

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2766 OF 2017

1. Ms. Amrita Prithwishwar	}	
Bhattacharjee	}	
aged 43 years, Occupation	}	
self-employed, having address	}	
at: A-401, Raj Rudram, Golkuldham,	}	
Goregaon (E), Mumbai 400 063	}	
	}	
2. Mr. Biju Augustine Kattain	}	
aged 49 years, Occupation Business,	}	
having address at: 223 Master	}	
Mind-4, Royal Palm Aarey Milk	}	
Colony, Goregaon (E),	}	
Mumbai 400 065	}	Petitioners

versus

1. State Government of Maharashtra	}	
through Urban Development	}	
Department (UDD), Mantralaya,	}	
Mumbai 400 032	}	
	}	
2. Deputy Director of Town	}	
Planning, Greater Mumbai, ENSA	}	
Hutments, E-Block, Azad Maidan,	}	
Mahapalika Marg, Mumbai 400 001	}	
	}	
3. Municipal Corporation of Greater	}	
Mumbai, through Chief Engineer	}	
(Development Plan), Head Office,	}	
Mahapalika Marg, Mumbai 400 001	}	
	}	
4. Mumbai Metro Rail Corporation	}	
Ltd. (MMRCL), NaMTTRI Building,	}	
Plot No. R-13, E Block, BKC,	}	
Bandra (E), Mumbai 400 051	}	
	}	
5. Mumbai Metropolitan Region	}	
Development Authority, (MMRDA),	}	
C-14 & 15, E Block, BKC, Bandra (E),	}	
Mumbai 400 052	}	

6. Union of India (through Urban }
 Development Ministry), Income Tax }
 Office Building, ground floor, Marine }
 Lines, Mumbai 400 020 } Respondents

Mr. Janak Dwarkadas-Senior Advocate
 with Mr. Zal Andhyarujina, Ms. Hrishika
 Harish, Mr. Sayeed Mulani, Ms. Shobhana
 Waghmare and Mr. S. Sancheti i/b.
 M/s.Mulani and Co. for the petitioners.

Mr. Ashutosh Kumbhakoni-Advocate
 General with Mr. Abhay Patki-AGP for
 respondent nos. 1 and 2.

Mr. Aspi Chinoy-Senior Advocate with
 Mr.Shardul Singh i/b. Mr.Akshay Shinde
 for respondent no. 4.

**CORAM :- S. C. DHARMADHIKARI &
 PRAKASH. D. NAIK, JJ.**

**Reserved on 15th June, 2018
 Pronounced on 26th October, 2018**

JUDGMENT :- (Per S. C. Dharmadhhikari, J.)

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. By this petition under Article 226 of the Constitution of India, the petitioners are challenging the Notifications dated 24th August, 2017 and 9th November, 2017. The further relief sought is that this court should issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to

implement the directives of respondent no. 1 dated 16th October, 2015 (Exhibit “F”) approving the Technical Committee Report and allotting land at Kanjur Marg to the fourth respondent to enable it to construct its car-shed depot. This relief is prayed in order to prevent the destruction of trees in Aarey Milk Colony and to prevent harm to the environment.

3. Thus, the short question before us is, whether the impugned notifications result in destruction of green cover as apprehended by the petitioners and whether the construction of car-shed is permissible in the subject area.

4. For appreciating the challenge to the notifications, a reference will have to be made to the background facts. The first respondent to this writ petition is the State of Maharashtra through the Secretary, Department of Urban Development having his office at Mantralaya, Mumbai 400 032. The second respondent is the Deputy Director of Town Planning, Greater Mumbai. The third respondent is the Municipal Corporation of Greater Mumbai. The fourth respondent is constructing the metro line from Colaba to Seepz known as Metro-III.

5. It is common ground that the parliamentary statute titled as the Metro Railways (Operation and Maintenance) Act, 2002

has been enacted so as to provide for the operation and maintenance and to regulate the working of metro railway in the National Capital Region, metropolitan city and metropolitan area and for matters connected therewith and incidental thereto. This Act, enacted on 17th December, 2002, defines “metro railway” in section 2(i) to mean rail-guided mass rapid transit system having dedicated right of way, with steel wheel or rubber tyred wheel coaches, but excluding tramways, for carriage of passengers and includes what is specifically set out in this definition. The “metro railway administration” is defined to mean a Government Metro Railway or a non-Government Metro Railway. It is common ground that such a project has been handed over for implementation to a company, namely, respondent no. 4 to this writ petition, which company is equally owned by the State of Maharashtra and the Government of India. The fifth respondent to the writ petition is the Mumbai Metropolitan Region Development Authority (MMRDA), which is implementing the Mumbai Metro Master Plan.

6. The petitioners have set out the following material dates and events.

7. A part-underground part-overground metro line was proposed from Colaba to Bandra sometime in the year 1990. To

facilitate the construction of this metro line, a part of Cuffe-Parade, falling under MCGM A Ward, was reserved for a Metro-Car-Shed. A Metro Car-Shed/Car-Depot is the area required to park the metro cars (bogies) when they are not in use, and where repairs and maintenance is also carried out. A part of the said area was required to be reclaimed from the shallow sea (reclamation of this area was part of the original development plan). The existing landed area is presently covered with slums.

8. In the year 2010, respondent No.1 issued its Government Resolution (“GR”) No.MRD-3310/431/CR-55/UD-7 dated 15.06.2010, extending the said Metro Line to Seepz (Andheri East), changing it to a completely underground line and changing the location of the Metro-Car-Depot to an underground location at Mahalaxmi Race Course.

9. By a Government Resolution dated 03.03.2014, the Respondent No.1 recorded that due to financial unavailability (total project cost being Rs.23,136 Crores), respondent No.6 was unable to approve the Metro-III project. However, as a Japanese International Cooperation Agency (“JICA”) had agreed to sanction a loan of Rs.13,235 Crores, the project could move ahead by forming Respondent No.4 as a Special Purpose Vehicle (“SPV”) for this project. It was further recorded that 30 hectares of land

at Aarey Depot would be transferred to Respondent No.4 for a Metro-Car-Depot plus an additional 3 Hectares of land, also at Aarey Depot, would be transferred to Respondent no.4 for residential/commercial development with the purpose of raising of funds for the Metro-III project. It was further recorded that even the car-shed area was approved for commercial use and commercial development. Exhibit-'B' is copy of the said Government Resolution dated 3rd March, 2014 and Exhibit -'B-1' is its English translation.

10. In the year 2014, respondent no.4 sought permission from the Tree Authority, Municipal Corporation of Greater Mumbai to cut/remove 2,298 trees at Aarey Depot. This caused a public outcry throughout the city of Mumbai and no trees were cut at the relevant time for this purpose. In February 2017, in Writ Petition No.(L) 365 of 2017, connected to tree cutting for the Metro 3 project, respondent no.4 informed that tree cutting plans were not yet finalised at Aarey Depot. In the said Writ Petition No.(L) 365 of 2017, this Court was pleased to permit respondent no.4 to transplant 1,727 trees and cut 1,074 trees (total 2,801 affected trees) located at 26 stations, which did not include Aarey Depot. Exhibit-'C' to the petition is a copy of respondent no. 4's letter dated 06.02.2017 stating that tree proposal for Aarey

station and depot is not yet finalised, along with a copy of Exhibit-K of the said WP(L)/365 of 2017 showing list of 26 stations, not including Aarey Depot.

11. The Petitioner states that land at Aarey Depot is a pristine area of land, covered with dense tree cover in most areas and lush green open spaces. This is a naturally forested area, and is completely uninhabited. This land is unmatched in its natural beauty and attracts various species of homogeneous & migratory birds and butterflies. It is a natural habitat of a large number of animals. The flora and fauna is peculiar and exclusive to the city of Mumbai. The said land has remained untouched since the 1950's. The entire area of Aarey Milk Colony is known as the 'Green Lung' of Mumbai City, on account of its natural beauty and tree cover. The land at Aarey Milk Colony is a natural air-purifier which is instrumental in cleaning away the air-toxins of Mumbai. A less known fact is that Aarey Milk Colony is also the 'Green Sponge' of Mumbai. The land at Aarey Depot (covered by the impugned notification) is located on the banks of the Mithi River (which carries the overflow waters from the Vihar lake and Powai lake to the Arabian Sea). The open land at Aarey Depot soaks in rain water during the monsoon and helps replenish the ground water levels. The land at Aarey Depot is relatively low-lying and

acts as a flood plain for the Mithi river when it overflows.

12. The proposal to develop Aarey Depot led to a public outcry throughout Mumbai. It is for these reasons that respondent no.1, on 11th March, 2015, constituted a Technical Committee of 6 members to look into the issue of environmental impact of setting up Metro-Car-Depot at Aarey Depot. The committee consisted of 6 experts, including 2 environmental experts. On 11th August, 2015 the said Committee submitted their report, wherein they concluded by recommending that (i) the Metro-III car-depot be relocated to Kanjur Marg, with only a small stabilising unit at Aarey Depot; (ii) in case the land is not made available at Kanjur Marg, then the car-depot be located at Aarey Depot within a 20.82 hectare area; and (iii) measures to be taken to mitigate environment damage at Aarey Depot. It is pertinent to state that the (only) two environmental experts of the committee, Dr. Shyam Asolekar, Professor IIT Mumbai and Dr Rakesh Kumar, Director NEERI, have both signed the said report with a remark “not in agreement with conclusions v to ix and all the recommendations stated above”. These dissenting environmental experts also attached three notes, dated 13th May, 2015, 12th June, 2015 and 30th July, 2015 in which they have categorically stated that Aarey Depot must be saved from ecological

destruction at all costs. It was noted by the environmental experts that no real or proper investigation was ever conducted into the alternate 8 sites proposed.

13. Immediately thereafter, respondent no.1 issued a directive dated 16th October, 2015 approving the said report of the Technical Committee in order to prevent the destruction of trees in Aarey Depot and to prevent harm to the environment. Respondent no.1 further approved that land at Kanjur Marg be allotted to Respondent No.4 to enable it to construct its car-depot at Kanjur Marg. Respondent no.1 also marked the location of the proposed car-depot on the plan of Kanjur Marg by showing area in green with caption "Proposed 41 Hectares Car Depot Plot free from disputed Petition" and showing area in yellow with caption "Elevated corridor and station passing through disputed land". It is apparent that the land at Kanjur Marg consists of two parts, one disputed and one undisputed. Exhibit-'F' is a copy of the said directive issued by respondent no.1, dated 16th October, 2015, along with plan showing the location of proposed car-depot at Kanjur Marg.

14. It is stated that there was a civil application, which was moved in Civil Writ Petition No. 5792 of 1996, being Civil Application No. 2521 of 2015, by which, the Collector of Mumbai

Suburban District sought to handover undisputed 41 hectares of land for car-depot at Kanjur Marg. However, that civil application was withdrawn and another civil application being Civil Application No. 84 of 2016 dated 28th December, 2015 was filed, but never moved. Thus, the allegation appears to be that though Kanjur Marg is a larger piece of land than Aarey Depot, still, the later land has been proposed to be handed over.

15. It is claimed that on 16th March, 2016, the first respondent issued a resolution, under which, 30 hectares of land plus additional 3 hectares at Aarey Depot is sought to be transferred to the fourth respondent for metro car depot and commercial use. Exhibit “H” to the writ petition is a copy of the original Government Resolution dated 16th March, 2016, whereas, Exhibit “H-1” is its English translation. The petitioners placed reliance on a final notification issued by the Ministry of Environment and Forest, Government of India dated 6th December, 2016 notifying the area around Sanjay Gandhi National Park as Eco-Sensitive Zone, including the area of Aarey Milk Colony. A press release in that regard dated 6th December, 2016 is referred to and a copy thereof is annexed as Exhibit “I”. On 30th December, 2016, the first respondent approved the modified depot layout-1 at Aarey as proposed by respondent no. 4 subject to fulfillment of certain

conditions. On 29th December, 2016, the first respondent issued a notice inviting objections/suggestions to their proposal to change the reservation in the 1991 Development Plan pertaining to the said land at Aarey from No-Development Zone to Metro Car Depot/Workshop, allied users and Commercial (C-1) Zone. Exhibit “K” is a copy of this notice with plan. It is claimed that concerned citizens/residents filed their objection to this notice before the second respondent and there were personal hearings held. On 21st July, 2017, the second respondent forwarded a report, in which, he recorded that 2382 objections were received against the proposal to convert the land at Aarey Depot from No-Development Zone to Metro Car-shed (C-1) Zone. It is claimed that thereafter, a press release was issued by the fourth respondent on 29th June, 2017 informing that they have issued a work order for Aarey Car Depot. Thus, they proceeded without the notifications in that behalf being issued and on a presumption that the change in reservation is bound to be granted. Then, there was another notice issued to the public on 24th June, 2017 proposing to cut 49 trees on the three hectares at Aarey Depot. In paragraph XVII of this petition, the petitioners allege as under:-

“xvii. The Petitioners state that there are various other Metro lines operating/under way in Mumbai. The Metro 1 (Andheri-Ghatkopar) car-depot operates within 17 Hectares (which

includes real estate development). The Metro 7 (Dahisar E to Andheri E) car-depot is sanctioned to operate within just 17 Hectares (40 Acres) of land. The Metro 2A (Andheri W to Dahisar W) car-depot is sanctioned to operate within just 9.35 Hectares. Land for the Metro 2A Car Depot was approved by the Hon'ble High Court on 15.06.2017 in a Notice of Motion filed by the Hon'ble Collector as recent as 21.04.2017. The Petitioners crave leave to refer to and rely upon the Hon'ble Bombay High Court's Order dated 15.06.2017 in NM(L)/963 of 2017 in Suit 3780 of 1991, when produced. Car-Depots can be located at any convenient place. The Car-Depot for Metro 1 & Metro 2A are not located at the start/end points. The Metro 2A car-depot is located over a Kilometre away from the Metro route. In the circumstances, there is no justification for the requirement of 33 Hectares of land for the Metro 3 Car Depot at Aarey, nor is there any justification to have a Car-depot at Aarey. Any other less ecologically damaging location would also suffice for the Car-Depot. The Petitioners crave leave to refer to and rely upon details of Metro 1 & Metro 7 car depot sizes, when produced.

xviii. Furthermore, the Report & Recommendations of the '*Fact Finding Committee on Mumbai Floods*' ("**FFC**"), which was constituted by Respondent No.1 to look into the flooding during July 2005, has interalia recommended that the fragile eco-system within Mumbai city needs to be restored, rejuvenated and upgraded, as the incident of flooding will only increase in future. The city of Mumbai has already once again seen the flood situation in August and September 2017 although there was much less rainfall. These occurrences are a direct result of deteriorating environment and the ongoing damage to the fragile eco system. Hence it is necessary to preserve and protect the existing eco-sensitive areas of Mumbai city. Hereto annexed and marked as **EXHIBIT-L** is the relevant extract of the said FFC report. The Petitioners crave leave to refer to and rely upon the entire report when produced.

xix. Similarly, in the Recommendations contained in the Parliament Report on '*Disaster in Chennai Caused by Torrential Rainfall and Consequent Flooding*' presented to Parliament on 12.08.2016, it was observed that unplanned urbanisation and growth of cities is one of the main contributing factors to floods in all metro cities (Para 7.2.5.); that floods are taking place more frequently in all cities including Mumbai (Para 8.8); that due to global warming flooding is more likely to happen frequently (Para 8.9). The said report also recommends that flood channels should be

cleared (Para 7.1.3); and that all metro cities must prepare action plan for flood proofing well in advance (Para 7.2.4.). The report clearly states that faulty town planning is one of the major cause of floods (Para 7.2.3.); and that town planning in all cities must be reviewed to give due importance to clear flood channels, safe-passage to excess water in lakes and other water bodies (Para 8.8). The Petitioners crave leave to refer to and rely upon the said Recommendations & Observations and the said Parliamentary report when produced.”

16. Then, it is claimed by relying on the photographs and Google Earth images (Exhibit “M”) that the fourth respondent has already started work at this car-depot by filling up about 30 feet height with land-fill.

17. In paragraph 5 of the petition, a reference is made to the Development Plan-2034 for Mumbai City and in which, referring to the public outcry against commercial exploitation of Aarey Milk Colony, the Planning Committee recommended that the land at this colony be kept free from human intervention by introduction of a Green Zone for entire Aarey Milk Colony, save and except the area for metro car-shed. A reference is then made in para 5 to the notification dated 7th August, 2017 on the publication of final Draft Development Plan-2034, which included at Serial No. 266 a modification to delete the reservation for metro car-shed at Aarey and to include it in the Green Zone by observing that this land is very important for the health and Eco-system of Mumbai City. The relevant documents are compiled as

Exhibit “N” to “Q” to this petition.

18. It is claimed that despite the deletion of this reservation in the impugned notification published on 24th August, 2017, the user is converted as above. It is alleged that there cannot be any change or alteration once the Draft Development Plan-2034 is published in the earlier Development Plan-1991. This writ petition was filed in this court on 5th October, 2017 and in para 7, there is a reference made to Government Resolution dated 23rd August, 2017 (Exhibit “R”) traceable to section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”) providing that no reservation be shown on forest land without no-objection certificate of the Forest Department. It is claimed that the land at Aarey Depot is forest land. An application is also pending before the National Green Tribunal for a declaration that the Aarey Milk Colony is a forest and part of the Eco-Sensitive Zone of Sanjay Gandhi National Park.

19. Then, it is alleged that after filing of this writ petition, an affidavit in reply dated 5th March, 2018 was filed by the first and the second respondent. In that, they disclosed that by a notification dated 9th November, 2017, the Development Plan-2034 has been sanctioned just for Aarey Depot. Therein, the Draft Development Plan was modified and the user of the land has been

changed to Metro/Mono Car-Shed. Exhibit “S” is a copy of this notification together with the Schedule. These two notifications, copies of which are at Exhibit “A” and “S” are then referred to as the impugned notifications and challenge is raised thereto on several grounds, including the amended grounds inserted and referred as paras 8(vi) to 8(xii).

20. The petition is opposed by the respondents. The fourth respondent has filed an affidavit in reply affirmed on 15th February, 2018. In that, they have denied the allegations. While stressing the need and requirement of the land in question for setting up a metro car-shed/depot/ workshop, it is not denied that a request was made to the State Government to change the user/designation/reservation of the said land. It is stated that the original and preferred option of the fourth respondent was to construct a metro car-shed with 55 stabling lines. That would require approximately 30 hectares of land. It would have impacted 2298 trees. It is in these circumstances that a reference is made to the setting up of a Technical Committee by Government Resolution dated 11th March, 2015. That mandated the MMRDA to consider various aspects in relation to the request of respondent no. 4, including availability of alternate site and in the absence of such availability, take steps to minimise

environment damage. The Technical Committee submitted its report, which came to be accepted by the State Government on 16th October, 2015. Hence, the fourth respondent requested the State Government to make available the land at Kanjur Marg. The same was not made available to the fourth respondent within a period of three months, as has been recommended in the report. Thereafter, alternate proposals were considered and a reference is made to the same in para 9 of this affidavit. Bearing in mind the cost, a general consultant for the project issued a letter on 1st February, 2016 to the fourth respondent highlighting the potential impact of delayed finalisation of the metro depot location. It was stated that the land at Kanjur Marg was not suitable, as there are various issues in relation thereto. There were technical difficulties. The technical difficulties, *inter alia* were that the land at Kanjur Marg would have to be filled by 3 to 4 meters to raise the depot above high floor level, this is a large scale filling. It would conflict with two monsoon seasons in the time period, over and above which, the availability of the fill and logistics to get the fill were both uncertain. Such difficulties at the site are pointed out in para 11 and then, it is emphasised that the general consultant recommended to the fourth respondent that the metro depot/shed be constructed at Aarey using the double decked layout as per the Technical Committee's report. The

general consultant represented that it would endeavor to restrict the depot planning within 20.82 hectares and not to affect more than 500 trees. It is in these circumstances that the fourth respondent says that the Government was moved to take a decision. That was because the delay would have impacted the project and the cost went on increasing and mounting. There were complications with regard to the alternate sites and highlighted in paras 12 to 16 of the affidavit in reply. It is, therefore, stated that all options were considered and then, the Board meeting of the fourth respondent resolved that the modifications should be carried out by moving a request to the State Government. That is how the request was made on 1st April, 2016. That culminated in the final steps being taken, namely, issuance of the impugned notifications.

21. It is claimed that the work has started for considerable time. The work of each station and laying of underground lines is required to progress in tandem with the work of completion of the metro shed. Once the station work has commenced and is being carried out, then, the construction of the car-shed could not be delayed. The work is carried out under the subject statute, which is not challenged. In these circumstances, any orders of this court would cause immense prejudice and loss to the project,

which is in public interest. Hence, the writ petition be dismissed.

22. The petitioners filed a rejoinder affidavit to this reply pointing out as to how the alternate site, proposals and options were not considered and from inception, the fourth respondent had in mind the subject land at Aarey. It is in these circumstances and highlighting the potential damage to the ecology and environment, it is claimed that the petition be allowed. It is highlighted in this affidavit-in-rejoinder that the land at Aarey is in Eco-sensitive forest area. It is also the flood plain for the Mithi River. Filling up this land would cause ecological destruction. The land at Kanjur Marg has no tree cover and is not located in Eco-sensitive area. It is stated that the same land at Kanjur Marg is to be developed for metro car-shed for Metro Line 6, which line starts at Jogeshwari, passes Aarey and ends at Kanjur Marg. The cost benefits of having a combined line and depot are enormous. Therefore, the respondents should not be permitted to move the depot now to this Eco-sensitive area. This affidavit in rejoinder is dated 5th March, 2018.

23. Initially there was no response to this petition from the State Government. On 25th March, 2018, respondent nos. 1 and 2 filed an affidavit in reply of the Deputy Director of Town Planning and in this affidavit, it is stated as under:-

“2. I say that, the Petitioners have challenged the Notification dated 24.08.2017 issued by the Government in Urban Development Department i.e. Respondent No.1 under Section 37(1AA)(c) of the Maharashtra Regional and Town Planning Act, modifying the sanctioned revised Development Plan (D.P.Plan) of K/East Ward of year 1991 in respect of land bearing CTS No.9(part), 10(part), 11(part), 12(part) and 13(part) of Village Prajapur and CTS No.2(part) of Village Vyravali, thereby inter alia deleting 33 Hectares of land from “No Development Zone” and reserving it for “Metro Car Depot/Workshop”, allied users. Further, the Petitioners have urged that the Government in Urban Development Department has unlawfully and illegally changed the land user of Aarey Depot from NDZ to Metro Car Depot by way of the impugned Notification dated 24.08.2017. Hereto annexed as copy of the said Notification as EXHIBIT-1.

4. I say that, the Revised Development Plan of K/E Ward of Municipal Corporation of Greater Mumbai has been sanctioned by the Government in Urban Development Department, under Section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 vide Notification N. TPB-4392/4716/CR-181/92/UD-11, dated 12th November, 1992 so as to come into force with effect from 29th December, 1992.

5. I say that, the Mumbai Metropolitan Region Development Authority is implementing Mumbai Metro Master Plan through Special Purpose Vehicle Company “Mumbai Metro Rail Corporation Limited”. The said Authority has requested that the land admeasuring about 33 Hectares, bearing CTS No.9(part), 10(part), 11(part), 12(part), 13(part) of Village Prajapur and CTS No.2(part) of Village Vyravali is required for Aarey Car Depot for Metro Line-III, Colaba-Bandra Corridor and also requested to change the use of the said land in the said Sanctioned Revised Development Plan from No Development Zone to Metro Car Depot/Workshop allied facilities and Commercial (C-1) Zone.

6. I say that, the Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, Government of Maharashtra vide memorandum dated 5th March, 2014 has accorded sanction to transfer the land in their possession bearing CTS No.9(part), 10(part), 11(part), 12(part), 13(part) of Village Prajapur admeasuring about 29.79 Hectares for Aarey Car Depot and also recorded sanction to transfer additional 3.00 Hectare land from CTS No.12(part) and 13(part) vide Government Resolution dated 16th March, 2016 for the same purpose.

7. I say that, in the meantime the State Government has constituted Committee vide Government Resolution No.MRD-3315/CR23/UD-7, dated 11th March, 2015 under the Chairmanship of the Metropolitan Commissioner, MMRDA regarding the proposed Car Depot on the said land to study the alternatives for locating Car Depot, if possible and to minimize damage to the trees on the site, if suitable alternative is not found and also to suggest mitigation measures to minimize environmental damages.

8. I say that, the said Committee has submitted its report with recommendations to the State Government and the said Authority vide letter dated 1st April, 2016 has intimated to the State Government that the alternative site is not available and the said land can be utilized for Car Depot by saving more than 50% of trees and plantation will be undertaken as per statutory requirements of 1:3 trees for every tree cut as per Committee's recommendations and requested to sanction Car Depot on the said land.

9. I say that, the State Government was of opinion that in the public interest it is necessary to delete the said land from the No Development Zone in the said Plan and to reserve it for Metro Car Depot/Workshop, allied facilities and Commercial (C-1) Zone.”

24. Thus, it is claimed that all the steps have been taken and the modifications are with conditions. These conditions are enumerated at page 180 of the paper book. That is part and parcel of the affidavit in reply of the State Government. That reads as under:-

“(1) Open area shown on the Part Plan of proposed modification shall be kept open and it shall be binding to conserve the trees on part of the said land permanently.

(2) To mitigate the environmental impact to Aarey Colony following measures shall be undertaken :

- i) Ground water recharging arrangements to be provided in the Depot.
- ii) Plantation of Trees as per recommendation

of the Committee.

- iii) Trees above 10 feet height of native variety only be planted.
- iv) Plantation to be undertaken by professional agencies only.
- v) Annual Audit of plantation by Third Party and Reports posted on the Company's website.
- vi) MMRC to maintain these trees for 5 years.

(3) Total 33 Hectors of land shall be used only for Metro Car Depot/Workshop, allied users only. Commercial user shall not be permitted.

(4) Before development of the land for the purpose of Car Shed, Mumbai Metro Rail Corporation Limited shall obtain necessary permissions from concerned Department as required under the all other prevailing laws.

(5) The character of overall construction shall be such that the underground water table shall not get disturbed.”

25. It is claimed that the objections or suggestions have not been disregarded, but, bearing in mind the larger public purpose sought to be subserved by the project, these steps and measures have been taken. By incorporating the conditions as aforementioned, the concerns of all stake holders, including the petitioners are taken care of. It is, therefore, denied that the notification is not in accordance with law.

26. The argument of the petitioners that due to said notification, the No-Development Zone is reduced by more than 10% and the character of the plan is changed, is incorrect. It is stated that this

argument overlooks sections 22-A, 31 and 37(1AA) of the MRTP Act. It is claimed that the procedure for modification as stipulated by section 37 has not been violated. The notification, therefore, does not violate any provisions of the law. It is claimed that the Government has sanctioned the Draft Revised Development Plan partly under the provisions of section 31 of the MRTP Act by notification dated 9th November, 2017. The proposal in respect of the metro car-shed on the land (area 33 hectares) has been sanctioned. Since Revised Development Plan came into force, the notification dated 24th August, 2017 has no statutory effect.

27. There is an additional affidavit of Mr. Sanjay Shantaram Banait, Deputy Director of Town Planning, filed on behalf of the State and prior thereto, there is an additional affidavit affirmed on 19th March, 2018 of the fourth respondent. In the additional affidavit, it is claimed that Aarey Milk Colony land admeasures 1287 Hectares and it is situated adjacent to Jogeshwari Vikhroli Link Road (JVLR). The affidavit of the State dated 17th February, 2016 filed before the National Green Tribunal confirms that Aarey Milk Colony has not been recognised and notified/identified as forest land in any record. By a draft notification dated 22nd January, 2016, for the first time, this Milk Colony was proposed to

be included within the Eco-sensitive Zone of Sanjay Gandhi National Park. However, the expert committee, which has been constituted for declaration of Eco-sensitive Zones unanimously resolved that the area of 165 hectares of the said land, which includes the land proposed to be allotted for metro depot, should not be included within the Eco-sensitive Zone and accordingly, the final notification dated 6th December, 2016 did not include this land of the Aarey Milk Colony in the notified Eco-sensitive Zone. Then, it is claimed that within the colony, there are several cattle sheds, many of which are abutted by large grazing grounds. A sizable portion of the area has also been allotted by the authorities to the cattle owners as grazing land. There are school buildings, police wireless station, hospitals, godowns, salt breaking unit, factories, general stores, a Reliance Energy Sub Station and a concrete manufacturing plant. The Konkan Krishi Vidyapeeth is located in the Aarey Milk Colony area. There is also a boiler house, central dairy building and garages located within the Aarey Milk Colony. The Mahananda Dairy Factory and staff quarters of this dairy are also located in the Aarey Milk Colony area. There are several external roads passing through the Aarey Milk Colony land area. It is claimed that the plot, which has been allotted for the metro car depot is located in the extreme southern end of the Aarey Milk Colony area and is located on its

southern periphery. It is in the vicinity of the busy JVLR, the Marol-Maroshi Road and the Aarey-Powai Road. The JVLR is one of the busiest roads of the city and links the central suburbs with the western suburbs and further feed traffic for the domestic and international airports. The metro plot is adjoining land presently occupied by an electric sub-station and training centre of Reliance Energy and a plot of land which was being used by Ready Mix Concrete Manufacturing plant. The plot is surrounded on three sides by roads on which there is significant vehicular traffic. The depot plot is not located in any core green area nor is it completely covered with trees. A major part of the plot was grasslands, which was being used as a grazing ground for cattle housed in the vicinity. These facts have been recorded in the report of the Technical Committee and even in the dissenting note. The metro depot area has been delineated in brown hatched lines upon the map prepared by the authorities of Aarey Colony Division and all of them have recorded that this can be utilised for construction of the car depot. The decision to construct this depot on the said Aarey Milk Colony has been taken after detailed deliberation at every level. There have been consultations and deliberations as well.

28. In this affidavit, it is further stated as under:-

“3. With reference to Para 4(vii) to (x) of the Petition, I say that pursuant to the recommendation/ Report of the Technical Committee the State Government had made efforts to secure the land at Kanjur Marg for the Metro Depot. However as a substantial part of the land required is the subject of litigation/proceedings pending in this Hon'ble Court the Govt. was apparently unable to secure possession thereof within any proximate time frame. I deny that no efforts were made by the govt. to move the Applications filed in that regard. The allegation that the Depot is sought to be located at the Aarey Milik Colony Land as “the first of several steps to exploit Aarey Milk Colony commercially by eventually permitting residential or commercial buildings” is both unwarranted & false. In fact although the initial proposal had included limited commercial development, the State Govt while approving the allotment/user for the Metro Depot has specifically disallowed any commercial user of the said land. It is denied that there are no buildings or habitation in the vicinity to necessitate/warrant a Metro Station. The proposed Metro station is only about 170 meters away from the main JVLR road and cannot be brought closer thereto in view of the boundaries of the existing substation of M/s Reliance Energy Ltd. (earlier BSES). This Metro station will serve as a very important multi-modal interchange point to service nearby densely populated areas of Powai, Andheri(E), Chandiwalli, Vikhroli, Kanjurmarg, Jogeshwari(E) and other localities in the vicinity. The proposed station at Aarey will also provide an interchange with the proposed Swami Samarth Nagar-JVLR-SEEPZ-Kanjurmarg-Vikhroli (EEH) metro corridor (Line-6). The Detailed Project Report of Line-6, prepared by DMRC, provides for a station at SEEPZ Village to provide an interchange with the Colaba-Bandra-Seepz corridor (Line-3). I say that thte said Line-6 also provide for interchange with other metro corridors: (i) Line 2 at Adarsh Nagar (ii) Line 7 at JVLR (iii) Line 3 at SEEPZ Village (iv) Line 4 at Kanjur Marg(W) and (v) Suburban Railways at Kanjur Marg (W). The Multi Modal Interchange policy of Government of India requires seamless interchange between different modes of transport : Rail, Road or Para transit. The station at Aarey alongwith SEEPZ Village station of Line-6 and interchange facilities with the road transport at this location confirm to the Government of India's policies on Multi Modal Integrated MRT network to bring extensive benefit to the commuters of public transport.

4. With reference to para 4(xv) and (xvi) I say that not only has the MMRCL undertaken to transplant as many of the affected trees as possible and also undertake multiple

compensatory tree plantation for all trees that had to be cut/removed and count not be transplanted, but MMRCL has also undertaken that it will plant an equivalent number of trees at the station sites after the station work had been completed. In fact this Hon'ble Court had on the aforesaid basis and having regard to the urgent need for such Public Transport facilities vacated its earlier order and permitted this Respondent to cut trees & proceed with the Line 3 construction works. The Aarey Metro Depot has been realigned/planned to exclude two largely wooded areas having trees & to affect the most minimal number of trees.

5. With reference to para 4(xvii) I say that the comparison of depot sizes [for other Metro Rail lines] is inapposite. I say that the size of the car depot required is dependent on the length of the metro corridor, length of the individual train and also the planned frequency of the train services, the shape and orientation of the land plot apart from other miscellaneous technical considerations and topographical constraints. I say that the Line-3 trains are of 8 coach train of total length of about 179 meters. I say that the Delhi Metro Rail Corporation Ltd., New Delhi (DMRC), which is the pioneer Metro company in India with extensive experience in planning, construction and operating metro services in the country, has been instrumental in preparing Detailed Project Reports of various metro projects in different cities in India. The Delhi Metro Rail Corporation Ltd. Has averaged areas of their different depots in Delhi and assessed that an average of 0.96 hectare of depot area would be required per running kilometer of Metro Line. By this statistical assessment, the depot area of 29.79 Ha is not excessive for a 33.5 Km. Line 3 corridor. The said area of 29.79 Ha includes the depot, the main line that connects the depot to the underground corridor and a station.”

29. In para 6 of this affidavit, it is stated that there was a Government of India Enterprise engaged and acting under the aegis of Indian Railways, to prepare a detailed project report. It proposed 34.3 hectares of land at the subject location in the Aarey Milk Colony. Subsequently, the Technical Committee formed by the Government of Maharashtra had considered all the

options for construction of the car depot at various locations in Mumbai. The matter has been finally considered by officers of the Urban Development Department of the Government of Maharashtra and by the Board of this respondent to arrive at the present plans. During this process, each and every possibility has been fully considered and all possible steps have been taken to minimise and mitigate any environmental damages to the Aarey Milk Colony area.

30. As set out above, after the affidavit on behalf of the Government of Maharashtra, while reiterating the stand in the earlier affidavit, it is denied that there is no attempt made to obtain the Kanjur Marg land. It is not correct that the civil application moved in the other petition was deliberately not pressed or intentionally withdrawn. It is stated that on account of the expediency and to avoid delay, the land at Aarey Milk Colony has been identified. Then, this court passed an order on 20th March, 2018, which reads as under:-

“1. Today when these matters are listed and with the understanding given to the parties that they would be disposed off finally, Mr.Chinoy, learned Senior Advocate, appearing on behalf of fourth respondent, tenders additional affidavit seeking to place on record some factual aspects and which escaped the attention of fourth respondent at the stage of filing of earlier affidavit. He prays that in the larger interest of justice and not to cause any prejudice to the parties on facts, this affidavit may be taken on record though it is filed belatedly. We accept this affidavit and it is taken on record.

2. A copy of this affidavit has been given to Mr.Dwarkadas, learned Senior Advocate, appearing for petitioners. He would submit that the petitioners would like to peruse the said affidavit and its annexures and thereafter respond.

3. Since the petitioners are taken by surprise by such an affidavit being introduced at this stage, primarily to accommodate them, we place this matter on 9th April 2018.

4. We refuse the request made by Mr.Patki, learned AGP to file additional affidavit of the State, for, then there is no end to the pleadings and additional pleadings. This would mean a matter which raised the issue of larger public interest, will not be decided in the coming future and would remain pending. The request made by the state Government's advocate is refused. We grant liberty to the petitioners alone to place response in writing by way of affidavit to this additional affidavit of fourth respondent. The same shall be filed on or before 2nd April 2018 with advance copy to the advocates for respondents. Stand over to 9th April, 2018.”

31. Pursuant to that order, the additional affidavits tendered by the State Government and respondent no. 4 were taken on record and the petitioners were permitted to file a rejoinder. They filed this rejoinder to deal with the additional affidavit of respondent no. 4. In that, while reiterating their contentions, it is stated that in the year 1969, when Aarey Milk Colony was handed over to the Sanjay Gandhi National Park, many of the said establishments were already in existence and entire area of Aarey, along with all these establishments, was handed over to Forest Department/ Sanjay Gandhi National Park Management. This fact is recorded in the Forest Development Corporation of Maharashtra Ltd. Letter dated 22nd July, 1980. It is stated that main car depot is

completely uninhabited. This can never be taken to be a developed part or portion. The open lands (grasslands) are low lying areas and form a part of the critical flood plain of the Mithi river. The said fact is also recorded in the District Collector's letter dated 21st November, 2012. Thus, one arm of the State identifies this land or plot to be critically located in the Eco-sensitive Zone, whereas, the Department of Urban Development asserts to the contrary. It is in these circumstances, it is stated that the explanation for changing the location from Kanjur Marg to Aarey Milk Colony is not bonafide. That should be rejected and the car depot be moved out of the Aarey Milk Colony area. For these reasons, it is stated that an alternate plot of 20.82 hectares should be identified for location of metro car depot and which ought to be other than the subject area. The petitioners also presented a rejoinder affidavit to the first respondent's additional affidavit dated 20th March, 2018. There as well, the above contentions have been reiterated. The additional affidavit of the respondents, based on the order passed by this court on 17th April, 2018, purports to explain the documents compiled in compilation of documents tendered and handed over by the petitioners' senior counsel during the course of arguments. It is stated that one document at Sr. No. 4 is the office translation of Marathi letter dated 21st July, 2017 of the Deputy Director of

Town Planning. In that, a detailed reference is made to the petitioners' objections and it is claimed that the Municipal Corporation of Greater Mumbai has objected to and disapproved the proposed change in land use at Aarey from No-Development Zone to metro car depot. It is stated that in the petitioners' compilation of documents, the document at page 42 in Marathi with English translation thereof at page 179 records that the Municipal Corporation of Greater Mumbai has disallowed this alteration in the meeting of Improvement Committee held on 7th June, 2017. The decision of this committee was communicated on 30th June, 2017. Prior thereto, on 14th June, 2017, the Improvement Committee referred to its meeting dated 7th June, 2017, in which, it disallowed this alteration. Thus, this position is not controverted and the Municipal Corporation is opposed to any change of user. This and other aspects are highlighted with reference to each and every document in the compilation of documents and finally, it is sought to be explained by reference to a document at Sr. No. 30 of the compilation of documents, that is a Marathi letter dated 21st November, 2012 with office translation. That is addressed by the Collector, Mumbai Suburban District to the Additional Chief Secretary, Revenue and Forest Department with respect to Aarey Car Depot, in which, it is stated that the land is full of paragrass and big forest trees, that the bed of the

Mithi River is situated on Eastern and Southern sides and that the land is naturally wet (*daldal*). Thus, this is a forest as per the dictionary and natural meaning. The fourth respondent finally tendered an affidavit on 24th April, 2018, in which, it is alleged that the petitioners are misrepresenting and misleading this court by not providing correct statement of facts. The Marathi documents are incorrectly translated. The Improvement Committee is not the Municipal Corporation of Greater Mumbai. The Municipal Corporation of Greater Mumbai has not disapproved of the alteration or change. Thus, number of documents in the compilation of documents tendered by the petitioners do not indicate the accurate factual position. For these reasons, it is submitted that the petition be dismissed.

32. On the above materials, we have heard the counsel appearing for the parties, including the learned Advocate General.

33. Mr. Janak Dwarkadas learned senior counsel appearing for the petitioners would submit that this petition is filed bonafide by the petitioners for protection and preservation of Aarey land and forest. The petitioners have clarified in the writ petition itself as to how their concern and anxiety is that such a pristine uninhabited forest land, which is a green lung of Mumbai near

floor plain of Mithi River, covering Eco-sensitive Zone should not be damaged and destroyed. The petitioners have filed such a petition in the bonafide belief that forests and greens are eventually the gifts of nature. These natural gifts benefit human beings to an enormous extent. They help us to breath clean and fresh air. They protect health of the human beings from serious ailments and diseases by minimising ill effects of pollution. Mr. Dwarkadas submits that when metropolitan cities are congested, have a huge traffic in flow, unregulated and uncontrolled construction activities, then, that is bound to cause pollution. In a city like Mumbai, everybody is a witness to the damage and destruction of environment and ecology. It is, therefore, the duty of human beings to protect the environment, particularly after Chapter IVA, titled as "Fundamental Duties", has been inserted in the Constitution of India. It is the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. Mr. Dwarkadas submits that plants, trees, birds and animals cannot speak and it is, therefore, the duty of the human beings to speak for them. They are crying for protection and preservation. It is, therefore, the obligation and duty of the human beings to return their kindness and favour by moving such cases before a court of law. Therefore, this litigation should

not be understood as espousing the cause of any vested interest or a blind opposition to improving and modernising public transport system in metro cities. The attempt of the petitioners is to demonstrate as to how there is competing or rival interest and the perennial tussle as to what is paramount, namely, development of environment and ecology. The courts have been consistently leaning in favour of protection and preservation of environment and ecology. The principle of sustainable development should, as in all cases, guide us in resolving the issue raised in this petition, according to Mr.Dwarkadas. Mr. Dwarkadas contends that the attempt should be to harmonise and balance the needs as in this case. If modernising public transport system comes at the cost of destruction of ecology and environment, then, this court must be in favour of safeguarding and protecting the environment. By that, this court will be reminding the State of its obligation and duty as set out in the directive principles of State policy (Article 48-A of the Constitution of India). Once the State is in a position of a guardian and Trustee of forests, natural resources, lakes and open spaces and they are vesting in it for the use and enjoyment of the public, then, according to Mr. Dwarkadas, the doctrine of public trust can be safely invoked in this case to issue the directions as prayed.

34. Mr. Dwarkadas would submit that the petitioners are, therefore, guided by the above principles and they have absolutely no ulterior motives nor is any challenge raised by the respondents in that behalf. As far as Notification dated 24th August, 2017 is concerned, Mr. Dwarkadas would submit that the notification brings in changes in the character of the Development Plan-1991. This notification has been issued to modify the reservation in the existing 1991-Development Plan in respect of the Aarey land from the No-Development Zone to Metro Car Depot/Workshop, allied facilities and Commercial (C-1) Zone. The power to do so is to be found in the MRTP Act. However, while exercising that power, the State cannot lose sight of the object and purpose of such an enactment. The obvious purpose is not to permit and allow uncontrolled and unregulated development and construction activities. Such construction activity, which would totally destroy the green cover or lungs, can never be permitted by the State Government, even if that is being carried out by an enterprise or a company or authority controlled by it. The State has a larger obligation to the public and when there is a conflict between public interest and benefits and advantages accruing to a statutory corporation like respondent no. 4, then, public interest must prevail. Mr. Dwarkadas submits that a change or modification, whereby a No-Development Zone is converted into a

Commercial Zone necessarily means commercial and private motives have intervened. There will not be just a car-shed, as projected, but what the vague expression and general words employed in the notification convey is that in the garb of allied facilities, a systematic commercial activity would be undertaken. There would be construction of buildings in the garb of car depot. Thereafter, the portions or parts of such buildings and areas would be put to commercial use. From that, the fourth respondent will derive huge pecuniary benefits for itself. All this will come at the cost of environment and ecology. This is a huge price, which will have to be paid by the residents of Mumbai. That is how a change in the character of the development plan of entire D-East Ward is the result of this notification. Now, already depleted forest cover in and around the Mumbai would be further reduced and decreased. If a National Park is also not safe from encroachment by human beings, then, all the more the area surrounding such park would be taken over. If that is allowed to be built upon, then, there is a genuine and real apprehension that the forest cover will also be encroached and taken over. In these circumstances, it is urged that this is a major modification. Mr. Dwarkadas would remind us that Sanjay Gandhi National Park acts like a lung of Mumbai and it is not just those residing in the D-East Ward, but all over Mumbai city and Mumbai Suburban

Districts, who visit this National Park and enjoy its green cover so as to minimise the ill effects to their health and wellbeing. In these circumstances, we should not allow such substantial changes being carried out, that too at the behest of respondent no. 4. It is submitted by him that section 37(1AA) of the MRTP Act must be read together with section 22A of the said Act. A change, which does not alter the basic features or the identity of the plan is permitted by section 37. An elimination of the green zone would be a substantial modification that changes the character of the development plan and hence, it is not permissible under section 37 of the MRTP Act.

35. Alternatively and without prejudice, Mr. Dwarkadas submits that the changes proposed under this notification of 24th August, 2017 falls within the definition of the expression “substantial modification” under section 22A of the MRTP Act. He would submit, therefore, that the impugned notification is contrary to law and should be quashed and set aside.

36. The next argument of Mr. Dwarkadas is that this notification has been issued on the recommendation of the Deputy Director of Town Planning and all his recommendations are illegal. The Deputy Director of Town Planning has referred to the areas outside K-East Ward. He has ignored other options for

establishment of metro car-shed as also alternate sites, observing that there is no need for him to consider them. Then, he has not taken any opinion of the Forest Department while making favourable recommendations. He has ignored a vital objection that the metro car depot comes under flood plain of Mithi River. He has ignored the fact that the rest of Aarey Colony is not part of the Mithi River floor plain. Mr. Dwarkadas would submit that in these circumstances, the power to modify or alter or change the development plan proposal is vitiated by total non application of mind to relevant and germane factors and considerations. If the power is exercised irrationally or by ignoring and brushing aside relevant and germane factors, then, such exercise can safely be termed as arbitrary, unreasonable, unfair and violative of Article 14 of the Constitution of India. Mr. Dwarkadas submits that the right to life and liberty guaranteed by Article 21 of the Constitution of India includes the right to clean and fresh air. In other words, protection of environment and ecology are inherent and implicit in the right guaranteed by Article 21 of the Constitution of India. The mandate of the above Articles is contravened when respondent no. 2 has opined that metro car-shed can be set up in Aarey Milk Colony. His recommendations have been accepted by the State Government and it has issued the impugned notification. Hence, respondent nos. 1, 2 and 4

together have violated the constitutional mandate of equality before law and equal protection of laws.

37. As far as the second challenge in the petition and to the Notification dated 9th November, 2017, Mr. Dwarkadas would submit that this notification is published for the land not recognised under the Development Control Regulations, 1991. The metro car depot is proposed for the first time under the Draft Development Control Regulations, 2034, which are notified, but are not final. Therefore, the fourth respondent does not have the right to carry out development until the final Development Control Regulations, 2034 are notified. In that, Mr. Dwarkadas relied upon section 2(9A) of the MRTP Act.

38. Mr. Dwarkadas then submits that there is no record/document evidencing a purported inquiry or consultation made with the Director of Town Planning, Maharashtra State, Pune, prior to issuing the 2nd impugned notification, although referred to in the notification. Mr. Dwarkadas would submit that in fact no such inquiry or consultation was made and the notification has been published without any application of mind in breach of the provisions of section 31(1) and 31(3) of the MRTP Act. This notification does not have an accompanying plan. Although the notification refers to a part final development plan,

which is to be kept open for inspection by the general public, no such plan is infact prepared along with this notification. No plan was made available when inspection was sought from offices of Town Planning Department and the Municipal Corporation of Greater Mumbai. The petitioners' advocate, by their letter dated 7th March, 2018, addressed to the Government Pleader appearing for respondent nos. 1 and 2, inter alia, sought inspection of the said plan. However, no response to the said letter is received till date. This notification is issued in complete ignorance and disregard to the provisions of section 22 of the MRTP Act.

39. Mr. Dwarkadas has taken us through the relevant provisions of the Constitution of India to submit that the State or Municipalities cannot make a law, which runs contrary to the law enacted by the Parliament. Even though urban forestry is covered under the 12th Schedule to the Constitution, no law, which results in destruction or non-preservation of urban forest and also runs counter to the enactments like the Forest (Conservation) Act, 1980, can be enacted.

40. Mr. Dwarkadas, in his arguments on the point that Aarey Milk Colony is a forest, would submit that no development is permitted in a forest. Mr. Dwarkadas elaborated this contention by submitting that the term “forest” has not been defined in the

Forest (Conservation) Act, 1980. However, in the judgment of the Hon'ble Supreme Court in the case of *T. N. Godavarman Thirumulpad vs. Union of India and Ors.*¹, there is a reference to the definition of the term “forest” appearing in section 2 of this Act and there, the Hon'ble Supreme Court has given an expansive meaning to that phrase. It is submitted that the Aarey Milk Colony is pristine uninhabited forest land and falls under the definition of “forest”. It has been recorded as a “forest” by the Forest Development Corporation of Maharashtra Limited by their letter dated 22nd July, 1980. There is also a reference to this in the Sanjay Gandhi National Park Management Plan for the period 2013-14 to 2022-23 and that plan states that the Revenue land transferred from Aarey Milk Colony forms a part of Protected Forest. Though it is styled as unclassified forest, yet, being termed as a forest is enough for the purposes of the petitioners and they can safely urge that if the subject area is a forested area full of quagmire and situated in the bed of Mithi River, then, the above apprehensions of the petitioners have reasonable basis.

41. Mr. Dwarkadas submits that the petitioners have challenged the impugned notifications permitting the use of forest land for metro car depot for that is in violation of section 2 of the Forest

¹ (1997) 2 SCC 267

(Conservation) Act, 1980. It is clear from the language of section 2 that there is a restriction on de-reservation of forest or use of forest land for non-forest purpose. It is evident by the non-obstante clause in that section that it is only a State Government or other authority, who can undertake a non-forest activity, but that has to be with prior approval of the Central Government. Further, the State Government in this case is not making or constructing the metro car-shed. The land is being developed for the metro car-shed by the fourth respondent, which is neither the Central Government nor a Authority, who has stepped in with prior approval of the Central Government. Mr. Dwarkadas would submit that this fourth respondent is a Special Purpose Vehicle set up for the purpose of developing the Metro-III Line. The fourth respondent is owned in the ratio of 50-50 by the State of Maharashtra and the Union of India. The handing over of Aarey forest land to the fourth respondent for the project is impermissible without prior permission of the Central Government. Mr. Dwarkadas placed reliance upon a letter dated 20th November, 2015 addressed to the fourth respondent and that clearly refers to a prior approval, but no such prior clearance or approval has been taken.

42. Then, it is stated that there is a very pertinent clarification

issued on 5th December, 2017 by the Ministry of Forest, Union of India that the Forest (Conservation) Act, 1980 and the Wildlife Protection Act, 1972 will be applicable for diversion of forest land for non-forest purpose irrespective of ownership of the forest land and even forest land owned by the State cannot be acquired and transferred to Railways under section 11(a) of the Railways Act, 1989 without following the provisions of the Forest (Conservation) Act, 1980 and the Wildlife Protection Act, 1972. In these circumstances, it is evident that allowing development in a forest contravenes at least two parliamentary statutes in the field.

43. It is then claimed that even with regard to the change or modification in the reservation, that could not have been effected without prior no-objection certificate of the Forest Department. In the instant case, without obtaining such no-objection certificate, the Urban Development Department, has, in contravention of the provisions of the prevailing laws, changed the reservation of land under the impugned notifications and the fourth respondent has hastily commenced work thereon. It is in these circumstances, it is submitted that the first respondent was bound to seek prior permission under the Forest (Conservation) Act, 1980 before passing any order directing the change of Aarey forest land to be

used for the non-forest purpose. A reference is also made to the Government Resolution dated 23rd August, 2017.

44. Mr. Dwarkadas submits that no permission under the Forest (Conservation) Act, 1980 was sought prior to issuance of the impugned notifications. In these circumstances, the conversion of land, which was in No-Development Zone for the use of metro car-depot is illegal and ought to be set aside.

45. It is stated that the Aarey land would come within the meaning of forest and the precautionary principles laid down by the Hon'ble Supreme Court in the case of *M. C. Mehta vs. the Union of India and Ors.*². Hence, the impugned notifications be set aside. They are contrary to the provisions of the Forest (Conservation) Act, 1980.

46. It is submitted that the metro administration has not acquired the Aarey land under the provisions of the Metro Act. In fact, it is the Maharashtra Government, who has voluntarily handed over their own dairy land free of cost to the Mumbai Metro Rail Corporation Limited (MMRCL) in lieu of its financial contribution towards cost of Metro-III project. It is in these circumstances that the fourth respondent cannot claim the

² (2004) 12 SCC 118

benefit or protection of section 10(4) of the Metro Rail (Construction of Works) Act, 1978.

47. Mr. Dwarkadas has invited our attention to the proceedings before the National Green Tribunal regarding Aarey land and relied upon its orders so as to urge that the non-forest work cannot proceed without the said tribunal deciding the dispute. Now, without waiting for the outcome of the adjudication before the National Green Tribunal, the work has been carried out and even beyond the three hectares land, as permitted in the National Green Tribunal's order. It is in these circumstances that the fourth respondent could not have misled either the authorities or this court that the status quo order of the National Green Tribunal does not pertain to the Aarey land nor can they commence any non-forest activity in this manner. Mr. Dwarkadas has handed over a note of his propositions on 27th April, 2018. That is essentially on the additional affidavit filed on 24th April, 2018 by the fourth respondent. Mr. Dwarkadas submits that the petitioners have commented upon the fourth respondent's stand before the National Green Tribunal and other issues highlighted in the fourth respondent's affidavits filed in this petition. For all these reasons, Mr. Dwarkadas would submit that the petition be allowed.

48. Mr. Kumbhakoni learned Advocate General appearing on behalf of the respondent nos. 1 and 2, after tendering a synopsis, submitted that there is no substance in any of the contentions of Mr. Dwarkadas. On 1st July, 2009, a notice was published in the Official Gazette, declaring the intention of the Municipal Corporation to revise the sanctioned Development Plan for Greater Mumbai. On 25th February, 2015, the Municipal Corporation has prepared a Draft Revised Development Plan and after obtaining sanction from the General Body, published it in the Official Gazette declaring the intention of the Municipal Corporation to revise the sanctioned Development Plan for Greater Mumbai. On 25th February, 2015, the Municipal Corporation has prepared Draft Revised Development Plan and after obtaining sanction from the General Body, published notice in the Government Gazette under sub-section (1) of section 26 of the MRTP Act inviting suggestions and objections from general public. On 23rd April, 2015, this draft was republished and in the draft plan, the property/land was reserved for Metro/Mono Rail Car-Shed (RT3.1). The notice inviting suggestions/objections was issued under section 26(1) of the MRTP Act and after the suggestions and objections were considered, a report was submitted along with recommendations to the Municipal Corporation under section 28(3) of the MRTP Act on 6th March,

2017. The Municipal Corporation sanctioned the Draft Development Plan with modifications or changes carried out by the Planning committee subject to the modifications suggested by the Municipal Corporation. The Municipal Corporation, while sanctioning the Draft Development Plan for the property in issue, made modifications vide Sr. No. 266 to the effect that the land proposed to be reserved for metro/mono car-shed be included in Green Zone.

49. On 2nd August, 2017, the Municipal Corporation submitted the Draft Development Plan to the State Government for sanction under section 30(1) of the MRTP Act and on 9th November, 2017, this Draft Development Plan has been sanctioned by the State Government.

50. It is submitted by Mr. Kumbhakoni that in view of the above, it is evident that the second proviso to section 31(1) of the MRTP Act does not apply in this case. Neither eventualities, as set out therein, come into play. After inviting our attention to sections 26, 28 and 31(1), the learned Advocate General would submit that there is no illegality or infirmity in the notification dated 9th November, 2017. It is in these circumstances that the first notification, which is also challenged, would not survive. That deletes 33 hectares at Aarey from No-Development Zone and

reserves it for metro car depot and allied facilities in the Development Plan-1991. Mr. Kumbhakoni was at pains to point out that the property in issue is not a part of the Sanjay Gandhi National Park. Without prejudice to this submission, he would submit that only a proposal for inclusion of the property in issue in the Sanjay Gandhi National Park is made. Mr. Kumbhakoni relying upon the note prepared at page 7, handed over by the petitioners, urged that the petitioners themselves admits that prior to the final notification dated 6th December, 2016, a draft notification issued by the Ministry of Environment and Forest dated 22nd January, 2016 proposed to declare the entire area of Aarey Colony as Eco-sensitive Zone. However, that has not been accepted as is evident from the final notification dated 6th December, 2016 of the Ministry of Environment and Forest. In these circumstances, it is futile to urge that the subject area is a forest. It is neither forest nor it falls in Eco-sensitive Zone. Mr.Kumbhakoni has taken us through the observations of this court made in its order dated 5th May, 2017 in Writ Petition No. 814 of 2017 to urge that metro project is a very vital project. It is a project of considerable public importance for a metropolitan city like Mumbai. Mr. Kumbhakoni relies upon para 16 of this order to submit that there is absolutely no merit in the writ petition and it should be dismissed.

51. Mr. Chinoy learned senior counsel appearing for the fourth respondent, in addition to adopting the arguments of Mr.Kumbhakoni, would submit that the petitioners have not challenged the notification of the Ministry of Environment and Forest dated 6th December, 2016. In the absence of comprehensive pleadings and challenge, the petitioners cannot request this court to inquire into the issue whether the subject area is a forest or not. In any event, these are highly disputed factual matters. A detailed inquiry in such matters cannot be held by this court in its limited jurisdiction under Article 226 of the Constitution of India. More so, when a like minded public spirited body has approached the National Green Tribunal and the issue is pending. This court cannot be called upon indirectly to hold an inquiry and which in any event can be held only by experts. Once the experts have decided not to declare the area as forest, but merely declared it to be an Eco-sensitive Zone, wherefrom as well, the portion carved out for a metro car-shed is excluded, then, all the more this writ petition should be dismissed. Both counsel have laid great emphasis on the notification, copy of which is annexed to the affidavit in reply of the Government of Maharashtra. Hence, it is submitted that this writ petition be dismissed.

52. For properly appreciating the rival contentions, a reference will have to be made to the two notifications. The first one is dated 24th August, 2017. A copy of the same is at page 185 of the paper book (Exhibit '1' to the affidavit in reply of respondent nos. 1 and 2. This notification reads as under:-

URBAN DEVELOPMENT DEPARTMENT

Mantralaya, Mumbai 400 032, dated 24th August 2017

NOTIFICATION

THE MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966.

No.TPB, 4312/92/(Camp)/CR-39/2012/UD-11.- Whereas the Revised Development Plan of “K/E” ward of Greater Mumbai (hereinafter referred to as “the Said Development Plan”) has been sanctioned by the Government in the Urban Development Department, under section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the said Act”) vide Notification No.TPB.4392/4716/CR-181/92/UD-11, dated 12th November 1992, so as to come into force with effect from the 29th December 1992;

And whereas, the Mumbai Metropolitan Region Development Authority is implementing Mumbai Metro Master plan through Special purpose Vehicle Company “Mumbai Metro Corporation Limited (hereinafter referred to as “the said Authority”);

And whereas, the said Authority has requested that the land admeasuring about 33 Hectare, bearing CTS No.9(pt.), 10(pt.), 11(pt.), 12 (pt.) 13(pt.) of village Prajapur and CTS No.2(Pt.) of Village Vyravali (hereinafter referred to as “the said land”) is required for Aarey Car Depot for Metro line-III, Colaba-Bandra Corridor and also requested to change the use of the said land in the said Development plan from No Development Zone to Metro Car Depot/Workshop, allied facilities and Commercial (C-1) Zone;

And whereas, the Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, Government of Maharashtra, vide memorandum dated 5th March 2014, has accorded sanction to transfer the land in their possession bearing CTS No.9(pt.), 10(pt.), 11(pt.), 12 (pt.), 13(pt.) of village Prajapur admeasuring about 29.79 Hectare for Aarey Car Depot and also accorded sanction to transfer additional 3.00 Hectare land from CTS No.12(pt.) and 13(pt.) vide Government Resolution dated 16th March 2016 for the same purpose;

And whereas, in the meantime the State Government has constituted Committee vide Government Resolution No.MRD-3315/CR-23/UD-7, dated 11th March 2015 under the Chairmanship of the Metropolitan Commissioner, Mumbai Metropolitan Region Development Authority regarding the proposed Car Depot on the said land to study the alternatives for locating Car Depot, if possible and to minimize damage to the trees on the site if suitable alternative is not found and also to suggest mitigation measures to minimize environmental damages;

And whereas, the Committee has submitted report with their recommendations to the State Government and the said Authority vide letter dated 1st April 2016 has intimated to the State Government that the alternative site is not available and the said land can be utilized for Car Depot by saving more than 50% of trees and plantation will be undertaken as per statutory requirements of 1:3 trees for every tree cut as per Committee's recommendations and requested to sanction Car Depot on the said land;

And whereas, the State Government was of opinion that in the public interest it is necessary to delete the said land from the No Development Zone in the said Plan and to reserve it for Metro Car Depot/Workshop, allied facilities and Commercial (C-1) Zone. (hereinafter referred to as "the proposed modification" and more specifically described in the Schedule appended hereto);

And whereas, in exercise of the powers conferred under Sub-section (1AA) of Section 37 of the said Act, Government had issued Notice of even No. dated 29th December 2016 for inviting suggestions/objections from the general public with regard to "the proposed modification" as mentioned in the Schedule appended to the said Notice and appointed the Dy. Director of Town Planning, Gr. Mumbai as the officer (hereinafter referred to as "the said Officer") to submit a

Report on the suggestions/objections received in respect of the proposed modification to the Government after giving hearing to the concerned persons;

And whereas, the said Notice dated 29th December 2016 was published in the *Maharashtra Government Gazette* (Extra-Ordinary Gazette) dated 29th December 2016 and the said Officer has submitted his report *vide* letter dated 21st July 2017 through the Director of Town Planning, Maharashtra State, after completing the legal procedure stipulated under Section 37(1AA) of the said Act;

And whereas, the Government finds it expedient to delete the said land from the No Development Zone in the said Plan and to reserve it for Metro Car Depot/Work shop, allied facilities.(hereinafter referred to as “the modification”);

And whereas, after considering the above stated Report of the said Officer and after consulting the Director of Town Planning, Maharashtra State, Pune, the Government is of the opinion that the modification is required to be sanctioned with some changes.

Now, therefore, in exercise of the powers conferred upon it under Section 37(1AA)(c) of the said Act, the Government hereby :-

(A) Sanctions the said modification proposal with conditions as follows :-

Sanctioned Modification

“The land admeasuring about 33 Hectare bearing CTS No.9(pt.), 10(pt.), 11(pt.), 12(pt.), 13(pt.) of village Prajapur and CTS No.2(pt.) of Village Vyravali (as more particularly shown on the part plan attached herewith) is deleted from “No Development Zone” and is reserved for reservation of “Metro Car Depot/Workshop, allied users”. The Appropriate Authority for development of the said reservation shall be “Mumbai Metro Rail Corporation Limited.”

Conditions :-

(1) Open area shown on the Part Plan of proposed modification shall be kept open and the it shall be binding to conserve the trees on part of the said land permanently.

(2) To mitigate the environmental impact to Aarey

Colony following measures shall be undertaken :-

- (i) Ground water recharging arrangement to be provided in the Depot.
- (ii) Plantation of Trees as per recommendation of the Committee.
- (iii) Trees above 10 feet height of native variety only be planted.
- (iv) Plantation to be undertaken by professional agencies only.
- (v) Annual Audit of plantation by third party and reports posted on the Company's website.
- (vi) MMRC to maintain these trees for 5 years.

(3) Total 33 hectors of land shall be used only for Metro Car Depot/Workshop, allied users only, Commercial user shall not be permitted.

(4) Before development of the land for the purpose of Car Shed, Mumbai Metro Rail Corporation Limited shall obtain necessary permissions from concerned Department as required under the all other prevailing laws.

(5) The character of overall construction shall be such that the under ground water table shall not get disturbed.

(B) Fixes the date of publication of this Notification in the Official Gazette as the date of coming into force of this modification.

(C) Directs the Municipal Corporation of Greater Mumbai that, in the Schedule of Modifications appended to the Notification sanctioning the said Development Plan, after the last entry a new entry as per (A) above shall be added.

The part plan showing the said modification shall be kept open for inspection by the general public during the office hours on all working days for period of one month in the office of the Chief Engineer (Development Plan), Greater Mumbai Municipal Corporation.

This Notification shall also be published on the Government website-www.maharashtra.gov.in.

By order and in the name of the Governor of Maharashtra,

KISHOR D. GIROLLA,
Under Secretary to Government.

53. Then, the second notification dated 9th November, 2017, copy of which is at page 190 (Exhibit '3') needs to be set out. That reads as under:-

URBAN DEVELOPMENT DEPARTMENT

Mantralaya, Mumbai 400 032, dated 9th November 2017

NOTIFICATION

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966.

No.TPB.4317/629/CR-118/2017/UD-11.- Whereas, the Municipal Corporation of Greater Mumbai is the Planning Authority for jurisdiction of Greater Mumbai (hereinafter referred to as "the said Corporation") as per the provisions of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter refer as "the said Act"). The first Development Plan prepared by the said Corporation, was sanctioned in the year 1964-1967. Thereafter, the said Corporation revised the first Development Plan as per provisions of the said Act, the said Revised Development Plan was sanctioned by State Government in the year 1991-1994. The last part of said Revised Development Plan was sanctioned on 4th March 1994 and has come into force accordingly;

And whereas, the said Corporation vide their Resolution No.767, dated 20th October 2008 declared their intention to revise the Sanctioned Revised Development Plan of Greater Mumbai within its jurisdiction as laid down under section 38 read with section 23(1) of the said Act. Accordingly, notice to that effect, was published in the *Official Government Gazette* on 1st July 2009. Thereafter the survey of Existing Land Use of the entire area within the jurisdiction of the said Corporation was carried out as laid down under

Section 25 of the said Act and the Existing Land Use maps were prepared;

And whereas, the said Corporation had prepared the Draft Revised Development Plan along with Development Control Regulations and after obtaining sanction from General Body, vide Resolution No.1195, dated 23rd February 2015, published a Notice in the *Maharashtra Government Gazette*, dated 25th February 2015, under sub-section (1) of Section 26 of the said Act for inviting suggestions/objections from general public on the Draft Revised Development Plan;

And whereas, the suggestions/objections received by the said Corporation in respect of errors in Draft Revised Development Plan and representations from organization, general public, members of Legislative Assembly/Council, the State Government has issued direction vide letter dated 23rd April 2015, under section 154(1) of the said Act, to the said Corporation to revamp/recast the draft Revised Development Plan after examining all the errors on the basis of existing site conditions and its merits by considering the planning and legal issues and republish the Draft Revised Development Plan after incorporating all the corrections for the purpose of inviting suggestion/objections as per the provision of section 26 of the said Act;

And whereas, as per direction of the State Government, the Draft Revised Development Plan along with Development Control Regulations were prepared by the said Corporation within the time extension granted under section 26(A) of the said Act by the State Government and after obtaining sanction from General Body, vide Resolution No.307, dated 27th May 2016, a notice for inviting suggestions/objections from the general public as required under the provision of sub-section (1) of section 26 of the said Act is republished in the *Maharashtra Government Gazette* dated 27th May 2016 (hereinafter referred to as “the said Draft Development Plan”);

And whereas, the Planning Committee constituted under section 28(2) of the said Act, has considered the suggestions and/or objections to the said Draft Development Plan received within stipulated period by the said Corporation and submitted their report along with their recommendations to the said Corporation under section 28(3) of the said Act on 6th March 2017;

And whereas, after considering the report of the

Planning Committee, the said Corporation *vide* its Resolution No.393, dated 31st July 2017 has sanctioned the Draft Development Plan with modifications or changes carried out by Planning Committee subject to the modifications suggested by the said Corporation, which were published under section 28(4) of the said Act and submitted in accordance with the provisions of sub-section(1) of section 30 of the said Act, to the State Government for sanction *vide* letter dated 2nd August 2017.

And whereas, the Director of Town Planning *vide* his Marathi letter dated 11th October 2017 and 26th October 2017 has submitted his Report on the part of the said Draft Development Plan in respect of proposals of 'S' and 'K/E' ward respectively;

And whereas, in accordance with sub-section (1) of section 31 of the said Act, after making necessary enquiries and after consulting the Director of Town Planning, Maharashtra State, Pune, the State Government is of the opinion that the part of the said Draft Development Plan in respect of proposals of 'K/E' and 'S' ward with modifications shown in Schedule, needs to be sanctioned.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 31 of the said Act and of all other powers enabling it on that behalf, the Government of Maharashtra hereby :-

(a) Accords Sanction to the part of the said Development Plan along with Modifications, as specified in Schedule.

(b) Fixes the date, one month after publication of this Notification in the *Official Gazette* to be the date on which the said sanctioned Development Plan Part, called the Final Development Plan Part, shall come into force.

The aforesaid Part Final Development Plan of Greater Mumbai Sanctioned by the State Government *vide* this Notification shall be kept open for inspection by the general public during office hours on all working days for a period of one month from the date of coming into force of this Notification, at the office of the,-

(1) Chief Engineer (Development Plan), Municipal Corporation of Greater Mumbai, Mahapalika Marg, Mumbai 400 001.

(2) Deputy Director of Town Planning, Greater Mumbai,
'E Block, ENSA Hutment, Azad Maidan, Mahapalika Marg,
Mumbai 400 001.

This Notification shall also be available on the
Government of Maharashtra
website :www.maharashtra.gov.in"

54. Relying upon these two notifications, it is urged on behalf of the respondents that the Government of Maharashtra published in the Maharashtra Government Gazette dated 29th December, 2016 and in Marathi and English newspaper on 4th January, 2017, the notice, whereunder, objections and suggestions were invited from the public. Those were with regard to the proposal to delete the land, more particularly described in this notice, from the No-Development Zone in the plan referred thereto and to reserve it for metro car depot, workshop and allied facilities and Commercial (C-1) Zone. This is thus the proposed modification.

55. The first notification dated 24th August, 2017 records that there is a Revised Development Plan of K-East Ward of Greater Mumbai. That has been sanctioned by the Government in the Urban Development Department under section 31(1) of the MRTP Act vide notification dated 12th November, 1992. It came into effect from 29th December, 1992. Then, it is stated that the MMRDA is implementing Mumbai Metro Master Plan through Special Purpose Vehicle Company, namely, the fourth respondent.

It requested that the land admeasuring about 33 hectare bearing CTS Nos. 9 to 13 (part) of village Prajapur and CTS No. 2(part) of village Vyravali is required for Aarey Car Depot for Metro Line-III, Colaba-Bandra Corridor and also requested to change the use of the said land in the said development plan from No-Development Zone to Metro Car Depot/Workshop, allied facilities and Commercial (C-1) Zone. Then, it refers to the sanction accorded by another department, namely Agriculture, Animal Husbandary, Dairy Development and Fisheries Department, Government of Maharashtra to transfer the land in their possession of village Prajapur admeasuring 29.79 hectares for Aarey Car Depot and also accorded to transfer 3.00 hectares from village Vyravali from CTS Nos. 12 (part) and 13 (part) for this purpose. The Government Resolution dated 16th March, 2016 is referred. Then, it is stated that there was a committee set up by the State Government dated 11th March, 2015 under the Chairmanship of the MMRDA regarding the proposed car depot to study the alternatives for locating car depot, if possible and to minimize damage to the trees on the site. If suitable alternative is not found, also to suggest mitigation measures to minimize environmental damages.

56. This committee submitted its report with their

recommendations to the State Government by letter dated 1st April, 2016. It stated that alternative site is not available and the said land can be utilised for car depot by saving more than 50% of trees and plantation will be undertaken as per statutory requirements. Then, the opinion of the State Government that it is in public interest to delete this land from the No-Development Zone and to reserve it for metro car depot/workshop as above, is referred and then, the public notice under section 37(1AA) of the MRTP Act is referred and pursuant thereto, the report of the Director of Town Planning was received on 21st July, 2017. It is in these circumstances that the Government sanctioned the modification in terms of the powers conferred in it under section 37(1AA)(c) and that modification is sanctioned with conditions. Each of these conditions have been carefully perused by us and they denote that precaution is taken not to allow an indiscriminate commercial user of the premises. Beyond the metro car depot/workshop and allied facilities, no commercial user is permitted on the total 33 hectares of land. Even open area has to be maintained and it is binding on the authorities to conserve the trees on the part of the said land permanently. To mitigate the environmental impact, measures have been taken as well. It is clear that before the development of the land, the fourth respondent shall obtain necessary permissions from the

concerned departments as required under other prevailing laws. Finally, the character of overall construction shall be such that underground water table shall not be disturbed.

57. On 9th November, 2017, the second notification came to be published and that says in categorical terms that there was a development plan styled as a First Development Plan prepared by the Municipal Corporation of Greater Mumbai. That was sanctioned in the year 1964-67. That development plan was revised and that Revised Development Plan was sanctioned by the State Government in the year 1991-94.

58. It is stated that the Municipal Corporation of Greater Mumbai, vide their Resolution No. 767 dated 20th October, 2008 declared the intention to revise the sanctioned Revised Development Plan of Greater Mumbai within its jurisdiction, as laid down under section 38 read with section 23(1) of the MRTP Act. A notice to that effect was published in the Official Gazette on 1st July, 2009. Thereafter, the survey of the entire area within the jurisdiction of the said Municipal Corporation was carried out and maps were prepared. It is stated that the Municipal Corporation prepared the Draft Revised Development Plan along with Development Control Regulations and after obtaining sanction from the General Body, vide Resolution No. 1195 dated

23rd February, 2015, published a notice in Maharashtra Government Gazette dated 25th February, 2015 under section 26(1) of the MRTP Act for inviting suggestions/objections of the general public on the Draft Development Plan.

59. Then, it is clarified that suggestions and objections were received by the said Municipal Corporation in respect of errors in the Draft Development Plan and representations from organisations, general public and members of the Legislative Assembly/Council and the State Government issued direction under section 154(1) of the MRTP Act on 23rd April, 2015 to revamp/recast this plan. That was after examination of the errors on the basis of existing site conditions and its merits by considering the planning and legal issues and republishing the Draft Revised Development Plan after incorporating all the corrections for the purpose of inviting suggestions/objections as per the provisions of section 26 of the MRTP Act.

60. As per the directions of the State Government, the Draft Revised Development Plan, along with Development Control Regulations were prepared by the Municipal Corporation within the time extension granted under section 26(1) of the MRTP Act and after obtaining sanction from General Body, vide Resolution No. 307, dated 27th May, 2016, a notice for inviting

suggestions/objections from the general public, as required under the provisions of sub-section (1) of section 26 of the MRTP Act was republished in the Maharashtra Government Gazette dated 27th May, 2016. Then, there is a reference to the Planning Committee constituted under section 28(2) of the MRTP Act, which considered these suggestions/objections to the Draft Development Plan. The Municipal Corporation considered all this and submitted its report with its recommendations under section 28(3) of the MRTP Act on 6th March, 2017 sanctioning the Draft Development Plan with modifications or changes carried out by the Planning Committee and they were published under section 28(4) of the MRTP Act. They were submitted under section 30(1) of the MRTP Act to the State Government for sanction vide letter dated 2nd August, 2017.

61. A reference is made to the report of the Director of Town Planning and his letter. Then, it is stated that the Government exercised its powers under section 31(1) of the MRTP Act and gave its sanction to the part of the Development Plan, along with modifications specified in the Schedule and determined the date on which this sanctioned part Development Plan shall come into force.

62. The Schedule has been reproduced at pages 192 to 193 of

the paper book and it reads as under:-

Schedule

(Accompaniment to the Government Notification
No.TPB.4317/629/CR-118/2017/UD-11
dated 9th November 2017

**Modifications Sanctioned by the Government u/s.31(1) of
the Maharashtra Regional and Town Planning Act, 1966**

<i>Administrative Ward</i>	Sanctioned Modification No.	Details of Land	Proposal under section 26 of the Act	Proposal under section 30 of the Act	Modification sanctioned by the State Government
(1)	(2)	(3)	(4)	(5)	(6)
'K/E' Ward	K/E-SM 1	CTS No.9(Pt.), 10(Pt.), 11(Pt.), 12(Pt.), 13(Pt.) of village Prajapur and CTS No.2(Pt.) of Village Vyaravali (Area about 33 Hectare)	Metro/ Mono Car Shed (RT 3.1)	Green Zone	Metro/Mono Car shed (RT3.1) with following conditions:- (1) Open area shown on the Part Plan of proposed modification shall be kept open and it shall be binding to conserve the trees on part of the said land permanently. (2) To mitigate the environmental impact to Aarey Colony following measures shall be undertaken :- (i) Ground water recharging arrangements to be provided in the Depot. (ii) Plantation of Trees as per recommendation of the Committee (iii) Trees above 10 feet height of native variety only be planted. (iv) Plantation to be undertaken by professional agencies only.

					(v) Annual Audit of plantation by third party and reports posted on the Company's website. (vi) MMRC to maintain these trees for 5 years.
'S' Ward	S-SM 1	CTS No.356 A/2 (Area about 2098.75 Sq.mtr.) of Village Hariyali Kannamwar Nagar, Vikhroli (E)	Multipurpose Community Centre (RSA 2.1)	Court Building (RPU 3.5)	(3) Total 33 hectares of land shall be used only for Metro Car Depot/Workshop, allied users only. Commercial user shall not be permitted. (4) Before development of the land for the purpose of Car Shed, Mumbai Metro Rail Corporation Limited shall obtain necessary permissions from concerned Department as required under all other prevailing laws. (5) The character of overall construction shall be such that the under ground water table shall not get disturbed. Court Building (RPU 3.5)

By order and in the name of the Governor of Maharashtra,

KISHOR D. GIROLLA,
Under Secretary to Government.”

63. Before proceeding further, it would be necessary to refer to some provisions of the Maharashtra Regional and Town Planning Act, 1966. This is an Act to make provision for planning the

development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development Plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid. The Act is divided into several Chapters and Chapter I contains preliminary provisions, including definitions. Chapter II contains provisions relating to regional plans and the whole of the procedure as set out therein with regard to making and sanctioning of regional plans denotes that the powers are all pervasive in nature. After that Chapter comes Chapter III styled as “Development Plans”. To understand some of the provisions of this Chapter III, a reference to the few definitions would be necessary. The word “development” is defined under section 2(7) and the word “development right” is defined under section 2(9). The term “Director of Town Planning” is defined under section 2(10). The term “Planning Authority” is defined under section 2(19). These definitions are reproduced herein below:-

“2(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.

2(9) “Development plan” means a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a special planning Authority for development of land within its jurisdictions.

2(10) “Director of Town Planning” means the officer appointed by the State Government as the Director of Town Planning.

2(19) “Planning Authority” means a local authority; and shall includes,-

(a) a Special Planning Authority constituted or appointed or deemed to have been appointed under section 40; and

(b) in respect of the slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act.”

64. A perusal of these definitions would denote as to how the provisions relating to regional planning and provisions relating to the Development Plan operate. Chapter III is titled as Development Plan and with sub-heading “(a) Declaration of intention, preparation, submission and sanction to Development plan”. Sections 21 and 22 appearing therein read as under:-

“21. (1) As soon as may be after the commencement of this Act, but not later than three years after such

commencement, and subject however to the provisions of this Act, every Planning Authority shall carry out a survey, prepare an existing land-use map and prepare a draft Development plan for the area within its jurisdiction, in accordance with the provisions of a Regional plan, where there is such a plan, publish a notice in the *Official Gazette* and in such other manner as may be prescribed stating that the draft Development plan has been prepared and submit the plan to the State Government for sanction. The Planning Authority shall also submit a quarterly Report to the State Government about the progress made in carrying out the survey and preparing the plan.

(2) Subject to the provisions of this Act, every Planning Authority constituted after the commencement of this Act shall, not later than three years from the date of its constitution, declare its intention to prepare a draft Development plan, prepare such plan and publish a notice of such preparation in the *Official Gazette* and in such other manner as may be prescribed and submit the draft Development plan to the State Government for sanction.

(3) On an application made by any Planning Authority, the State Government may, having regard to the permissible period specified in the preceding sections, from time to time, by order in writing and for adequate reasons to be specified in such order, extend such period.

(4) If the declaration of intention to prepare Development plan under section 23 is not made or if the draft Development plan is not submitted to the State Government as aforesaid for sanction by any Planning Authority within the period specified or within the extended period, the concerned Divisional Joint Director or Deputy Director of Town Planning and Valuation Department or an officer not below the rank of an Assistant Director of Town Planning nominated by him, as the case may be, may after declaring the intention, carry out necessary survey of the area and prepare an existing-land-use map in consultation with the Director of Town Planning and prepare such Development plan and publish a notice in the *Official Gazette* and in such other manner as may be prescribed stating that such plan has been prepared and submit it to the State Government for sanction, and may recover the cost thereof from the funds of that Planning Authority, notwithstanding anything contained in any law relating to the said fund. Such officer shall exercise all the powers and perform all the functions of a Planning Authority which may be necessary for the purposes

of preparing a Development plan and publishing a notice as aforesaid and submitting it to the State Government for sanction.

(4A) If at any stage of preparation of the draft Development plan, the time fixed under sections 25, 26 and 30 for doing anything specified in the said sections lapse, the Planning Authority shall be deemed to have failed to perform its duty imposed upon it by or under the provisions of this Act and any work remaining to be done upto the stage of submission of the draft Development plan under section 30 shall be completed by the concerned Divisional Joint Director or Deputy Director of Town Planning and Valuation Department or an officer nominated by him not below the rank of an Assistant Director of Town Planning, as the case may be. The said officer shall exercise all the powers and perform all the duties of a Planning Authority, which may be necessary for the purpose of preparing a Development plan and submitting it to the State Government for sanction and may, notwithstanding anything contained in any other law relating to the funds of the Planning Authority, recover the cost thereof from such funds:

Provided that, the said Officer shall exercise all the power and perform all the duties of the Planning Authority within such period as may be specified by an order by the Director of Town Planning, having regard to the stage of preparation of Development plan:

Provided further that, the said period specified under the first proviso shall not exceed the original period stipulated under the relevant section.

(5) If any local authority which is a Planning Authority is converted into, or amalgamated with, any other local authority or is sub-divided into two or more local authorities, the Development plan prepared for the area by that Planning Authority so converted, amalgamated or sub-divided shall, with such alternations and modifications, as the State Government may approve be the Development plan for the area of the new Planning Authority or Authorities into or with which the former Planning Authority is converted, amalgamated or sub-divided.

22. A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In

particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say, -

(a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational;

(b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theaters and places for public entertainment, or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government;

(c) Proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;

(d) transport and communications, such as roads, high-ways, park-ways, railways, water-ways, canals and air ports, including their extension and development;

(e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;

(f) reservation of land for community facilities and services;

(g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;

(h) preservation, conservation and development of areas of natural scenery and landscape;

(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value and of heritage buildings and heritage precincts;

(j) proposals for flood control and preservation of river pollution;

(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking

or any other authority established by law for designation of land as subject to acquisition for public purpose or as specified in a Development plan, having regard to the provisions of section 14 or for development or for securing use of the land in the manner provided by or under this Act;

(l) the filling up or reclamation of low lying, swampy or unhealthy areas or levelling up of land;

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of fees, charges and premium, at such rate as may be fixed by the State Government or the planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act.”

65. A perusal of sections 21 and 22 would demonstrate that a development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the matters listed in clauses (a) to (m). Thus, the proposals for designation of areas for open spaces, play grounds, stadia, zoological gardens, green

belts, nature reserves, sanctuaries and dairies is one of the matters, which a development plan shall provide for. A careful perusal of the clauses would indicate that the plan shall contain proposals for allocating the use of land, proposals for designation of land for public purpose, proposals for designation of area for open spaces etc. At the same time, it shall provide, as far as may be necessary, for transport and communication, such as roads, highways, parkways, railways etc. It shall include their extension and development. It is not the case of the petitioners that transport and communications and roads, railways cannot be a matter provided for in the development plan. There are also other matters such as public utilities, amenities and services, including electricity and gas. In several of these matters, judicial notice can be taken of the fact that the land in the area of a Planning Authority can be used and the user is regulated as well. However, that has not ruled out excavation and opening up of land so as to lay pipelines, sewerage and drainage lines and equally, electricity, gas and water supply pipelines. It is not the case of the petitioners that such opening up, digging and excavation is prohibited altogether. Public utilities, amenities and services have equally to be provided in open spaces, play grounds, stadia, gardens and sanctuaries and dairies. Equally, the plans can provide for preservation, conservation and development of

area of natural scenery and landscape. A balancing act has to be performed and it is not the object and purpose of a law like the MRTP Act to permit uncontrolled, unrestricted and unchecked, much less unregulated development. Planned development itself means that a development is permitted and promoted, but that has to sustain the environment and ecology. It cannot damage or destroy ecology and environment altogether. We have seen the ill effects, when there are no flood control measures, the river pollution is not checked and prevented. A balance has been created and judicial notice can be taken of the fact that if adequate safeguards and measures so as to prevent floods and pollution are not taken, there is either a rainfall deficit or there is excess and untimely rainfall. There are other man-made calamities. If there is undue human intervention and nature is not allowed to take its course, then, we have seen the adverse effects. Cities like Mumbai, Chennai, Kochi in Kerala and Bengaluru in Karnataka and several others have been witnessing floods and at regular intervals. There are no long term protective and preventive measures and that is the reason why these incidents are frequent. At the same time, the nature is tinkered in hilly areas. The States of Himachal Pradesh and Uttarakhand have experienced such calamities. The need of the hour is a balanced and sustainable development. The planning is a

continuing process. Eventually, a planner cannot lose sight of human aspirations and hopes, which have to be fulfilled. Our life is full of complexities and contradictions. In cities and metro cities people with contrasting and contrary hopes, dreams and aspirations reside and settle, then, it is a challenging task for an urban planner. The balancing act, which has to be performed on the above lines, is often a subject of challenge and attack in court and outside. We cannot be oblivious to the fact that those who shout from rooftops and complain about destruction of environment and ecology feel nothing when occupying houses and structures, which are built either on forest land or lands which have been opened up after hill cutting. We feel nothing while using roads which pass through thick forests and green areas and rather we demand shortcuts, bypasses, over bridges, underpasses, flyovers so as to avoid traffic congestion. Those, who speak of preservation of environment and ecology, are the first ones to buy modern technosavvy gadgets and frequently use airports and aerodromes which are close to the metro cities or within the cities or have been built or expanded by reducing the parks, gardens, playgrounds etc. It is this dichotomy, which will have to be taken into consideration in determining the challenge of the present nature.

66. Suffice it to say that when a modification of a substantial nature within the meaning of section 22A can be carried out, then, absent a challenge to the very legal provision or enactment as a whole, we cannot, only on general concerns, interfere with the policy decisions. Eventually, it is for the Executive to frame a policy. Equally, it is open for the Executive to modify or reform its existing policies to suit the current needs and trends. It is they who have determined that the mode of transportation in a city like Mumbai needs to be modernised so also traffic congestion can be effectively tackled by reforming or modifying public transport, then, merely because another view is possible or that there will be necessarily a destruction of environment and ecology, we cannot strike down such policies. So long as there is a power enabling the authorities to frame and modify its policies, then, we are nobody to interfere with their actions. The policy measures can be interfered with on limited grounds. In the absence of clear proof of lack of bonafides, contravention of the rights guaranteed by the Constitution of India or violation of statutory provisions, the policy decisions cannot be interfered with. They are founded on the executive discretion and freedom of experiment. There is a greater latitude in such matters. The methodology may be of trial and error, but so long as the bonafides are not in issue, then, we are nobody to interfere with the policy decisions. We have noted

that the arguments of the petitioners overlook section 22A of the law and equally section 31.

67. While modification of substantial nature can be carried out and that is provided for by section 22A, then, the procedure therefor is set out in Chapter III of the MRTP Act. Sections 22A, 26 and 31 read as under:-

“22A. In section 31, the expression “of a substantial nature” used in relation to the modifications made by the State Government in the draft Development Plan means,-

(a) any modification to a reserved site resulting in reduction of its area by more than fifty per cent. or reduction of such amenity in that sector by an area of more than ten per cent. in the aggregate;

(b) insertion of a new road or a new reservation or modification of a reserved site or a proposed road or a proposed road widening resulting in inclusion of any additional land not so affected previously;

(c) change in the proposal of allocating the use of certain lands from one zone to any other zone provided by clause (a) of section 22, which results in increasing the area in that other zone by more than ten per cent. in the same planning unit or sector in a draft Development plan;

(d) alteration in the Floor Space Index beyond ten per cent. of the Floor Space Index prescribed in the Development Control Regulation.

26. (1) Subject to the provisions of section 21, a Planning Authority, or the said Officer shall, not later than two years from the date of notice published under section 23, prepare a draft Development plan and publish a notice in the *Official Gazette*, and in such other manner as may be determined by it stating that the Development plan has been prepared. The notice shall state the name of the place where a copy thereof shall be available for inspection by the public and that copies thereof or extracts therefrom certified to be correct shall be

available for sale to the public at a reasonable price, and inviting objection and suggestions within a period of thirty days from the date of notice in the *Official Gazette*:

Provided that, in case of a Municipal Corporation having population of ten lakhs or more as per the latest census, the period for inviting objections and suggestions shall be sixty days from the date of notice in the *Official Gazette*:

Provided further that, the State Government may, on an application of the Planning Authority, by an order in writing, and for reasons to be recorded from time to time extend the period for preparation and publication of notice of the draft Development plan.

Provided also that, the period so extended shall not in any case, exceed,-

- (i) twenty-four months, in the aggregate, in case of Municipal Corporation having population of one crore or more, as per the latest census figures;
- (ii) twelve months, in the aggregate, in case of Municipal Corporation having population of ten lakhs or more but less than one crore, as per the latest census figure; and
- (iii) six months, in the aggregate, in any other case.

(2) The notice shall also state that copies of the following particulars in relation to the draft Development plan are also available for inspection by the public and copies thereof, or extracts therefrom certified to be correct, are also available for sale to the public at a reasonable price at the place so named, namely:-

- (i) a report on the existing-land-use map and the surveys carried out for the purpose of preparation of the draft plan;
- (ii) maps, charts and a report explaining the provisions of the draft Development plan;
- (ii-a) map showing the planning units or sectors unalterable till the Development plan is revised;
- (iii) regulations for enforcing the provisions of a draft

Development plan and explaining the manner in which the permission for developing any land may be obtained from the Planning Authority or the said officer, as the case may be;

(iv) a report of the stages of development by which it is proposed to meet any obligation imposed on the Planning Authority by the draft Development plan;

(v) an approximate estimate of the cost involved in acquisition of land required by the Planning Authority for the public purposes, and also cost of works, as may be necessary.

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

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

(i) twenty-four months, in the aggregate, in case, the area of such Development plan falls in the jurisdiction of a Metropolitan Planning Committee constituted under the Maharashtra Metropolitan Planning Committee (Consultations and Functions) (Continuance of Provisions) Act, 1999;

(ii) twelve months, in the aggregate, in any other case, as may be specified in such notification:

Provided further that, where the modifications proposed to be made by the State Government or submitted by the Planning Authority under section 30 and proposed to

be approved by the State Government without any further change are of a substantial nature with respect to the draft Development plan published under section 26, the Government shall publish a notice in the *Official Gazette* and also in not less than two local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of one month, from the date of such notice:

Provided also that, if the Government does not publish its decision by notification in the *Official Gazette*, regarding sanctioning the draft Development plan submitted to it, for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft Development plan to the Planning Authority, or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan, within the period under this section, such draft Development plan shall be deemed to have been sanctioned as submitted to the Government under section 30, on the date immediately following the date of expiry of the period under this section:

Provided also that, where any modification submitted by the Planning Authority or, as the case may be, the said Officer, under section 30 is of substantial nature with respect to the draft Development plan published under section 26, such modification shall not be deemed to have been sanctioned and the Government shall publish a notice regarding such modifications of substantial nature and the provisions relating to publication of the notice in the *Official Gazette* and two local newspapers for obtaining suggestions and objections as stipulated in the second proviso, shall apply.

(2) The State Government may appoint an officer of rank not below that of a Group A officer and direct him to hear any such person in respect of such objections and suggestions and submit his report thereon to the State Government within one year from the date of publication of notice under second proviso to sub-section (1).

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

Provided that, the time-limits as provided in sub-

sections (1) and (2) shall not apply for according sanction to the modifications published under sub-section (1):

Provided further that, the Government shall take final decision regarding such modifications within one year from the date of receipt of the report from the officer appointed under sub-section (2).

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

(4A) The State Government may, by notification in the *Official Gazette*, delegate all the powers and functions under this section to the Director of Town Planning in such cases and subject to such conditions, if any, as may be specified in such notification.

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

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

68. By section 37, a modification of Final Development Plan is also permitted. Section 37 is heavily relied upon together with section 37A. Both read as under:-

“37. (1) Where a modification of any part of or any proposal made in, a final Development plan, the Planning Authority may, or when so directed by the State Government shall, within ninety days from the date of such direction, publish a notice in the *Official Gazette* and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such

notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any,) to the State Government for sanction within one year from the date of publication of notice in the *Official Gazette*. If such modification proposal is not submitted within the period stipulated above, the proposal of modification shall be deemed to have lapsed:

Provided that, such lapsing shall not bar the Planning Authority from making a fresh proposal.

(1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government shall issue the notice, and thereupon the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.

(1AA)(a) Notwithstanding anything contained in sub-section (1), (1A) and (2), where the State Government is satisfied that in the public interest it is necessary to carry out urgently a modification of any part of, or any proposal made in, a final Development plan of such a nature that it will not change the character of such Development plan, the State Government may, on its own, publish a notice in the *Official Gazette*, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice and shall also serve notice on all persons affected by the proposed modification and the Planning Authority.

(b) The State Government shall, after the specified period, forward a copy of all such objections and suggestions to the Planning Authority for its say to the Government within a period of one month from the receipt of the copies of such objections and suggestions from the Government.

(c) The State Government shall, after giving hearing to the affected persons and the Planning Authority and after making such inquiry as it may consider necessary and consulting the Director of Town Planning, by notification in the *Official Gazette*, publish the approved modifications with or without changes, and subject to such conditions as it may deem fit, or may decide not to carry out such modification. On the publication of the modification in the *Official Gazette*, the final Development plan shall be deemed to

have been modified accordingly.

(1-B) Notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed under section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is satisfied that a modification of any part of, or any proposal made in, a final Development plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may publish a notice in the *Official Gazette*, and in such other manner as may be determined by it, inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification, and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction.

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

37A. Notwithstanding anything contained in this Act or any other law for the time being in force, or in any judgment, order or direction of any Court or any draft or final Development plan, the State Government or the Planning Authority may, in respect of any plot of land reserved, designated or allocated for the purpose of playground in such draft or final Development plan, which is in the possession of the State Government or the Planning Authority, by an order issued from time to time, permit any organisation, body of persons or association to use such play-ground for functions organised on the occasions of Independence Day, Republic Day, Maharashtra Day and similar National events, and the *Jayanties or Punnyatithies* of National Leaders, religious functions and public meetings, on terms and conditions specified by the State Government or the Planning Authority, as the case may be, in such order, for a period not exceeding 12 days at a time and in any case not exceeding forty-five days in the aggregate, in a calender year; and such use shall not be deemed to be a change of user:

provided that, temporary use of any plot of land, reserved, designated or allocated for the purpose of playground, for management of any disaster or emergency such as Helipad or other essential use, shall also not be deemed to be a change of user.”

69. A perusal of section 37(1) would denote that where a modification of any part of or any proposal made in a Final Development Plan, the Planning Authority may or when so directed by the State Government shall carry out the mandate of that sub-section. The public has a vital interest and is an important stakeholder. It can object and equally give suggestions. There is a hearing contemplated and the proposed modifications with amendments, if any, have to be forwarded to the State Government for sanction within one year from the date of publication of notice in the Official Gazette. If that is not done, the proposal of modification shall be deemed to have been lapsed. However, if the procedure is followed, then, what is important to note is that the further steps have to be taken. The argument of the petitioners also overlooks sub-section (1AA)(a) to (c) of section 37. It is relevant here to note that this provision is given an overriding effect. If the State Government is satisfied that in public interest, it is necessary to carry out urgently modification of any part of or any proposal made in a Final Development Plan of such a nature that it will not change the character of such development plan, it can, on its own motion, take the steps within

the meaning of the sub-section and the clauses thereof. The modification then would come into effect.

70. In the present case, we have noted that by section 22A, the expression “modification of substantial nature” is defined and for the simple reason that during the course of sanction of Draft Development Plan, it would be open for the State Government to effect modification thereto. It may sanction the Draft either without modification or subject to such conditions as it may consider proper and as provided in the second and third proviso to section 31(1) of the MRTP Act. If the modifications proposed to be made by the State Government or submitted by the Planning Authority under section 30 and proposed to be approved by the State Government without any further change are of a substantial nature with respect to the Draft Development Plan, then, the State Government has to follow the second and the third proviso.

71. The provision as highlighted by the State Government indicates that the notification dated 24th August, 2017, issued by respondent no. 1 is under section 37(1AA) clause (c) of the MRTP Act. We have referred to this section in the foregoing paragraphs only to emphasise that by the sub-section and its clauses, an overriding power is conferred in the State Government. If the State Government is satisfied that in the public interest it is

necessary to carry out urgently a modification of any part of or any proposal made in a Final Development Plan and that is of such a nature that it will not change the character of such development plan, then, the State Government can suo moto proceed to invite objections and suggestions from any persons with respect to the proposed modifications and after giving hearing to such persons and after making such inquiries as it may consider necessary and consulting the Director of Town Planning, it can, by a notification in the Official Gazette, publish the draft modifications with or without changes and subject to such conditions as it may deem fit or may decide not to carry out such modifications.

72. The notification has been reproduced by us and that sanctions the modifications, namely, deleting the land from No-Development Zone in the Revised Development Plan of K/East Ward and to reserve it for metro car-depot, allied facilities and Commercial (C-1) Zone. This notification making this modification is in accord with the legal provisions. There is no substance in the allegation and the complaint that this brings about a modification, which changes the character of the development plan. The character of the development plan is not changed and all the more when this modification is sanctioned

with conditions. None of the conditions reproduced by us in the foregoing paragraphs would contravene the constitutional guarantee of protection of environment and ecology. We have seen that the conditions rather safeguard the environment and ecology. The conditions enshrine that the plantation of trees will be made as per the recommendations of the Committee and that trees above 10 feet height of native variety only be planted and that plantation to be undertaken by professional agencies only. Annual audit by third party would be done and reports would be posted on the website with an additional term that the fourth respondent will maintain these trees for five years and ensure that damage, if any, caused to ecology and environment is mitigated by the plantation. Further, nothing beyond the total 33 hectares of land would be used for the metro car depot/workshop and allied user. No commercial user has been permitted. Further, several authorities will have to be approached for prior permissions. Finally, the character of overall construction shall be such that the underground water table is not disturbed. Hence, we do not see any substance in the challenge to this notification.

73. As far as the notification dated 9th November, 2017 is concerned, that is in relation to the Draft Revised Development

Plan along with Development Control Regulations. These were placed before the General Body and the Municipal Corporation's General Body passed a Resolution No. 1195 dated 23rd February, 2017 resolving that a notification under section 26(1) of the MRTP Act shall be published for inviting suggestions/objections from general public on the Draft Revised Development Plan. As far as this aspect is concerned, there is a clear prescription and to be found in sub-section (1) of section 26 of the MRTP Act. Sub-section (1) says that subject to provisions of section 21, the Planning Authority can, within the time prescribed in that provision, prepare a Draft Development Plan and publish a notice in the Official Gazette, informing that the development Plan has been prepared and public can inspect it and thereafter, the objections and suggestions can be made.

74. After this was published and the suggestions/objections were received by the Municipal Corporation, during that course, the State Government issued directions by a letter dated 23rd April, 2015 to the Municipal Corporation to revamp/recast the Draft Development Plan after examining all the errors on the basis of existing site conditions and its merits by considering the planning and legal issues and republish this Draft Development Plan after incorporating all the corrections for the purpose of

inviting suggestions/objections as per section 26 of the MRTP Act.

75. It is in these circumstances and in terms of the directions of the State Government that the Draft Revised Development Plan, along with Development Control Regulations were prepared by the said Municipal Corporation within the extended time granted under section 26 of the MRTP Act and after obtaining sanction from the General Body, by Resolution No. 307 dated 27th May, 2016, the Municipal Corporation of Greater Mumbai published a notice inviting suggestions/objections of the general public.

76. Then, there is a reference made to the objections to the Draft Development Plan and which objections were considered by the Planning Authority. It submitted its report under sub-section (3) of section 28 to the State Government on 6th March, 2017. The Municipal Corporation, after considering the report of the Planning Committee, by its Resolution No. 393 dated 31st July, 2017, has sanctioned the Draft Development Plan with modifications or change carried out by the Planning Committee, subject to the modifications suggested by the Municipal Corporation. These were also published in terms of sub-section (4) of section 28 for the information of the public.

77. Thereafter, the Draft Development Plan came to be

forwarded to the State Government and in terms of sub-section (1) of section 30. The State Government had before it this Draft Development Plan as also a report of the Director of Town Planning. He made his report on part of the said Development Plan in respect of the proposals of “S” and “K/East” Wards respectively. Thereafter, in exercise of this power of sanction to the Draft Development Plan conferred by sub-section (1) of section 31, the Government of Maharashtra accorded sanction to the part of the said Development Plan along with modifications as specified in the Schedule to the notification dated 9th November, 2017.

78. A careful perusal of sub-section (1) of section 31 would denote that the State Government is conferred with a power to sanction the Draft Development Plan submitted to it for the whole area or separately for any part thereof, either without modification or subject to such modifications as it may consider proper or return the Draft Development Plan to the Planning Authority for modifying it. It may also refuse to accord sanction to the Draft and direct preparation of fresh development Plan. The State Government is right in this case when it says that the two provisions, namely, sub-section (1) of section 31 and section 37(1AA) deal with different situations, in the sense, by the first,

namely, section 31(1), the sanction is to Draft Development Plan and it may be sanctioned for the whole area or separately for any part thereof either with modifications or subject to such modifications as the State Government may consider proper and the latter is dealing with modification of Final Development Plan. A care has been taken by law to ensure that the Final Development Plan does not lose its character altogether. Therefore, the petitioners are in error in mixing up the issues. The argument of Mr. Dwarkadas that section 22A of the MRTP Act would apply overlooks the fact that the modification to the Final Development Plan is made under a distinct provision, whereas, when the Draft Development Plan is sought to be sanctioned, what is contemplated by sub-section (1) of section 31 is that where the modification is proposed to be made by the State Government or submitted by the Planning Authority under section 30 and proposed to be approved by the State Government without any further change are of substantial nature, then, the Government shall publish a notice in the Official Gazette and also in not less than two local newspapers, inviting objections and suggestions from any person in respect of the proposed modifications. That is how the second proviso to sub-section (1) of section 31 reads. However, a careful perusal of the notification dated 9th November, 2017 leaves us in no manner of doubt that the

State Government had before it the Corporation's Resolution dated 20th October, 2008 declaring its intention to sanction Revised Development Plan of Greater Mumbai within its jurisdiction as laid down under section 38 read with section 23(1) of the MRTP Act. It had before it the notice published in the Official Gazette of 1st July, 2009, the survey of existing land use of the entire area within the jurisdiction of the Municipal Corporation and the existing land use maps. Further, it had the Resolution dated 23rd February, 2015, a notice published in the Maharashtra Government Gazette of the same date under section 26(1) inviting suggestions/objections from general public on the Draft Revised Development Plan. However, the State Government issued a direction as noted above dated 23rd April, 2015 to revamp/recast the Draft Revised Development Plan and republish such draft after incorporating all the corrections for the purpose of inviting suggestions/objections as per section 26 of the MRTP Act. The Government was pleased to extend the time and after obtaining sanction from the General Body, vide Resolution No.307 dated 27th May, 2016, the notice under section 26(1) was republished on that very day by the Municipal Corporation. After that, the Planning Committee also submitted its report on 6th March, 2017 to the Municipal Corporation, which was also forwarded to the State Government, the Municipal Corporation's

Resolution of 31st July, 2017, sanctioning the draft with modifications or changes carried out by the Planning Authority and the publication under section 28(4) of the MRTP Act. All this was forwarded vide letter dated 2nd August, 2017 to the State Government for sanction. Thereafter, the State Government came to the conclusion that the part of the said development plan, in respect of proposals of “K/East” and “S” Wards, with modifications need to be sanctioned. That is how the Schedule to the notification reads. This is a conditional modification. It is in these circumstances, according to us, section 22A is not violated. This is not a change of a substantial nature. This is not a case where the green area has been eliminated or has been allotted to be used for commercial purposes. We have carefully perused the report of the Director of Town Planning and we do not find that this report undermines the importance of Aarey Colony.

79. It is also not possible to agree with Mr. Dwarkadas when he urges that the notification dated 9th November, 2017 is published for land use not recognised under the Development Control Regulations-1991. That metro car depot may have been proposed for the first time, but a mode of public transport, such as Metro Railway was always in the offing. That it took time to take concrete shape does not mean that the State was not at all

contemplating its introduction. In fact, on the own showing of the petitioners, such a project was always thought of so as to solve the problem of traffic congestion. In these circumstances, it is not possible to agree with him that metro car depot was not a recognised land use or that the fourth respondent does not have the right to carry out development of metro car depot until Final Development Regulations-2034 are notified. It is apparent that the same are now notified. Secondly, the argument that the notification does not have the accompanying plan is incorrect simply because when the suggestions of the public and equally objections were invited, everything was made available for inspection. That is set out in the notification itself. Finally, we find that none of the proposals in the development plan, in terms of section 22, have been brushed aside. The notification dated 9th November, 2017 does not disregard section 22 of the Act.

80. The argument that Aarey is a forest and no development is permitted in a forest belies the fact that the additional affidavit of respondent no. 4 shows that the Aarey Milk Colony was, by a draft notification dated 22nd January, 2016, for the first time, proposed to be included within the Eco-sensitive Zone of Sanjay Gandhi National Park. The Expert Committee constituted for declaration of Eco-sensitive Zone had, however, unanimously

decided that the area of 165 hectares of the said Aarey Land, which includes the land proposed to be allotted to metro car depot, should not be included in the Eco-sensitive Zone and accordingly, the final notification did not include the said 165 hectares of land in the notified Eco-sensitive Zone. Hence, it is erroneous to term Aarey or Aarey Milk Colony area as a forest. There is no question of the same being referred to as forest, particularly in the light of the final notification dated 6th December, 2016. We have carefully perused that notification and which is to be found at page 347 of the compilation handed in by Mr. Dwarkadas. The notification dated 22nd January, 2016 is a draft. It contains the extended boundaries of Eco-sensitive Zone and other details. When that was forwarded for sanction, it is clear that it was not sanctioned by including the subject Aarey land as a Eco-sensitive zone. Thus, it is not an Eco-sensitive Zone of the Sanjay Gandhi National Park. If that is how it is projected in the notification, then, absent a challenge thereto, we cannot consider the arguments of Mr. Dwarkadas on this point any further. Respondent no. 4, in the additional affidavit, tendered on 15th June, 2018 has clarified that the metro car depot site is not a forest land. The car depot is not in a statutorily recognised forest area. No Government record has been referred to by the petitioners, in which, the metro car depot area is recorded as a

forest. Further, we have other materials on record, which would denote that the metro car depot site forms part of Aarey Milk Colony and does not form part of the Sanjay Gandhi National Park. The petitioners, in the additional affidavit and particularly in paras 24 to 28 at running pages 226-228 rely upon the copy of the letter dated 22nd July, 1980 of the Forest Development Corporation of Maharashtra Ltd. The said letter alone is not decisive for it is evident that the land has not been notified as a forest. The respondent no. 4 has clearly denied this fact and with reference to public documents. In para 21 of this affidavit at page 295, the fourth respondent says as under:-

“21. With reference to paragraphs 24 to 28, I say that the same refers to 2076 Ha of land which were transferred earlier from the Aarey Milk Scheme to the Borivili National Park. The present area of Aarey Milk Scheme: 1278 Ha, is after excluding the said area of 2076 Ha which had thus been transferred to the National Park. The Metro Car depot site forms part of the Aarey Milk Scheme Lands and does not form part of the lands transferred to the National Park. This issue has been raised before the NGT and the Forest Department/Govt have also clarified that the Aarey Car Depot Land falls within the Aarey Milk Scheme lands and that it did not fall within the 2076 Ha transferred to and forming part of the National Park.”

81. It is also reiterated that Aarey Milk Colony is a larger area of 1287 hectares adjoining the National Park. It is claimed that the plot, which has been allotted for the metro car depot is located in the extreme southern end of the Aarey Milk Colony area and is located on its southern periphery. It is in the vicinity of the busy

JVLR, the Marol-Maroshi Road and the Aarey-Powai Road. There are other locations as well. Mr. Dwarkadas argues that Aarey land has been recorded as a forest and in that regard, our attention is invited to a letter dated 22nd July, 1980. That is at page 476 of the petitioners' compilation of documents. However, it is on the subject of exclusion of the recreational zone from the part of the notification declaring the area as National Park under the Wildlife Protection Act, 1972. This letter, to our mind, does not lend support to the arguments of the petitioners, as canvassed. We have, therefore no hesitation in accepting the arguments of Mr. Kumbhakoni and Mr. Chinoy to the contrary. The lands have been transferred from Aarey Milk Colony to Sanjay Gandhi National Park and there may have been some amendment plans of this park, but from that alone, it is not possible to deduce that the subject land is a forest.

82. Then, the letter of the District Collector, Mumbai Suburban District dated 21st November, 2012, addressed to the Additional Chief Secretary, Revenue and Forest Department, recording the change in the land earmarked for metro car depot for Metro-III Line is also carefully perused. It merely says that the land is fully quagmire. However, by that itself, it will not be possible to conclude that this land or the preferred land is a forest. Hence,

we have no hesitation in rejecting the petitioners' argument that the impugned notifications permit use of forest land for metro car depot.

83. Needless to clarify that the use of the land for metro car depot must abide by the conditions imposed on the fourth respondent, but that is a distinct aspect. That is not to be confused with the assertion of the petitioners that the metro car depot is in a forest or on a forest land. Thus, this is not a case of assignment and allotment of a forest land to the fourth respondent without prior permissions or without any cognizance of the environment protection and wildlife protection laws. It is evident that before development and use as a metro car-shed, all the permissions will have to be obtained and all conditions have to be abided by the respondent no. 4.

84. In the above circumstances, we are not in a position to accept Mr. Dwarkadas's arguments that the Environment Protection Act, 1986 and the Forest Conservation Act, 1980 have been given a go-bye while issuing the impugned notifications and while permitting change of user.

85. Mr. Dwarkadas is heavily relying upon the report of a Technical Committee set up by the State Government. He is also

relying upon the project report of Mumbai Metro Rail Corporation Limited styled as the Delayed Project Report for Metro Line III, Colaba-Bandra-Seepz and the conclusion in the final report, which indicates, according to the Corporation itself, that additional clearance would be required because the site is in green forest area (DP Zone-I). However, the affidavit styled as clarificatory affidavit filed by the Assistant Conservator of Forest, Thane Forest Division, Thane, before the National Green Tribunal, a copy of which is on record of this case and part and parcel of the petitioners' compilation of documents, reveals that the subject property admeasures 1280 hectares as referred by the applicants before the National Green Tribunal, has not been recognised and notified and/or identified and demarcated as a forest land in any record. When this information is placed before us, then, it is difficult to accept the arguments of Mr. Dwarkadas that the perception or understanding of the fourth respondent-Corporation to the contrary must override everything and should be accepted by us. Any publication by the fourth respondent, but not of identical legal status and character as this affidavit of the Assistant Conservator of Forest and duly supported by official records and public documents, therefore, cannot be accepted. Mr. Dwarkadas has made much capital of the additional affidavit of the petitioners, wherein they made a solemn statement to the

effect that the Municipal Corporation of Greater Mumbai has objected to and disapproved the proposed change in the Aarey Milk Colony land from No-development Zone to metro car depot. The petitioners have understood that the Deputy Director of Town Planning records, in his report, that the Municipal Corporation of Greater Mumbai has disallowed the proposed alteration in the meeting of the Improvement Committee held on 7th June, 2017. It is evident from a perusal of the relevant documents that the Municipal Corporation has not said anything of the nature attributed to it by the petitioners. Rather, the Municipal Corporation has informed the Deputy Director of Town Planning that it has published the notice in relation to the modification proposed to sanction Revised Development Plan of “K/East” Ward. The modification was published on 29th December, 2016. The remarks that are forwarded by the office of the Chief Engineer, Development Plan are subject to approval of the Municipal Corporation. The Municipal Corporation has not said anything in relation thereto. It is evident from the correspondence in this behalf that there is no disapproval of the Municipal Corporation. Any document and attributed to the Improvement Committee of the Municipal Corporation of Greater Mumbai cannot be said to be the basis for such an argument. The Marathi resolution of the Corporation stated to be disallowing the alteration, has been

carefully perused by us. It does not say anything, by which we can hold that the Municipal Corporation is disapproving the alteration or modification. In fact, the Improvement Committee Resolution stated to be of disapproval has been forwarded as its recommendation to the Municipal Corporation. However, the Municipal Corporation has not said what is attributed to it by the petitioners. Hence, we do not see how any assistance can be taken of this letter at page 314 of the compilation of documents of the petitioners to contend that the Municipal Corporation of Greater Mumbai has disapproved the alteration or modification.

86. We are mindful of the concerns expressed in the Technical Committee Report. The remarks and observations of the minority member have been carefully perused by us. We are not oblivious to these concerns of Dr. Sham Asolekar, who is not in agreement with the conclusions of the majority and to be found from paras v to ix and the recommendations of the majority as well. We have carefully perused his notes as well. We are of the firm opinion that these notes and the concerns expressed by him cannot be ignored. That they are not being ignored is apparent from the conditions imposed on the fourth respondent. The modification is not unconditional. Similarly, neither of the notifications allow a free user as is projected before us. No

commercial user is permitted. Further, prior sanctions and permissions have to be obtained and secondly, there is a monitoring and supervising mechanism in place as well.

87. While we dismiss the writ petition and by discharging the Rule without any order as to costs, we direct the fourth respondent to strictly abide by the conditions imposed in the impugned notifications and no activity contravening and violating the same shall be permitted at site. We direct respondent no. 1-State as also the concerned officials of the Municipal Corporation of Greater Mumbai to ensure that none of these conditions are flouted or violated by the fourth respondent. If any term or condition is found to have been violated, then, irrespective of the construction carried out at site, the State Government and the Municipal Corporation of Greater Mumbai shall not be inhibited or prohibited from exercising their statutory powers, particularly under the MRTP Act and the Mumbai Municipal Corporation Act, 1888. They can refuse development permission in the event any violations or breaches are noticed or they can refuse permission or approval for using the construction at site as a metro car depot in the event they are satisfied that the terms and conditions of the notifications are breached or violated. Merely because we have upheld the legality and validity of the notifications does not mean

that the statutory authorities should permit the fourth respondent to carry out any works or activities contrary to the terms and conditions of the notifications. We clarify that we have upheld the notifications with the terms and conditions. With this clarification, the writ petition stands dismissed. Rule discharged. There would be no order as to costs.

(PRAKASH.D.NAIK, J.) (S.C.DHARMADHIKARI, J.)