority after preparing and publishing notice of Draft Development Plan u/s 26. If such a modification is sought to be made, and the modification is of a substantial nature, the Planning Authority is required to publish a notice in the Official Gazette and also in the local newspapers inviting objections and suggestions from any person with respect to the proposed modification, and thereupon the provisions of Section 28 shall apply in relation to such suggestions and objections as they apply to suggestions and objections dealt with under that section.

Section 31 deals with the power of the State Government to sanction a Draft Development Plan. The State Government is vested with power to sanction Draft Development Plan either with or without modifications. The second proviso to Section 31 further provides 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. These objections and suggestions have to be considered by an officer appointed by the State Government who is required to make his report to the State Government, and thereafter the State Government, after taking into consideration such objections and suggestions and the report of the officer, shall sanction the Draft Development Plan.

37. It would, thus, appear on a conjoint reading of Sections 22A, 29 and 31 of the M.R.T.P. Act that if the Planning Authority, after preparation and publication of notice of Draft Development Plan u/s 26, proposes to make any modification of a substantial nature, it is required to follow the procedure laid down u/s 28 of the M.R.T.P. Act. Similarly, if the State Government wishes to make any modification in the Draft Development Plan submitted to it for sanction, which is of a substantial nature, it is required to notify objections, etc., which have to be considered by an officer appointed by the State Government, and thereafter to sanction the plan after taking into consideration such objections and suggestions and the report of the officer. It is obvious that a Draft Development Plan prepared and published u/s 26 is to be submitted to the Government for its sanction only after the procedure laid down in Section 28 is followed. Section 28 lays down the procedure for inviting objections, etc., and only thereafter the Planning Authority is required to submit the plan for sanction to the State Government. It, therefore, follows that if a Draft Development Plan prepared and published u/s 26 and objections thereto invited u/s 28, and the Planning Authority does not wish to make any further modification, it is not required to take any action u/s 29 of the M.R.T.P. Act. The Draft Development Plan published by it u/s 26 and notified by it u/s 28 after inviting objections, etc., and following

the procedure laid down u/s 28, has to be submitted to the State Government for its sanction.

Such a Draft Development Plan, when submitted to the State Government, is required to be considered by the State Government u/s 31 of the M.R.T.P. Act. If the State Government does not propose to make any modification of a substantial nature, Section 22A is not at all attracted. Thus, if a Draft Development Plan notified u/s 28 after inviting objections, etc., is submitted to the State Government for its sanction and the sanction is accorded without effecting any modification of a substantial nature, Section 22A does not come into play at all. The modifications contemplated by Sections 29 and 31 are the modifications to the Draft Development Plan notified u/s 26 and Section 28(4) respectively, and not modifications to any earlier Development Plan which may have been sanctioned. A revised Draft Development Plan notified u/s 26 or Section 28 can undoubtedly modify an earlier sanctioned plan, because the very purpose of preparing a new plan or revised plan is to bring about such changes in the existing plan as are considered necessary. It, therefore, follows that while acting u/s 29, the Planning Authority, and u/s 31 the State Government, modifications to be considered are those to the Draft Development Plan notified u/s 26, or the Draft Development Plan notified u/s 28(4) and submitted to the State Government for sanction u/s 31.

38. We may now advert to the facts of this case. The Draft Development Control Regulations were published by the Thane Municipal Corporation, and objections thereto were invited u/s 28 of the M.R.T.P. Act. After considering the objections in the light of the provisions of Section 28, the Draft Development Control Regulations as finalised by the Planning Authority were published u/s 28(4) of the M.R.T.P. Act on 8th August, 1994. The Draft Development Control Regulations as published on the 8th August, 1994, and submitted to the Government for sanction, contain Appendix N. Appendix N was applicable to congested area as shown on the Development Plan. N.1.1.2 provided the permissible F.S.I. : 2. Appendix R contained the Regulations for re-construction of buildings destroyed by fire, collapsed, demolished, etc. The Draft Development Control Regulations, 1994, including Appendices N and R, were submitted to the Government for its sanction. By the impugned second Notification, the Government has sanctioned the Draft Development Control Regulations providing F.S.I. : 2 with only a clarification, inasmuch as it has permitted F.S.I. : 1.5 in congested area for purely residential use, and in case of mixed residential and commercial use, additional F.S.I. : 0.5 is permitted for commercial use only. The sanction thus accorded u/s 31 of the M.R.T.P. Act is for total F.S.I. : 2 as proposed by the Planning Authority.

The learned Advocate-General, therefore, submitted that in the facts and circumstances of this case, Section 29 of the M.R.T.P. Act was not attracted at all, inasmuch as the Draft Development Control Regulations as published and notified u/s 26 were not sought to be modified by the Planning Authority. The only question that arises is : Whether u/s 31, the State Government brought about

any modification of a substantial nature?

39. We are of the view that the State Government, while sanctioning the Draft Development Control Regulations with certain modifications, has not brought about any modification of a substantial nature. In the Draft Development Plan submitted by the Planning Authority, the permissible F.S.I. in congested area was 2. All that the State Government has done is to clarify that F.S.I. : 1.5 is for residential use, and 0.5 for commercial use in case of mixed residential and commercial use. Except for this small clarification of Clause (a) of Paragraph N. 1.2, the rest of Appendix N has been approved. It cannot, therefore, be said that while sanctioning the Draft Development Control Regulations, the State Government has effected a modification of a substantial nature by alteration in the F.S.I, beyond 10% of the F.S.I, prescribed in the Development Control Regulations prepared and published u/s 26. The Respondents are, therefore, right in submitting that in the facts and circumstances of this case, the question of modification of a substantial nature does not arise, and Section 22A of the M.R.T.P. Act is not attracted at all, because the Planning Authority did not purport to act u/s 29. and the Sanctioning Authority, viz., the State, did not bring about any modification of a substantial nature, and simply approved the F.S.I, proposed in the Draft Development Control Regulations with certain clarification. In the view that we have taken, we do not consider it necessary to consider the further submissions urged on behalf of the Respondents that the F.S.I, had already been increased to 2 even before the impugned second Notification was issued. However, we may only notice the submissions urged before us by the Respondents.

It was submitted that certain directions were issued by the State Government u/s 154 of the M.R.T.P. Act on 23rd April, 1993 (Exhibit "J"). However, the said directions were modified by Government Notification dated 19th June, 1993 (Exhibit "L") while sanctioning the minor modification proposal u/s 37(2) of the M.R.T.P. Act submitted by the Planning Authority. It was provided that in cases where the Thane Municipal Corporation had sanctioned F.S.I. ; 2 after May, 1988 in accordance with the Resolutions passed by the Corporation in June, 1988, the excess F.S.I, over and above F.S.I. : 1.33 so allowed shall not exceed 2.00 or the F.S.I, actually consumed as on 23rd April, 1993, whichever is less. Later, by Exhibit "O" , Notification dated 28th April, 1995, while sanctioning in part of Draft Development Control Regulations, the Government did not sanction the Draft Development Control Regulations insofar as they related to development/ redevelopment of congested area, grant of transferable development rights and development around hazardous industries. The Draft Development Plan had been returned to the Corporation for complying with the requirements of the M.R.T.P. Act. By the said Notification, it was provided that till the time the Regulations in respect of development/redevelopment of congested area are sanctioned, along with the said Development Plan, Regulations sanctioned by Government by Notification dated 19th June, 1993 (Exhibit "L") shall be applicable for the Gaothan area. Thus, Exhibit "L" dated 19th June, 1993 providing a maximum

F.S.I. : 2 in certain cases was permitted till the final Draft Development Control Regulations along with the Development Plan were sanctioned. The submission urged on behalf of the Respondents is that these Notifications were never challenged on the ground of increase of F.S.I. The learned Advocate-General further submitted that if at all the Petitioner ought to have challenged these Notifications at the appropriate time. They cannot now be heard to say that the increase in F.S.I, is illegal.

40. Mr. Anturkar advanced a submission before us that the Draft Development Control Regulations were published u/s 28(4) of the M.R.T.P. Act along with Appendices R and N on 8th August, 1994. Section 22A came into force with effect from 17th August, 1994. According to him. Section 22A having come into effect after the publication of the Draft Development Control Regulations u/s 28(4) of the M.R.T.P. Act on 8th August, 1994, the same could not have applied to the Draft Development Control Regulations, which had been published earlier. In our view, the submission overlooks the fact that Section 22A is confined in its application to modifications of a substantial nature proposed by the Planning Authority u/s 29 to the Draft Development Plan published u/s 26, and such modifications proposed by the State Government u/s 31 of the M.R.T.P. Act to the Draft Development Plan published u/s 28 of the M.R.T.P. Act and submitted to it for sanction. Section 22A has no application to a Draft Development Plan published u/s 26, because. in any event, the Draft Development Plan notified u/s 26 is subjected to the procedure laid down u/s 28 of the M.R.T.P. Act.

41. We are, therefore, satisfied that the second impugned Notification granting increase in F.S.I, is valid and legal, and having regard to the facts of the case, Section 22A of the M.R.T.P. Act is not attracted.

42. The third impugned Notification has been issued by the Government in exercise of power u/s 37 of the M.R.T.P. Act, whereby it has sanctioned the partial modification of Appendix R of the sanctioned Development Control Regulations sanctioned on 28th April, 1995. The Respondent-Corporation, the Planning Authority, was of the opinion that the provisions of Regulation No. 165 of the Regulations and the corresponding Appendix R needed modification so as to give effective implementation to the safety of existing buildings and to solve the problem of re-housing the tenants of the existing dilapidated buildings. The provision of Regulation No. 165 and Appendix R thereunder were considered to be inadequate by the Planning Authority. By their letter dated 10th March, 1997, the Planning Authority, viz.. Respondent No. 2- Corporation, informed the Government to re-consider the necessary changes in the contents of Regulation No. 165 and Appendix R thereunder. The Planning Authority, thereafter, followed the necessary legal formalities u/s 37 of the M.R.T.P. Act, and submitted its proposal for sanction of the State Government. Thereafter, the State Government, after making necessary enquiries and after consulting the Director of Town Planning and on being satisfied that the said proposal for modification was necessary in the public interest, sanctioned the modification with certain

changes. Primarily, by the third Notification, Clauses 1 (a) and (b) of Appendix R have been modified. The aforesaid clauses, as they existed before modification, read as follows :-

"1. (a) These provisions shall be applicable to following proposals :

(1) Reconstruction/redevelopment schemes undertaken by the Corporation/ Owners for the existing residential developments.

(ii) Reconstruction/redevelopment of buildings destroyed by fire, collapsed, demolished, etc.

Reconstruction in whole or in part of a building (not being a building wholly occupied by warehousing user) existing on or before reference date as specified in (c) below and which has ceased to exist in consequence of accidental fire, natural collapse or demolition for the reason of the same having been declared unsafe by or under a lawful order of the Commissioner.

(b) The F.S.I, to be allowed for such proposals shall be the F.S.I. permissible under these regulations or the F.S.I, consumed by the existing building whichever is more. In addition to this 15 per cent additional F.S.I, shall be allowed as an incentive to the owner."

By the impugned Notification, the modification has been sanctioned as follows :-

"1. (a) These provisions shall be applicable to following proposals :-

(i) Reconstruction/Redevelopment scheme undertaken by the Corporation/ Owners for the existing authorised residential development.,

The F.S.I, to be allowed for such proposal shall be F.S.I, permissible under these regulations or the F.S.I, consumed by the existing authorised building whichever is more. In addition to this 15% additional F.S.I, shall be allowed as an incentive to the owner.

(ii) Reconstruction/Redevelopment of buildings destroyed by fire, collapsed, demolished, etc.

Reconstruction in whole or in part of a building (not being a building wholly occupied by warehousing user) on or before reference date as specified in I(c) below and which has ceased to exist in consequence of accidental fire, natural collapse or demolition for the reason of the same having been declared unsafe by or under a lawful order of the Commissioner.

(a) Redevelopment outside congested area shall be allowed with an F.S.I, equivalent to that already authorisedly utilised plus 50% of the permissible F.S.I. or 2.00 whichever is more provided the total F.S.I, of the new structure shall not exceed 3.00.

Redevelopment within the congested area shall be allowed with an F.S.I, equivalent to that already authorisedly utilised plus 50% of the permissible F.S.I.

provided that the total F.S.I, of the new structure shall not exceed 3.00.

(b) The Committee comprises of Commissioner (T.M.C.), Superintending Engineer, Public Works Department, Thane, (and) Dy. Director, Town Planning, Konkan Division shall be set up and the said committee shall decide the buildings which are dangerous and dilapidated."

43. Counsel for the Petitioner submitted that the modifications have been sanctioned by the Government without following the procedure as is required to be followed in the case of modifications of a substantial nature. In any event, he submitted that the modifications bring about a change in the character of the Development Plan, and, therefore, was not permissible u/s 37 of the M.R.T.P. Act. He submitted that the F.S.I, in respect of the buildings covered by the aforesaid Regulations has been increased up to a maximum of F.S.I. : 3 with the result that it would cause further congestion and completely defeat the very purpose of planning. The learned Advocate-General, on behalf of the State of Maharashtra, and the interveners before us have contended that the third Notification sanctioning the modifications in the Development Control Regulations is in accordance with law. Section 22A is not at all attracted to a modification sanctioned u/s 37 of the M.R.T.P. Act.

44. It was contended before us by the learned Advocate-General that it was the Planning Authority which initiated the process of modifying Regulation 165 and Appendix R, since it found that it was inadequate to solve the problem of re-housing tenants of the existing dilapidated buildings. The Planning Authority initiated the process of modification u/s 37 on 7th March, 1997 entirely in accordance with Section 37(1) of the M.R.T.P. Act. The Government considered the request of the Planning Authority, and directed it to initiate the proposal. In accordance with the provision of Section 37(1) of the M.R.T.P. Act, objections and suggestions were called for and considered by the Planning Authority. Thereafter, the proposed modifications were submitted to the Government for sanction, and after taking into account all relevant considerations, the Government sanctioned the modifications. He also submitted that it is not permissible to import the considerations of Section 22A to Section 37. Section 22A deals with an anterior stage, viz., the process of preparing, publishing and sanctioning a Draft Development Plan. Section 37 comes into operation after the plan has become final. The only restriction in Section 37 is that the modification should be of a nature that does not change the character of the plan. As a matter of fact, the word "Minor" in the marginal note to Section 37 was deleted by Act 39 of 1994, because it did not reflect the real requirement of Section 37, namely, that the modification should be such as does not change the character of the Development Plan.

45. Counsel for the interveners, who are owners/builders/developers, who claim benefit of the amended Development Control Regulations have referred to the facts of their respective cases. It has been submitted on their behalf that they were owners of old buildings, which were dilapidated and in any case, the

Corporation had declared some of those buildings to be dangerous and unfit for habitation. Those buildings had, therefore, to be demolished and re-constructed, but, at the same time, the tenants had to be re-housed. In Civil Application No. 8320 of 2000, it was pointed out that there were 78 tenants in such a dilapidated structure and the total built-up area was only a little over 29,000 square feet. In accordance with the Development Control Regulations, at least 220 square feet was to be made available to each tenant. It was, therefore, impossible to raise a structure sufficient to accommodate all the tenants without increasing the permissible F.S.I. Unless some increase in F.S.I. was permitted, there would have been no incentive for a builder/developer/owner to re-construct the building. It was, therefore, emphasised before us that the Planning Authority was conscious of the practical difficulties faced by such owners/builders/developers, and if any increase in F.S.I. was not permitted, it was impossible for the owners/builders/developers to demolish the old structures and to construct new ones with sufficient floor area to accommodate all the tenants who had to be re-housed. These are the circumstances which compelled the Planning Authority to suggest modification to Appendix R. It was also submitted by Mr. Naphade, appearing on behalf of the Applicants in Civil Application No. 9246 of 2000, that the grant of F.S.I. : 1, 2 or 3 is a matter of policy. The Planning Authority as well as the State Government have considered all aspects of the matter, particularly the problem faced by the owners/builders/developers to re-house the displaced tenants. With an increase in F.S.I., some margin was provided for the owners/builders/developers who were required to invest a huge amount for re-construction of the building, major part of which was to be given back to the tenants who were displaced. He, therefore, submitted that public interest was also served by granting a slight increase in F.S.I., which enables the owners/builders/developers to re-house the displaced tenants. He further submitted that by granting benefit of increased F.S.I. to only some of the structures which were dilapidated, the character of the plan was not changed. The question as to whether the modification is of a substantial nature, does not arise in the case of a modification of Regulations u/s 37 of the M.R.T.P. Act where the test to be applied is whether the modification brought about a change in the character of the Development Plan. Section 22A was, therefore, relevant only at the stage of the preparation of the Draft Development Plan and its modification by the Planning Authority or by the State Government. Section 37 became applicable when the finalised Development Plan was sought to be modified. Counsel for the interveners also submitted that though the maximum permissible F.S.I. is 3, having regard to the conditions imposed by the modifications, very few of them, if any, can get benefit of F.S.I. : 3.

46. We have earlier noticed that Section 22A enumerates what may be described as modification of a substantial nature, but Section 22A is confined in its application to modification made either by the Planning Authority or the State Government u/s 29 or 31 of the M.R.T.P. Act. It is, therefore, apparent that the concept of "modification of a substantial nature" is not relevant while considering

modification of the final Development Plan u/s 37 of the M.R.T.P. Act.

We may, at this stage, notice the relevant provisions of Section 37 of the M.R.T.P. Act, which are as follows :-

"37. Modification of final Development Plan.-

(1) Where a modification of any part of, or proposal made in, a final Development Plan is of such a nature that it will not change the character of such Development Plan, the Planning Authority may, or when so directed by the State Government shall, within sixty days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction.

(2) The State Government may, after making such inquiry as it may consider necessary after hearing the persons served with the notice and after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction. If a modification is sanctioned, the final Development Plan shall be deemed to have been modified accordingly."

47. The words "Minor modification" in the marginal note were substituted by the word "Modification" in the marginal note of Section 37 by Maharashtra Act No. 39 of 1994, The section refers to modification of any part or proposal made in a final Development Plan, which is of such nature that it will not change the character of such Development Plan. The modification proposed by the Planning Authority, if it does not change the character of the Development Plan, has to be published and objections invited. Thereafter, the procedure laid down in the section has to be followed before it is sent for the Government's sanction. On a mere reading of Section 37, it is quite clear that what is not permitted under the aforesaid section is a modification in the final Development Plan of a nature which will change the character of the Development Plan. It is, therefore, not relevant to consider as to whether the modification is of a substantial nature as enumerated in Section 22A of the Act. What is relevant is to consider whether the modification would change the character of the Development Plan. Learned Advocate-General and Counsel for the interveners are, in our view, right in submitting that the question as to whether the sanctioned modification amounted to a modification of a substantial nature, is wholly irrelevant while considering a modification sought to be made u/s 37 of the M.R.T.P. Act. The sole question, therefore, which arises for consideration is : Whether the modification proposed and sanctioned brings about a change in the character of the Development Plan? In our view, the modification is not such as would bring about a change in the character of the Development Plan. The modification of the Development Control

Regulations as sanctioned by the State Government is applicable only to cases of reconstruction/redevelopment undertaken by the Corporation or the owners of the existing authorised buildings destroyed by fire, collapsed, demolished, etc. It is not as if there is a general increase in F.S.I, and any builder or developer can raise a structure with F.S.I. : 3. It is only in the cases specified where such increased F.S.I. is permissible. The modification giving benefit of increased F.S.I, is, therefore, limited in its application only to those reconstruction/redevelopment proposals specified in the Resolution, and is not meant to give benefit of increased F.S.I, to all development proposals which may be submitted hereafter. Since the benefit of increased F.S.I, will be available only to a very few structures, it cannot be said that the grant of additional F.S.I, limited to only such structures changes the character of the plan. In fact, a Division Bench of this Court in Writ Petition No. 693 of 1991, etc., decided on 16th April, 1991 took the view that such a modification was not even a substantial modification u/s 22A of the M.R.T.P. Act.

48. Mr. Aney lastly submitted before us, relying upon a passage appearing in Administrative Law by Sir William Wade, Seventh Edition (page 550), that it is of the essence of natural justice that it should be observed generally in the exercise of discretionary power. The mere fact that the discretion conferred is wide is no reason for weakening this principle. All discretionary powers have limits of some kind, and whether those limits are widely or narrowly drawn, the discretion ought to be exercised fairly, just as it must also be exercised reasonably. Even in a matter of policy, there is no reason why the discretion should not be exercised fairly vis-a-vis any person who will be adversely affected. He submitted that quite apart from the question of giving a fair hearing to the affected parties as a matter of policy, the State must also be satisfied that there is material to justify the exercise of authority. In the instant case, the mere requisition by the Planning Authority was not enough, and there should be material to show that there was justification for the exercise of the discretion vested in the State Government. The State Government must consider whether the modification proposed did not change the character of the Development Plan. According to him, grant of increased F.S.I, even to a dilapidated structure touches the character of the Plan.

49. It is, no doubt, true that even in matters of policy, the Government is not expected to act without there being any material to Justify the exercise of discretion. Moreover, when the discretion is vested in the State Government to be exercised in accordance with the statutory provisions, the procedure prescribed by the statute has to be followed, and the discretion can be exercised only after considering the material which is required to be considered by the State. In the instant case, it cannot be said that the Planning Authority or the State Government acted without there being any material to Justify the proposed modifications in the Development Control Regulations or acted in breach of principles of natural justice. It is not disputed before us that the Planning Authority itself had written to the State Government that there was need to

modify Regulation No. 165 and corresponding Appendix R to give effective implementation to the safety of existing buildings and to solve the problem of re-housing the tenants of the existing dilapidated buildings.

Counsel for the interveners have submitted before us that but for the increase in permissible F.S.I, it would be impossible for owners/builders/ developers to re-construct the dilapidated buildings and to re-house the displaced tenants. That is the reason why it became necessary for the Planning Authority to move the Government for modification of the Development Control Regulations. Moreover, before the Planning Authority made a proposal for modification of the Development Control Regulations, it had to publish a notice in the Official Gazette inviting objections and suggestions from any person with respect to the proposed modifications. It was also required to serve notice on all persons affected by the proposed modifications, and only after giving a hearing to such persons, it could submit the proposed modifications with amendments, if any, to the State Government for sanction. Thus, the Planning Authority was required to invite objections and suggestions, and consider them before submitting its proposal to the State Government for sanction of the modifications proposed. Thereafter, the State Government was also required to make such enquiry as it considered necessary, and it was also obliged to hear the persons served with the notice after consulting the Director of Town Planning. Thus, before a modification could be proposed by the Planning Authority, the Planning Authority was required to invite objections and suggestions thereto. Similarly, the State Government, before sanctioning the modifications, was also required to hear persons served with the notice and to consult the Director of Town Planning. It cannot, therefore, be said that the Planning Authority, as well as the State Government, acted without there being any material to justify their actions. It is not the case of the Petitioner that the procedure laid down in Section 37 of the M.R.T.P. Act was not followed. If the procedure was followed, and the Planning Authority submitted its proposal after inviting objections and suggestions, and considering them, and the State Government similarly granted sanction after complying with the provision of Sub-section (2) of Section 37, it cannot be said that they acted without there being any material to justify their actions or that their action lacked fairness. There was pressing need to re-house the tenants, who would have been displaced from the dilapidated buildings, and this could not be achieved, unless some additional F.S.I, was made available to the owners/builders/developers to provide an incentive for redevelopment or reconstruction of dilapidated structures. We are, therefore, satisfied that the third Notification is perfectly valid, and has been issued after following the mandate of Section 37 of the M.R.T.P. Act.

50. We, therefore, hold that all the three Notifications dated 4th October, 1999 have been issued in accordance with law, and suffer from no vice, which would justify their quashing by this Court. We find no merit in this Writ Petition. The same is dismissed.

51. The Civil Applications filed for intervention and the one filed for vacating interim reliefs stand disposed of, as we have heard all the interveners/applicants, who appeared before us at the hearing of the Writ Petition.