IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL PUBLIC INTEREST LITIGATION NO. 12 OF 2011

Shri Nitin Shankar Deshpande)
residing at 1/C-108, Adarsh Nagar, Kolbad,)
Thane (W) 400 601.) .. Petitioner

V/s.

1. The Registrar General,) Deleted by order
High Court of Bombay) dated10/10/2012

2. State of Maharashtra)

3. Nyaysagar Co-operative Housing Society)
Ltd. Through the Secretary,)
S. No. 341 (P) Plot No. 629 (P))
Bandra (E), Mumbai-400 051.)

4. Siddhant Co-operative Housing Society Ltd.)
Through the Secretary,)
S. No. 341 Plot No. 629,)
Bandra (E), Mumbai-400 051.) ..Respondents

Mr. Amit Karande with Mr. Ulhas T. Naik for the petitioner.

Mr. Janak Dwarkadas, Senior Advocate with Mr. M.S. Karnik for respondent No.1.

Mr. D.J. Khambata, Advocate General with Mr. V.R. Dhond, Special Public Prosecutor and Mrs. Revati Mohite Dere, and Mr. N.P. Deshpande, AGP for State/respondent No.2.

Mr. I.M.Chagla, Senior Advocate with Mr. F.E. Divitre, Sr. Advocate, Mr. J.P. Avasia and Mr. Zal Andhyarujina i/b. M/s. Dastur Dadhich & Kalambi for respondent No.3.

Mr. Rafiq Dada, Senior Advocate with Mr. Amit Desai, Sr. Advocate, Mr. Shyam Mehta, Senior Advocate and Mr. C. Rashmikant, Mr. Murtuza Federal and Mr. Rohan Dakshini i/b M/s. Federal & Rashmikant for respondent No.4.

CORAM : MOHIT S. SHAH, C.J. &
RANJIT MORE, J.

JUDGMENT RESERVED ON : 10 OCTOBER 2012
JUDGMENT PRONOUNCED ON : 22 NOVEMBER 2012

JUDGMENT : ***(PER CHIEF JUSTICE)***

In this petition, purporting to be public interest litigation, the petitioner claiming to be a public spirited citizen has challenged the allotment of plots admeasuring 1400 sq.mts. and 1500 sq.mts. by the State of Maharashtra to two co-operative housing societies-respondent Nos.3 and 4 respectively. The petitioner has also prayed for demolition of the existing structures constructed by the above respondents and has prayed for a direction to the State of Maharashtra to restore the original reservation granted in respect of the above plots. The petitioner has also prayed for a direction to the State of Maharashtra to take action against the State Government officers who had changed the reservation.

2. Before setting out the grounds of challenge, it is necessary to note that the allotment of land admeasuring 1400 sq. ms. was made in favour of respondent No.3 – Nyaysagar Co-operative Housing Society Ltd. (hereinafter referred to as “the Nyaysagar Society”) on 22 June 2004. Construction of the building having 16 flats commenced in April 2006. Construction

was completed in December 2008 and the occupancy certificate was issued by the Municipal Corporation for Greater Mumbai on 30 March 2009. The present petition was, however, filed on 3 March 2011. The petitioner has not offered any explanation for the delay except stating that there is no delay in filing the PIL as the petitioner had made representation on 29 December 2010 to the Chief Minister, State of Maharashtra.

3. Similarly, respondent No.4 – Siddhant Co-operative Housing Society Ltd. (hereinafter referred to as "the Siddhant Society") was allotted land admeasuring 1500 sq.ms. on 30 October 2007. Possession of the plot was handed over to respondent No.4 on 15 February 2008. Construction of the compound wall was carried out immediately thereafter. IOD for construction of the building was issued by the Municipal Corporation on 7 October 2008 and the construction of 11 flats commenced in January 2009 and has thereafter been completed. Here also the petitioner has offered no other explanation for the delay in filing the petition in March 2011.

4. In *R & M Trust vs. Koramangala Residents Vigilance Group & Ors., (2005) 3 SCC 91*, the Supreme Court has held that the sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends. The Court held that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. In the facts of that case, the construction was started in 1987

and stopped after the building had come up to three floors in 1988. In March 1991, it was resumed after permission was granted and the writ petition was filed in November 1991. In the meanwhile, construction was almost complete. The Supreme Court held that delay was fatal. Similarly, in *Chairman & MD, BPL Ltd. vs. S.P. Gururaja & Ors., (2003) 8 SCC 567,* the allotment made in the year 1995 was challenged in the writ petition filed after one year. By that time, the appellant company had not only taken possession of the land but also made sufficient investment. The Supreme Court held that the delay in that case had defeated equity and the delay of the nature should be considered to be of vital importance.

5. The above mentioned facts regarding allotment of land admeasuring 1400 sq.mts. in favour of respondent No.3 society in 2004 and land admeasuring 1500 sq.mts. in favour of respondent No.4 society in 2007 and commencement of construction of building in each case long prior to filing of the writ petition in 2011 would have been sufficient to dismiss the PIL on the ground of delay, but since the petitioner has alleged that the Government machinery acted in an illegal and arbitrary manner to do favour to the Judges of this Court, we heard the learned counsel for the parties at length on merits of the controversy as well.

6. The petitioner has challenged the allotment of the above plots in favour of respondent Nos. 3 and 4 societies on the following grounds:-

(a) The allotment was made by the State Government hastily.

(b) The allotment was made by the State Government by illegally deleting the reservation on the plot for housing the homeless.

(c) The allotment was made at nominal and/or throwaway prices as compared to prevailing market rates.

(d) The allotment was in violation of the Government policy to allot land to cooperative societies having 20% members belonging to SC/ST/NT.

(e) The allotment of land to respective societies could not have been made without auction.

The petitioner has alleged that all this was done and the Government machinery acted in an illegal and arbitrary manner so as to do favour to the Judges of this Court.

7. The learned Advocate General for the State of Maharashtra and the learned counsel for respondent Nos. 3 and 4 societies have addressed the Court to show that no illegality or irregularity was done in allotment of land to the respondent societies nor any undue favour was shown to the Judges who are members of the respondent societies.

8. On behalf of the State Government, affidavit in reply dated 19 July 2011 has been filed by Mr. R.K. Surve, Joint Secretary, Revenue & Forest Department, pointing out the following facts with the relevant submissions:-

I. <u>Status and description of land involved:</u>

The parcels of land allotted to the two societies admeasuring 1400 and 1500 sq.mts. formed part of piece and parcel of land, bearing Survey No.341, CTS No.629 (Part) admeasuring about 25000 sq.mtrs. Originally this piece and parcel of land was subject to the following reservations:

(a) An area of about 4300 sq. mtrs. was originally reserved for “Court”. This reservation was lawfully changed to “Court and Judges and Judicial Staff Quarters”. This plot has been handed over to the Law and Judiciary Department, which is constructing a large court complex thereon;

(b) An area of about 1500 sq. mtrs., was originally reserved for “Judges' and judicial staff quarters”. This reservation was lawfully deleted. This land was allotted to respondent No.4 - Siddhanth Co-operative Housing Society (Siddhanth”) in 2007;

(c) An area of 10,000 sq. mtrs., was originally reserved for “housing for the dis-housed”. Out of this area of 10,000 sq. mtrs., the reservation was lawfully reduced/restricted to 1000 sq. mtrs., and the balance 9000 sq. mtrs., was converted to residential. Out of this 9000 sq. mtrs.,

(i) approx 1390 sq. mtrs., was allotted to Renuka Co-operative Housing Society (“Renuka”) in 2003.

(ii) approx 1400 sq. mtrs., was allotted to respondent No.3 - Nyayasagar Co-operative Housing Society ("Nyayasagar") in 2004; and

(iii) approx 1020 sq. mtrs., was allotted to Sindhuratna Co-operative Housing Society ("Sindhuratna") in 2008.

Whilst the members of Nyayasagar Society are Judges, the members of Renuka and Sindhuratna include civil servants, government servants, MLAs.

- 1000 sq. mtrs. has already been handed over to the Mumbai Municipal Corporation for housing the dishoused.

(d) an area of about 3700 sq. mtrs., was reserved for "recreation ground". This has been handed over to the Mumbai Municipal Corporation, and

(e) an area of 5357 sq. mtrs., was reserved for a D.P. Road. This has been handed over to the Mumbai Municipal Corporation,

II. Reservation for "Housing the Dishoused" - what it entails.

Under Regulation 9 of the Development Control Regulations for Greater Mumbai, 1991 (DCR), where land is subject to the Reservation "housing for the dishoused", the owner of the land is entitled to develop the land for housing and use the normal permissible FSI, subject to an obligation to hand over 10 per cent of the permissible built up area in the form of tenements, each having carpet area of 20.90 sq.mtrs. (225 sq.ft.) to the Corporation for allotment to persons affected by projects undertaken by the Corporation or in the absence of such allottees to others at market price. Where the owner complies with such condition, the owner is entitled to have full permissible FSI without taking into account the area so handed over. The

fundamental fallacy in the petition is that it falsely asserts that where a plot is subject to the reservation of "housing the dishoused", 100 per cent of the plot is to be used for providing homes for the homeless. On the contrary, only 10% of the built up area is to be handed over to "the dishoused", as stated above. Therefore, where land with the reservation "housing the dishoused" is to be allotted, the allottee could lawfully have, after giving away 10% built up area as stated above, the balance 90% area for himself, and in addition get additional FSI of 10% to compensate for the 10% given to the dishoused.

The petitioner, however, to create mischief, has sought to gloss over the distinction between "homeless" and "dishoused". The latter has a very clear and specific legal meaning/connotation and is restricted to those persons who have been dis-housed by reason of projects undertaken by the Corporation. The reservation, therefore, does not impose a requirement to provide accommodation for homeless, as the petition mischievously seeks to project. Secondly, there is no requirement that the entire plot area is to be used for such purpose. The reservation itself makes it clear that the obligation upon the owner is restricted to handing over 10 per cent of the area. In other words, for a plot admeasuring 10,000 sq.mtrs. the owner is free to use the entire FSI of the plot, subject to handing over 10 per cent built up area (1000 sq.mtrs.) to the Corporation. The premise that land meant for the homeless was allotted to Judges is therefore completely false.

Land allotment to Nyaysagar (respondent No.3)

(a) As stated above, a piece of land admeasuring about 1400 sq.mtrs. was allotted to Nyayasagar in 2007 out of the plot admeasuring 10,000 sq.mtrs, which was originally reserved for "Housing the Dishoused". As stated above, out of this plot admeasuring 10,000 sq.mtrs, two other pieces of land admeasuring about 1390 sq.mtrs and 1020

sq.mtrs, were allotted to two other societies, being "Renuka" and "Sindhuratna" in 2003 and 2008 respectively.

(b) State Government did not hastily allot any plot contrary to the reservation or hastily change any reservation as alleged. The allotment of land to Nyayasagar (and the two other societies) and the change of reservation on the plot admeasuring 10,000 sq. mtrs, was by following due process of law, which is a matter of public record.

(c) Under the provisions of the Maharashtra Regional and Town Planning Act, ("Act or MRTP Act"), State Government has the power to make modifications to the Development Plan, which modifications are required to be made by following the prescribed procedure. In the present case, all modifications of the reservations in question were made by following the prescribed procedure under the Act. The reservation on the plot admeasuring 10,000 sq.mtrs. was originally for "housing the dishoused". This reservation was altered by duly following the procedure under Section 37 of the Act. More particularly:-

(i) a direction under Section 37(1) was issued by the Government, on 9 January 2004 to the Mumbai Municipal Corporation to take steps to initiate the change in the Reservation and within 60 days publish a Notice in the official Gazette inviting suggestions and objections from the public;

(ii) as the Municipal Corporation failed to do so, the Government exercised powers under Section 37(1A) of the Act and issued 3 Notices inviting objections and suggestions, during the period 16 and 26 June 2004;

(iii) after considering the same and after scrutinizing the Report dated 27 July 2004

of the Director of Town Planning, a Notification under section 37 (2) of the Act was issued on 3 August 2004, whereby the reservation (housing the dishoused) was maintained on 10% of the plot (1000 sq.mtrs) and the balance 90% (9000 sq.mtrs) was placed in a residential zone.

(d) The process referred to above, was not done only for respondent No.3 Nyaya Sagar society alone. This process was followed for the entire plot admeasuring 10,000 sq.mtrs., from which allotments were also made to two other societies viz (i) Renuka; and (ii) Sindhuratna as also Mahsul Bhavan; and Rajpatrit Adhikari Mahasangh (Gazetted Officer's Federation). The suggestion that Judges were singled out for some special favour is, therefore, wholly misconceived.

(e) There was no illegality or impropriety whatsoever in the change of reservation, nor was there any illegality or impropriety in the decision to allot land and the procedure followed in this behalf. The change of reservation was, as stated above, brought about by following the due process under the Act. The reservation of “housing of the dishoused” was reduced to 1000 sq.mtrs and the remaining 9000 sq.mtrs of land was deleted and included in the residential zone.

(f) Without prejudice to the right of the State Government to alter/change the reservation in question, it is submitted that public interest has not been compromised. The effect of the reservation “housing for the dis-housed” does not require that the entire plot is required to be used for the said purpose : only 10% of the built up area is to be made available. In the case of the plot admeasuring 10,000 sq,mtrs, the 10% area that would be so ear marked would translate to 1000 sq.mtrs. The change of the reservation, as

done, substantially sub-serves the public purpose, since, whilst transferring 9000 sq.mtrs into residential, the entire area of 1000 sq.mtrs was made available for housing the dishoused. This plot (admeasuring 1000 sq.mtrs) has in fact been, very recently, actually handed over to the Mumbai Municipal Corporation for that purpose. Once the Municipal Corportion constructs tenements and hands them over to the dishoused, this would substantially meet public interest.

(emphasis supplied)

III. SIDDHANTH (Respondent No.4 society)

Insofar as the allotment of land to "Siddhanth" is concerned, the correct facts (which the Petitioner has not disclosed) are set out below:-

(a) Siddhanth Society was allotted approx 1500 sq.mtrs of land in 2007. This plot of land was originally subject to the reservation "Judges and judicial staff quarters". Abutting this plot was another plot admeasuring about 4300 sq.mtrs, which was subject to the reservation "Court";

(b) The Law & Judiciary Department, which was the "Appropriate Authority" for the Reservation for `Judges & Judicial Staff Quarters' was of the opinion that it did not require the said land for construction of Judicial Quarters at the expense of the Government. As the "Appropriate Authority" itself did not require the land in question, the Government, deleted the said Reservation by following the prescribed procedure under section 50 of the MRTP Act. The process of deletion of the Reservation, culminated with the issuance of a Notification dated 15 February, 2007 issued under Section 50(2) of the Act. Consequent upon the deletion of the said reservation, this plot admeasuring 1500 sq.mtrs therefore came to be included in the Residential zone.

(c) Possession of the plot admeasuring approx 1500 sq.mtrs was delivered to Siddhanth Society vide possession receipt dated 15 February 2008.

(d) Adjacent to the Siddhanth plot is a plot admeasuring approx 4300 sq.mtrs, which was subject to the Reservation “Court”. The Revenue and Forest Department however desired that the reservation for Staff Quarters be included on the adjacent plot admeasuring 4300 sq.mtrs, which was already subject to a Reservation for “Court”. As this would have entailed a change in the reservation, the Government issued a Notification dated 12 March 2007, under Section 37(1) for the Act, for initiating modification to the plan by changing the Reservation from “Court” to “Court and Judges and Judicial Staff Quarters”. The process under Section 37 of the Act was duly followed and public objections were invited and heard and thereafter a Notification dated 17 August 2009 was issued under Section 37(2) of the Act.

(e) Possession of the adjoining plot admeasuring about 4300 sq.mtrs was handed over to the Law & Judiciary Department for construction of a Court complex (wherein provision has also been made for quarters) and construction of the said complex is underway.

(f) The shifting/deletion of reservations was done by following the due process of law. State Government is under the Act empowered to shift/alter reservations. In the present case, State Government has done so by following the statutorily prescribed procedure. Not only was the same lawfully done but the same was done for good reason. The allotment of land to Siddhant Society is also perfectly lawful and duly done, strictly in consonance with the statutorily prescribed procedure.

IV. No favour bestowed on Judges

The Petition mischievously alleges that some special favour was bestowed upon Judges of this Court, who were treated as a special case. This allegation is controverted for the reasons set out below.

(a) Firstly, there is nothing illegal whatsoever in the allotment of Government lands to Co-operative Societies of persons from diverse walks of life. The Government policy in this behalf, stated in the G.R. Dated 5th July, 1999 expressly permits such allotment of Govt. Land to Co-operative Housing Societies. This power of the Government to allot lands to co-operative housing societies has been judicially upheld in the case of Foreshore Co-operative Housing Society vs. Nivara Hakk Suraksha Samiti, (1991) 2 SCC 75 (that was also a case of Judges Co-operative Housing Society). Since 1999, there are hundreds of cases of allotment of government lands to co-operative housing societies. These include Societies whose members are members of the legislature; executive administration; armed forces; police; sportsmen; artists; journalists. The allotment of lands to co-operative housing societies is, therefore, not something to which exception can be taken. There is no reason why judges should be excluded. Even in the past lands have been allotted for setting up co-operative housing societies whose members were Judges.

(b) Secondly, even in so far as plot bearing S. No. 341 and CTS No. 629 (Part) are concerned, the two respondent societies are not the only one to whom lands have been allotted. As more particularly stated above, out of the same plot admeasuring 10,000 sq. mtrs. (from which approx 1400 sq. mtrs of land was allotted to respondent No.3 Nyayasagar), approx 1400 sq. mtrs of land had been allotted to Renuka in

> 2003 even prior to the allotment to Nyayasagar. Similarly, approx 1020 sq. mtrs of land was allotted to the Sindhuratna Co-op. Society in 2008. These societies have, as members, inter-alia, govt employees, civil servants, MLAs.

DISCUSSION

Contention (a): Was allotment made hastily?

9. As regards the first allegation that the allotment was made hastily, it clearly emerges from the record that the allotment was made over a period of time extending over several years during which the prescribed statutory procedure was followed. Respondent No.3 – Nyaysagar Society applied for land in February 2003 and possession of the land was given to it in June 2004. Similarly, respondent No.4 – Siddhant Society applied for land in November 2006 and possession of the land was given to it in February 2008. It is, therefore, not possible to accept the allegation about haste. The allegation is made without any sense of responsibility.

10. Learned counsel for the petitioner as well as the intervener, however, submitted that though notification under section 37(2) of the MRTP Act deleting reservation of “housing for the dishoused” was issued on 3 August 2004, the allotment of land admeasuring 1400 sq.ms. to respondent No.3 society was made on 22 June 2004 and, therefore, there was undue haste in allotment of land to respondent No.3 society. It is submitted that even the notices inviting objections and suggestions under section 37(1A) of the Act were published between 16 and 26 June 2004 and, therefore, allotment could not have been made on 22 June 2004.

11. We do not find any substance in the contention because even where a land is subject to reservation for housing the dishoused, there is no legal prohibition against the allotment of land because there is no obligation on the owner or allottee of such land to use the entire land for housing the dishoused. The only obligation on the owner / allottee of such land subject to reservation "housing the dishoused" is only to provide 10% of the total built up area to be constructed on such land as per normal FSI to the Municipal Corporation for allotment to the dishoused, i.e. those who lost their houses on account of projects of the Municipal Corporation. Hence, before commencing construction, the owner/allottee must submit building plans providing 10% of the permissible built up area in the form of tenements each having carpet area of 225 sq.ft. Reservation, therefore, becomes material only at the stage of permission to construct on the land in question.

12. Identical challenge was raised in *Foreshore Cooperative Housing Society Ltd. vs. Nivara Hakk Suraksha Samiti, (1991) 2 SCC 75* and the Supreme Court turned down that challenge in the following words:

> "5. The last contention raised by Shri Sebastian was that the plots in question were reserved in the draft development plan for "housing the dishoused" and that, therefore, the allotment of this land to the society for housing purposes was not proper. The High Court has pointed out that the plots have been dereserved under the powers vested in the Administrator of the Municipal Corporation under Section 50 of the Maharashtra Regional Town Planning Act. Learned Counsel referred to the provisions of Sections 26 to 29

> of the Act. But we agree with the High Court that the relevant provision is contained in Section 50 and that, since dereservation has been made under this section, the objection put forward does not survive. The reservation becomes material only at the stage of permission to construct on these plots and it is common ground that by the time the constructions were made dereservation had been effected."
>
> (emphasis supplied)

There is no dispute that respondent No.3 commenced construction of the building on 4 April 2006, which was long after the dereservation notification was issued on 3 August 2004 and land of 1,000 sq.mts. was made available to the Municipal Corporation for housing the dishoused.

Contention (b) : Was change in reservation illegal?

13. Though what Regulation 9 of DCR provides is reservation for housing the dis-housed, the petitioner has called it a reservation for homeless, which is incorrect. "Dishoused" has a very specific and narrow meaning restricted to those persons who have been dishoused by reason of projects undertaken by the Municipal Corporation. The reservation in DCR 9, therefore, does not impose an obligation to provide accommodation for the homeless as alleged by the petitioner.

14. The State Government has made the Development Control Regulations for Greater Mumbai, 1991 in exercise of powers conferred by section 31 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). Regulation 9 of the said Regulations provides that the uses of all lands situated within the limits of Municipal Corporation of Greater Mumbai shall be

regulated in regard to type and manner of development/ redevelopment according to Table-4. The said Table contains guidelines for development of reservation including "housing the dishoused" and public housing and municipal housing. Item No.1(c) deals with the reservation for "housing the dishoused". It provides that the Corporation may develop the land after acquiring it in accordance with law or the owner may develop the land for housing with a normal permissible FSI on such terms as are agreed to between him and the Commissioner and in addition on conditions stipulated in (d) below.

Item 1(d) deals with "reservation for public housing / high density housing" and provides that the public authority may acquire the land and develop the land for the allocated purpose or "**the owner may develop the land** on such terms as are agreed between him and the Commissioner **and further subject to** certain conditions; the relevant condition reads as under:-

> (ii) The owner shall hand over 10% of the permissible built up area in the form of tenements each having carpet area of 20.90 sq.mt. (225 sq.ft.) to Corporation free of charge for allotment to persons affected by projects undertaken by Corporation or in the absence of such allottees to others at market price. Thereafter the owner will be entitled to have full permissible FSI of the plot without taking into account the area so handed over to the Corporation."
>
> (emphasis supplied)

15. The scheme of reservation for housing the dishoused may be understood as per the following illustration.

Suppose a plot admeasuring 1000 sq.mtrs. owned by Mr.X is subject to reservation for “housing the dishoused” and the normal permissible FSI is 1.

(i) The owner would be entitled to construct building with total built up area of 1000 sq.mtrs. on the land.

(ii) The owner has to hand over 10% of that built up area i.e. 100 sq.mtrs. in the form of tenements, each having carpet area of 225 sq.ft. to the Municipal Corporation for allotment to persons affected by projects undertaken by the Corporation (i.e. “dishoused”).

(iii) Where the owner complies with such condition, he is entitled to have full permissible FSI of 1000 sq.mtrs. for himself, without taking into account the 100 sq.mtrs. built up area handed over to the Corporation for housing the dishoused.

IN OTHER WORDS, where the land with the reservation “housing the dishoused” is allotted by the Government, the allottee would have to give away 10% built up area (100 sq,mts.) as stated above to the Municipal Corporation for housing the dishoused and then use the balance 90% (900 sq.mts.) area for himself and in addition get additional FSI of 10% (100 sq.mts.) to compensate for the 10% built up area given to the Municipal Corporation for housing the dishoused.

16. It is, therefore, clear that there is no obligation that the entire plot area has to be used for the purpose of housing the dishoused. The reservation itself makes it clear that the obligation upon owner is only restricted to handing over 10% of the permissible built up area. In other words, for a plot admeasuring 10,000 sq.mtrs. with FSI of 1, the owner is free to use the entire FSI of the plot and construct 10,000 sq.mts. of built up area, subject to handing 10% built up area (1000 sq.mtrs.) over to the Municipal Corporation. The petitioner's allegation that the land meant for the homeless was allotted to Judges is, therefore, completely baseless and misconceived.

17. It is thus clear that even if the reservation for “housing the dishoused” was not removed for the plot of 10,000 sq.mts., the land available for housing the dishoused would have been only 10%, i.e. 1,000 sq.mts. Since 1000 sq.mts. of land has already been handed over by the State Government to the Municipal Corporation out of 10,000 sq.mts of land originally reserved for housing the dishoused, no land has been lost by the Municipal Corporation for the purpose of housing the dishoused.

18. In Foreshore Cooperative Housing Society (supra), the Supreme Court dealt with a similar challenge:

> “Learned Counsel sought to contend that the dereservation was arbitrary. But, as rightly pointed out by Shri Ashok Desai, this is a totally new case that is being sought to be put forward on behalf of the writ petitioners. Their contention, even in their amended writ petition, was only that the land, having been reserved, could not be allotted to the society and this was rightly answered by the High Court by

> pointing out that it had been subsequently dereserved. The validity or the bonafides of dereservation were not put in issue and no material was also placed before the High Court or before us in support of any such contention. We, therefore, hold that there is no merit in this contention."

Same is the case here also, as the petitioner has not placed any material before us to show how the dereservation is arbitrary or lacking in bonafides.

Contention (c): Was allotment made at nominal price?

19. No arguments were urged by the learned counsel for the petitioner at the hearing of the PIL on deleting the reservation for "Judicial and Judicial Staff Quarters" on the land admeasuring 1500 sq.mtrs., which was allotted to respondent No.4-Siddhant Society in 2007. In any case, the facts pointed out in the affidavit on behalf of the State Government make it clear that the Law and Judiciary Department was of the opinion that the said land was not required for construction of judicial quarters at the expense of the Government and, therefore, after following the prescribed procedure under the MRTP Act, notifications dated 15 February 2007 and 12 March 2007 were issued under the MRTP Act for deleting the reservation for "Judicial and Judicial Staff Quarters" and changing the reservation on the adjoining plot admeasuring about 4300 sq.mtrs., from "Court" to "Court and Judges and Judicial Staff Quarters". The possession of the said plot admeasuring about 4300 sq.mtrs. was also handed over to the Law and Judiciary Department and construction of Court Complex (wherein provision has also been made for quarters) is going on. Hence,

there was no illegality or impropriety in deleting the reservation in respect of the plot which was allotted to respondent No.4-Siddhant Society on 30 October 2007.

20. As regards the petitioner's case that land was allotted to the Judges' Societies at nominal or throw away prices, the learned Advocate General has pointed out that the allotment of land by the State Government to cooperative housing societies under the Government Policy of 9 July 1999 is at Government prescribed prices. The procedure till 24 May 2007 was that at the time of allotment, the Revenue Department would fix the adhoc value pending final determination of the exact rate by the Town Planning & Valuation Department. The Revenue Department would, therefore, take an undertaking from the allottee that the difference between the adhoc value and the final value would be made good with interest. However, with effect from 25 May 2007, the policy was changed and it was decided that the allotment would be made with reference to ready reckoner rates.

21. At the time of allotment of land admeasuring 1400 sq. ms. to respondent No.3 – Nyaysagar Society in June 2004, the adhoc value of Rs.22,500/- per sq.m. was fixed by the Revenue Department, and the Town Planning & Valuation Department was asked to determine the final value. The Town Planning & Valuation Department, however, did not determine the final value till 25 May 2007 by which time the policy was revised. Hence, the final value of the plot allotted to respondent No.3 (Nyaysagar Society) was determined as per the 2004 ready reckoner which was approximately Rs.21,500/- per sq.m. Hence, the difference

between the two rates was refunded to respondent No.3 (Nyaysagar Society). No special treatment was given to the Judges' Societies. Renuka Co-operative Housing Society of Government officers was allotted land admeasuring 1400 sq.ms. at the adhoc rate of Rs.20,500/- in the year 2003 and the final value was determined at Rs.21,500/- on the basis of ready reckoner rate for the year 2003. Accordigly Renuka Co-operative Housing Society was required to pay the difference between the two rates. Since respondent No.4 (Siddhant Society) was allotted 1500 sq. ms. of land in August 2007, the ready reckoner rate of Rs.30,300/- per sq.m. as applicable to that year was applied. Similarly, Sindhuratna Society was allotted 1020 sq.ms. of land in 2008 and the ready reckoner rate applicable for that year was determined as the final value.

22. While we are on the fixation of price at which the land was given to the respondent societies, it would not be out of place to refer to the following averments in the affidavit dated 7 July 2012 filed on behalf of respondent No.4 Siddhant society, which are not disputed by the petitioner:-

> “In the petition, the Petitioner has purported to allege that the location of the said plot is in Bandra-Kurla commercial area, as if the said plot was in a prime location of huge value. As a matter of fact the said Plot is not in the Bandra-Kurla Complex but is near the Government Colony, with a huge nala (within 50 metres of the plot) into which toxic effluents from industrial waste are released. A slum known as “Bharat Nagar Slum” is located at about 100 metres from the said land. The huge nala is being used as a public toilet. Encroachments were on the said land when the same was allotted. Even today, there are

> three hutments near the entrance of the said land. Further, at the time when the plot was allotted, it was uneven, undeveloped and a huge amount had to be spent for levelling the said land. The entire area was submerged in water upto the 1st floor level. A residential building of ground floor podium, stilt plus six upper floors has been constructed."

23. We, therefore, find considerable substance in the submissions of the learned Advocate General that no concession was offered to respondent No.3 society or respondent No.4 society in the matter of fixation of price for allotment of lands in question which are in the same area.

Contention (d): Not having 20% members belonging to SC/ST/NT

24. As regards the contention that respondent Nos.3 and 4 Societies have committed breach of clause 9 of the Government Resolution dated 9 July 1999 requiring that 20% of members of a cooperative housing society to whom land is allotted must be from Scheduled Castes / Scheduled Tribes / Nomadic Tribes, in the facts of the present case, respondent No.3 society having 16 members was required to have 3 members belonging to SC/ST/NT. Respondent No.3 society has 2 members belonging to Scheduled Castes, who are Judges of this Court.

By letter dated 22 December 2005, the Government of Maharashtra sanctioned the request of respondent No.3 – Nyaysagar Society for partial relaxation of the condition stipulated in clause 9 of the Government Resolution and, therefore, instead of 3 members being required to be belonging to SC/ST/NT, respondent No.3 was permitted to have 2 such members.

25. As far as respondent No.4 – Siddhant Society is concerned, Government Memorandum dated 30 October 2007 allotting 1500 sq. ms. of land to it specifically mentioned that the condition for 20% of members of the society being from SC/ST/NT was relaxed.

26. In Foreshore Cooperative Housing Society Ltd. (supra), a three Judge Bench of the Supreme Court considered the identical contention, (that relaxation of condition obligating society to have 20% members belonging to SC/ST/NT was arbitrary) in the following words:

> "4. The third objection of the learned Counsel was that the provisions of paragraph 10 of the guidelines has not been complied with. This paragraph requires that a society to which Government land is granted for construction of residential flats/houses should enroll 20 per cent from amongst scheduled castes, scheduled tribes and nomadic tribe communities. <u>There are two answers to this objection</u>. The first is that the guideline applies only to cases where, under the rules of the cooperative society, persons from the backward communities specified therein are eligible for membership. <u>It does not appear to envisage enrolment of the members of such communities even where membership of the society is restricted to certain categories of persons among whom there is no eligible member from the backward communities</u> or to require the amendment of the society's rules and regulations to ensure the presence of such members in the society. That apart the second objection which has been upheld by the High Court is that the Government has exercised its powers of relaxation and has permitted the society a relaxation from this rule on the understanding that one person from the communities mentioned, who was eligible to become such a member, should be admitted

> as a member subject to his willingness to accept the same. We are informed that such a person has also been admitted to the membership of the society. In view of this, this contention no longer survives."
>
> (emphasis supplied)

It is an undisputed fact that membership of the respondent societies is restricted to Judges of this Court, who were sitting Judges at the time of enrolment as members of the concerned societies. Since no other Judge belonging to SC/ST/NT was available at the relevant time to be enrolled as a member of respondent No.3 and respondent No.4 societies, the above decision will apply with equal force.

Contention (e) : Allotment without auction was illegal.

27. The learned counsel for the petitioner as well as the intervenor submitted that the allotment of lands to respondent Nos.3 and 4 societies was even otherwise illegal as it was in violation of the Maharashtra Revenue (Disposal of Government Lands) Rules, 1971, particularly Rule 26(1) which reads as under:-

> **26. Disposal of building sites**
>
> (1) Except as otherwise provided in these rules, the occupancy rights in building sites shall be disposed of by the Collector under Section 20 read with Section 31 by public auction to the highest bidder, unless for reasons to be recorded in writing, the Collector thinks that in any particular case, there is good reason for granting the land without auction."

It is also submitted that even otherwise, the allotment was illegal as it was made in violation of law laid down by the Supreme Court that public property should ordinarily be sold by public auction to fetch the maximum revenue.

On the other hand, the learned Advocate General submitted that unlike Rule 26, Rule 27 of the Maharashtra Land Revenue (Disposal of Lands) Rules, 1971 itself confers power upon the Government to allot lands to cooperative housing societies without public auction. Rule 28 also confers similar power upon the Government to grant land to freedom fighters, members of armed forces and the Government servants. It was submitted that Government resolution dated 9 July 1999 contains the policy guidelines for making such allotment of land to Cooperative housing societies. The said guidelines do not provide for auctioning the land. The Resolution provides for allotment of land to Cooperative Housing Societies having the members who are State Government officers/servants and the employees of Local Self Bodies/Corporation of Public Sector who are in service, Cooperative Housing Societies having the members only from Central Government Offices/servants who are in service, Co-operative Housing Societies in which at least 50% members are Litterateur, Artists, sportsmen, journalists etc., Cooperative Housing Societies having members who are peoples representatives, Cooperative Housing Societies having the members from other section of the public etc. However, the Government resolution provides that the provision to invite applications from the public by giving press release in the newspaper will apply if there are more than two plots in the lay-out.

28. Similar challenge levelled in Foreshore Cooperative Housing Society Ltd. (supra) was negatived by the Supreme Court in the following terms:-

> "The first contention was that the allotment of land to the Society was in violation of paragraph 11 of the guidelines issued by the government for allotment of lands in the city of Bombay for housing purposes. He pointed out that under this paragraph the Collector was required to issue public notices regarding the availability of plots for allotment for housing purposes. Clause 4 of the guidelines provided for certain rules of priority in the matter of allotment and paragraph 7 required that the comparative merits of various applicants should be examined before any allotment was made. Learned counsel submitted that the allotment to the Society was made without observing these statutory guidelines. The High Court pointed out that paragraph 11 relied upon by the learned counsel itself contains an exception that the rule regarding prior publicity will not apply in cases where one or two plots are available for disposal in isolation and held that the present case falls under this exception. Learned counsel submits that this finding of the High Court overlooks that this exception is not available in cases where, as here, a layout is prepared in accordance with the local development control rules making a number of plots available for disposal. He also submits that this was a case where more than two plots were allotted to the Society and that the exception is not attracted. So far as the first aspect is concerned, we may point out that though there is a reference to some layout, there is no material before us to conclude that a number of plots were allotted to various societies on the basis of a layout so prepared and that the allotment to the Society is not a case of allotment in isolation. Though learned counsel mentioned that allotment had been made to this Society as well as to a number of other societies of a vast area of land known as Queen's Barracks, no facts were placed on record before us or before High Court in support of this contention."

29. In the instant case also, there is no case of allotment to various societies on the basis of a layout, but it is a case of allotment in isolation. One plot admeasuring 1390 sq. mtrs. was allotted to Renuka Cooperative Housing Society in the year 2003, one plot approximately admeasuring 1400 sq. mtrs. was allotted to respondent No.3 society in the year 2004, one plot admeasuring 1500 sq. mtrs., was allotted to respondent No.4 society in the year 2007 and one plot admeasuring approximately 1020 sq. mtrs., was allotted to Sindhuratna Cooperative Housing Society in the year 2008. The petitioner has challenged the allotment of lands to only respondent Nos.3 and 4 societies in the year 2004 and 2007 respectively. The challenge would, therefore, have to be negatived on the same logic which was accepted by the Apex Court in Foreshore Cooperative Housing Society Ltd. (supra).

30. We also find considerable substance in the submission of the learned Advocate General that there was nothing illegal in the allotment of Government lands to respondent Nos.3 and 4 cooperative societies whose members were sitting Judges of this Court at the time of allotment of land in 2004/2007. While Rule 26 provides for disposal of building sites by public auction, Rule 27 permitting grant of land to co-operative housing societies does not provide for auction, Rule 28 for grant of land to freedom fighters, members of armed forces and Government servants also does not provide for auction. The Government policy stated in the Government Resolution dated 9 July 1999 permits allotment of Government land to cooperative housing societies to persons from diverse walks of life. Since 1999, there are hundreds of cases of allotment of Government lands to cooperative housing societies.

They include societies whose members are Members of Legislature, Executive, Administration, Armed Forces, Police, Sportsmen, Artists and Journalists. Since such cooperative housing societies of persons are treated as a special class for rendering public service and since allotment of lands to cooperative housing societies without public auction is not only illegal but in fact is permissible under Rules 27 and 28 of Disposal of Government Lands Rules, there is no reason why Cooperative Housing Societies of Judges should be excluded. Even in the past, lands have been allotted without auction for setting up of cooperative housing societies whose members were Judges. In future, of course, it may be desirable that applications of Co-operative Housing Societies of sitting Judges of the High Court for allotment of land may be routed through the Registrar General of the High Court.

31. Moreover, the change in reservation, as discussed above, was not merely for the benefit of two cooperative societies of Judges. Out of the same plot admeasuring 10,000 sq.ms., the land admeasuring 1400 sq. ms. was allotted to Renuka Society in 2003 before another parcel of land admeasuring 1400 was allotted to respondent No.3 (Nyaysagar Society) in 2004. Similarly, after allotment of 1500 sq.ms. to respondent No.4 (Siddhant Society) in 2007, another parcel of land admeasuring 1020 sq. ms. was allotted to Sindhuratna Society in 2008. Renuka Cooperative Housing Society and Sindhuratna Society have as their members, inter alia, Government officers/employees and MLAs. It is thus clear that no special benefit was bestowed upon Judges.

32. Further, as discussed earlier, the reservation (housing the dishoused) does not require the owner/allottee of the land to provide the entire built up area for the dishoused. Only 10% of the built up area of the permissible FSI as per the normal FSI is to be provided to persons affected by projects of the Municipal Corporation.

33. Having heard the learned counsel for the parties and the intervenor, we find that the State Government had followed the procedure prescribed for modification/deletion of the reservation in the development plan. The modification/deletion of the reservations which are subject matter of the present petition did not bring about the loss of identity of the original development plan as a whole. In this connection, we may refer to the following principles laid down by a Division Bench of this Court in *Mihir Yadunath Thatte vs. State of Maharashtra, 2007 (1) All MR 537*:-

> "22. Town planning changes with times. The development plan is not something which once sanctioned, cannot be touched. Periodic changes in the development plan are even contemplated by law. That the modification in the development plan is permissible is clear from Section 37 of the Town Planning Act. However, such modificatiojn must not change the character of the development plan. If every modification in the development plan is to be construed as a change in the character of the development plan then Section 37 of the Town Planning Act may be rendered otiose and of no avail. That is not the scheme of Section 37. The validity of the modification in the development plan has to be tested on the touch-stone of the alteration in the character of the development plan. Once there is no alternation in the character of the development plan by the modification, it is not material whether such modification is minor or major. It is for this reason that the word minor was deleted in Section 37 by Act 39 of 1994. Even the fundamental or significant changes in the development plan which do not change the character of the development plan is permissible under Section 37." (vide Mihir Yadunath Thatte v. State of Maharashtra, 2007(1) All MR 537).

Similarly, in *Pune Municipal Corporation v. Promotors and Builders Association, 2004 SCC 796*, the Supreme Court construed the powers under section 37 of the Act and made the following observations:-

> "The main limitation for the Government is made under clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. And for such minor changes it is only normal for the Government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the respondents herein that the proposed change is arbitrary or unreasonable."

In the facts of the present case, the petitioner has not shown as to how modification/ deletion of the reservations in question was arbitrary or unreasonable.

34. However, we may refer to one aspect which was not argued by the petitioner, though it is not possible to give any finding on that aspect as the Municipal Corporation is not before us. Reservation for housing the dishoused is essentially provided for the persons affected by the projects of the Municipal Corporation. The reservation is, thus, for the benefit of the Municipal Corporation. The obligation on the owner of the land subject to reservation of "housing the dishoused" is to provide 10% of the permissible built up area in the form of tenements, each having carpet area of 225 sq.ft. to Municipal Corporation free of charge for allotment to persons affected by projects

undertaken by the Corporation. At the time of deleting the reservation from 9000 sq.mtrs. of land out of the parcel of land admeasuring 10,000 sq.mtrs., the Government has preserved the reservation by subjecting the entire 1000 sq.mts. of land to reservation for housing the dishoused and, thus, entire 1000 sq. mtrs., of land has been handed over to the Municipal Corporation of Greater Mumbai for housing the persons dishoused by the Municipal Corporation projects. It is, however, not clear as to who will bear the cost of constructing such tenements of 225 sq. ft., each on the said land admeasuring 1000 sq. mtrs.

35. During the course of hearing several matters regarding development/ redevelopment of the properties on public lands, we have found that the public authorities have adopted the innovative method of offering higher FSI on such land and, thus, attract developers who provide 50% of the built up area free of cost to a public authority if the developer is allowed to sell the remaining 50% of the built up area in the open market, for instance by offering FSI of 2 on the said land admeasuring 1000 sq.mts. (as against normal FSI of 1), the Municipal Corporation may entrust the project to a developer for constructing 1000 sq.mts. of built up area having tenements of 225 sq.ft. each to be given to the Municipal Corporation free of cost for housing the dishoused and constructing another 1000 sq.mts. of built up area to be sold by the developer in the open market.

This situation would, therefore, not cause any prejudice either to the Municipal Corporation which will not have to incur any cost for constructing the tenements for the persons dishoused by its project not will it require such dishoused

persons to incur any cost for the tenements being allotted to them.

36. Since the Municipal Corporation is not a party before us, we are not required to consider the above aspect any further, but it will be open to the Municipal Corporation to go in for any such suitable formula for constructing the tenements for persons dishoused by its projects. It is for the Municipal Corporation to consider whether the Corporation would go in for the self financing scheme for constructing tenements for persons dishoused by its own projects or whether the Corporation would like to seek Government directions to the cooperative housing societies (which have got allotment of lands initially reserved for "housing for the dishoused" and subsequently released from such reservation) to make proportionate contributions limited to maximum 10% of the actual cost of construction of its buildings incurred by that cooperative housing society.

Contention : Is the act of giving flats on rent/ leave and licence basis illegal?

37. While the discussion so far was with reference to the challenge to allotment of plots, which challenge has been turned down, we now deal with the petitioner's contention that the members of respondent Nos.3 and 4 societies are acting illegally in giving the flats constructed on lands allotted by the Government on leave and licence basis. It is submitted that the land is allotted by the Government for construction of flats to be occupied by Judges themselves and that the land was not given to

respondent Nos.3 and 4 societies to provide an additional source of income for their members by giving the flats on rent or on leave and licence basis.

38. The learned Advocate General has countered the above contention by pointing out that clause 10 of Appendix B to the Government Resolution dated 9 July 1999 which provides for allotment of land to cooperative housing societies itself permits the members of cooperative housing societies to let out their flats with a condition that 5% of the rent be paid as a premium to the State Government. Since this condition has been duly complied with by the members of respondent Nos. 3 and 4 Societies who have given out their flats on leave and licence basis, there is no illegality.

39. Clause 10 of the Government Resolution dated 9 July 1999 reads as under:-

> "10. Hereinafter, while granting the Government lands to the Co-operative Housing Societies, a condition to surrender to the Government a Flat/House by a member of such societies shall not be applicable. However, if such member has given his flat/house on rent, then the member is required to pay to the Government an annual premium, at a rate of 5 per cent of transfer fee."
>
> (emphasis supplied)

40. Under the aforesaid Government Resolution, the Government has been allotting lands to cooperative housing societies having as their members government officers, government employees, MLAs, members of Armed Forces, policemen, artists and journalists. The members of all allottee

societies are subjected to same terms and conditions and, therefore, no favour has been done to members of respondent Nos.3 and 4 societies by allowing them to give out the flats on rental/leave and licence basis. The only condition applicable is that 5% of the rent/licence fee is to be paid as a premium to the State Government. We are, therefore, not in a position to hold that the members of respondent Nos.3 and 4 societies who paid the full market value as per the ready reckoner rate applicable to the year of allotment, are acting illegally in giving the flats on leave and licence basis.

41. Learned counsel for the petitioner as well as the intervener, however, submitted that though members of cooperative housing societies, to which lands are allotted, may be entitled in law to give their flats on rent/leave and licence basis, it is contrary to the spirit of the Government policy. It is vehemently submitted that once lands for constructing flats are allotted to the members of cooperative housing societies, the object of the policy was not to give additional source of income to such members, whether they be Government officers or Judges or persons in other walks of life. It is submitted that the flats must be occupied by the Government officers/Judges and other members of the respective allottee societies themselves or their family members.

42. We may note that clause 10 of Appendix B to the aforesaid Government Resolution dated 9 July 1999 has not been challenged in the memo of the petition and, therefore, there are no pleadings on the issue. More over, respondent Nos.3 and 4

societies are only two out of hundreds of cooperative housing societies whose members would be affected by any finding if given on such a contention.

43. Learned counsel for respondents Nos. 3 & 4 also submitted that the flats allotted to members of respondents Nos.3 & 4 societies (1076 sq.ft.each i.e. 100 sq.mtrs.) are not spacious enough for the Sitting Judges, who are also required to have law books and law reports at their residence and who also take voluminous case papers home for preparing the cases in advance. It was also submitted that the official accommodation being allotted to Judges in south Mumbai in the vicinity of the High Court has area of about 3000 sq.ft. each (about 300 sq.mtrs.) and such space is required to have their office and library at home. It was also submitted that the time that would otherwise be spent in commuting from Kurla to High Court in south Mumbai is being better utilized by investing the same in doing part of their judicial work beyond Court hours. It was, therefore, submitted that if the members of respondents Nos. 3 & 4 societies, who are Sitting Judges, give their flats on rental or leave & licence basis, there is nothing illegal or irregular or improper and the licence fees may be used for discharging the huge loan liability required to be incurred for construction of flats in question. They also do not get house rent allowance, otherwise payable to those Sitting Judges, who do not occupy the official accommodation.

44. High Court Judges are constitutional functionaries who are allotted spacious official accommodation commensurate

with their status in the society. What is more important and relevant for the purposes of this PIL is - those, who do not know what the Judges do beyond Court hours, may be surprised , if not amazed, to find that what the Judges do in Court rooms during Court hours is just a part of their onerous judicial work. Beyond Court hours, Judges not merely dictate the reserved judgments or edit and correct the judgments and orders dictated in open Court, but Judges also read case papers, law books and law reports at home. A Judge does not merely remain aloof from the society; very often his family members find the Judge cogitating on matters pending before him for hearing or pending for judgments, with such concentration and intensity that he is only physically present within four walls of the house. Judges accordingly need space, both physical as well as mental, which would permit them to concentrate on their judicial work beyond Court hours. It is, therefore, in the fitness of things that in stead of occupying small flats of 1076 sq.ft. each at a far away place, Sitting Judges occupy spacious official accommodation in the vicinity of the High Court. The time that would otherwise be spent in commuting in the City of Mumbai is, therefore, better utilized by investing the same in doing additional work, which is a part of their official work of judging. All these advantages may be lost if they have to reside in small flats constructed by respondents Nos. 3 & 4 -societies. We also take judicial notice of the fact that the Judges who occupy official accommodation do not get house rent allowance available to Judges occupying private accommodation under the provisions of Section 22A(2) of the High Court Judges (Salary and Conditions of Service) Act 1954.

45. As regards the retired Judges, they cannot be singled out as there are also several retired government officers/employees and others who are getting the benefit of clause 10 of Appendix B to the aforesaid Government Resolution dated 9 July 1999. Since hundreds of cooperative housing societies of government officers/employees and persons in other walks of life are not before us, we do not propose to express any opinion on this issue except to state that this is a policy matter for the State Government to re-examine.

46. No other contentions were raised in the petition and no other contention was raised at the hearing of the petition except the contention that the flats are constructed in excess of the permissible built up area. This contention was raised for the first time in the rejoinder affidavit. At the hearing of the petition, learned counsel for respondent Nos.3 and 4 societies submitted that each flat has built up area of only 1076 sq.ft. as per the Government Resolution dated 9 July 1999 and as provided in the sanctioned building plans and that the construction of servants' quarters is also as per the sanctioned building plans. It is, therefore, submitted that there is no illegality. The Municipal Corporation is not a party to these proceedings and, therefore, we have not gone into the merits of this controversy. We leave it open to the Mumbai Municipal Corporation to look into the matter and take necessary action in accordance with law, in case it is found that the construction is not in accordance with the sanctioned building plans.

47. Subject to the observations made in this judgment, the petition is dismissed.

CHIEF JUSTICE

RANJIT MORE, J.