IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION/PIL NO. 4642 OF 2005

1. Maidan Bacchav Samiti, A Society registered under the Society's Registration Act Through its President Shri Sachin Sridhar Chavan, having address at Mahagiri, Koliwada, Thane (W), 400 601.]

2. Shri Madhukar Govind Koli, Aged : 50 years, Occ: Business, R/o Mahagiri, Koliwada, Thane 400 601.]

3. Shri Milind Shantilal Patel, aged 36 years, Occ: Business, R/o Mahagiri, Koliwada, Thane 400 601.]

4. Shri Milind Shantilal Patel, aged 36 years, Occ: Business, R/o Mahagiri, Koliwada, Thane 400 601.] ... Petitioners

V/s

1. Ramchandra Padmakar Vaidya Hall Trust, having Registration No.A-34-T, situated at Kharkar Ali, Thane 400 601 – Through its President, Shri Ashok Kotnis.]

2. Shri Anand Waman Nadkarni, R/o Block No.65, Sitaladevi Trust Building, Lady Jamshedji Road, Mahim, Mumbai.]

3. Shri Ashok Dwarkanath Pothnis, R/o IInd Floor, R.M. Pride, Ram Maruti Road, Above ICICI Bank, Thane.]

4. Shri Ramchandra Sitaram Satgare,]
R/o Hiradeep, 2nd Floor, Block No.12,]
Mental Hospital Road, Thane.]

5. Shri Ravindra Gajanan Pradhan,]
6th Floor, Bldg. No.A, Flower Valley, Thane.]

6. Shri Sanjay Mukund Kelkar,]
Shram Saphalaya, 1st Floor, Aaram Road]
Estate, Veer Savarkar Marg, Thane.]

7. M/s.Ratnamani Developers Pvt. Ltd.]
Through its Partners Shri Kanti M. Shah and]
Shri Yogesh Kapasi, having office at]
Sutravihar Co-op. Hsg. Society, Ram Murti]
Road, Thane.]

8. Municipal Corporation of the City of Thane,]
By its Commissioner.]

9. The Commissioner,]
Municipal Corporatio of City of Thane.]

10. The Asst. Charity Commissioner,]
Thane Region, Thane.]

11. The Asst. Director of Town Planning,]
Thane Municipal Corporation, Thane.]

12. The Secretary,]
Urban Development Department,]
Mantralaya, Mumbai.]... Respondents

Mr. Shriram S. Kulkarni for Petitioners and for Applicants in Civil Application No. 946 of 2010.

Mr. A.V. Anturkar with Sugandh B. Deshmukh for Respondent Nos.1 to 5 and Applicants in Civil Application No.517 of 2009.

Mr. C.R. Sonawane, AGP and Mr. R.B. Behere, AGP, for Respondent Nos.10, 12 and 13 – State.

Mr. R.S. Apte, senior advocate with Mr. Mandar Limaye for Respondent Nos.8 and 9.

CORAM : MOHIT SHAH, C.J.
& S.J. VAZIFDAR, J.

Date of Reserving : ***TUESDAY, 15TH MARCH, 2011.***

Date of Pronouncement : FRIDAY, 1ST APRIL, 2011.

ORAL JUDGMENT *: [Per S.J. Vazifdar, J.]*

1. Petitioner No.1 is a registered society which claims to be established, *inter-alia*, for protecting open spaces in Thane City, Maharashtra. Petitioner Nos.2 to 4 claim to have been using the suit plot for sports, cultural and other activities. Respondent Nos. 2 to 6 are the trustees of respondent No.1. Respondent Nos.1 to 6 claim to have entered into an agreement with respondent No.7 M/s. Ratnamani Developers Pvt. Ltd. for the development of the land in question which we will presume belongs to respondent No.1. Respondent Nos. 8 to 11 are the Municipal Corporation of the City of Thane, the Commissioner of respondent No.8, the Assistant Charity Commissioner, Thane Region, the Assistant Director of Town Planning of respondent No.8 and the Secretary, Urban Development Department, Mantralaya, Mumbai, respectively.

2. The petitioners have filed this Public Interest Litigation, *inter-alia*, for a Writ of Certiorari to quash the proceedings in respect of change No.M/19 of the suit plot in the final Development Plan published by the State Government in the Official Gazette on 4th October, 1999 and to restore the original user stipulated in the Development Plan as submitted by the Planning Authority under section 30(1) of the Maharashtra Regional & Town Planning Act, 1966 (MRTP Act) for final sanction on 19th February, 1996. The petitioners have also sought a Writ to quash and set aside an order dated 18th December, 2003, in M.A. No.80/03 passed by the Assistant Charity Commissioner, respondent No.10, according permission to the Trust to develop the property pursuant to an agreement with the developer, respondent No.7.

3. Respondent No.8 – Thane Municipal Corporation (TMC) by a letter dated 2nd July, 2004, responded to the queries raised by the petitioners under the Right to Information Act. One Sanjay S. Deshmukh, an officer of TMC filed an affidavit dated 16th August, 2005, in this petition. One Hemant Ramdas Thakur working as a Town Planner in the office of the Assistant Director of Town Planning filed an affidavit dated 20th October, 2005. The facts appearing in these three documents are relevant for the purpose of considering the petitioners case under the MRTP Act.

4(A) In the year 1974, the property was shown as open space in the Development Plan.

(B) The draft Development Plan published on 21st December, 1991, showed the land to be in *gaothan* area.

The said Deshmukh's affidavit states that in the draft Development Plan of 21st December, 1991, the plot was "shown to have been proposed to be reserved as open space." This, however, Mr.Apte, the learned senior counsel appearing on behalf of TMC, states was a mistake. He relied upon Schedule I to the Government Notification dated 4th October, 1999. Under the column "Proposals as per submitted Draft Development Plan under Section 30 of the MRTP ACT, 1966", it is stated as follows in respect of the said plot:-

> *"Existing open space situated on North-East side of Site No.13." "Extension to school."*

The said Thakur's affidavit states that in this plan, the land was "designated" as an "existing entertainment use". During the hearing and in the written submission on behalf of the Assistant Town Planner, it is stated that the land was shown as "Existing Recreational use".

There is no affidavit filed by either the said Deshmukh or the said Thakur stating that there was any error in their respective affidavits. The 4th October, 1999 Notification relied upon by the respondents in this regard is under challenge in this Writ Petition. Further, even if we were to presume Mr. Apte's submission to be correct the plot was, even according to him, shown as an "existing open space".

5. The reply to the RTI query states that on 6th October, 1994, the revised draft Development Plan was published wherein "Existing entertainment/recreation user" was shown in respect of the said plot

which was recommended to be included by change No.22 in congested area. The reply also stated that when the draft Development Plan was re-published on 15th January, 1996, the existing user was shown for entertainment and the area was recommended for including the same in congested area vide change No.23.

The reply further states that the same position continued while submitting the revised draft Development Plan for final sanction under section 30(1) on 19th February, 1996.

6, Pausing here, it must be noted that by an application dated 10th April, 1997, made to the Ministry of Urban Development, respondent No.1 requested for a change in user in respect of the said land.

7. This brings us to the main controversy in the petition viz., to the sanctioned revised Development Plan dated 4th October, 1999. The Urban Development Department, by the Notification dated 4th October, 1999, in exercise of powers under section 31(1) of the MRTP Act sanctioned the said draft Development Plan. The Notification stated that some of the modifications proposed to be made by the State Government, included in Schedule II thereto, were of a substantial nature requiring re-publication under section 31. The modification further stated as under:-

> "Now, therefore, in exercise of the powers conferred by sub-section (1) of section 31 of the said Act and all other powers enabling it in that behalf of the Government of Maharashtra hereby sanctions the said Draft Development Plan, excluding the areas under modifications, which are of substantial nature mentioned in schedule-II and shown on plan in Orange Colour

verged and marked as Excluding Portion E.P.1 To E.P. 256 on the plan submitted by the said Corporation, with certain modifications made by Government which are not considered to be of substantial nature are shown in Orange Colour on said Draft Development Plan, and as described in schedule-1 appended to this notification and fixes 22 November 1999 to be date on which the said Development Plan shall come into force."

The first respondent's application dated 10th April, 1997, for change of user, was apparently granted. The authorities, however, did not consider the modification to be substantial and, therefore, included it in Schedule I to the Notification dated 4th October, 199 at Sr. No.19 which reads as under:-

"*SCHEDULE I*

SECTOR No.1

Modifi-cation No.	Designation of Site/Sector No.1 Site No.	Description of land S.No./C.S. No.	Proposals as per submitted Draft Development Plan under Section 30 of the MR & TP Act, 1966	Modification made by Government while sanctioning Development Plan
-	-	-	-	-
19		Existing open space situated on North East side of Site No.13 "Extension to school."		The land shall be included in Residential Zone, 33% of existing open space shall be kept permanently open.

8. There were protests from the public and residents of the locality including sports organizations about the change in user/modification.

The petitioners' contention is that the modification was granted without following the procedure under section 31 of the MRTP Act, requiring re-publication as in the case of a substantial modification. The State Government did not consider the modification to be a substantial one warranting the same.

9. Mr. Kulkarni, the learned counsel appearing on behalf of the petitioners submitted that the said modification was a substantial one which required the authorities to follow the mandatory provisions of section 31 requiring re-publication. The State Government and the authorities were not entitled to exercise power on their own while granting the modification. Mr. Anturkar, the learned counsel appearing on behalf of respondent Nos.1 to 5 contended that the modification was not a substantial one and that, therefore, the State Government was entitled to consider it on its own without re-publishing the same inviting objections. The learned counsel for the respondent authorities supported Mr. Anturkar.

10. Section 31 of the MRTP Act reads as under:-

> "**31. Sanction to draft Development plan**.- (1) Subject to the provisions of this section, and not latter than one year from date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, the State Government may, after consulting the Director of Town Planning by notification in the *Official Gazette* sanction the draft Development plan submitted to it for the whole area, or separately for any part thereof, either without modification or subject to such modifications as

it may consider proper, or return the draft Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan:

[Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the *Official Gazette*, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period as may be specified in the notification;]

Provided [further] that, where the modifications proposed to be made by the State Government are of a substantial nature, the State Government shall publish a notice in the *Official Gazette* and also in local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of sixty days from the date of such notice.

(2) The State Government may appoint an officer of rank not below that of a Class-I Officer and direct him to hear any such person in respect of such objections and suggestions and submit his report thereto to the State Government.

(3) The State Government shall before according sanction to the draft Development plan take into consideration such objections and suggestions and report of the officer.

(4) The State Government shall fix in the notification under sub-section (1) a date not earlier than one month from its publication on which the final Development plan shall come into operation.

(5) If a Development plan contains any proposal for the designation of any land for a purpose specified in clauses (b) and (c) of section 22, and if such land does not vest in the Planning Authority, the State Government

> shall not include that in the Development Plan, unless it is satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition not later than ten years from the date on which the Development plan comes into operation.
>
> (6) A Development plan which has come into operation shall be called the "final Development plan" and shall, subject to the provisions of this Act, be binding on the Planning Authority."

Thus, under section 31, the State Government is entitled, *inter-alia*, to sanction the draft Development Plan submitted to it subject to such modifications as it may consider proper. Under the third proviso, however, where the modifications proposed to be made by the State Government are of a substantial nature, the State Government shall publish a Notice in the Official Gazette and also in the local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of 60 days from the date of such notice.

11. The Notice, as contemplated under the third proviso to section 31 was admittedly not published. It was not disputed that the provision is mandatory. The respondent's only contention is that the said modification is not of a substantial nature.

12. The modification is undoubtedly a substantial one. It can hardly be suggested that a change of the user of land from open space to a residential zone requiring only 33% to be kept open is not a substantial modification. Mr. Anturkar, however, submitted that the

MRTP Act defines a substantial modification; the said modification does not fall within the definition and that, therefore, the said modification is not a substantial modification within the meaning of the MRTP Act.

We will presume for the purpose of this petition that the said land belongs to respondent No.1 and that Schedule I under the first column we have reproduced qua the said land merely indicates the location of the open space and that the same has nothing to do with the school. We will also presume that the use of the land, albeit for several decades by the members of the public, does not affect the first respondent's ownership thereof. In other words, the first respondent merely permitted persons to use the property for sports and other activities. It was a mere permissive user. For the purpose of this Writ Petition, this is immaterial. The only question is whether the change is a substantial modification, thereby requiring the authorities to follow the mandatory provision under section 31 or whether it was not a substantial modification, thereby entitling the State Government to consider and allow the same without republishing the proposed modification.

13. Mr. Anturkar submitted that the said modification is not of a substantial nature as it does not fall within section 22A(c) of the MRTP Act. Section 2(2) and section 22A of the MRTP Act read as under:-

> **"2. Definitions.-** In this Act, unless the context requires,-
> (1) .....
> (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;"

.....

22A. Modification of a substantial nature.- In section 29 or 31, the expression "of a substantial nature" used in relation to the modifications made by the Planning Authority or the officer appointed by the State Government under sub-section (4) of section 21 (hereinafter referred to as "the said Officer") or the State Government, as the case may be, in the draft Development Plan means,-

(a) reduction of more than fifty per cent., or increase by ten per cent., in area of reservations provided for in clauses (b) to (i) of section 22, in each planning unit or sector of a draft Development Plan, in sites admeasuring more than 0.4 hectare in the Municipal corporation area and `A' class Municipal area and 1.00 hectare in `B' Class and `C' Class Municipal areas;

(b) all changes which result in the aggregate to a reduction of any public amenity by more than ten per cent. of the area provided in the planning unit or sector in a draft Development Plan prepared and published under section 26 or published with modifications under section 29 or 31, as the case may be;

(c) reduction in an area of an actually existing site reserved for a public amenity except for marginal area upto two hundred square metres required for essential public amenity or utility services;

(d) 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 ten per cent in the same planning unit or sector in a draft Development Plan prepared and published under section 26 or published with modifications under section 29 or 31, as the case may be;

(e) any new reservation made in a draft Development Plan which is not earlier published under section 26, 29 or 31, as the case may be;

(f) alternations in the Floor Space Index beyond ten per cent of the Floor Space Index prescribed in the Development Control Regulations prepared and published under section 26 or published with modifications under section 29 or 31, as the case may be.]"

Mr. Anturkar contended that each word in the expression "a*ctually existing site reserved for public amenity*" in section 22A(c) is important. According to him, the section requires that there should be an actually existing site, that the same must be reserved and that the reservation must be for a public amenity.

14. The said plot is an actually existing site and it falls within the Development Plan.

15. The next question is whether the plot was reserved. Mr. Anturkar submitted that there is nothing in the plan that indicates that the plot was reserved. Mr. Anturkar submitted that the plot was not "reserved" for any purpose. In the Development Plan, certain areas are to be kept open. In this case, the Development Plan only directs the plot to be kept open but does not reserve it for any purpose.

According to him the said plot was only "designated" and not reserved as an existing open area. He submitted that the MRTP Act uses the words "allocating", "designation" and "reservation" each of which must be given a separate and distinct meaning. In this regard, he placed considerable reliance upon section 22 of the MRTP Act which reads as under:-

> **"22. Contents of Development Plan**.- A Development plan shall generally indicate the manner in which the use of land in the area of the Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,-
>
> (a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial agricultural, recreational;
> (b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government;
> (c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and diaries;
> (d) transports and communications, such as roads, high-ways, park-ways, railways, water-ways, canals and airports, including their extension and development;
> (e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;
> (f) reservation of land for community facilities and services;
> (g) proposals for designation of sites for service

industries, industrial estates and any other development on an extensive scale;

(h) preservation, conservation and development of areas of natural scenary and landscape;

(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value [and of heritage buildings and heritage precincts];

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

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

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

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purpose to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and hoardings and other matters as may be considered necessary for carrying out the objects of this Act."

Mr. Anturkar emphasized the fact that the words “allocating”, “designation” and “reservation” are used in different sub-clauses indicating thereby that the Legislature intended giving each of them a different meaning. Thus, he submitted, the question of a substantial modification under section 22A(c) can arise only if there is a “reservation” of a site.

16. The submission is not well founded. We agree with Mr. Kulkarni that the words “allocating”, “designation” and “reservation” are interchangeable and that the ambit of each of the words is the same. The provisions of the Act themselves support Mr. Kulkarni’s submission.

17. Section 22A(a) refers to area of reservations provided for in clauses (b) to (i) of section 22. Only clause (f) of section 22 refers to reservation of land. The other clauses viz. (b) to (e) and (g) to (i) do not refer to reservations. Clauses (b), (c) and (g) refer to designation of areas, sites and land. Clauses (d), (e), (h) and (i) do not refer to the terms “allocating”, “designation” or “reservation”. Thus the term “reservation” in section 22A(a) refers not merely to “reservation”, but also to the terms “allocating” and “designation”.

18. 24. Section 113(1) of the Act reads as under:-

> “**113. Designation of site for new town**.- (1) If the State Government is satisfied that it is expedient in the public interest that any area should be developed as a site for a new town as reserved or designated [in any draft or final Regional Plan] it may, by notification in the *Official*

> *Gazette*, designate that area as a site for the proposed new town. The new town shall be known by the name specified in the notification."

Whereas, in the first part of the first sentence, the words "reserved" or "designated" are used, the second part of the same sentence only uses the word "designate" indicating thereby that the term "designate" is also used in respect of a reservation indicating that the terms are interchangeable.

19. It is true that in some provisions, such as section 50, all the terms are used. Normally, this would indicate an intention to ascribe a different meaning to each of them. However, considering the manner in which the terms have been used in the Act, it appears that they are interchangeable.

20. Mr. Anturkar submitted that the Act uses the word "designation" to mean that the user is for the purpose for which it is designated and nothing more. In other words, once a property is designated for a particular purpose, the owner thereof can use it only for that purpose. According to Mr. Anturkar, the term `designation' is used only to restrict the nature of use of the land by private owners. Further, according to him, the designation of lands does not constitute reservation entitling the Government to acquire the same under the provisions of section 126 of the said Act.

21. This is not so. Section 22(b) refers to proposals for designation of land, *inter-alia*, for public health institutions, places for public

entertainment and Government and other public buildings. Proposals for designation of land therefore are not only with respect to private lands.

22. Mr. Anturkar submitted that only plots which are reserved in a Development Plan may be acquired by the State Government in exercise of powers under section 126 of the said Act. According to him, properties which are merely designated cannot be acquired. The purpose of designating private plots is, according to him, as noted earlier, only for the purpose of indicating the nature of user by the private owner.

23. The submission is, in fact, contrary to section 50 of the Act which reads as under:-

> "**50. Deletion of reservation of designated land for interim draft of final Development plan**.- (1) The Appropriate Authority [(other than the Planning Authority)], if it is satisfied that the land is not or no longer required for the public purpose for which it is designated or reserved or allocated in the interim of draft Development plan or plans for the area of Comprehensive development or the final Development plan, may request -
>
> (a) the Planning Authority to sanction the deletion of such designation or reservation or allocation from the interim or the draft Development plan or plans for the area of Comprehensive development, or
>
> (b) the State Government to sanction the deletion of such designation or reservation or allocation from the final Development plan.
>
> (2) On receipt of such request from the Appropriate

> Authority, the Planning Authority, or as the case may be, the State Government may make an order sanctioning the deletion of such designation or reservation or allocation from the relevant plan:
>
> Provided that, the Planning Authority, or as the case may be, the State Government may, before making any order, make such enquiry as it may consider necessary and satisfy itself that such reservation or designation or allocation is no longer necessary in the public interest.
>
> (3) Upon an order under sub-section (2) being made, the land shall be deemed to be released from such designation, reservation, or as the case may be, allocation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land, under the relevant plan."

The section indicates that plots are also designated for public purpose and designation is not only of private plots.

24. Section 125 does not support Mr. Anturkar's submission. Section 125 reads as under:-

> "**125. Compulsory acquisition of land needed for purposes of Regional Plan, Development plan or town planning scheme, etc**.- Any land required, reserved or designated in a Regional Plan, Development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894)."

25. Section 125 is only a deeming provision to the effect that when land which is required, reserved or designated, *inter-alia*, in a

Development Plan is sought to be acquired, it shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act. The section is of no assistance in determining the question whether the terms are interchangeable or not.

26. The submission is also contrary to section 127 which deals with lapsing of reservation. The section provides that:- "*if any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement*" or if proceedings for acquisition of such land under the Land Acquisition Act are not commenced within the stipulated period, the owner or any person interested in the land may serve a notice upon the appropriate authority to that effect and if within 6 months from the date of service of such notice, the land is not acquired or steps are not taken for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

The section, therefore, makes it clear that lands which are either reserved, allotted or designated may be acquired. In other words, it is not only lands which are shown to be reserved under the Development Plan, which may be acquired under the Act.

27. Our attention was not invited to any part of the Act which makes separate provisions for lands which are allotted, reserved

and designated. The Act deals with the same in an identical manner.

28. Mr. Kulkarni's reliance upon a judgment of a Division Bench of the Gujarat High Court in *Palitana Sugar Mill Pvt. Ltd. v. State of Gujarat (2001) 4 GLR 3048*, is well founded. The judgment dealt with the provisions of the Gujarat Town Planning & Urban Development Act, 1976. However, as regards the present question, the provisions of the two Acts are similar. In paragraph 46, Chief Justice D.M. Dharmadhikari (as His Lordship then was) speaking for the Division Bench held :-

> "**46**. Since under Section 20 there is reference to specific clauses (b), (d), (f), (k) and (o) of subsection (2) of Section 12 and in Section 12 both the expressions `designation' and `reservation' are used, in our opinion, in the expression `designation' shall be deemed to have lapsed under subsection (2) would include `reservation' to have lapsed as well. The two words `designation' and `reservation' seem to be interchangeable for the purpose of the Act. This is so because clauses (b), (f) and (k) in subsection (2) uses the expression `proposals for reservation' whereas clauses (e), (n) and (o) do not use the word either `reservation' or `designation', but, only makes a mention of proposals for specific public purposes. All the above mentioned clauses containing use of expression `reservation' or omission of it find mention in subsection (1) of Section 20 to which subsection (2) of Section 20 is made applicable specifically by mention of entire subsection (1) in opening part of subsection (2) to enable the authorities to acquire the land both `reserved' or `designated' within a period of ten years or within six months of service of notice by the land owner or person interested. The automatic result of service of notice is failure of the authorities in taking steps to acquire the land and is lapsing of designation or reservation of land affected by

the Act." (emphasis supplied)

29. An appeal against the judgment was dismissed by the Supreme Court in *Bhavnagar University v. Palitana Sugar Mills, (P) Ltd. (2003) 2 SCC 111*. This aspect was, however, not dealt with in the judgment.

30. Mr. Anturkar submitted that the above observations are only orbiter as it was not necessary for the Division Bench to consider the same. We do not agree. The Division Bench analyzed several provisions of the Act, including sections 12 and 20 thereof. Indeed, whether the observations are orbiter or not matters little for even if they were not orbiter, we are not bound by the judgment. We are, however, in respectful agreement with the reasoning adopted by the Division Bench of the Gujarat High Court.

31. Mr. Anturkar lastly submitted that in any event, in the present case, the provisions of section 22A(c) do not apply as the reservation was not for a public amenity. He stated that the plot belongs only to the first respondent-Trust and cannot be used by the public as a play-ground.

32. Even assuming for the sake of argument that the members of the public are not entitled to use the plot being owned by the Trust as a matter of right as on date, it would make no difference to this petition. Even according to the respondents, it has been shown as an open plot in the draft Development Plan. If we are right in holding

that the terms “allocating”, “reserved” and “designation” are interchangeable, it matters not whether in the draft Development Plan, the land was shown to be allotted, designated or reserved. If this “allocation”, “reservation” or “designation” is for a public amenity, the case falls within section 22A(c). It is not necessary, as suggested by Mr. Anturkar, that the plot to fall within section 22A(c) must be actually in use for such public amenity on the date of the Development Plan. If Mr. Anturkar’s submission was correct, the word or words in section 22A(c) would have been “utilized” or “being utilized” or “used” instead of “reserved”. A Development Plan also provides for the future use of land. It is subject to acquisition under the provisions of the Act. Upon such acquisition, the Government/authorities would be entitled to use/retain it as a public amenity. Open spaces falls within the definition of “amenity” under section 2(2). There is no reason we are able to gather for the plot being shown in the Development Plan as an existing open space or for recreational or entertainment purpose other than for the purpose of the reservation or allocation or designation thereof for using it as a public amenity.

33. In the circumstances, it was necessary for the concerned respondents to follow the provisions of section 31(1) of the said Act. They admittedly did not do so. The impugned modification is, therefore, liable to be quashed.

34. In this view of the matter, it is not necessary for us to consider Mr. Kulkarni’s submission that there is no rationale for the

modification. He relied upon the judgment of the Supreme Court in *Bangalore Medical Trust v. B. S.Mudappa & Ors., AIR 1991 SC 1902*. Nor have we considered the challenge to the order of the Assistant Charity Commissioner. The petitioners are at liberty to raise the issue in future, if necessary.

35. In the result, Rule is made absolute in terms of prayer (b), which reads as under :-

> "(b) This Hon'ble Court be pleased to issue a Writ of Certiorari or writ in the nature of Certiorari, or any other appropriate writ, order or direction calling for the record and proceedings in respect of Change No.M/19 of suit plot in the Final Development Plan published by the State Government in the Official Gazette on 04.10.1998, and after examining the legality, validity and propriety of the same, further be pleased to quash and set aside the same, and to restore the original user in the Development Plan as submitted by the Planning Authority under Section 30(1) of the Maharashtra Regional Town Planning Act, 1966 for final sanction on 19.02.1996."

However, there shall be no order as to costs.

CHIEF JUSTICE

S.J. VAZIFDAR, J.