

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

PUBLIC INTEREST LITIGATION NO. 123 OF 2016

Sandeep Thakur
Age: 65 years,
Indian Citizen and Inhabitant
residing at F8/RH6/Sector 6,
Vashi, Navi Mumbai 400 703

...Petitioner

Versus

1. The State of Maharashtra
Copy of the petition to be served
on Learned Government Pleader.
2. The Navi Mumbai Municipal Corporation
having its office at CBD-Belapur,
Navi Mumbai - 400 614
3. City & Industrial Development
Corporation of Maharashtra Limited
having it's office at 2nd floor,
Nirmal, Nariman Point,
Mumbai - 400 021.
4. Commissioner of Police
Navi Mumbai having his office at
CBD Belapur, Navi Mumbai
400 614.
5. Ekta JN-1/1-18 Apartment
Owner's Association,
Plot No.5, Sector No.9,
Juhu Nagar, Prabodhankar Thakre
Marg, Vashi, Navi Mumbai 400703
6. Kailash Apartment Owner's Association,
JN-1/19-45, Sector No.9, Juhu Nagar,
Prabodhankar Thakre Marg,

Vashi, Navi Mumbai 400 703

7. Builders Association of Navi Mumbai
A Public Trust duly registered under
the provisions of Maharashtra Public
Trust Act, 1950 having its office at
Office No. 308/309, Persipolis,
Plot No. 74, Sector 17, Vashi,
Navi Mumbai 400 703.

8. Nalin Shyamlal Sharma
Adult Indian Inhabitant,
Proprietor of M/s. Sai Developers,
having its office address at
Office No. 901, Goodwill Excellency,
Plot No. 62, Sector 17, Vashi,
Navi Mumbai 400703.

...Respondents

**WITH
INTERIM APPLICATION NO. 14928 OF 2023**

**WITH
INTERIM APPLICATION NO. 14929 OF 2023**

**WITH
INTERIM APPLICATION NO. 15735 OF 2023**

**IN
PUBLIC INTEREST LITIGATION NO. 123 OF 2016**

Mr. Sandeep Thakur, Petitioner-in-person present.
Mr. Tejesh Dande a/w Mr. Bharat Gadhavi, Mr. Vishal Navale, Ms.
Trusha Shah, Mr. Vikrant Khare & Mr. Pratik Sabrad for Respondent
No.2-NMMC.
Mr. B. B. Sharma for Respondent No. 3-CIDCO.
Mr. M. M. Pabale, AGP for Respondent No. 4-State.
Mr. Sugandh Deshmukh for Respondent Nos. 5 and 6.
Mr. Saket Mone a/w Mr. Devansh Shah i/by Vidhii Partners for
Respondent Nos. 7 and 8.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

RESERVED ON : 11th OCTOBER, 2023

PRONOUNCED ON : 22nd DECEMBER, 2023

JUDGMENT [Per Chief Justice]:

1. Heard the Petitioner in-person and the learned Counsel representing the Respondents.
2. This Public Interest Litigation (PIL) Petition has been filed expressing concerns about the parking spaces as laid down in the Unified Development Control and Promotion Regulations (hereinafter referred to as **“UDCPR”**) promulgated by the State Government vide notification dated 02/12/2020 so far as it relates to its application in the territories over which Navi Mumbai Municipal Corporation (hereinafter referred to as **“NMMC”**) exercises its jurisdiction.
3. The challenge to the impugned provisions of UDCPR is primarily on the ground that the same is absolutely arbitrary in as much as it attempts to nullify and subvert the Interim order dated 05/10/2016 passed by this Court in this PIL Petition.

4. It has also been argued by the Petitioner that NMMC vide its Affidavit dated 22/09/2016 filed in this Petition had assured the Court that it is willing to further increase the parking requirements by modifying the existing regulations relating to parking norms after the approval of the State Government, however, the said assurance has been given a go-by while promulgating the impugned UDCPR.

5. It has been further argued that by not accepting the recommendations made by the designated officer while finalizing the impugned provisions of UDCPR, the State Government has acted arbitrarily, which renders the impugned provisions of the said regulations null and void.

6. Opposing the PIL Petition, learned Counsel representing the Respondents have submitted that the impugned provisions of UDCPR are a piece of subordinate legislation and unless the said provisions are shown to be manifestly arbitrary or against any provisions of the Constitution or any other law including Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as **“MRTP Act”**), same cannot be struck down by this

Court for the reason that the scope of judicial review or judicial scrutiny of such subordinate legislation is limited.

7. The submission further is that in a challenge to subordinate legislation, presumption of its constitutionality has to be borne in mind and burden to establish the subordinate legislation being violative of any law lies heavily on the person intending to challenge the same. It is argued further by the Respondents that from the material available on record no inference can be drawn that the impugned provisions of UDCPR suffer from any illegality or procedural lapse or any other legal lacuna so as to render them null and void and hence, in this view of the matter, the PIL Petition is liable to be dismissed.

8. We have given our thoughtful consideration to the competing submissions made by learned Counsel representing the respective parties and have also perused the records available before us on this PIL Petition. For reflecting appropriately on the dispute and the issues raised in this PIL Petition, we need to note certain facts, which are relevant for the purposes of deciding the issues appropriately.

9. Prior to 07/09/1994, the Respondent No. 3-City and Industrial Development Corporation of Maharashtra (**CIDCO**) was the Planning Authority for all the nodes in Navi Mumbai. However, on 07/09/1994, the NMMC was appointed as Planning Authority for the development nodes of Navi Mumbai comprising of Vashi, Koparkhairane, Sanpada, Nerul, CBD-Belapur, Airoli etc. by the State Government.

10. The Development Control Regulations (hereinafter referred to as "**DCRs**") were framed by the CIDCO for the entire area of Navi Mumbai, which included the area presently under the jurisdiction of NMMC and the said DCRs were adopted and applied by NMMC as a well. However, in the year 2005 NMMC decided to frame its own DCRs and notification was published by the State Government on 12/12/2007 and 21/07/2008 sanctioning the said regulations with certain modifications.

11. The Petitioner filed PIL Petition viz. PIL No. 110 of 2009 with a prayer for quashing regulations 16.4.12 and 16.4.13 of the DCR regarding certain Change of Use and Mixed Use. The said PIL

Petition was decided by means of order dated 09/09/2014 whereby the said regulations were quashed. It has been further submitted by the Petitioner that despite increased requirement of parking spaces and despite phenomenal increase in number of vehicles, while notifying the DCRs for NMMC inadequate parking norms were provided in Regulation 44.

12. The Petitioner filed PIL Petition viz PIL No. 43 of 2009 with a prayer *inter alia* that NMMC be directed to revise the norms for parking spaces based on the data of ownership of vehicles and density collected prior to the year 2000. The said PIL Petition was disposed of by this Court by means of order dated 29/01/2009 with a direction to NMMC to consider the suggestions made by the Petitioner and to forward the recommendations for taking appropriate measures to the State Government. Thereafter, as per the submissions made by the Petitioner, he realized that the State Government had already issued notification u/s. 37(1-AA) of MRTP Act proposing to revise the aforesaid parking norms by inviting suggestions and objections to the proposed revision. The Petitioner is said to have made suggestions and objections in view of the notice published u/s. 37(1-AA) of the MRTP Act vide his

letter dated 16/02/2009 and also submitted written submissions on 29/06/2009 at the time of personal hearing.

13. The Petitioner has further submitted that since no action was taken by the authorities, he filed another PIL Petition viz. PIL No. 260 of 2009 submitting therein that despite the order dated 29/01/2009 passed by this Court in PIL No. 43 of 2009, the authorities had not taken any effective steps. The said PIL Petition No. 260 of 2009 was disposed of finally by a co-ordinate bench of this Court by means of an order dated 22/04/2010 noticing the statement made by the Additional Government Pleader appearing for the State that the Government is collecting data and after collection of data suitable amendments will be made in Regulation 44. The statement made on behalf of NMMC that relevant data has been forwarded to the State Government so that proper amendments can be made in Regulation 44 was also noticed by the Court in its order dated 22/04/2010. The Court, thus disposed of the said PIL Petition expressing confidence therein that necessary amendments shall be made in Regulation 44 by the State Government before 30/09/2010. Thereafter, the State Government issued notification dated 26/10/2010 revising the

parking norms specified in the earlier regulation no. 44.2.

14. Not being satisfied by the said notification dated 26/10/2010 whereby the amendments were made in Regulation 44.2, the Petitioner again filed PIL Petition viz. PIL No. 34 of 2011 with the assertion that the norms for parking spaces even after the issuance of notification dated 26/10/2010 do not meet the requirement. During the pendency of the said PIL Petition, the State Government issued corrigendum dated 26/04/2011 inserting certain corrections in the notification dated 26/10/2010 whereby one parking space for (1) 4 tenements having carpet area upto 35 sq.mt. each, (2) 2 tenements with carpet area exceeding 35 sq.mt. each, (3) 1 tenement with carpet area exceeding 45 sq.mt. but not exceeding 60 sq.mt. each and (4) $\frac{1}{2}$ tenements with carpet area exceeding 60 sq.mt. was provided. It was also provided by the Corrigendum dated 26/04/2011 that in addition to the above, parking shall be provided to the extent of 10% of the number stipulated above, subject to minimum of one.

15. Thereafter in pursuance of an order dated 22/06/2011 passed by this Court in PIL No. 34 of 2011 post decisional hearing

was provided to the Petitioner by the Principal Secretary of the State Government in the Department of Urban Development on 18/07/2011 and on the basis of the said personal hearing, a note was prepared by the Principal Secretary of the State Government in the Urban Development Department on 18/07/2011, wherein certain suggestions were made including the suggestion that parking requirement for residential use of smaller tenements upto 35 sq.mtrs carpet area will have to be amended and this exercise should be taken up and completed within six months.

16. The PIL No. 34 of 2011 was finally disposed of by a co-ordinate Bench of this Court by means of order dated 07/09/2011 by providing that directions/recommendations contained in the note dated 18/07/2011 prepared by the Principal Secretary will have to be followed by the NMMC and also by the State Government. The Court further directed that scientific survey may be started immediately and it may be completed as expeditiously as possible. The Court further directed that procedure u/s. 37 of MRTP Act to amend the DCRs will also be adopted and complied as early as possible.

17. As submitted by the Petitioner, since in pursuance of the order dated 07/09/2011 passed by this Court in PIL No. 34 of 2011, nothing was done, the proceedings of the instant PIL Petition have been instituted.

18. During pendency of this PIL Petition an order was passed by this Court on 05/10/2016 noticing the earlier round of litigation. The Court by means of this order dated 05/10/2016 issued certain directions, which are as under:

“17. Upon cumulative consideration of the aforesaid facts and circumstances, we issue the following directions: -

(a) The Commissioner, NMMC is directed to show cause as to why action under Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India be not initiated for non-compliance with the directions issued in the order dated 7 September 2011 in PIL 34 of 2011. Such cause to be shown within a period of four weeks from today;

(b) The NMMC and the State Government to comply with the directions issued by this Court in its order dated 7 September 2011 in PIL 34 of 2011 as expeditiously as possible and in any case within a period of three months from today.

(c) Taking into consideration the virtually undisputed material and circumstances referred to in paragraphs 13, 14 and 15 of this order, we grant interim relief in terms of prayer clause (E)

of the petition, which is transcribed in paragraph 3 of this order. This means that the NMMC, in any permission for construction/development which it may issue hereafter, shall necessarily include a condition that the owner / builder / developer provides at least one parking space for one tenement having built up area upto 45 sq. meters or carpet area upto 35 sq. meters."

19. During pendency of the instant PIL Petition and during the subsistence of the order dated 05/10/2016, the State Government published a notice u/s 37(1AA)(a) of the MRTP Act inviting objections and suggestions with respect to certain modifications proposed in the then existing DCRs. The said notice dated 08/03/2019 declared the intention of the State Government to replace the existing DCRs in supersession of all the earlier existing/proposed DCRs of NMMC. The notice dated 08/03/2019 described the proposed DCPR as "Draft Comprehensive and Integrated Development Control Regulations for Municipal Corporations in Mumbai Metropolitan Region".

20. The notification dated 08/03/2019 initially excluded certain municipal bodies including NMMC. However, a corrigendum was published on 09/08/2019 to correct certain errors and typographical mistakes in the notice dated 08/03/2019 whereby

the NMMC was included in the proposed DCRs. Pursuant to the said notice dated 08/03/2019 and corrigendum issued thereto, dated 09/08/2019, the Petitioner is said to have submitted his suggestions and objections to the proposed draft Regulations vide letter dated 03/12/2019 by stating therein that the proposed off street parking requirement depicts lesser area than what was required under existing DCRs and also under original draft regulations published on 28/02/2017 and gazetted on 02/03/2017.

21. In sum and substance, the Petitioner in his objections, submitted pursuant to the notice dated 08/03/2019 as corrected vide corrigendum dated 09/08/2019, stated that the proposed regulations will reduce the actual effective area for parking and that the same do not provide for adequate parking. In the objections it was also stated by the Petitioner that proposed regulations do not provide for any parking for shops and row houses for plots upto 100 sq.mrts though the existing DCRs provided for the same.

22. The process of preparing Comprehensive and Integrated Development Control Regulations for Municipal Corporations in

Mumbai Metropolitan Region initiated vide notification dated 08/03/2019 ultimately culminated in issuance of notification dated 02/12/2020 whereby requisite sanction was accorded by the State Government u/s 37(1-AA)(c) and u/s 20(4) of the MRPT Act. The sanctioned UDCPR was published by the State Government in the official gazette as well.

23. It has been stated by the Petitioner that in the UDCPR notified on 02/12/2020, provisions for off-street parking does not have any relation whatsoever with the off-street parking requirement in the existing DCR of NMMC and further that the same are derogative of the interim orders passed by this Court in this PIL Petition.

24. It is also the submission of the Petitioner that the Regulations 8.1 to 8.2.2 in the UDCPR notified on 02/12/2020 regarding off-street parking requirement run contrary to the assurance given by the NMMC in its Affidavit dated 22/09/2016 wherein it was stated that NMMC was willing to further increase the parking requirements by modifying the existing DCR relating to parking norms as per the recommendations of the Committee

after the approval of the State Government.

25. It has also been argued by the Petitioner that the said regulations are against the report of the designated officer whereby the government was advised to follow the orders passed by this Court and hence, the provisions regarding off-street parking requirements made in the UDCPR notified on 02/12/2020 are absolutely arbitrary which amounts to nullifying and subverting the order dated 05/10/2016 passed by this Court in the instant PIL Petition.

26. On the aforesaid grounds, it has been argued vehemently by the Petitioner that the Regulations 8.1 to 8.2.2 regarding parking spaces and off-street parking requirement as available in the UDCPR are liable to be struck down.

27. As already observed above, learned Counsel representing the Respondents including learned AGP appearing for the State and learned Counsel representing NMMC have submitted that the impugned regulations being subordinate legislation, scope of judicial review by this Court under Article 226 of the Constitution

of India is very limited and unless the regulations are found to be manifestly arbitrary no interference by the Court will be permissible. So far as this submission made on behalf of the Respondents is concerned, there cannot be any quarrel to the legal proposition that the ground of challenge to subordinate legislation is very limited and in fact subordinate legislation can be questioned only on the grounds on which plenary legislation is questioned. It has been held by the Hon'ble Supreme Court in case of ***Dental Council of India vs. Biyani Shikshan Samiti and Another*** reported in **(2022) 6 SCC 65** that subordinate legislation though does not carry the same degree of immunity enjoyed by a plenary legislation passed by competent legislature, however, it may be challenged on any of the grounds on which a statute can be questioned and in addition it may also be questioned on the ground that it does not conform to the statute under which it is made. Subordinate legislation can also be challenged on the ground that it is contrary to some other statute.

28. Referring to the judgment in ***Indian Express Newspapers (Bombay) Private Ltd. and others vs. Union of India and others, (1985) 1 SCC 641, Dental Council of India (supra)***

lays down that subordinate legislation though can be questioned on the ground of unreasonableness; however, such unreasonableness should not be in the sense of not being reasonable but it should be in the sense that it is manifestly arbitrary. Paragraph nos. 26 and 27 in the case of ***Dental Council of India (supra)*** are extracted hereinbelow:

“26. It will be relevant to refer to the following observations of this Court in Indian Express Newspapers (Bombay) (P) Ltd. and others vs. Union of India and others, (1985) 1 SCC 641:

“75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.”

23. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is

contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.”

29. A reference, in relation to the scope of interference by this Court under Article 226 of the Constitution of India to a subordinate legislation, can be had to a Division Bench of this Court in the case of ***Janhit Manch & Anr vs. State of Maharashtra & Ors*** reported in ***2006 SCC OnLine Bom 1145***.

30. The law relating to the tests available for judicially scrutinizing any subordinate legislation has been exhaustively reviewed by the Division Bench of this Court in ***Janhit Manch (supra)*** wherein it has been held that subordinate legislation must be manifestly arbitrary to be held as arbitrary i.e. a law which could not be reasonably expected to emanate from an authority delegated with law making power. The Court in ***Janhit Manch (supra)*** has further held that the question which is required to be considered while judicially scrutinizing a delegated legislation is not as to what material was available at the time when subordinate legislation was made but the question is

whether the delegated legislation is either beyond the scope of the Act or is ex-facie or manifestly arbitrary.

31. ***Janhit Manch (supra)*** further observes that for holding a delegated legislation to be unreasonable the person challenging the same must establish the facts which support the plea of unreasonableness and that the unreasonableness must be seen by merely reading the impugned Legislation itself and not by enquiring as to what material justifies the delegated legislation. Paragraph Nos. 82 to 84 of the judgment in the case of ***Janahit Manch (supra)*** are relevant to be referred to which read as under:

“82. Development Control Regulations form a part of the Development Plans and do not have a permanent existence, but they are liable to be revised every 20 years, is a circumstance mitigating arbitrariness. The aforesaid decision in Kruse vs. Johnson has been followed by the Supreme Court. See (Maharashtra S.B.O. & H.S. Education vs. Paritosh) reported in A.I.R. 1984 SC 1548 at 1555. See also (Suman H.C. vs. Rehabilitation Ministry Employees Housing Building Society Ltd.) reported in (1991) 4 SCC 488 at 499-500. In fact in (Khoday Distilleries Vs. State of Karnataka) (1996) 1 SCC 304, the Supreme Court held that in order to hold delegated legislation as arbitrary, such legislation must be manifestly arbitrary i.e. a law which could not be reasonably expected to

emanate from an authority delegated with law making power.

83. In the case of a delegated legislation, the question that is required to be considered is not, from the view point of what material was available at the time when the legislation was enacted, but whether the delegated legislation is either beyond the scope of the Act or is ex-facie or manifestly arbitrary i.e. without requiring any evidence. The impugned delegated legislation is enacted under the Maharashtra Regional Town Planning Act. The impugned delegated legislation pertains also to the issues under the Slum Clearance Act. Both the Acts are required to be harmoniously construed and in deciding the challenge under Article 14 of the Constitution of India or under Article 21 of the Constitution of India, regard must be had to the objects sought to be achieved by the said legislation considering the objects of the relevant enactment. The Maharashtra Slum Clearance Act, 1971 and the Maharashtra Regional Town Planning Act have both been enacted to achieve the same or similar purpose. The enactments were brought into force and the delegated legislation was enacted to meet the emerging challenges and changed situations. See (State of Maharashtra vs. Mahadev Pandarinath Dhole) reported in 1980 Bombay Cases Reporter, 590.

84. When can delegated legislation be said to be unreasonable. The petitioners for that must establish the facts which support the plea of unreasonableness. The unreasonableness must be seen by merely reading the impugned Legislation itself and not by enquiring as to what material justifies the delegated legislation. When you use the expression unreasonable, it must be understood that it is unreasonable not

in the sense of it not being reasonable but in the sense that it is manifestly arbitrary. (See Indian Express Newspaper (Bombay) Private Limited vs. Union of India (1985) 1 SCC 641 : A.I.R. 1986 S.C. 515. The Court when testing the constitutional validity of a piece of delegated legislation on the touch stone of Article 14 of the Constitution, can examine whether the criterion adopted is reasonable. "Reasonableness, for purposes of judging whether there was an excess of power or an arbitrary exercise of it, is really the demonstration of a reasonable nexus between the matters which are taken into account in exercising a power and the purposes of exercise of that power. See (Meenakshi Mills vs. Union of India), (1974) 1 SCC 468 : AIR 1974 SC 366, (Panipat Co-op. Sugar Mills vs. Union of India), (1973) 1 SCC 129: AIR 1973 SC 537 and (SI Syndicate vs. Union of India) (1974) 2 SCC 129 : AIR 1975 SC 460. It would, therefore, be clear from the above, that it would not be possible for this Court considering the object behind the D.C. Regulation and Appendix VII-B to hold that they are ultra vires Article 14 and 21 of the Constitution of India as being manifestly arbitrary, unreasonable and or discriminatory.

32. It is also to be noticed that in a challenge to delegated legislation the Court must proceed on the presumption that law is constitutional and it is only when the person challenging the same discharges his burden to establish that the legislation is arbitrary or discriminatory, would the burden shift on the State to justify the constitutionality of the legislation.

33. It is also to be noticed that in ***Janhit Manch (supra)*** what was under challenge therein was “the Development Control Regulations of Greater Bombay, 1991” framed under the relevant provisions of the MRTP Act, 1966 and it is in this context that the Division Bench in ***Janhit Manch (supra)*** noticed that any legislation which deals with a development plan is socio-economic legislation and as such laws relating to economic activities would be reviewed with greater latitude than laws touching civil rights such as freedom of speech, etc. The Court further proceeds to observe that the legislature should be allowed some play in the joints as it has to deal with complex problems, which may not admit a solution to any straight jacket formula.

34. The Division Bench in ***Janhit Manch (supra)*** has further observed that in such cases the Court feels more inclined to give judicial deference to the legislative judgment in the field of economic regulations than in other areas where fundamental human rights are involved. Paragraph 95 of the judgment in ***Janhit Manch*** is relevant to be quoted here, which is as under:

“95. It is therefore clear that only in those cases involving/violation of Environmental Protection laws and ecological disasters, will the principle

enunciated in Vellore case and as expanded in (A. P. Pollution Control Board V. M.V. Nayudu (Retd)), case reported in (1999) 2 SCC 718 : A.I.R. (1999) (S.C.) 812 : (1999) 2 SCC 718 be applied. It cannot be applied to every case where some issue relating to environment is raised, more so to those cases, where the substantive legislation lays down the parameter for publishing a development plan and making D.C. Regulations, taking into consideration environmental needs of the planning area. Considering these aspects, the court must proceed on the presumption that the law is constitutional. It is only on the Petitioner's discharging the prima facie burden that the legislation is arbitrary or discriminatory would the burden shift on the State to justify the constitutionality of the legislation. In our opinion that burden has not been discharged. In the instant case, material has been produced by the private Respondents to support the constitutionality of the Legislation. It is always open to the court to rely on such material and need not reject the material produced by the private respondents, because it has not come from the State. As we have noted earlier, Legislation which deals with Planning is a socio-economic Legislation and as such laws relating to economic activities would be reviewed with greater latitude than laws touching civil rights such as freedom of speech, etc. The Legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula. In such cases the Court must feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. The Court must therefore adjudge the constitutionality of such legislation by generality of its provisions and not by its crudities or inequities or by

the possibilities of abuse of any of its provisions. So tested we do not find that the challenge on the ground that the legislation is manifestly arbitrary or unreasonable and/or discriminatory and must be rejected."

35. We may also refer to the judgment of the Hon'ble Supreme Court in case of ***Promoters & Builders Association of Pune vs. Pune Municipal Corporation and others*** reported in ***(2007) 6 SCC 143*** wherein the Court, while dealing with the challenge to the Development Control Regulations for Pune Municipal Corporation framed under MRTP Act, has held while discussing various provisions of MRTP Act that u/s. 37 of the MRTP Act the government has been given absolute liberty to make or not to make inquiry before granting sanction to proposed regulations, with or without modifications. It is further held that Government could impose such conditions as it deems fit and further it is also permissible for the Government to refuse the sanction.

36. On the basis of above discussion of the legal principle as evolved by the Hon'ble Supreme Court and this Court in respect of scope and extent of challenge to a delegated legislation, the legal

position which emerges is that though the subordinate legislation is not as immune from the challenge as a statute, however, it can be questioned on the grounds available for questioning or challenging an act of legislation. The subordinate legislation can be challenged on additional ground of the same being contrary to the Act under which it has been framed or it is contrary to any other enactment. It is also clear from the above discussion that subordinate legislation though can be questioned on the ground of unreasonableness, however, such unreasonableness should be in the sense that it is manifestly arbitrary and not in the sense of not being reasonable.

37. It is also clear that in a challenge even to subordinate legislation, the Court must proceed on the presumption that such subordinate legislation is constitutional and burden lies heavily on the person or party challenging the same to prove its unconstitutionality and it is only once the party challenging the subordinate legislation discharges its burden of establishing that legislation is arbitrary or discriminatory, the burden would shift on the State to justify the constitutionality of such delegated legislation.

38. While dealing with the facts of the present case, we are conscious of the legal principles relating to limitation of this Court in interfering with subordinate legislation, however, at the same time certain facts relevant for appropriate adjudication of this case cannot be lost sight of.

39. The history of litigation and repeated challenge made by the Petitioner to the regulations relating to parking and off-street parking had already been discussed above. It will be relevant to mention that before the impugned regulations were notified on 02/12/2020, during the pendency of this PIL Petition, the Court had passed a detailed order on 05/10/2016 issuing certain directions, which are already extracted above.

40. The background facts noticed by this Court while passing the order on 05/10/2016 needs to be reiterated by us at this juncture. The Court in the said order dated 05/10/2016 has firstly noticed the order dated 07/09/2011 whereby the earlier PIL being PIL No. 34 of 2011 filed by the Petitioner was disposed of with following directions:

“2. The scientific survey may be started immediately. One year's time is an outer limit. It may be completed as expeditiously as possible and the procedure under Section 37, to amend the D C Regulations, may also be adopted and completed as early as possible. Six months' time limit laid down by the Principal Secretary (UD-I) for that purpose is merely an outer limit. Efforts may be made to complete the procedure as early as possible.

3. The petitioner's grievance is redressed as of today, hence the petition is disposed of.”

41. The Court, in the order dated 05/10/2016 has further noticed the Affidavit filed on behalf of NMMC on 22/09/2016 and observed that the NMMC had completely ignored the directions issued by this court in its order dated 07/09/2011 in as much as no scientific survey as directed was conducted. While passing the order dated 05/10/2016, the Court further noticed that it was not the contention of the NMMC that existing regulations relating to parking spaces are adequate or that there is no necessity to revise said regulations. The Court further observed in the said order dated 05/10/2016 that it is conscious that in the matter relating to regulations, the Court has limited role to play and normally these matters are for the Corporation and the State Government to address. The Court also noticed that, however, in the present

case, there was really no dispute whatsoever apart from there being overwhelming material on record to establish that the existing regulations relating to parking spaces are woefully inadequate and cry for urgent revision. Paragraph 12 of the interim order passed in this PIL Petition by the Court on 05/10/2016 is extracted hereinabove.

“12. We are conscious that in matters relating to regulations, whether for the purposes of construction of buildings or providing parking spaces, this court, has quite a limited role to play. Normally, these are matters for the Corporation and the State Government to address. However, in the present case, there is really no dispute whatsoever apart from there being overwhelming material on record to establish that the existing regulations relating to parking spaces are woefully inadequate and cry for urgent revision. Whilst, at this stage, we do not propose to make any observations upon the submissions of Mr. Thakur that the lethargy and inaction on the part of NMMC is only to afford benefits to builders and developers, we cannot be oblivious of the serious issues arising out of inadequate parking spaces and matters connected therewith.”

42. The Court while passing an order dated 05/10/2016 had also taken into account the recommendations made by the Principal Secretary to the State Government in Urban Development Department in his note dated 18/07/2011, which were reiterated

by this Court in its order dated 07/09/2011 passed in PIL Petition No. 34 of 2011. The Court also noticed the Affidavit dated 22/09/2016 filed by the NMMC which made a reference to the Report of the Expert Committee constituted under the Chairmanship of Principal Secretary of the Government for preparation of all-inclusive and standardized Development Control Regulations. The Court also noticed that the Expert Committee in its report recommended that the parking norms should provide 3 parking spaces for 1 tenement having built up area of more than 70 sq. meters, 2 parking spaces for tenement having built up area between 50 to 70 sq. meters, 2 parking spaces for every 2 tenements having built up area between 35 sq. meters to 50 sq. meters, and 1 parking space for every 2 tenements having built up area less than 35 sq. meters.

43. The Court also noticed that, ***“on the inadequate parking spaces in buildings and co-operative housing society projects, invariably several vehicles are parked upon public roads and in other public places. This results in traffic congestion, accidents and vehicular pollution. There is no gain saying that the members of the public are very***

severally prejudiced as a result”.

44. The Court also observed that right to open spaces, proper roads, clean and healthy environment are within the ambit of Article 21 of the Constitution of India as held by the Hon’ble Supreme Court in ***Municipal Corporation of Greater Mumbai & Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited & Anr.*** Reported in ***(2014) 4 SCC 538***. These observations are contained in paragraph 16 of the order passed by this Court on 05/10/2016, which is also extracted hereinbelow:

“16. There is substantial increase in the population and number of vehicles within the jurisdiction of NMMC. On account of the present regulations, which require the builders and developers to provide only one parking space for every four tenements having carpet area upto 35 sq. meters each, the problem of parking of vehicles has assumed very serious proportions. On account of inadequate parking spaces in buildings and co-operative housing society projects, invariably several vehicles are parked upon public roads and in other public places. This results in traffic congestion, accidents and vehicular pollution. There is no gain saying that the members of the public are very severally prejudiced as a result. By now, it is accepted that the right to open spaces, proper roads, clean and healthy environment is within the ambit of Article 21 of the Constitution of India. The NMMC as well as the State Authorities, despite acknowledgment the present regulations are woefully inadequate and

cry for urgent revision, have failed to take steps, even though, such steps were directed by the Principal Secretary (UD) and this Court in its order dated 7 September 2011 in PIL 34 of 2011. Inaction and lethargy, whatever may be the motive cannot be countenanced in a situation of this nature."

45. Thus, having regard to the entire facts and circumstances, as also the need for better parking spaces, the Court had passed the order 05/10/2016. While passing the said order the Court has taking into account the contents of the Affidavit dated 22/09/2016 filed by the NMMC wherein it was stated *inter alia* that NMMC is willing to further increase the parking requirement by modifying the DCRs applicable to parking norms as per the recommendations of the Committee after the approval of the State Government. The relevant extract of the said Affidavit dated 22/09/2016 filed by the NMMC is quoted herein below:

"The above comparative chart shows that the existing parking norms of NMMC are at par with Thane Municipal Corporation and stringent than CIDCO norms. Despite this position, NMMC is willing to further increase the parking requirements by modifying the DCR relating to parking norms as per recommendation of the Committee after approval of State Government."

46. Another Affidavit filed on 15/11/2016 by the NMMC is also

relevant to be pointed out wherein the NMMC has regretted that it could not pursue the matter to get its DCR modified in tune with the decision of the government dated 18/07/2011. Paragraph no. 10 of the said Affidavit filed on 15/11/2016 is extracted herein below:

“10.I further say that, it is a matter of great regret that the Navi Mumbai Municipal Corporation did not implement the directions issued by this Hon’ble Court within the time limit and even after expiry of thereof. It is also unfortunate that, though the State Government had showed the willingness in the form of decision dated 18th July, 2011 to accept parking norms of one parking space for every 2 tenements of 45 Sq.mtrs. of built up area (with slight modification prescribing 35 Sq.mtrs. carpet area), the Municipal Corporation failed and neglected to pursue the matter further and get its Development Control Regulations modified in accordance with its own proposal.”

47. Thus, we find that while framing the UDCPR notified on 02/12/2020 neither the State Government nor NMMC has taken into consideration the directions issued by this Court and its order dated 05/10/2016, nor has it taken into consideration the assurances given to the Court by NMMC. It is also worthwhile to note at this juncture that the need of increased parking area and off-street parking though has been recognized by the NMMC which

is the Planning Authority, however, such need has not been addressed while issuing of impugned UDCPR notified on 02/12/2020.

48. As a matter of fact, the facts and circumstances in which the order dated 05/10/2016 was passed by this Court are self-speaking as noticed by the Court in the said order which clearly establishes the need of having better parking spaces. In our considered opinion the said concern expressed by the Planning Authority as also by the Court stands unredressed even after the issuance of impugned UDCPR notified on 02/12/2020, which call upon us to issue necessary directions in the interest of justice and also keeping in view the dire need of having better parking spaces.

49. We, thus, dispose of the PIL Petition with the following directions:

- a) The Navi Mumbai Municipal Corporation (NMMC) shall take a fresh look at the need of having better and adequate parking spaces within the territory of

NMMC and prepare a report by conducting a study for making suggestions for appropriate amendments, which may be warranted in UDCPR notified on 02/12/2020, in its application to NMMC.

- b) The study as directed above, will be conducted by an Expert Committee to be appointed by the Commissioner, NMMC, which shall submit its report within four months from the date a copy of this order is produced before the Commissioner, NMMC.
- c) Based on the aforesaid study, NMMC and the State Government shall take appropriate steps to provide for better and adequate parking space in NMMC by taking recourse to the procedure as prescribed u/s 37 of MRTP Act, 1966.
- d) The entire exercise shall be completed by the State Government and NMMC and all other authorities or bodies concerned within 12 months from today.

50. Before parting we may put on record our appreciation for the Petitioner, who has, relentlessly, been striving for a public cause highlighted in this PIL Petition.

51. We also observe that we have issued the aforesaid directions so as to ensure that the spirit and zeal shown by the Petitioner for the public cause of having better and adequate spaces do not die.

52. There shall be no order as to costs.

53. All the Interim Applications also stand disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)