
(2012) 10 BOM CK 0022
In the Bombay High Court
Case No : PIL No. 74 of 2010

Surendra Ramlal Tiwari and Another APPELLANT
Vs
State of Maharashtra and Others RESPONDENT

Date of Decision : 20-10-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21, 226, 48A
Maharashtra Regional and Town Planning Act, 1966 — Section 22(c), 31(6), 37, 42

Citation : (2013) 1 BomCR 774

Hon'ble Judges : Hardas P.V., J;Bhangale A.P., J

Bench : Division Bench

Advocate : A.S. Jaiswal, for the Appellant; Bharti Dangre, A.G.P., for Respondent 1, S.K. Mishra, for Respondent Nos. 2 and 3, M.G. Bhangde and R.M. Bhangde, for the Respondent

Judgement

Bhangale A.P., J.—Pursuant to Misc. Civil Application No. 1129 of 2011 (Review Application) preferred by Bhartiya Vidya Bhavan (hereinafter referred to as "BVB".) through its Attorney Shri T.G.L. Iyer, Civil Lines, Nagpur with a prayer to recall the Judgment dated 12th October, 2011, we had heard the parties and by order dated 26th April, 2012, we had recalled the Judgment dated 12th October, 2011 and restored the Public Interest Petition No. 74 of 2010 for hearing afresh. The challenge was to the action of local Planning Authority-Nagpur Improvement Trust (hereafter referred to as "N.I.T.") for allotment of the land, which was reserved in the Development Plan for Primary School, Secondary School and Playground to Bhartiya Vidya Bhavan, an educational Institution/Trust. The petition was accepted as a Public interest Litigation pursuant to orders of the learned Senior Judge of the Bench at Nagpur dt. 2.12.2010 and 6.12.2010 and notices were issued to the respondents named in the P.I.L.

2. The grievance of the BVB is that it had proposed to start the Primary and Secondary School of CBSE pattern in English Medium on the ground that it is required in Khasra No. 12, mouza Bhamti (Bhamti-Parsodi Street Scheme) in the City of Nagpur. But the entire tender process was set aside by this Court initiated

by e-tender, dated 06/ 09/2010. According to the BVB, there was no challenge in the petition that the area of the School has been increased and the area reserved for the playground is decreased without following the procedure according to law. According to the BVB, the writ petitioners had not challenged non-communication of the decision taken in the pre-bid meeting to the general public. According to the BVB, the minutes of the pre-bid meeting were communicated on the web site "www.nittenders.com" on 01/10/2010 and the last date for the submission of the bid was 20/10/2010. According to the BVB, there was no challenge to violation of the Development Plan by reduction of the playground by allowing a restaurant in the residential Zone. The BVB contended that the restaurant was not meant for the general public nor for their school. It was a Canteen strictly for the refreshment for the people coming to the playground to be conducted by the Contractor appointed by the Nagpur Improvement Trust (N.I.T.). It is further contended that there is no plan for the commercial activity. The restaurant is to situate at the Corner occupying 90 Sq. Meters out of 13537 Sq. Meters within the permissible Zone. According to the BVB, there is no violation of the Development Regulations 2000 for Nagpur City and the dominant user will not change. It is also contended by the BVB that the public interest would not be injured/affected by the Restaurant/canteen as it is for the people using the playground. Further, according to the BVB, the Writ Petitioners had not challenged the fact that the last date for the submission of e-tender was 05/10/2010 and opening has been on 05/ 10/2010, but the resolution to participate in the tender process was made by the BVB at Mumbai on 15/10/2010. According to the BVB, the tender process was extended by the N.I.T. till 20/10/2010 by publishing the corrigendum on 30/9/2010 in the newspapers "The Hitavada", "Lokmat Samachar", "Deshonnati", and "Navbhrat" and the bid was submitted online on 19/10/2010 within the extended time. According to the BVB, the writ petitioners had not raised a challenge that the names of the two participants were not recorded in the pre-bid meeting. The BVB submitted that there was separate attendance sheet for that purpose and the attendees had duly signed. Further, according to the BVB, apart from the land area of 11136 sq. meters, the N.I.T.'s land was also included to make it 13557 Sq. meters for the project of playground plus Garden. The BVB submitted that the entire area is included in Project A (playground + Garden at the periphery and left over places of the playground). According to the BVB, total area of the garden would be only 3460 Sq. meters. According to the BVB, Nagpur City's Development Control Rules are not violated to beautify the playground as the playground remains substantial user. It is grievance of the BVB that the Public Interest Litigation was allowed erroneously without specific challenges from the writ petitioner to the construction of the School with garden, Sports complex, playground for the School etc. proposed by the BVB.

3. The facts, briefly stated, are as under:

The land Khasra No. 12 of Mouza-Bhamti included in Bhamti Parsodi Street Scheme of Nagpur Improvement Trust (hereinafter referred to as "the N.I.T.") was reserved as per the Development Plan sanctioned in the year 2001, as

below: -

Remaining reservation was for 9 meters x 12 meters wide road and residential purpose.

4. On 27/02/2002, by a Notification, the Nagpur Municipal Corporation (hereinafter referred to as "the N.M.C.") was declared as the Planning and Development Authority. It is competent Authority to make necessary changes in respect of planning and development in the above Khasra. It had passed unanimous resolution on 12/04/2010 to delete the reservation of plot nos. SW-164 and 165 and included those plots in the MSW-16 reserved for playground meant for the use of common people, who are residents in the surrounding area. The notice dated 26/10/2010 was issued by the N.M.C. in view of section 37 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act") for the modification of the above said reservations accordingly. But, earlier, on 29/03/2010, the N.I.T. had issued a notice inviting offers to develop the aforesaid plot nos. SW-164 and SW-165 for the Primary and Secondary School on Public-private participation basis, contrary to the unanimous resolution passed by the N.M.C. and modification proposed by it.

5. The petitioners before this Court argued that they represented the residents of the area. Petitioner No. 1 is a Lecturer while petitioner No. 2 is an association of local residents formed for preserving the said playground. The petitioners, who represent the residents of the area concerned, had made representations to the Planning Authority to declare the entire land comprising of plot nos. SW-164, SW- 165, MSW-16 of the land Khasra no. 12 in Bhamti-Parsodi Street Scheme as a "playground" and their prayers in the petition in the public interest were to quash an advertisement issued on dated 29.03.2010 with its Corrigendum issued later and the subsequent tender notice similarly published in September, 2010 by the N.I.T. On behalf of the petitioners, it is submitted that the Writ Petition under Article 226 of the Constitution of India is treated as a "Public Interest Litigation" (read with articles 14 and 48-A) and the petitioners seek to represent the common people residing in the Bhamti area (rate & tax payers) claimed to be deeply interested in the public utility land, environmental protection of the area and planned and orderly development of the City of Nagpur. Since alteration of the sanctioned Development Plan is the subject-matter falling within the jurisdiction of the Planning Authority under the Maharashtra Regional Town Planning Act, 1971, respondent/ Nagpur Municipal Corporation (N.M.C.) was instructed to take suitable action u/s 37 of the MRTP Act.

6. The petitioners prayed for declaration that modifications of reservations suggested by the N.M.C. vide notice dated 26.10.2010 u/s 37 of MRTP Act by seeking deletion of reservation for Primary School and Secondary School and to add the land thereof to reservation for playground is legal and valid. It is not in dispute that, during pendency of this petition, the N.M.C. has considered the said proposal, but, later on, decided to withdraw it. In the result, the original reservation, as given in the Development Plan, stands as it is. The position

declared by the N.M.C. on record and vide affidavit dated 10/08/2011 and declaration that the proposal for minor modification of Development Plan initiated u/s 37 of the MRTTP Act is dropped, was not questioned in any way, although, thereafter C.A.O. No. 1182 of 2011 has been moved by the writ petitioners on 24/08/2011 seeking leave to add Para 16G to the petition. The amendment was allowed by this Court on 14/09/ 2011. Thus, the declaration that the proposal to drop reservations for Secondary School and Primary School is valid has not been pressed thereafter by the petitioners. Similarly, though there is a subsequent tender issued in September 2010, that second tender has also not been questioned before this Court specifically. However, it needs to be pointed out that, the resolution passed by the N.I.T. on 07/01/2011 accepting the offer received in pursuance of that tender, has been challenged by amending the prayer clause and by adding grounds on 25/03/ 2011 and thereafter, on 14/09/2011.

7. We have heard Shri A.S. Jaiswal, learned Counsel for the petitioners, Smt. Bharti Dangre, learned Additional Government Pleader for respondent No. 1, Shri S.K. Mishra, learned Counsel for respondent Nos. 2 and 3 and Shri M.G. Bhangde, learned Senior Advocate for BVB. We have also perused copies of the documents sought to be relied upon by the parties along with the affidavits filed on the record.

8. After pointing out the facts in brief, Shri Jaiswal, learned Counsel for the petitioner, urged that there are 20 Schools in the vicinity and hence, there is no need of any new Primary and Secondary School in the area. He contended that the concerned area is congested one and the children in the area have no facility of "playground" except this public utility land and similarly, the elderly persons and the common people have no other open space available for their daily Morning or Evening stroll and physical exercise. He, therefore, contends that allotment of the entire land including the reserved land for playground to Bhartiya Vidya Bhavan is contrary to the provisions of MRTTP Act. Shri Jaiswal, learned Counsel argued that section 22(c) of the said Act requires that a Development Plan shall generally indicate the manner in which the use of the land covered thereby shall be regulated. In particular, it shall provide, so far as may be necessary, for, inter alia, proposals for designation of areas for open spaces, play-grounds, stadium, zoological gardens, green belts, nature reserves, sanctuaries and dairies. By reason of section 31(6), the Final Development Plan is binding on the Planning Authority. Under the provisions of section 42, it is the duty of the Planning Authority to take such steps as necessary to carry out the provisions of the Development Plan.

9. In The Municipal Corporation for Greater Bombay and Another Vs. The Advance Builders (India) Private Ltd. and Others, , the Supreme Court observed that since development and planning was primarily for the benefit of the public, the planning authority was under a statutory obligation to perform its duty, in accordance with the provisions of the Town Planning Act. Shri Jaiswal, learned

Counsel points out that, in the first tender notice inviting offers, the area declared for School was 3850 Sq. meters and an obligation was cast upon the successful bidder to develop area admeasuring 13666 sq. meters as playground and garden". The aspirant was expected to have minimum annual turn over exceeding Rs. 10 crores in any three financial years and net worth Rs. 5 crores. This could not be materialized and then similar notice was again published in September 2010 and in this revised tender, the minimum annual turn over exceeding Rs. 10 crores was maintained as it is and net worth Rs. 10 crores as on 31.03.2010 was asked for. The condition that the bidder must have previous experience of running and managing or must own at least five Schools or Colleges over past 5 years was also put as a qualification for the bidder. He argues that as there was no response to March 2010 tender, the conditions needed to be relaxed, but here, in the later invitation, the conditions were made more stringent. Shri Jaiswal, learned Counsel contended that the acts of N.I.T. were to favour the BVB, in particular to facilitate the construction of the School, Sports complex, Restaurant, garden etc. over the area including the playground earmarked for the people in the development plan.

10. In this background, he has invited our attention to clause 9 of the tender notice to urge that the entire playground as also the garden is to be used by the Private School and thus, it no longer remains available as a public utility land for the children residing in the locality or for the general public throughout the day. He contends that the conditions in the tender have also been modified later on to suit the BVB and allotment of the land to it on 7/01/2011 is mala fide. Our attention is invited to the admitted fact that the father of the Chairman of the N.I.T. is on Local Executive Committee (for Nagpur) of BVB. It is urged that, because of this, the condition later published on 6/9/2010 shows distinct changes to see that the projects can be allotted only to the BVB. The learned Counsel has invited our attention to provisions of section 16(1)(d) of the Nagpur Improvement Trust Act, 1936 to contend that, if really the Chairman of the N.I.T. had abstained from meeting, in which the resolution in favour of the BVB came to be passed by the N.I.T., it was obligatory for the Trustees to elect somebody else as a Chairman to preside over that part of the meeting. He contended that declaration of interest by the Chairman came at the end of business transacted and the Chairman of the N.I.T. had refused to participate only in decision made on the subject and there is nothing on record to show that he did not participate in deliberations for the decision. It is contended that, because of influence of the BVB and the Chairman of N.I.T., the condition to allot the reserved land to CBSE approved School or then the stringent conditions like experience and minimum number of Schools etc. came to be added. The resolution dated 7/1/2011 passed by the N.I.T. is, therefore, challenged as invalid and unsustainable as also illegal.

11. Our attention is invited to the provisions of section 22(c) of MRTP Act. The learned Counsel states that the reservation in the Development Plan for playground is a separate entry and the reservation for garden or park is an independent reservation. When the land in the layout is reserved for playground,

it cannot be permitted to be used as garden or park. Support is being taken from the Division Bench judgment of this Court in the case of Sarvajanik Shri Ganeshotsav Mandal and Sanjay Sawant, President of Sarvajanik Shri Ganeshotsav Mandal Vs. Municipal Corporation of Greater Mumbai, State of Maharashtra and Chhatrapati Shivaji Maharaj Smarak Samiti, , particularly paras 13, 14 & 20 for this purpose. It is reiterated by learned Counsel Shri Jaiswal that because of congested local area and availability of large number of Schools in the locality, the common people in the area are badly in need of a playground. It is submitted that, to maintain standard of hygienic living in the local area and for the safety and healthy environment, planned development of the playground is important aspect of the town planning Scheme. That need is rightly recognized in the Development Plan and hence, the playground cannot be allowed to be put to any other use exclusively beneficial to the private party and therefore, it cannot be allowed to be used as a playground to BVB School. In the Sarvajanik Ganeshotsav's case (supra), the Division Bench of this Court has declared the agreement of entrustment of the plot by the Bombay Municipal Corporation to the Chatrapati Shivaji Maharaj Samiti admeasuring 8261.90 Sq. meters in Vileparle (east), Mumbai as illegal and ultra vires and directed the Municipal Corporation to take possession, maintain & manage the open space as playground. In the recent running in the case of (Manohar Joshi Vs. State of Maharashtra and Others), (2012)3 S.C.C. 619, it was held that Government's action to delete the reservation in respect of the final plot and sanction to construct and occupy it in favour of the developer was illegal, unjustified and in complete subversion of the statutory requirements of the MRTP Act. The State Government and the planning Authorities were directed to scrupulously follow the directions and the suggested safeguards.

12. Shri S.K. Mishra, learned Counsel for the N.I.T. & the N.M.C. stated that the petition, as filed, is not a bona fide or genuine attempt to redress public grievance. He pointed out that the petition has been filed on 1/12/2010 i.e. long after the second invitation dated 6/09/2010, and still it does not contain any challenge or reference to that tender notice. The effort in the petition was to have entire ground used for playground without any reservation for the School and this was after the Nagpur Municipal Corporation passed a resolution to propose modification u/s 37 of MRTP Act for this purpose. Shri Mishra argued that the Nagpur Municipal Corporation has dropped that proposal and as the petitioners seek something which is now contrary to the Development Plan, it is not in the public interest. He farther contended that the proposed reservation in the Development Plan exists since the year 2000 and it is nowhere the case of the petitioner that the reserved land is the only playground available in the entire area. He contended that, because of section 31(6) of MRTP Act, the Development Plan is binding on the Nagpur Improvement Trust. As reservation is for the School, the condition that such School has to be recognized by CBSE is good and valid. He points out that no objection was raised by the petitioners or any residents before the Development Plan was finalized. In writ petition, there is

only challenge to the tender as published on 29/03/2010 and though it has been amended subsequently twice, there is no express challenge to the tender as published on 6/9/2010.

13. Shri Mishra argued further that, in response to the earlier tender, dated 29/3/ 2010, the only offer of Rs. 1.08 Crores was received, whereas an amount of Rs. 2.5 Crores was needed for playground development. Hence, that tender notice was cancelled and fresh tender was published on 6/ 9/2010. In the fresh tender, Rs. 2.5 Crores are stipulated for the School plots. He contends that the project is Public Private Participation Project (PPP) and there is no question of any loss to the public revenue. Though two tenders were received, only one continued its offer on 20/10/2010 when tenders were opened. Offer of BVB was found above the upset price as the BVB had offered Rs. 5.31 Crores. These developments are not being questioned in the writ petition. It was amended in March 2011 to incorporate challenge to resolution dated 7/1/2011 and thereafter in September 2011. In this background, it is contended that section 16(1)(d) of NIT Act is not attracted in the present facts. There were total 78 different subjects before trustees on 7/1/2011 and only one valid offer was available for consideration. There is no prejudice to anybody because of that grant. Shri Mishra invited our attention to photograph placed on record to point out how four play-courts are to be developed in playground within 18 months. The BVB has agreed to pay Rs. Two lakh per year for maintenance of the playground. It is further stated that the Chairman of the N.I.T. (Shri Sanjay Mukherjee), against whom the allegations of bias are made, was transferred in June 2011 and he has not been joined as a party-in-person. Our attention is invited to the reply of N.I.T. to amendment effected by the petitioners to point out how the playground is to be used. Shri Mishra pointed out that the tender also permitted consortium to be formed and hence, it cannot be alleged that the conditions in it were tailor-made to facilitate the BVB alone.

14. Shri Bhangde, learned Senior Counsel for BVB, however, wants to assail the bona fides of the writ petitioners. According to him, the petition is not filed in the public interest, but the petitioners are actually puppets in the hands of other School managements in the area. He points out that, the cost of each tender notice was Rs. 10,000/ and here, though the petitioners have annexed both these tenders, they have not disclosed the source from whom they got its copy. He contended that the petitioners have not purchased the same. Similarly, attention is invited to communications/letters dated 25/11/2008, 7/5/2010, 7/4/2010; resolution dated 12/4/2010; copy of note-sheet produced as Annexure P-10 and also copy of impugned resolution dated 7/1/2011 to contend that the same could not have become available to the petitioners in the normal course. It is not surprising that copies of the documents from public Office may come in the hand of any private party because it may happen that corrupt elements masquerading as public servants in the public Offices are likely to be motivated for monetary gain, or somebody may use undue influence in public Office to commit acts contrary to law to favour the private parties interested to

get the work done by hook or crook. Sometimes copies of the documents from the public Office may be procured from public servant as referred above, but copies of such procured material also may expose the illegality, irrationality and impropriety done in public Office. To that extent, the devout act of the petitioners to procure copies of documents and bring them to the attention of the Court may be pardonable in public interest. The impugned letter of intent dated 18.01.2011 is also pointed out to be of similar nature. Our attention is invited to reply filed to C.A.W. No. 1182 of 2011 to contend that appropriate stand in this respect is already taken by the BVB on record and the petitioners have not chosen to explain the position. The judgment of the Hon''ble Apex Court in the case of Dr. B. Singh Vs. Union of India (UOI) and Others, is pressed into service by Shri Bhangde to urge that, in such circumstances, no cognizance of the controversy can be taken as P.I.L. and the petition needs to be dismissed with heavy costs.

15. The recent judgment delivered by the Hon''ble Apex Court in the case of Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, is pressed into service to emphasize the need of correct pleadings in such challenge. It is contended that there is no challenge in the entire matter to the use of reserved land for the "playground" as garden. The use of portion of land reserved for "playground" as garden is not fatal and the DP reservation cannot be said to be violative hereby as user substantially remains the same. Our attention is invited to the judgment of the Hon''ble Apex Court in the case of Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, to substantiate this contention.

16. The judgment of this Court in the case of Sarvajanic Shri Ganeshotsav Mandal, Mumbai & Anr. (supra) relied upon by the writ petitioners is sought to be distinguished by pointing out the judgment of the Hon''ble Apex Court relied upon by respondent No. 4 (supra). Shri Bhangde, learned Senior Counsel further states that the plot reserved for playground in that case was sought to be developed into Swimming Pool and Sports Complex and it was found contrary to the Development Plan. Here, the earlier user as per the Development Plan substantially continues.

17. Shri Bhangde further points out that there is no challenge even to the second tender published on 6/9/2010 and there is no plea that the conditions therein are tailor-made to suit the BVB. The subsequent amendments effected by the petitioners show that they had an opportunity to challenge the later tender also, but the same has not been availed. The condition to permit only CBSE School on reserved land is also not available for challenge. According to Shri Bhangde, there is no argument and challenge pointing out any damage to the public interest. In this connection, support is being taken from the judgment in the case of Jagdish Mandal Vs. State of Orissa and Others, . By pointing out Para 21, it is urged that as a contract is entered into between BVB and N.I.T., the scope of judicial review under Article 226 of Constitution of India is very limited and the challenge, as raised, does not call for any such interference.

18. The judgment of the Hon"ble Apex Court in the case of Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, is also relied upon to show as to how the terms and conditions of tender need to be appreciated and the limited role available to courts of law in such matter. The learned Counsel states that the entire challenge on this count is without any merit.

19. Inviting our attention to the proceedings of the meeting of N.I.T. dated 7/1/2011, it is contended that the relationship sought to be established between the Chairman of the N.I.T. and the BVB Society is too remote. Again, reply filed to C.A.W. No. 1182 of 2011 is pressed into service for the said purpose. BVB is old society registered at Bombay and subsequently, under the Bombay Public Trusts Act. The resolution was passed on 15/10/2010 at Bombay to participate in tender process of the N.I.T. and the letter of intent was also forwarded to the BVB at Bombay. The BVB has come into picture only after publication of tender notice and the decision to modify tender conditions. Similarly, decision to accept offer of BVB and to issue it a letter of intent is taken by the Board of Trustees of the N.I.T. and not by its Chairman. These trustees are members of the N.I.T. and there is no allegation of mala fides against any of them. It is urged that there were total six trustees. In this situation, it is contended that, only for one subject for which there was only one offer, complete & valid in all respect; it was legally not necessary for the Chairman of the N.I.T. to rescue himself. In any case, it was not necessary for the other trustees to appoint any other person as the Chairman while considering the said subject. The judgment of the Hon"ble Apex Court in the case of Javid Rasool Bhat and Others Vs. State of Jammu and Kashmir and Others, is pointed out to show how bias, in such a matter, needs to be looked at. It is contended that here, the Chairman has not participated in deliberations and was not party to the decision. His mere physical presence, therefore, was not sufficient to be construed as a fact to influence the decision making process. The Full Bench judgment of Madhya Pradesh High Court in the case of The State of M.P. and Others Vs. Beni Pd. Rathore and Others, is pressed into service for evaluating presence of the Chairman in the meeting on 7/1/2011. The learned Counsel states that, in this situation, merely because another person is not elected as a Chairman u/s 16(1)(d) of the NIT Act, that by itself is not sufficient to vitiate the resolution dated 7/1/2011.

20. Lastly, our attention is invited to the fact that, in the said area, there is no playground since the last about 10 years and the land though reserved, is having only shrubs and wild grass grown over it; it cannot be, therefore, used for any purpose. If the petitioners were/are really interested and acting in public interest, they must explain as to why they have not approached any of the Authorities or this Court earlier in point of time for getting the said land cleared and for its use as per the Development Plan. Shri Bhangde, therefore, submits that the petition suffers from laches.

21. Shri Jaiswal, learned Counsel, in reply, has contended that the residents of

Trimurti Nagar are entitled to have playground and that playground cannot be used for School. The judgment of the Hon''ble Apex Court in the case of A. Abdul Farook Vs. Municipal Council, Perambalur and Others, is relied upon to urge that, in such matters, Court cannot adopt approach which is too technical. It is reiterated that, in the latter tender, instead of relaxing the terms and conditions, the same have been made more harsh only to select and favour the BVB. None of the documents produced on record by the petitioners are pointed out as incorrect or false & hence, the BVB should not hide behind technicalities. It is also argued that the Chairman of the N.I.T. duly communicated his interest in awarding tender to the BVB on 7/1/2011 and his presence, therefore, has influenced the entire proceedings. He, therefore, sought for an order in favour of the residents of Trimurti Nagar. Shri Jaiswal argued that the petitioners are not late in approaching the Court under the circumstances.

22. Shri Jaiswal, learned Counsel has placed reliance on the case of A. Abdul Farook (supra). Paragraph no. 33 contained observations of Hon''ble Apex Court that, in a public interest nature litigation before it, it is not necessary for the Court to abide by strict rules of pleadings and even if it is found that the petitioners are busy bodies, the courts can, while discharging them, proceed to deal with the Public Interest Litigation suo motu. Earlier judgments have been also noted to show that the Public Interest Litigation is inquisitorial in nature, while private litigation is adversarial. In Public Interest Litigation, Court is not supposed to strictly follow the ordinary procedure. The Hon''ble Apex Court found permanent arches allowed to be erected by Municipal Council in political interest and not in public interest. Shri Jaiswal, learned Counsel, making a reference to the ruling in Jagdish Mandal (supra) argued that, in the present case also, Judicial review is invoked on the ground that the process adopted by the N.I.T. was intended to favour the BVB and it is arbitrary, mala Court's and irrational adversely affecting the public interest. He submitted that, in such cases, commercial functions like evaluation of the tenders, awarding of Contracts if mala fide and not in the public interest can be interfered with on the principles of equity and justice. Administrative action has to be fair, rational, and reasonable without any bias or special favour to any private party at the cost of public interest. He submitted that Public Interest Litigation ought not to be dismissed or defeated on technical ground.

23. Shri Bhangde, learned Senior Counsel has relied upon the later judgment of larger bench of the Hon''ble Apex Court in the case of State of M.P. Vs. Narmada Bachao Andolan (supra) to urge that the law on pleadings is also applicable to Public Interest Litigation. Perusals of paragraph nos. 8 to 11 of the said judgment show the purpose of pleadings and issues. The Hon''ble Apex Court has observed that-if any factual or legal issue, despite having merit has not been raised by the parties, the Court should not decide the same, as the opposite Counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard and such a judgment may be violative of principles of natural justice. In paragraph no. 12, the Hon''ble Apex Court has observed that every technicality

in procedural law is not available as a defence in matters of grave public importance. In paragraph no. 13, it is observed that there must be sufficient material in petition on the basis of which the Court may proceed. Public Interest Litigation must have factual foundation to show basis on which litigant is claiming relief and information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of principles of natural justice. Even in the Public Interest Litigation, the litigant cannot approach the Court to have a fishing and roving enquiry. In the Public Interest Litigation before the Hon''ble Apex Court, an impression was given that some drastic steps would be taken by the Authorities causing great hardship to the large number of persons. The petition, however, did not disclose the factum of number of persons who had already vacated their houses and handed over possession. Contention was that urgent measures were required to be taken by the courts and the Hon''ble Apex Court has noted that there was no material to adjudicate upon the issue involved in the Public Interest Litigation. The High Court, in this background, had directed the. Authority to submit report on rehabilitation work and the Authority, vide its report, then pointed out a huge amount of several thousand Crores already invested and disbursed. Majority of the families had already shifted and an amount of Rs. 9924 Crores was already disbursed amongst the claimants and the sum of Rs. 589 crores was only left to be disbursed. The Hon''ble Apex Court has noted that there were no pleadings before the High Court on the basis of which a writ petition could have been entertained and decided and it deserved rejection at the threshold. It is also noted by the Hon''ble Apex Court that, even in the Public Interest Litigation, in absence of such factual matrix, similar course can be followed by the courts. This judgment, therefore, shows total absence of pleadings on facts vital for consideration & completion of more than 95% of rehabilitation has weighed with the Hon''ble Apex Court. Such is not the position here.

24. In Dr. B. Singh (supra), the Hon''ble Apex Court has considered the issue of bona fides of petitioner after observing that time has come to weed out the petitions which though titled as "Public Interest Litigation", are in essence something else. The courts at times entertain such private disputes which results in wasting of valuable judicial time. It has been noted that, in the service matters, Public Interest Litigations are not entertained. The Hon''ble Apex Court has noted that, such Public Interest Litigation could have been thrown out by the High Court. Tendency is growing slowly to permit setting in motion Criminal law jurisdiction often unjustifiably just for getting publicity and giving adverse publicity to the opponent is also noted. In the process, it is also observed that Official documents are being annexed without even indicating as to how the petitioner could possess them. The story of accidentally finding such documents was not believed. Where such petitioner does not have even a remote link with the issue involved, the Hon''ble Apex Court has stated that it becomes imperative for Court to lift the veil and uncover the real purpose of the petition and the real person behind it. The issue before the Hon''ble Apex Court was about a petition

purported to have been filed questioning the propriety of a person being considered for appointment as a Judge.

25. In view of ratio in the ruling in Bangalore Medical Trust Vs. B.S. Muddappa and others, , it cannot be said that the present issue cannot form a subject matter of scrutiny in the Public Interest Litigation. The details of reservation with respective earmarked area are already mentioned by us above. It is the stand of N.I.T. that it is not required to obtain development permission from the Nagpur Municipal Corporation in respect of developments undertaken by it as a Development agency and the State Government through its notification dated 27th February, 2002, has clarified that it can continue functioning as a Planning Authority for such developments undertaken by it. We find that the notification issued continues the N.I.T. for limited purpose in the areas transferred to the Municipal Corporation. Present area i.e. Bhamti Parsodi area is one such area. Though writ petitioners have raised this issue in Para no. 4 of their writ petition, no arguments about absence of authority in the Nagpur Improvement Trust are advanced by them. The N.I.T.'s status as the Planning Authority for the area concerned is not in dispute as we have considered the arguments advanced on behalf of the State of Maharashtra and the Nagpur Municipal Corporation in this respect. However, in affidavit dated 11/8/ 2011 sworn by Ravindra Rambhau Kumbhare, Additional Municipal Commissioner, it is stated that "the Nagpur Improvement Trust, which was Planning and Development Authority in respect of these reserved lands prior to 27th February, 2002, had submitted objection to the proposed Development Plan". The effort made by citizens to secure entire land from Khasra No. 12 as playground by deleting reservation of Primary School and Secondary School and for that purpose, to seek minor modification in the final Development Plan as per section 37 of the MRTP Act could not succeed. But then, details of those 20 Schools in Para 11 of the petition are not in dispute. The Writ Petitioners as also the respondents have not invited attention of the Court to the proceedings of pre-bid meeting conducted by the Chairman of the N.I.T. on 17/9/2010. Two of the Institutes interested in submitting tender are reported to have participated in it. However, the minutes do not record their names. First clarification given by the N.I.T. is about area of land under School project. It is stated to be revised to 4125.50 sq. meters or 1.02 Acres. This seems to be because of requirement of CBSE that the plot of School to be recognized by it must have area above one Acre. The provision in clause 5.8(2) of the tender document has been amended accordingly and the reserved price has also been modified to Rs. 2.75 Crores. The timings for use of playground and garden for School are revised from morning 8.30 a.m. to 4.30 p.m. in the evening. For general public, the time given is 5.00 a.m. to 8.00 a.m. and 5.00 p.m. to 9.00 p.m. T.C. (Terms and Conditions) and charges for the use of playground and garden for School are stated to be Rs. 2 lakh per year with 5% increase per year over the previous year and the N.I.T. has agreed for arranging maintenance of garden. Ownership of playground and garden is stated to be with the N.I.T. No ground floor construction is permitted except for staircase and lift. The

requirement of 4.50 meter from Ground level to the beams of stilt parking is also clarified. The question about grant of relaxation for marginal space for better planning of School is answered by stating that relaxation shall be allowed as per the Development Control Rules. The detailed specifications and estimate for the development of playground and garden is stated to be enclosed along with some communication as "Annexures Y & Z". One of the queries required the N.I.T. to specify timing of restaurant for general public. This timing is specified to be from 5.00 p.m. onwards.

26. A perusal of tender document vide clause 5.5.2(xi) shows that 10 seats in the School every year are to be filled in exclusively on the recommendations of the Chairman of the N.I.T. The tender document shows the "playground and garden" as Project A and the "Primary and Secondary School" as project B. The perusal of clause 5.5.2 (xii) shows that if the bidder fails to comply (Garden project), it would be considered as major breach of terms and conditions. Thus, failure to comply with the playground part is not treated as a major breach by the N.I.T.

27. A perusal of minutes of pre-bid meeting with tender document, therefore, reveals a further reduction in the area of playground. The area for school is increased and some area of playground is also allowed to be developed as a garden. In section 22(c) of the MRTP Act, playground is an independent reservation implying thereby that it cannot be construed to mean reservation for park or garden. In other words, it may require minor modification u/s 37 of the MRTP Act. The garden as also the playground is to be used by School during the day time and it becomes available to common/general public only after 5.00 p.m. Thus, children in the locality, who are real beneficiaries of that Development Plan reservation, are supposed to play only between 5.00 a.m. to 8.00 a.m. and 5.00 p.m. to 9.00 p.m. Insofar as the garden is concerned, the very same time limits apply. Not only this, but indirectly a commercial user is permitted and a restaurant is allowed to come up either in the playground or in the garden. That facility perhaps is to be used by the School and the person running it can cater to general public after 5.00 p.m. Such person will obviously be a contractor on commercial basis. The private School will not run a restaurant for general public. Such commercial user and such exploitation of public property or garden has not been communicated to general public as there is no such mention in documents inviting offer. Clause 5.3 of tender describes the entire area to be purely residential area. Not only this, but availability of area as per CBSE requirement is also not disclosed to general public. It cannot be presumed that other institutions having CBSE affiliation and running Schools in the Country would not have been interested in opening a School in the city, had they known that land as required by CBSE with such facilities is available for them. It is equally important to note that this meeting dated 17/9/2010 has been chaired by the Chairman of the N.I.T. against whom there are allegations of bias and partiality. As per the tender document, cost of project A (playground & garden) to be borne by BVB is Rs. 2.50 Crores minimum & it is as per N.I.T.'s 2008-09 CSR. But then, the offer on

that basis & for that sum is being accepted in 2010-2011 i.e. almost 2 years later. No pains are taken to point out CSR rates for 2010-2011. It also needs to be mentioned that the last date of E-sub-mission of tender was 5/10/2010 & the opening has been on 5/10/2010. But then, the body of BVB at Mumbai did resolve to participate in tender process on 15/10/2010.

28. Shri Jaiswal, learned Counsel has relied upon the Division Bench judgment of this Court in the case of Sarvajani Shri Ganeshotsav Mandal, Mumbai (supra). In this judgment, an open space reserved or Development Plan or playground was being put to use as a park. The Hon'ble Division Bench has noted that ordinary meaning of "playground" is an outer area for children to play on or on piece of and set up for open air recreation, specially for children or then one connected with School. The judgment of learned Single Judge of this Court in the case of C.R. Dalvi and Others Vs. Municipal Corporation and Others, holding that such land reserved in the Development Plan cannot be utilized for any purpose other than for playing of children and similar recreational activities is also noted by the Division Bench. In Para 20, the Division Bench then notices that playground, swimming pool, gymnasium and park even though covered under the head Recreational grounds and facilities, is a separate and distinct "use" category and cannot be put to interchangeable use wholly or partly. The Division Bench, therefore, found that swimming pool can never be covered by expression "playground" or vice versa. The Division Bench concluded that the land reserved for playground cannot be permitted to be used for the purpose of swimming pool and sports complex.

29. Shri Bhangde, learned Counsel has relied upon the judgment in the case of Forward Construction Company (supra), where the reservation was for bus depot and the land was sought to be put to use by compounding bus depot with commercial activity of a shopping complex. The plot was situated in commercial road and was acquired by the Municipal Corporation for bus depot and ultimately, was used for bus depot with added commercial purpose. The Hon'ble Apex Court held that it did not constitute "change". It is noted that general meaning of word change is "to make or become different, to transform or convert". If the user was to be completely or substantially changed, only then the prior modification of Development Plan was necessary. In the facts before the Hon'ble Apex Court, user of plot was not changed. It was being used as a bus depot with commercial use to augment income of Corporation for public purpose. It is, therefore, obvious that a plot in commercial area acquired for bus depot was being used not only for bus depot but also for commercial purpose. Both users were legal and also acceptable.

30. The judgments on which the respective Counsel have placed reliance show that where original reservation is not in any way increased and an activity incidental thereto is taken up, the Hon'ble Apex Court has found that such an activity is not in violation of Development Plan reservation. Here, the N.I.T. has limited powers of continuing with development already undertaken and in case,

area of respective reservation i.e. under DP reservation is to be changed, it must obtain previous approval of Nagpur Municipal Corporation. Similarly, its changing purposes by putting part of land to use as garden or then for commercial purpose as restaurant, the object behind providing the land for playground is definitely frustrated. For use of certain facilities in playground, the children/their parents are supposed to pay. Charges for use of tennis Court, throw ball, basket ball, skating rink, table tennis, craft etc, for equipments & maintenance of these courts are to be worked out by the BVB and the NIT. Only playground would be available to children free of costs. We are informed that the N.I.T. and not the BVB would run the restaurant. In the facts before this Court, the area of playground is being reduced; a garden though not envisaged in Development Plan is being introduced & is proposed in the part of playground. Similarly, commercial user by allowing restaurant open to public is also being permitted. The area for the school cannot be increased so as to change the reserved playground area. It is, therefore, obvious that all these changes cannot be viewed as beneficial to the residents of the area and in this situation; test of substantial user cannot be applied.

31. This brings us to the question regarding presence of the Chairman of the N.I.T. during the meeting. The proceedings no doubt record that the interest which the Chairman of the N.I.T. had in the subject was disclosed by him and thereafter, on 7/ 1/2011, the decision has been taken. The minutes record the history and in the meeting of trustees, nobody appears to have either moved that subject or seconded it. But, at the end of minutes, the fact of disclosure of interest is recorded. The Chairman had disclosed that his father is a Committee Member of BVB for Nagpur area and hence, the Chairman would not participate in taking decision and the Trustees, therefore, had to take appropriate view on merits. It is further recorded that this fact was noted by trustees and then approval was given to allotment of 4125.50 sq. meters of land on premium of Rs. 281 lakh to BVB.

32. Upon perusal of the judgment in the case of Javid Rsool Bhat (supra), it reveals that the contention was that the selection of candidates was vitiated because of presence of father of one of the candidates on Selection Committee. The Principal of Medical College, Srinagar, whose daughter was a candidate for admission to Medical College, had informed the Selection Committee at the very outset about it and had also stated that he would not be concerned with written test and would not be present at the time of interview of his daughter. The other members of the Selection Committee accepted and did not think it necessary to advise the Government to appoint a substitute member of Selection Committee. The Hon''ble Apex Court has noted that the procedure adopted by the Selection Committee and the members concerned was not in accordance with well known and accepted procedure. It is also noted that, in the absence of mala fides, it would not be right to set right the selection merely because one of the candidates happened to be related to the Member of the Selection Committee. In Para 14, the Hon''ble Apex Court has noted the facts in the case of A.K. Kraipak

and Others Vs. Union of India (UOI) and Others, and then concluded that, in the facts before it, when other candidates were interviewed, the Principal was not aware of the marks obtained either by his daughter or by any other candidate and there was no occasion to suspect his bona fides even remotely. There was not even a suspicion of bias and hence, there was no violation of principles of natural justice.

33. In State of M.P. Through Local Self Govt. Department, Bhopal (supra), the Full Bench of Madhya Pradesh has considered similar aspect in case of meeting of no confidence and it was noted that requirement of law to preside over meeting if President is present, contemplated not mere physical presence but presence coupled with readiness to preside over the meeting and in the absence of resident or in the event of his declining, it was for the Vice President to preside over the meeting.

34. In the facts which we have noticed, the decision as to area under reservation was taken at the time of pre-bid meeting. The question remains disputed as to whether there was given a public notice for the knowledge of general public in the newspapers of wide circulation in the area concerned. The premium amount was proportionately raised, but it was not communicated to the general public. That meeting was conducted by the Chairman himself. The material changes and diversions from Development Plan are already noted by us above and absence of any details on the issue is also noted by us. We, therefore, find that, in such a situation, it was obligatory for the N.I.T. as also the BVB to bring on record the circumstances in which the changes were brought and accepted. The N.I.T. has remained satisfied by throwing burden on the shoulders of the petitioners and by contending that, as necessary details are not pleaded, this Court cannot take cognizance of the matter as a Public Interest Litigation. Their bona fides have been questioned by pointing out the production of documents which normally could not have reached them, in these facts, we do not find that production of documents by itself show any oblique motive. The issue brought by them before the Court is in public interest and they have succeeded in pointing out how a development plan reservation is being violated.

35. The judgment of the Hon'ble Apex Court in the case of Dr. B. Singh (supra) considers the filing of PIL in service matters. We find observations therein are not applicable directly in the context of the present facts. In any case, we are not in a position to find out any oblique motive with the petitioners who represented the residents of the area. The existence of about 20 Schools in the vicinity of the area and, therefore, no need for any additional School is already on the record. Therefore only, the Planning Authority had proposed minor modifications u/s 37 of the MRTP Act by deleting reservation for School by adding said land to playground. However, later on, the said Authority viz., N.M.C. has gone back on its proposal.

36. The case of State of Madhya Pradesh Vs. Narmada Bachao Andolan (supra) shows the application of law of pleadings. In the present matter, necessary

material is already on record and the petitioners have sufficiently pleaded their case of violation of development plan reservation. The first question which arises for consideration is whether in such circumstances, when several Schools are available in the vicinity, the State Government or any other Authority which has to permit the School to be opened, is duty bound to grant permission to the BVB merely because of Development Plan reservation. The other question is whether the Planning Authority in the light of provisions of section 31(6) of the MRTTP Act can alter the area of land under reservation and whether the N.I.T., who has been given limited role, can do so without recourse to provisions of section 37 thereof. It is also not understood as to how a Public Authority like N.I.T. can seek reservation of 10 seats from BVB in such matters. All these issues definitely are issues in larger public interest.

37. Shri Bhangde, learned Senior Advocate has contended that the courts have limited jurisdiction while appreciating the terms and conditions of the tender. A perusal of judgment in the case of Directorate of Education Vs. Educomp Datamatics Ltd. (supra), particularly paras 11 & 12 show that terms and conditions are prescribed by the competent Authority bearing in mind the nature of contract and such Authorities are best judges to prescribe the same. It is not for the courts to comment whether better terms and conditions could have been prescribed. In such matters, such Authorities need to be given a free hand. The State Government can choose its own method to arrive at a decision and fix its own terms of invitation to tender and that is not open to judicial scrutiny. However, the Hon''ble Apex Court has also found that the Court can examine decision making process.

38. In the case of A. Abdul Farook (supra), the Hon''ble Apex Court has held that, in the, Public Interest Litigation, it is not necessary for the courts to abide by strict rules of pleadings and such Litigation is inquisitorial in nature. The question before the Hon''ble Apex Court was regarding erection of arches and no objection Certificate issued by Municipality to construct the same on the condition that there would be no hindrance to traffic. The Secretary of District Consumer Council had filed writ petition for issuance of writ of Mandamus for bearing the respondents from putting up such arches. There was also challenge by a Ward Member, who sought certiorari for quashing no objection Certificate. The learned Single Judge dismissed that Writ Petition. In turn, an appeal was preferred. The Division Bench of the High Court dismissed that appeal as also Writ Petition and then the Secretary of District Consumer Council and Ward Member approached the Hon''ble Apex Court. The Apex Court allowed the appeal. It is noted by the Hon''ble Apex Court in Para 37 that though the Authorities may grant permission to construct such permanent structure, there must be public interest in carrying it out and not any private interest or interest of any political party. The judgment, therefore, shows that whenever a public interest is found, the Court can interfere in the Public Interest Litigation without bothering for technical objections, as attempted to be raised by before us.

39. In the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , the Hon"ble Apex Court has laid down certain norms out of it as under:

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L. (4) The Court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL. (5) The Court should be fully satisfied that substantial public interest is involved before entertaining the petition. (6) The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions. (7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation. (8) The Court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

40. While tracing the history of Public Interest Litigations in the Country, Hon"ble Apex Court noted that the Public Interest Litigation is an extremely important jurisdiction exercised by the Supreme Court and the High Courts. The courts in a number of cases have given important directions and passed orders which have brought positive changes in the Country. The courts' directions have immensely benefited marginalized sections of the society in a number of cases. It has also helped in protection and preservation of ecology, environment, forests, marine life, wildlife etc. The Court's directions to some extent have helped in maintaining probity and transparency in the public life. The Hon"ble Apex Court, while exercising its jurisdiction of judicial review, realized that a very large section of the Society, because of extreme poverty, ignorance, discrimination and illiteracy, had been denied justice from time immemorial and in fact, they have no access to justice. Predominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the Society, the Hon"ble Court has initiated, encouraged and propelled the Public Interest Litigation. The litigation is upshot and product of Hon"ble Apex Court's deep and intense urge to fulfill its bounden duty and Constitutional obligation. The courts expanded the meaning of "right to life" and liberty guaranteed under Article 21 of the Constitution". The rule of "locus standi" was diluted and the traditional meaning of "aggrieved person" was broadened to provide access to justice to a very large section of the Society which was otherwise not getting any benefit from the judicial system. In paragraph 36, the Hon"ble Apex Court observes that, in very few cases, the Indians in large numbers are seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. The Hon"ble Court states that the narrow concepts of "cause of action", "person aggrieved" and individual litigation are becoming obsolescent in some jurisdictions.

41. Thus, there cannot be any estoppel or acquiescence in such matters by local residents when this Court has found that the cause presented to it is public cause & cognizance is taken in larger public interest. The limitations laid down by the Hon"ble Apex Court can not enable the wrongdoers & manipulators to hide behind the technicalities or by continuing to indulge in activities prejudicial to public at large. In Mohd. Aslam @ Bhure Vs. Union of India (UOI) and Others, , the Hon"ble Apex Court has considered the technical objections raised in the situation when it has treated letters, telegrams or postcards or news reports as Writ Petitions. In such petitions, on the basis of pleadings that emerge in the case after notice to different parties, relief can be given or refused. Therefore, the Court should not approach matters where public interest is involved in a technical or a narrow manner particularly, when the Court has entertained the petition, issued notice to different parties. It would not be appropriate for the Court to dispose of the petition on such grounds. In the proceeding before the Hon"ble Apex Court initiated as a Public Interest Petition, several reliefs were claimed, but after the interested parties were impleaded and their pleadings were putforth, the Hon"ble Apex Court gathered what crystallized there from as the controversy involved. The ruling in the case of Jagdish Mandal (supra) laying down scope of judicial review in award of contracts is, therefore, not attracted nor decisive in the present facts.

42. In this situation, we find that the N.I.T. and the N.M.C. have not made clean breast of matter. They, along with the BVB, are trying to take shelter behind technicalities. Violation of final Development Plan and injury to rights of local residents, for whose benefit the reservation exists, is sufficiently clear and needs redressal in the public interest. The State of Maharashtra has not found it necessary and convenient to clarify the position as to the use and need for the playground pursuant to the Development plan. We find that the e-tender floated by the N.M.C. does not depict clear position which the N.M.C. has revealed in pre-bid meeting on 17/9/2010. We, therefore, must quash the process undertaken by the N.M.C. including allotment effected in favour of BVB on 7/1/2011. The common people mostly belonging to poor, weak, disadvantaged Society sometimes are ignorant due to their social and economic backwardness/difficulties. They may not be able to come forward to the Court to enforce their fundamental and legal rights guaranteed in favour of the citizens. In such a case, any bona fide litigant can be allowed to come forward to protect public and social interest and vindicate the cause of justice to redress public injury. Public Interest Litigation has a great potential as it enables the Court to see to it that justice must reach to doors of all those citizens in the area who could not come to the Court due to their socioeconomic difficulties. In our view, the public interests lies in the reservation and preservation of open spaces for "playground". Such public interest cannot be sacrificed by transferring such sites to private persons interested in the playground for conversion of it to some other different user in a venture to establish their own sports complex, restaurant, swimming tank, garden etc., where such private party is motivated with a view to earn monetary

gains/ profits out of its project. Any such act by the Planning Authority to transfer the playground to the private party interested to earn pecuniary gains out of it, instead of maintaining the playground as mentioned in the Development Plan in the larger public interest for the benefit of common people, would be an act contrary to the legislative intent and inconsistent with its statutory obligations. Furthermore, it would be in direct conflict with the Constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens/local residents irrespective of their socio-economic handicaps. Every action of the local Planning Authority must be informed by a reason, free from arbitrariness and discrimination. Playground meant for the residents of the area cannot be allowed to be bartered away and converted as a club/sports complex with restrictive user meant for handful of rich people in the society. It is duty of the local Authority to maintain the playground for the benefit of common people who are mainly residents of the surrounding area. This is larger public interest. Funds are required to be generated for such public purpose; want of funds cannot be an excuse for the local Planning Authority to shirk its statutory duty to maintain the playground and furthermore, there is no justification to deviate from the final Development Plan to transfer such public property to the private hands interested in earning monetary profits out of it. In our view, in the facts and circumstances of the present case, user of the plot of land reserved as a "playground" under the Development Plans cannot be deviated for any other purpose other than the reserved purpose of the "playground" as determined in the final Development Plan. It is needed for the children in the area and for recreational activities for citizens. In these days, the thickly populated urban areas in the City need planned and controlled development and there is dearth of adequate open spaces for the playgrounds in the City, where children of the local residents can play and have an opportunity to train themselves and undertake career in major outdoor Sports like Cricket, football, hockey etc. or at least to maintain their physical fitness at satisfactory level. The nation needs best of talent in major Sports to shine on behalf of India at International level. Such playgrounds, as planned in Town Planning Scheme should sub-serve the need if kept available to children of the local residents in the urban areas as well, free of costs and at various places in the city as originally planned in the Scheme under the MRTP Act. The State or instrumentality of the State (Article 12) cannot act in unreasonable, arbitrary manner, to modify the final Development Plan with a view of entering into an agreement or otherwise causing injury or harm to the Public interest flowing from its unjust and unreasonable conduct. Reservation as to "playground" mentioned in the Final Development Plan pursuant to the Town Planning Scheme under the MRTP Act declared by the State, which is binding on the Planning Authority, cannot be allowed to be defeated to favour the private party in an agreement. We, therefore, quash and set aside the tender process to the extent of allotment of the "playground" area by the N.I.T. to the BVB because the learned Counsel Shri A.S. Jaiswal appearing on behalf of the writ petitioners,

during the hearing before us, has shown some degree of latitude to the challenge of tender process between the BVB and the N.I.T. and he submitted that the Writ Petitioners do not want to press the challenge for validity of allotment of the land to the BVB, restricted for the purpose of starting the Primary and Secondary School as planned by the N.I.T. as a local Planning Authority. While the learned Senior Advocate Shri M.G. Bhangde expressed apprehension that the BVB may not be able to run the School without availability of the playground for their school children. We must hasten to clarify that the playground reserved in the Development Plan can be used for the benefit of all School going children in the School of the BVB as well as the children of the residents in the surrounding urban area with unrestricted and free entry for the common people in the area for use of the playground in public Interest. In return, for the use of the playground for their School during the School hours, we expect the BVB to assist the local Planning Authority-N.I.T. by extending financial help and co-operation for cleanliness, maintenance and upkeep of the playground in play-worthy condition for its proper use. The tender process to that extent shall stand as valid. Rule is made absolute accordingly. No order as to costs.