IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2476 OF 2015

1 Gulmohar Area Societies Welfare Group
102, Matruchaya,
Gulmohar Cross Road 6,
Juhu, Mumbai 400049.

2 Pranab Kishore Das,
Al-Hasanat, Plot 3/7, 10th Road,
JVPD Scheme, Juhu, Mumbai-400049

3 Ashoke Pandit,
605/3, Aroma Society,
Opp. Oshiwara Police Station,
Andheri (West) Mumbai 400 053.

4 Save Open Spaces,
605/3, Aroma Society,
Opp. Oshiwara Police Station,
Andheri (West) Mumbai 400 053. ….Petitioners

Vs.

1 Municipal Corporation of Greater
Bombay, having its office at
Municipal Corporation Building,
C.S.T. Mumbai-400 001.

2 Maharashtra Housing & Area
Development Authority,
Gruh Nirman Bhavan, Bandra (East),
Mumbai-400 050.

3 State of Maharashtra,
Mantralaya, Mumbai-400 032.

4 Anjuman-E-Shiate Ali,
a Public Trust registered under
the Bombay Public Trust Act,
1950 and also a society registered
under the Societies Registration Act
1960, having its office at
Badri Mahal, Dr. D.N. Road,
Fort, Mumbai-400 001.
through its Authorized Trustee

5 Parasmani Co-operative Housing
Society (Proposed), having its
Office at Krishna Kunj,
14, Nutan Laxmi Society,
N.S. Road No. 9, J.V.P.D.S.,
Mumbai-400 049, through its
Chief Promoter Shri Hemant Kotak

6 Juhuraj Co-operative Housing
Society (Proposed), through its
Chief Promoter, Mr. Shabbir
Mulla Alihussain Pardawala,
Having his address at Flat No.2,
Ground Floor, Building No.2,
Zakaria Patel Compound, S.V. Road,
Malad (West), Mumbai-400 064. ....Respondents.

WITH

WRIT PETITION (LODGING) NO. 1130 OF 2017

1 Al-Hasanat Cooperative Housing
Society, having its registered office
at Plot 3/7, 10th Road, JVPD
Scheme, Juhu, Mumbai-400 049.

2 Gulmohar Areas Societies
Welfare Group
102, Matruchaya,
Gulmohar Cross Road 6,

Juhu, Mumbai 400 049.

3 Save Open Spaces,
605/3, Aroma Society,
Opp. Oshiwara Police Station,
Andheri (West), Mumbai - 400 053.

4 Pranab Kishore Das,
Al-Hasanat, Plot 3/7, 10th Road,
JVPD Scheme, Juhu, Mumbai-400 049.

Vs.

1 Maharashtra Housing & Area
Development Authority,
Griha Nirman Bhavan, Bandra (East),
Mumbai-400 050.

2 S.S. Zende,
Vice President and Chief Executive
Officer, Maharashtra Housing & Area
Development Authority,
Griha Nirman Bhavan, Bandra (East),
Mumbai-400 050.

3 Municipal Corporation of Greater
Bombay, having its office at
Municipal Corporation Building,
P.M. Road, V.T. Mumbai-400 002.

4 Anjuman-E-Shiate Ali,
a Public Trust registered under
the Bombay Public Trust Act,
1950 and also a society registered
under the Societies Registration Act
1960, having its office at
Badri Mahal, Dr. D.N. Road,
Fort, Mumbai-400 001.
through its Authorized Trustee

5 Juhu Lifestyle Co-operative Housing
Society Ltd. (Proposed), claiming to have
Its address at Old Plot No.3, being part
of land bearing CTS No. 196-A,
North-South, 10th Road,
JVPD Scheme, Juhu, Mumbai. ….Respondents.

Mr. Shiraz Rustomjee, Senior Counsel along with Ms. Shreya Parik, Ms. Sujata More and Ms.Aparjita Sen I/by M/s. Desai Desai Carrimjee and Mulla for the Petitioner in both Petitions.
Mr. Sagar Patil I/by Mr. Jernold Joseph Xaview for the Respondent No.1 -MCGM.
Mr. Ravi Kadam, Senior counsel along with Mr. Vaibhav Parashuram for the Respondent No.2 in WP/2476/2015 and Respondent No.1 and 2 in WPL/1130/2017.
Mr. Dushyant Kumar, Asst. Government Pleader for the State-Respondent No.3 in WP/2476/2015.
Mr. Prasad Dhakephalkar, Senior Counsel along with Mr. Vivek Patil and Mr. Yogendra Shirwadkar I/by M/s. Vivek Patil and Associates for Respondent No.5 in WPL/1130/2017.
Mr. Aspi Chinoy, Senior Counsel along with Mr. Roop Vasudeo and Ms. Dipali Mainkar for Respondent No.4 in WPL/1130/2017.
Mr. Virag Tulzapurkar, Senior Counsel along with Mr. Vaibhav Joglekar and Mr. Ashok Paranjape, Mr. Deepan Dixit and Ms. Nazeen Kotwal i/by M/s. MDP and Partners for Respondent No.4 in WP/2476/2015.
Dr. Milind Sathe, Senior Counsel along with Mr. Roop Vasudeo and Mr. Nilesh Parmar for Respondent No.6 in WP/2476/2015.

CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.
RESERVED ON : 5 JULY 2017
PRONOUNCED ON : 19 JULY 2017

***JUDGMENT (PER- B.R. GAVAI, J.)*:-**

Since the facts and questions of law involved in both these Petitions are common, the Petitions were heard together and are

disposed of by this common Judgment and Order.

2 The first Writ Petition No. 2476 of 2015 is filed by Gulmohar Area Societies Welfare Group and others (hereinafter referred to as, *"2015 Petition",* for short.). Petitioner No.1 therein, is a Public Trust registered under the provisions of the Bombay Public Trust Act, 1950 and has been formed for protecting the interest of residents of the Gulmohar Road Area, in Juhu, wherein two plots which are the subject matter of the present Petitions are situated. Petitioner Nos. 2 and 3 are the residents of Juhu. Petitioner No.2 claims to be an Architect, involved in the planning, design and maintenance of public open spaces in the City of Mumbai, including Juhu Beach and Gateway of India. Petitioner No.3 is a Filmmaker. Petitioner No.4 is an NGO, which claims to be committed to preserve and maintain the open spaces in the City of Mumbai.

3 Insofar as the second Petition is concerned, i.e. Writ Petition (Lodging) No. 1130 of 2017 (hereinafter referred to as, *"2017 Petition",* for short.), the Petitioners therein i.e. Petitioner No.2, Petitioner No.3 and Petitioner No.4, are also the Petitioners in the

earlier Petition. Petitioner No.1 is a Co-operative Housing Society located on Old Plot No.3, sub-plot No. 7.

4 In 2015 Petition, the subject matter is a plot of land admeasuring 2000 sq. mtrs. (2,500 sq. yards) being a part of the land bearing Plot No.6, CTS No. 29 of Survey No. 287 situated on 9th Wireless Road, JVPD Scheme, Juhu, whereas the subject matter of 2017 Petition is a plot of land admeasuring 1687.18 sq. yards, bearing the part of the land being Old Plot No.3, CTS No. 196-A, North-South, 10th Road, JVPD Scheme, Juhu, Mumbai.

5 For the sake of convenience, the Respondents herein, are referred to as mentioned in 2017 Petition.

It appears that, after the independence, in the year 1950, the Juhu Residential Area in Mumbai, was being developed under the name of Juhu Ville Parle Development Scheme (for JVPD, Scheme"). It further appears that, at the relevant time the said work was being undertaken by the erstwhile Housing Board Commissioner of Bombay. The larger area was divided into plots and sub-plots. It further appears from the record that, Respondent No.4, which is a Public

Trust and which claims to act in the interest of Dawoodi Bohra Community, requested the then Housing Board Commissioner of Bombay to allot certain plots, which were further to be sub-divided and alloted to the various individuals and Housing Societies, comprising of the members of Dawoodi Bohra Community. It further appears that, accordingly there was correspondence between the Architect of Respondent No.4, the Mumbai Housing Board (hereinafter referred to as, *"MHB"*) and the then Bombay Municipal Corporation, which is now the Municipal Corporation of Greater Mumbai (for short, *"the MCGM"*) with respect to Plot Nos. 1, 3, 5 and 6, totally admeasuring 46850 sq. yards, for allotment to the individuals and the Housing Societies of the Dawoodi Bohra Community. It further appears that, finally the Bombay Municipal Corporation sanctioned the layout as submitted by the Architect of Respondent No.4 wherein, an area admeasuring 1687 sq. yards in plot No.3 and the area of 2500 sq. yards in Plot No. 6, were to be kept open for the purpose of garden. Undisputedly, right from inception of the sanction of layout, these two plots namely sub-plot No. 14 in Plot No.3 (hereinafter referred to as "*Plot No. 3/14*") admeasuring 1687 sq. yards and sub-plot No.11 in Plot No.6 (hereinafter referred to as

"Plot No. 6/11") admeasuring 2500 sq. yards were either kept open or used for the garden purposes till very recently. However, it appears that subsequently, when the Maharashtra Housing and Area Development Authority (for short, *"the MHADA"*) submitted the entire layout plan of entire JVPD Scheme, admeasuring 580000 sq. yards, the said two plots were not shown as garden spaces and are shown as residential areas.

6 Insofar as Plot No.6/11 is concerned, it appears that there was certain encroachment by the encroachers on the said plot. The said encroachment came to be cleared by the MHADA in the year 2003. It appears that, initially the said plot came to be alloted by the State Government to one Parasmani Co-operative Housing Society (proposed)-Respondent No.5 (for short, *"Parasmani Society"*) in 2015 Petition. However, it appears that, on 15 February 2007, the possession of the said plot was given to Respondent No 4-Anjuman-E-Shiate Ali, A Public Trust (hereinafter referred to as *"Anjuman Trust"*), which gave rise to Writ Petition Nos. 1964 of 2007 and 2151 of 2009. It further appears that, there was a settlement between the Parasmani Society and the Anjuman Trust in the said proceedings. It further

appears that, Respondent No.5-therein namely Juhuraj Co-operative Housing Society (proposed), (for short, *"Juhuraj Society"*), also came to be included as a party Respondent in the said Writ Petitions. As per the consent terms, it was agreed that the Anjuman Trust was entitled to the possession of the said plot and as per the original scheme, it selected Juhuraj Society, as a beneficiary of the said plot. As per the consent terms, Respondent Nos. 1 and 2 therein, i.e. MHADA and MHB, were to execute the lease deed directly in favour of Respondent No.6-Juhuraj Society. The said consent terms are signed by the learned counsel appearing for the Parasmani Society, Anjuman Trust, as well as, Juhuraj Society and the said parties. However, insofar as the signature of MHADA is concerned, the counsel representing for MHADA has signed with an endorsement *"for the purpose of identification"*. Both the Petitions came to be disposed of, in terms of the consent terms, by order dated 10 November 2014.

7 The Petitioner i.e. "Save Open Spaces", who is the Petitioner in both the Petitions, therefore, approached this Court for seeking Review of the said order dated 10 November 2014 by filing Review Petition (Lodging) Nos.98 of 2014 and 99 of 2014, contending

therein that in view of the layout plan the consent terms, which permitted construction on plot No. 6/11 was not permissible in law and therefore, sought review of the said order. However, this Court vide order dated 19 January 2015, observed that the issue whether the plot is an open plot or can be developed or not, was not decided by the Minutes of Order and it is further observed that, the said issue will be decided by the MCGM or MHADA in accordance with law. The Court further observed that, the Review Petitioners are not bound by the Minutes of the Order, filed by the parties in the Petitions. With these observations, the Review Petitions came to be disposed of.

8 In this background, the Petitioners have approached this Court by the way of the 2015 Petition, claiming for various reliefs inter-alia, a declaration that the said plot forms part of the mandatory open space for the layout and cannot be built upon. The relief is also claimed that in the event, Respondent No.2 has already executed the lease of the said plot in favour of Respondent No.6, then for a declaration that the same is void, illegal and of no effect in law.

9 Insofar as plot No. 3/14 is concerned, the Respondent

MHADA had granted license for beautification and maintenance of the garden to Petitioner No.1-Society. It appears that, the Respondent Anjuman Trust somewhere in the year approached the Chief Executive Officer (for short, *"CEO"*) and Vice President of MHADA for registration of Co-operative Society on the said plot. However, the move was opposed by Petitioner No.1. The CEO and Vice President of MHADA therefore, directed the Chief Officer of the MHB, to pass appropriate orders with respect to the claim of Anjuman Trust. The Chief Officer, MHB, vide order dated 24 July 2013, rejected the claim of Anjuman Trust. Being aggrieved by the order passed by the Chief Officer, MHB, the Anjuman Trust filed an Appeal before the CEO and Vice President, MHADA. It appears that, in the said proceedings, Petitioner No.1 opposed the said Appeal on the ground that, it is barred by law of limitation because it is filed after 16 months. It was also objected that the CEO and Vice President, MHADA has no jurisdiction to entertain the said Appeal and as such, the Appeal was not maintainable. It appears that, the CEO and the Vice President of MHADA, who is impleaded in personal capacity as Respondent No.2, heard the matter on 3 October 2016 and vide impugned order dated 21 March 2017, directed to lease the sub-plot No. 3/14 in favour of

beneficiaries, selected by the Anjuman Trust for the purpose of construction. By the said order, he further directed to withdraw the proposal, which was earlier made by the MHADA in the year 2015, for showing these plots as reserved for garden. Being aggrieved thereby, the 2017 Petition.

10 Shri Rustomjee, the learned Senior Counsel appearing on behalf of the Petitioners, submits that the present case is a case of blatant misuse of the powers by Respondent No.2. He further submits that, when the Chief Officer of the MHB had found that the Respondent Anjuman Trust had no independent right in the Trust and that the plot in question was reserved for garden, Respondent No.2 has grossly erred in allowing the purported Appeal of the Anjuman Trust. The learned Senior Counsel submits that, the Appeal was not tenable inasmuch as, the statute and unless the statute provides for the Appeal, the Appeal would not be tenable. The learned Senior Counsel submits that, Respondent No.2 has assumed the jurisdiction, not vested in him. The learned Senior Counsel submits that, when the Chief Officer by an elaborate order had held that the Anjuman Trust had no independent right and it was only acting as a facilitator

for the other individuals and societies of the members of the Dawoodi Bohra Community, the decision of Respondent No.2 is contrary to record and patently erroneous. The learned Senior Counsel submits that, the Respondent Anjuman Trust was very well aware from the beginning that both these plots are reserved for the garden. He submits that, the layout, which was submitted by the Architect of the Respondent Anjuman Trust to the MCGM, itself shows these two plots as reserved for garden. He submits that, however, the Respondent Anjuman Trust taking advantage of a slight mistake committed while submitting 1999 development plan, by which the said two plots were shown as residential area, with a malafide intention has attempted to create a right, which is not vested in it. The learned Senior Counsel further submits that, Respondent No.2, in collusion with the said Anjuman Trust, has fallen prey to the illegal design of the land-grabbers and allotted the plot for construction to the nominee of Anjuman Trust on the plot, which is reserved for garden space.

11 The learned Senior Counsel submits that, Respondent No.2 has erred in mixing the issue of reservation in a development plan and the reservation for the garden area in a particular layout. He submits

that, the 1999 development plan submitted by the MHADA was for the entire JVPD area and as such, the reservations shown therein were totally different than the reservation which are required to be kept in a particular layout. He however, submits that Respondent No.4-Anjuman Trust was very well aware from inception that the aforesaid two plots were reserved for the garden, in the layout situated on the 46850 sq. yards of land, which was allotted by MHADA to the individuals and the members of the Dawoodi Bohra Community, through the Respondent-Anjuman Trust. He submits that the Respondent Anjuman Trust only acted as an facilitator and has no independent right in any of the plots. The learned Senior Counsel submits that under the provisions of law as existing in 1967 i.e. Section 302 of the Bombay Municipal Corporation Act, (for short, *"the BMC Act"*) and Regulation 39 of the Development Control Rules, 1967, it was mandatory to keep 15% open space in the layout and accordingly, the aforesaid two plots are kept reserved for garden area, in pursuance to the mandate of those statutory provisions. He further submits that the perusal of the files of the MHADA itself would reveal that, the MHADA had committed mistake while submitting the development plan of 1999, since the said two plots were not shown as

reserved for garden. It is submitted that, having realized the said mistake committed by it, the MHADA had sent the proposal to the MCGM for showing these two plots reserved for garden, so as to make out the deficiencies in the open space area, mandatorily required to be kept.

12 Shri Rustomjee, the learned Senior Counsel further submits that, Respondent No.2 has totally ignored the earlier noting made by the then Chief Officer, MHB dated 21 October 2014, stating therein, that it is mandatory to keep those two plots open for garden, which noting was duly approved by the then CEO and Vice President. The learned Senior Counsel further submits that, Respondent No.2 could not have ignored the earlier approval granted by his Predecessor in the office, to the proposal of Chief Officer, that these two plots are required to be kept reserved for garden. He submits that, merely because a person occupying the office changes, cannot be the ground for changing the decision taken by another person, who has earlier occupied the said office.

13 Shri Rustomjee, the learned Senior Counsel submits that

upon perusal of the various noting in the various files of the MHADA it clearly reveals that, the requirement of open space as per the 1991 Development Control Rules (for short, *"1991 DCR"*) is not met and therefore, in addition to maintain the open space, it was necessary to keep these two plots open for garden. However, Respondent No.2 has totally ignored the same and permitted the land to be allotted to Juhu Lifestyle Co-operative Housing Society Limited (proposed) (hereinafter referred to as *"Juhu Lifestyle Society")* as a nominee of Anjuman Trust.

14 The learned Senior Counsel further submits that, the conduct of Respondent No.2 also shows that he has acted in a malafide manner. He submits that, though the matter was heard by him in October 2016, the impugned order was passed in March 2017. He submits that though a copy was demanded, the same was not handed over to the Petitioners and as such, they are required to obtain the same by filing an application under the Right to Information Act, in the month of April 2017. He further submits that, the manner in which, the lease deed is hastily executed by the MHADA, shows that Respondent No.2 was undoubtedly interested in the matter. He

submits that, by way of impugned order, Respondent No.2 has permitted the large chunk of land for commercial exploitation by Respondent Anjuman Trust and Respondent Juhu Lifestyle Society, without the Respondent MHADA or the State, getting the slightest benefit of the same.

15 In the 2015 Petition, the learned counsel submits that insofar as Plot No.6/11 is concerned, the perusal of the record would reveal that, though the Chief Officer of the MHB has specifically opposed signing of the consent terms, the consent terms were recorded hastily and the order was obtained in terms of minutes of order, and a lease deed was executed in favour of Juhuraj Society as a nominee of Anjuman Trust. He submits that, even in respect of the said plot also, the noting of the MHADA clearly shows that, on account of deficit of open spaces in the scheme, the plots are required to be reserved as open spaces. He submits that, however, the same is permitted to be commercially exploited by Anjuman Trust and the said Juhuraj Society for ulterior motives. He submits that, on perusal of the record it reveals that illegal consent terms were filed in this Court in Writ Petition Nos. 1964 of 2007 and 2151 of 2009 and after coming to

know about the orders passed by this Court in the said Petitions, the Petitioner immediately filed Review wherein, this Court has specifically observed that the said consent terms were not binding on the Petitioners and that the said consent terms do not deal with the issue, as to whether the said plot is required to be kept open for garden or not.

16 The learned Senior Counsel, therefore, submits that this is a fit case wherein, this Court should allow the Petition and declare that the said two plots are mandatorily required to be kept as open space for garden and the lease deed executed in favour of the Juhuraj Society and Juhu Lifestyle Society as a nominees of Respondent Anjuman Trust, are liable to be quashed and set aside.

17 Shri, Chinoy, the learned Senior Counsel appearing on behalf of the Respondent-Anjuman Trust, submits that once the MHADA had submitted 1999 plan, it is not at all permissible to go into the earlier documents. He submits that in the 1999 layout, for the larger area, MHADA has shown the requisite open spaces, which conform to the 1991 DCR and as such, the contention of the

Petitioners with regard to the earlier layout, does not hold any water. He submits that, since under 1999 Development plan, these entire plot No.3 and plot No. 6 are shown as residential areas, the sub-plot Nos.14 and 11 of these plots, can vary well be used for construction for residential purposes and no error could be found with the impugned order.

18 The learned Senior Counsel submits that, in an administrative matter, merely because erroneously Respondent No.2 has used the word "*Appeal*", cannot be a ground to interfere with the same. He submits that in an administrative set up, a superior officer is always entitled to reverse the decision of the inferior officer and therefore, much weightage should not be given to some erroneous words used in the impugned order. He submits that, on perusal of the documents submitted by the MHADA with the MCGM dated 13 May 1996, it clearly shows that in the revised layout submitted by the MHADA for the entire JVPD scheme, open area works out to 24.63% i.e. approximately 25% and as such requirement in the 1991 DCR has been duly complied with. He submits that since the requirement of open spaces under 1991 Regulation is squarely made out, the

contention of the Petitioners that these two additional plots should also be kept open space, is without substance.

19 He submits that the said layout plan has been sanctioned by the MCGM on 15 October 1999, and since these two plots are not shown as open plots in the said layout, the contention of the Petitioners needs to be rejected outright.

20 Shri. Tulzapurkar, the learned Senior Counsel appearing on behalf of Respondent Anjuman Trust submits that insofar as the Petition filed by the Parasmani Society is concerned, the Respondent State Government, as well as, MHADA have clearly admitted that, though in the original layout, these two plots were shown as reserved for the garden, in a subsequent layout sanctioned by the MHADA these two plots are shown as residential area and as such, there is no impediment for developing these two plots for construction of residential buildings.

21 Shri. Sathe, the learned Senior Counsel appearing on behalf of Respondent-Juhuraj Society submits that the Respondent

Anjuman Trust has made the payment for all the plots between 1962 to 1967. He submits that, since the Anjuman Trust has made the payment, it had an absolute right to assign the nominee for the purposes of execution of lease deed between MHADA and the said nominee. He further submits that, the said right has been further crystallized in the consent terms on the basis of which, the consent decree came to be passed by this Court on 19 August 1975, in Appeal No. 54 of 1975. The learned Senior Counsel submits that, under Regulation 23 of the 1991 DCR, the MHADA has submitted the development plan. He submits that, as a matter of fact, the said plot was encroached by the encroachers and the same was cleared by MHADA and Respondent Anjuman Trust. The learned Senior Counsel submits that, again in view of the decree dated 10 November 2014, passed on the basis of consent terms in a Writ Petition filed by Parasmani Society, the Anjuman Trust had every right to nominate Respondent Juhuraj Society. He further submits that since consequently the lease deed is executed in favour of Juhuraj Society by MHADA, the said Juhuraj Society, has right to construct the building for the residential purposes.

22 Shri Dhakephalkar, the learned Senior Counsel appearing for Respondent No. 5-Juhu Lifestyle Society, further submits that the Petitioners in 2017 Petition are very well aware that the plot in question is for the residential purposes, inasmuch as while it was granted the permission to maintain the same as garden, in the said permission itself, it is specifically mentioned that the said plot is reserved for residential purposes.

23 Mr. Kadam, the learned Senior Counsel appearing on behalf of Respondent-MHADA submits that while examining the final decision of the Authority, it will not be permissible for the Court to examine the internal noting in the files made by the earlier officers. He further submits that the noting in the files made by the various officers, including the earlier Vice President and CEO are for the purpose of internal administration and unless they culminate into the final decision, it will not be effective in law. He further submits that without going into the niceties of the arguments regarding the Appellate powers etc., it will have to be held, that in administrative hierarchy, the superior Authority always has a power to overrule or set aside the decision of the inferior Authority. He therefore, submits that

no error could be found in the order of CEO and Vice President, MHADA for setting aside the orders passed by the Chief Officer of the MHB.

24 All the learned Senior Counsel appearing for the respective Respondents pray for dismissal of both these Petitions.

25 The law as to the scope of Judicial Review of administrative action of the administrative authorities has been very well crystallized by their Lordships of the Apex Court in the case of ***Tata Cellular Vs. Union of India***[1]**.** It will be relevant to refer to paragraph No. 77 of the Judgment of the Apex Court in the said case.

> *"77 The duty of the court is to confine itself to the question of legality. Its concern should be:*
>
> *1. Whether a decision-making authority exceeded its powers?*
>
> *2. Committed an error of law,*
>
> *3. committed a breach of the rules of natural justice,*
>
> *4. reached a decision which no reasonable tribunal would have reached or,*

1 (1994) 6 SCC 651

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out additional of further grounds in courts of time. As a matter of fact, in R v. Secretary of State for the Home Department ex Brind [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of nature and degree which requires its intervention".”

26 It could thus be seen that, while exercising the powers of Judicial Review for examining the decision of the Respondent MHADA, we will have to restrict our enquiry to the decision making process of MHADA. We would be entitled to interfere with the same

only if we find that the decision making process suffers from illegality, irrationalities or procedural impropriety.

27 With the assistance of the learned Senior Counsel appearing for the parties, we have scrutinized the entire material placed on record. Since, most of the documents are the copies of the record of MCGM and the Respondent MHADA, there is not much dispute about the said documents. As such, while deciding the present Petitions, we will have to deal with the issue, as to what are relevant provisions of law and as to what is the effect of the documents, which are part of the record of MHADA, MCGM and MHB.

28 It is not in dispute that, initially it is the Respondent Anjuman Trust, who had approached erstwhile MHB (Presently MHADA) for allotment of 46850 sq. yards of the land to the 59 allottees, i.e. 57 individual allottees and 2 proposed Co-operative Housing Societies. It is also not in dispute that the said area of 46850 sq. yards is part of the larger JVPD Scheme, which was developed by MHADA, approximately in 580000 sq. yards. It further appears from the material placed on record that there arose some dispute between

the MHADA on one hand and the Respondent-Anjuman Trust and four others on another hand. The said dispute ended into a decree which was passed in terms of consent terms in Appeal No. 54 of 1975 in Miscellaneous Petition No. 691 of 1968 dated 19 August 1975.

29 It is relevant to refer to the following part of Regulation 39 of 1967 Development Control Rules (for short, "*1967 DCR")*, which reads thus-

> ***"39. Layouts or Sub-divisions.-*** *(a) Layouts or sub-division in residential and commercial zones;*
>
> *(i) When the land under development admeasures 3,000 sq. yds. or more the owner of the land shall submit a proper layout or sub-division of his entire independent holding.*
>
> *(ii) In any such layout or sub-division 15 per cent of the entire holding area shall be reserved for a recreational space which shall be as far as practicable in one place.*
>
> *(iii) No such recreational space shall admeasure less than 450 sq. yds.*
>
> *(iv) The minimum dimension of such recreational space shall in no case be less than 25 feet and if the average width of such recreational space is less than 80 feet the length thereof shall not exceed 2½ times the average width."*

30 It is also relevant to refer to Regulation 23 of the 1991 DCR for Greater Bombay, 1991 which reads thus-

> ***"23. Recreational/Amenity Open Spaces***
> *(1) Open spaces in residential and commercial layouts-*
>
> *(a)* ***Extent.-*** *In any layout or sub-division of vacant land in a residential and commercial zone, open spaces shall be provided as under:*
>
> *(i) Area from 1001 sq.m. to 2500 sq.m. 15 per cent.*
>
> *(ii) Areas from 2501 sq.m. to 10000 sq.m. 20 per cent.*
>
> *(iii) Area above 10000 sq.m. 25 per cent.*
>
> *These open spaces shall be exclusive of areas of accesses/internal roads/designations or reservations, development plan roads and areas for road-widening and shall as far as possible be provided in one place. Where, however, the area of the layout or sub-division is more than 5000 sq.m., open spaces may be provided in more than one place, but at least one such places shall be not less than 1000 sq.m. In size. Such recreational spaces will not be necessary in the case of land used for educational institutions with attached independent playgrounds. Admissibility of FSI shall be as indicated in Regulation 35.*
> *(b)* ***Minimum area.-*** *No such recreational space shall measure less than 125 sq.m.*
>
> *(c)* ***Minimum dimensions-****The minimum dimension of such recreational space shall not be less than 7.5 m., and if the average width of such recreational space is less than 16.6 m., the length thereof shall not exceed 2½ times the average width.*

> *(d)* ***Access.-****Every plot meant for a recreational open space shall have an independent means of access, unless it is approachable directly from every building in the layout.*
>
> *(e)* ***Ownership.-*** *The ownership of such recreational space shall vest, by provision in a deed conveyance, in all the property owners on account of whose holdings the recreational space is assigned."*

31 It could thus be seen from the perusal of Regulation 39 of 1967 DCR, that if the land under development admeasured 3000 sq. yards or more, the owner of the land was required to submit a proper layout plan or the sub-division of his entire independent holding. Clause (ii) of Regulation 39 further reveals that, in any such layout or sub-division 15 per cent of the entire holding area was required to be kept reserved for recreational space, which was further required to be as far as practicable in one space. Clause (iii) requires that, such recreational space shall not to be less than 450 sq. yards. Clause (iv) thereof deals with the dimensions of the plot of such recreational area.

32 On perusal of Regulation 23 of the 1991 DCR, it would reveal that for different layouts or sub-divisions of different sizes in residential and commercial zone, different areas of open spaces are required to be provided. For an area between 1001 sq. mtrs. to 2500

sq. mtrs. 15% open area is required to be provided. For an area from 2501 sq. mtrs. to 10000 sq. mtrs., 20% area is required to be provided, whereas for an area of more than 10001 sq. mtrs., 25% of the area is required to be provided as open space of the layout or sub-division. Regulation 23 would further reveal that these open spaces are exclusive of areas of accesses/internal roads, designations or reservations, development plan roads and areas for road-widening. It further provides that, as far as possible, the open area should be provided in one place. It further provides that, in an area of layout or sub-division, which are more than 5000 sq. mtrs. open spaces could be provided in more than one places, however, at least one of such places is required to be not less than 1000 sq. mtrs. Clauses (b) and (c) of Regulation 23 deal with the minimum area and the minimum dimensions. Clause (d) provides that, every plot meant for a recreational open space should have an independent means of access, unless it is approachable directly from every building in the layout. Clause (e) provides that the ownership of such recreational spaces shall vest by provisions in a deed of conveyance, in all the property owners on account of whose holdings the recreational space is assigned.

33 In the light of this legal position, we will have to scrutinize the documents on record, which are copies of the record of MCGM and MHADA.

34 Vide communication dated 5 December 1962, one Yahya C. Merchant, the Chartered Architect submitted an application on behalf of Anjuman Trust to the Executive Engineer, Housing Bandra Division, Bombay 1, for sub- division of Plot Nos. 1, 3, 6 and 5. The subject mentioned in the said Application was *"Low Income Group Housing Scheme- Allotment of Plots at Irla Nalla, Juhu, to the members of the Dawoodi Bohra Community"*. It will be relevant to refer the said letter which reads thus:-

> *"With reference to the above, I am submitting herewith four copies of each Layout Plan showing the sub-division of Plots Nos. 1, 3, 6 & 5 in the above scheme. I am also enclosing herewith list showing the names of the allottees and the areas allotted to them against their respective names for each plot.*
>
> > *<u>Sub-division of Plot No.1</u> : This plot has been sub-divided into 20 plots numbering from 1 to 20. All the names of the allottees have been given and the areas marked against their names, except for Plot No.1, which name will be forwarded to you in due course. A private road of 30 ft. wide has been*

provided which is to be allotted in the joint names of the owners of Plots Nos. 6 to 15.

Sub-division of Plot No. 3:- This plot has been sub-divided into 14 plots numbering from 21 to 34. All the names of the allottees have been given and the areas marked against their names. Plot No.34 which has been kept as a recreational plot is to be allotted in the joint names of the owners of Plots Nos. 21 to 33.

Sub-division of Plot No.6:- This plot has been sub-divided into plots numbering from 1 to 10, and the names of all the allottees have been given and the areas marked against their names.

Sub-division of Plot No.5:- This plot has been sub-divided into 16 plots with a private road of 30 ft. wide. Since the allotment of the plots has not yet taken place, the names of the allottees will be submitted to you in due course.

In order to effect the speedy allotment of the plots to the parties concerned, I have to request you to approve the plans submitted to you at your earliest and oblige."

35 The perusal of the aforesaid letter would clearly reveal that the plot No.3 is sub divided into 14 plots. Out of the said 14 plots, 13 plots are to be allotted to the 13 persons whose names are annexed in the list to the said Application whereas, the 14th plot i.e. the garden plot is to be allotted in the joint names of the owners of Plot Nos. 21 to 33. The annexures of the said Application also reveals

that, it contains the names of the 13 individuals for plot Nos. 21 to 33 whereas, on the garden plot names of all 13 persons are mentioned.

36 However, it appears that since in the 1962 Application, the reservation of open space that was provided was of only 1627.09 sq. yards in plot No. 3, certain discussions between the Architect of Anjuman Trust and MCGM took place. It is further to be noted that, initially in plot No. 6, there was no reservation. As such, a communication dated 17 June 1965 came to be addressed by the said Yahya C. Merchant. A reference is made in this letter that the BMC had sanctioned layout of the adjoining plot without insisting on 15% of the garden space. However, it is pertinent to note the following contents of the said letter dated 17 June 1965, addressed to MCGM which reads thus-

> *"That the Housing Board has provided garden space of 5% in the Scheme.*
>
> *That the total area of Plots Nos. 1, 3, 5 and 6 is 46,850 sq. yds. In Plot Nos. 1 and 2, area of road is 1121 sq. yds. and 891 sq. yds. respectively totalling the area of roads – 2012 sq. yds. Therefoe, the net area remaining for all the plots is 44,838 sq. yds. My clients now propose to leave the following area for the garden:*
>
> *In Plot No.3 -1687 sq. yds. and in Plot No.6 – 2500 sq. yds. totalling 4187 sq. yds. in all, which works out at*

nearly 10% of the total area. I am enclosing herewith a revised Layout Plan of Plot No.6 in triplicate.

I have therefore, to request you to sanction the Layout of Plot Nos. 1, 3, 5 and 6 at your earliest, to enable my clients to proceed with the execution of the lease."

37 It could thus be seen that, the Respondent Anjuman Trust has agreed to provide 2500 sq. yards in plot No.6 as a garden area in addition to 1687 sq. yards area already provided in Plot No.3 earlier. The said letter further states that the said area of 4187 sq. yards, works out nearly 10% of the total area. It further states that, the Housing Board has already provided the garden space area of 5% in the Scheme. A communication dated 6 August 1965 is addressed by the City Engineer of Bombay Municipal Corporation to the Housing Commissioner, Bombay stating therein that, the garden and recreation area allotted in the whole scheme works out to less than 5% of the total area, as against the requirement of 38.7 acres calculated on 15% basis, actual open area kept is only 11.25 acres. It is therefore, stated that the Housing Board should reserve some of the plots as garden etc., in order to make up the deficiency to satisfy 15% requirement.

38 Vide another communication dated 2 November 1965,

addressed to the Housing Commissioner, the said Yahya C. Merchant has again reiterated that in Plot No. 3, area admeasuring 1687 sq. yards and in Plot No. 6, area admeasuring 2500 sq. yards totaling 4187 sq. yards shall be reserved for garden. Accordingly, in the year 1967 the Standing Committee of BMC approved the sub-division of Plot No.3 wherein, Plot No.3/34 as numbered at that time has been shown to be reserved for "Garden". Similarly, vide order dated 3 March 1967, Plot No.6 was sub-divided in 11 Plots wherein, Plot No. 10 admeasuring 2500.50 sq. yards has been reserved for garden. It can thus, clearly be seen that while layouts for plot Nos. 3 and 6 were sanctioned by the BMC in the year 1967, one plot in each of these layouts, is specifically kept reserved for garden. Undisputedly, though under 1991 DCR, the requirement was 15%; the reservation as proposed by the Architect of Anjuman Trust was approximately 10% i.e. even less than the requisite one. Be that as it may be, it is clear from the record that in the year 1967, while sanctioning the layout, these two plots, one plot each in these two larger plots, have been reserved for garden.

39 However, it appears that, when MHADA submitted a

revised development plan on 15 October 1999, it submitted a layout of entire JVPD scheme. It however, appears that, while submitting the said development plan, the details of the internal layouts, as sanctioned by the BMC were not shown in the said layout and as such, the plots which are subject matter of the present Petitions, which are part of big plot Nos. 3 and 6 were shown as plots of Dawoodi Bohra Committee Co-operative Housing Society. However, the internal sub-division of the said bigger plots, as per the layouts sanctioned by the BMC has not been shown in the layout plan.

40 It appears that, this error while submitting the amended layout plan, must have ignited ingenious idea in the mind of some land grabbers, so as to turn this obvious error into a gold mine. However, the same obvious error is explicit from not one, but many documents, which are part of the record.

41 As discussed hereinabove, the aforesaid error appeared in 1999 plan, submitted by the MHADA. It appears that, taking advantage of the same, land grabbers started making attempt to grab these two pieces of land, which by passage of time, had become gold

mine. Insofar as plot No. 6/11 is concerned, it was initially allotted by the State Government to one Parasmani Society, however, the possession was given to Anjuman Trust. The matter came up before this Court by way of Writ Petition Nos. 1964 of 2007 and 2151 of 2009 and the consent terms were filed before this Court, on the basis of which, the orders came to be passed by the Division Bench of this Court on 10 November 2014. It appears that, immediately after the order was passed in terms of the consent terms, the matter was moved at breakneck speed for executing the lease deed in favour of the Juhuraj Society, the nominee of Anjuman Trust. When the Petitioner-"Save Open Spaces", came to know about this, they filed Review Petition, wherein the learned Vacation Judge of this Court, initially granted an ad-interim order on 30 December 2014. The Review Petitions were ultimately disposed of by this Court, on 19 January 2015, as discussed herein above.

42 It further appears that in the meantime, Respondent Anjuman Trust approached the Vice President of MHADA by letter dated 9 November 2012, to give NOC for registration of the Co-operative Housing Society of Plot No. 3/14. The CEO and Vice

President referred the matter to the Chief Officer of the Mumbai Board. The Chief Officer, by an elaborate reasoned order, held that the sub-plots, which were approved as a part of layout of the BMC, were leased to the beneficiaries already fixed by the Board and only the formalities like payment of the charges, approval of the plan etc. are to be done through the association. The Chief Officer has also taken a view that, the plot which is a mandatory open space in the approved plan, according to the plan was to be leased out to the neighbouring societies for recreation purposes. He further held that, the open space in question i.e. the said plot now belongs to MHADA and the disposal of the same will have to be done independently by MHADA, following the guidelines laid down by the MHADA.

43 It further appears that after the aforesaid order was passed by the Chief Officer, a communication was addressed by the MCGM on 31 October 2014. As such, it appears that the Chief Officer of the Mumbai Board referred the matter to MHADA. The Architect of MHADA submitted the noting as under on 15 December 2014.

"OFFICE NOTE:-

Sub:- Revised layout plan for JVPD scheme at Vile Parle (W). Mumbai.

Submitted :

The Chief Officer/MB's office Note on pre-pages N/43 to N/47 may please be perused. The revised layout of JVPD is submitted by Consultant Architect Shri Sukhatme. The same is examined and observations are as under :-

1. *The above layout plan with 3 FSI and 1.2 FSI for CRZ affected area was earlier approved by Hon. VP/A. Is given on page N/15. Thereafter, the layout was submitted to MCGM vide Arch./MB.'s letter dtd. 4-6-14 for grant of approval under revised DCR-33(5).*

2. *The MCGM vide their letter dtd. 31-10-14 has informed the discrepancies in the layout plan and compliance of the same is under process in Arch./MB's office.*

3. *In the meanwhile, it was noticed by Arch/MB's office that in the plans of 2 Societies of Bohra community, approved by MCGM, RG areas are shown on plots No. 5/285 admeasruing 2090.72 sq. mtrs. and on plot No.4/321 admeasuring 1410.68 sq. mtrs.*

4. *Since as per the layout approved by MCGM in the past, in the years 1967 & 1999 the said plot were shown without RG hence these Rg areas had remained to be shown on the layout plan submitted earlier for approval of Hon. VP/A..*

5. *However, now the revised layout plan is submitted at C/1009 incorporating the 2 RG areas on the respective plots as mentioned above at Para-3.*

In view of above, the revised layout plan of

JVPD may be considered for approval.

Submitted for approval please."

44 The noting was duly approved by the then Vice President vide his noting dated 24 December 2014. Thus, it is abundantly clear that the then Vice President has granted approval for submitting of the revised plan by incorporating said two plots which are subject matter of the present Petitions, as recreational/garden area. Not only this, but the Architect and the Planner of the MHADA, in pursuance to the aforesaid noting, addressed a communication dated 20 January 2015, to the Executive Engineer of MCGM to submit the proposed layout of JVPD. It is relevant to refer to the said letter which reads thus-

> *"The existing J.V.P.D. Scheme, Vileparle (W) Colony was developed by Mumbai Housing Board. The previsous layout is approved for 1.00 FSI on dated 15/10/1999 vide letter no. CE/1496/BS II WS LOKWS.*
>
> *The colony is basically for EWS, LIG, MIG, HIG category T/s and sub divided plots. As per the amended D.C.R.Clause no.33 (5) dt. 08/10/2013 this office has prepared a revised layout with 3.00 FSI and already submitted to your office vide letter under reference no.2 for further scrutiny and approval with all necessary documents (Copy of the above Reference letter No.2 is enclosed herewith for ready reference).*
>
> *As per the layout approved by Bombay Municipal Corporation in the past vide No. TP/LO/1891 Dt. 03/03/1967, subdivided plot no.1, 3, 5 & 6 (old nos. of*

plots) the two plots named as no. 3/34, 6/10 are reserved for 'Garden' in the layout admeasuring 1410.68m2 (1687.18 sq. yards) & 2090.72 m2(2500.00 sq. yards) respectively. The above mentioned plot nos. are old one. According to approval given in the past, revision made in the layout and submitted along with this letter. The revised nos. of subdivided plots are now 3, 4, 5 & 6 and nos. of Garden plots are 4/321 & 5/285. Now, The revision of said plots made in the layout and the set of revised layout submitting for the further approval.

The compliances for your office letter dt. 31/10/2014 will be submitted shortly for further necessary actions.

You are hereby requested to approve the layout as revised under D.C. Regulation Clause 33(5) dt. 08/10/2013 with 3.00 FSI M/s. Shirish Sukhatme and Asso. Are appointed to follow up the matter as per the procedure and to obtain the approval to the layout from MCGM."

(Emphasis supplied)

45 Thus, it is clear that the MHADA itself has sent the proposal to the MCGM for rectification of layout plan submitted in 1999, for showing these two plots, as garden plots. The copy of the map submitted along with the said letter, clearly shows that the two plots which are subject matters of the present Petitions, are garden plots. In the background of this, the order impugned before us in the 2017 Petition, is not only surprising, but shocking one. We fail to understand, as to how Respondent No.2, when as per the approval

granted by his predecessor in office had sent a proposal for correction of 1999 layout plan showing the aforesaid two plots as reserved for garden, could have passed the impugned order, holding that the Anjuman Trust has a complete and absolute right to nominate, select and reject the beneficiary in respect of sub-plot No.14 of plot No.3 and directed the Chief Officer, MHADA to take steps to withdraw the revised plan dated 20 January 2015 and further to take necessary steps to execute the lease agreement in favour of the beneficiary selected by Anjuman Trust and further directing the CEO, MHADA to take steps to hand over the possession of the plots to Anjuman Trust. It appears that Respondent No.2 has completely lost sight of the doctrine of Public Trust.

46 It would be relevant to refer to the following observations of Their Lordships of the Apex Court in the case of ***M.C. Mehta Vs. Kamal Nath & Ors.***[2]

> *"25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of*

2 (1997) 1 SCC 388

> *nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes."*

47 In the case arising out of somewhat similar facts, Their Lordships of the Apex Court had an occasion to consider the issue in the case of ***M.I.Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors.***[3]. In the said case, Mahapalika who, under the statutory duties was to be trustee of an open space meant for garden, had converted the same for construction of an underground shopping complex. It will be relevant to observe the following observations of Their Lordships.

> *50. Jhandewala Park, the park in question, has been in existence for a great number of years. It is situated in the heart of Aminabad, a bustling commercial-cum-residential locality in the city of Lucknow. The park is of historical importance. Because of the construction of underground shopping complex and parking it may still have the appearance of a park with grass grown and path laid but it has lost the ingredients of a park inasmuch as no plantation now can be grown. Trees cannot be planted and rather while making underground construction many trees have been cut. Now it is more like a terrace park. Qualitatively it may still be a park but it is certainly a park of different nature. By construction of underground shopping complex irreversible changes have been*

3 (1999) 6 SCC 464

> *made. It was submitted that the park was acquired by the State Government in the year 1913 and was given to the Mahapalika for its management. This has not been controverted. Under Section 114 of the Act it is the obligatory duty of the Mahapalika to maintain public places, parks and plant trees. By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain the park which cannot be permitted. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done. The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by this Court in Span Resort Case [M.C. Mehta V. Kamal Nath, (1997) 1 SCC 388]"*

48 As an officer of the MHADA, Respondent No.2 was expected to act in a manner, which would have protected the rights of MHADA or the public at large, rather than showing the magnanimity of handing over such a precious piece of land to Anjuman Trust or its trustee, without State Government or the MHADA getting a single rupee benefit. In the present case, it is only on account of the Petitioners knocking the doors of this Court at right time and on

account of the orders passed by this Court, the space which was reserved for garden in the sanctioned layout could be saved, which would have been otherwise utilized by the Respondents in collusion with each other for construction of huge residential complex. If the Petitioners had not approached this Court, at the right juncture, the land-grabbers would have been successful in their design of converting scarce open piece meant for garden into a residential complex for commercial exploitation. As it is, the cities are having very less number of open spaces, which are lungs of the City. We have no hesitation to hold that an attempt to destroy the open spaces meant for garden, with ulterior motive would be violative of the doctrine of public Trust.

49 We find that, the impugned order in 2017 Petition in addition to the aforesaid ground, is liable to be quashed and set aside on several grounds.

50 Firstly, none of the Senior Counsel appearing for the Respondents have been able to point out any provision, which provides for an Appeal before Respondent No.2 against an order

passed by CEO of MHADA. The only answer given is that in an administrative hierarchy, it is always permissible to the superior Authority to set aside the order passed by the inferior Authority. No doubt that, in exercise of administrative functions, the higher Authority would always be entitled to decide in public interest, contrary to the decision of the subordinate Authority. However by now, it is more than settled that an appeal would not be tenable, unless the statute specifically provides for it. Respondent No.2 has dealt with the said issue in an interesting manner. It will be appropriate to refer to what is observed by Respondent No.2, which reads thus-

> *7.3.....Hence, the VP & CEO, MHADA, being the highest executive officer of MHADA, has all the inherent powers including administrative powers to sit in appeal/ revision to correct the mistakes/ errors committed by the regional boards of MHADA and its authorities being subordinate authorities."*

51 We find that from the perusal of the order it appears that the learned Authority has arrogated upon itself, the jurisdiction to decide the issue with regard to the title, which are exclusively within the jurisdiction of a Competent Civil Court.

52 The proceedings before Respondent No.2 reveal that the Petitioners had specifically raised an objection regarding limitation inasmuch as the Appeal was preferred after a period of 16 months from the order of Chief Officer of Mumbai Board. However, it will be interesting to note, in what manner Respondent No.2 has dealt with the same, which reads thus:-

> *"(m) As discussed above, the Appellant has rightly contended that there is no period of limitation provided for such administrative appeal and hence, the appeal is not barred by law/ by limitation. Moreover, the Appellant has filed the appeal within a reasonable period. Moreover, in view of the finding that the impugned acts of offering and granting licence and the impugned order being incorrect, it cannot be held that the appeal suffers from delay and laches."*

53 One more ground on which the order of the Respondent No.2 deserves to be set aside is that, the matter was heard on 3 October 2016 whereas, the impugned order was delivered on 21 March 2017, which period is almost of 6 months. The Apex Court has deprecated this practice in the Judgment of ***Anil Rai Vs. State of Bihar***[4] in paragraph No.9 which reads thus-

> *"9. It is true, that for the High Courts, no period*

4 (2001) 7 SCC 318

> *for pronouncement of judgment is contemplated either under the Code of Civil Procedure or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come up to the expectation of the society of ensuring speedy, untainted and unpolluted justice."*

54 The perusal of the Judgment of the Apex Court in the case of ***Anil Rai (Supra)*** would reveal that the Hon'ble the Apex Court has held that even the High Courts should deliver the Judgments within a period of three months after hearing the matter. We find that when the law laid down by the Apex Court requires the High Courts to decide the matter within three months, the same would also be applicable to the Judicial or Quasi-judicial authorities exercising Judicial or Quasi-judicial powers. In the present case, the matter has been decided almost after the period of six months from the date on

which it was heard by Respondent No.2. On this ground also, we find that the decision of Respondent No.2 is liable to be quashed and set aside.

55 The main reasoning given by Respondent No.2 for holding in favour of Anjuman Trust, is that Petitioner No.1 in 2017 Petition, has not challenged the development plan of 1991 and approved layout of 1999. Another reasoning given by the learned Authority is that 1991 development plan and approved layout of 1999, clearly override the private layout of 1967-68. We find that the reasonings are totally unsustainable. The development plans would show the areas, which are reserved for various purposes, like commercial, playground, open spaces etc. However, both 1967 DCR, as well as, 1991 DCR specifically provide that certain areas should be kept as an open area, while dividing the plot into sub-plots and while making the layouts. As already discussed hereinabove, 1967 DCR specifically provides that when the land under development is admeasuring 3000 sq. mtrs. or more, 15% of the area is required to be reserved for recreational space. Admittedly, the layout plan, which was submitted by the Architect of Respondent No.4, was for an area of 46850 sq.

yards. It could thus, be seen that, the layout was for a area of more than 3000 sq. yards and as such, it was necessary to provide 15% of the land as open land/recreational area. Even if the area of both these plots is counted together, it would not even make even 10% of the layout area. Not only this, but the position would be amply clear from the communication of Architect of Respondent No.4 itself, dated 5 December 1962 and 17 June 1965. The position is also clear from the layout plans, which are sanctioned by the Corporation in the year 1967.

56 We further find that, when the earlier incumbent in the office of Respondent No.2 had approved sending the revised plan for including aforesaid two lands as reserved for garden and when such a proposal was already sent by MHADA to MCGM, Respondent No.2 could not have sat over in an Appeal, over the decision of his predecessor in the same office and acting totally contrary to the decision already taken.

57 We further find that the reasonings given by Respondent No.2 that Anjuman Trust has an absolute right, is also totally incorrect

and contrary to the record. We may refer to the communication addressed by the Respondent-Anjuman Trust, which is part of the record of the Petition, reads thus-

> *"(1) In May 1959, it was decided to allott the above plots to the members of the Dawoodi Bohra Community on individual basis as well as to the Co-operative Housing Societies to be formed by the members of the community with condition that all members should belong to low-income groups, i.e. persons having annual income not exceeding Rs.6,000/- and that not more than one plot wil be allotted to each applicant and in case of co-operative societies no individual member will get more than 550 sq. yds. The Board therefore, asked the Anjuman Shiate Ali, the Association of the Dawoodi Bohra Community of Bombay to introduce to the Board such members and societies of the community.*
>
> *(2) Accordingly 57 individuals and 2 Co-operative Housing Societies submitted their applications which were forwarded to the Housing Board with Lay out plans which were approved by the Housing Board.*
>
> *(3) Allottments of small lots were therefore, done to all the 57 individuals and 2 Co-operative Housing Societies as per the lay out plans approved and passed by the Housing Board.*
>
> *(4) I now submit, and as you will observe that the Anjuman Shiate Ali has acted all along as an Agent to introduce to the Board Low Income Group members of the Dawoodi Bohra Community. It has not acquired and will not acquire any title to the aforesaid plot. The proposal of sub-division submitted to you is entirely on behalf of all the 57 individuals and two co-operative societies. Moreover,*

> *allottments according to the plants submitted to you in 1961 has been done and approved by the Board. It will therefore seriously effect and upset all the individuals and two co-operative Societies, on of which has 45 and the other 23 members."*
>
> *(emphasis supplied)*

58 It could thus, be seen that the Anjuman Trust clearly admitted that its role is only of introducing to the Board, members of the Society of the Dawoodi Bohra Community. However, it is clear that the allotments were to be done to all 57 individuals, including two Co-operative Societies, as per the layout plan approved and passed by the Housing Board. In clear terms, the Anjuman Trust has admitted that, all along it acted as an agent to introduce to the Board, the Low Income Group members of Dawoodi Bohra Community and in that regard, had not acquired any title to the aforesaid plots. It is further admitted that the proposal of the Dawoodi Bohra Community submitted was entirely on behalf of 57 individuals and two Co-operative societies. The decree in terms of the consent terms in Appeal No. 54 of 1975, dated 19 August 1975, also clarifies this position.

59 No doubt that the learned Senior Counsel appearing for the Respondents are right in contending that in the affidavit filed on

behalf of the State Government in the Petition filed by Parasmani Society i.e. Writ Petition No. 1964 of 2007 and Writ Petition No. 2151 of 2009 and in the affidavit of MHADA, it is stated that the said plots are in residential zone. However, in our view, that itself could not take the case of the Respondents any further. If under 1967 DCR in a layout or sub-division, 15% area was required to be kept as an open area and that in furtherance thereof, if in the plans submitted by the Architect of Anjuman Trust, two plots were reserved as garden and that too only making out 10% of the land which is less than 15% as required and which plan was sanctioned by the then BMC in 1967, a statement in the Affidavit cannot make statutory provisions redundant. Equally, showing the said plot in the residential zone would not mean that if an area which as per the DCR is reserved as open space in the said layout, can also be used for the construction. In our view, acceptance of such an argument would be contrary to the Regulation 39 of 1967 DCR and Regulation 23 of the 1991 DCR. In our considered view, merely because the State Government or the MHADA by filing an affidavit in the Petition state that the said larger plot is shown as residential area, itself will not take away the reservation of a open area in a layout, which is reserved as per the

layout sanctioned by the MCGM.

60 In our considered view, if such an argument is accepted, in the layouts in the residential zone, there would be no requirement of providing open space.

61 We are therefore of the considered view that, both these Plot Nos. 3/14 and 6/11, which were reserved as garden spaces, as per the layout sanctioned in the year 1967 by the then BMC/MCGM, could not have been allotted for the construction of residential purposes. We are also of the considered view that the view taken by the Chief Officer of the MHB, which was duly approved by the then Vice President/CEO, holding that the revision requires to be done in 1999 plan, to show these two plots as a reserved for garden, are in accordance with law and in any case, in the larger public interest. We find that Respondent No.2, apart from the issues regarding the jurisdiction and limitation, has grossly erred in setting aside the decision of his predecessor and directing the Chief Architect to withdraw the revised plans submitted by MHADA to MCGM vide order dated 21 March 2017. Thus, impugned order is not only illegal but,

totally contrary to the public interest. We also have no hesitation in holding that Respondent No.2 has also grossly erred in giving the declaration that Anjuman Trust has complete and absolute rights to nominate, select, reject the beneficiary in respect of the sub-plot 14 of Plot No. 3. In our considered view, the directions in the impugned order of Respondent No.2 to take forthwith steps for executing the lease deed in favour of the beneficiary selected by Anjuman Trust and also to hand over the possession, in respect of the said plots, coupled with the manner in which the lease deeds were executed at a breakneck speed, create great degree of suspicion. Furthermore, the refusal to supply the copy of the impugned order to the Petitioners, makes the entire situation suspicious.

62 Insofar as 2015 Petition is concerned as already discussed hereinabove, we are of the considered view that even the plot which is subject matter of the said Petition, is reserved in lay out sanctioned by the BMC/MCGM in the year 1967 for open space/garden space. As such, neither the State Government nor the MHADA had a right to allot it to anyone. We find that the action of Respondents in first allotting it to Parasmani Society, then handing over the possession to

Anjuman Trust are contrary to the provisions of law. We are also of the considered view that the consent terms, entered into between the Parasmani Society, Anjuman Trust and Juhu Society, thereby agreeing that the Anjuman Society is entitled to nominate the beneficiary to plot No. 6/11 and further agreeing to nominate the Respondent Juhuraj Society for the purpose of executing lease deed between the MHADA and Juhuraj Society are also not legal and valid. In any case, the said were not binding on MHADA. We are surprised as to how inspite of a specific written noting made by the Chief Officer of MHB that MHADA should not approve the consent terms, MHADA has put up the signature on the consent terms, may be only for the purpose of identification. We are of the considered view that MHADA ought not to have been a party to such collusive and illegal act between Parasmani Society, Anjuman Trust and Juhuraj Society. We are also of the considered view that hasty manner in which the lease deed is executed in favour of Juhuraj Society by MHADA also creates great degree of suspicion.

63 Applying the principles of law as laid down by their Lordships of the Apex Court in the case of ***Tata Cellular (Supra)*** we

find that the decision making process of Respondent No.2 MHADA is liable to be vitiated on all the three grounds as carved out by their Lordships in the said case. We find that Respondent No.2 has totally erred in mixing the reservation as provided in the development plan and the open space as required to be kept in layout as per the 1967 DCR and 1991 DCR. We have no hesitation in holding that the decisions to allot lease in favor of Juhuraj Society and Juhu Lifestyle Society as a nominee of Anjuman Trust, are totally contrary to the DCRs of 1967 and 1991 and as such, the decision maker has not understood the law correctly and therefore the decision suffers on the ground of illegality. We further find that the decision by MHADA to allot plots, meant to be kept as an open space and that too to the nominee of the Anjuman Trust and parting away with a Gold Mine giving enormous benefit to private parties, without the public exchequer getting slightest benefit thereof, would came within the ambit of *"irrationality"*. We further find that the decision of Respondent No.2 in overlooking the earlier approval by his predecessor in office, of sending a revised plan for showing these two plots as reserved for open space/garden and further overlooking the well reasoned order passed by the Chief Officer of the Mumbai Board,

would also suffer on the ground of "procedural impropriety". In any case, the decision of Respondent No. 2 is totally against the public interest.

64 In that view of the matter, we are inclined to allow these Petitions in the following terms.

ORDER

a) Order dated 21 March 2017, passed by Respondent No.2-MHADA is quashed and set aside.

b) It is held and declared that Plot No.6/11, bearing CTS No. 29 of Survey No. 287 situated on 9th Wireless Road, JVPD Scheme, Juhu, admeasuring (2,500 sq. yards) which is subject matter of 2015 Petition, and; Plot No.3/14, CTS No. 196-A, North-South, 10th Road, JVPD Scheme, Juhu, Mumbai, admeasuring 1687.18 sq. yards, which is subject matter of 2017 Petition are required to be kept as an open

garden space, as per the layout sanctioned by Respondent BMC/MCGM in 1967.

c) It is further held and declared that no construction activities can be permitted to be carried out on the aforeseaid two plots.

d) Consequently, the lease deed executed by the Respondent- No.2-MHADA in favour of Respondent Nos. 6-Juhuraj Co-operative Housing Society (Proposed) in Writ Petition No. 2476 of 2015 and Respondent No.5-Juhu Lifestyle Co-operative Housing Society Ltd. (Proposed) in Writ Petition (Lodging) No. 1130 of 2017 are quashed and set side.

e) It is held and declared that the proposal submitted by Respondent-MHADA as per the approval granted by the predecessor in the office of Respondent No.2 dated 20 January 2015, is in

accordance with law and that the Respondent MCGM shall consider the same to be legal and valid and shall take necessary decision on the said proposal in the light of what has been observed hereinabove, within a period of six weeks from today.

f) We impose costs of Rs.2,00,000/- (Rupees Two Lakhs only) each on Respondent No.4-Anjuman Trust and Respondent No.6-Juhuraj Co-operative Housing Society (Proposed) and Rs.1,00,000/- (Rupees One Lakh only) on Respondent No.2-MHADA in Writ Petition No. 2476 of 2015, to be paid to the Petitioners within a period of two weeks from today. We also impose costs of Rs.2,00,000/- (Rupees Two Lakhs only) each on Respondent No.4-Anjuman Trust and Respondent No.5-Juhu Lifestyle Co-operative Housing Society (Proposed) and Rs.1,00,000/- (Rupees One Lakh only) on Respondent No.1-

MHADA in Writ Petition (Lodging) No. 1130 of 2017, to be paid to the Petitioners within a period of two weeks from today. We further direct the Respondent-MHADA to recover the costs from the person who are found to be responsible for the actions which we have held to be illegal.

g) Rule is made absolute in the aforesaid terms.

h) At this stage, the learned counsel appearing for the Petitioners graciously state that, the Petitioners are not interested in costs and the same to be paid to the Maharashtra State Legal Services Authority, as a donation on behalf of the Petitioners. We therefore, direct the aforesaid Respondents to deposit the costs by Demand Draft to be drawn in favour of *"STATE LEGAL AID FUND"* within a period of two weeks from today.

i) At this stage, the learned counsel appearing on behalf of Respondents - Anjuman Trust, Juhuraj Co-operative Housing Society (Proposed), Juhu Lifestyle Co-operative Housing Society (Proposed) and MHADA, pray for stay to the implementation of the order passed by us for the period of eight weeks from today. Taking into consideration, the view which we have taken, we are not inclined to consider the prayer. The prayer for stay is accordingly rejected.

(RIYAZ I. CHAGLA J.) **(B.R. GAVAI J.)**