

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 230 OF 2022

1. **VRINDA SHARAD BAL,**
Adult, Indian Inhabitant,
Aged: 65 years; Occupation: Business,
having residential address at:
1182/1/2, FC Road,
Pune 411 005
2. **PALLAVI SHARAD BAL,**
Adult, Indian Inhabitant,
Aged: 35 years; Occupation: Business,
having residential address at:
1182/1/2, FC Road,
Pune 411 005

... PETITIONER

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
through the Secretary, UDD,
and through the office of
Government Pleader attached to this
Hon'ble Court
2. **PUNE MUNICIPAL
CORPORATION,**
Main Building, Near, Mangala Theatre,
Shivajinagar, Pune 411 005
3. **EXECUTIVE ENGINEER, PMC,**
Building Development Department,
Zone No. 3, Svatantryaveer Savarkar
Bhavan, Pune Municipal Corporation,
Pune

... RESPONDENTS

ARUN
RAMCHANDRA
SANKPAL

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ARUN
RAMCHANDRA
SANKPAL
Date: 2023.10.31
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APPEARANCES

FOR THE PETITIONERS	Mr Virag Tulzapurkar, Senior Advocate, with Nikhil Sakhardande, Senior Advocate, Siddhesh Bhole & Ashwin Pimple, i/b SSB Legal & Advisory.
FOR RESPONDENT-STATE	Ms Molina Thakur, AGP.
FOR RESPONDENTS NOS.2 & 3	Mr Rajdeep Khadapkar.

CORAM : G.S. Patel & Kamal Khata, JJ.

DATED : 23rd October 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.** Rule returnable forthwith since there are Affidavits to the stage of Sur-Rejoinder. We have heard Mr Tulzapurkar for the Petitioners and Mr Khadapkar for Respondent Nos 2 and 3 at some length.

2. The contesting Respondents, Respondent Nos 2 and 3, are the Pune Municipal Corporation (“PMC”) and its Executive Engineer. The Petition relates to land at Bavdhan (Khurd), Pune, Survey No 23, Hissa Nos 1 to 5 and 7. It is a very large tract of land of 8 Hectares, 79 Ares, about 1,02,300 sq mts. From Survey No 23,

Hissa No 1, an area of 1 Hectare and 44 Ares did not at the time of the Petition belong to the Petitioners. But the case advanced is in respect of this land also.

3. The challenge is to a Government Notification dated 5th August 2015, issued by the State Government under the Maharashtra Regional Town Planning Act, 1966 (“**the MRTP Act**”). A copy of this Notification is at Exhibit “G,” at page 52. This Notification is what we call the Bio-Diversity Park (“**BDP**”) Notification. The Petition assails the attempt by Respondent Nos 2 and 3 to apply the BDP Notification retrospectively to permissions and sanctions granted and development done on the Petitioners’ land.

4. Also under challenge are two letters dated 26th April 2021 and 10th June 2021, copies of which are at pages 84 and 91, the effect of which was to reject the Petitioners’ applications for a revalidation of the layouts proposed on these lands.

5. In 1997, 23 villages came under the agglomeration of the PMC. At that time, it was the Regional Development Plan of 1998 for Pune that governed town and country planning in the area. The land was admittedly in what was called the Hill Top Hill Slope (“**HTHS**”) zone. There was no absolute prohibition on construction in the HTHS zone. That is not even the controversy before us. Some development was permissible. Before applying for development or construction permission, sanctions had to be obtained for the proposed layouts. The layout needed to be

completed, that is to say, the supporting infrastructure of roads, etc., had to be laid and done.

6. On 14th November 2003, the PMC, the Planning Authority under the MRTP Act for the area in question, sanctioned a layout plan proposed by the Petitioners' predecessors-in-title regarding this land. This was obviously a first step towards redevelopment. At that time, i.e., in 2003, the land was still part of the HTHS zone. The Development Control Regulations of 1987 were then in force. The Petition asserts that after the layout was sanctioned, the previous owners approached the 1st Petitioner for a demarcation of the land. Thus, the 1st Petitioner got involved in construction and further layout activities.

7. Sub-paragraph (F) of the Petition at page 7 says that the 1st Petitioner carried out permitted and sanctioned development in accordance with the sanctions or permissions then granted. This is explained to mean the demarcation and plotting of the land, development of internal roads, fencing, compound gates, etc. Then the 1st Petitioner approached the Deputy Superintendent of Land Records ("**DSL**R") to conduct a joint measurement of that land. There is said to have been an inspection. A Demarcation Certificate No 1163/2004 was issued on 15th October 2004.

8. At this stage it is important to see Exhibit "D" to the Petition, at page 47. A more legible version is shown to us. This is the DSLR measurement. For some reason that we do not understand, and in circumstances that are certainly inexplicable, the PMC today thinks

it fit and appropriate to wholly disavow this measurement by the DSLR. This is without any basis and certainly without demonstrated consequence or sequitur. The PMC simply brushes this aside as being ‘immaterial’.

9. There are two documents at Exhibit “E.” Page 49 shows the layout. The imagery date stated at the foot is 15th December 2004. At page 48 is another Google satellite image. The imagery date is 22nd May 2020 as can be seen from the lower right-hand corner and this shows the internal layout roads. This is important because the entire case before us, and which we shall briefly discuss below, is that *no work at all* has even been done on this site.

10. On 31st December 2002, a draft Development Plan (“DP”) was published for the newly added 23 villages under Section 26(1) of the MRTP Act. This was obviously subject to objections and suggestions. Substantial modifications were required. The draft DP had to be taken into account while granting permissions. On 30th December 2003, the Planning Committee constituted under the MRTP Act submitted its report to the Principal Committee. Since the changes were substantial, a fresh draft Development Plan was proposed. The Principal Committee, by Resolution No 299 dated 21st March 2005, approved the recommendations made by the Planning Committee to convert inter alia the HTHS zone into what was now called the Bio-Diversity Park Zone or BDP zone. A copy of this is to be found at Exhibit “F” at pages 50 and 51. It is almost entirely illegible. An English translation is at pages 50 A and 51A.

11. The draft Development Plan was republished on 30th March 2005 following Section 29 of the MRTP Act calling for objections.

12. Under Section 30 of the MRTP Act, the modified draft Development Plan was then submitted to the State Government for its approval on 30th November 2005. This submission showed the conversion of the HTHS zone into the BDP zone. Obviously, since this covered a large area, the State Government, the final sanctioning authority, decided it would be more prudent to consider the draft in stages or phases. It did so on several dates between 17th May 2008 and 5th August 2015. The last of these is relevant for our purposes. A Notification of that date was issued (the impugned notification) approving the modifications stated there. These modifications took effect upon the date of that notification. Schedule A of the Notification at Item 3 relates to the subject lands and the BDP reservation, but with retrospective effect from 21st March 2005.

13. This Notification is to be found at pages 54 to 56. Schedule A of the Notification is from page 58. Item 1 deals with the HTHS zones. Then Item 2, under EP-9, sets out the regulations for the BDP.

14. Essentially, the 5th August 2015 BDP zone Notification substituted the BDP zone for the earlier HTHS zone. The State Government included the Petitioners' land in that zone with effect from 21st March 2005. But even in that Notification, some exceptions were made for certain categories of land, i.e., those for

which permission had been granted by a competent authority for development, sub-division, layout or building prior to the date of the resolution of the 2nd Respondent proposing the BDP reservation (21st March 2005), provided these were valid. These were taken out or excluded from the reservation of the BDP zone. These exceptions were thus excluded and unaffected by the BDP zone reservation.

15. The Petitioners claim that they were entitled to apply for further development permission since they had not only obtained permissions but had taken the initial steps towards development and obtained permission on 14th November 2003.

16. From October 2004, the Petitioners sought renewals of their sanctioned plans. They were not permitted to even file these. This position continued for 10 years, according to the Petitioners. Then in 2015, pursuant to the Notification at Exhibit “G,” the Petitioners sought an exemption. On 29th May 2018, the 1st Petitioner formally applied to the 3rd Respondent for re-approval and for further permissions.

17. Further applications were made between November 2003 and July 2020. There is then an internal document of 11th August 2020 at Exhibit J page 78 signed by five senior officers of the PMC on a recommendation that the Petitioners should be granted permission since the layout was sanctioned before 21st March 2005 and development had already taken place within one year of obtaining that approval.

18. The Petitioners accordingly applied on 18th March 2021 for permission. On 26th April 2021 came the first letter of rejection inter alia saying that the land was covered by the BDP zone and now contending that there was 'no development' on the land within the prescribed time limit under Section 48 of the MRTP Act. A further representation followed from the Petitioners on 3rd May 2021. This again met with a rejection vide a letter dated 10th June 2021.

19. We need to look at Entry No 3 of Schedule A to the impugned Notification. This deals with the lands that are covered by the Petition. We reproduce the Entry from pages 66 to 67.

Sr No	EP No.	Description of Proposal /Regulation as per published plan under Section 26 of MR & TP Act 1966	Proposal as per the submitted Draft Dev Plan of Pune, Under Section 30 of the MR & TP Act, 1966	Description of proposed substantial modification published under Section 31(1) of MR & TP Act 1966 vide Corrigendum No. TPS-1812/1/CR-33/12/reconstructed -11/UD-13 dated 28/02/2013	Modifications Sanctioned by the Government under Section 31(1) of MR & TP Act 1966
3	EP-35, 44 & 61	S.No.7, 49, 50, 289 etc Hill Top Hill Slope Zone, Residential Zone.	Bio-Diversity Park Reservation	EP-35, 44 & 61:- Bio-Diversity Park Reservation. 1) Reservation for Bio-Diversity Park (BDP) is proposed to be sanctioned, with Pune Municipal Corporation (PMC) as the Appropriate Authority. 2) The following categories of lands on which permission had been granted by the Competent Authority for Development/ Sub-division / Layout / Building, before the date of	EP-35, 44 & 61: Bio-Diversity Park Reservation (BDP). Substantial modification sanctioned as follows:- (1) Reservation for Bio-Diversity Park (BDP) is sanctioned with Pune Municipal Corporation (PMC) as the Appropriate Authority. (2) The following categories of lands on which permission had been granted by the Competent Authority for Development /

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				Resolution of the PMC, proposing reservation for BDP (i.e. 21/03/2005), are proposed to be deleted from the said reservation for BDP:- a) Lands under layouts in which both layout permission as well as building permission in respect of all or some of the plots within such layouts had been granted before 21.3.2005 and partial or substantial development has taken place. b) Lands on which permission for single or multiple buildings had been granted before 21.03.2005 and where substantial development has taken place. c) Lands on which permission for development / sub-division / layout / building had been granted and was valid on the 21/03/2005, but could not be renewed owing to the sole reason of such land having come under the	Sub-division / Layout / Building, before the date of Resolution of the PMC, proposing reservation for BDP (i.e., 21.3.2005) and which were valid, are deleted from the said reservation of BDP. a) Lands under layouts in which both layout permission as well as building permission in respect of all or some of the plots within such layouts had been granted before 21st March 2005 and partial or substantial development has taken place. b) Lands on which permission for single or multiple buildings had been granted before 21st March 2005 and where substantial development has taken place. c) Lands on which permission for development / sub-division / layout / building had been granted and was valid on the 21st March 2005 but could not be renewed owing

Sr No	EP No.	Description of Proposal /Regulation as per published plan under Section 26 of MR & TP Act 1966	Proposal as per the submitted Draft Dev Plan of Pune, Under Section 30 of the MR & TP Act, 1966	Description of proposed substantial modification published under Section 31(1) of MR & TP Act 1966 vide Corrigendum No. TPS-1812/1/CR-33/12/reconstructed -11/UD-13 dated 28/02/2013	Modifications Sanctioned by the Government under Section 31(1) of MR & TP Act 1966
				proposed reservation for BDP	to the sole reason of such land having come under the proposed reservation for BDP. (d) The lands / plots allotted before 21st March 2005 under Gaothan rehabilitation Scheme / Project affected schemes / Indira Awas Yojana subject to terms and conditions of the allotment orders of the competent authority.

(Emphasis added)

20. Now it is clear that sub-clause (c) is part of the four sub-clauses of clause (2). Further, clause (2) clearly speaks of a deletion from the reservation of the BDP zone. Clause (c) excludes lands on which permissions for development sub-division had been granted and were valid on 21st March 2005 but could not be renewed because they had come under the reservation for the BDP zone.

21. In this context it is worth noting the 11th August 2020 PMC note. The important aspect is set out at pages 79 to 81 thus:

“शासनाचे दि. ५/८/२०१५ चे अधिसूचनेनुसार बी.डी.पी. बाबत खालीलप्रमाणे तरतूद केलेली आहे.

1) Reservation for Bio-Diversity Park (BDP) is sanctioned with Pune Municipal Corporation (PMC) as the Appropriate Authority.

2) The following categories of lands on which permission had been granted by the Competent Authority for Development / Sub-Division / Layout / building, before the date of Resolution of the PMC, proposing reservation for BDP (i.e. 21-3-2005) and which were valid, are deleted from the said reservation of BDP.

(a) Lands under layouts in which both layout permission as well as building permission in respect of all or some of the plots within such or some of the plots within such layouts had been granted before 21st March 2005 and partial or substantial development has taken place.

(b) Lands on which permission for single or multiple buildings had been granted before 21st March 2005 and where substantial development has taken place.

(c) Lands on which permission for development / sub-division / layout / building had been granted and was valid on the 21st March 2005, but could not be renewed owing to the sole reason of such land having come under the proposed reservation for BDP.

(d) The lands / plots allotted before 21st March 2005 under Gaothan Rehabilitation scheme/project affected schemes / Indira Awas Yojana subject to terms and conditions of the allotment orders of the competent authority.

उपरोक्त तरतूदीनुसार दि. २१/०३/२००५ पूर्वी ज्या मिळकतीवरील लेआऊट मंजूर केलेला आहे / बांधकाम परवानगी दिलेली आहे व ज्यांचे नकाशे वैध आहेत अशा मिळकती बी.डी.पी. आरक्षणातून वगळलेल्या आहेत.

विषयांकीत मिळकतीवरील प्लॉटेड लेआऊट दि. १४/११/२००३ रोजी मंजूर झालेला आहे. त्याचप्रमाणे मिळकत

मालकाने मंजूर लेआऊटनुसार अंतर्गत रस्ते विकसित केलेले असल्याचे नमूद करून त्या प्रित्यर्थ संदर्भ क्र २ चे पत्रान्वये दि. २८/१२/२००३ ची गुगल इमेज जोडून सदर लेआऊटमध्ये रस्ते विकसन झाल्याचे कळविले आहे. त्याचप्रमाणे मंजूर लेआऊटनुसार मिळकतीची केलेली मोजणी मो.र.नं. ११७/२००४ दि. १५/१०/२००४ दाखल करून लेआऊट मंजूरीनंतर १ वर्षात विकसनाचे काम सुरू केल्याने व मोजणी केल्याचे नमूद करून नकाशे वैध असल्याने दि. ५/८/२०१५ चे अधिसूचनेनुसार कमिटेड डेव्हलपमेंट म्हणून वगळण्याची विनंती केलेली आहे. तसेच मिळकतीवर ड्राफ्ट डी.पी. नुसार बी.डी.पी. आरक्षण दर्शविल्याने पुर्नमान्यता घेता आलेली नसल्याचे नमूद केलेले आहे.

मंजूर विकास नियंत्रण नियमावलीतील कलम ६.७ नुसार कमेन्समेंट ऑफ वर्कबाबत खालीलप्रमाणे तरतूद आहे.

“The commencement certificate / development permission shall remain valid for 4 years in the aggregate but shall have to be renewed every year from the date of its issue. The application for renewal shall be made before expiry of one year if the work is not already commenced. Such renewal can be done for three consecutive terms of one year after which proposals shall have to be submitted to obtain development permission afresh. If application for renewal is made after expiry of the stipulated period during which commencement certificate is valid, then the Authority may condone the delay for submission of application for renewal by charging necessary fees; but in any case, commencement certificate shall not be renewed beyond 4 years from the date of commencement certificate / development permission.

Provided that, no such renewal shall be necessary if the work is commenced within the period of valid permission and such permission shall remain valid till the work is completed.

For the purpose of this regulation,
“commencement” shall mean as under:-

(a)	For layout, sub-division and amalgamation	Final demarcation and provision of water bound macadam roads complete.
(b)	For a building work including additions and alterations	Construction of basement upto ground level slab or construction of building at plinth level whichever is minimum.
(c)	For bridges and overhead tanks construction.	Foundation and work up to the base floor.
(d)	For underground works	Foundation and work upto floor of underground floor.

विषयांकीत मिळकतीवरील लेआऊट दि. २१/०३/२००५ पूर्वी मंजूर असल्याने व मंजूर विकास नियंत्रण नियमावलीतील कलम ६.७ मधील तरतुदीनुसार मंजूरीनंतर एक वर्षाचे कालावधीत रस्ते विकसन व मंजूर लेआऊटनुसार मोजणी दि. १५/१०/२००४ केलेली असल्याने वैध ठरत असल्याने शासन अधिसूचना दि. ५/८/२०१५ मधील कलम २ (सी) लागू होत आहे. त्याचप्रमाणे सदर मिळकत बी.डी.पी. आरक्षणापूर्वी हिल टॉप — हिल स्लोप झोन विभागात समाविष्ट राहिल व त्यास हिलटॉप — हिलस्लोप बाबतच्या तरतुदी लागू होतील.

पुणे महापालिकेच्या जुन्या हद्दीच्या प्रारूप विकास योजना आराखड्यामध्ये हिलटॉप—हिलस्लोप झोन दर्शविलेला असून त्याबाबत प्रारूप विकास नियंत्रण नियमावलीमध्ये तरतूद केलेली आहे. शासनाने सदर आराखड्यातील हिलटॉप — हिलस्लोप याबाबत निर्णय प्रलंबीत ठेवलेला आहे. तथापि सन १९८७ च्या विकास नियंत्रण नियमावलीतील कलम एम-८ मध्ये हिलटॉप — हिलस्लोप याबाबतची तरतूद होती.

तरी विषयांकीत प्रकरणी मा. महापालिका आयुक्त यांची खालील बाबींस मान्यता मिळणेस विनंती आहे.

- १) विषयांकीत मिळकतीवरील लेआऊट दि. २१/३/२००५ पूर्वी मंजूर असल्याने व मंजूर विकास नियंत्रण नियमावलीतील कलम ६.७ मधील तरतुदीनुसार मंजूरीनंतर एक वर्षाचे कालावधीत रस्ते विकसन व मंजूर लेआऊटनुसार मोजणी केलेली असल्याने वैध ठरत असल्याने शासन अधिसूचना दि. ५/८/२०१५ मधील कलम २ (सी) लागू होत आहे. सबब, सदरची मिळकत बी.डी.पी. आरक्षणातून वगळल्याचे व आरक्षणपूर्व हिलटॉप — हिलस्लोप झोन विभागात समाविष्ट असल्याचे घोषित करणेस.
- २) सदर मिळकतीवरील विकसनास सन १९८७ च्या मंजूर विकास नियंत्रण नियमावलीतील एम—८ नुसार तरतूदी लागू करणेस.
- ३) विषयांकीत मिळकतीवरील विकसन प्रस्ताव उपरोक्त तरतुदीनुसार मंजूर करणेस.
- ४) मंजूर विकास नियंत्रण व प्रोत्साहन नियमावलीतील कलम ६.७ मधील तरतुदीनुसार पुर्वमान्य लेआऊट मुदतवाढ/पुनर्मान्यता देणेस.

मा.स. कळावे.

(दत्तात्रय गरड) (चंद्रकांत गायकवाड) (श्रीकांत वायदंडे)

कनिष्ठ अभियंता उप अभियंता कार्यकारी अभियंता

बांधकाम विकास विभाग बांधकाम विकास विभाग बांधकाम विकास विभाग

झोन क्र. ३ झोन क्र. ३ झोन क्र. ३

पुणे महानगरपालिका पुणे महानगरपालिका पुणे महानगरपालिका

मा. उप आयुक्त (दक्षता)

महापालिका आयुक्त कार्यालय

पुणे महानगरपालिका

२) मा. अतिरिक्त महापालिका आयुक्त (ज)

पुणे महानगरपालिका

यांचेमार्फत रवाना.”

(Emphasis added)

22. There is no ambiguity about this document or the interpretation of the PMC as to the meaning of the word “commencement” at all.

23. In this context, Section 48 of the MRTP Act is to be noted. It reads thus:

“48. Lapse of permission

Every permission for development granted or deemed to be granted under section 45 or granted under section 47 shall remain in force for a period of one year from the date of receipt of such grant, and thereafter it shall lapse:

Provided that, the Planning Authority, may, on application made to it extend such period from year to year; but such extended period shall in no case exceed three years:

Provided further that, if the development is not completed up to plinth level or where there is no plinth, up to upper level of basement or stilt, as the case may be, within the period of one year or extended period, under the first proviso, it shall be necessary for the applicant to make application for fresh permission.”

24. What is now sought to be argued is that there being ‘no development’ on the land as per the sanctions, the Commencement Certificate had lapsed and was not in force on the relevant date. Therefore, it is argued, no further permissions can be granted. Therefore, the land is *not* excluded from the BDP zone.

25. It is also argued that an officer of the PMC made a site visit and found no development there. We will dispense with the second

submission rapidly. It is made simply across the Bar based on instructions from the junior engineer, a person who came into PMC employment only in 2017. We are told that this so-called site visit was not contemporaneous. It was allegedly made recently on 3rd October 2023.

26. There is no record of this site visit. No notice was given of this site visit. There is no report following such a site visit. It is astonishing that such an oral submission is made by a local authority, or on its behalf, unsupported by a shred of documentation. Contrary to this assertion, now made for the first time, there was admittedly no site visit with the contrary view of 'no development' on 11th August 2020 or at any time prior to that since the date of the permission on 14th November 2003. The argument is therefore an attempt firstly to completely abandon or disassociate from the DCLR measurement sheet and secondly from the PMC's own internal 11th August 2020 communication.

27. It is sought to be suggested that this internal communication of the PMC itself is inconsequential. But it is not. It is signed by five senior officers. There is nothing on record to indicate that the PMC ever took the view that this recommendation was incorrect, not in consonance with law or anything of the kind. Instead, what is sought to be argued up to the stage of a Sur-Rejoinder, and entirely on the basis of bald denial, is a factual aspect that there is no development on the land.

28. There is nothing from the PMC to show this at all. Everything points to the contrary, including the PMC's own recommendations, a part of the record.

29. The PMC's internal document and the concept of, or the definition of, "commencement," noted therein at page 80 and extracted above, is in our view completely correct. This is important because the quoted paragraph also shows the proviso that is fully applicable. We note that in the preceding portion, sub-clauses (a), (b) and (c) might all be applicable but there is nothing on the PMC's record to indicate that no work was ever done, which is the sole argument before us today.

30. What is dispositive in our view is the definition of development under Section 2(7) of the MRTP Act. This has received much judicial interpretation, but it is true that it is a wide definition. It uses both expressions "means" and "includes". Every conceivable kind of intervention on land is covered by the definition of the word "development." Section 2(7) reads:

(7) "**development**" with its grammatical variations *means* the carrying out of buildings, engineering, mining **or other operations in or over or under, land or the making of any material change, in any building or land** or in the use of any building or land or any material or structural change in any heritage building or its precinct **and includes** demolition of any existing building, structure or erection or part of such building, structure of erection; **and reclamation, redevelopment and lay-out and sub-division of any land**; and "to develop" shall be construed accordingly;

(Emphasis added)

31. If this be so, two consequences must immediately follow. *First*, that there can be no question of retrospective application of the 5th August 2015 Notification to lands that were specifically excluded from the BDP zone. Once it is shown that the Petitioners' lands were so excluded, there can be no retrospective application of the BDP zone Notification to those lands. *Second*, it must also necessarily follow that any refusal to grant permission on the basis that the BDP zone Notification applies: (a) either to the Petitioners lands despite the exclusion or, (b) applies retrospectively to the Petitioners lands or (c) both, is clearly unsustainable.

32. Consequently, Rule will have to be made absolute in terms of prayer clause (A) and partly absolute in terms of prayer clause (B) read with sub-clause (2). These prayers are set out below.

A. That this Hon'ble Court be pleased to issue a writ of certiorari or such other writ/order/direction as may be deemed appropriate by this Hon'ble Court to quash and set aside retrospective applicability of the said Notification dated 5 August 2015 at Exhibit G herein and further be pleased to declare that the said Notification dated 5 August 2015 is prospective in nature and applied only prospectively from 5 August 2015;

B. That this Hon'ble Court be pleased to issue a writ of certiorari or such other writ/order/direction as may be deemed appropriate by this Hon'ble Court and be pleased to quash and set aside the Impugned Letters dated 26 April 2021 at Exhibit L and dated 10 June 2021 at Exhibit N hereto issued by the Respondent No. 3 by which development permission/ revised layout proposal dated 18

March 2021 and 3 May 2021 were rejected; and further be pleased to restore the said Application dated 18 March 2021 and/or 3 May 2021 to file; and to direct/order the Respondents to grant development permission in respect of the said Land on the basis:-

- i. that the said Notification dated 5 August 2015 at Exhibit G does not apply to the said Land at all; or
- ii. Alternatively, that the said Land falls within exception/exclusion/deletion made by the clause set out at item (3), modification sanctioned as per modification 2(c) of Schedule 'A' to the said Notification dated 5 August 2015.

33. We clarify that we are not directing Respondent Nos 2 and 3 to *grant* development permission in respect of the lands but only to consider any applications made in that regard but without reference to the BDP zone Notification and without applying the BDP zone Notification to those lands. In other words, Respondents Nos 2 and 2 cannot refuse to consider the applications for development permission with reference to or on the basis of the BDP Zone Notification in respect of the lands covered by the Petition.

34. The Petition is disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)