

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5069 OF 2010

The Industrial Association of
Small Scale Industries,
Through its Chairman,
Shyam s/o Vasudev Agrawal,
Age: 50 Years, Occu.: Business,
R/o.: Ganesh Building, Navi Peth,
Jalgaon, Dist.: Jalgaon .. **Petitioner**

Versus

1. The State of Maharashtra
Through its Secretary,
Industries Department
Mantralaya, Mumbai-32
2. The Maharashtra Industrial
Development Corporation,
Through its Chief Executive Officer,
Mumbai
3. The Collector,
Jalgaon District,
Jalgaon
4. The District Industries Center,
Through its General Manager,
Jalgaon
5. The Regional Officer,
M.I.D.C., Nashik Division,
Nashik
6. The Area Manager,
M.I.D.C. Jalgaon Area,
Jalgaon

7. The Joint Chief Executive Officer,
M.I.D.C., Mumbai
8. The Assistant Director of Town Planning,
Jalgaon
9. Suresh Nandlal Talreja,
Age: 44 Years, Occu.: Business,
R/o.: 2, Utkarsh Housing Society,
Adarsh Nagar, Jalgaon
10. Rina Shreyas Kumat,
Age: 33 Years, Occu.: Business,
R/o.: 10, Priyadarshani, Nehru
Chowk, Navi Peth, Jalgaon
11. Vishal Dhanraj Mandhan,
Age: 38 Years, Occu.: Business,
R/o.: 4, Ganpati Nagar,
Behind Bendre Hospital, Jalgaon
12. Shriram GopalDas Khatod,
Age: 44 Years, Occu.: Business,
R/o.: 79, Jai Nagar, Jalgaon
13. Pankaj Gunawant Tongle,
Age: 30 Years, Occu.: Business,
R/o.: 13, Anussuya, Rambag Colony,
Near Maniyar Law College, Jalgaon
14. Yogesh Pundalik Vanjarai,
Age: 38 Years, Occu.: Business,
R/o.: Netaji Chowk, Mehrun, Jalgaon
15. Vishal Ananda Joshi,
Age: 26 Years, Occu.: Business,
R/o.: 38/8, Old Joshi Colony,
Near Netrajoyti Hospital,
Sindhi Colony Road, Jalgaon
16. Rinkesh Suresh Haswani,
Age: 25 years, Occu.: Business,

R/o.: 32, Ganpati Nagar,
Near Rotary Hall, Jalgaon

17. S.S.D. Agro Industries
Through its Partner
Roma Mukesh Tharwani
Age: 36 Years, occu.: Business,
R/o.: 86, Jilha Peth, Gujarathi Galli,
Jalgaon
18. Pradeep O. Karamchandani,
Age: Major, Occu.: Business,
R/o.: Flat No. 1, Aradhya Apartment,
Adarsh Nagar, Jalgaon .. **Respondents**

Mr. A. G. Talhar, Advocate for Petitioner.
Mr. S. G. Karlekar, A.G.P. for Respondents No. 1,
3 & 4.
Mr. P. M. Shah, Senior Advocate for Respondent
No. 2 / MIDC.
Mr. S. S. Dande, Advocate for Respondents No. 5
& 6.
Mr. S. H. Tripathi, Advocate for Respondents No. 9
to 18.
Mr. V. D. Sapkal, Advocate for intervenor (C.A.
No. 2192/2017)

WITH

CIVIL APPLICATION NO. 12431 OF 2012
CIVIL APPLICATION NO. 10788 OF 2015
CIVIL APPLICATION NO. 2192 OF 2017
CIVIL APPLICATION NO. 1815 OF 2018

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WITH

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WRIT PETITION NO. 7259 OF 2012

The Industrial Association of
Small Scale Industries,
Through its President,
Shyamsunder s/o Vasudev Agrawal,
Age: 52 Years, Occu.: Business,

R/o.: Ganesh Building, Navi Peth,
Jalgaon, Dist.: Jalgaon

.. **Petitioner**

Versus

1. The State of Maharashtra
Through its Secretary,
Industries Department
Mantralaya, Mumbai-32
2. The Maharashtra Industrial
Development Corporation,
Through its Chief Executive Officer,
Mahakali Cave Road, Andheri (E),
Mumbai
3. The Director of Town Planning,
Pune at Pune
4. The Assistant Director of Town Planning,
Jalgaon at Jalgaon
5. The District Collector,
Jalgaon at Jalgaon
6. The District Industries Center,
Through its General Manager,
Jalgaon at Jalgaon
7. The Regional Officer,
MIDC, Dhule Division,
Dhule at Dhule
8. The Area Manager,
MIDC, Jalgaon at Jalgaon,
at Jalgaon

.. **Respondents**

Mr. A. G. Talhar, Advocate for Petitioner.
Mr. S. G. Karlekar, A.G.P. for Respondent No. 1.
Mr. S. S. Deve, Advocate for Respondents No. 2, 7
& 8.

WITH

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WRIT PETITION NO. 1824 OF 2016

Tulsi Jelly Sweets,
 Plot No. D-29, Addl. MIDC,
 Ajanta Road,
 Through its Proprietor,
 Ashutosh Chudaman Patil,
 Age: 41 Years, Occu.: Business,
 Plot No. D-29, Addl. MIDC,
 Ajanta Road, Jalgaon-3,
 Taluka and District – Jalgaon .. **Petitioner**

Versus

1. The State of Maharashtra,
 Through its Secretary,
 Industries Development Department
 Mantralaya, Mumbai-32
2. The Maharashtra Industrial
 Development Corporation,
 Udhog Sarthi, Marol Industrial Area,
 Mahakali Caves Road,
 Andheri (East), Mumbai-93,
 Through its, The Chief Executive Officer
3. The Regional Officer,
 Maharashtra Industrial Development
 Corporation, Opp. Office of Deputy Engineer,
 M.I.D.C., Awadhan, Dhule,
 Taluka and District – Dhule .. **Respondents**

Mr. P. D. Bachate, Advocate h/f. Mr. U. A.
 Bhadgaonkar, Advocate for Petitioner.
 Mr. S. G. Karlekar, A.G.P. for Respondent No. 1.
 Mr. S. S. Deve, Advocate for Respondents No. 2
 and 3.

WITH

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WRIT PETITION NO. 10100 OF 2018

Ganga Argo,

Through its Partners,

1 Chetan Vikas Dahad,

Age: 37 Years, Occu.: Business,

2 Bhushan Vikas Dahad,

Age: 35 Years, Occu.: Business

Both R/o.: Plot No. F-08, Ajanta Road,

Jalgaon – Tq. & Dist.: Jalgaon

..Petitioners

Versus

1. The State of Maharashtra,

Through it's Secretary,

Industrial Development Department,

Mantralaya, Mumbai-32

2. Maharashtra Industrial

Development Corporation,

Udhyog Sarthi, Marol Industrial Area,

Mahakali Caves Road,

Andheri (East), Mumbai-93,

Through its, The Chief Executive Officer

3. The Regional Officer,

Maharashtra Industrial Development

Corporation, Opp. office of Deputy Engineer,

M.I.D.C., Awadhan, Dhule,

Taluka and District - Dhule

.. Respondents

Mr. P. D. Bachate, Advocate h/f. Mr. U. A. Bhadgaonkar, Advocate for Petitioners.

Mr. S. G. Karlekar, A.G.P. for Respondent No. 1.

Mr. S. S. Deve, Advocate for Respondents No. 2 and 3.

**CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

JUDGMENT RESERVED ON: 20.12.2018

JUDGMENT PRONOUNCED ON: 29.03.2019

JUDGMENT (Per S. V. Gangapurwala, J.):

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for respective parties matters are taken up for final hearing.

2. The petitioner is an industrial association of small scale industries. In Writ Petition No. 5069 of 2010, the petitioner seeks direction against the Maharashtra Industrial Development Corporation (hereinafter referred to 'MIDC') to cancel and set aside the allotment of open spaces / amenity places / plots for industrial purpose. In Writ Petition No. 7259 of 2012 the petitioner challenges the Revised Development Control Regulations, 2009 (*hereinafter referred to 'Regulations-2009'*) on the ground that State Government and MIDC have no authority to sanction said Regulations.

3. Mr. Talhar, learned counsel for the petitioner submits that the members of the petitioner association are industrialist and are allotted the plots within the Jalgaon industrial area. The learned counsel submits that so as to set up industries in orderly manner the Maharashtra Industrial Development Act, 1961 (*hereinafter referred to 'MID Act'*) was enacted and by virtue of the said act the respondent Maharashtra Industrial Development Corporation was formed. The Development Plan is to be prepared and as per the Development Plan the plots are to be given to the industries on lease hold basis. The Development Plan earmarks open plots. The same are to be kept vacant for amenity purposes. As the plots are amenity plots the MIDC does not have authority to allot the said plots for industrial purpose. The open plots are lungs of the industrial area. The MIDC decided to allot the open plots for educational and other purposes. The petitioner challenged the said action by filing

writ petition in the High Court. In the writ petition undertaking was given by the MIDC that the amenity plots will not be allotted to other parties. In view of the undertaking given by respondents no further orders were passed by the High Court. The High Court in the said writ petition observed that the Corporation has categorically undertaken that it will maintain open spaces for reserved area as per the Rules and Regulations. According to the learned counsel, ignoring the above facts, the MIDC again decided to allot the open plots by maintaining the seniority of the applications.

4. The learned counsel submits that without following any due process, the MIDC has decided to allot the open spaces. The said action on the part of the MIDC is bad in law. It is not permissible for the MIDC to allot the open spaces for industrial purpose as per the Maharashtra Regional and Town Planning Act, 1966 (*hereinafter referred to 'MRTP Act'*) and as per the MID Act. The learned

counsel submits that MIDC has to first convert the open spaces for industrial purpose, then alone MIDC can allot the plot for industrial purpose. The MRTP Act does not provide any such provision to convert amenity plot for industrial purpose. As such, MIDC does not have authority in law to allot open plots for industrial purpose. The learned counsel submits that without following procedure under Section 115 of the MRTP Act the MIDC cannot develop the land. The procedure prescribed under Section 115 of the MRTP Act has not been followed. In view of that MIDC cannot convert the open space into industrial plot. The learned counsel submits that reliance placed upon the Regulations-2009 is misplaced. The Corporation is relying upon the Circular to suggest that the percentage of amenity area / open space to be maintained is 10% of the 1 Hector land. Keeping 10% open land is a minimum requirement. If the approved lay out shows the percentage of open space more than 10%, that does not mean that it cannot be maintained. Under the

Regulations-2009, no procedure is provided to convert open space into industrial plot. The provisions under Section 115 of the MRTP Act have to be adhered to. No such procedure has been followed and adopted. As per Sub-section 4 of Section 115 of the MRTP Act it is for the Special Planning Authority and the State Government to take care of the entire Development Plan. The act of the respondent in allotting the open space for industrial purpose be quashed and set aside. The learned counsel to buttress his submission relies upon the judgment of the Division Bench of this Court in *Writ Petition No. 5964 of 2008 dated 06.10.2017*. The learned counsel also relies on the judgment of the Apex Court in case of **M/s. Ispat Industries Limited Vs. Commissioner of Customs, Mumbai** bearing *Appeal (Civil) No. 3972 of 2001* dated 29.09.2006.

5. The learned counsel for the petitioner further submits that Regulations-2009 were framed by the Corporation under Section 115 of the MRTP

Act without there being any provision to do so and the State Government also sanctioned the same without considering the mandate of Section 64 of the MID Act. According to the learned counsel, the approved map which is placed on record clearly shows that the MIDC has tried to convert the open space in to an industrial plot without following Section 115 of the MRTP Act.

6. The learned counsel for the petitioner further submits that this Court on 13.06.2012 had considered the mandate of Section 115 of the MRTP Act and has granted interim protection and therefore as per the said order *status quo* as on today in relation to open spaces is required to be maintained. According to the learned counsel, respondent Corporation has relied upon the judgment of *Owens-Corning Indian Ltd. Vs. Maharashtra Industrial Development Corporation and others*, wherein a specific issue was raised whether the Special Planning authority is required to follow the procedure prescribed u/s. 37 of the

MRTP Act while making the changes in the lay out plan prepared for an industrial area. The said judgment has no application to the facts of the present case because Section 37 of the MRTP Act has no application therefore the case law relied upon has no bearing on the issue in hand. The learned counsel submits that issue involved in this case is whether the MIDC can develop a land without following the procedure under Section 115 of the MRTP Act or not. The respondent Corporation has not placed any other material on record to show that the procedure prescribed u/s 115 of the MRTP Act was followed. So in absence thereof, the Corporation cannot and should not covert the open space in to industrial plot. In the Regulations-2009, no procedure is provided to covert the open space in to an industrial plot. If any land is to be developed then the procedure prescribed u/s 115 of the MRTP Act has to be followed. That, there is a basic difference between Section 37 and Section 115 of the MRTP Act. Section 37 is in respect of

the development plan, whereas the Section 115 is applicable in respect of the development of the land. The land situated in an industrial area belongs to the Corporation and thus the State Government and the Director of town planning are having control over the said industrial area u/s. 115 of the MRTP Act. The learned counsel submits that as per Section 2(e) of the MID Act and as per Section 2(7) of the development rules, it is clear if any land is to be developed, then the Corporation is required to follow the mandate of Section 115 of the MRTP Act and as per the mandate of Section 115 before making any changes in the approved lay out, it is for the planning authority to invite objections and suggestions from the persons affected by the said proposal and after considering the same it is obligatory on the part of the Corporation to submit the same to the State Government for its approval. As per Sub-clause (4) of Section 115 of the MRTP Act it is for the Special Planning Authority and the State

Government to take care of the entire development plan.

7. Mr. Talhar, the learned counsel for the petitioner in Writ Petition No. 7259 of 2012 submits that the Regulations-2009 are non-est and contrary to the parent Act i.e. MID Act and to the provisions of MRTP Act. In view of the said, Regulations-2009, framed are illegal and bad in law. While enacting the Regulations-2009, the Corporation circumvented the mandate of Section 115 of the MRTP Act. The Regulations-2009 cannot be framed and ought not to have been framed u/s. 115 of the MRTP Act. Under Section 115 of the MRTP Act only proposal for development of land can be submitted. Section 115 of the MRTP Act cannot be used for making any regulation. The power to frame rules is given u/s. 63 of the MID Act and to frame regulations is given u/s. 64 of the MID Act. The particular subjects are mentioned for which the rules and the regulations are to be made. The subject as given under Section 64 of the MID Act

finds no place in Regulations-2009 and thus as per Section 64 the State Government as well as the Corporation has no authority in law to frame such regulation which are inconsistent to the parent Act i.e. MID Act.

8. The learned counsel for the petitioner further submits that if the rules and regulations are to be made, then it is for the State Government to place the said rules and regulations before each house of the State and after getting approval from the same, then only it has force of law. The Regulations-2009 have not been placed before each house of the State nor the Corporation or the State Government are authorised to make such a regulation under Section 115 of the MRTP Act, because it is related to development of the land i.e. if any land is to be developed within the meaning of MRTP Act and MID Act, then the procedure is given under Section 115 of the MRTP Act. There is no provision to make regulation under said Section.

9. According to the learned counsel for the petitioner, it is well settled principle that law, rules are to be made consistent to the Act and the regulations are to be made consistent to the Act and Rules. The rules and regulations cannot run counter to the Act. Therefore the action of the State and Corporation clearly show that the Regulations-2009 were made contrary to the Act and contrary to the rules and therefore they are non-est and illegal.

10. The learned counsel for the petitioner further submits that the Corporation initially filed an affidavit and has relied upon the Regulations-2009 when it is noticed that same cannot be done, the Corporation relied upon the Disposal of Land Regulations 1975 which is already repealed in view of the 1994 amendment in MRTP Act and in view of enactment of Section 115 of the MRTP Act. Therefore, the attempt made by the Corporation is a palpable attempt to justify their action.

11. Mr. P. M. Shah, learned Senior Advocate for the respondent / Maharashtra Industrial Development Corporation submits that the petitioner in a way is challenging the Development Control Regulations, 1999 after 19 years it came into existence. The petition is therefore not maintainable at such a belated stage.

The learned senior Advocate submits that the MIDC has been appointed as a Special Planning Authority under Section 40 (1A) of the MRTP Act. Section 40 (3) of the MRTP Act provides that Section 113 of the MRTP Act would apply with certain modifications. It shall not be necessary for the Special Planning Authority to make any development plan for town planning scheme for any modified area for the purpose of carrying out its objects under the MRTP Act. Rule 27 of the Development Control Regulations, 1999 and Rule 21.5 of the Regulations-2009, requires MIDC to reserve 10% of the land in the layout as open spaces. From the open spaces, an area to the

extent of 5% may be allowed to be constructed only with ground floor structure for the purpose of incidental / allied public use, such as pavilion, water tank, care tanker room, store room etc. The industrial areas are normally developed phase wise. It is within the ambit of MIDC's powers to prepare a layout to the extent of any part of the land required for immediate development. The power to prepare layout would include the power to amend, allot or modify the layout.

12. The learned Senior Advocate further contends that MIDC has prepared Development Control Regulations as a part of development proposals under Section 115 of the MRTP Act. Under Section 64 of the MID Act, it has power to make regulations consistent with MID Act and the Rules thereunder to carry out the purposes of the MID Act. In exercise of powers conferred under Section 64 of the MID Act, MIDC has framed regulations with prior sanction of the State Government. The said regulations *inter alia* provided that

Corporation shall prepare layout of land transferred to it by the State Government as industrial area or industrial estate.

13. The learned Senior Advocate further submits that the Development Control Rules are framed for achieving the planned development of the industrial area and the same are also approved by the State Government. The petitioner had approached this Hon'ble Court by filing Writ Petition No. 2811 of 2003 and the said Writ Petition is disposed of as the MIDC has specifically undertaken to maintain the reservation of open spaces and amenity plots as required under the Development Control Rules. The MIDC has maintained the open spaces and amenity plots as is required under the Rules. As per Rules 21.5 and 21.7 of the Development Control Rules in any layout or sub division of land admeasuring more than 1 Hectare for industrial purpose and 0.5 Hectare for residential purpose, 10% of total area of land so sub-divided shall be reserved for open

space. Out of such open spaces, an area to the extent of 5% may be allowed to be constructed, only by ground floor structure for the purpose of incidental allied public use, such as, pavilion, water tank, care takers room, store room and such other purpose which is incidental to the main purpose for which open space is used. The open spaces earmarked in the layout as "Open Spaces" shall be permitted to be used for A] Tree plantation, B] play grounds / sports ground.

It is contended that, presently in the additional Jalgaon industrial area the percentage of open spaces is higher than the required as per Development Control Rules. Actual area of open space is 72.80 Hectare and as per the Development Control Rules the required 10% open space area is only 52.35 Hactare. For allotment of the open spaces and managing the area including the change of reservation of open space it has constituted a legal committee with the participation of the representations of the local industries

association. The committee comprises as under -

- A] General Manager, District Industries Center
- B] Regional Officer, MIDC
- C] Executive Engineer, MIDC
- D] Representative of planning Wing
- E] ATP department
- F] Deputy Engineer / Special Planning Authority of the concerned area
- G] Presidents of the Local Industries Associations

As per circular dated 11.05.2007 and 03.10.2007 for the purpose of early disposal of cases recommended by the Local Committee as well as the Apex Committee the respondent has constituted another committee at their level and powers are given to the said committee to take final decision on the recommendations made to it. The association is also one of the members of the Local Committee. As per the Development Control Rules in any layout of the land admeasuring more than 1 Hectare for industrial purpose and 0.5 Hectare for residential purpose, 5% of the total area of the land subdivided is to be reserved for amenity area. Reservation as mentioned in the Rules are permissible in the lands reserved for

amenity area. The respondent has given the chart showing the area reserved for open space and amenity, the same is proper. The learned Senior Advocate relies on following judgments -

1. *D. B. Realty Limited & others Vs. State of Maharashtra and others reported in 2015 (3) Bom.C.R. 640.*
2. *Nariman Point Association and another Vs. State of Maharashtra and others reported in 2003 (5) Bom.C.R. 273.*
3. *Owens – Corning India Ltd. Vs. Maharashtra Industrial Development Corporation decided by the Division Bench of the Bombay High Court on 11.04.2001 in Writ Petition no. 3031 of 1999.*
4. *Rajiv Mohan Mishra Vs. City and Industrial Development Corporation of Maharashtra Ltd. and others decided on 02.11.2018 in PIL No. 80 of 2013 and other connected matters.*
5. *Ramtanu Co-op Housing Society Vs. State of Maharashtra reported in 1970 AIR (SC) 1771.*
6. *Hamilton Housewares Private Limited Vs. Designated Authority, Directorate General of Antidumping and Allied Duties and others reported in 2012 (1) Mh. L. J. 442"*

14. We have considered the submissions canvassed by the learned counsel for respective parties.

15. The Maharashtra Industrial Development Corporation is established under Section 3 of the MID Act. The object and purpose of establishment of MIDC is to secure and assist in rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Maharashtra. The MIDC is required to ensure planned and accelerated industrial development throughout the State of Maharashtra. The MIDC establishes industrial areas and industrial estates in the State of Maharashtra. Industrial area as defined under Section 2 (9) of the MID Act means any area declared to be an industrial area by the State Government by notification in the official Gazette, which is to be developed and where industries are to be accommodated. The functions of the MIDC are detailed in Section 14 of the MID Act. The functions as detailed under Section 14 of

the MID Act are reproduced as under -

"14. Functions:

The functions of the Corporation shall be:

i) generally to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Maharashtra, and

ii) in particular, and without prejudice to the generality of clause (i), to :

(a) establish and manage industrial estates at places selected by the State Government;

(b) develop industrial areas selected by the State Government for the purpose and make them available for undertakings to establish themselves;

(c) [* * * *]*

(d) undertake scheme or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on an agency basis, in furtherance of the purposes for which the Corporation is established and all matter connected therewith."

16. The MIDC is designated and appointed as a Special Planning Authority under Section 40 (1A) of the MRTP Act. The second proviso to Sub Section (1A) of Section 40 provides that the provisions of clauses e and f of Sub-section 3 or of Sections 116, 117, 126, 127 and Chapter VIII shall not be applicable to such special planning authority. Section 40 (3) of the MRTP Act further provides

for modification in Section 113 of the said Act to the effect that it shall not be necessary for a special planning authority to make any development plan or town planning scheme for any notified area for the purpose of carrying out its objects under the MRTP Act. Section 115 of the MRTP Act applies to the MIDC with modification.

17. Reading the provisions of MID Act and the MRTP Act harmoniously and in conjunction it appears that MIDC is not required to resort to Section 21 of the MRTP Act for preparation of development plan. It is concerned with the establishment growth and development of industries, industrial areas or establishments.

18. The layout of an industrial area / establishment is prepared in conformity with the Development Control Regulations of MIDC and its Land Disposal Regulations. The MIDC has to prepare a layout of the land which is required for immediate development.

19. The grievance of the petitioner it appears in Writ Petition No. 5069 of 2010 is that the open spaces and amenity plots are given for industrial purpose and the same is not in consonance with the statute.

20. Regulation No. 21.5 and 21.6 of the Regulations-2009, deals with recreational open spaces within layout and amenity area. The same reads thus -

"21.5 Recreational Open Spaces within Layout

In any layout or sub-division of land admeasuring more than 1 hectare for industrial purpose and more than 0.5 hectare for residential purpose, 10% of total area of land so sub-divided shall be reserved for open space, which shall as far as practicable, be located in one central place. Out of such open spaces, an area to the extent of 5%, may be allowed to be constructed, only with ground floor structure, for the purpose of incidental/aliied public use, such as pavilion, club house gymnasium, water tank, care taker's room, toilet, store room, creche, library, children play school and such other purpose which is incidental to the main purpose for which the open space is used. Location of such structures shall be in one corner of the open space provided further that in the industrial layouts, minimum width of open space shall be 15 m and area of open space shall not be less than 750 Sq.m and in

residential zone, it shall not be less than 125 Sq.m

In the case of layouts of sub-division where there is a combination of smaller (up to one 1.0 Ha.) and bigger plots (more than 1 Ha.), the recreational open space of 10% of the total area, excluding the area under bigger plots, shall be provided. The recreational open spaces within bigger plots shall be provided in accordance with Regulation No. 21.5 above.

21.6 Amenity Areas:

In any layout or sub-division of land admeasuring more than 1 hectare for industrial purpose and 0.5 hectare for residential purpose, 5% of the total area of land so sub-divided, shall be reserved for "Amenity Area". Following uses shall be permissible in the lands reserved for Amenity Area-MIDC offices, Local Area offices, Post Offices, Telephone Exchange, Fire Stations, Police Stations/Chowkies, Electric Sub-station, Water Supply Works, Drainage Works, Common Facility Centre/Recreation Centre, Industries" Association offices, Schools/Colleges, Educational institutions, Training Centre, Pollution Control Laboratories, Sulabh Shauchalaya, informal shopping , stall sites, plots for PAPs, communication centers, milk booths, and such other users as may be permitted by MIDC."

21. The respondents have provided the chart showing total area under the additional Jalgaon industrial area and the area reserved for amenity and open spaces. The same is reproduced as under -

ANNEXTURE – A			
AREA STATEMENT – ADDL. JALGAON INDUSTRIAL AREA			
1.	TOTAL AREA	:	629.09 H.
2.	DEDUCTION;		
	A) LARGE SIZE PLOTS ABOVE 4.0 HECT. ALLOTTED TO INDIVIDUAL UNITS AND DEVELOPED BY INDIVIDUAL ENTITY	:	53.63 H.
	B) AREA UNDER UNPLOTABLE LAND :	:	9.31 H.
	C) Area UDER NALLAS, QUARRES, DITCHES, DERELICT LAND NOT INCLUDED IN PLANNING :	:	1.07 H.
	D) LAND UNDER ENCROACHMENT / HUTMENT	:	
	E) PLOTTABLE LAND (YET TO BE PLAN)	:	41.57 H.
	TOTAL :		105.58 H.
3.	NET AREA (1-2)	:	523.57 H.
4.	A) 5% AREA REQUIRED FOR AMENITY	:	26.17 H.
	B) PROVIDED ACTUAL AMENITY	:	53.83 H.
5.	A) 10% AREA REQUIRED FOR OPEN SPACE	:	52.35 H.
	B) PROVIDED ACTUAL OPEN SPACE (-8.87%)	:	72.80 H.
6.	A) AMENITY AREA IN EXCESS	:	27.66 H.
	B) OPEN SPACE IN EXCESS	:	20.56 H.
7.	A) ALLOTTED AMENITY AREA	:	40.17 H.
	B) VACANT AMENITY AREA	:	13.66 H.
8.	A) ALLOTTED OPEN SPACE AREA	:	0.60 H.
	B) VACANT OPEN SPACE AREA	:	72.31 H.
9.	POTABLE LAND	:	-
10.	ROAD AREA		100.81 H.

*NOTE: 1. REVISED AREA STATEMENT AFTER PROPOSED LAYOUT OF PL-8
2. STATEMENT REVISED ON ACCOUNT OF PROP. LAYOUT OF PL-7*

22. The MIDC is empowered to prepare the layout. Once it is instilled with the power to prepare the layout, the said power would mean to include the power to amend, alter or modify the layout provided that the maintenance of open spaces and amenity plots as provided under the Development Control Regulations are followed. The MIDC cannot maintain an area for open spaces and amenity plots less than that provided under Clause 21.5 and 21.6 of the Regulations-2009.

23. Perusal of the chart as reproduced supra would show that the MIDC has maintained the necessary required open space and the area for amenity plot. If the necessary are for open space and amenity plot is maintained as per the Development Control Regulations the petitioner would not have any locus to agitate.

24. The petitioner could not place on record any material to demonstrate that without following the

procedure MIDC has allotted the open spaces and amenity areas. The MIDC is entitled to change the reservation of open spaces depending upon the percentage of open space and amenity area. The MIDC does not have power to reserve the area for the open space less than specified under Regulation 21.5 of the Regulations-2009. The area beyond the required percentage of open space can be utilised for further development of the industrial area by following the procedure. We do not find that the respondent MIDC has not adhered to the undertaking filed by it in Writ Petition No. 2811 of 2003. As per the chart submitted by the MIDC, the required 10% open space area is 52.35 H., however, MIDC has kept open space of 72.80 H. The MIDC constituted the committee for allotment of open spaces and amenity areas including the change of reservation of open spaces. The representative of the petitioner is also a member of the committee.

25. It has been stated by the respondents that as

per the Circular dated 11.05.2007 and 01.10.2007 the committee is constituted for early disposal of the cases recommended by the local committee and the apex committee and it is on their sanction the reservation of open spaces and amenity plots is deleted with, however maintaining the area of open spaces and amenity plots required under the Regulations.

26. The MIDC being special planning authority is not required to follow the procedure prescribed under Section 37 of the MRTP Act for the purpose of bringing in any change in the existing layout prepared by the MIDC. Reference can be had to the judgment of the Division Bench of this Court in case of **Owens-Corning Indian Ltd. Vs. Maharashtra Industrial Development Corporation and others** passed in **Writ Petition No. 3031 of 1991 dated 11.04.2001**. In the light of above we do not feel that MIDC has improperly dealt with the open spaces and amenity plots.

27. This takes us to the next question of

challenge to the Regulations-2009 as raised in Writ Petition No. 7259 of 2012.

28. Initially the Development Control Rules were framed in the year 1996. The Development Control Rules have been framed by MIDC in accordance with Section 115 of the MRTP Act. The MIDC has framed Development Control Rules as a part of Development proposals under Section 115 of the MRTP Act in the year 1996. After considering the suggestions and objections the State Government has accorded sanction to the said Development Control Rules.

29. The MIDC under Section 64 of the MID Act is empowered and entitled to make regulations. Section 64 reads thus -

"64. Power to make regulations :

1) The Corporation may, with the previous approval of the State Government, make regulations consistent with the Act and the rules made thereunder, to carry out the purposes of this Act, and without prejudice to the generally of this power, such regulations may provide for :

(a) under Section 7, the time and place of meeting of the Corporation and the procedure to be followed in regard to the transaction of business at such meetings;

(b) under Section 12, the conditions of

appointment and service and the scales of pay of officers and servants of the Corporation, other than the Chief Executive Officer the Deputy Chief Executive Officer or Officers and the Chief Accounts Officer;

(c) under Section 20, the officer of the Corporation who may operate its accounts;

(d) under Section 43-1A, the manner in which Government lands shall be dealt with by the Corporation after development;

(e) under Section 44, the committee of the Corporation to hear appeals under that section and the procedure to be followed by it;

(f) under Section 56, the additional terms and conditions subject to which lands and buildings in industrial estate and industrial areas may be held or used;

(g) any other matter which has to be, or may be, provided by regulations.

2) All regulations made under this section shall be published in the Official Gazette and shall be laid for not less than thirty days before each House of the State Legislature as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid or the session immediately following."

30. The petitioner has not challenged the Development Control Regulations, 1999. Thereafter, the Revised Development Control Regulations are framed in the year 2009. The same are also challenged after three years. As observed above, the MIDC is a special planning authority for

developing the notified areas under Section 40 of the MRTTP Act.

31. Clause (d) of Sub-section 3 of Section 40 of the MRTTP Act modified Section 115 of the MRTTP Act. The modified Section 115 applicable to the MIDC reads thus -

"115. Planning and control in notified area

(1) A Special Planning Authority shall, from time to time, submit to the State Government its proposals for the development of land (being land either belonging to, or vesting in, it or acquired or proposed to be acquired under Section 116), and the State Government may, after consultation with the Director of Town Planning, approve such proposals either with or without modification.

(2) Before submitting the proposal to the State Government, the Special Planning Authority shall carry out a survey and prepare an existing land-use map of the area and prepare and publish the draft proposals for the lands within its jurisdiction together with a notice in the Official Gazette and local newspapers in such manner as the Special Planning Authority may determine, inviting objection and suggestions from the public within a period of not more than 30 days from the date of notice in the Official Gazette. The Special Planning Authority may, if it thinks fit, give individual notices to persons affected by the draft proposals.

(3) The Special Planning Authority may after duly considering the objections or

suggestions, received by it, if any, and after giving an opportunity, to persons affected by such draft proposals of being heard modify its proposals, if necessary, and then submit them to the State Government for its approval. The orders of the State Government approving such proposals shall be published in the Official Gazette."

32. As a part of development proposal under Section 40(3)(d) of the MRTP Act the MIDC has prepared the Development Control Rules. The same are approved after considering the objections and suggestions.

33. In case of **Owens-Corning Indian Ltd. Vs. Maharashtra Industrial Development Corporation and others** (supra) it has been held by the Division Bench of this Court that the Development Control Rules are framed by MIDC as a part of the development proposals under Section 115 of the MRTP Act. It cannot be said that the Regulations-2009 framed are ultra vires the powers with the MIDC. The said rules are part of the development proposal regulating the development of the notified area. The regulations are applicable to

all the development activities in the notified area under the jurisdiction of MIDC. It is for regulating the development plan and the development in the notified area the regulations are framed. The same are to be construed as a part of a development proposal. The development proposal cannot be unregulated. The regulations framed are not beyond the powers of MIDC. The same are after the sanction of the State Government as provided under Section 40 (3) (d) of the MRTP Act. In absence of the regulations, the development of the industrial area would be in haphazard manner and would be left to the unregulated discretion of the authority. The regulations prescribe maintenance of open spaces, amenity plots, providing of FSI and various other aspects as detailed in the said regulations.

34. In the light of above, Writ Petition No. 5069 of 2010 and Writ Petition No. 7259 of 2012 fail. Writ Petitions stand disposed of accordingly. The civil applications also stands disposed of. No

costs.

35. In view of disposal of Writ Petition No. 5069 of 2010 and 7259 of 2012 no further orders are required in Writ Petition No. 1824 of 2016 and Writ Petition No. 10100 of 2018 and these writ petitions also stand disposed of. No costs.

36. Rule is discharged in all the writ petitions.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]

37. At this stage, the learned counsel for the petitioner request for the continuation of the interim order passed by this Court earlier for a further period of four (04) weeks.

38. Mr. Dande, the learned counsel opposes the said request.

39. Considering that the interim order was in force, the same is continued for a further period of four (04) weeks.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]
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