

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.896 OF 2021

Gera Developments Pvt. Ltd.)
and Anr.).. Petitioners

Versus

The State of Maharashtra,)
through Principal Secretary (UD-1))
& Ors.).. Respondents

**WITH
INTERIM APPLICATION NO. 959 OF 2021
IN
WRIT PETITION NO. 896 OF 2021**

Shri Prabhakar Dagadu Buchade).. Applicant

In the matter between:

Gera Developments Pvt. Ltd.)
and Anr.).. Petitioners

Versus

The State of Maharashtra,)
through Principal Secretary (UD-1))
& Ors.).. Respondents

**WITH
INTERIM APPLICATION NO. 768 OF 2021
IN
WRIT PETITION NO. 896 OF 2021**

Rajendra Sunil Bodke).. Applicant

In the matter between:

Gera Developments Pvt. Ltd.)
and Anr.).. Petitioners

Versus

The State of Maharashtra,)
through Principal Secretary (UD-1))
& Ors.).. Respondents

**WITH
INTERIM APPLICATION NO. 1246 OF 2021
IN
WRIT PETITION NO. 896 OF 2021**

Kundan Ashok Landge).. Applicant

In the matter between:

Gera Developments Pvt. Ltd.)
and Anr.).. Petitioners

Versus

The State of Maharashtra,)
through Principal Secretary (UD-1))
& Ors.).. Respondents

**WITH
WRIT PETITION (ST.) NO.9531 OF 2021**

Kapil Prabhakar Buchade).. Petitioner

Versus

The State of Maharashtra)
& Ors.).. Respondents

Mr. Virag Tulzapurkar-Senior Advocate with Mr. Nikhil Sakhardande-Senior Advocate, Mr. Rohan Rajadhyaksha, Mr. Pralhad Paranjpe, Mr. Rustam N. Mulla, Mr. Aditya N. Raut and Mr. Sohan Kinkhabwala i/b. M/s. Desai Desai Carrimjee and Mulla for the petitioners in WP/896/2021.

Mr. Anil Anturkar-Senior Advocate with Mr. Preet Phanse and Mr. Ajinkya Udane i/b. Mr. Yatin Malavankar for the petitioner in WPST/9531/ 2021 and for applicant in IA/959/2021.

Mr. Milind Deshmukh for the applicant in IA/798/2021.

Mr. Prasanna K. Shahane for applicant in IA/1246/2021.

Mr. P.P. Kakade-Government Pleader with Mr. M.M. Pable-AGP and Ms. G. P. Sonawane-AAGP for State.

Dr. Milind Sathe-Senior Advocate with Ms. Shyamali Gadre and Ms.Tanvi Doshi i/b. Little and Co. for respondent nos. 2 to 4 (MIDC).

Mr. Nitin Deshpande for respondent no.5 (PMRDA) in WP/896/2021.

**CORAM : DIPANKAR DATTA CJ &
G.S.KULKARNI, J.**

**RESERVED ON : AUGUST 24, 2021
PRONOUNCED ON : NOVEMBER 22, 2021**

JUDGMENT: (PER DIPANKAR DATTA, CJ.)

PROLOGUE:

1. Writ Petition No.896 of 2021 (hereafter "W.P.-I", for short) and Writ Petition (St.) No.9531 of 2021 (hereafter "W.P.-II", for short) were heard together along with interim applications filed in W.P.-I. Undisputedly, the main controversy is involved in W.P.-I and it is common ground that success of

W.P.-I, in any manner other than grant of relief as claimed vide prayer clause (a), could have the effect of jeopardizing the property rights of the applicants and the petitioner in W.P.-II, viz. Kapil Prabhakar Buchade (hereafter "Kapil", for short). Incidentally, Kapil is also an applicant seeking intervention in W.P.-I. In our opinion, the controversy raised in W.P.-I having given rise to the proceedings before this Court, we are tasked to resolve such controversy first and, thereafter, depending on the outcome of W.P.-I, decide W.P.-II. In the process, we propose to give our reasons for disposal of the interim applications too.

THE CONTROVERSY:

2. Failure/refusal and/or reluctance on the part of the Maharashtra Industrial Development Corporation (hereafter "the M.I.D.C.", for short) to issue Occupancy Certificate (hereafter "the O.C.", for short) and Building Completion Certificate (hereafter "the B.C.C.", for short) in respect of a multi-storied building constructed by the petitioners in W.P.-I, on the basis of a building plan duly sanctioned by the M.I.D.C., has given rise to the controversy in W.P.-I.

3. W.P.-II was instituted during the pendency of W.P.-I, wherein Kapil has expressed apprehension that moulding of the relief claimed in W.P.-I and implementation of any decision, taken in pursuance of an order passed on W.P.-I, would affect his property rights. Similar apprehension has been expressed by the other applicants.

4. As the narration of facts which we propose to undertake hereafter would unfold, the Government of Maharashtra (hereafter "the GoM", for short) has been the metaphorical 'Kumbhkarna'. By not waking up on time, the GoM has failed to step in at the appropriate stage to set things right. Although intermittently it did wake up from deep slumber, the GoM did not notice and hence took no real interest in averting the sort of a crisis situation that has gradually developed over the years because two of the planning authorities under the Maharashtra Regional and Town Planning Act, 1966 (hereafter "the MRTP Act", for short), i.e., the M.I.D.C. and the Pune Metropolitan Region Development Authority (hereafter "the P.M.R.D.A.", for short) have been at crossroads while asserting their respective rights under the relevant enactment. If only

the GoM had not continued to be in deep slumber, the controversy raised in W.P.-I, in all probability, could have been avoided. Be that as it may.

THE FACTS IN W.P. NO.896 OF 2021 (W.P.-I):

5. The case pleaded in the writ petition runs thus. The petitioners in this writ petition essentially under Article 226 of the Constitution of India are a private limited company (hereafter "GERA", for short) and its Managing Director. It is claimed that GERA is engaged in real estate business for 50 years.

6. Through a series of transactions, the leasehold rights in respect of a piece and parcel of leasehold land bearing Plot No.1B, situated at Rajiv Gandhi Infotech Park (earlier known as "International Biotech Park"), M.I.D.C., Plot No.1B, Phase - II, Hinjewadi, Pune, admeasuring 14,855 sq. mtrs (hereafter "the subject land") stood transferred to GERA under a registered Deed of Assignment dated December 16, 2015. It was executed by and between International Biotech Park Limited (in which the M.I.D.C. is also a joint venture partner/shareholder and has representation on the Board of

Directors) and GERA, and is an exhibit to W.P.-I at Ext. C.

7. On March 30, 2016, the M.I.D.C. in its capacity as the Special Planning Authority under section 40(1A) of the MRTTP Act granted additional FSI to GERA upon payment by it of Rs.23,60,26,000/-. On April 12, 2016, April 24, 2017 and January 11, 2018, the M.I.D.C. sanctioned the building plan(s) for construction of a multi-storied building on the subject land whereupon a commercial building named "Imperium Rise" (hereafter "the said building", for short) has duly been constructed by GERA. According to the petitioners, construction of the said building, strictly in accordance with the building plan(s), was completed in December, 2019.

8. While construction of the said building had progressed up to the 15th floor, an engineer of the P.M.R.D.A. by his letter dated July 17, 2018 called upon the petitioners to stop construction immediately and to maintain *status quo* till a further decision is taken. Such direction to stop work was issued on the basis of a site inspection on July 16, 2018 and formation of a *prima facie* satisfaction that the said building was coming up on a plot of land which was within the limits of

a 'ring road'. A writ petition (W.P. No. 7910 of 2018) was instituted by the petitioners before this Court challenging such stop-work notice. However, by a letter dated July 30, 2018, the P.M.R.D.A. informed GERA that since the M.I.D.C. is the Special Planning Authority in the said area, the stop-work notice stands withdrawn. In view of such letter of the P.M.R.D.A., the petitioners' grievance in respect of the stop-work notice stood substantially redressed and, as such, they did not press W.P. No. 7910 of 2018. It stood disposed of as withdrawn, as recorded in an order dated August 1, 2018.

9. After construction of the said building was completed in December, 2019, the M.I.D.C. issued the Final Fire NOC and the plot boundary verification certificate to GERA on January 1, 2020 and March 6, 2020, respectively. Thereafter, on March 11, 2020 (Ext. LL-1), GERA applied before the respondent no.3, Executive Engineer of the M.I.D.C., for grant of the O.C. in respect of the said building, enclosing therewith all the relevant documents and necessary certificates. Contemporaneously, GERA had also made an application dated March 12, 2020 before the respondent no.4, Chief

Engineer of the M.I.D.C., requesting for grant of the B.C.C. in respect of the said building (Ext. LL-2). GERA further claims to have sent multiple reminder letters and requested the respondent no.3 to grant the O.C. to it (Exts. MM and NN, colly.). An online application dated October 26, 2020 was also filed by GERA before the M.I.D.C. and the respondents 3 and 4 requesting for the O.C. in respect of the said building. The Deputy Engineer of the M.I.D.C. suggested to the respondent no.3, Executive Engineer of the M.I.D.C., to issue the O.C. in favour of the petitioners. Also, by a letter dated November 2, 2020, the Chief Executive Officer of the M.I.D.C., informed the Principal Secretary (UD-1), Urban Development Department, GoM (Ext. PP), *inter alia*, to the following effect:

"3.As we are aware that all these I.T. companies has already made a huge investment to obtain approvals, permissions, construct these buildings, now if they are not allowed to occupy these buildings then it will be the big loss not only to them but also have major impact on Government Revenue in the form of direct & indirect taxes, also employment generation & loss of business potential and this may have adverse effect on the development of surrounding areas as well.

Considering all the above facts of the matter and as MIDC has already accorded building plan approvals to these structures, it is fait accompli to issue necessary Occupancy Certificate to the already build structures coming in the proposed Ring Road alignment; hence MIDC is issuing the same.

With reference to the subject matter you are requested to accord approval-in-principal to make change in the alignment of proposed Ring Road & reduction in the width of ring road upto 45 to 60 m. I hereby request you to please give your valuable guidance and support to resolve the issue at earliest.”

10. However, despite the repeated efforts and follow-ups, there has been arbitrary and unreasonable failure and neglect on the part of the M.I.D.C. and its officers to grant the O.C. and the B.C.C. for more than 10 months, since it was first applied.

11. The reason for which the O.C. and the B.C.C. has not been granted by the M.I.D.C. is because of the proposed 'ring road', which is part of the Regional Plan for Pune Region (hereafter "the Pune Regional Plan", for short). The alignment of the ring road, as proposed in the Pune Regional Plan, would cut across the subject land, and the said building, as it presently stands, would directly obstruct a part of such road.

12. Several meetings were held between the officers of the P.M.R.D.A. and the M.I.D.C. where they dwelled on various aspects but ultimately no consensus could be reached and the M.I.D.C. was informed not to issue any permission, certificate, etc. in respect of structures/buildings that fall in the alignment of the proposed ring road.

13. The fallout of the above, it is claimed, has caused severe embarrassment and anxiety to the petitioners. Having incurred huge expenditure in completing the said building, the petitioners are being threatened by the purchasers of units in the said building to drag them into unnecessary litigation before the Maharashtra Real Estate Regulatory Authority 19 (hereafter "the MahaRERA", for short). The petitioners have entered into agreements for sale, as mandatorily required under the provisions of the Real Estate (Regulation and Development) Act, 2016, with approximately 600 purchasers. Since the O.C. and the B.C.C. are unreasonably and unnecessarily withheld and if not granted to GERA forthwith, grave and irreparable harm, loss and prejudice will be caused not only to the petitioners but also the various allottees of the

units in the said building. In case of non-grant of the necessary O.C. and B.C.C., the petitioners are, *inter alia*, likely to face legal proceedings for delayed possession of the units to the respective purchasers, despite there being no fault on their part. The purchasers may even terminate their purchase agreements with GERA and seek refund of their purchase consideration with interest, if possession is not offered to the purchasers of their respective units, causing immense loss to it. The total amount paid by approximately 600 purchasers exceeds Rs.25 crore. The petitioners claim that they are faced with the prospect of not being issued the O.C. and the B.C.C. because of the internal tussle of the M.I.D.C. and the P.M.R.D.A.

14. It is urged by the petitioners that as per the Development Control Regulations, 2009 and the Circular on "Guidelines for Procedure, checklist of documents and time limit for issuing building completion, occupancy certificate to SPAs" dated December 21, 2017 issued by the M.I.D.C., the respondents 3 and 4 are under obligation to decide the application for the O.C. within a period of 15 days of the date

of the application, which they respondents have failed to decide (Ext. QQ).

15. The petitioners have referred to the position stated by the M.I.D.C. in its letter dated November 2 2020 (Ext. PP) to the effect that "*considering all the above facts of the matter and as MIDC has already accorded building plan approvals to these structures, it is fait accompli to issue necessary Occupancy Certificate to the already build structures coming in the proposed Ring Road alignment; hence MIDC is issuing the same*" and in the light of the above, their incontrovertible assertion is that GERA is entitled to the grant of the O.C. by the M.I.D.C. However, despite stating that it would be issuing the O.C., the M.I.D.C has failed to issue the same. It is submitted that the aforesaid failure *ex facie* constitutes arbitrary, unreasonable and capricious conduct on the part of the M.I.D.C which warrants interference by this Court for grant of relief as sought in W.P.-I.

16. Without prejudice to the aforesaid, the petitioners contend that having regard to the promises/representations contained in the Indenture of Lease dated March 26, 2004,

various sanctioned plans, permissions and correspondence addressed by the M.I.D.C., GERA proceeded to construct the said building on the subject land. Accordingly, the M.I.D.C. is precluded by principles of promissory estoppel from denying the O.C. and the B.C.C. to GERA; also that, it is entitled to the grant of the O.C. and the B.C.C. on the grounds of legitimate expectation.

17. The petitioners finally contend that by arbitrarily and unreasonably failing to issue the O.C. and the B.C.C., the respondents have violated the fundamental rights of the petitioners guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India.

18. With such pleadings, the petitioners in W.P.-I have claimed the following relief: -

“(a) That this Hon’ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, as the Hon’ble Court may deem fit, directing Respondent Nos.2 to 4 to grant the Occupancy Certificate and Building Completion Certificate to Petitioner No.1 in respect of the said Building, in terms of Respondent No.2’s letter dated 02 November 2020 (Exhibit PP), addressed to the Principal Secretary (UD-1) Urban Development Department, Government of Maharashtra;

(b) That pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court be pleased to direct Respondent Nos.2 to 4 to grant an Occupancy Certificate and Building Completion Certificate to Petitioner No.1 in respect of the Said Building, in terms of Respondent No.2's letter dated 02 November 2020 (Exhibit PP), addressed to the Principal Secretary (UD-1) Urban Development Department, Government of Maharashtra;

(c) In the alternative to prayer (b) this Hon'ble Court be pleased to direct Respondent Nos.2 to 4 to grant a provisional Occupancy Certificate and Building Completion Certificate to Petitioner No.1 in respect of the Said Building, in terms of Respondent No.2's letter dated 2nd November, 2020 (Exhibit PP), addressed to the Principal Secretary (UD-1) Urban Development Department, Government of Maharashtra."

I.A. Nos.768 of 2021, 959 of 2021 and 1246 of 2021.

19. I.A.No.768 of 2021 (hereafter "I.A.-I", for short) is at the instance of the applicant named Rajendra Sunil Bodke. The applicant has sought for intervention in W.P.-I on the allegation that GERA has encroached the lands of poor agriculturists including his land for which no compensation has been paid as well as on the allegation that GERA and the officers of M.I.D.C. have been acting in connivance with each other to deprive the poor agriculturists of their rights.

20. I.A. No.959 of 2021 (hereafter "I.A.-II", for short) is at the instance of the applicant named Prabhakar Dagadu Buchade. The applicant has filed the application for intervention through his constituted attorney, Kapil (the petitioner in W.P.-II). The prayer of the applicant is based on the ground that the original Regional Plan for Pune Region having been approved, there cannot be change of use of any land for any purpose, other than agriculture, or for the purpose of carrying out any development, without previous permission and that the M.I.D.C. has failed to comply with and/or to act in accordance with the provisions of section 18 of the MRTP Act. It is pleaded that vide Government Resolution dated March 30, 2017, a notice was published inviting objections/suggestions with regard to the change of alignment of the ring road and thereby to make changes in the original Regional Plan. Pursuant to objections/suggestions that were received, the ring road was realigned by modifying the original plan. Such realignment did not affect the lands of the applicant. There was a further modification of the alignment of the ring road. GERA had never objected to such

modifications at any point of time. The applicant has pleaded in paragraphs 20 and 27 that he is really aggrieved by the order dated March 3, 2021 passed by us wherein it was recorded that officers of the P.M.R.D.A. were ready to sit with the officers of the M.I.D.C. as well as GERA to find out a solution by reducing the width of the proposed ring road. The applicant apprehends that if the alignment of the proposed ring road is re-aligned once again, it would pass through his agricultural properties situated on Survey Nos.57/1/2, 62/1 and 62/4 thereby causing immense prejudice and detriment.

21. I.A. No.1246 of 2021 (hereafter "I.A.-III", for short) is at the instance of the applicant named Kundan Ashok Landge. The allegations based whereon intervention has been sought by the applicant are more or less similar to the allegations levelled in I.A.-I. According to the applicant, GERA instituted W.P.-I to use the court machinery to give a go-bye to and/or to protect the illegalities committed by it and the officers of the M.I.D.C. From paragraph 17 of the application, it appears that several complaints have been lodged by the applicant as well as other agriculturists before the MahaRERA under the

provisions of the Real Estate (Regulation and Development) Act, 2016 and that such complaints are pending.

THE PROCEEDINGS OF W.P.-I BEFORE THE COURT:

22. While hearing W.P.-I, we noticed that the P.M.R.D.A. was not arrayed as a respondent although it is a necessary party. Accordingly, by our order dated February 16, 2021, leave was granted to the petitioners to implead the P.M.R.D.A. as an additional respondent. Necessary amendment having been effected, the P.M.R.D.A. was brought on record.

23. On March 3, 2021, we had issued Rule in W.P.-I after hearing the parties for some time. Having noticed the letter dated November 2, 2020 of the Chief Executive Officer of the M.I.D.C. addressed to the Principal Secretary, U.D.D., GoM (extracted supra), we had observed that pendency of the Rule ought not to preclude the respondents in the writ petition, i.e., the U.D.D., GoM, the M.I.D.C., the P.M.R.D.A. as well as the petitioners to sit together and find out a solution upon realigning the ring road so that it could bypass the subject land of the petitioners, and thereby the controversy in respect

of issuance of the O.C. and B.C.C. may be laid to rest once and for all. If any decision were arrived at prior to final hearing of the Rule, it was observed that such decision ought to be placed before us. This arrangement was to be worked out without prejudice to the rights and contentions of the petitioners in W.P.-I.

24. At this juncture, we deem it appropriate to record that few orders were passed in March, 2021 to facilitate resolution of the issues by arriving at a workable solution without prejudice to the rights and contentions of the parties. Finally, the parties could meet on April 1, 2021. In our order of April 6, 2021, we recorded Mr. Tulzapurkar, learned senior counsel appearing for the petitioners, having placed on record a communication dated April 5, 2021 of the Chief Engineer, P.M.R.D.A. addressed to the Executive Engineer, M.I.D.C. along with the minutes of meeting dated April 1, 2021. A re-aligned plan, reportedly prepared in terms of the deliberation in the meeting held on that date, was also placed on record. It was at this stage that Mr. Anturkar, learned senior counsel for Kapil, had intervened and prayed for time to obtain

instructions as to whether the re-aligned plan would affect the interests of Kapil who, in the meanwhile, had filed I.A. No.959 of 2021 for intervention. While adjourning hearing till April 7, 2021, officers of the U.D.D., GoM, the P.M.R.D.A. and the M.I.D.C., who had attended the meeting on April 1, 2021 were directed to remain present, so that an endeavour could be made to resolve the issues.

25. Several opportunities were granted thereafter to arrive at a workable solution which, unfortunately, have not fructified.

26. During the pendency of W.P.-I, however, partial O.C. was granted by the M.I.D.C. in favour of the petitioners; but they chose not to accept such partial O.C. and prayed that the Rule be heard finally. Resolution of the issues through discussions not being in sight, we did not wish the proceedings to linger further; hence, the writ petitions and the applications were taken up for final hearing. In the course of hearing, the parties were informed that we propose to hear Mr. Anturkar (on behalf of Kapil since he had instituted an independent writ petition) and consequently I.A. No. 959 of 2021 would be

allowed, whereas the other interim applications would not be entertained and that the applicants thereof would be left free to seek their remedy in accordance with law.

FACTS IN W.P. ST. NO.9531 OF 2021 (W.P.-II):

27. W.P.-II by Kapil arises out of an apprehension. Kapil is an agriculturist, having lands on the edge of the industrial area of the M.I.D.C. He apprehends that if the decision recorded in the minutes of meeting dated April 1, 2021, insofar as the same relates to re-alignment of the proposed ring road by preparing a revised plan to save the said building constructed by GERA, is implemented, he stands the risk of losing his lands and consequently, that would lead to his property rights being abrogated.

28. Kapil has, accordingly, prayed in W.P.-II that the minutes of meeting dated April 1, 2021 be quashed.

29. As stated by Kapil, the reason why W.P.-II has been instituted as an independent proceeding, when the application for intervention in W.P.-I was pending, is that he received legal advice to the effect that as an intervenor he cannot question the legality of the minutes of meeting dated April 1,

2021; hence, institution of W.P.-II was necessitated.

30. The minutes of meeting dated April 1, 2021, recorded in Marathi, is Ext. DD of W.P.-II. However, Mr. Tulzapurkar having placed on record the translated version of such minutes in English and the parties not having objected to the said translated version, we propose to reproduce the same in its entirety for a decision on Kapil's intervention application as well as W.P.-II. The minutes read as follows:

"Subject: Minutes of meeting dated 01st April 2021 conducted under the chairmanship of Commissioner PMRDA at the office of PMRDA on 1st April, 2021 at 11.30 A. M. in accordance with the Hon. High Court order in Civil Writ Petition no. 896 of 2021 dated 03rd March 2021 and 19th March 2021 between PMRDA, MIDC and Gera Developers.

Foreword: -

Gera Developers have filed a Civil writ petition No. 896 of 2021 since MIDC is not issuing occupancy certificates to the constructions coming in the alignment of the 110 mtr ring road sanctioned under the regional plan at RGIP, Ph-II, Hinjawadi, Pune. PMRDA is respondent No. 5 in the said petition. The Hon. High Court in its order dated 03/03/2021 has instructed to conduct a joint meeting between UDD, MIDC, PMRDA and the petitioners. The said meeting was first scheduled on 09/03/2021 but it could not take place as the CEO, PMRDA was appointed as the election observer in West Bengal by the Election Commission. After completion of the work of the first phase of the election the meeting was conducted in the conference hall of the

Commissioner, PMRDA at PMRDA's Aundh office on 1st April, 2021 at 11.30 A. M. between PMRDA, MIDC and Petitioners. The following people representing PMRDA, MIDC and Gera Developers were present for the said meeting as mentioned in the separate list attached.

MINUTES OF THE MEETING

The Commissioner PMRDA welcomed everybody at the start of the meeting and mentioned the context of the meeting.

The inner ring road of PMRDA admeasuring 128 kms in length and width 90 mtrs was proposed in the regional plan of Pune 1997. The width of which was amended to 110 mtrs as per the provisions of section 20(4) of the MRTP Act. The status of this road as on today is of a RP road. The PMRDA came into existence on 30/03/2015 and it is a planning authority for the PMR region and MIDC is the planning authority for MIDC area like Rajiv Gandhi Infotech Park, Hinjawadi under the provisions of the MRTP Act. The Commissioner PMRDA also made it clear that the RP of 1997 is still in force and is binding upon all the planning authorities including MIDC. The said regional plan is applicable to MIDC area also. The length of the ring road is 128 kms and since it is passing through the boundaries of PMRDA, PMC, PCMC and MIDC it is necessary to plan the ring road together. Therefore it is necessary for all the above mentioned planning authorities/local self-government to consider the area under this ring road. It will not be possible to take into consideration only the approx. 3 kms length of the ring road passing through MIDC area.

Since the responsibility of the RP road is of the PMRDA's the work of ring road project/inspecting the alignment/preparing the project report was undertaken by PMRDA. On 26/04/2016, CE PMRDA, Engineering branch has brought to the notice of CE MIDC (Pune Zone) that construction permissions were given to industries

coming in the alignment of the sanctioned ring road in Hinjawadi Industrial area. Thereafter a lot of correspondence took place between PMRDA and MIDC and also many meetings were conducted at the level of Commissioner PMRDA. The Regional officer MIDC in his letter dated 20/07/2018 has mentioned that he has informed to the Executive Engineer (IT-Division) MIDC in accordance with the letter of PMRDA dated 10/07/2018 that no permissions or sanctions are to be granted to plots which were being affected by the ring road. PMRDA since its inception in 2015 has time and again brought to the notice of MIDC about the constructions that were taking place in the alignment of the sanctioned ring road of 1997. Now if the alignment is to be changed then there is a possibility that the owners of the plots, developers who have been granted permission and who will now be affected due to the new alignment will oppose such a thing. Also it will be necessary for the Government to finalize the change in alignment vide sections 20 and 37 of the MRTP Act after calling for the suggestions of the citizens.

In the meantime, after 2016, there is an outer ring road – width 110 mtrs of MSDRC which has also been proposed. Also the Government has decided to keep the alignment of both the ring roads common for a stretch of 38 kms from Urse to Solu. Now since the work of MSRDC ring road has gathered momentum, based on the vehicle population and as per the requirement it has been requested to the Government by PMRDA vide its letter dated 07/01/2021 to convene a meeting at Government level to get an approval for reducing the width of the ring road to 60/65 mtrs for some portion of its length. It is also made clear in this that, excluding the length of the ring road with MSRDC, for an approx. length of 85 kms from Solu to Parandwadi (Urse interchange) and for the width of that stretch it is necessary to have a joint planning. In this remaining length, an approx. length of 44.42 kms passes through

the PMC limits and for that action in accordance with section 37 of the MRTP Act is expected to be taken. The ultimate decision of reducing the width of the said ring road is necessary to be taken at the Government level. For this, MIDC is expected to follow up with Government regarding this proposal in accordance with the below mentioned points considering the permissions granted to petitioner Gera along with other permissions.

- A.) To suggest an alternate alignment of the ring road within the MIDC limits and to present the same to the Urban Development Department of the Government and to give a copy of it to PMRDA for it to incorporate it into its DP.
- B.) If MIDC proposes any changes and if such changes require any forest land then it shall be the responsibility of MIDC to make available the said forest land at their own cost.
- C.) No compromises to be done in the geometrical standards of the ring road.
- D.) It shall be necessary for MIDC to ensure that the suggested alignment of MIDC does not impact any permissions which have been granted by PMRDA/Government earlier.

Thereafter Shri. Rohit Gera – Managing Director Gera Developers while explaining their point of view mentioned that earlier PMRDA had issued a stop work notice but later on had withdrawn it.

On this, the Commissioner PMRDA gave an explanation that MIDC as a planning authority can take action in accordance with the MRTP Act. Therefore, there was no question of PMRDA directly issuing a stop work notice. Also, before the work actually started at site, PMRDA

from time to time had informed MIDC to take preventive action on the constructions. However it is expected to find a solution to points A, B, C, D. On this, Shri. Rohit Gera consented to the point that since the project is in MIDC land, he shall submit a proposal regarding revised alignment to MIDC and then MIDC along with its opinion shall submit it to PMRDA and the Government. The Commissioner has passed the following orders at the end of the meeting;

- 1) The MOM to be shown to MIDC and petitioners unofficially for their consent and the said fact to be brought to the notice of the Hon. High Court at the hearing scheduled on 6th April, 2021.
- 2) In accordance with A, B, C, D above, MIDC to prepare a technical proposal of revised alignment – 65 mtrs width for MIDC area.
- 3) MIDC while preparing their proposal should try and be in sync with the technical parameters of the 65 mtr alignment proposed by PMRDA. For this, all the necessary information to be shared by PMRDA with MIDC.
- 4) MIDC to follow up with UD regarding their proposed/revised proposal for their area.
- 5) The issue of reducing the width of the ring road is currently at a proposed stage and a final decision regarding this is expected to be taken at Government level. Also, action to be taken by PMRDA to adopt a stance of co-operation with MIDC regarding the ring road alignment within the MIDC area.

The meeting was concluded with a vote of thanks.

(Dr.Suhas Diwase)
CEO, PMRDA"

M.I.D.C.'s CASE:

31. M.I.D.C. has filed 2 (two) affidavits, one dated February 18, 2021 and the other dated April 19, 2021.

32. Case of the M.I.D.C. is that, all along it acted in terms of the Maharashtra Industrial Development Act, 1961 (hereafter "MID Act", for short) and the Development Control Regulations, duly sanctioned/approved by the GoM from time to time, and that all building plans for construction of buildings as part of expansion of the Infotech Park were sanctioned before the P.M.R.D.A. came into existence in 2015. It is the further stand of the M.I.D.C. that despite the Pune Regional Plan having been sanctioned by the GoM as far back as in 1997, yet, lands had been acquired by the GoM in terms of section 32 of the MID Act for the M.I.D.C. for setting up an 'industrial area'. It is also its stand that even the Final Regional Plan for a particular Region is susceptible to necessary revision/modification at the instance of the GoM and the P.M.R.D.A., after coming into existence, has also got the alignment of the proposed ring road altered not once but twice during 2017-19.

33. In fine, the M.I.D.C. has taken a stand that the petitioners in W.P.-I have no cause of action to claim relief against it and, thus, the writ petition against it ought to be dismissed.

P.M.R.D.A.'s CASE:

34. On behalf of the P.M.R.D.A., two affidavits have been filed. In the first affidavit dated April 9, 2021, the stand taken is that after the Pune Regional Plan was sanctioned on November 25, 1997 and it came into effect on February 10, 1998, the M.I.D.C. committed serious breach of the provisions of sections 45 and 46 of the MRTP Act by granting building permission in such a manner that the same violates the Pune Regional Plan. It is also asserted that the petitioners have constructed illegally with open eyes and, therefore, cannot claim any relief from this Court contrary to law. It is also asserted that if the M.I.D.C. was of the opinion that any provision of a draft Regional Plan or the final Regional Plan, as the case may be, needs any modification, then as the Special Planning Authority, it ought to have carried out modification of the Regional Plan under section 27 of the MRTP Act, with

approval of the GoM. The M.I.D.C. having failed to do that, the P.M.R.D.A. from time to time has raised objections and had even issued a stop work notice restraining GERA from proceeding further with construction work but the same had to be withdrawn on a technical ground of jurisdiction. There is no illegality on the part of the P.M.R.D.A. in objecting to grant of O.C./B.C.C. in favour of GERA. In such affidavit, a reference has also been made to deliberation that took place in course of meetings between the said P.M.R.D.A., M.I.D.C., Zilla Parishad, the local Municipal Corporation, etc.

35. The second affidavit is dated August 21, 2021, wherein it is repeated that the layout of the M.I.D.C. is illegal because it has not followed the procedure laid down under section 40 of the MRTP Act. A reference has also been made to the affidavit dated August 13, 2021 of the U.D.D., GoM, which has supported the stand of the P.M.R.D.A. Since the subject land falls in the illegal layout prepared by the M.I.D.C. which affects the ring road in part of the Pune Regional Plan, an important project of the P.M.R.D.A., it is prayed that the Court may not grant any relief to the petitioners.

U.D.D., GoM's CASE:

36. For over a period of time, the U.D.D., GoM did not answer the Rule.

37. The indifference and apathy of the U.D.D., GoM noticed by us led to an order dated August 10, 2021. We required the GoM to file a short affidavit whether a ring road in and around Pune, which was originally conceived in 1994 and forms part of the Pune Regional Plan sanctioned on November 25, 1997, is still a techno-economically feasible project; if the answer were in the affirmative, the GoM was directed to indicate in such affidavit a rough estimate of the total project cost and the approximate time that could be taken for construction of such ring road, excluding the time to be taken for acquiring lands to be affected by such project. The GoM was also directed to indicate the likely time to be taken for demarcation and acquisition of lands.

38. In terms of such order dated August 10, 2021, an affidavit of Mr. Bhushan Gagrani, the Principal Secretary (UD-1), U.D.D., GoM dated August 13, 2021 has been filed.

39. Paragraph 1 of such affidavit suggests that the same is not intended to be an affidavit-in-reply to W.P.-I. Since the GoM had not answered the Rule, it could have latched on to the opportunity of answering the Rule and obtained leave in that behalf from the Court. The reason why the GoM elected not to answer the Rule issued on W.P.-I is conspicuous by its absence. What is all the more conspicuous by its absence is the omission of the U.D.D., GoM to answer the specific queries that it was required in terms of our order dated August 10, 2021. In any event, the contents of the said affidavit make interesting disclosures and, thus, we consider it appropriate to reproduce the same hereunder:

"2) I say that the aforesaid Ring Road is proposed as per the Notification dated 25/11/1997 declaring the final Regional Plan for the Pune region, in terms of the MRTP Act. It falls in the area of Pune Metropolitan Region, which includes the area of the Pune and Pimpri-Chinchwad Municipal Corporations. By notification dated 07/09/2013, the State Government has approved the roads connecting to the aforesaid ring road. The particulars of the said Ring Road are placed on record by the respondent No.5 PMRDA. I say that the aforesaid Regional Plan still subsists, holds the field, which provides for development of the aforesaid Ring Road, as reflected by the said Regional Plan.

- 3) The City of Pune has developed beyond imagination during the past two decades. It may be appreciated that substantial traffic going to Mumbai via Pune from Northern Maharashtra and Southern Maharashtra passes through the city of Pune. That puts a heavy burden on the flow of traffic within the city of Pune. In order to ease this traffic, the aforesaid Ring Road is proposed. This Ring Road will divert heavy vehicular traffic passing through Pune City. I further say that the aforesaid Ring Road is going to provide easy access and connectivity to the Airport at Lohgaon, Chakan MIDC and various portions of the City of Pune. Therefore, it has been decided to take up this project on a priority basis.
- 4) The process of development of said Ring Road is already initiated. The East portion of said 110 km Ring Road from NH-65 to NH-48 has been taken for development in 1st phase of Ring Road. For the acquisition and the development 10 Town Planning Schemes were proposed by PMRDA, out of which 5 Town Planning Schemes are in progress. They provide for various amenities, which include the Ring Road proposed in the Regional Plan.
- 5) After its constitution, during the First Meeting of the PMRDA dated 28/12/2016 under the Chairmanship of Hon'ble Chief Minister, the PMRDA has given Administrative Approval of Rs.17,412/- Crores for construction of Ring Road of 128 KM length. The PMRDA is authorized to acquire land for this purpose, raise funds, obtain Environmental Clearance, etc. The Commissioner PMRDA is authorized to appoint the Project Management Consultant for this purpose.

- 6) I say that the total length of the aforesaid Ring Road is 128.08 KMs, which includes stretch that is common for the MSRDC and PMRDA. This common portion between Parandwadi Interchange to Urse (i.e. KM 126/080 to 128/080 or KM 0/00) as also the portion between village Urse i.e. KM 0/00 upto Solu Tal. Khed, Dist. Pune i.e. KM 38/00 running in total 40 KMs has been handed over to MSRDC by letter dated 31/05/2021.
- 7) In regard to the remaining length of 88.08 KMs, as per the proposal dated 21/06/2021 from PMRDA regarding modification in sanctioned Regional Plan, the proposal to keep the road width up to 65 Mtrs. is under consideration.
- 8) The details of this project are as under:
 - 1) Total Length: 88.08 KMs
 - 2) Total Width: 65 Mtrs (proposed)
 - 3) Railway Bridges : 02 Nos
 - 4) Over Bridges : 06 Nos.
 - 5) Tunnels: 05 Nos
 - 6) Major Bridges: 15 Nos
 - 7) Minor Bridges : 03 Nos
 - 8) RCC Box culverts: 140 Nos
 - 9) Elevated Corridor/Structure: 37 Nos.
- 9) I say that for the purpose of a Detailed Project Report (DPR) on 01/07/2017, IIC Technologies Ltd. (Lead Member), Hyderabad in consortium with Monarch Surveyors & Engineering Pvt. Ltd., Pune and India International Infrastructure Engineers Ltd, Banguluru is appointed as DPR Consultant and the said Consultant has been given extension to submit the Project Report up to 31/03/2022.
- 10) The Project is proposed to be developed in the following manner:

Seg-Ment	Stretch	Length in KM	Total area of land required for 65 Mtr width	Remarks
01	Solu to Vadgaon Shinde (Nirgudi)	38/00 to 52/500 (4.50)	29.25 Hec	
02	Vadgaon Shinde (Nirgudi) to Pune-Nagar Road	42/500 to 48/990 (6.49)	42.18 Hec	It is proposed that this 6.49 KM Stretch is to be developed on PPP basis and Tenders are invited for appointment of Consultant
03	Pune-Nagar Road to Pune-Satara Road	48/990 to 81/280 (32.290)	209.88 Hec	
04	Pune-Satara Road to Parandwadi Interchange	81/280 to 126/080 (44.800)	291.20 Hec	
	Total	88.080	572.52	

- 11) Out of the required 572.52 Hec land, the PMRDA is in possession of 33.19 Hec. of lands. For the implementation of this Project, PMRDA requires land also for providing amenities. Taluka-wise

break-up of this required land is as under:-

Sr. No.	Name of the Taluka	No.of Villages	Total Length (KM)	Area required on the basis of 65 Mt width (H-R)
1.	Haveli	26	55.601	261-40
2.	Maval	06	8.141	52-92
3.	Mulshi	07	22.045	143.30
4.	Khed	01	2.293	14-90
	Total	40	88.08	572.52

- 12) I say that, PMRDA proposes to acquire land for the aforesaid Ring Road by one of the following 3 Modes:-

- A) Through the Town Planning Scheme
- B) By giving TDR/FSI to landowners
- C) Allotment of alternate land or direct purchase

- 13) I say that the Sec, 128 (1A) r/w the provisions of Sec. 128(3) of the MRTP Act do not come into picture unless the Special Planning Authority has followed the provisions of Sec. 40 of the MRTP Act and gets its plans for development of the acquired land approved by the State Government. Therefore, though the piece of land in issue in the present matter was acquired by MIDC and the said land vests in the State Government by virtue of the provisions of the MIDC Act, the aforesaid Regional Plan remains unaffected by such acquisition and resultant vesting.

Hence, this Affidavit."

40. It is evident from a bare reading of the affidavit that the Detailed Project Report (DPR) is yet to be received by the

P.M.R.D.A./U.D.D., GoM. There is no indication about the time frame within which the project of the ring road is expected to be completed. Although administrative approval of Rs.17,412/- crore was given in 2016, details of the estimated cost of the ring road project have not been shared. Most importantly, the ring road having been conceived in 1994 and Pune city having expanded since then beyond imagination, there is not an iota of reference how far the project is techno-economically feasible in present times.

CONTENTIONS OF THE PETITIONERS IN W.P.-I:

41. Mr. Tulzapurkar contended that the construction undertaken by GERA is entirely legal and valid. In exercise of powers conferred on it by law, the M.I.D.C. had granted permission to build and so long breach of the building plan is not noticed, question of denying the O.C. and the B.C.C. does not arise.

42. Our attention was drawn to the MID Act and in particular to section 1(3) thereof for contending that Chapter VI thereof was brought into force in the State of Maharashtra w.e.f. March 20, 1999 vide Notification dated March 19, 1999. In

terms of Chapter VI of the MID Act, the GoM acquired plots of land including the subject land, for expansion of the Infotech Park. Incidentally, Chapter VI of the MID Act is titled as "Acquisition and Disposal of Land" and it has been the specific contention of Mr. Tulzapurkar that all steps having been taken by the GoM for acquisition of lands for the M.I.D.C. in exercise of powers conferred by Chapter VI of the MID Act for the expansion of the Infotech Park, the GoM cannot feign ignorance at this distance of time and contend that the M.I.D.C. has not placed any proposal before the U.D.D. in accordance with section 40 of the MRTP Act.

43. Categorical assertion of Mr. Tulzapurkar has been that because of the steps taken by the GoM under Chapter VI of the M.I.D.C. Act to acquire plots of land for the M.I.D.C., in law, the Regional Plan stood modified to the extent of such acquired plots of land and the reservation made thereunder ceased to have any effect; and the consequence of the said plan ceasing to have effect is that the plots identified and reserved for the ring road project, which had been acquired for the purposes of the M.I.D.C., ceased to be under

reservation. The acquisition of the plots of land having been effected in the year 2000 itself, the M.I.D.C. is right in saying that it granted permission validly in the year 2004 and onwards in respect of the project, conceived and designed in furtherance of setting up of an Infotech Park on the plots of land which were so acquired.

44. Further, our attention was invited to a Notification dated March 19, 1999 whereby Chapter VI of the MID Act was brought into force. Our attention was also drawn to show that the particular areas appearing in such notification were declared as '*industrial area*' under section 2(g) of the MID Act.

45. Next, our attention was invited to a Notification dated May 25, 2000 whereby intention of the Sub-Divisional Officer, Maval Sub-division, Pune, in declaring the lands included in the schedule thereto as acquired for the purpose indicated in section 32(1) of the MID Act, was conveyed. While pointing out to the plots of land included in the schedule, it was also shown that the same included the subject land which was acquired for expansion of the Pune Infotech Park (Hinjewadi); that valid acquisition of lands was made by the GoM for the

purpose of development of the M.I.D.C, and thereby to further the objects of the MID Act; and that the rights in respect of the subject land had accrued in favour of International Biotech Park Limited initially and in view of the subsequent assignment, in favour of GERA to promote the plan of Infotech Park at Hinjewadi, Pune.

46. Continuing his arguments further, Mr. Tulzapurkar referred to section 128 of the MRTP Act. Our pointed attention was invited to sub-sections (1A), (2) and (3) of section 128 and it was contended that if an acquisition has been resorted to under the MID Act for a purpose different from the original plan in terms of the power conferred by the MRTP Act, such original plan would stand varied by reason of sub-section (3) of section 128 of the MRTP Act; hence, the reservation under the original plan would not hold good once the process of acquisition of the plots of land under Chapter VI of the MID Act is complete.

47. In this connection, Mr. Tulzapurkar referred to a letter dated August 3, 2018 of the Executive Engineer, M.I.D.C. addressed to the Commissioner of the P.M.R.D.A. The

Executive Engineer referred therein that the notification issued by the U.D.D., GoM for 90. mtrs. wide ring road in the Pune Regional Plan and sanctioned on November 25, 1997, is yet to be implemented despite lapse of 19 years of such sanction and that during such long period of time, number of constructions had come up on the alignment of the proposed ring road. It was further pointed out that allotments of plots of land were approved on June 18, 2004 whereupon companies like Infosys Limited, Wipro Limited, International Biotech Park Limited, M/s. Emcure Pharmaceuticals, etc. had commenced functioning and were contributing majorly in employment generation, export and development of the State as well as the nation. However, it was observed that some of the I.T. company buildings, i.e., Infosys Limited, Wipro Limited, Pune Dynasty Projects Pvt. Limited, Pune Embassy Projects Pvt. Limited and commercial building of GERA were coming in the alignment of the proposed 110 mtrs. wide ring road as per the Pune Regional Plan. Considering that the construction had come up as per the building plan approved by the M.I.D.C. being the Special Planning Authority, it would

not be advisable to demolish the construction as the same may be inappropriate. Since the allottees were not at fault and that the demolition of the structures could create conflicts between the M.I.D.C. and others, it was necessary to change the proposed alignment of the 110 mtrs. wide ring road outside the Infotech Park limits. The said letter also referred to objections raised by the M.I.D.C. against alignment of the proposed 110 mtrs. wide ring road vide letter dated September 26, 2017. A caution was sounded that demolition of the working I.T. units is likely to hamper growth and development of the country and could stop employment generation together with prospect of loss of employment of the present employees. It was, accordingly, proposed to change the current alignment of 110 mtrs. wide ring road outside the Infotech Park limits.

48. Referring to the aforesaid letter dated August 3, 2018, it has been contended by Mr. Tulzapurkar that the consequence of dismantling a major part of the Infotech Park for making way to facilitate construction and completion of ring road would be severe not only for the IT companies that had grown

and spread their wings over the years but also that the commercial building constructed by GERA in the meanwhile. A special reference was made by him to the fact that GERA in the course constructing the said building had incurred heavy expenditure towards construction thereof and that in course of official business had sold units in the said buildings to the prospective occupiers who were waiting for the O.C. and the B.C.C. to be issued to take over possession of the units purchased by them. Not only that, certain purchasers have moved the MahaRERA to seek legal remedies. It would, therefore, be absolutely arbitrary on the part of the P.M.R.D.A. to object to grant of the O.C. and the B.C.C. by the M.I.D.C. to GERA. The original reservation ceases to apply to the subject land because of the acquisition of lands made by the GoM under section 32 of the MID Act resulting in variation in the Pune Regional Plan for the ring road project.

49. The doctrine of '*desuetude*' was thereafter pressed into service by Mr. Tulzapurkar to contend that inaction or non-action to implement the ring road project, which is part of the Pune Regional Plan, for over two decades has resulted in

fading out of such project into '*desuetude*' and losing force thereby, notwithstanding that there has been no express revocation of such plan. The decision of the Supreme Court in **Municipal Corporation for the City of Pune vs. Bharat Forge Company Ltd.**, reported in (1995) 3 SCC 434, was relied on in this context.

50. Mr. Tulzapurkar was next heard to contend that the GoM having acquired the lands under section 32 of the MID Act, such lands having been declared as '*industrial area*' and the M.I.D.C. having leased out the lands comprised in such industrial area for the purpose of furtherance of the objects for which it was brought into existence, it is too late in the day either for the U.D.D., GoM or for the P.M.R.D.A. to contend that the reservations made in the Pune Regional Plan should be carried forward and that acquisitions and further steps taken under the MID Act should yield to the Pune Regional Plan. On the issue of non-implementation of the Pune Regional Plan, reference was also made to section 127 of the MRTP Act relating to lapsing of reservations and it was contended that reservations lapse after 10 years and since in

the present case more than double that period has lapsed since the Pune Regional Plan was sanctioned by the GoM on November 25, 1997 and without any activity having been undertaken for construction of the ring road, the Court ought to direct the M.I.D.C. to issue the O.C. and the B.C.C. immediately; and, if at all necessary, may direct the U.D.D., GoM to align the proposed ring road in such a manner so that the same does not infringe upon the property rights of GERA.

CONTENTIONS ON BEHALF OF THE M.I.D.C.

51. Dr. Sathe, learned senior counsel appeared for the M.I.D.C. He advanced arguments in two tranches, first after Mr. Tulzapurkar concluded his argument and once again before Mr. Tulzapurkar argued in rejoinder. We propose to record his arguments in a composite manner.

52. Inviting our attention to section 40 of the MRTP Act and the amendment made therein by insertion of section 40(1A) with effect from October, 1993, it was contended by Dr. Sathe that the M.I.D.C. became the Special Planning Authority for "the notified area" by statutory force whereas in terms of sub-section (1) of section 40, an authority could be constituted or

development authorities appointed by the GoM, by notification in the Official Gazette, for any undeveloped area specified in a notification as "the notified area".

53. Referring to the Pune Regional Plan which was sanctioned under section 15 of the M.R.T.P. Act on November 25, 1997, Dr. Sathe invited our attention to clauses MRPG 6 and MRPG 9. According to the former clause, the alignment of new roads shown in the Final Regional Plan shall be considered as tentative and it also enables necessary changes in the alignment, if warranted, in the manner specified therein; whereas, the latter clause provides that lands notified by the M.I.D.C. in future for *bona fide* industrial purpose shall be treated as if in industrial zone. It was, thus, contended by him that alignment of new roads were tentative and the said plan itself contemplated an 'industrial area' at the instance of the M.I.D.C. in future, provided the same were for *bona fide* industrial purpose.

54. Dr. Sathe next referred to the Notification dated May 25, 2000 whereby lands were acquired by the GoM for the M.I.D.C. and emphasis was laid by him on the specific user of

land consequent upon acquisition, i.e., declared as acquired for expansion of Pune Infotech Park (Hinjawadi). Based on the same, it was contended that the Pune Regional Plan stood modified once such notification was issued; and that with possession of the acquired lands being handed over to the M.I.D.C. on March 23, 2001, it had full authority in law to allot lands for industrial purposes to interested companies. Continuing further, it was contended that construction of buildings on such acquired lands, which had earlier been declared as '*industrial area*' by the GoM, permitted by the M.I.D.C. are perfectly valid in law.

55. While concluding, Dr. Sathe referred us to the judgment authored by Lord Denning in **John Neil Mouat vs. Betts Motors Ltd.**, reported in Privy Council 1959 PLD 56, where in view of the facts before it the Court had observed that the importers having received certain letters were entitled to assume that the right hand of the Government knew what the left hand was doing, and therefore to assume that the Director of Price Control knew that dealers had to exact a special covenant and fixed the maximum price on that basis.

56. Dr. Sathe was heard once again advancing arguments for the M.I.D.C. to clarify the position in view of the charge of the U.D.D., GoM and the P.M.R.D.C. that the M.I.D.C. had failed to follow the requirements of section 40 of the MRTP Act. Refuting such charge, Dr. Sathe contended that proposals, from time to time, were placed before the U.D.D., GoM which, having sanctioned/approved the same, initially led to the Development Control Regulations, 1999 and upon repeal thereof the Development Control Regulations, 2009 being duly notified. According to him, once such Regulations were sanctioned/approved, any plan such as the Pune Regional Plan would stand modified to the extent parts of such plan were affected by reason of acquisition of lands made by the GoM under the MID Act for the M.I.D.C.

CONTENTIONS ON BEHALF OF THE P.M.R.D.A.

57. Appearing for the P.M.R.D.A., Mr. Deshpande, learned counsel contended that the P.M.R.D.A., since it came into existence, has been following the MRTP Act in all earnestness and its objection to grant of the O.C./the B.C.C. to GERA by the M.I.D.C. rests on firm foundation. He referred to the

provisions of sub-section (1A) of section 128 of the MRTP Act and contended that in view of its opening words it is clear that whatever is postulated by it would be subject to the MRTP Act or the other provisions of law for the time being in force. According to him, sub-section (1A) read with sub-section (3) can have no effect unless the provisions of section 40 of the MRTP Act are, in terms, followed by the M.I.D.C. Section 40 gives "the notified area" the status of a "*new town*" and in terms of sub-section (3) thereof, the provisions of Chapter VI shall, subject to the provisions of sections 40 and 41, apply *mutatis mutandis* to the Special Planning Authority as they apply in relation to a Development Authority, as if the notified area were a new town, but with modifications as indicated in section 40 itself. While not questioning the acquisition of land made by the GoM for the M.I.D.C., he submitted that the requirement of sub-section (4) of section 40 to give due regard to the Pune Regional Plan ought to have been kept in mind; however, surprisingly, no proposal was placed by the M.I.D.C. before the GoM despite being fully aware of certain plots of the acquired land,

comprised in "*the notified area*", falling in the alignment of the proposed ring road. Since development permission had been granted by the M.I.D.C. without due regard to the Pune Regional Plan, question of attraction of the provisions of section 128 to the present case does not and cannot arise. He, accordingly, prayed for dismissal of W.P.-I *qua* the P.M.R.D.A.

58. Mr. Deshpande submitted that looking at the provisions of the MRTP Act, the Regional Plan is not automatically varied by reason of acquisition of land under the MRTP Act. The reason therefor is that section 128(1A) opens with the words "*save as otherwise provided in this Act or any other law for the time being in force.*" Thus, sub-section (1A) of section 128 of the MRTP Act creates an altogether different category of acquisition which is subject to relevant provisions of the MRTP Act or any other law for the time being in force. Significantly, sub-section (1A) of Section 128 does not begin with a *non obstante* clause. Looking to the MRTP Act, section 40 cannot be ignored even while the land is acquired under the MIDC Act. The process that is embodied in sub-sections

(3) and (4) of section 40 of the MRTTP Act not having been undertaken by the MIDC, the question of sub-section (5) thereof coming into operation does not and cannot arise.

CONTENTIONS ON BEHALF OF THE GoM

59. Mr. Pabale, learned AGP representing the GoM adopted the submission of Mr. Deshpande and asserted that no Development Plan under section 40 of the MRTTP Act was ever submitted by the M.I.D.C. and in view thereof, any development permission granted by the M.I.D.C. in favour of GERA or the other allottees of land comprised in "*the notified area*" is of no consequence; and construction, if any, made in the alignment of the proposed ring road cannot be allowed to remain.

60. Responding to our query as to why the GoM chose not to answer the Rule in W.P.-I, why no action was taken from the side of the U.D.D., GoM to stop construction in the alignment of the proposed ring road, what would be the effect of the Development Control Regulations of the M.I.D.C. approved/sanctioned by the GoM, and whether such Regulations took shape upon the M.I.D.C. placing proposals

before the GoM under section 40(3)(d) of the MRTP Act, Mr. Pabale seemed to be in utter discomfort for want of instructions.

CONTENTIONS ON BEHALF OF KAPIL

61. Mr. Anturkar appearing for Kapil submitted at the outset that Kapil is only interested in protecting his property. Presently, as the alignment of the proposed ring road stands, Kapil is not affected at all. However, if the alignment is changed once again (and there is every reason for Kapil to so perceive) having regard to the minutes of meeting dated April 1, 2021, Kapil's agricultural lands standing on the edge of the M.I.D.C. area could be affected.

62. Mr. Anturkar contended that the petitioners as well as the M.I.D.C. have proceeded on a misconstruction of the statutory provisions. According to him, the most crucial provision is sub-section (3) of section 128 of the MRTP Act and referring to the same, much emphasis has been laid by him on the expression "*shall be deemed to be suitably varied by reason of acquisition of the said land*". The emphasized portion of section 128(3) is in the nature "of legal fiction", and

is a limited deeming provision for achieving a “purpose”. In order to understand the meaning of this legal fiction, one has to identify the “purpose” for which the legal fiction is employed. Law, he has contended, is well-settled that although full effect is required to be given to the legal fiction, after identifying the “purpose” for which the legal fiction is employed, by virtue of the rule of purposive interpretation, it cannot be interpreted or permitted to travel beyond that purpose. Reliance in this connection has been placed by him on the decision of the Supreme Court in **Nandkishore Ganesh Joshi vs. Commissioner, Municipal Corporation of Kalyan & Dombivali**, reported in (2004) 11 SCC 417, which has been affirmed in **State of Karnataka vs State of Tamil Nadu**, reported in (2017) 3 SCC 362, as well as on the decisions in **Amazon.com NV Investment Holdings LLC vs Future Retail Limited**, reported in 2021 SCC Online SC 557, and in **Vineeta Sharma vs. Rakesh Sharma**, reported in (2020) 9 SCC 1.

63. Mr. Anturkar further submitted that the words “by

reason of the acquisition of the said land" are most important because they would indicate, what is the "purpose" for which the legal fiction in sub-section (3) of section 128 is employed, and the purpose of the legal fiction is to ensure suitable variation only of those aspects of the relevant plan or scheme, which have been necessitated "*by reason of*" viz. "*on account of*" acquisition of the said land.

64. Elaborating his arguments, Mr. Anturkar submitted that there are only three variations which are necessitated "*on account of*" or "*by reason of*" acquisition of the said land, viz. (a) the owner of the land is divested of his ownership rights and ownership of the land changes in favour of the State because the land vests in the GoM; (b) irrespective of the fact that in the Regional Plan the land is in whichever zone, after the acquisition, the land shall be deemed to be in the "Industrial Zone"; and (c) the third is what is provided in sub-section (2) of section 128, i.e., the consequence if the earlier planning authority has spent any amount *qua* the acquired land.

65. Further, it has been submitted by Mr. Anturkar that in

order to understand the significance and importance of the aforesaid noun clause, viz. "*by reason of acquisition of the said land*", one has to firstly put that clause under an eclipse and read sub-section (3) of section 128 without the aforesaid noun clause, and then remove that eclipse and read sub-section (3) with that noun clause. Also, he submitted that the significance of that noun clause would clearly unfold that the suitable variation contemplated by sub-section (3) of section 128 is only that variation which is necessarily occasioned by reason of the acquisition of the said land, viz. the three variations which are referred to above. All other variations are outside the scope of section 128(3) and will be subsequently done under section 40(3) of the MRTP Act.

66. Mr. Anturkar's further submission has been that importantly, the verb used in sub-section (3) of section 128 is "*suitably varied*"; and by no stretch of imagination, the word "*varied*" can be understood or interpreted so as to mean that the reservation automatically lapses. MRTP Act, according to Mr. Anturkar, has used the word "varied" in section 92, section 92(proviso) and section 165(2), or "*suitably varied*" in section

71(5) and section 128(3). It has further used the words "*property will be relieved from reservation*" in sections 49(7), 50(3), 127(1) and 128(2). Further, the verb "*lapsed*" has been used in sections 127, 48, 21(4A) and 48 and the words "*deemed to have lapsed*" in sections 127, 37(1), 49(7) 58(37), "*stand modified*" in section 158(5) or "*modified*" in sections 20(3), 28(1), 31(30, 31(1) third proviso, 40(3)(d), 51(1), 67, 79(1), 108(1), 120, 124(3), 157(1), "*to substitute*" in sections 159A, First Schedule Cl.3(2), 3(2)(b), S. 40(3)(c)(ii), "*to change*" in sections 2(7), 18(1), 22A(1), 28(1) and 37(1AA)(a), "*to amend*" in sections 9(2)(b), 20(4), 37(1) and 70(1). It has also used verbs such as "*amend*" or "*change*" or "*substitute*" or "*alter*".

67. After referring to all such statutory provisions where different words/phrases/expressions carrying almost similar meaning have been used, Mr. Anturkar contended that whenever the Legislature in one enactment has deliberately used different words/phrases/expressions, its intention is clear, i.e., it did not intend to convey the same meaning, and

for this reason separate/ different words have been used. As submitted, whenever the MRTP Act wanted to say that the reservation "*has lapsed*" or "*the property is relieved from reservation*", it has expressly said so. The very fact that it has not said so in section 128(3) is clearly indicative of the fact that it never intended to convey that meaning and, therefore, it has used a different word, viz. "*varied*". Similarly, wherever the Legislature intended to say "*to amend*", "*to substitute*", "*to modify*", "*to change*", it has expressly said so. To vary, according to Mr. Anturkar, is indicative of a very minor type of change, which is consequential in nature. All other phrases to which he invited our attention, indicate the ladder upward showing different level of changes. Thus, the very fact, that the Legislature instead of using these phrases has used an innocuous phrase like "to vary" and that too, to "*suitably vary*", shows that it never intended that the Regional Plan enbloc would become redundant or that the reservation in the Regional Plan enbloc would "stand lapsed" as argued.

68. Mr. Anturkar, while countering the arguments on behalf

of the petitioners, urged us to note the difference between "*lapsed*" and "*stand lapsed*". The word "*stand lapsed*" is indicative of an automatic lapsing. No such word is used in the MRTTP Act. The enactment has used phrases such as "*lapsed*" and also "*deemed to have lapsed*". It was submitted that by no stretch of imagination, the word "*suitably varied*" could be interpreted so as to mean "*stand lapsed*".

69. While winding up, it was also submitted by Mr. Anturkar that merely because the land becomes an Industrial Zone, reservation does not automatically come to an end. In any case, roads are needed even in the Industrial Zone also and, thus, merely because by virtue of section 128(3) of the MRTTP Act, the land is included in the Industrial Zone, it cannot be said that the reservation of the road has become so inconsistent, with Industrial Zone, that the reservation would automatically lapse, as argued.

70. After extensive arguments on the points of law, Mr. Anturkar challenged the authority of the Chief Executive Officer of the M.I.D.C. to write the letter dated November 2, 2020 referring to section 4 of the MID Act. According to him,

the said officer exceeded his jurisdiction in so writing, without taking any positive step to remove the constructions in the alignment of the proposed ring road which was brought to the notice of the M.I.D.C. by the P.M.R.D.A. repeatedly. It was his contention that on the face of the letters of the P.M.R.D.A., it is rather surprising that the M.I.D.C. is supporting GERA. He even went to the extent of submitting that the M.I.D.C. and GERA want illegalities committed in raising constructions in the alignment of the proposed ring road to be sanctified by the Court. If indeed M.I.D.C. has not committed any error in sanctioning the building plan, it should go ahead with issuance of the O.C./the B.C.C. to GERA.

71. Resting on the aforesaid contentions, Mr. Anturkar prayed that W.P.-I, accordingly, be dismissed.

72. Appearing in support of W.P.-II, Mr. Anturkar submitted that the cause of action for institution of the same may not survive if W.P.-I is dismissed. However, if we are inclined to direct the official respondents in W.P.-I to realign the proposed ring road in terms of the decision taken in the meeting dated April 1, 2021 and in so realigning Kapil's lands are acquired,

certainly he would be a person aggrieved and entitled to maintain W.P.-II for the relief as claimed by him.

ARGUMENT IN REJOINDER

73. Mr. Tulzapurkar argued that it is absurd for the GoM, the P.M.R.D.A. and Kapil to contend that the acquisition of lands under section 32 of the MID Act notwithstanding, such lands cannot be used for the purpose for which the same had been acquired because of the Pune Regional Plan. Once acquisition of lands for the specified purpose was made, the provisions of sub-sections (1A) and (3) of section 128 of the MRTP Act are attracted with the result that the said plan is varied and no further act is required in this behalf. Also, the M.I.D.C. having placed proposals before the GoM which have since been sanctioned/approved giving birth to the Development Control Regulations, the Pune Regional Plan would stand modified in terms of sub-section (5) of section 40. The provisions of law are quite clear and no interpretative exercise of the nature resorted to by his adversaries are called for in the circumstances.

74. Insofar as the three variations referred to by Mr.

Anturkar are concerned, it was argued that the argument is irrelevant and untenable. According to Mr. Tulzapurkar, the entirety of section 128 is to sub-serve a purpose of use different from the original use; hence, variation referred to in sub-section (3) of section 128 must also necessarily relate to a purpose. What sub-section (3) envisages is that the purpose for which reservation has been made in the Regional Plan would stand replaced by the new purpose, no sooner acquisition therefor, as referred to in sub-section (1A), is made. As a corollary, it has been submitted that 'to the extent required' for the '*industrial area*' is the meaning to be given to the expression "*suitably varied*"; if not, sub-section (3) would be rendered meaningless.

75. Mr. Tulzapurkar cited the decision in **Madanlal Fakirchand Dudhediya vs. Shree Changdeo Sugar Mills Ltd. & Ors.**, reported in AIR 1962 SC 1543, for the proposition that it is an elementary rule of construction that the words used in a section must be given their plain grammatical meaning and while dealing with two sub-sections of a section, it is necessary that the two sub-sections are

construed as a whole with "each portion throwing light, if need be, on the rest"; also, that the two sub-sections must be read as parts of an integral whole, and as being inter-dependent, an attempt should be made in construing them to reconcile them if it is reasonably possible to do so and to avoid repugnancy. Also, the decision in **Shri Ramtanu Co-operative Housing Society Ltd. & Anr. vs. State of Maharashtra & Ors.**, reported in (1970) 3 SCC 323, was cited for the proposition that acquisition of lands for the M.I.D.C. is a public purpose.

76. In conclusion, it was prayed that relief as claimed by the petitioners ought to be granted.

ADJUDICATION

77. We are indeed tasked to resolve a tricky but broad issue, i.e., whether, the Final Regional Plan for Pune Region (notified on November 11, 1997) notwithstanding, the petitioners are entitled in law to claim that the M.I.D.C. ought to be directed to issue the O.C. and the B.C.C. for the said building ('Imperium Rise') constructed on land falling within portions of the alignment of the proposed ring road? We are conscious

of the absence of any authority on the interplay of the various sections of the MID Act and the MRTTP Act. Also, the situation calls for keeping an eye on both public and private interest which are intrinsically connected. Exploring a wise middle path is sometimes considered a necessity; and that we did attempt in fair and reasonable measure expecting that the different authorities would resolve the issues, but had to abort the same in view of the contentious stand of the parties, leaving the issues for our decision. Required as we are to adjudicate the merits of the rival claims, we need to break away from the previous abortive attempts to reach a workable solution and start on a clean slate. The path of simple adherence to the mandate of law is what we propose to tread, guarding against any prejudice or predilection arising from such attempts.

78. To render an appropriate decision on these proceedings, it would be convenient for us to first chronologically arrange certain relevant but undisputed facts and circumstances which we have culled out from the pleadings on record, then notice the applicable law and interpret the same, and to ultimately

apply the law to such facts and circumstances.

IMPORTANT EVENTS

- i. A notification dated May 18, 1990 of the U.D.D., GoM was published in the Official Gazette dated May 20, 1990, whereby for preparation of the Regional Plan for Pune Region the Pune Regional Planning Board was constituted under section 4(1) and (2) read with section 20 of the MRTP Act.
- ii. A draft Regional Plan for Pune Region, prepared by the Planning Board under section 16(1) of the MRTP Act, was published on September 30, 1993.
- iii. On October 14, 1993, the M.I.D.C. was appointed as the Special Planning Authority in terms of section 40(1A) of the MRTP Act.
- iv. The draft Regional Plan [at (ii) supra] was accorded sanction on November 11, 1997 by the GoM leading to the Final Regional Plan of Pune Region being notified, to take effect from February 10, 1998. *Inter alia*, a 90 mtr. wide ring road with length of approximately 128 kms. was proposed for the Pune Region.
- v. A notification dated March 19, 1999 was published in the Official Gazette notifying that in exercise of power conferred by section 1(3) of the MID Act, the GoM has appointed March 20, 1999 as the date from which Chapter VI thereof would take effect in the area mentioned in Schedule A annexed thereto and such area was declared as 'industrial area' under section 2(g).
- vi. By a further notification dated September 2, 1999 issued under sub-section (2) of section 32 of the MID Act, which was published in the Official Gazette, opportunity was extended to persons interested to object to the proposed acquisition of lands for the 'industrial area'.

- vii. Finally, on May 25, 2000, another notification under sub-section (1) of section 32 of the MID Act was published in the Official Gazette notifying that the lands mentioned in the attached schedule, which were notified earlier for the purpose of development of 'industrial area', upon consideration of objections received are declared as acquired for expansion of Pune Infotech Park (Hinjawadi). The acquired lands would cover approximately 400 acres of land including few kms. of the proposed ring road.
- viii. On March 23, 2001, possession of the acquired lands was made over to the M.I.D.C.
- ix. By a lease deed March 26, 2004 executed by and between the M.I.D.C. and International Biotech Park Limited, the former granted lease of 103.37 acres to the latter in Zones A to D, Pune Infotech Park for a term of 95 years commencing from March 26, 2004, together with right of renewal.
- x. On August 31, 2009, Revised Development Control Regulations made by the M.I.D.C. for the 'notified areas' as defined under section 40(1A) of the MRTP Act were sanctioned by the GoM in the U.D.D, to be enforced w.e.f. September 24, 2009, upon repeal of the Development Control Regulations, 1999 sanctioned on January 7, 1999.
- xi. International Biotech Park Limited on March 23, 2015 sought for permission of the M.I.D.C. to transfer and assign Plot No.1B to the GERA.
- xii. P.M.R.D.A. was constituted under section 42C of the MRTP Act on March 31, 2015.
- xiii. M.I.D.C., on August 24, 2015, accorded permission to the aforesaid prayer of International Biotech Park Limited.
- xiv. A deed of assignment was executed on December 16, 2015 by and between International Biotech Park Limited and GERA in respect of Plot No.1B, admeasuring 14,855 sq.

mtrs. or thereabout, in pursuance whereof the leasehold rights in respect of such plot were acquired by GERA with the consent of the M.I.D.C.

- xv. On March 30, 2016, the M.I.D.C. in its capacity as Special Planning Authority under the MRTTP Act granted additional F.S.I. to GERA upon receiving payment in excess of Rs.23 crore.
- xvi. Between April 12, 2016 and January 11, 2018, from time to time, the M.I.D.C. sanctioned building plan for the said building, i.e., 'Imperium Rise'. Based thereupon, GERA commenced construction.
- xvii. On March 17, 2017 and September 13, 2019, it is alleged by the M.I.D.C. (see: paragraph 4.1 of affidavit dated April 19, 2021) and admitted by the P.M.R.D.A. (see: paragraph 5 of affidavit dated June 4, 2021) that by notifications of even date, there has been modification of the Regional Plan/the alignment of the proposed ring road.
- xviii. A stop-work notice dated July 17, 2018 was issued by the P.M.R.D.A. to GERA on the ground that the under-construction building was coming in the way of the alignment of the ring road.
- xix. Immediately, the petitioners challenged this notice in W.P.7910 of 2018 before this Court.
- xx. On July 30, 2018, the P.M.R.D.A. by a communication withdrew the stop-work notice on the ground that the M.I.D.C. was the Special Planning Authority.
- xxi. This Court disposed of W.P. 7910 of 2018 on August 1, 2018 as withdrawn, since by reason of the communication dated July 30, 2018, the grievance of the petitioners had been substantially worked out.
- xxii. In December, 2019, the petitioners completed construction of the said building.
- xxiii. On January 1 and March 6, 2020, the M.I.D.C. granted final Fire NOC and plot boundary

- verification certificate to the petitioners, respectively.
- xxiv. M.I.D.C., on January 16, 2020, submitted a plan with revised alignment for implementation but the P.M.R.D.A. did not approve the same.
 - xxv. The petitioners applied for the O.C. and the B.C.C. for the said building on March 11 and 12, 2020, respectively.
 - xxvi. Between July 13 and November 6, 2020, reminders were sent and follow-ups made by the petitioners for the O.C. and the B.C.C., but in vain.
 - xxvii. The Chief Executive Officer of the M.I.D.C. on November 2, 2020 although informed the Principal Secretary, U.D.D., GoM that the O.C. is being issued, no such certificate was issued.
 - xxviii. On January 19, 2021, W.P.-I was instituted with prayers as noted above.
 - xxix. A meeting of the parties was convened on April 1, 2021, the minutes whereof are reproduced in paragraph 30 supra.
 - xxx. On April 18, 2021, W.P.-II was instituted by Kapil challenging the minutes of meeting dated April 1, 2021.
 - xxxi. Pursuant to a meeting convened on April 26, 2021 attended, *inter alia*, by the parties to these proceedings, part O.C. was granted on June 10, 2021 in favour of the petitioners by the M.I.D.C. on the terms and conditions mentioned therein.

THE APPLICABLE LAW

79. The applicable law for deciding the controversy are the two local enactments which are dozens of years old albeit the amendments as made from time to time, viz. the MID Act and the MRTP Act. We shall presently note relevant provisions of

the said laws for having a firm grip over the controversy and in our pursuit to resolve the same strictly in accordance with such laws.

80. However, before we commence our journey, we consider it most appropriate to remind ourselves of the observations of the Supreme Court in its decision in **Reserve Bank of India vs. Peerless General**, reported in (1987) 1 SCC 424, as to how a statute should be read. Since we intend to seek guidance from paragraph 33 thereof, the relevant portion is quoted below:

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no

word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ***"

81. While bearing the above observations in mind, let us now turn to the MID Act first, since it is prior in point of time to the MRTP Act.

MID Act:

82. To find out why the MID Act was enacted, reading its preamble would make the task easy. It reads:

"An Act to make special provision for securing the orderly establishment in industrial areas and industrial estates of industries in the state of Maharashtra, and to assist generally in the organization thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid."

83. The MID Act is spread over eight chapters. We are required only to read the relevant provisions therein.

84. Chapter I contains the customary provisions including, *inter alia*, the definitions. We quote below definitions of some of the important terms as used in the MID Act:

"2. In this Act, unless the context otherwise requires, -

(b) 'building' means any structure or erection, or part of a structure or erection, which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not;

(e) 'development' with its grammatical variations, means the carrying out, of building, engineering, quarrying or other operations in in, or over or under land, or the making of any material change in any building or land, and includes redevelopment, but does include mining operations; and 'to develop' shall be construed accordingly;

(g) 'industrial area' 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;

(h) 'industrial estate' means any site selected by the State Government, where the Corporation builds factories and other buildings and makes them available for any industries or class of industries;

85. Chapter II provides for the establishment and constitution of the M.I.D.C. In exercise of power conferred by section 3 of the MID Act, the M.I.D.C. was established as a body corporate and constituted with such of the members as specified in section 4. The Minister for Industries, GoM, *ex officio*, would be the Chairman of the M.I.D.C. Chapter III provides for the functions and powers of the M.I.D.C. In terms of section 14, it is the function of the M.I.D.C. to generally promote and assist in the rapid and orderly establishment, growth and development of industries in the state and in

particular to, *inter alia*, establish and manage industrial estates [as defined in section 2 (h)] at places selected by the GoM and to develop industrial area [as defined in section 2 (g)] selected by the GoM for the purpose and make them available for undertakings to establish themselves. Section 15, *inter alia*, confers power on the M.I.D.C. to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by it. What is mandated by section 18 is that the M.I.D.C. would be bound to follow and act upon general or special directions as to policy given by the GoM for the purpose of carrying out the purposes of the MID Act. Acquisition and disposal of land is the subject of Chapter VI of the MID Act. As has been noted above, Chapter VI was enforced w.e.f. March 20, 1999.

86. For the purpose of these proceedings, section 32 of the MID Act is of significance and hence, is quoted below in its entirety:

"32. Compulsory acquisition - (1) If at any time in the opinion of the State Government, any land is required for the purpose of development by the Corporation, or for any other purpose in furtherance of the objects of this Act, the State Government may acquire such land

by publishing in the *Official Gazette* a notice specifying the particular purpose for which such land is required, and stating therein that the State Government has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested therein, to show cause, within such time as may be specified in the notice, why the land should not be acquired. The State Government shall also cause public notice to be given in the manner laid down in section 53 and in the *Official Gazette*:

Provided that, if the land proposed to be acquired falls within a Scheduled Area then the State Government shall before such acquisition consult,-

- (i) the Gram Sabha and the Panchayat concerned if the land is falling within the area of one Panchayat;
- (ii) the concerned *Gram Sabhas* and the Panchayat Samitee if the land is falling within the area of more than one Panchayats in the Block concerned;
- (iii) the concerned *Gram Sabhas* and the *Zilla Parishad* if the land is falling within the area of more than one Block in the district concerned;

such consultation shall be carried out in the manner as may be laid down by the State Government by issuing a general or special order in this behalf:

Provided that the decision taken by the majority of the *Gram Sabhas* concerned by passing a resolution in the above matters shall be binding on the

concerned Panchayat Samiti or the *Zila Parishad* as the case may be.

Explanation. - For the purposes of these provisos, -

- (i) the expressions 'Gram Sabha' or 'Panchayat' and 'Scheduled Areas' shall have meanings, respectively, assigned to them in the Bombay Village Panchayats Act, 1958;
 - (ii) the expressions 'Panchayat Samitee' and 'Zilla Parishad' shall have the meaning, respectively, assigned to them in the Maharashtra *Zilla Parishads* and Panchayat Samitis Act, 1961.
- (3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein, and after giving such owner and person an opportunity of being heard, the State Government may pass such orders as it deems fit.
- (4) When a notice under sub-section (1) is published in the *Official Gazette*, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances:

Provided that if before actual possession of such land is taken by or on behalf of the State Government, it appears for the State Government that the land is no more required for the purposes of this Act, the State Government may, by like notice, withdraw the land from acquisition and on the publication of such notice in the *Official Gazette*, the land shall revest with retrospective effect in the person in whom it was vesting immediately before the publication of the notice under sub-section (1), subject to such encumbrances, if any, as may be subsisting at that time. The owner and other persons interested shall be entitled to compensation for the damage, if any, suffered by them in consequence of the acquisition

proceedings as determined in accordance with the provisions of section 33.

(5) Where any land is vested in the State Government under sub-section (4), the State Government may by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the State Government may take possession of the land, and may for that purpose use such force as may be necessary.

(7) Where the land has been acquired for the Corporation or any local authority, the State Government shall, after it has taken possession thereof, by notification published in the *Official Gazette*, transfer the land to the Corporation or that local authority, as the case may be, for the purpose for which it was acquired, and the provisions of section 43-1A shall apply to any land so transferred."

MRTP Act:

87. It is now time to look at the MRTP Act. We may record that a clear understanding of the relevant provisions thereof would be the clinching factor.

88. Since the preamble of the MRTP Act makes the reason for its enactment clear as crystal, we reproduce the same hereunder:

"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."

89. Originally, there were 9 (nine) chapters in the MRTTP Act which came into force w.e.f. January 11, 1967. In due course of time, Chapters III-A and VI-A have been inserted by Amending Acts 25 of 2009 (w.e.f. August 25, 2009) and 16 of 1992 (w.e.f. August 10, 1992), respectively. Out of these 11 (eleven) chapters that comprise the MRTTP Act, we need to notice only a few of them which are absolutely relevant for our purpose and not all.

90. From Chapter I of the MRTTP Act titled 'Preliminary', the meaning of certain terms as defined in section 2 thereof have to be kept in mind while we read the other chapters. The same read as follows:

"Section 2. In this Act, unless the context otherwise requires, -

(9) 'Development plan' means a plan for the development or redevelopment of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a special planning Authority for development of its land within its jurisdictions;

(19) 'Planning Authority' means a local authority; and shall includes (sic, include), -

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

(23) 'Region' means any area established to be a Region under section 3;

(24) 'Regional Board' or 'Board' means a Regional Planning Board constituted under section 4;

(25) 'Regional plan' means a Plan for the development or redevelopment of a Region which is approved by the State Government and has come into operation under this Act.

(27) 'Regulation' means a regulation made under section 159 of this Act and includes zoning, special development control regulations and other regulations made as a part of a Regional Plan, Development plan, or town planning scheme;"

91. Chapter II contains provisions relating to Regional Plans, with sections 3 and 4 ordaining establishment of 'Region' and constitution of 'Regional Planning Boards', respectively. Sections 13 to 16 lay down, *inter alia*, the steps to be taken

prior to preparation of the Regional Plan, its contents, and the procedure to be followed in preparing the same and its approval by the GoM. Section 17 requires publication of the Regional Plan after approval and section 18 restricts change of user of land or development thereof. Revision or modification of the Regional Plan is permitted by section 20, in the manner specified.

92. Chapter III is devoted to Development Plan. The intendment of this chapter is that the Development Plan ought to be prepared in accordance with the provisions of a Regional Plan, if there be any, and in the manner laid down in the other provisions thereof. Section 22 enumerates what the contents of a Development Plan should be and we consider it appropriate to reproduce only a part thereof hereinbelow:

“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, theatres 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.

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

93. Section 23 of the MRTTP Act lays down the procedure to be followed in preparing and sanctioning the Development Plans. The other sections following it are also relatable to the Development Plans but not being essential for a decision, are not referred to in detail.

94. However, the next important provision to be taken note of in Chapter III of the MRTTP Act is section 40. Having regard to the contentions raised before us by learned counsel for the parties, in our view, section 40 has to be considered as the most relevant provision. Although all sub-sections are not relevant, we consider it appropriate to reproduce below the said section in its entirety for facility of proper appreciation:

“40. Special Planning Authority for developing certain notified areas.

(1) The State Government may, by notification in the Official Gazette for any undeveloped area specified in the notification in this Act referred to as 'the notified area' either-

(a) constitute an authority consisting of a Chairman, a Vice-Chairman, a member of the Maharashtra Legislative Assembly representing the notified area, one member representing the municipal area, if any, included in the notified area, the Deputy Director of Town Planning, and the Executive Engineer, Public Health Works Division, each having jurisdiction over the notified area, and an officer not below the rank of an Assistant Collector; or

(aa) appoint the Authority constituted under the Maharashtra Housing and Area Development Act, 1976, or

(b) appoint any Development Authority declared under sub-section (3A) of section 113, or

(c) appoint the Bombay Metropolitan Region Development Authority established under the Bombay Metropolitan Region Development Authority Act, 1974, to be the Special Planning Authority for developing the notified area, or

(d) appoint the Metropolitan Region Development Authority established under the Maharashtra Metropolitan Region Development Authority Act, 2016.

(1A) Notwithstanding anything contained in sub-section (i), any area where Chapter VI of the Maharashtra Industrial Development Act, 1961 (hereinafter in this section referred to as 'the said Act'), applies, or any other area comprising Government land handed over to the Maharashtra Industrial Development Corporation established under section 3 of the said Act, shall be deemed to be 'the notified area'; and the Maharashtra

Development Corporation established under section 3 of the said Act, shall be the Special Planning Authority in respect of such notified area, and shall be deemed to have been appointed as such under this section, for the purposes of this Act:

Provided that, at any time, as provided in the first proviso to sub-section (3) of section 1 of the said Act, where the State Government by notification in the *Official Gazette*, directs that the said Chapter VI shall cease to be in force in that area or any part thereof, from the date specified in such notification then from such date, the said area or part thereof, as the case may be, shall cease to be the notified area, and the Maharashtra Industrial Development Corporation shall cease to be the Special Planning Authority for the purposes of this Act for such area or part thereof:

Provided further that, the provisions of clauses (e) and (f) of sub-section (3) or of section 116, 117, 126, 127 and Chapter VIII shall not be applicable to such Special Planning Authority.

(1B) Notwithstanding anything contained in sub-section (1), the State Government may, by notification in the Official Gazette, appoint any agency or authority created by or in accordance with Government order or instrument, or any company or corporation established by or under any State or Central Law, to be the Special Planning Authority for any notified area.

(2) The Chairman and Vice-Chairman of the Special Planning Authority constituted under clause (a) of sub-section (1) shall be appointed by the State Government; but if any municipal area forms part of any notified area then the President of the Municipal Council of such municipal area shall be the Vice Chairman. The Officer not below the rank of an Assistant Collector shall be the Secretary and the Chief Executive Officer.

(3) The provisions of Chapter VI of this Act shall, subject to the provisions of this section and Section 41 apply *mutatis mutandis* to the Special Planning Authority as they apply in relation to a Development Authority, as if the notified area were a new town, subject to the following modification, namely:-

(a) in section 113-

(i) in sub-section (6) after the words 'Regional Board' the words and figure 'with the modification that section 8 shall not apply in relation to notified area' shall be added;

(ii) to sub-section (8) the following proviso shall be added, namely:

Provided 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 this Act. It may submit its proposals for the development of the land in the notified area (being land either vesting in it or land which has been acquired or is proposed to be acquired under section 116) as provided in section 115;

(b) section 113A shall be omitted;

(c) in section 114,-

(1) in sub-section (1),-

(i) the words, figures and letter 'subject to the provisions of section 113A' shall be omitted;

(ii) in the proviso, for the words, brackets and figures 'constituted under sub-section (2) of

section 113' the words 'unless empowered by the State Government so to do' shall be substituted;

(2) in sub-section (2) in the proviso, in clause (a) for the portion beginning with the word 'constituted' and ending with the words 'such Authority', the following shall be substituted, namely:-

'and if both the Chairman and Vice-Chairman are not available, with such officer or officers as may be authorised by such authority.';

(d) for section 115 the following shall be substituted, namely:-

'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 proposals 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 objections 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*.’;

(e) for section 116 the following shall be substituted, namely:

‘116: POWER OF SPECIAL PLANNING AUTHORITY TO ACQUIRE LAND IN NOTIFIED AREA.-

Every Special Planning Authority shall have all the powers of a Planning Authority under this Act as provided in Chapter VII for the purposes of acquisition of such land in the notified area as it considers to be necessary for the purpose of development in that area either by agreement or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, or any land adjacent to such area which is required for the development of the notified area and land whether adjacent to that area or not which is required for provision for services or amenities for the purposes of the notified area.’;

(f) for Section 117, the following shall be substituted, namely:-

‘117: OBLIGATION TO PURCHASE LAND IN NOTIFIED AREA.-

Where any land has not been acquired within a period of ten years from the date of notification under sub-section (1) of section 40 any owner of the land may by notice in writing served on the Special Planning Authority, require it to acquire his interest therein; and thereupon, the provisions of Section 127 providing for 'lapsing of reservations shall apply in relation to such land as they apply in relation to land reserved under any plan under this Act.';

(g) in section 122, in sub-section (1), the words, brackets and figures 'constituted under sub-section (2) of section 113' shall be omitted.

(4) In preparing and submitting its proposals for developing any land under section 115 and in approving them under that section, the Special Planning Authority and the State Government shall take particular care to take into consideration the provisions of any draft or final Regional Plan, draft or final development plan or any draft or final town planning scheme, or any building bye-laws or regulations, which may already be in force in the notified area or in any part thereof.

(5) Where any proposals for development of any land are approved by the State Government under section 115, the provisions of the proposals approved by the State Government shall be final, and shall prevail, and be deemed to be in force, in such notified area; and to that extent the provisions of any such plan or scheme applicable to and in force in the notified area or any part thereof shall stand notified by the proposals approved by the State Government."

95. Section 40 is peculiarly drafted. Certain other provisions of the MRTP Act are bodily lifted and incorporated therein with

modifications, which makes it difficult for a reader. It would have been desirable if the provisions that are lifted and incorporated with modifications were broken into separate sub-sections and made part of section 40. Be that as it may.

96. The next equally important provision deserving consideration is Section 128 of the MRTP Act under Chapter VII, titled 'Land Acquisition'. It reads as under:

"128. Power of State Government to acquire lands for purpose other than the one for which it is designated in any plan or scheme.

(1) Where any land is included in any plan or scheme as being reserved, allotted or designated for any purpose therein specified or for the purpose of Planning Authority or Development Authority or Appropriate Authority and the State Government is satisfied that the same land is needed for a public purpose different from any such public purpose or purpose of the Planning Authority, Development Authority or Appropriate Authority, the State Government may, notwithstanding anything contained in this Act, acquire such land [under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(1A) Save as otherwise provided in this Act or any other law for the time being in force where any land included in any plan or scheme as being reserved, allotted or designated for any purpose therein specified or for the purposes of a Planning Authority or Development Authority or Appropriate Authority, is being acquired by the State Government under the

provisions of the Maharashtra Industrial Development Act, 1961, for the Maharashtra Industrial Development Corporation (being the Special Planning Authority deemed to have been appointed as such under sub-section (1A) of section 40, the provisions of sub-sections (2) and (3) of this section shall *mutatis mutandis*, apply to such acquisition proceedings.

(2) In the proceedings under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Planning Authority or Development Authority or Appropriate Authority, as the case may be, shall be deemed to be a person interested in the land acquired; and in determining the amount of compensation to be awarded, the market value of the land shall be assessed as if the land had been released from the reservation, allotment or designation made in the (sic) any plan or scheme or new town, as the case may be, and the Collector or the Court shall take into consideration the damage, if any, that Planning Authority or Development Authority or Appropriate Authority, as the case may be, may sustain by reason of acquisition of such land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, or otherwise, and the proportionate cost of the Development plan or town planning scheme or new town, if any, incurred by such Authority and rendered abortive by reason of such acquisition.

(3) On the land vesting in the State Government under Section 38 or 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, the relevant plan or scheme shall be deemed to be suitably varied by reason of acquisition of the said land."

97. Chapter IX of the MRTTP Act contains 'Supplemental and Miscellaneous Provisions'. Section 159 forming part of the said chapter confers powers on the authorities mentioned therein the power to make regulations for carrying out the purposes of the MRTTP Act. For facility of convenience, we quote the same hereinbelow:

"159. Power to make regulations:

(1) Any Regional Board, Planning Authority or Development Authority may, with the previous approval of the State Government, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act, and without prejudice to the generality of this power,-

(i) A Regional Board or a Development Authority may make,-

(a) Regulations subject to which it shall exercise powers and perform functions under this Act;

(b) Regulations for regulating its procedure and the conduct of its business at its meeting;

(c) regulation providing for any other matter which has to be or may be prescribed by regulations;

(ii) a Planning Authority may make,-

(a) regulations prescribing the manner in which its order under sub-section (1) of section 45 shall be communicated to the applicant seeking permission under that section;

(b) regulations prescribing the time within which and the manner in which a notice shall be served on the State Government under sub-section (1) of section 49;

(c) regulations providing for any other matter which has to be or may be prescribed by regulations.

(2) Subject to the provisions of this Act, the State Government may, by notification in the Official Gazette, make Special Development Control Regulations consistent with this Act and the rules made thereunder, for the purpose of implementing any Scheme, Project, Programme or Policy, of the Central or the State Government, in the whole or a part of the State.

(3) The State Government shall, before making such Regulations prepare a draft thereof and publish a notice in the Official Gazette stating the draft Regulations have been prepared. The notice shall state that the names of the places where a copy of such draft Regulations shall be available for inspection by the public at all reasonable hours mentioned therein and the copies thereof or any extract therefrom, certified to be correct, shall be available for sale to the public at a reasonable price; and invite objections and suggestions from any person with respect to the draft Regulations before such date as may be specified in the notice. The notice shall also be published in at least two newspapers having wide circulation in the area to which the Regulations are to be made applicable and also in such other manner as the State Government may think fit.

(4) After considering the objections and suggestions received by it, the State Government may approve such draft Regulations with modifications or without modifications, if any, as it may think fit, or decide not to approve the same and shall publish a notification in the Official Gazette stating that the Regulations have been approved with or without modifications or have not been approved, as the case may be. In case the Regulations are approved, the notification shall specify therein the date on which the Regulations shall come into operation.

(5) Where Special Development Control Regulations are made, the provisions of such Regulations shall be in force in the area to which such Regulations are made applicable and the provisions of any plan or scheme applicable to and in force in such area or part thereof, prior to the date of coming into force of such Regulations under sub-section (4) shall, to the extent of the provisions contained in such Regulations, stand modified."

REASONS:

98. Having noticed the statutory provisions laying down the scheme of Governmental policy, viz. to secure rapid but orderly establishment and organization of industries in industrial areas and industrial estates in the state on the one hand, and, to have a well-planned development and use of lands in the Regions of the state on the other, we now move on to the main part of our judgment, i.e., the reasons for our conclusions to rest on.

99. The factual narrative would reveal the respective stands taken by the three sets of official respondents.

100. As noticed above, the U.D.D., GoM for quite some time maintained a stoic silence. Mr. Pabale representing the U.D.D., GoM, we have recorded, was put to utter embarrassment for want of appropriate instructions. As a matter of fact, the

U.D.D., GoM chose not to answer the Rule. The reasons are not far to seek. The U.D.D., GoM had failed to take effective steps pursuant to the Pune Regional Plan, sanctioned on November 25, 1997, by way of acquisition of lands in terms of the provisions contained in Chapter VII of the MRTP Act for the ring road project while, at the same time, it acquired the plots of land in terms of section 32 of the MID Act to further the objects of the M.I.D.C. which, in turn, proceeded to allot plots of land to various companies for the purpose of setting up of the Infotech Park as well as for expanding it. This has resulted in creation of third-party interests and the problem has indeed taken such serious turn that it is sort of a crisis situation now. In the circumstances, without considerations of any equity, a decision has to be given as to what the law requires and whether the law has been followed, without being unnecessarily troubled by the constructions that have since come up in the alignment of the proposed ring road. If the law has not been followed, the construction of the said building raised by GERA has to be demolished.

101. We may, at this stage, recall paragraph 33 of the decision in **Reserve Bank of India** (supra), interpret the relevant statutory provisions and apply the law irrespective of who/what would be the casualty in the process.

102. To recapitulate, the sole reason appearing from the affidavit filed on behalf of the U.D.D., GoM for supporting its view of sub-section (1A) read with sub-section (3) of section 128 of the MRTP Act not coming into the picture is that the M.I.D.C. had not followed section 40 of the MRTP Act. This assertion is premised on the failure/omission of the M.I.D.C. to obtain approval of the GoM for development of the acquired lands.

103. Our discussion should start with section 128 of the MRTP Act. The marginal note encapsulates what the contents of the provision are all about. The section empowers the GoM to acquire lands for a purpose other than the one designated in any plan or scheme. Therefore, designation of a purpose in any plan or scheme notwithstanding, the GoM has the power to acquire lands for other purposes. Sub-section (1) is not relevant for the present purpose. Sub-section (1A) having

application insofar as the M.I.D.C. is concerned, however, begins with the expression "*(S)ave as otherwise provided in this Act or any other law for the time being in force ...*". We propose to consider such expression immediately after completing our discussion on how sub-sections (1A) to (3) have to be construed. Sub-section (1A) of section 128 ordains that provisions of sub-sections (2) and (3) thereof shall apply, *mutatis mutandis*, to acquisition proceedings which the GoM has initiated for acquiring lands under the MID Act for the M.I.D.C., although such lands are included in any plan or scheme as being reserved, allotted or designated for any purpose therein. Since the provisions of sub-sections (2) and (3) are to apply *mutatis mutandis* to proceedings for acquisition under sub-section (1A), what is intended by the legislature is to bring an idea of adaptation and make a change, but so far only as it is necessary for the purpose of the change, without altering the essential nature of the thing changed. In other words, having regard to what is ordained by sub-section (1A) and the purpose sought to be achieved by sub-section (3), we hold that once the lands vest in the GoM

free from all encumbrances under sub-section (4) of section 32 of the MID Act for an '*industrial area*', the relevant plan including the purpose for which any land included in such plan has been reserved, allotted or designated, by reason of the legal fiction, is "*deemed to have been suitably varied*" to the extent of the purpose for which acquisition of lands under the MID Act is made by the GoM. Any question as to whether the Pune Regional Plan, or for that matter, the proposed ring road project, automatically lapses because of such acquisition under section 32 of the MID Act read with sub-section (1A) of section 128 of the MRTP Act, does not and cannot really arise, since the plan or scheme is "*deemed*" to be "*suitably varied*", i.e., to the extent of the purpose for which the lands covered by the subject acquisition is to be utilized, viz., selection and declaration by the GoM of an area for setting up an '*industrial area*' for the purposes of the M.I.D.C.; and, thus, to such limited extent, the reservation, allotment or designation in any plan or scheme would be "*deemed to be suitably varied*" as opposed to lapsing of the plan or scheme.

104. At this stage, we may briefly identify the purpose for which legal fiction is created by using the term "*deemed*". This requirement arises in view of the decisions cited by Mr. Anturkar on legal fiction.

105. There can be no dispute that when a statute creates a legal fiction saying that something shall be deemed to have been done which, in fact and truth, has not been done, the Court has to examine and ascertain for what purpose and between which persons such a statutory fiction is to be resorted to, and thereafter the Courts have to give full effect to such a statutory fiction and it has to be carried to its logical conclusion.

106. The principle that can be culled out from the cited decisions is that, it is the bounden duty of the Court to ascertain the purpose for which the legal fiction has been created and once such purpose is ascertained, it should be carried to its logical conclusion by giving full effect. It is also the duty of the Court to imagine the fiction with all real consequences and instances, unless prohibited from doing so.

107. Having regard to such settled law, the term "*deemed*" in sub-section (3) of section 128 of the MRTP Act has to be read in its context and further, the fullest logical purpose and import are to be understood keeping in mind the object of the legislation. The words "*relevant plan or scheme*" in sub-section (3) came in substitution of the words "relevant draft plan or scheme", pursuant to an Amendment Act of 1976. Therefore, the word "draft" stands deleted with the consequence that not only would the "relevant plan" in sub-section (3) relate to a plan in draft form but also to a plan in its final form. By reason of sub-section (1A) of section 128 ordaining *mutatis mutandis* application of, *inter alia*, sub-section (3) to acquisition proceedings under the MID Act, reference in sub-section (3) to "*Section 38 or 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*" would have to be read as "section 32(4) of the MID Act", because of the change, and take the fiction to its logical conclusion, although there may not have been, in fact and truth, variation of the relevant plan by any action taken under section 20 of the

MRTP Act. By virtue of user of the term "*deemed*", the position in law seems to be inescapable that upon vesting of the land in the GoM, the statutory fiction is to be resorted to and by carrying it to its logical conclusion, the Pune Regional Plan would be deemed to be suitably varied owing to acquisition of land for the M.I.D.C. for furthering its objects under the MID Act.

108. Mr. Anturkar's attempt to explain how the verb "*varied*" in sub-section (3) of section 128 is to be construed in the light of the other provisions in the MRTP Act, where the verbs "modified", "altered", "lapsed", etc. have been used, is of little impact. We need not indulge in an exercise on semantics in ascertaining the meaning of the verb "*varied*" in the light of the other referred verbs. Examining the provisions of sub-sections (1A) and (3) not merely in semantics but in the broader and more appropriate context of the Governmental policy, aiming at planned development of Regions as well as orderly growth of industries, coupled with the text and context of the MRTP Act and the MID Act, leads us to the inevitable conclusion that the plan or scheme, or for that

matter to be specific, the purpose of reservation, allotment or designation of any land comprised in a plan or scheme, would have to give way to the purpose of the '*industrial area*' which, upon acquisition of land by the GoM, is declared as such by none other than the GoM itself; and to the extent necessary (this is because of the expression "*suitably varied*") and subject, of course, to what is provided elsewhere in the MRTTP Act because of the opening words of sub-section (1A). As a consequence, the plan or scheme by reason of the deeming provision in sub-section (3) shall be deemed to be "*suitably varied*" to give way to the purpose of orderly establishment and development of industries in the notified area/industrial area.

109. We may record that the thrust of Mr. Anturkar's argument has been aimed at showing how the words "*suitably varied*" in sub-section (3) of section 128 of the MRTTP Act ought to be construed. He, however, seems to have missed the tree for the woods. Sub-section (3) of section 128 is not a standalone provision. Being preceded by sub-section (1A), it has always to be read in the light thereof. Thus read, the

words "*suitably varied*" cannot have overriding effect over the other provisions. Considering the provisions in sub-section (1A) to the effect that to acquisition proceedings, initiated by the GoM under the MID Act for the M.I.D.C., sub-section (3) would apply *mutatis mutandis* leaves none in doubt of the legislative intent. Not much argument was advanced by Mr. Anturkar on the purpose of sub-section (1A) and the effect it has on sub-section (3) for which we hold that his arguments do not cover the entire gamut of either the statutory provision or the legislative intent behind it. His argument based on sub-section (3) of section 128 and how "*varied*" has been defined in Law Dictionaries and how other verbs have been used in the MRTP Act pale into insignificance for the reasons we have discussed above. His contention, therefore, stands rejected.

110. However, section 128 is not a provision which is a charter for the M.I.D.C. to proceed in its own way once lands are acquired under section 32 of the MID Act by the GoM for a different purpose. The stage is now set for us to consider what the opening words of sub-section (1A) connote. "*Save as otherwise provided in this Act or any other law for the time*

being in force ...”, it has not been disputed at the Bar, would mean that if there is any provision in the MRTP Act or in any other law for the time being in force, expressly debarring enforcement of sub-sections (1A), (2) and (3) or expressly restricting its operation in any manner or from taking effect, obviously section 128 has to yield to such other provision of the MRTP Act or the other laws, as the case may be. We have not been shown any express bar either in the MRTP Act or any other laws for section 128 of the MRTP Act to take effect; rather, it is common ground that the provisions in section 128 would be subject to the provisions of section 40 of the MRTP Act. This obviously would necessitate looking for the requirements laid down by section 40 that could act as restrictions on section 128 having full effect and which the M.I.D.C., as the Special Planning Authority, is statutorily obliged to follow and whether the accusation of the U.D.D., GoM in its affidavit dated August 13, 2021 that the same has not been followed, is justified or not.

111. Having read section 40 in between the lines, particularly in the light of incorporation of other provisions of the MRTP

Act therein (viz. section 115, providing for 'Planning and control in notified area') for its applicability to a Special Planning Authority like the M.I.D.C., we are of the opinion that the entire section is not relevant here. It is only sub-sections (1A), (3)(d) and (e), (4) and (5), which require exercise of our minds.

112. Sub-section (1A) of section 40 carves out what "*the notified area*" is, in respect whereof the M.I.D.C. would be the Special Planning Authority. The lands covered by the Notification dated March 19, 1999 comprise "*the notified area*". As per sub-section (3), the provisions of Chapter VI of the MRTP Act titled 'New Towns' shall apply *mutatis mutandis* to the Special Planning Authority as they apply in relation to a Development Authority, as if the notified area were a new town, subject to the provisions in sections 40 and 41 and subject to, *inter alia*, the modification of sections 115 and 116 as mentioned in clauses (d) and (e). Sub-section (4) requires that the Special Planning Authority and the GoM while preparing and submitting its proposals for developing any land under section 115 and in approving them under that

section, as the case may be, shall take particular care to take into consideration the provisions of, *inter alia*, any Final Regional Plan which may already be in force in the notified area or in any part thereof. However, the mandate of subsection (5) is that if any proposal for development of any land is approved by the GoM under section 115, the provisions of the approved proposal shall be final and shall prevail, and be deemed to be in force in such notified area; and to that extent, the provisions of any plan or scheme applicable to and in force in the notified area or any part thereof shall stand modified by such proposal approved by the GoM (emphasis supplied).

113. This being the scheme of section 40, we need to examine the accusation of the GoM in paragraph 13 of its affidavit (noted above) against the M.I.D.C.

114. Dr. Sathe has brought to our notice clauses MRPG-6 and MRPG-9 of the Pune Regional Plan, published in the Official Gazette dated November 25, 1997. In terms of the former clause, the alignment of new roads shown in the Pune Regional Plan shall be considered as tentative and it also

enables necessary changes in the alignment, if warranted, in the manner specified therein. The latter clause provides that lands notified by the M.I.D.C. in future for *bona fide* industrial purpose shall be treated as if in industrial zone. The term 'industrial zone' is, however, neither defined in the MID Act nor in the MRTP Act; instead, we have noticed what an '*industrial area*' and an "*industrial estate*" are in terms of the MID Act.

115. Dr. Sathe has also placed on record the Revised Development Control Regulations framed by the M.I.D.C. and approved by the GoM. It would be convenient for us to reproduce the terms of the Notification dated August 31, 2009 issued by the U.D.D., GoM, upon revision of the earlier Development Control Regulations approved vide Notification dated January 7, 1999. The same reads as under:

"URBAN DEVELOPMENT DEPARTMENT

Mantralaya, Mumbai 400 032, dated 31st August, 2009

NOTIFICATION

**MAHARASHTRA REGIONAL AND TOWN PLANNING ACT,
1966**

No.TPB/4308/465/CR-64/08/UD-11.- Whereas, the Government of Maharashtra in exercise of the powers conferred by sub-section (1A) of section 40 of

Maharashtra Regional and Town Planning Act, 1966, (hereinafter referred to as "the said Act") has appointed Maharashtra Industrial Development Corporation (MIDC) as a Special Planning Authority (hereinafter referred to as "the said Authority");

And whereas, in exercise of the powers conferred by the provision of the said act and all other powers enabling it in this behalf the said Authority has prepared the Development Control Regulation (hereinafter referred to as "the said Regulations") for the notified areas of MIDC;

And whereas, vide section 115(1) of the said Act, the Urban Development Department, Government of Maharashtra has sanctioned the said regulation vide notification No. TPB/4395/353/CR-135/95/UD-11, dated 7th January 1999;

And whereas, the said Authority felt necessary to revise the said regulations and the said Authority in their Meeting No.314, dated 7th September 2007 *vide* Resolution No.4401 has approved to revise the said regulations;

And whereas, consulting the various organization and Industrial Association, MIDC has prepared the Draft Revised Regulation;

And whereas, after publication of Draft Revised Regulation u/s 115(2) and after considering the suggestions and objections received by it, the said Authority has accorded their approval to draft Revised D.C. Regulations *vide* meeting No.322, dated 24th July 2008;

And whereas, the said Authority vide its letter No.2195, dated 18th September 2008, has submitted the said Revised Development Control Regulations to Government for sanction;

And whereas, Government of Maharashtra after consulting the Director of Town Planning, has come (sic, come) to the conclusion that the said Revised Development Control Regulations shall be sanctioned with certain charges (sic, changes) as appended in the

schedule hitherto.

Now, therefore, Government of Maharashtra hereby accords its sanction to the said Revised Development Control Regulations as per the powers conferred under section 115 of the said act, and the said regulations shall come into force from the date of its publication in the Official Gazette.

Note.- A set of Development Control Regulations is available for inspection and sale of the general public during office hours in the all offices of M.I.D.C.”

116. The notification was published in the Official Gazette on September 24, 2009 and, therefore, the Revised Development Control Regulations came into force with effect from that date.

117. It is clear on a bare reading of the Notification dated August 31, 2009 that in exercise of power conferred by the modified version of section 115, since incorporated in section 40(3)(d) of the MRTP Act, and after consultation with the Director of Town Planning, the GoM accorded sanction to revise the earlier Development Control Regulations, 1999, which led to publication of the Revised Development Control Regulations by the Notification dated August 31, 2009. Although the notification only refers to section 115 as the enabling power, we find from the preamble to the said

Revised Development Control Regulations that the M.I.D.C., being the Special planning Authority for the "*notified areas*" as defined in sub-section (1A) of section 40, had evidently exercised the power conferred by clause (d) of sub-section (3) of section 40, which includes modified section 115, as applicable to a Special Planning Authority like the M.I.D.C. This position stands fortified from the recital in the Notification dated August 31, 2009 that the draft Revised Regulations under sub-section (2) of section 115 was published and suggestions/objections received by the M.I.D.C. were considered.

118. According to Dr. Sathe, the proposals offered by the M.I.D.C. in terms of sub-section (1) of section 115, upon being approved by the GoM, took shape and got transformed into the Revised Development Control Regulations which the U.D.D., GoM notified on August 31, 2009 by the aforesaid notification and the said notification itself was published in the Official Gazette on September 24, 2009.

119. Indeed, section 40, or for that matter section 115 incorporated in section 40, make no reference to any

Regulation. The power to make Regulation is conferred by section 159 of the MRTP Act. Although, of course, a special planning authority in terms of sub-section (1) of section 159 is also empowered to make regulation consistent with the MRTP Act and for carrying out the purposes of such Act, section 159 has not been referred to as the source of the power. The GoM too, while sanctioning/approving the draft Revised Regulations, has not invoked its power under sub-section (1) of section 159. The well-settled principle of law that mere omission to refer to the source of power or erroneous reference to any provision does not vitiate an action, so long the power is otherwise available under the law, is not attracted here. Bearing in mind that the Revised Development Control Regulations have been framed in exercise of power conferred by section 40 of the MRTP Act and regard being had to the definition of "Development Plan" in section 2(9) thereof, we are inclined to the view that the Revised Development Control Regulations are more in the nature of a Development Plan regulating development of areas covered by such plan, rather than a Regulation, the

contents whereof are consistent with the provisions of section 22 of the MRTP Act.

120. Coming back to the accusation of the U.D.D., GoM that section 128 is not applicable because the M.I.D.C. did not follow section 40 by placing proposals before the GoM, we need to deal with the same considering the developments as noted in the Notification dated August 31, 2009 as well as the contents of the Revised Development Control Regulations. The noun in plural "*proposals*" or the expression "*proposals for the development of land*" have not been defined in the MRTP Act. In common parlance, a 'proposal' is a plan or suggestion, especially a formal or written one, put forward for consideration by others. The M.I.D.C. having placed its proposal for revising the earlier Development Control Regulations before the GoM for approval, can it be said that section 40 was observed in the breach so as not to attract the rigours of section 128? The M.I.D.C. in forwarding the draft of the Revised Regulations having followed the provisions in sub-sections (2) and (3) of section 115, as incorporated in section 40, can it be alleged that the provisions of section 115 stand

breached? The answers to the above cannot but be in the negative.

121. The Revised Development Control Regulations in its Part II and in clause 17.1 'Classification of land-uses' thereunder, has 'Industrial' land-use as one of several classes of land-uses. Clauses 18 to 22 thereunder deal with different aspects of such land-use. In fact, such Regulations appear to be a complete code in itself that has been conceived and designed not only for the purpose of orderly establishment and organization of industries but optimum use of the facilities on offer. True, the Revised Development Control Regulations do not specifically refer to any land in particular but sight cannot be lost of the fact that in terms of clause 1.2, the same would be applicable to all development activities in the "*notified areas*" under the jurisdiction of the M.I.D.C. The U.D.D., GoM while considering the draft of the Revised Regulations appears to have consulted the Director of Town Planning too as per the mandate of sub-section (1) of section 115. Since such provision refers to "*proposals for development of land*", the U.D.D., GoM must be presumed to have proceeded to approve

the draft of the Revised Regulations as if it were a proposal from the M.I.D.C. and that too, the same had been generated after compliance with the provisions in sub-sections (2) and (3) of section 115. Also, in the absence of anything to the contrary, the Revised Development Control Regulations ought to be presumed to have been prepared by the M.I.D.C., and approved by the GoM, upon taking note of the Pune Regional Plan dated November 25, 1997. Thus, it can safely be held that not only the M.I.D.C. but also the GoM strictly adhered to the mandate of sub-section (4) of section 40 of the MRTP Act. In any event, it has not been claimed by any of the respondents, viz. the GoM, the P.M.R.D.A. or Kapil, that the Revised Development Control Regulations had been sanctioned/approved by the GoM without any proposal received from the M.I.D.C. At this distance of time and when no other plausible explanation is forthcoming from the side of the U.D.D., GoM or any other party, we cannot allow any accusation that has been flung, for argument's sake, to colour our views for saving an important project, such as the ring road, from facing hurdles in its way at the cost of

buildings/structures that have been built in accordance with building plans sanctioned by the M.I.D.C. on the basis of the laws that govern it. We are, thus, left with no other option but to hold that the accusation from the side of the U.D.D., GoM of the M.I.D.C. not having followed the provisions of section 40 of the MRTP Act for attracting section 128 thereof, has been hurled to be rejected. If indeed there was any breach of the statutory provisions, we wonder whether the U.D.D., GoM would have at all sanctioned/approved the Revised Development Control Regulations; also, whether it would have allowed other industries to come up and occupy a part of the alignment for the ring road project. We wish, the GoM had woken up from its slumber while constructions in the 'industrial area', falling within the alignment of the proposed ring road, were in progress. If while in slumber it has allowed the same, it must be regarded as a tacit approval of the projects undertaken in such 'industrial area'. The specificity of facts and a consistent course of action of the GoM of disapproving what had been proposed by the M.I.D.C. (for development of land within the "*notified areas*", to be used for

industries), convincing enough to draw the inference that law was breached being conspicuous by its absence, the exercise of power by the U.D.D., GoM under sub-section (1) of section 115 in sanctioning/approving the Revised Development Control Regulations cannot be seen to be an idle ritual, bereft of reality.

122. We repeat, the GoM had all the time at its disposal to acquire land for the ring road project ever since the Pune Regional Plan was published in the Official Gazette on November 25, 1997. Instead, the GoM acquired land under section 32 of the MID Act for the M.I.D.C. The subject land was one among many plots specifically acquired for the purpose of setting up the Infotech Park. Viewed in the light of sub-section (1A) of section 128 of the MRTP Act, such acquisition was a permissible course of action for the GoM and having regard to compliances with the provisions of section 115, as incorporated in section 40, we also have no hesitation to hold that the provision in sub-section (5) of section 40 would spring into life and render the Pune Regional Plan modified to the extent of approval of the proposals for

development of land by the GoM under sub-section (1) of section 115.

123. The logical conclusion that can thus be drawn from the above discussion is that the U.D.D., GoM and the P.M.R.D.A. are incorrect in their understanding of the legal provisions and have no authority in law to object to issuance of the O.C. and the B.C.C. in favour of GERA.

124. Apart from the discussions on the relevant provisions of law, it needs to be realized by one and all that strict adherence to the Pune Regional Plan (which contemplates a ring road but the alignment whereof was to be considered tentative as per the said plan) by turning a blind eye to what has happened over the years post such plan and what have been achieved post the acquisition of lands under section 32 of the MID Act, would not only be a cause of embarrassment but could cost the GoM heavily, not only in terms of money, but by retarding the growth of the Infotech Park itself together with all other ancillary industries. It is in such circumstances that the issue ought to be given a quietus.

125. The point canvassed by Mr. Tulzapurkar by relying on the doctrine of '*desuetude*', however, does not impress us. On facts, it is evident that the Pune Regional Plan was notified on November 25, 1997. It is also evident from the affidavit of U.D.D., GoM that some steps have been taken in terms of such plan after the birth of P.M.R.D.A. to acquire lands for the proposed ring road project. The hiatus between the two is not so wide that it would attract the aforesaid doctrine. The contention, accordingly, is overruled.

126. Before parting, we may also make a brief reference to the conduct of the P.M.R.D.A. in first issuing the stop-work notice dated July 17, 2018 and then withdrawing such notice on July 30, 2018, thereby preempting a decision on the petitioners' earlier writ petition. Had it not *sou motu* withdrawn the notice, despite being aware of the said building coming up within the limits of the ring road project, the issue could have been thrashed out three years back. The conduct of the P.M.R.D.A., thus, hardly inspires confidence.

127. It is now time to examine the subject matter of challenge in W.P.-II. The minutes of meeting dated April 1,

2021 have been questioned by Kapil, as noted above, apprehending that giving effect to the decision recorded in such minutes could abrogate his property rights. Such meeting had been convened in pursuance of a previous order dated March 3, 2021 passed by us to explore a workable solution. Now that we have almost concluded the process of deciding W.P.-I on its own merits having regard to our reading and understanding of the relevant laws and we do not propose to make any direction to any of the authorities, who are respondents before us, to give effect to the decision arrived at in such meeting, no right of Kapil can be said to have been breached warranting interdiction by the writ court. As on date, there being no valid decision taken by the GoM with regard to further re-alignment of the ring road that could prejudicially affect Kapil's property rights, the cause of action for instituting W.P.-II does not survive.

128. Insofar as I.A.-I and I.A.-III are concerned, we had while reserving judgment on W.P.-I and W.P.-II, observed that such applications for intervention do not deserve to be entertained and that the applicants would be given liberty to pursue their

remedies in accordance with law, for the reasons to follow.

129. As noticed above, the allegations in the said two applications are that in constructing the said building, GERA has encroached the agricultural lands of the applicants and that there has been no acquisition thereof in accordance with law; consequently, allegations have been levelled that the applicants stand deprived of compensation payable according to law.

130. Insofar as W.P.-I is concerned, such applicants have no right to intervene. Having regard to the nature of disclosure made by the said applicants in I.A.-I and I.A.-III that have left them aggrieved and the reasons which we have assigned hereinabove on the contentious issue, we see no reason as to why they should be allowed to participate in the proceedings of W.P.-I. Certainly, the writ court is not expected to examine whether in raising construction of the said building GERA has encroached any adjoining property. That is a matter which ought to be left for consideration of the M.I.D.C. while it would proceed to issue the O.C./the B.C.C. in respect of the said building. If at all the allegation of encroachment of

agricultural lands of the applicants by GERA is correct, the remedy of the applicants lies in approaching the appropriate civil court for declaration and injunction.

131. It is also on record that the applicant in I.A.-III has approached the MahaRERA for redressal. If that is the admitted case and the MahaRERA has the jurisdiction and competence to grant relief to the applicant in I.A.-III, it would be open to him to seek appropriate remedy before the MahaRERA in accordance with law.

132. We have also observed on August 24, 2021 (when judgment was reserved) that we would allow Kapil to intervene since he had instituted an independent proceeding by way of W.P.-II to ventilate his grievance against the minutes of the meeting dated April 1, 2021. In view of the findings that we have recorded above in the course of our discussion, on the relevant laws, we see no reason to pass any further order on I.A.-II.

CONCLUSION

133. For the foregoing reasons, we pass the following order:

ORDER

- (I) I.A. No.959 of 2021 stands allowed.
- (II) I.A. No. 768 of 2021 and I.A. No.1426 of 2021 stand dismissed with liberty to the respective applicants to pursue their legal remedies before the appropriate forum in accordance with law.
- (III) Insofar as W.P.-I (Writ Petition No.896 of 2021) is concerned,
 - (a) the Rule in W.P.-I is made absolute; and
 - (b) it is directed that the M.I.D.C. and its officers shall be under an obligation to grant Occupancy Certificate and Building Completion Certificate to the petitioners in respect of the building 'Imperium Rise', if the same has been constructed in accordance with the sanctioned building plan(s), upon completion of all legal formalities within a period of three months from today.
- (IV) Regarding W.P.-II (Writ Petition St.No.9531 of 2021), it is directed that:
 - (a) the same stands disposed of with the observation

that the cause of its institution does not survive in view of the reasons assigned by us for making the Rule in W.P.-I absolute;

- (b) however, the petitioner in W.P.-II shall be at liberty to seek legal remedy in accordance with law, if at all as a result of future re-alignment of the ring road, his property rights are affected.

134. The parties shall bear their own costs.

(G.S. KULKARNI, J.)

(CHIEF JUSTICE)

PRAVIN
DASHARATH
PANDIT

Digitally signed by
PRAVIN DASHARATH
PANDIT
Date: 2021.11.22
20:48:30 +0530