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REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5683 OF 2022

**UNITY MALL PREMISES CO-
OPERATIVE SOCIETY LTD,**
a Cooperative Society, registered under the
provisions of Maharashtra Co-operative
Societies Act, 1960 having its registration
No.PLR/VSI/HSG/O/1119/2020 and
address Survey No. 283A and 284-A next
to Big Bazaar, Bhabola-Papdy Rao, Vasai
(W), Palghar 401202.

...PETITIONER

~ VERSUS ~

- 1. VASAI-VIRAR CITY MUNICIPAL
CORPORATION,**
a Statutory Body incorporated under
the Maharashtra Municipal
Corporations Act, 1949 having its
Main Office at Opposite Virar Railway
Station, Virar (East), 403 305 and Vasai,
I Ward Office at Par Naka, Opposite
DM Petit Hospital, Zenda Bazar,
Vasai (West), 401 201.
- 2. ANIL KUMAR PAWAR,**
The Municipal Commissioner of Vasai-
Virar City Municipal Corporation

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having office at Par Naka, Opposite DM Petit Hospital, Zenda Bazar, Vasai (West), 401 201.

3. **THE DEPUTY DIRECTOR, TOWN PLANNING,**
Vasai-Virar City Municipal Corporation
having address at Par Naka, Opposite DM Petit Hospital, Zenda Bazar, Vasai (West), 401 201.
4. **SATISH J DATTANI,**
Sole Proprietor of M/s Dattani Estate Developers, through his duly Authorised Signatory/ Constituted Attorney of Brijesh Satish Dattani, having office at Lakshmi Shopping Centre, 2nd floor, VL Lane, Kandivali (West), Mumbai 400 067.
5. **CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED,**
a Government Company incorporated under the Companies Act, 1956, having its registered office at Nirmal, 2nd floor, Nariman Point, Mumbai 400 021 and Vasai Office at Ambika Commercial Complex, Vasai East, District Thane (now Palghar) 401 210.
6. **DATTANI VILLAGE BUILDING NO. 1 CO-OPERATIVE HOUSING SOCIETY LIMITED,**
a Cooperative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 having address at Bhabola-Papdy Road, Vasai (W), Palghar 401 202.

**7. DATTANI VILLAGE BUILDING
NO. 2 CO-OPERATIVE HOUSING
SOCIETY LIMITED,**
a Cooperative Housing Society
registered under the provisions of the
Maharashtra Co-operative Societies
Act, 1960 having address at Bhabola-
Papdy Road, Vasai (W), Palghar 401
202.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr Mayur Khandeparkar, with <i>Aneesa Cheema, Nitin G Raut, GP Vas, Sunita Serrao, Dhvani Mehta, i/b P Vas & Co.</i>
FOR RESPONDENT NO.1- VVC MC	Mr MP Rao, Senior Advocate, i/b <i>Swati Sagvekar.</i>
FOR RESPONDENT NO.4	Mr Rajiv Narula, with Mehek <i>Chowdhary, Milind Mane, i/b Jhangiani Narula & Associates.</i>
FOR RESPONDENT NO.5	Mrs Uma Palsuledesai, i/b BB <i>Sharma, for Respondent No. 5.</i>

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

DATED : 9th November 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Rule. There are Affidavits in Reply and Rejoinder. Rule is made returnable forthwith.

2. We have heard Mr Khandeparkar for the Petitioner, Mr Rao for the Vasai-Virar City Municipal Corporation (“VVCMC”) and Mr Narula for Respondent No 4 the developer (“Dattani”) at some length.

3. Before we proceed to the individual facts of the Petition and the questions of law and the rival submissions, we believe it is necessary to take a step back to address the issue of public law that Mr Khandeparkar canvasses. This needs to be set in context.

4. What is involved here is the provision of a particular ancillary facility, popularly known in planning law as an ‘amenity’, in the vicinity of a commercial complex. The amenity in question is ‘parking’. This is distinguished from the very beginning from parking as we understand it in residential developments where a parking spot is associated with, tied to, or goes along with a residential apartment or flat. Here, it is not only the commercial shop owners who would use the parking but more importantly it is their visitors who would use the parking.

5. The reason we believe it is important to address this at the forefront is because of the stand taken by both Mr Rao and Mr Narula. In one voice they say that this Petition involves no question of public law. It is purely a private contractual dispute between the Petitioner on the one hand and Dattani on the other. Whether they say so in so many words or not, this is a submission that is directed towards maintainability of the Writ Petition under Article 226 of the Constitution of India.

6. More specifically, it has been Mr Rao's submission, and which we will consider in detail a little later in this judgment, that in the memo of the Petition, the Petitioner has been careful — he uses the word 'astute' — not to point to any specific violation or infraction of any planning provision, law, statute or regulation. Against the Municipal Corporation, therefore, he submits there is no failure to perform a statutory or public duty and, correspondingly no public law remedy nor any enforceable right is made out in the Petition itself.

7. For his part, Mr Narula for Dattani, supports this submission but carries it further by saying that even factually there is no basis for the Petition at all. There is no reduction or diminution of the 'parking amenity' that was part of a contract between the individuals who are now members of the Petitioner Society and Dattani.

8. Having given this some considerable thought, we believe that these oppositions are perhaps over- simplistic and do not completely convey nor adequately address the issue at hand.

9. The development is a large one. It takes the form of what we know as a 'layout' where multiple constructions are put up as part of a single proposal. Work is ongoing. The Petitioner Society's members have commercial shops in a mall.

10. By definition, a 'Commercial Mall' is an agglomeration of various shopping outlets, and these will vary from retail vendors of

various descriptions to food courts, entertainment areas (games or, as here, a multiplex cinema theatre).

11. It is not in dispute that the present mall, Unity Mall, is only one of several developments in the larger layout being done by Dattani. Essential to any understanding of such developments is the acknowledgement of a commonsensical recognition that a mall succeeds or fails depending on what are called footfalls i.e., the number of visitors who come to it. If visitors are in some way impeded or inconvenienced and footfalls diminish, the entire commercial enterprise not only of individual shops but of the mall itself is imperilled.

12. Of course, there are layers to this. Individual holders or occupants of shops may need to pay license fees or other outgoings and those are not linked to the number of visitors or even necessarily to turnover. There are fixed costs: rental, electricity, security, wages and more. It is common experience that malls are usually part of large layouts. Standalone malls in smaller areas are infrequent though by no means unknown. But if a layout is large, we should typically or predominantly find it in the city's suburbs or towards its outskirts because that is where large tracts of lands are available. The geography of this city tells us that the proliferation of malls is greater towards the north where there is a greater available landmass. These malls are also known to be proximate to residential localities.

13. Commercial malls are also great equalizers. They are frequented by every strata of society whether it is for entertainment or shopping or sometimes even for the air-conditioning. The issue in the Petition is self-evident. If there is shopping in a commercial mall, then there must be some reasonable convenient method not only of reaching the mall but of being able to ferry back the shopping. This may be particularly true where a mall features not just shopping for small items but bulkier items or household provisions.

14. Necessarily, this means that malls typically provision for parking. Separate parking arrangements are made for two wheelers and four wheelers. Many four-wheelers are self-driven. Especially on weekends, we know malls to be frequented by entire families for several hours or even a full day, for there is much to be had between the shopping, the food offerings, theatres, children's play areas and so forth. Because land for construction is scarce and because malls need large built areas, they are more often than not removed from the more densely populated areas. This means that some form of vehicular transport becomes a necessity. Public transportation is not always a viable option particularly in bad weather and given that malls offer shopping. This may perhaps be distinguished from individual standalone restaurants and hotels which may have valet parking. Usually, parking lots in malls are either covered (accessed by ramps) or open air spaces with demarcated parking slots. No mall uses parking on a public road or thoroughfare — and even that is almost impossible to come by. At best, therefore, a mall visitor has only to cross a car park entry or exit lane to enter the mall. More

often, where parking is provided within the mall, there is direct access to the mall from the car parking facility itself.

15. If convenient parking is unavailable in reasonable convenient proximity in and around the mall or if, say, the parking for one mall is provided in the basement of another mall, there is likely to be a direct impact on the mall in question. Individual and personal safety and security is undoubtedly a concern because visitors include children and the elderly.

16. The question of public law that therefore presents itself to us in this Petition is whether on the basis of a contract a developer can alter the amenity in a layout in such a way as to diminish and render almost entirely unusable — and certainly thoroughly inconvenient — parking that was once earlier promised and assured to the mall in question.

17. This is not just a matter of a private contractual dispute. It is true that there may be various amendments and modifications that a developer may well seek to make to amenity spaces within the mall. The question from the perspective of a planning authority such as the VVCMC must always be, and we shall shortly assess this in the context of Maharashtra Regional Town Planning Act, 1966 (“**the MRTP Act**”) and the Unified Development Control and Promotion Regulations 2020 (“**the UDCPR 2020**”), whether permissions have to be granted simply because the developer asks for them and claims these as of right, or whether the planning authority must

have regard to wider public concerns including questions of public convenience and safety.

18. We have since the hearings in this matter began made several efforts to find a workable solution. None has come to fruition. We will therefore confine ourselves to the facts as they appear.

19. The Petitioner Society is only one of several societies on this plot. Respondent Nos 6 and 7 are two other societies. We are not concerned with them. The property in question is new Survey Number 225/A. It is at Village Sandor on Vasai Road (West), Taluka Vasai, District Palghar. The area of the plot is said to be 7130 sq mts. On this there is now a shopping mall of ground and four floors with a total coverage of 6421.21 sq mts. There is a multiplex theatre inside the mall. There are 214 different commercial units of varying sizes. The disputed parking relates to 204 car parking spaces and 310 two wheeler spaces on what was said to be land appurtenant to the Unity Mall.

20. In 1986, Dattani (and we use this to mean his entire clutch of entities and individuals) sought permission to convert a larger tract of land to non-agricultural purposes. Permission followed in 1987. On 21st March 2005, a Commencement Certificate (“CC”) came to be issued by the then planning authority, the City and Industrial Development Corporation (“CIDCO”), to Dattani for the development of this property. CIDCO approved plans for the development for a multiplex theatre complex and a shopping mall in 2006. Dattani commenced construction. This work was completed

in 2011. This takes us immediately to a part Occupancy Certificate (“OC”) that was issued for the multiplex building on 25th October 2011. The as-built drawings were attached to the part-OC. These included a built-up area (“BUA”) statement and parking statement. We find it at page 340 of the Affidavit in Rejoinder. It showed 204 four wheeler car parking spaces and 310 two-wheeler parking spaces.

21. The fold-out plan at page 340 has a tabulation at the top captioned “built up area statement and summary”. These car parking figures are clearly shown against Sr No 3 which is called “the multiplex” in this tabulation. At page 72 of the Petition, there is another copy of the same drawing with the same parking area statement. But the number of car parking areas is only one aspect of the matter, and it is this that is possibly deceptive, because it is Mr Narula’s case for Dattani that there has been ‘no reduction’ in the number of car parking spaces; there has only been a ‘redistribution’. What this means, as we shall presently see, is that instead of being in one location, the parking spaces are, according to him, shown in the layout but at different locations.

22. The easiest way to see this is from drawings that were shown to us repeatedly. It may be useful at this stage to consider the drawings and the locations. One of these is to be found in a compilation that was given to us by the Petitioner. The Unity Mall is shown on the block plan to the lower left side. This is clearly seen in a plan dated 25th October 2011 which is part of a convenience compilation at page 473. The Unity Mall is shown on the south west

of the plot. A portion shown in the sketch just above and to the left of the Unity Mall and Multiplex and shaded in pink is a single contiguous area for the parking in question.

23. Now to immediately juxtapose what has happened today, and we will proceed a little later to see how this came to pass, but for the present only desire to provide a comparison, is that this pink-shaded portion has been carved up into diverse so called amenities.

24. There is a history to how these amenities changed form and ultimately these shape-shifting amenities resulted in, almost incredibly, the creation or the erection of nothing less than a bungalow for the Municipal Commissioner and a camp office, a structure of ground and two floors at the top right hand corner of what ought to have been, and was promised to be, the Unity Mall's car parking space. The statement in the Petition was that parking area was provided to the north west of the Unity Mall. The access road was to the north, opening on to a 30-meter wide DP Road, while the exit was on the eastern side of Unity Mall's compound.

25. After 2006 Dattani executed several registered agreements selling commercial units in the Unity Mall to various persons. One such agreement is at page 82 of the Petition.

26. Matters remained at this level till 9th December 2020. This is significant because it was in September of that year that the UDCPR 2020 came into force. Entirely without consent of or even intimation to the Petitioner, Dattani sought an amendment to the

layout proposal. This car parking space that we have described above was now to be shown as a Recreational Ground or a RG. This was the first amendment. Dattani was to have formed a co-operative society. He did not. Consequently, 170 owners who, between them, held 208 shops came together and sought registration of the Petitioner Society.

27. In early January 2021 the Petitioner learnt of this first amendment proposed by Dattani. The Society filed a Right to Information (“RTI”) application. It received documents a little later and on 9th February 2021 complained to the VVCMC. A copy of this complaint is at page 177. The Petitioner said that the car parking spaces had gone down from 204 to 54. The parking for two wheelers had shrunk from 310 to 113. The entire parking facility was now repositioned and proposed to the south east of the Unity Mall complex although this had a garden with a fountain and a stepped entrance area that had already existed for 10 years. The whole plan was unworkable because loading and unloading areas were shown at the front of the mall and this was contrary to the UDCPR 2020 itself.

28. To make matters worse, the loading and unloading areas were shown to be placed on gutters and footpaths at the front of the Unity Mall. To the north east of the mall there was now parking purportedly shown although there existed at that location four underground water tanks for potable water, toilet water and firefighting systems. The eastern and northern sides of the Unity Mall building were now being shown as elevated by two and half or

three feet from street level, thus making 13 organized vehicular access almost impossible. A boundary wall separating the Petitioner Society from the 6th Respondent Society was sought to be deleted and was being shown instead as car parking. Similarly, the common boundary wall of the Petitioner's property and that of Respondent No 7 to the west had disappeared and instead there was now a wider road which clearly encroached on the Unity Mall property. The so called RG area was 8192.3 meters (shown as 8,188.56 meters) and the RG location was shifted by showing an area of 1285.28 sq mts in the Unity Mall's area.

29. On 2nd June 2021, Dattani executed an agreement for transferring this amenity plot to the VVCMC. One of the conditions was that this amenity plot would be used for public purposes.

30. In the meantime, the VVCMC forwarded the Petitioner's complaint to Dattani and sought an explanation on 5th July 2021. Dattani's reply came on 13th August 2021 refuting the Petitioner's contentions. In particular, and this will be important. Dattani contended that he held a blanket consent under written contractual agreements with the Petitioner's members and was therefore entitled in law to deal with the amenities, by whatever name called in any way he desired; in short, that no consent of the Petitioner Society was required.

31. In December 2021, the Petitioner sought a deemed conveyance from the Deputy Registrar and competent authority. While this application was pending, Dattani now put in a second

amendment proposal on 24th December 2021. This was again without intimation to or consent of the Petitioner and this proposed yet another change to these amenities. By this 2021 second amendment, a recreation ground was shown on the Unity Mall property and was allotted for the construction of a bungalow for the Municipal Commissioner. This was positioned entirely within the originally promised Unity Mall car parking space. Some parking spaces were shifted to the southern side of the mall building in what were earlier the loading and unloading areas. The Petitioner objected.

32. On 3rd April 2022 the Municipal Commissioner called a meeting, but the Petitioners say they were told that for various reasons no parking would be permitted within 10 meters of the Commissioner's bungalow.

33. This Petition was filed on 26th April 2022. The challenge in the Petition is to the sanction to both these amendments. The Petition itself has been amended and we now set out all the prayers as they currently stand: prayer clauses (a), (a i), (b), (bi), (c), (ci), (cii), (d), (e), (f), (fi) and (fii) read as follows:

“(a) that this Hon’ble Court be pleased to issue a Writ of Certiorari or a Writ, Order or a direction in the nature of Certiorari by calling for the records, papers, plans etc. in respect of the subject Commercial Mall Building viz. ‘Unity Mall’ from Respondent Nos. 1 to 3 pertaining to the Impugned First Illegal Amendments vide the Impugned Order dated 09th December 2020 and the Impugned Second Illegal Amendments vide the Impugned Order dated 24th December 2021 to the original Plan No. BP-736

VP-762 dated 25th October 2011 along with that of the entire layout and after examining and scrutinizing the legality and validity of the same to quash and set aside the said Impugned Order dated 09th December 2020 (Exhibit 'I' hereto) and the impugned order dated 24th December 2021 (Exhibit 'N' hereto) both amending the 'As Built Drawing' (Original Drawing) with Parking Statement No. BP-736 VP-762 dated 25th October 2011 (Exhibits 'A' and 'A-1' hereto) and/or the illegalities in the entire layout.

(a i) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ Order of a direction in the nature of Certiorari by calling for the records, papers, plans, etc of the Impugned Agreement of Handing over dated 2nd June 2021 and Impugned Deed of Rectification dated 27th April 2022 and after examining and scrutinizing the legality and validity of the same quash and set aside the said Impugned Agreement of Handing over dated 2nd June 2021 and Impugned Deed of Rectification dated 27th April 2022 as illegal, null, void, bad in law and not enforceable.

(b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ, Order or direction in the nature of Mandamus directing a Respondent Nos. 1 to 3 their servants agents of anybody acting through them including Respondent No. 4 to restore/cause to be restored the original position of the Petitioners said property as per the 'As Built Drawing' (Original Drawing) with Parking Statement No. BP-736 VP-762 dated 25th October 2011 as also its vicinity which is been disrupted, altered, dug, excavated, demolished, destroyed, changed or done or caused to be done pursuant to the Impugned First Illegal Amendments vide the Impugned Order dated 09th December 2020 (Exhibit 'I' hereto) or the Impugned Second Illegal Amendments vide the Impugned Order dated 24th December 2021 (Exhibit 'N' hereto) at the cost

of Respondent Nos. 1 to 3 and/or Respondent No. 4 builder, either jointly and severally.

(b i) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ Order or Direction in the nature of Mandamus directing the Respondent to 1 to 3 and 4 their servants, agents or anybody acting through them to remove the construction for Municipal Commissioner's Bungalow on the Petitioner's parking area appurtenant to the said Commercial Multiplex Theater Building Complex now known as Unity Mall, bearing New Survey No. 255/A (Old Survey No. 283/A) of the Petitioner's said property alongwith their material, machinery and laborers at their own cost.

(c) that this Hon'ble Court be pleased to declare that the 'As Built Drawing' (Original Drawing) with Parking statement No. BP-736 VP-762 dated 25th October 2011 (Exhibit 'A' and 'A-1' hereto) is legal, valid, binding, enforceable and the only valid plans applicable to the Petitioner's said property (described in the schedule at Exhibit 'C' hereto).

(c i) that this Hon'ble Court be pleased to declare that the Impugned Agreement of Handing over dated 2nd June 2021 and Impugned Deed of Rectification dated 27th April 2022 is illegal, null, void, unenforceable, not binding on the Petitioner and the same be cancelled and delivered.

(c ii) that this Hon'ble Court be pleased to declare that the Mutation entries, if any made in favour of Respondent No. 1 to 3 in respect of the Plot of Petitioner's parking area appurtenant to the said Commercial Multiplex Theatre Building Complex now known as Unity Mall, bearing Survey No. 255/A (Old Survey No. 283/A) of the Petitioner's said property pursuant to the Impugned Agreement to Handing over dated 2nd June 2021 and Impugned Deed of Rectification dated 27th April 2022 is

illegal with direction concerned Talathi, City Survey office, Tehsildar and other revenue authorities concerned to cancel the same.

(d) that this Hon'ble Court by its permanent injunction and order be pleased to restrain the Respondent Nos. 1 to 3 their officers, servants, agents or anybody acting through them from doing or permitting from doing any act or work pursuant to the Impugned First Illegal Amendments vide the Impugned Order dated 09th December 2020 (Exhibit 'I' hereto) or the Impugned Second Illegal Amendments vide the Impugned Order dated 24th December 2021 (Exhibit 'N' hereto) or from permitting any work contrary to 'As Built Drawing' (Original Drawing) with Parking Statement No. BP-736 VP-762 dated 25th October 2011;

(e) that this Hon'ble Court by its permanent injunction and order be pleased to restrain Respondent Nos. 1 to 3 from permitting the operation, implementation and execution of the said Impugned Order dated 09th December 2020 (Exhibit 'I' hereto) and/or Impugned Order dated 24th December 2021 (Exhibit 'N' hereto) and the respective plans passed thereunder;

(f) that this Hon'ble Court by its permanent injunction and order be pleased to restrain the Respondent No. 4 his servants, agents or anybody acting through him from doing any act or work in the Petitioners' said property and in the larger layout pursuant to the Impugned First Illegal Amendments vide the Impugned Order dated 09th December 2020 (Exhibit 'I' hereto) and/or the Impugned Second Illegal Amendments vide the Impugned Order dated 24th December 2021 (Exhibit 'N' hereto) and/or from doing any work contrary to 'As Built Drawing' (Original Drawing) with Parking Statement No. BP-736 VP-762 dated 25th October 2011 (Exhibit 'A', 'A-1' hereto).

(fi) that this Hon'ble Court by its permanent Injunction and Order be pleased to restrain Respondent No. 1 to 3 and/or 4 or both from Mutating their names in respect of the Portion of the Petitioner's Parking area appurtenant to the said Commercial Multiplex Theatre Building Complex now known as Unity Mall, bearing New Survey No. 255/A (Old Survey No. 283/A) of the Petitioner's said property on which the Municipal Commissioner's Bungalow is sought to be constructed.

(fii) that this Hon'ble Court by its Permanent Injunction and Order be pleased to restrain Respondent No. 1 to 3 and Respondent No. 4 from carrying out any construction, digging, excavation, alterations in etc in respect of the construction of the Municipal Commissioner's Bungalow in the Parking area appurtenant to the said Commercial Multiplex Theatre Building Complex now known as Unity Mall, bearing, New Survey No. 255/A (Old Survey No. 283/A) of the Petitioner's said property of the Petitioners said property."

34. Just before this Petition was filed, Dattani executed a so-called Deed of Rectification on 2nd April 2022 in an attempt to 'rectify' the description of the area described in the Agreement of 2nd June 2021.

35. On 4th May 2022, this Court granted time to file Affidavits but made it clear in paragraph 6 that any further construction would be subject to further orders of the Court and the Respondents could not claim any equities.

36. Dattani filed an Affidavit in Reply on 4th May 2022. Some of the contentions in this Affidavit may as well be noted immediately.

In paragraph 5.12, Dattani said that the original plan proposed multiple structures on the larger layout plot. The only relevant change for the Unity Mall property was that the previous parking space on the southwestern side of the Unity Mall building was now proposed as a garden in the amended layout. In the first amendment this was shown as a garden as amenity Plot No 3. This was apparently changed to a reservation for the Commissioner's bungalow because this was required, or so Dattani says, by the VVCMC.

37. More importantly, in paragraph 6 Dattani denied that the car parking space was an entitlement of the Petitioner Society although he agreed that it was a planning requirement of the larger layout. This parking was always open to the sky, but Dattani denied that he had ever represented to the Petitioner or its members that this parking would 'belong' to them or to their Society. In paragraph 7, he amplified this to say that the amenity did not form part of the amenity of the Unity Mall Society. It was therefore not covered by any rights of the Society. Then in paragraph 8 Dattani said that originally in 2006 there were a total of 133 car parking spaces. These were increased in 2010 to 204. In the latest layout plan, 57 two-wheeler parking spaces and 54 four wheeler parking spaces were provided '*in the periphery*' of the Unity Mall building, but 253 two-wheeler parking spaces and 150 four-wheeler parking spaces were provided 'elsewhere in the layout'. Dattani claimed that therefore planning requirements were met to the satisfaction of the VVCMC.

38. Interestingly, in paragraph 9 Dattani said that the parking package of 204 parking spaces was indeed compulsorily required but was being provided elsewhere in the layout. In other words, the Petitioner could not insist on parking being at a particular location. In paragraph 10, Dattani said that this open-to-sky parking was ‘never a common amenity’ of the Unity Mall building. Dattani was within his rights to change the location of the parking without the Petitioner Society’s consent and without even informing it, and even to substitute the original parking area with that of a bungalow for the Municipal Commissioner.

39. This statement that the amenity space was to be used for construction of the Municipal Commissioner’s bungalow was reiterated in a further Affidavit of 6th June 2022.

40. On 15th June 2022, the VVCMC filed an Affidavit in Reply. It took the stand that parking in the layout was not ‘reserved’ and ‘that the parking had merely been realigned’ during the amendment. It is argued that Vasai-Virar Development Control Regulations 2001 (“**the VVDCR 2001**”), which predated the UDCPR 2020, provided for a common facility centre area. This meant that any amenity could be approved, and it was on this basis that the Municipal Corporation had approved the ‘proposal’ for the Commissioner’s bungalow. The VVCMC adopted Dattani’s stand about the dispersed spread of car parking spaces throughout the layout.

41. The Petitioner filed a Rejoinder on 17th June 2022. Then there followed on 29th July 2022 an Additional Affidavit by Dattani which now brought on record the Deed of Rectification of 27th April 2022. We allowed the Petition to be amended a little thereafter and an Affidavit in Reply came to be filed to the amended Petition by Dattani on 6th September 2022.

42. This is the factual background. To summarise: first, car parking was shown in the proximate vicinity of the Unity Mall building. It was open to the sky. It had defined entry and exit points. It provided for a certain number of four wheeler car parking spaces and two wheeler parking spaces. Without the Petitioner's knowledge or consent, this was by the first amendment broken up into amenity spaces showing a recreational ground. Some part of that amenity was "surrendered" to the Municipal Corporation and by the second amendment, where there was to be a parking for the Unity Mall, there was now a Commissioner's bungalow with a narrowed access.

43. "Our Mall is now all but useless," is the submission with which Mr Khandeparkar opens his case. It is inconceivable he submits, and we believe quite correctly, that any rational, reasonable or sane citizen would want to visit a mall, struggle to find car parking to begin with and worse yet to have to walk several hundred meters to reach the mall from the car parking space. To cross a busy internal layout road would certainly be out of the question. No thought is spared as to what is to be done about the security of children or older people and how they are expected to cross what is evidently a

busy internal layout road, used for other structures and for larger goods-carrying vehicles. The entire approach of the Respondents, Mr Khandeparkar submits, is based on one simple fallacy: that parking in the context of a commercial mall is simply 'nice to have' but is not essential. It might as well be an ornamental feature. To the contrary, he submits; it is an essential and mandatory planning condition. No commercial layout is sanctioned or permitted unless car parking is provided. Obviously, the underlying rationale is that a mall cannot be permitted without parking provisions made, or permitted in a way that results in adding to traffic and congestion immediately outside the layout complex. The entire scheme of permitting commercial layout development is an understanding and an acceptance that people will arrive in vehicles which will then go off public roads for parking, entry and exit. Therefore, parking must be provided within the proposed complex.

44. This is not only a question of numbers. It is also a question of site location and specifically of providing parking proximate to the mall.

45. He clarifies that this has nothing at all to do with the convenience of the shop owners. It is a matter of public safety and public convenience, that is to say, the convenience of the public which accesses and visits the mall. It is for those shoppers and visitors that such a parking facility is intended.

46. The OC plan of 25th October 2011 and the built up area statement and summary to which we have already referred provides

for the parking space specifically in the context of the mall of the Petitioner Society (which has a multiplex). The OC was granted on the basis of “As Built Drawings’ under the VVDCR 2001 applicable to the Vasai Virar Sub-division. It is inconceivable, Mr Khandeparkar submits, again we think with considerable justification, that the OC can continue but the underlying drawings can simply be altered beyond all recognition. In the OC plan there is a division or distribution of car parking space. It is a simple multiplier: one parking space for every 50 sq mts of shopping area; and therefore, there are 103 car parking spaces for shopping and 101 for the theatre (on a calculus of one parking for every 10 seats, there being a total of 1012 theatre seats). The aggregate four wheeler parking would thus be 204 covering 5177.66 sq mts and in addition there would be 310 two wheeler parking. There were also six loading and unloading bays. All this was in a single, contiguous, consolidated area.

47. He draws our attention to Regulation 5.12 of the VVDCR 2001. Regulation 5.12.2.1 says that car parking spaces are to be exclusive of a clear circulation space of 3.6 mts (later amended to 3 mts) around the building. Now if the car parking space is provided at some distance away from the building this clause is rendered meaningless. Further, parking spaces for buildings where there are likely to be congregations of people such as cinema theatres are specified in Table 8 below Regulation 5.12.4.1. This was the basis of sanctioning the proposal and granting the OC to begin with.

48. The UDCPR 2020 as applicable to Vasai-Virar came into force on 2nd December 2020. By that time, the sanctioned car parking spaces as identified in the OC plan were already being used by the members of the Petitioner Society and their customers/visitors. Seven days later Dattani sought to unilaterally amend the plan and now introduced for the first time RG No 6 of 1285.28 sq mts in place of the car parking space. On this plan to the north west was a new provision for the Commissioner's bungalow adjacent to what was shown now as RG No 4. There was never a development plan reservation for a Municipal Commissioner's bungalow in the Petitioner's mall plot or the associated car parking spaces.

49. It is decidedly odd, Mr Khandeparkar submits, that a Municipal Commissioner's bungalow's site is shown as an 'amenity space' or that there is an amenity reservation shown despite an OC having been issued nine years earlier in 2011.

50. The effect of the first amendment was that Dattani reduced the 'proximate' car parking spaces from 204 to 54 and for two wheelers from 310 to 113. Secondly the common boundary wall of the Unity Mall structure and the property of the 7th Respondent on the west was not shown. Instead of the earlier six meter road there was now a road of 12 meters width. Third an area of 500 sq mts was shown as a 'recreation ground' in the Unity Mall property. The 2021 second amendment deleted RG No 6 and now introduced the Municipal Commissioner's bungalow. There appears to be no such

written requisition from the VVCMC, and it is certainly not shown to be within any provision of the UDCPR 2020.

51. In other words, Dattani showed a portion that he himself indicated was reserved for the Municipal Commissioner's bungalow and then proceeded to surrender it to the Municipal Corporation by a Deed of Transfer dated 2nd June 2021 followed by a Deed of Rectification dated 27th April 2022. That this was done under Section 126 of the MRTP Act to get additional Floor Space Index ("FSI") benefit is not in dispute.

52. The submissions on behalf of the Petitioner may be summarized thus:

- (i) These changes were without consent of the Petitioner Society. That consent was necessary.
- (ii) The changes made no viable alternative provision for car parking spaces.
- (iii) The changes effectively reduced the existing mall to a commercial space without its car parking amenity and this was in violation of compulsory car parking requirements which can be related to the sanction and the grant of the OC's.
- (iv) The requirement that car parking spaces must be adjoining or alongside the mall under UDCPR DCR Regulation 8.1.1 is violated.
- (v) It is impermissible to say that car parking spaces simply exist *somewhere* in the layout but no one can tell where.

Rectangles are simply shown on a map without any concern as to how these will actually be utilized in practice.

- (vi) The failure to recognize proximate car parking as essential to a functioning and functional mall is a failure of the planning process. It is not simply a matter of a contractual breach.
- (vii) Without car parking spaces a mall has no utility to the visiting general public and scattered parking is not only a public inconvenience but also a public safety hazard.

53. It is impermissible to provide one commercial unit's car parking in an adjoining mall or elsewhere in the vicinity because that amenity is tied as part of the sanction and the OC for the mall itself. Permitting the dispersal of the car parking is a breach of planning law because it effectively results in the deletion of mandatory car parking spaces. That the Municipal Corporation has, by virtue of these deletions and surrenders, obtained a tangible benefit to itself in the form of a Municipal Commissioner's bungalow and camp office is an aspect of *mala fides* that speaks for itself and does not require any great evidence.

54. Mr Khandeparkar points out that Regulation 1.4(vi) of UDCPR 2020 says that for revising development permissions granted before the advent of the UDCPR 2020 the consent of third parties in favour of whom interest were created is mandatory. There was no question therefore even de hors a contract of doing away

with the consent of the Society. That is a statutory obligation and none may contract out of it.

55. Even otherwise, Regulation 3.4.3 of the UDCPR 2020 says in terms that no permission would be granted to delete or reduce open spaces from existing sanctioned layouts or sub divisions. This does permit a ‘rearrangement’ or ‘realignment’ of recreational open spaces without a decrease in area, subject to a minimum prescribed area, but only with the consent of plot/tenement holders/co-owners. Ordinarily, no such revision is permitted four years after the first final sanction.

56. It is in this context that Mr Khandeparkar invites our attention to the decision of the Supreme Court in *Nahalchand Laloochand Pvt Ltd v Panchali Cooperative Housing Society Ltd.*¹ This was under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“MOFA”) and dealt *inter alia* with the rights of the promoter vis-à-vis those of a society of flat purchasers in respect of open parking spaces/stilt parking spaces. The Supreme Court rejected the contention that the promoter had the right to sell stilt or open parking spaces and the submission that this right was not constrained by the statute but survived under Section 6 of the Transfer of Property Act, 1882. The builder had claimed protection under Article 300A of the Constitution of India saying that otherwise there would be an expropriation of property. The Supreme Court had no hesitation in negating this submission.

1 (2010) 9 SCC 536.

57. As we noted at the forefront, the present case may stand on a slightly different footing because we are not concerned with individual society members in a residential society. Again, the car parking spaces in question here are really not for the individual use of commercial unit holders. But that seems to us to make matters worse for the Corporation and for Mr Narula, because what is at play here are not individual rights inter se but concerns about public convenience and even public safety. Some of the observations of a Division Bench of this Court in *Sandeep Sharadchandra Thakur v Navi Mumbai Municipal Corporation & Ors*² may be relevant. In paragraph 23, the Division Bench said that the problems of car parking are complicated especially with the increase in car densities. Building bye-laws and development control rules and regulations for Municipal Corporations therefore make allowance and have requirements in regard to parking and parking spaces. The Court observed that planning and development authorities must act responsibly to deal with parking and transportation issues. Importantly maintaining parking spaces goes some distance to prevent a spill over of motor vehicles onto public roads and reduces road congestion.

58. But there is something in our view that is even more invidious and insidious at play. This so-called realignment and redistribution of car parking spaces is no random act of Dattani. It is a studied and deliberate decision. It was done the way it was done for a clearly discernible reason. The open-to-sky car parking space as it was originally provisioned and as we find it in the OC plan gives Dattani

2 2013 SCC OnLine Bom 489 : (2013) 3 AIR Bom R 449.

no benefit at all. It has no FSI utility. It is incapable of being monetised. But if it is transformed by some architectural or planning alchemy or prestidigitation into an 'amenity space' and that amenity space is redistributed, and that amenity space is then 'surrendered' to the Municipal Corporation, there is an immediate advantage in additional FSI and buildability that comes to Dattani.

59. The question is at whose cost? Obviously, at the Petitioner's cost is one answer; but that is only part of the answer. It comes at the very real cost of visitors to the Unity mall. We do not know precisely what we are being asked to accept, and which is clearly implicit in the submission on behalf of the VVCMC and Dattani namely, that it is perfectly all right for the Unity Mall to be a complete failure because no one will find it convenient to visit it. That is not a problem of either the VVCMC or Dattani. That various persons have paid significant amounts of money to acquire commercial premises in the mall on the assurance that it could be used reasonably as a mall, i.e., with parking to facilitate the visiting public, is now entirely irrelevant. The parking is simply something that Dattani can use, distribute, realign or in effect play with as he wishes and from which he can derive any form of monetary benefit but the Petitioner Society can have no say in this at all.

60. On the face of it such a submission is almost impossible to accept. The case by Mr Rao for the VVCMC on this is that no one separately paid for the car parking spaces and there were no allotments or beneficiaries. If there is an alternative made by the builder, then so far as the Municipal Corporation is concerned, that

is all there is to it. The builder has rights to the full exploitation of the property and the Municipal Corporation is required not to unreasonably deny those rights. He is at some pains to point out yet again that no violation of any DCR is pointed out and that the Municipal Commissioner's bungalow is not shown to be an impermissible structure. He maintains that in the original sanctioned plan of 25th October 2011 there were only 83 car parking spaces shown, not 204, and then says that until 2021 nobody even parked there. That is not a submission we are prepared to accept.

61. Mr Narula's submission is, as we have noted, on the dual basis that this is a private contractual dispute and it might at best be covered by the MOFA, the subject matter of a civil suit, but is are certainly not part of writ law. There is sufficient parking in the immediate periphery and the rest is distributed. He has these points to make: If Dattani can show that there is no reduction, if the Petitioner can show no infraction and no enforceable right and no public duty of the Corporation then, in his submission, the Petition must be dismissed.

62. We reject outright the submission that a Municipal Corporation or any planning authority or development authority under the MRTP Act must simply sanction for the asking any proposal that comes to it provided it falls within the frame of the planning law. The Municipal Corporation or any planning authority or development authority cannot turn a blind eye to the interests of the public at large. It certainly cannot be seen to be benefitting at the cost of the public interest and essential requirements.

63. What must inform planning decisions by a planning authority is set out in clear terms in the MRTP Act. First, we consider the definition of ‘development’ in Section 2(7) of the MRTP Act. Now this will have to be read with the amended Section 2(9A) introduced in 1991 of ‘development right’. These two sections tell us that development is of the widest possible import and a development right is said to mean the right to carry out every form of this development and includes Transferable Development Right (“TDR”) and FSI utilisation. But then we must have regard to certain other provisions of the MRTP Act. As far as regional plans are concerned, Section 14 sets out the contents of a regional plan. It reads as follows:

“14. Contents of Regional Plan:— Subject to the provisions of this Act and any rules made thereunder for regulating the form of a Regional plan and the manner in which it may be published, any such Regional plan shall indicate the manner in which the Regional Board propose that land in the Region should be used, whether by carrying out thereon development or otherwise, the stages by which any such development is to be carried out, **the network of communications and transport**, the proposals for conservation and development of natural resources, **and such other matters as are likely to have an important influence on the development of the Region;** and any such plan in particular, may provide for all or any of the following matters, or for such matters thereof as the State Government may direct, that is to say—

(a) allocation of land for different uses, general distribution and general locations of land, and the extent to which the land may be used as residential, industrial, agricultural, or as forest, or for mineral exploitation;

- (b) reservation of areas for open spaces, gardens, recreation, zoological gardens, nature reserves, animal sanctuaries, dairies and health resorts;
- (c) transport and communications, such as roads, highways, railways, waterways, canals and airports, including their development;
- (d) water supply, drainage, sewerage, sewage disposal and other public utilities, amenities and services including electricity and gas;
- (e) reservation of sites for new towns, industrial estates and any other large scale development or project which is required to be undertaken for proper development of the Region or new town;
- (f) preservation, conservation and development of areas of natural scenery, forest, wild life, natural resources, and land-scaping;
- (g) preservation of objects, features, structures or places of historical, natural, architectural or scientific interest and educational value;
- (h) areas required for military and defence purposes;
- (i) prevention of erosion, provision for afforestation, or reforestation, improvement and redevelopment of water front areas, rivers and lakes;
- (j) proposals for irrigation, water supply and hydro-electric works, flood control and prevention of river pollution;
- (k) providing for the relocation of population or industry from over-populated and industrially congested areas, and indicating the density or population or the concentration of industry to be allowed in any area.
- (l) Provisions for permission to be granted for controlling and regulating the use and development of land

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

(Emphasis added)

64. As the emphasized portions show, parking and matters likely to have an important influence on the development of the region must be provisioned in the Regional Plan. For development plans covered by Chapter III i.e., the development or redevelopment of areas within the jurisdiction of a planning authority such as the VVCMC, the corresponding provision is Section 22. It is perhaps even more detailed than Section 14 and it reads as follows:

“**22. Contents of Development Plan:-** A Development plan shall generally indicate the **manner in which the use of land in the area of the 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;
- (c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;
- (d) transport and communications, such as roads, high-ways, park ways, railways, water-ways, canals and airports, including their extension and development;
- (e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;
- (f) reservation of land for community facilities and services;
- (g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;
- (h) preservation, conservation and development of areas of natural scenery and landscape;
- (i) preservation of features, structures or places of historical, natural, architectural and scientific interest and

educational value and of heritage buildings and heritage precincts;

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

(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to requisition for public purpose or as specified in a Development plan, having regard to the provisions of section 14 or for development or for securing use of the land in the manner provided by or under this Act;

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

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

other matters as may be considered necessary for carrying out the objects of this Act.”

(Emphasis added)

65. In particular we note the emphasis that a development plan must have provision for transport, roads, park ways, designation of lands for public purposes, public assembly, and finally provisions for permissions to be granted for controlling and regulating the use and development of land within the jurisdiction of that local authority. Sub-clause (m) is particularly important. This speaks of conditions and restrictions in regard to open spaces to be maintained about i.e., around buildings the use and purposes to which buildings or specified areas of land may be appropriated and most importantly in sub-clause (m) we find the use of the words ‘parking space’ and ‘loading and unloading space’ for any building.

66. While on this subject we must look at the meaning given to the word ‘amenity’ in Section 2(2) of the MRTP Act.

(2) “amenity” means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences

67. This tells us that it is no part of a planning authority’s remit to look simply at development proposals from the perspective of a project proponent or a developer.

68. Planning is not meant only for developers. If that were so, there might as well be no planning at all. The mandate of the MRTTP Act is *balanced* development and this means that a balance must be struck between competing demands and equities. The demands of developers may be one. But equally important are the demands of purchasers and even more importantly and although they may be silent bystanders in a planning permission process, the general public.

69. Overall, no planning authority can lose sight of the persons for whom development is intended. This is almost determinative. An industrial complex is obviously meant to cater to the person running the industry and his or her or its staff and workmen. A residential development is meant for residents, people who will take up homes and for their households. Commerce is a two-way street. It needs a vendor and a purchaser. This may be in relation to goods or services. But there is no possibility of saying that a commercial layout is meant *only for the developer of the commercial layout* or that the concerns of the shop owners or their customers are immaterial or irrelevant to the planning or decision-making process. Such a view would be, in our estimation, not only so thoroughly unreasonable as to immediately invite the invocation of an Article 14 principle or even the principle of Wednesbury's unreasonableness and would also fall afoul of the well-settled principle and doctrine of proportionality. Above all the proportionality doctrine requires precisely that which we commend in this case i.e., that a balance must be struck.

70. The question is not whether Mr Narula's client has struck the balance. We have no such expectations of him. We make no such demands of him. He is after all a developer, and he is in pursuit of his profit motive as indeed he must be. But it is to Mr Rao's client the Municipal Corporation that we must turn for it is the Corporation and its Municipal Commissioner that must serve the foregoing public purposes demanded of any administrative authority, and must strike the appropriate balance, specifically while granting or refusing permission particularly for facilities or amenities that are intended for the public. Those concerns must be weighed. They cannot be ignored.

71. Now if we do that in the present Petition, we are unable to see how the needs of the public using the Unity Mall are in any way subserved by this constant juggling and re-jigging of spaces and of carving up the original open-to-sky parking lot and distributing bits and pieces of it over different locations. It can hardly be suggested that the public that wishes to come to the Unity Mall will be equally indifferent whether it parks in close proximity to the mall with convenient and safe access to it or is required to drive several hundred meters around the entire layout to another spot and then trudge to the mall. This is not only a question of the survival of the mall. It is that of course. But that raises the question about why any permission was given for the Unity Mall building in the first place if the intention was to divorce it so totally from an essential facility and amenity such as parking space. This is the public law element, and we are unable to see how the needs of the public have been subserved.

72. Indeed, in the present case there is an even more alarming factor. Things might have been placed somewhat differently had the developer simply created another commercial development on RG No 6. But for the Municipal Corporation to acquire for itself a significant facility such as a bungalow for its Commissioner and a camp office and to have this done at the cost of a parking facility associated with the commercial mall and meant for the shopping public is beyond egregious.

73. We are wholly unable to see how the VVCMC could have conferred such a benefit on itself. It is unthinkable that the developer could have been permitted to gerrymander the dimensions of the car parking lot and that the Municipal Commissioner could have granted permission in such a way that would result in the creation of a bungalow for the Municipal Commissioner himself.

74. Thus, when Mr Khandeparkar says that this is a case that reeks of *mala fides* in law, we are inclined to agree. There was no occasion for the creation of this Municipal Commissioner's bungalow at this location. There was no reservation for it in the Development Plan. It was only earmarked unilaterally by Dattani in his first amendment and shown as a proposed location and was then offered to the Municipal Corporation, and here is the evident quid pro quo, in exchange for additional FSI or TDR. This is something that we are not prepared to permit under any circumstances.

75. To make sure that nothing is lost in translation, we will put this as plainly as possible. This Municipal Commissioner has permitted the dilution and reduction of effective car parking amenities for Unity Mall at the instance of Dattani for a benefit to the Municipal Commissioner and the Municipal Corporation in exchange for granting Dattani higher FSI. That is all there is to it and there is not a single method or reason we can think of to justify such an action. It might have been entirely different had there been a pre-existing reservation for any purpose where this Municipal Commissioner's bungalow is now supposed to stand.

76. As far as the Society's rights or remedies for loss of damage are concerned, those may well be taken in an appropriate civil action, and we have nothing to say in that regard. Similarly, any rights that the Society seeks to invoke under MOFA are left open for appropriate proceedings.

77. In the present case, however, we are unable to accept that the amended plans as finally submitted by Dattani could ever have been sanctioned by the VVCMC. Both amendments in our view to the extent that they result in the reduction, re-allocation of the dimensions, location, and boundaries of the parking for Unity Mall as shown in the OC plan are therefore held to be entirely unlawful and illegal and are quashed and set aside.

78. Consequently, the Deed of Rectification and the Agreement of Handing over to the extent that it affects adversely the Petitioner Society will also have to be quashed and set aside.

79. It is sufficient to make Rule absolute in terms of prayer clause (a), (ai) to the extent noted above, (b), (bi), (c), (d), (e) and (f). As to prayer clause (bi), we clarify that if the Municipal Corporation can devise a method to restore the car parking of Unity Mall to that as shown in the OC as built drawings without demolishing the Commissioner's bungalow, then it is at liberty to do so.

80. The Petition is disposed of in these terms. No costs.

81. At the request of Ms Sagvekar we give the VVCMC 12 weeks for compliance from the date this order is uploaded.

(Kamal Khata, J)

(G. S. Patel, J)