

Shephali/Arun

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1029 OF 2024

- 1. GLIDER BUILDCON REALTORS
PVT LTD,**
a company incorporated under the
provisions of Companies Act 2013,
having its registered office at Piramal
Tower, 8th Floor, Ganpatrao Kadam
Marg, Lower Parel, Mumbai 400 013.
- 2. DEEPAK SUVARNA,**
Director of Petitioner No 1,
having his office at Piramal Tower,
8th Floor, Ganpatrao Kadam Marg,
Lower Parel, Mumbai 400 013.

... PETITIONERS

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,
THROUGH ITS PRINCIPAL
SECRETARY, URBAN
DEVELOPMENT DEPARTMENT,**
Mantralaya, Mumbai 400 032.
- 2. MUNICIPAL CORPORATION OF
GREATER MUMBAI,**
a statutory corporation constituted
under the provisions of the Mumbai
Municipal Corporation Act 1888,

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having its office at Mahapalika Building,
Mahapalika Marg, Opp. CST,
Mumbai 400 001.

3. **MUNICIPAL CORPORATION OF GREATER MUMBAI,**
having its office at Mahapalika Building,
Mahapalika Marg, Opp. CST,
Mumbai 400 001.

4. **THE MONITORING COMMITTEE,**
a committee constituted under
Regulation 58 of DCR 1991 which
continues to function under analogous
Regulation 35 of DCPR 2034, through:

(i) **CHAIRMAN (MONITORING COMMITTEE),**
having his office at Municipal
Corporation of Greater Mumbai,
Municipal Head Office, 5th Floor,
Annexe Building, Mahapalika Marg,
Fort, Mumbai 400 001.

(ii) **CHIEF ENGINEER (DEVELOPMENT PLAN),**
Member Secretary, Monitoring
committee, having his office at
Municipal Corporation of Greater
Mumbai, Municipal Head Office,
5th Floor, Annexe Building,
Mahapalika Marg, Fort,
Mumbai 400 001.

5. **MAFATLAL INDUSTRIES LIMITED,**
an existing company under the
provisions of Companies Act 2013,
having its registered office at Mafatlal

House, Mafatlal Industries Limited,
5th Floor, HT Parekh Marg, Backbay
Reclamation, Churchgate,
Mumbai 400 020.

6. **RASHTRIYA MILL MAZDOOR SANGH, MUMBAI,**
a Labour Union claiming to be the
representative union for Cotton Textile
Industry in Greater Mumbai,
having its office at Mazdoor Manzil,
GD Ambedkar Marg, Parel,
Mumbai 400 012.
7. **GIRNI KAMGAR SABHA,**
a Labour Union claiming to be the
representative union for cotton textile
industry in Greater Mumbai, having its
office at 3/5 Merchant Chamber, GM
Bhosale Marg, Worli Naka, Mumbai.
8. **SARVA SHRAMIK SANGHATANA,**
a Labour Union claiming to be the
representative for cotton textile
Industry in Greater Mumbai, having its
Office at 1054, Shramik (Royal Crest),
Plot No 31, Lok Manya Tilak Colony
Road, No 3, Dadar (E),
Mumbai 400 014.
9. **GIRNI KAMGAR SANGHARSH SAMITI,**
a Labour Union claiming to be the
representative union for cotton textile
Industry in Greater Mumbai, having its
office at Ground Floor, Ramniwas, Dr
Ambedkar Road, Opp. Central Railway
Workshop, Mumbai 400 012

...RESPONDENTS

WITH
WRIT PETITION NO. 491 OF 2020
WITH
INTERIM APPLICATION (L) NO. 8076 OF 2024
IN
WRIT PETITION NO. 491 OF 2020

- 1. MAFATLAL INDUSTRIES LIMITED,**
A company incorporated and registered under the Indian Companies Act 1882 and a continuing company within the meaning of the Companies Act, 2013, having its Registered Office at 301-302, Heritage Horizon Off CG Road, Ahmedabad 380 009 and its Corporate Office at Mafatlal House, Mafatlal Industries Limited, 5th Floor, HT Parekh Marg, Backbay Reclamation, Churchgate, Mumbai 400 020.
- 2. RAJENDRA R LIKHITE,**
Adult Indian Inhabitant, Group Senior Vice President (HR & Admin) and Shareholder of Petitioner No.1, having his office at Mafatlal House, Mafatlal Industries Limited, 5th Floor, HT Parekh Marg, Backbay Reclamation, Churchgate, Mumbai 400 020.

... PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA**,
through its Urban Development
Department, Mantralaya,
Mumbai 400 032.
2. **GLIDER BUILDCON REALTORS
PVT LTD**,
(formerly Gliders Buildcon LLP)
a company registered under the
Companies Act 2013 and having its
Registered Office at Piramal Towers,
8th Floor, Ganpatrao Kadam Marg,
Lower Parel, Mumbai 400 013.
3. **THE MUNICIPAL CORPORATION
OF GREATER MUMBAI**,
a statutory authority, constituted and
exercising functions under the Mumbai
Municipal Corporation Act 1888 and
having its principal office at Mahapalika
Bhavan, Mahapalika Marg, Opposite
CST Railway Station,
Mumbai 400 001.

... RESPONDENTS

Continued ...

APPEARANCES

**FOR THE PETITIONER
IN WP/491/2020 & FOR
RESPONDENT NO 5 IN
WP/1029/2024.**

**Mr Rafique Dada, Sr Advocate,
with Mr Ashish Kamat, Sr
Advocate,
*with Aditya Mehta, Aakanksha
Saxena, MS Federal, Murtaza
Federal, Rashne Mulla-Feroze &
Veer Ashar, i/b Federal &
Company.***

**FOR PETITIONER IN
WP/1029/2024 & FOR
RESPONDENT NO 2 IN
WP/491/2020.**

**Mr Virag Tulzapurkar, Sr
Advocate,
*with Krishna Balaji Moorthy,
Bhakti Mehta & Vikrant
Baravkar, i/b Wadia Ghandy &
Co.***

**FOR THE RESPONDENT-
STATE IN WP/491/2020.**

**Smt Jyoti Chavan, Addl GP,
*with Smt Sheetal Malvankar,
AGP.***

**FOR THE RESPONDENT-
STATE IN
WP/1029/2024.**

Smt Pooja Patil, AGP.

**FOR RESPONDENT NO 6
IN WP/1029/2024 & FOR
THE APPLICANT IN
IAL/8076/2024**

**Mr Mihir Desai, Sr Advocate, *with
Sanskriti Yagnik & Rishika
Agarwal.***

**FOR RESPONDENT NO 8
IN WP/1029/2024 & FOR
INTERVENOR IN
WP/491/2020.**

Ms Jane Cox, *with Rohini T.*

**FOR THE RESPONDENT-
MCGM.**

Mr Kunal Waghmare.

**Mr Jayesh Dusane, *Executive
Engineer (DP) City, present.***

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

**DATED : 21st March and 22nd March
2024**

ORAL JUDGMENT (Per GS Patel J):-

1. In both Petitions, Rule. By consent, Rule returnable forthwith.

2. We have heard the learned Advocates for all the contesting parties at some length. This common judgment disposes of both Petitions. Writ Petition No 1029 of 2024 is filed by a real estate developer company, Glider Buildcon Realtor Private Limited (“**Glider**”) and one of its directors (“**the Glider Petition**”). Writ Petition No 491 of 2020 is filed by Mafatlal Industries Limited (“**Mafatlal**”) and one of its principal officers (“**the Mafatlal Petition**”). In the Glider Petition, Mafatlal is the 5th Respondent. In the Mafatlal Petition, Glider is the 2nd Respondent.

3. In addition, in the Glider Petition there are four labour unions as Respondents Nos 6, 7, 8 and 9, viz., Rashtriya Mill Mazdoor Sangh, Mumbai represented by Mr Desai, the Girni Kamgar Sabha, the Sarva Shramik Sanghatana represented by Ms Cox, and the Girni Kamgar Sangharsh Samiti.

4. Both Petitions are directed towards a single order or communication, although in the Glider Petition there is a challenge

to a subsequent event. The principal reliefs in the Glider Petition are these:

- “(a) this Hon’ble Court be pleased to issue a writ of certiorari or any other writ, order or direction in the nature of certiorari under Article 226 of the Constitution calling for the records and proceedings in respect of issuance of the directions/orders by the Monitoring Committee contained in the Minutes of the Meeting dated 24th January 2024 (**EXHIBIT V** hereto) and the Impugned Order & Minutes dt 8th February 2024 (**EXHIBIT W** hereto) and after going through the legality, validity and propriety thereof, be further pleased to quash and set aside the same;
- (b) This Hon’ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus under Article 226 of the Constitution of India directing:
 - (i) Respondent No.4 Monitoring Committee to withdraw/cancel the direction/order of the Monitoring Committee contained in the Minutes of the Meeting dated 24th January 2024 (**EXHIBIT V**) and the Impugned Order & Minutes dt 8th February 2024 (**EXHIBIT W** hereto);
 - (ii) Respondents not to take any steps for implementation of the direction/order of the Monitoring Committee contained in the Minutes of the Meeting dated 24th January 2024 (**EXHIBIT V**) and the Impugned Order & Minutes dt 8th February 2024 (**EXHIBIT W** hereto)”

5. The Mafatlal Petition, on the other hand is addressed to a communication of 7th September 2019 by the State Government, a copy of which is at Exhibit “S” to that Petition.

6. The 7th September 2019 State Government communication purported to dispense with a condition incorporated in the Development Control Regulations 1991 (“DCRs”). Mafatlal maintains that this could not be done and the condition must be met. The Monitoring Committee constituted and established under DCR 58 passed on order of 24th January 2024 and issued minutes of 8th February 2024 (Exhibits “V” and “W” to the Glider Petition) essentially requiring compliance with that very condition. Glider challenges this order and these minutes.

7. Clearly, if the Mafatlal Petition succeeds, the Glider Petition must fail. The converse is not necessarily true. Even if the Mafatlal Petition fails, the Glider Petition may still need to be addressed because its scope is slightly different.

8. If we were to attempt a general description of what these cases are about, it would be this. This is the story of a defunct cotton textile mill and its lands; of a city zoo expansion that never was; of a radical change in city planning; of spindles unlike any in children’s fairy tales; of the relentless pursuit of profits by a developer; and the fates and livelihoods of the textile mill’s erstwhile workmen and their families. Or, to badly paraphrase Lewis Carroll, the time has come (as the walrus might have said), to speak

of many things: of mills and zoos and city plans, of workers and developer kings.

9. At the heart of this dispute there is a single Development Control Regulation, DCR 58. More precisely, there is a statutory *amendment* to that DCR, one that specially targeted this particular textile mill. What Mafatlal challenges is the State Government's decision by executive fiat to dispense with what is effectively an engrafted provision in a delegated legislation and to say effectively that that provision 'need not be followed'. Glider contends that this executive decision is not only proper but is necessary; and Mr Tulzapurkar for Glider has argued at some length that even if there is an amendment of the town planning statute or, more precisely delegated legislation under the town planning statute, this must be seen in a factual context and background. Mr Dada for Mafatlal puts his case, at least at one level, far more simply: once there is an amendment to a statute, be this as primary or as delegated legislation, it cannot possibly be undone by executive or administrative action. That branch of the law, he submits, is far too well settled to admit of any further controversy.

10. For their part, Mr Desai and Ms Cox urge that the amendment to the delegated legislation, viz., the DCR, was not merely an innocuous change in regard to land utilisation, sharing of available land, floor space index, buildability and the usual considerations in a town planning statute. In the context of this particular piece of earth, that change to the delegated legislation went a step further. It made a specific provision that was directed at

the setting up — as part of the town planning statute — a spindle unit to provide employment to erstwhile workers (and their families) of the defunct Mafatlal mill. That provision entered the statute book. Ms Cox and Mr Desai therefore support Mr Dada's argument that the engrafted statutory amendment cannot be unravelled or dispensed with by an executive instruction of some functionary in the secretariat.

11. But this does not lend the necessary perspective. We need to take a much longer step back, because fundamental to an understanding of what happened and why events unfolded as they did, is a brief survey of the development of this branch of the law and DCR 58. That in turn will demand that we look at why this DCR for these lands was even necessary and what it is that DCR 58 attempted to do.

12. The history of Bombay, now Mumbai, is arguably inextricably linked to identifiable forms of development. Reclamation from the sea is the most obvious. This led to the physical expansion of the city and the growth of its land mass. Another is the construction and the development of a north-south axis of rail corridors more or less through the spine of this peculiarly funnel-shaped city: broader at the north and tapering quite significantly to the south. Almost in parallel with the railway development, is the development of what we now know as the mill lands. These were more or less along the alignment of the railway lines and perhaps logically so for commerce and transport. Bombay was a hub of cotton and textile trading. Processing and manufacturing cotton textile mills grew. The first

mill of its kind probably dates back to the early or mid-1800s. More mills were added over time. There was one to the southern end of this city (Mukesh Mills). Another was closer to the eastern seaboard (Calico Mills). Many were positioned more or less along the centre of this city. These mill lands were large holdings. They not only held the actual textile factories but, importantly from our perspective today, they made provision for living quarters and accommodation for mill workers (though not mill owners who lived elsewhere in significantly more splendid residences). These mill workers' accommodations followed another built form peculiar to Bombay, viz., that of the chawl. Typically, these would be ground and three or four floor structures with outer corridors and rooms leading off them with common facilities at the end of the corridors. From the mill owners' perspective, this was not so much an imposition of some town planning norms as a matter of commercial expedience, convenience and economy. If one built housing, then one did not have to pay for it elsewhere. At that time, there would have been large undeveloped portions of the city especially to the north. Few could then have anticipated the explosive growth in population, industry and commerce that was to follow in the decades to come and which accelerated between the 1950s and the early 1970s. About 130 years after the first mill was established, there were as many as 58 cotton textile mills. Between them, these occupied a territory of as much as 600 acres of land in the middle of this city. To give some sense of scale, this is roughly 240 times the size of the Oval Maidan opposite the High Court. Over a quarter of a million people were employed by these mills. So profound was the impact that this central area came to be known as *Girangaon*, literally mill village.

13. Time was unkind to these mills. Some say that so too was the government. Some mills were taken over by the National Textile Corporation. How and why these mills fell into decline has been the subject of much research in academia. It is argued that the mills did not keep pace with technology. They did not modernise. There are also allegations of mismanagement and financial misdealing. Many mills began to show significant financial losses.

14. Accompanying this narrative, and given that this is the city of Bombay / Mumbai, there is inevitably a parallel story of underworld killings, murders, guns, clandestine transactions, dons and the subversion of (not by) trade unions. There was much strife, all of it centred around these mill lands. The textile workers' general strike of 1982 was perhaps the one that spelt the mills' death knell. Many mills closed down. Thousands of mill workers lost their jobs. Manufacturing shut down. Factories closed. The built structures fell into disuse.

15. There have been later attempts to save some of these built forms, most notably in the shape of our heritage regulations: within these now defunct mill lands one can still see old holding ponds, warehouses, brick and stone chimneys and other structures. But what remains of many of these structures is sometimes only the outer facade.

16. The single biggest asset of every one of these mill lands was the land that each occupied. By this time, i.e., by the mid-1980s, there was massive growth in the city. The State Government had

been alive to the problem of city growth, densification and expansion at least since the early 1960s. We did not then have a controlling town planning statute. The Government set up two committees, first the Barve Committee and then later the Gadgil Committee. The task of the committees was to address Mumbai-centric problems and to suggest legislative measures for controlled and planned development. It is pursuant to these that there came to be enacted in 1966 the Maharashtra Regional Town Planning Act (“**MRTP Act**”) (with effect from 1967). But the MRTP Act, which was in some senses a breakthrough because it conceptualised the concept of regional planning with each region being under a board, and all planning being tied to regional planning plus local development, necessarily required subordinate legislation to control actual development. Until the MRTP Act, it was the then Bombay Municipal Corporation — now the Brihanmumbai Municipal Corporation (“**BMC**”) — that granted permissions and allowed development and set up schemes. But these were not controlled by an overarching statute such as the MRTP Act. One of the salient features of the MRTP Act was its adoption of general planning principles following the recommendations of the Barve Committee. Key to these recommendations was the need for ‘balanced development’, i.e., to provide for the differing needs of various stakeholders in the city, including provisioning for open spaces, mass housing, affordable housing, commercialisation and so forth. Of course, in parallel there was the adoption of a proposal for a twin city across the harbour but that is another story in itself.

17. At the relevant time, therefore, in the late 1960s the subordinate legislation took the form of the Development Control

Rules, 1967. The MRTP Act itself mandated that Development Plans had to be revised every 20 years.

18. The scene shifts to 1989–1991, when the Government, following the requirement of the MRTP Act, first proposed the draft Development Control Regulations of 1989, part of the process of preparing a revised development plan. The government gave notice and invited suggestions and objections to the draft Regulations of 1989. This revised draft Development Plan was therefore set in a historical context known to the city because they came at a time roughly 10 years after the general textile mills strike and after these mills had fallen into disuse.

19. The task before the city planners in regard to these 600 acres of mill lands was a most unusual one. They had this enormous land bank. It represented untold potential for development of this city. But there were competing demands for this land. Many of these lands were still in private hands. There was a demand that private owners should be allowed to develop them even at the highly increased land rates. There was a demand that portions of these lands be made available for affordable housing through the Maharashtra Housing and Area Development Authority (“MHADA”) There was also a proposal that portions of these lands be kept as open spaces for the betterment of this city. The public sector undertaking, the National Textile Corporation, which had taken over some mills, had its own demands.

20. The draft Development Regulations of 1989 finally became the Development Control Regulations of 1991. Embedded in these we find the present Regulation that is in contention, DCR 58. If one looks at the DCR 1991 as a whole, it is perhaps this one DCR that remains remarkable for what it set out to achieve.

21. We will immediately dispense with an argument advanced by Mr Tulzapurkar that a Division Bench of this High Court (Sujata Manohar and AP Shah JJ, as they each then were) in *Nivara Hakk Suraksha Samiti v State of Maharashtra & Ors* along with *Bombay Environmental Action Group & Anr v State of Maharashtra & Ors*¹ having held that the DCRs were not intended to deal with labour issues or labour welfare per se, as that would be the subject of industrial legislation, therefore no part of DCR *could even provide for labour welfare*. This completely misses the point. The submission that was canvassed by *Nivara Hakk* was that the DCRs *should* make provision for labour welfare for the mill workers. The Division Bench held that the State Government had no mandate to compulsorily make that provision. The Division Bench did not hold that the DCR *could not* make some provision directed towards welfare of erstwhile mill workers. No part of that judgment says that making such a provision for labour welfare was beyond legislative competence. All that the court said was that the prayer for a mandamus directing the State Government to make such a provision could not be granted, a very different proposition. We decline to read the judgment in *Nivara Hakk* as suggesting something other

1 Order dated 16th April 1991 in Writ Petition No 963 of 1991.

than what it held. The ratio of the judgment is not as Mr Tulzapurkar would have it.

22. DCR 58 was, we believe it is fair to say, a most unusual provision, even a breakaway one. Unlike many of the other newly introduced provisions such as DCR 33 or DCR 67 that dealt with heritage, DCR 58 did not restrict itself to matters of the built form. It was not limited to land use or zoning. What DCR 58 endeavoured to do, unusually in such cases, was an exercise in *social re-engineering* and set in an urban renewal fabric. It took this vast acreage of mill land and assessed how best it could be put to balanced use having regard to competing equities. At least one of these equities came from the very segment that is today represented before us by Mr Desai and Ms Cox, that of erstwhile mill workers forced into desperate conditions of near penury, lack of employment and worse. DCR 58 attempted several things simultaneously. It took into account the demand of private owners as stakeholders for the right to develop the land. It acknowledged the need for augmenting the city's stock of affordable or mass housing. It also took into account the need to make some provision for the housing and the livelihood of erstwhile mill workers. This was not an attempt to redefine employer--employee relations or employer--industrial workmen relations as might more properly be understood in an industrial legislation.

23. It is important to remember that the DC Rules of 1967 and the DCR of 1991 are unquestionably delegated or subordinate legislation. They come into being in a prescribed manner beginning

with a notice of an intent to prepare a Development Plan. Public participation and public consultation in the planning process is the *sine qua non* of this planning process at every stage. The State Government is the final authority that decides whether to sanction or not sanction a draft sent to it by the Planning Authority, viz., in this case the BMC. The State Government is not bound to accept the draft. It can reject it in full. But importantly, the State Government has the power to modify the plan and, as we shall presently see, there is a mechanism provided not only for modification of a draft plan but also of a final sanctioned plan. This is not a question of a judicial determination of what a Development Plan should or should not contain. Elsewhere, we have in fact gone to the length of upholding that these decisions of the State Government are not justiciable and are not amenable to judicial review because decisions of what to sanction, what suggestions to accept, what objections to uphold and what shape the Development Plan should take are all matters exclusively within the power and are the exclusive province of the State Government.²

24. Having said this, the enactment of DCR is not the establishment of a set of executive or departmental instructions. In themselves, DC Rules and Regulations do take the form of legislation—this is not contentious—and, necessarily therefore, DCRs are often set up against a vires challenge, that is to say, ultra

² See: *Rational Art & Press (P) Ltd v State of Maharashtra & Ors*, 2023 SCC OnLine Bom 2272; *Ramchandra Tukaram Mohite & Ors v State of Maharashtra & Ors*, 2023 SCC OnLine Bom 2640; *Subhash Dattatray Saste v State of Maharashtra & Ors*, unreported judgment dated 30th November 2023 in Civil Writ Petition (L) No 29746 of 2023, Neutral Citation: 2023:BHC-AS:36893-DB.

vires the present statute or some provision of the Constitution of India.

25. This is fundamental to an understanding of later events. To put it differently, if the controlling regulations were merely departmental instructions or executive guidelines, then that which the executive did in its executive function, it could undo. But once there was a legislation, and we will examine the law briefly in this regard to the extent necessary, it was not possible for the executive to undo a legislation — whether primary or subordinate — by executive decision making. What we are asked to consider is precisely such an executive decision, the one of 7th September 2019 assailed in the Mafatlal Petition. This is why we said that if Mafatlal succeeds in its challenge, the Glider Petition must necessarily fail.

26. Before we proceed to the list of dates, therefore, and in this background, it is important to understand how DCR 58 was structured to operate and, briefly, what happened to a State Government interpretation of that DCR resulting in a decision of the Supreme Court.

27. DCR 58 itself has been amended periodically and we are today now looking at the amended DCR 58. It is now a fairly long regulation with sub-regulations (1) to (10). We reproduce DCR 58 in full:

“58. Development or redevelopment of lands of cotton textile mills.

(1) *Lands of sick and/or closed cotton textile mills.*

With the previous approval of the Commissioner to a layout prepared for development or redevelopment of the entire open land and built-up area of a sick and/or closed cotton textile mill and on such conditions deemed appropriate and specified by him and as a part of a package of measures recommended by the Board of Industrial and Financial Reconstruction (BIFR) for the revival/rehabilitation of a potentially viable sick and/or closed mill, the Commissioner may allow:

- (a) The existing built-up areas to be utilised —
 - (i) for the same cotton textile or related user subject to observance of all other Regulations;
 - (ii) for diversified industrial user in accordance with the industrial location policy, with office space only ancillary to and required for such users, subject to and observance of all other Regulations;
 - (iii) for commercial purposes, as permitted under these Regulations:
- (b) Open lands and balance FSI shall be used as in the Table below:—

Sr No	Extent	Percentage to be earmarked for Recreation Ground/Garden/Playground or any other open user as specified by the Commissioner	Percentage to be earmarked and handed over for development by MHADA for public Housing/ for mill worker's housing as per guidelines approved by Government to be shared equally	Percentage to be earmarked and to be developed for residential or commercial user (including users permissible in residential or commercial zone as per these Regulations) or diversified industrial users, as per industrial Location Policy, to be developed by the owner
(1)	(2)	(3)	(4)	(5)
1.	Up to and inclusive of 5 Ha	33	27	40
2.	Between 5 Ha and up to 10 Ha	33	34	33
3.	Over 10 Ha	33	37	30

Notes:—

- (i) In addition to the land to be earmarked for recreation ground/garden/playground or any other open user as in column (3) of the above Table, open spaces, public amenities and utilities for the lands shown in columns (4) and (5) of the above Table as otherwise required under these Regulations shall also be provided.

- (ii) Segregating distance as required under these Regulations shall be provided within the lands intended to be used for residential/commercial users.
- (iii) The owner of the land will be entitled to Development Rights in accordance with the Regulations for grant of Transferable Development Rights as in Appendix VII in respect of lands earmarked and handed over as per column (4) of the above Table. Notwithstanding anything contained in these Regulations, Development Rights in respect of the lands earmarked and handed over as per column (3) shall be available to the owner of the land for utilisation in the land as per column (5) or as Transferable Development Rights as aforesaid.
- (iv) Where FSI is in balance but open land is not available, for the purposes of column (3) and (4) of the above Table, land will be made open by demolishing the existing structures to the extent necessary and made available accordingly.
- (v) Where the lands accruing as per columns (3) and (4) are, in the opinion of the Commissioner, of such small sizes that they do not admit of separate specific uses provided for in the said columns, he may, with the prior approval of Government, earmark the said lands for use as provided in column (3).
- (vi) It shall be permissible for the owners of the land to submit a composite scheme for the development or redevelopment of lands of

different cotton textile mills, whether under common ownership or otherwise, upon which the lands comprised in the scheme shall be considered by the Commissioner in an integrated manner.

- (vii) Notwithstanding any thing above, the layout of mill land shall be submitted by the mill owner within six months of closure of the mill or within six months of this notification whichever is later and the lands earmarked for MHADA and Recreation Ground shall be handed over to the concerned Authority immediately after the approval of layout.

(2) Lands of cotton textile mills for purpose of modernisation —

With the previous approval of the Commissioner to a layout prepared for development or redevelopment of the entire open land and/or built up area of the premises of a cotton textile mill which is not sick or closed, but requiring modernisation on the same land as approved by the competent authorities, such development or redevelopment shall be permitted by the Commissioner, subject to the condition that it shall also be in accordance with scheme approved by Government, provided that, with regard to the utilisation of built-up area, the provisions of clause (a) of sub-Regulation (1) of this Regulation shall apply and, if the development of open lands and balance FSI exceeds 30 percent of the open land and balance FSI, the provisions of clause (b) of sub-Regulation (1) of this Regulation shall apply.

Notes:—

- (i) The exemption of 30 percent as specified above may be availed of in phases, provided

that, taking into account all phases, it is not exceeded in aggregate.

- (ii) In the case of more than one cotton textile mill owned by the same company, the exemption of 30 per cent as specified above may be permitted to be consolidated and implemented on any of the said cotton textile mill lands within Mumbai provided, and to the extent, FSI is in balance in the receiving mill land.

(3) *Lands of cotton textile mills after shifting*

If a cotton textile mill is to be shifted out side Greater Bombay but within the State, shifting outside the state to be regarded as closure and to be dealt with as such with due permission of the competent authorities, and in accordance with a scheme approved by Government, the provisions of sub-clauses (a) and (b) of sub-Regulation (1) of this Regulation shall also apply in regard to the development or redevelopment of its land after shifting.

- (4) The condition of recommendation by the Board of Industrial and Financial Reconstruction (BIFR) shall not be mandatory in the case of the type referred to in sub-Regulations (2) and (3) above.

- (5) Notwithstanding anything contained above, the Commissioner may allow additional development to the extent of balance FSI on open lands or otherwise by the cotton textile mill itself for the same cotton textile or related user.

- (6) With the previous approval of the Commissioner to a layout prepared for development or redevelopment of the entire open land and/or built up area of the premises of a cotton textile mill which is either sick and/or closed or

requiring modernisation on the same land, the Commissioner may allow:—

- (a) Reconstruction after demolition of existing structures limited to the extent of the built up area of the demolished structures, including by aggregating in one or more structures the built up areas of the demolished structures;
- (b) Multi-mills aggregation of the built up areas of existing structures where an integrated scheme for demolition and reconstruction of the existing structures of more than one mill, whether under common ownership or otherwise, is duly submitted, provided that FSI is in balance in the receiving mill land.

(7) Notwithstanding anything contained above:

- (a) **if and when the built up areas of a cotton textile mill occupied for residential purposes as on the 1st January, 2000 are developed or redeveloped, it shall be obligatory on the part of the land owner to provide to the occupants in lieu of each tenement covered by the development or redevelopment scheme, free-of-cost, an alternative tenement of the size of 225 sq ft carpet area:**

Provided, that no such occupants shall be evicted till such time, he/she is provided with alternative accommodation of the size 225 sq ft carpet area in such development or redevelopment scheme.

For reconstruction/redevelopment to be undertaken by landlord/or Co-operative Housing Society of occupiers in respect of

residential building/chawls located on the lands of Cotton Textile Mills, the following conditions shall apply:—

- (i) In case redevelopment of buildings occupying part of larger holding, the notional area of plot on the basis of permissible FSI and the total built-up area of the building shall be computed and thereafter considering such notional area of the plot, FSI of 4.0 shall be allowed.
- (ii) The FSI computation of 4.00 shall be as follows:—

Rehab area shall be the total built up area required for rehabilitation of all the occupants of residential buildings/chawls with the carpet area of 27.88 sq mt each. In case of authorised non-residential occupier existing on 1st January, 2000 the area to be given in the reconstructed building will equivalent to the area occupied in the old building.

Difference between FSI 4.00 and FSI used for rehabilitation of existing occupants shall be used and shared as follows:—

- (a) Available difference shall be divided into two parts in a ratio of 1:40.

(b) Out of these two parts, 1.00 shall be constructed by the mill owners in the form of additional tenements having 27.88 sq mtrs carpet area each and shall be handed over to MHADA/Government and to be used for rehabilitation of mill workers.

(c) The mill owners shall be entitled for FSI of above 0.4 part as stated in (a) in lieu of construction done and handed over of MHADA/Government.

(d) Construction for rehabilitation of all the occupants of residential buildings/chawls shall be done by mill owner. No incentive FSI against such construction shall be permitted.

- (iii) All the occupants of the old building shall be re-accommodated in the redeveloped building.
- (iv) In case of the cess building, the list of occupants and area occupied by each of them in the old building shall be certified by Mumbai Repairs and Reconstruction Board and for other building it shall be certified by Municipal Corporation of Greater Mumbai.
- (v) In case of dispute the manner shall be referred to the Monitoring Committee

and the decision of the Committee shall be binding on all parties.

- (vi) An amount of ₹ 20,000 per tenement have to be deposited by developer as a corpus fund with the society of the occupants at the time of completion of construction for maintenance of the buildings.
- (vii) Notwithstanding anything contained in these Regulations, the relaxation's incorporated in regulation No.33(7) of these regulations and amended from time to time, shall apply.
- (b) **if and when a cotton textile mill is shifted or the mill owner establishes a diversified industry, he shall offer on priority in the relocated mill or the diversified industry, as the case may be, employment to the worker or at least one member of the family of the worker in the employ of the mill on the 1st January, 2000 who possesses the requisite qualifications or skills for the job;**
- (c) **for purposes of clause (b) above, the cotton textile mill owner shall undertake and complete training of candidates for employment before the recruitment of personnel and starting of the relocated mill or diversified industry takes place.**
- (d) **Notwithstanding anything contained above, if and when a cotton textile mill is taken up for development/redevelopment for any industrial/commercial purposes, the mill owner or the developer or the occupier or the premises shall on priority**

provide employment to the worker or at least one member of the family of the worker in the employ of the mill on the 1st January, 2000 who possesses the requisite qualifications or skills for the job.

(8) (a) Funds accruing to a sick and/or closed cotton textile mill or a cotton textile mill requiring modernisation or a cotton textile mill to be shifted, from the utilisation of built up areas as per clause (a) of sub-Regulation (1) and as per clauses (a) and (b) of sub-Regulation (6) or from the sale of Transferable Development Rights in respect of the land as per columns (3) and (4) of the Table contained in clause (b) of sub-Regulation (1) or from the development by the owner of the land as per column (5), together with FSI on account of the land as per column (3), shall be credited to an escrow account to be operated as hereinafter provided.

(b) The funds credited to the escrow account shall be utilised only for the revival/rehabilitation or modernisation or shifting of the cotton textile mill, as the case may be, provided that the said funds may also be utilised for payment of workers' dues, payments under Voluntary Retirement Schemes (VRS), repayment of loans of banks and financial institutions taken for the revival/rehabilitation or modernisation of the cotton textile mill or for its shifting outside Greater Mumbai but within the State.

(9) (a) In order to oversee the due implementation of the package of measures recommended by the Board of Industrial and Financial Reconstruction (BIFR) for the revival/rehabilitation of a potentially sick and/or closed textile mill, or schemes approved by Government for the modernisation or shifting of cotton textile mills,

and the permissions for development or redevelopment of lands of cotton textile mills granted by the Commissioner under this Regulation, the Government shall appoint a Monitoring Committee under the chairmanship of a retired High Court Judge with one representative each of the cotton textile mill owners, recognised trade union of cotton textile mill workers, the Commissioner and the Government as members.

(b) The Commissioner shall provide to the Monitoring Committee the services of a Secretary and other required staff and also the necessary facilities for its functioning.

(c) Without prejudice to the generality of the functions provided for in clause (a) of this sub-Regulation, the Monitoring Committee shall:—

(i) lay down guidelines for the transparent disposal by sale or otherwise of built up space, open lands and balance FSI by the cotton textile mills;

(ii) lay down guidelines for the opening, operation and closure of escrow accounts;

(iii) approve proposals for the withdrawal and application of funds from the escrow accounts;

(iv) monitor the implementation of the provisions of this Regulation as regards housing, alternative employment and related training of cotton textile mill workers.

(d) The Monitoring Committee shall have the powers of issuing and enforcing notices and attendance in the manner of a Civil Court.

(e) Every direction or decision of the Monitoring Committee shall be final and conclusive and binding on all concerned.

(f) The Monitoring Committee shall determine for itself the procedures and modalities of its functioning.

(10) Notwithstanding anything stated or omitted to be stated in these Regulations, the development or redevelopment of all lands in Greater Mumbai owned or held by all cotton textile mills, irrespective of the operational or other status of the said mills or of the land use zoning relating to the said lands or of the actual use for the time being of the said lands or of any other factor, circumstance or consideration whatsoever, shall be regulated by the provisions of this Regulation and not under any other Regulation.

However, the lands reserved for public purposes which is owned or held by Cotton Textile Mills, shall not be regulated by the provision of this regulations and the reserved lands shall be handed over to the MCGM or the Appropriate Authority in lieu of TDR or shall be developed as per the provisions laid down under Regulation 9 (Table-4)."

(Emphasis added)

28. Some facets of this DCR must be noted. *First*, there is the consideration of the three-way split that is mentioned in the table in DCR 58(1)(b) and the words 'open lands' and 'balance Floor Space Index ("FSI")'. *Second*, sub-regulation (2) deals with modernisation. That is in its own compartment. *Third*, sub-regulation (3) then speaks of lands of cotton textile mills after shifting. *Fourth*, there are the provisions of sub-regulations (6) and (7) emphasized above.

29. Notably, sub-regulation (7) opens with a non-obstante clause that separates it from everything that went before. Sub-regulation (6) confers discretion on the Municipal Commissioner. Sub-regulation (7)(a) speaks of a situation when the built-up areas of a cotton textile mill used for residential purposes — i.e., the workers' chawls — are developed or redeveloped. It casts an obligation on the land owner to provide to these occupants alternative tenements free of costs and specifies the area. Sub-regulation 7(b) deals with the situation when a cotton textile mill is shifted or the mill owner diversifies. The mill owner is required to offer on priority in the shifted mill or in the diversified industries employment to the worker or at least one member of the family of the worker who was in employment on 1st January 2000 subject to that person possessing the necessary skill sets. Sub-regulation 7(d) goes a step further. It opens with a non-obstante clause as we noted and speaks of a situation when a cotton mill is taken up for development or redevelopment for any industrial or commercial purpose and it then casts an obligation on the mill owner, the developer and even says occupiers of the premises to give priority employment to the worker or one member of the family of the worker subject to the date, condition and being in possession of the necessary skills sets.

30. Now pausing for a moment, let us understand what DCR 58 set out to do. It took an existing built form. It contemplated a change in that built form. It envisaged the shifting of a textile mill or what is called a diversification, i.e., a move away from the cotton textile mill to some other permissible purpose. It also contemplated the development or re-development of the land for any industrial or commercial purpose. When that happened, it was not just the built

form that was being regulated. For the first time, DCR 58 then tells us what the obligation of the mill owner is in regard to the employment of those who once were, as Mr Desai and Ms Cox have reminded us more than once, the heart of the textile mill industry from the very beginning. Everything here, they say, was built on the backs of these workmen. It is this that finds recognition in DCR 58.

31. These provisions tell us one thing above all: that DCR 58 attempted an extremely delicate balancing of competing urban and social equities.

32. Mr Tulzapurkar has taken us at some length through the decision of the Supreme Court in *Bombay Dyeing & Manufacturing Company Limited v Bombay Environmental Action Group & Ors*.³ The decision is well-known. There is an analysis of the DCRs and particularly DCR 58. Whether Mr Tulzapurkar says so or not, the issue before the Supreme Court was on the interpretation of the words ‘open lands’ and ‘balance FSI’ in DCR 58(1)(b). The reason is obvious and may be stated shortly like this. The table below DCR 58(1)(b) provided for a roughly one-third each division between open spaces, public housing and private development. But one third of what? Was it the entire acreage of the mill land? Or was it only that portion that was unbuilt and undeveloped that was to be divided into three?

33. Before the Bombay High Court, the Public Interest Litigation Petitioner successfully argued that any other interpretation would

3 (2006) 3 SCC 434.

render DCR 58 meaningless and would be contrary to every notion of balanced development. In short, it was the entirety of the mill holding that that had to be divided into three. Or to put it even more bluntly, 200 acres would go for open spaces, 200 for affordable housing and the remaining 200 would be available for private development. The Supreme Court negated this. On a consideration of the rival arguments and interpreting the words 'open lands' and 'balance FSI', the Supreme Court held in effect that it was the only the unutilised portion that would be subjected to this three-way division.

34. The Supreme Court's interpretation of this part of DCR 58 is not even the controversy before us today. Mr Tulzapurkar's emphasis is, we believe, rather on this: that the Supreme Court while interpreting the MRTP Act did not say that every modification required to pass through the necessary statutory filter of being notified for suggestions and objections. Only a modification of a substantial character or a substantial modification that changed the character of a Development Plan required to pass through this mandated process. He agrees that the Supreme Court held that a change in a 'reservation' — a locking or earmarking of some land in the development plan for a public purpose — would amount to a substantial modification and would require the statutory process to be followed.

35. The word 'reservation', one that we use far too readily, really means the identification of parcels of land for some public purpose. This may be an amenity, a playground, recreational ground, a

school, a municipal market and so on. The word reservation is not defined. But ‘amenity’ is defined in Section 2(2) of the MRTTP Act thus:

“2(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.”

36. “Development” in Section 2(7) is a term of the widest possible amplitude.

37. Of immediate relevance to this argument, and possibly central to the entire case is Section 37 of the MRTTP Act. This Section has also been modified. Sub-section (1A) was added by a 1971 amendment. Sub-section (1AA) was added by a 2002 amendment. Section 37(1)(b) was inserted by the 1996 amendment. As amended, Section 37 reads thus:

“37. Modification of final Development Plan

(1) Where a modification of any part of or any proposal made in a final Development Plan, the Planning Authority may, or when so directed by the State Government shall, within ninety days from the date of such direction, publish a notice in the *Official Gazette* and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any

such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction within one year from the date of publication of notice in the *Official Gazette*. If such modification proposal is not submitted within the period stipulated above, the proposal of modification shall be deemed to have lapsed:

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

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

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

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

receipt of the copies of such objections and suggestions from the government.

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

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

(2) The State Government may, make such inquiry as it may consider necessary and after consulting the Director of Town Planning by notification in the *Official Gazette*, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse

to accord sanction. If a modification is sanctioned, the final Development Plans shall be deemed to have been modified accordingly.”

(Emphasis added)

38. Only parenthetically, we note that the words “in the public interest” in Section 37(1AA) are, if not an oxymoron, then at least a matter of overstating the obvious because anyone would be entitled to presume that everything that the Government does at every stage can only be in the public interest and cannot possibly be otherwise. Whether therefore, Section 37(1AA) requires a *special* public interest to be shown is a question for another day.

39. The substance of this, therefore, is that where a modification is proposed to a final Development Plan and that modification is a substantial one, then it must pass through the Section 37 process.

40. We note for completeness, the insertion by the 2011 amendment of Section 22A which defines ‘modification of a substantial nature’. It does so in the context of Section 31 and Section 31 speaks of a sanction to a draft Development Plan. There is little reason to believe that the modification that we are concerned with under Section 37 is, following the decision by the Supreme Court, any different from a ‘modification of a substantial nature’ contemplated under Section 22A. It reads thus:

“22A Modification of substantial nature

In section 31, the expression “of a substantial nature” used in relation to the modifications made by the State Government in the draft Development plan means,—

- (a) any modification to a reserved site resulting in reduction of its area by more than fifty per cent or reduction of such amenity in that sector by an area of more than ten per cent in the aggregate;
- (b) insertion of a new road or a new reservation **or modification of a reserved site** or a proposed road widening resulting in inclusion of any additional land not so affected previously;
- (c) change in the proposal of allocating the use of certain lands from one zone to any other zone provided by clause (a) of section 22, which results in increasing the area in that other zone by more than ten per cent in the same planning unit or sector in a draft Development plan;
- (d) alternation in the Floor Space Index beyond ten per cent of the Floor Space Index prescribed in the Development Control Regulations.

(Emphasis added)

41. Therefore, once there is a proposal to alter, delete or change a reservation in a final Development Plan, this is necessarily (see Section 22A) a modification of a substantial nature that requires that the process of Section 37 be followed. Once this process is followed and the amendment is brought into effect, the consequence is that the final Development Plan stands modified. In other words, this is akin to an amendment to a statute. It is an amendment to a delegated legislation. The process of *amending the legislation* is what is set out in Section 37.

42. It is with this background that we now turn to the facts.

43. Mafatlal acquired an aggregate of about 83,000 sq yards or roughly 70,000 sq mts of CS No 590 of the Mazgaon Division between mid-1921 and the third quarter of 1923. On this it set up its industry, later known as Mafatlal Mill No 2. This continued until the Development Plan of 1967. Geographically, the land is in Byculla, abutting the eastern boundary of the legendary Veer Jijamata Udyan, the city's botanical garden and zoo. In the 1967 Development Plan this tract of land fell into a reservation for an expansion of the zoo.

44. Mafatlal's commercial fortunes declined drastically. By September 2000 it was in all kinds of difficulties. The then Board of Industrial and Financial Reconstruction ("**BIFR**") constituted under the Sick Industrial Companies (Special Provisions) Act, 1985 ("**SICA**") declared Mafatlal to be "sick". This is a terminology of the kind now considered to be 'inappropriate'; we are now more used to these entities being in what is called a Corporate Insolvency Resolution Process ("**CIRP**"). That is just a more lugubrious phrase for the earlier, and certainly more evocative, four-letter word.

45. On 4th July 2001, the Secretary of the Urban Development Department ("**UDD**") exercised powers under Section 37(1) of the MRTP Act. The direction was to the Planning Authority, BMC to delete the reservation in respect of a larger tract of Mafatlal land subject to certain conditions and to re-designate the land for what is equally euphemistically called 'retention' activity, possibly a very nice way of saying that Mafatlal could, on amendment, do with that

land pretty much what it wanted within the frame of the now in force DCR 1991.

46. On 30th October 2002 and on 16th January 2003, the BIFR passed an order sanctioning a rehabilitation scheme for Mafatlal. It is important to note that Mafatlal had dispersed locations. Not all its activities were concentrated on the Mazgaon land. Other than the division in Mazgaon, there was a division in Lower Parel near the BDD Chawls, and other units in Navsari, etc. The BIFR order allowed Mafatlal to consolidate its Mazgaon and Lower Parel activities by setting up and operating a 10,000 spindle unit at Mazgaon. There is no doubt that this was intended as a step towards the rehabilitation of Mafatlal.

47. But if part of the Mafatlal land at Mazgaon was under a reservation, and there was a proposal to reduce or delete that reservation then, as we have seen, this required an amendment under Section 37. That was why that Section 37 process began.

48. On 10th February 2004, the State Government issued a Notification under Section 37(2) by which it sanctioned the modification to the final Development Plan (having followed the Section 37 amendment route).

49. In March 2004, there came to be filed a PIL No 660 of 2004 by Janhit Manch challenging the 2004 Notification and the release of the Mafatlal land from the zoo reservation. While this Petition was pending, on 21st or 25th PIL 2009 the BIFR made an order

modifying the 2002 scheme. We will shortly have occasion to look at the original scheme, the draft and the modification because at least some of this is contentious. But to summarise, the BIFR permitted an amendment to what it called “paragraph 5.6”. There has been some disagreement about what exactly this refers to but we believe this can be resolved by a careful identification of the relevant paragraphs.

50. It is not however capable of dispute, in our view, that the original requirement of 10,000 spindles was not done away with at all even by the 2009 modification. In fact, there seems to be indication to the contrary because there is at least one clause that contemplates that 10,000 spindle unit continuing. The BIFR recognised that there was a pending PIL and said that any land disposal would be subject to the outcome of the PIL. That is not controversial. The Municipal Corporation was allowed to grant all necessary approvals, but this was again subject to the outcome of the PIL. Mr Dada maintains, and he is supported in this by Mr Desai and Ms Cox, that the sanctioned scheme’s provisions continued to the extent applicable to the Modified Draft Revival Scheme (“**MDRS**”). There was no explicit abrogation of the 10,000 spindle unit measure.

51. On 23rd September 2009, the *Janhit Manch* PIL was dismissed by this Court.⁴ The PIL judgment notes in paragraph 5 a submission that under the final Notification sanctioning the modification of 10th February 2004, Mafatlal could revive its

4 2009 SCC OnLine Bom 1488.

manufacturing activity with 10,000 spindles and this would provide much needed employment to workmen.

52. Now, Mafatlal's fortunes changed. This was perhaps inevitable because by now Mafatlal had available to it an extremely expensive slice of Mumbai.

53. On 4th November 2010, the Labour Commissioner issued a certificate that there were no labour dues or pending dues of workmen. A few months later, on 6th April 2011, the BMC approved Mafatlal's Development Plan for CS No 593 of the Mazgaon Division. This BMC approval itself contemplated the development of the spindle unit. The approval itself was subject to certain terms and conditions and one of these was that all the conditions mentioned in the State Government Notification under 37(2) would be met.

54. It is at about this point that Mafatlal joined hands with Glider. They entered into a registered Development Agreement. Glider took development rights of the leasehold land at Mazgaon, except the structure of 10,000 spindle units. Their agreement apparently says that Glider was obliged to construct that 10,000 spindle unit and deliver it to Mafatlal.

55. Diverting a little but only so that we can rid ourselves of it, Mr Tulzapurkar was anxious to say that any disputes between Mafatlal and Glider regarding the Development Agreement are outside the purview of our writ jurisdiction. He is completely

correct in this. We are not examining the Development Agreement or the commercial terms between Mafatlal and Glider at all. They are no part of our concern today. If there are any disputes those will have to be taken to a Court or a forum of appropriate jurisdiction. We need not spend further time on this aspect of the matter beyond noting that Mafatlal also executed a Power of Attorney in favour of Glider.

56. On 26th September 2013, the BMC approved Mafatlal's amended plan for development of the Mazgaon plot. This included the development of the spindle unit.

57. This takes us now to the events of 2019 which brought Mafatlal to Court in the first place. It seems Glider wrote to the State Government (and Mr Dada is understandably annoyed that Glider attempted to do so both for itself and on behalf of Mafatlal) suggesting that the requirement for the spindle unit be dispensed with. Mr Dada would have it that Glider had no business making a representation of this kind on behalf of Mafatlal. Mafatlal did not and does not support any such proposal.

58. Glider's letter is undated. For some reason that we are unable to understand, the Labour Commissioner convened a meeting on 7th March 2019. There was some discussion regarding this very aspect, viz., the closure or the dispensing with the spindle unit.

59. Nobody had yet dispensed with it and on 30th March 2019 the BMC issued a partial Occupation Certificate ("OC") for the

spindle unit because by then this had actually been constructed by Glider. Mafatlal wrote on 4th June 2019 protesting about Glider's representation. Glider replied on 14th June 2019 claiming that it had exclusive rights and entitlements under the Development Agreement and the Power of Attorney. Mafatlal responded on 20th June 2019 demanding that Glider withdraw its application for removing the spindle unit condition. On 9th July 2019, Mafatlal wrote directly to the Principal Secretary of UDD asking him to ignore Glider's letter for a closure of the 10,000 spindle unit.

60. On 7th September 2019 came the impugned letter from the State of Maharashtra. It said that the requirement of the spindle unit need not be implemented "since the workers had been paid".

61. We pause here for a moment. Although we will return to this slightly later, what this tells us is that there are now three sets of documents that we will have to examine more closely. The first is the exact wording of the 2004 amendment notification. The second is the sanctioned BIFR scheme to see what it was that BIFR actually did in the modification. This is not important from the town planning perspective, but it is necessary for us to be able to address Mr Tulzapurkar's argument that the BIFR itself had dispensed with the 10,000 units spindle condition, for he sets this up as a precursor or a justification for Glider's representation to the State Government's UDD. Then we will have to look up at the impugned letter to see what it is that the Government actually did.

62. On 18th November 2019, Mafatlal wrote to the BMC and asked the BMC not to act on any submission or representation that Glider made.

63. Mafatlal's Petition came to be filed on 21st November 2019. Nothing much seems to have happened till mid-February 2021 when Mafatlal learnt that the BMC was now acting on an application by Glider to use the FSI of the constructed 10,000 spindle unit. On 2nd March 2021, Mafatlal filed an Interim Application. It came to light that Glider had made proposals to the MCGM to dispense with the constructed spinning unit altogether so that it could develop the land in accordance with the UDD's 7th September 2019 so-called clarification, the impugned letter. Some orders were passed in the Mafatlal Petition. Affidavits in Reply came to be filed. Then there was a Rejoinder.

64. This went on till about 8th June 2023 when Mafatlal wrote to the Monitoring Committee saying that the issue of the spindle unit was pending before this Court, but the unit had not yet been delivered. The Monitoring Committee took note of this at its meeting on 22nd June 2023.

65. On 24th August 2023, there was a meeting of the Monitoring Committee. Notice was issued to Glider asking to explain why it had not delivered possession of the spindle unit to Mafatlal. The Monitoring Committee also asked the UDD to explain why its 7th September 2019 letter had been issued.

66. Glider replied to the Monitoring Committee on 5th October 2023. It contended that the scheme modified by BIFR had deleted the spindle unit requirement. It then said that there were no dues of workmen and ‘there was no purpose’ to the spindle unit, and that it was not required. Since the 7th September 2019 UDD communication had not been stayed, it was binding and thus Glider contended it was not required to deliver possession of any unit to Mafatlal.

67. On 9th January 2024, the Rashtriya Mill Mazdoor Sangh made a representation that the spindle unit had been constructed, an OC had been obtained and demanded that possession should be delivered to Mafatlal so that erstwhile mill workers could be employed.

68. On 24th January 2024, the Monitoring Committee met regarding this spindle unit. On 8th February 2024, it directed that the spindle unit be delivered by Glider to Mafatlal. This is what Glider challenges in its Writ Petition.

69. There is some subsequent correspondence between Advocates, but this need not detain us much further.

22nd March 2024

70. We turn first to the 10th February 2004 Notification under Section 37(2) of the MRTP Act. Both Petitions have a copy of this. We will take it from Exhibit “D” at page 76 of the Mafatlal Petition.

A clearer typed copy is at page 80. The Notification speaks of the area of 58,197.97 sq mts out of CS No 593 of the Mazgaon division owned by Mafatlal as reserved for an extension to the Veer Jijamata Udyan (the botanical garden and zoo). It mentions that this reservation was in the final sanctioned Development Plan and that there was on this land a cotton textile mill. The next portion says that the Development Plan was revised in 1991 after the previous plan of 1967. In the earlier plan too, the land was reserved for the same purpose. The Notification mentions that the reservation was deleted and was allowed for retention but while sanctioning the final Development Plan, the State Government continued the zoo expansion reservation.

71. The Notification goes on to say that the mill was a running industry till June 2000. There is a recitation of the several factors that led to the orders of the BIFR. Mafatlal approached the Government with a proposal for commercial exploitation of its lands (both at Lower Parel and at Mazgaon) to generate funds to partly revive the mill and to pay various dues. That was the basis of the request for a deletion of the reservation. The Notification states explicitly that Mafatlal intended to develop it in accordance with DCR 58. The Government is said to have examined the proposal. It noticed that the revival would restore the viability of the mill and would also enable payment of various dues, including labour dues. A specific note is that this would help to some extent to protect the jobs of workers. But that required, the Government said, the release of the land from reservation and it being allowed for commercial exploitation. Acting 'in the larger public interest', the Government said it was expedient to take the necessary steps to delete the

reservation and conditionally place the land as a retention activity. The Notification expressly refers to the imposition of conditions. An express condition noted was that the land would be developed scrupulously in accordance with DCR 58 and in accordance with the package of measures approved by BIFR.

72. Accordingly, the State Government directed the BMC to delete the reservation and designate the land as a retention activity. This required the publication of a Notification and the procedure under Section 37(1) of the MRTP Act, including inviting suggestions and objections.

73. That process having been completed, the modification was notified as sanctioned. We now reproduce the relevant part of the modification from pages 83 and 84:

“ **MODIFICATION** ”

A) Sanctions the said modification proposal as under:-

50% of the net reservation area (i.e., after deduction of Road Set Back area) is deleted from “Extension to VJB Udyan” and the area so deleted is designated as “Retention Activity”, while remaining 50% of the net area is retained as reserved for “Extension to VJB Udyan” subject to following conditions (as more specifically shown on the plan enclosed):-

- i) The land on which the reservation of “Extension to Veer Jeejamata Udyan” is retained shall be handed over by the owner to the Corporation free of encumbrances on non

cash compensation terms, in accordance with provisions contained in regulations.

- ii) **The development of land thus released from the reservation, shall be available to the owner for being developed as per provisions of regulations 58 of DCR for Greater Mumbai and the same shall also be subject to the scheme as approved by BIFR.**
- iii) **The said company shall utilize the funds accrued out of the development of lands so released from reservation primarily for adjustment of the dues of the workers and also for payment of dues of Financial Institutions as stipulated by BIFR in the approved scheme.**
- iv) **As per the stamped undertaking submitted by the company to Government, the said company shall recommence their spinning activity of 10000 spindles as stipulated by BIFR.**

B) Fixes the date of coming into force of these modifications as the date of publication of this notification in the official gazette.

C) Directs the said Corporation that in the schedule of modifications appended to the aforesaid Government Notification sanctioning the said Regulations, after the last entry, the above entry (1) shall be added.

By order and in the name of Governor of Maharashtra.”

(Emphasis added)

74. Since there was an argument before us that the modification to the development plan was necessary ‘only’ to remove the reservation, we immediately note that the modification did not stop at a deletion of the reservation. It could have. But it went further. Not only was there a mention in the recitals of the imposition of an express condition but clauses (ii), (iii) and (iv) were also included in the modification. In other words, all four clauses became part of the amended delegated or subordinate legislation. No one part can be plucked out to the exclusion of the others. Had the modification stopped at clause (i), then possibly the picture would be completely different.

75. To understand the consequences of this, we need to move directly to a time eight years later on 7th September 2019. This is the letter that Glider seeks to enforce in its Petition and which Mafatlal challenges. A copy is at Exhibit “S” at page 384 of the Mafatlal Petition. This translation is at pages 385 and 386. We reproduce it fully:

“ GOVERNMENT OF MAHARASHTRA
No. TPB-4318/380/C.R.-26/2019/UD-11,
Urban Development Department,
4th floor, Manatralaya,
Mumbai – 400 032.
Date: 07/09/2019.

To,
1) Commissioner,
Brihanmumbai Municipal Corporation,
Mumbai.
2) M/s Glider Buildcon Realty Pvt Ltd,

Piramal Tower, 8th floor,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400 013.

Sub: Regarding relaxation of condition for construction of a 10,000 spindle unit on the land of M/s. Mafatlal Industries Ltd., situated at CS No. 593 (Part) of Mazgaon Division, Mumbai City.

Ref: 1) Government Notification No. TPB-4301/974/CR No. 76/01/UD-11, dated 10/02/2004.

2) Letter from M/s Glider Buildcon Realty Pvt Ltd on the above cited subject received in Urban Development Department.

Sir,

Letter under reference from the Applicant may please be perused.

The legal dues of the workers from M/s Mafatlal Industries Ltd on the subject land have been paid and as per the letter referred at reference No.2 above, a request has been made to the Government for relaxation of condition for construction of a 10,000 spindle unit as per the scheme given by BIFR.

While approving the changes in the reservation on the said land in the approved development plan of the year 1991 as per the provisions of Section 37(2) of the Act, as per the condition put by BIFR, a condition of starting a 10,000 spindle unit to restart the spinning activity, was included Condition No. (iv) of the Government Notification dated 10/02/2004. At present, BIFR does not exist. In reference to this and taking into consideration the opinion of the Law & Judiciary Department that as BIFR does not exist and as there are no arrears of legal dues to be paid to workers, there is no need to take permission from the National Company

Law Tribunal (NCLT). In view of this, I am directed to inform you that *there is no need to implement condition No.(iv)* contained in the Government Notification dated 10/02/2004.

Yours
Sd/ 7.9.2019
(Nirmalkumar P Chowdhary)
Under Secretary,
Government of Maharashtra.

Copy:- Select File (UD-11)”

(Emphasis added)

76. This is a decidedly curious communication. It proceeds on the basis that although there was a statutory amendment to the Development Plan and the DCRs, one that introduced Condition (iv) noted above, since BIFR did not exist and since there were no arrears of legal dues, “there was no need to take permission from the National Company Law Tribunal”; and, in view of this, the Under Secretary felt that there was ‘no *need* to implement Condition (iv)’.

77. There is a jump in logic right here. On its own, this does not explain or clarify what the reference to the National Company Law Tribunal (“NCLT”) supposedly refers to. The argument is in four distinct parts. *First*, that the BIFR does not exist. That is surely irrelevant. *Second*, that there are no arrears of dues to the workers. That is equally immaterial. *Third*, that permission of the NCLT was not required. We will return to the context of this a little later. *Fourth*, “there was no need” to implement Condition (iv).

78. In another manner of speaking, a statutory amendment was simply written off the statute book on the ground that “*there was no need*”.

79. We have to pose the question whether had the modification been challenged before us (not the 7th September 2019 communication) on the ground that Condition (iv) was “unnecessary”, whether a Writ Court in interpreting a statute could ever have written a statutory provision off the statute book entirely. The answer must be emphatically in the negative.

80. Notably, nobody ever challenged the inclusion or the imposition of Condition (iv) at any time. Even if it had been opposed in the form of suggestions and objections, once finally sanctioned it was clearly a part of the delegated legislation. It could not be read down, let alone read out, in this fashion even by a court.

81. But what is this reference to the NCLT? Apparently, this stems from a set of correspondence and legal opinions. We find these in annexures to Mafatlal’s Affidavit in Rejoinder in its own Petition. The first document at page 497 is an Industries, Energy and Labour Department note which submits a reference to UDD. It notes that Glider sought a ‘relaxation’ of the condition for constructing the 10,000 spindle unit at CS No 593 at Mazgaon. After some discussion noted, the Industries, Energy and Labour Department Authorities said there were no arrears of any dues to any worker and that there could be no objection to accord approval to this request of “relaxation”. However, and this is the point, since

the BIFR did not exist and the NCLT was now the authority, that department felt that the stand or the view of the NCLT should be taken into account.

82. This document is of some date prior to 5th March 2019. On 8th March 2019, Glider's Attorneys seem to have written to it in this regard. Now, we are a little puzzled as to how this communication finds its way into a Court record. Even if it was referred elsewhere, it is surely protected by attorney-client privilege and without it being expressly waived we do not see how it could have been introduced in these papers. We see no reason to refer to it. Even if it was given to the Government that will not suffice to waive the privilege that automatically applies in law.

83. Whatever be that opinion and we will proceed on the footing that the advice was that there was no need to apply to the NCLT, the next event of consequence was a 4th April 2019 noting of UDD. This refers to the legal opinion of Glider's Attorneys but all that this says is that an opinion from the Law and Judiciary Department was required. That opinion is then also annexed at page 510. It is dated 25th June 2019. The sum and substance of the opinion is that it was not legally feasible to delete Condition (iv) in the 2004 modification "without the remarks of the NCLT".

84. The next document at page 520 is a 13th August 2019 document from the Law and Judiciary Department which now says that Mafatlal was not required to approach NCLT for any scheme or

any condition sanctioned by the BIFR under the SICA. This was supposed to be a reconsideration of the earlier opinion.

85. But no amount of opinion harvesting can possibly alter a position in law. The question is whether a legislation introduced by an amendment could be done away with by executive fiat saying that it was no longer needed.

86. In law, this has long been well settled. Court after Court has said that this simply cannot be done. This principle has been applied in every branch of the law, including in the matter of reservations as understood in public employment education and so on: see: *Palghat Jilla Thandon Samudhaya Samrakshna Samithi & Anr v State of Kerala & Anr.*⁵ That was a case where an executive action sought to delete a statutory or legislative provision. The Supreme Court in the clearest possible terms held that this could not be done.

87. If this is the position in law, then there is little to be gained by an examination of why Glider felt or led the Government to believe that Condition (iv), the construction and the delivery of 10,000 spindle unit “was unnecessary”. But this has been argued at some length before us and we will therefore deal with it. We have additionally the benefit of two compact notes from Mr Desai on behalf of the Rashtriya Mill Mazdoor Sangh and Ms Cox on behalf of the Sarva Shramik Sanghatana. As we have noted, the submission from Mr Tulzapurkar is that by the modified scheme, the 10,000 spindle unit requirement was done away with by the BIFR itself.

5 (1994) 1 SCC 359.

This is not entirely accurate. The hearings before the BIFR on 24th and 25th June 2019 set out the entire history including the issuance of a show cause notice in 2005 and showing why the scheme could not be held to have failed. We find a copy of this at page 128 of Glider's Petition with a typed copy at page 194. The relevant portion for our purposes is at page 196 in paragraph 8. This refers to a review hearing on 4th October 2006 to review the status of implementation of the scheme called SS-02.

88. Mafatlal was directed to prepare a Draft Modified Revival Proposal covering the recovery of various dues. Mafatlal did so, and then the BIFR prepared and circulated a Modified Draft Revival Scheme ("MDRS") on 6th April 2009. A copy of this document is to be found at page 123 of the Glider Petition with a typed copy from page 189. The relevant paragraph 12 at pages 199 to 200 shows that the BIFR considered Mafatlal's proposal. Paragraph 12 reads thus:

"12. The Board, on consideration of draft modified revival scheme (DMRS) received from the company/MA noted that the DMRS, besides being tied-up with the means of finance, is likely to turn the company profitable/viable on a long-term basis. In view of this, the Board, based on the said DMRS and also the other material on record, prepared a Modified Draft Revival Scheme (MDRS) dt 06.04.09 for the company's revival, and the Board also directed that, besides circulation of the said MDRS to the concerned agencies for their consents/comments in terms of provisions u/s 19(1) & 19(2) of the Act, within a period of 60 days, the gist of the said MDRS be also published in two (2) leading newspapers (one national daily and one local daily) as per the prevalent practice of the Board, inviting objection (s)/ suggestion(s), if any, from all concerned

agencies, within the same period of 60 days. The Board further directed that the objections(s) / suggestion (s), if any, would be heard/considered by the Board on 25.06.09 at 11.30 AM. Due to some unavoidable circumstance, the said hearing was pre-poned and re-schedule on 24.06.09.”

89. This was linked to a proposed means of financing and was said to be likely to turn the company viable on a long-term basis. The board thus prepared the MDRS and directed that besides circulating it to all agencies concerned for their consent and comments within sixty days, the gist of the MDRS to be also published in two newspapers.

90. Various persons submitted suggestions and objections between 24th and 25th June 2009.

91. Based on these, the BIFR then made various specific changes in the MDRS. The changes made are to be found at page 138 in paragraph 37 and which includes an amendment to paragraph 5.6 of the MDRS in respect of the sale of the Mazgaon land.

92. What is relevant is that paragraph 5.6 thus stood modified. At page 138 is the modified portion. The original paragraph 5.6 is to be found from page 164 to 165. The original proposal was modified by a deletion and a substitution. It added certain additional paragraphs. Sub-clause (e) at page 139 (and this was at the time when the Janhit Manch Petition was pending) dealt in sub paragraph (i) with the sale of the Mazgaon land and sub-clause (ii) dealt with the Lower Parel land.

93. The Modified Revival Scheme is at page 142 of the Glider Petition with a typed copy at page 210. The background is set out. Clause 2.2.3 at page 151 dealt with the sale of Mazgaon land but paragraph 2.2.4 at page 152 said that units at Lower Parel and Ahmedabad would be closed and that the *Mazgaon unit would be operated at a capacity of 10,000 spindles*. Other machinery of these units had been shifted to Nadiad and Navsari. Then there was a discussion about the capital expenditure. From this, it does not appear that there was a deletion by the BIFR of the 10,000 spindle unit at any time. These documents from the BIFR were aimed at a package of measures, including capital expenditure, and a consolidation of activities. The scheme dealt with funding mechanisms for the rehabilitation package and that included the remainder of the Mazgaon land. This necessarily meant that land other than the land on which the spindle unit was to be constructed. Importantly, the provisions of the sanctioned scheme continued to apply to the modified scheme and were not abrogated as we can see from page 168, paragraph 6 (iii). It reads thus:

“6 Other Terms and Conditions

(i) ...

(ii) ...

(iii) The provisions of the earlier Sanctioned Scheme shall continue to be applied to this Modified Scheme to the extent applicable and not be abrogated in this scheme.”

94. Mafatlal was deregistered by the BIFR order of 12th August 2010. But that order said that those portions of the modified scheme that had not been implemented would be implemented and that the implementation would be monitored.

95. Ms Cox has thus carefully set out how the specific provision for the 10,000 spindle unit cannot be said to have been dispensed with or cancelled by the BIFR.

96. The submission by Mr Desai is that the 2004 Notification provided for a deletion of a reservation for 50% of the net reservation area of the larger land after deducting road set back and this was to be made available to Mafatlal for development in accordance with DCR 58. He submits, and we have already held, that one quarter of the modification, represented by Condition (iv) cannot be brushed aside by an executive order. Interestingly, there is not even an appropriate Notification seeking to amend that modification. All we have is this communication from an Under Secretary in UDD. Even if there was a proposed modification to the modification, we dare say this would require to go through the process of Section 37. We do not find substance in Mr Tulzapurkar's argument that if the land occupied by the spindle unit is compared to Mafatlal's holding, then it is trivial, and if it is compared to the entire land mass of Mumbai, it is even more trivial. That is hardly an appropriate test. The other way of looking at it admits of absolutely no answer which is that Condition (iv) is exactly 25% of the 2004 modification. To do away with 25% of a specific targeted earmark modification would undoubtedly be a modification of a substantial nature.

97. Above all, there is this consideration that must weigh with us. What are the contesting equities? On one side there is Glider, a real estate development company. On the other side, are the labour

unions represented by Mr Desai and Ms Cox. In between is Mafatlal. At least presently, and after our order for all time to come, its sympathies will lie with the labour unions so far as this spindle unit is concerned, for we will not hear Mafatlal hereafter to say that the spindle unit is not necessary or should be allowed to be taken up for redevelopment. That is not its case before us. That has not been its case at any time before any authority, even the Government of Maharashtra and it will not be allowed to turn back from this position.

98. What we have been told is that the corporate and commercial need of Glider, an entirely private real estate developer, must be allowed to override and prevail over (we dare say even ‘Trump’) the concerns of the labour unions and the provision of employment to erstwhile mill workers or members of their families. We are being told that not only is Condition (iv) of the 2004 amendment ‘unnecessary’, but that the provisions of DCR 58(7), 58(9) and 58(10) are nothing but so much clutter and a burden on the more important real estate profit aspirations of Glider.

99. Our answer to this is that perhaps in Mumbai more than in any other city in India these social and economic disparities are already far too stark and far too much in conflict. These contradictions between extremes of poverty and wealth are literally smashed together here, cheek by jowl. We see daily how appalling these disparities are. We are being asked to add to these. We are being asked to do away with employment to erstwhile mill workers and their families. We are asked to hold that their livelihoods,

earnings and the principled approach of DCR 58 must be sacrificed at the altar of Mammon.

100. We will not permit this. The BIFR's order was not only for the revival of Mafatlal. Part of the revival of Mafatlal involved a close consideration to the requirements of DCR 58 and the interests of its erstwhile workmen. Now we are being told that this is all unnecessary. We are being told that it need not been done. Instead, we are led to believe high value real estate must be preferred over these considerations. That can hardly be an impelling, let alone a compelling, circumstance for a Writ Court functioning under Article 226 of the Constitution of India. It just so happens that these two Writ Petitions are by Mafatlal on one side and Glider on the other. The same result would undoubtedly follow had one of the labour unions sought to approach this Court.

101. We return finally to one submission that was taken more than once, namely that Development Control Regulations are not meant for labour welfare. That may be true. They are not. But the fact that they do provide for labour welfare does not invalidate them. We have yet to see a single challenge mounted successfully on this aspect of the matter, viz., that the provisions of DCR 58 that clearly provide for labour welfare are somehow ultra vires or unlawful. If that is not so, then it is impossible for any private enterprise to argue that those provisions should be given short shrift.

102. We find absolutely no substance to the Glider Petition. The communication impugned of 7th September 2019 of the State

Government cannot be sustained. It is quashed and set aside. The Mafatlal Petition succeeds. Rule is made absolute in terms of prayer clauses (a)(i), a(ii), a(iii), a(iv), a(v) and (b). They read thus:

“(a) that this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order and/or direction:

- (i) ordering and declaring that the letter dated 7th September 2019 issued by Respondent No.1 (Exhibit S hereto) is illegal, invalid, non-est and ultra vires the MRTTP and/or unconstitutional and that the same does not have the effect of modifying the 2004 Notification;
- (ii) restraining, injuncting and/or prohibiting Respondent Nos. 1 to 3 and their servants, officers, directors and/or agents from in any manner (directly and/or indirectly) acting on the basis of the letter dated 7 September 2019 (Exhibit S hereto); and
- (iii) restraining and prohibiting Respondent Nos. 1 to 3 and their servants, officers, directors and/or agents from in any manner (directly and/or indirectly) interfering with, obstructing, disturbing and/or otherwise prejudicing the setting up of the 10,000 spindles unit at the subject property and the Petitioner’s commencement of its spinning activity therefrom.
- (iv) restrain and prohibit Respondent Nos. 1 to 3 by themselves or through their respective servants, officers, directors and/or agents from in any manner (directly and/or indirectly) demolishing the constructed

Spinning Unit or any part thereof on the subject property and restrain and prohibit Respondent No.2 by itself or through its servants, officers, directors and/or agents from in any manner (directly and/or indirectly) utilizing the FSI of the constructed Spinning Unit in any manner for any other purpose.

- (v) restraining and prohibiting Respondents Nos. 1 and 3 from entertaining and Respondent No. 2 from making any application for change of development plans, altering and/or demolishing the constructed Spinning Unit.

(b) that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ order or direction calling for the proceedings in relation to the Respondent No. 1's letter dated 7 September 2019 (Exhibit S) and after perusing the same to quash and set aside the said letter."

103. Mr Tulzapurkar's request for a continuance of interim relief is rejected.

104. In view of this, the pending Interim Application does not survive and is disposed of accordingly.

105. Parties to bear their own costs.

(Kamal Khata, J)

(G. S. Patel, J)