Bombay Dyeing & Mfg. Co. Ltd vs Bombay Environmental Action Group & Ors on 7 March, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1489, 2006 AIR SCW 1392, 2006 (3) AIR BOM R 164, (2006) 4 COMLJ 14, (2006) 2 SCJ 705, 2006 (3) SCC 434, (2006) 3 SUPREME 49, (2006) 1 LACC 456, (2006) 3 SCALE 1, 2006 BOM LR 1 738, (2006) 1 GCD 686 (SC), MANU/SC/1197/2006, (2006) 3 BOM CR 260

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Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:
Appeal (civil) 1519 of 2006

PETITIONER:
Bombay Dyeing & Mfg. Co. Ltd

RESPONDENT:
Bombay Environmental Action Group & Ors

DATE OF JUDGMENT: 07/03/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:

J U D G M E N T [Special Leave Petition (Civil) No.23040 of 2005] With CIVIL APPEAL NO. 1528 of 2006 [Arising out of SLP (C) No. 24415 of 2005] CIVIL APPEAL NO. 1546 of 2006 [Arising out of SLP (C) No. 23317 of 2005] CIVIL APPEAL NO. 1541 of 2006 [Arising out of SLP (C) No. 23500 of 2005] CIVIL APPEAL NO. 1532 of 2006 [Arising out of SLP (C) No. 24418 of 2005] CIVIL APPEAL NO. 1540 of 2006 [Arising out of SLP (C) No. 23607 of 2005] CIVIL APPEAL NO. 1550 of 2006 [Arising out of SLP (C) No. 23609 of 2005] CIVIL APPEAL NO. 1520 of 2006 [Arising out of SLP (C) No. 23616 of 2005] CIVIL APPEAL NO. 1536 of 2006 [Arising out of SLP (C) No. 23632 of 2005] CIVIL APPEAL NO. 1521 of 2006 [Arising out of SLP (C) No. 23700 of 2005] CIVIL APPEAL NO. 1515 of 2006 [Arising out of SLP (C) No. 23718 of 2005] CIVIL APPEAL NO. 1538 of 2006 [Arising out of SLP (C) No. 23765 of 2005] CIVIL APPEAL NO. 1518 of 2006 [Arising out of SLP (C) No. 24419 of 2005] CIVIL APPEAL NO. 1523 of 2006 [Arising out of SLP (C) No. 23794 of 2005] CIVIL APPEAL NO. 1543 of 2006 [Arising out of SLP (C) No. 23810 of 2005] CIVIL APPEAL NO. 1517 of 2006 [Arising out of SLP (C) No. 23815 of 2005] CIVIL APPEAL NO. 1522 of 2006 [Arising out of SLP (C) No. 26193 of 2005] CIVIL APPEAL NO. 1530 of 2006 [Arising out of SLP (C) No. 26088 of 2005] CIVIL APPEAL NO. 1534 of 2006 [Arising out of SLP (C) No. 26089 of 2005] CIVIL APPEAL NO. 1526 of 2006 and [Arising out of SLP (C) No. 25048 of 2005] CIVIL APPEAL NO. 1516 of 2006 [Arising out of SLP (C) No. 26090 of 2005] S.B. SINHA, J :

Leave granted in all SLPs.

INTRODUCTION Whether any synthesis between environmental aspects and building regulation vis-`-vis the scheme floated by the Board of Industrial and Financial Reconstruction (for short 'BIFR') in terms of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, 'SICA') herein is possible is the core question involved in these appeals.

BACKGROUND FACTS The First Respondent herein is a public charitable trust. Its aims and objects, inter alia, are to look after the environment in all respects. It had allegedly initiated and/or participated in matters of environmental importance as regard preservation and improvement wherefor it had moved the court in public interest on several occasions. The Second Respondent herein is said to be the honorary Secretary of the First Respondent and served in various committees appointed by the Central and State Governments as also by the Bombay High Court. The said respondents filed a writ petition questioning the validity of Development Control Regulation No. 58 (DCR 58) framed by the State of Maharashtra in terms of the Maharashtra Regional and Town Planning Act, 1966 [for short "the MRTP Act"]. The Respondents in the writ application, some of whom are Appellants herein, were/ are owners of various cotton textile mills.

DCR 58 admittedly was made by the State of Maharashtra with a view to deal with the situation arising out of closure and/or unviability of various cotton textile mills occasioned inter alia by reason of a strike resorted to by the workers thereof.

WRIT PROCEEDINGS The writ petition questioning the validity of DCR 58 by the First and Second Respondents was filed allegedly to protect the interests of the residents of Mumbai and to improve the quality of life in the town of Mumbai which is said to have drastically been deteriorated during the last fifteen years as also for preventing further serious damage to the town planning and ecology so as to avoid an irretrievable breakdown of the city. The main thrust of the writ petitioners was to ensure "open spaces" for the city and to provide the crying need of space for public housing. In the said writ petition, apart from the State of Maharashtra, the Municipal Corporation of Greater Mumbai (MCGM), the Maharashtra Housing and Area Development Authority (MHADA), the National Textile Corporation (NTC) North Maharashtra and South Maharashtra were impleaded as respondents. Before the High Court, a large number of mill owners and others who allegedly have invested a huge sum on the lands of the mill owners or otherwise interested in implementation of DCR 58 of 2001 filed applications for their impleadment as parties therein which were opposed by the writ petitioner- respondents. The said applicants were, however, allowed to intervene in the matter. It is, however, not in dispute that the purchasers from National Textile Corporation were not impleaded as parties therein who are now before us. On or about 2.6.2005, the writ petitions-Respondents took out a Chamber Summons seeking to amend the writ petition. The proposed amendments

inter alia related to:

"i) a challenge to the clarification dated 28th March, 2003 issued by Respondent No. 3 on the ground that the same seeks to permit residential user and is therefore an amendment of DCR 58 of 2001; and

ii) the alleged requirement of Environmental Impact Assessment (EIA) in pursuance of notification dated 27th January, 1994 as amended by notification dated 7th July, 2004 issued under the provisions of the Environment Protection Act."

The said Chamber Summons was allowed by an order dated 7.7.2005 directing:

"We are fully satisfied that the amendments sought are necessary and essential in the above Petition especially when the above petition is a PIL petition, which is yet to be admitted. The Respondents will have full opportunity to deal with these amendments by filing an additional affidavit in reply. Under these circumstances, Chamber Summons is made absolute in terms of prayer clause (a). Amendment to be carried out on or before 16.7.2005 "

HIGH COURT JUDGMENT The aforementioned writ petition was allowed by the Bombay High Court on 18.02.2005. By its judgment, the Division Bench of the High Court, inter alia, held :

(i) DCR 58 should be construed having regard to the importance of open space and public space;

(ii) By reason of the 2001 amendment, no substantial change had been made and the amendments carried out therein must be construed having regard to the expression 'development' which included 'demolition of structures'.

(iii) DCR 58 as amended must be harmoniously construed so as to uphold the constitutionality thereof. The expression 'open space' would take within its ambit the same space as was obtaining after demolition.

(iv) DCR 58, if not construed in the manner as contended by the writ petitioners would render it ultra vires Articles 14, 21 and 48-A of the Constitution of India.

(v) Sales carried out by the National Textile Corporation were contrary to the scheme framed by BIFR as also the orders of this Court dated 05.05.2005

(vi) NTC as a State should have taken steps to modernize its mills or start other textile mills. It could not act like a private mill owner. Its high profits should not be expended towards anything which would be contrary to the objectives for which the Acts of 1974 and 1994 were enacted, as also the scheme of the BIFR and the orders of this Court.

(vii) Doctrine of prospective overruling has no application in the instant case.

(viii) The High Court refused to dismiss the public interest litigation on the ground of delay in view of the enormity of the issues involved. In support of the said contention, it principally relied on the decision of this Court in M/s. Lohia Machines v. Union of India [AIR 1985 SC 421].

(ix) It concluded:

> "(a) In amended DCR 58(1)(b), "open lands"

would include lands after demolition of structures.

(b) Clarification dated 28th March, 2003 is clearly violative of Section 37 of MRTP Act and Article 21 of the Constitution of India.

(c) The issue whether the amended DCR 58 is contrary to Section 37 of MRTP Act or Article 21 of the Constitution of India, is kept open.

(d) All the constructions carried out by various Developers are clearly in violation of EIA Notification as amended on 7th July, 2004, as admittedly none of them have obtained clearance from Ministry of Environment and Forests.

(e) All sales of Mill lands carried out by NTC are clearly contrary to the Supreme Court orders dated 11th May, 2005 and 27th September, 2002 and contrary to the sanctioned BIFR schemes."

Upon taking into consideration the provisions of the 1994 Amendment Act and SICA, it was held:

> (i) State also has a stake in the mills because they meet the requirements of cheap and quality cloth and furthermore provide work and livelihood to many.
>
> (ii) An ecological imbalance would be created by proliferation of high-

rise structures in Girangaon area, which was essentially planned for commercial and industrial activities.

(iii) DCR 58 facilitates the implementation of measures for revival, rehabilitation and modernisation of closed, sick and potentially viable sick mills and must, thus, be construed as such.

(iv) NTC should take all such measures as are necessary to protect and encourage the industry and not contrary thereto or inconsistent therewith.

(v) It was necessary to amend DC Regulations to confer additional rights and incentives to enable NTC and the mill owners revive the mills.

(vi) The Commissioner has discretion to permit utilisation of existing built up area and open lands as well as the balance FSI.

(vii) NTC has a statutory obligation to revive, rehabilitate, or modernise the mills.

(viii) Commissioner has the power to allow re-construction and demolition of existing structures, but re-construction is limited to the extent of built up area of the demolished structures.

(ix) Combination of properties whether under common ownership or otherwise and joint development is permitted provided FSI is in balance.

(x) If the textile mill has shifted or the owner establishes a diversified industry then further obligation is cast to offer on priority in the re- located mill or diversified industry, as the case may be, employment to the workers.

(xi) Fruits and benefits of development and re-development cannot be retained by owners but they have to be passed on to those who are legitimately entitled thereto.

(xii) Monies are required to be put in Escrow Account.

(xiii) It is a complete and comprehensive code so far as development and re-development of lands of cotton textile mills is concerned. Mill owners must not be allowed to trade in the properties owned by it.

(xiv) The scheme is very much workable as the regulation allows enough free play to meet the obligations towards workers and financial institutions.

(xv) The intent is to control the development and re-development by making comprehensive regulatory measures, the portions becoming vacant after demolition of existing built-up areas have to be included in the concept "open lands."

As regards, the clarification made by the State dated 28.3.2003, it was opined that the same amounts to amendment of DCR 58 and, thus, not being a clarification simpliciter in terms of DCR 62(3), the same was unsustainable. The said clarification was also ultra vires Article 21 of the Constitution of India.

As regards non-compliance of the notification dated 07.07.2004, it was observed that none of the mills obtained clearance as per the EIA Notification in spite of High Court's directions to do so and had been carrying on construction activities. MCGM as also the State of Maharashtra did not take any effective step to ensure compliance of the EIA notification. Even the public hearings conducted by the Maharashtra Pollution Control Board were not done satisfactorily. It directed that the public hearings be conducted by the Ministry of Environment and Forests itself, keeping in view the enormity of ecological imbalance and environmental degradation and also keeping in mind 'Precautionary Principle' and the principle of 'sustainable development.' In its judgment, the High

Court furthermore opined:

(i) MCGM has not ensured at all, while sanctioning the building plans, compliance of the provisions relating to public amenities.

(ii) No step for compliance with EIA Notification had been taken ever by MCGM..

(iii) MCGM did not ensure furthermore that all the Mill owners provide free housing of 225 Square feet to the occupants. Despite mandatory nature of DCR 58 (7) none of the sanctioned plans provide for any housing for the mill workers/occupants.

(iv) MCGM has not ensured surrendering of lands for "open spaces" and "public housing" as per amended DCR 58, although any construction could commence only after physical surrender of lands as "open spaces" and "public housings."

(v) Since, MCGM had completely abdicated all its basic functions, State of Maharashtra was ordered to take immediate remedial measures.

SUBMISSIONS We have heard a large number of counsel appearing for the parties. Submissions of the learned counsel appearing for the Appellants and supporting respondents are as under:

Re: DCR 58 (A) DCR 58, as amended in 2001, shall apply not only to a sick mill but also to a closed mill being unviable which had opted for revival/ modernization/shifting. The original DCR 58 being not invalid, the mere grant of additional benefits would not make it ultra vires. (B) The State cannot be said to have ignored various conflicting objectives while carrying out the amendment in DCR 58. (C) The High Court, in exercise of its jurisdiction of judicial review, could not have interfered with a policy decision of the State. (D) The High Court committed a manifest error in holding that the amended version of DCR 58 vis a vis the term 'open space' would have the same meaning as was contemplated under DCR 58 of 1991. (E) The High Court failed to appreciate that reading down of DCR 58 was impermissible in law.

(F) The High Court ought to have taken into consideration the past experience of the State necessitating amendment of DCR. (G) The High Court furthermore failed to take note of the fact that the committees appointed by the State also made recommendations that the mill owners would be allowed to develop their lands. (H) Two different interpretations of DCR 58 having been found by the High Court to be possible, it could not have arrived at a conclusion that clarificatory notification dated 28.03.2003 amounted to an amendment of the Regulation and, thus, void. (I) The impugned judgment is wholly unsustainable as several irrelevant factors, e.g. deluge in the city of Bombay in 2005, were taken into consideration for the purpose of interpretation of DCR 58. (J) The findings of the High Court would lead to a radical discrimination between cotton textile mills and other industries which being not

based on any rational criteria renders it unconstitutional being violative of Article 14 of the Constitution of India. (K) The High Court failed to take into consideration the fact that the equity was in favour of the appellants herein as they having already demolished the building as having created third party interests, should not have been asked to go back to the same position as was obtaining in the year 1991.

(L) If the impugned judgment is upheld, several provisions of DCR 58, as for example, clause (6) thereof would become otiose and redundant and, thus, interpretation of the High Court in respect of DCR 58 is unsustainable.

(M) No foundational fact having been laid in the writ petition to show as to how the clarification amounts to amendment of DCR 58, the High Court committed a manifest error in arriving at a finding that the said Regulations are ultra vires Section 37 of the Act and/or Article 21 of the Constitution of India.

(N) The Respondent-writ petitioners were guilty of serious delay and laches in filling of the writ petition and thus it was liable to be not dismissed in limine.

Re: Validity of sales of 5 mills by NTC

(a) The High Court in granting relief in favour of the writ petitioners failed to take into consideration relevant factors and based its decision on irrelevant factors and, thus, misdirected itself in law.

(b) The judgment of this Court in Bombay Dyeing & Manufacturing Co.

Ltd. v. Bombay Environmental Action Group and Ors. [(2005) 5 SCC 61] being final and binding on the parties, the High Court committed a serious illegality in interfering therewith.

(c) BIFR scheme had wrongly been taken recourse to for the purpose of construction of the Regulation.

Submissions of Writ Petitioners Respondents No. 1-2 (1) DCR broadly lays down a scheme of land uses and zoning, Clause 58 thereof as amended in 2001 should be read in conformity with the provisions of the MRTP Act.

(2) The expression 'open land' as contained in DCR 58 must be interpreted in such a manner so as to enable the concerned authorities to sanction a building plan in terms of the extant regulations. (3) On a plain construction of DCR 58 of 2001, it has rightly been held by the High Court that the intention of the State evidently was to give only double FSI and not to diminish the stake of MCGM and MHADA in the mill land.

(4) Interpretation of DCR 58 by the State has defeated the purport and object of the Act.

(5) For the purpose of upholding the constitutionality of DCR 58, the same was required to be read down, failing which it is rendered unconstitutional.

(6) The effect and purpose of DCR 58 as clarified by the state only having come to the notice of the writ petitioners in 2005 and as the writ petition was filed by them immediately thereafter, the same was not liable to be dismissed on the ground of delay and laches on their part.

(7) In view of the subsequent events, this Court may lay down the principles for the purpose of moulding the reliefs and remit the matter to the High Court for consideration of the matter afresh.
(8) MHADA and the MCGM having taken different stands before the High Court, that they should not be permitted to support the State before this Court.

(9) All applications for grant of permission for development/ redevelopment was required to be considered having regard to the nature of the land as would be existing after demolition of the existing structures.

STATUTORY SCHEME Bombay Town Planning Act, 1954 replaced the Bombay Town Planning Act 1915 which became applicable to the entire State of Maharashtra including the town of Mumbai.

In the year, 1966, the legislature of the State of Maharashtra with a view to make provisions for planning and development and use of land in regions established for that purpose and for constitution of Regional Planning Boards therefor and for other purposes mentioned in the preamble thereto enacted the MRTP Act repealing and replacing the Bombay Town Planning Act, 1954. It came into force with effect from 11th January, 1967. MRTP Act provides for formulation of regional plans and development plans. Definitions of some of the expressions which are relevant for our purpose are as under:

> 2(7) "Development" with its grammatical variations means the carrying out of buildings, engineering, mining or other operations in, or over, or under, land or the making of any material change, in any building or land or in the use of any building or land or any material or structural change in any heritage; building or its precincts and includes demolition of any existing building structure or erection or part of such building, structure of erection; and reclamation, redevelopment and lay-out and sub-division of any land; and "to develop" shall be construed accordingly;
>
> 2(9) "Development plan" means a plan for the development or re-development of the area within the jurisdiction of a planning Authority and includes revision of a development plan and proposals of a special planning Authority for development of land within its jurisdiction;
>
> 2(9A) "development right" means right to carry out development or to develop the land or building or both and shall include the transferable development right in the form of right to utilise the Floor Space Index of land utilisable either on the remainder of the land or partially reserved for a public purpose or elsewhere, as the

final Development Control Regulations in this behalf provide;

2(13A) "Floor Space Index" means the quotient or the ratio of the combined gross floor area to the total area of the plot, viz.: -

Floor Space Index = "

Section 2(27) defines regulations made under Section 159 of the MRTP Act and includes zoning and other regulations made as part of a regional plan, development plan or town planning scheme. The land-use maps and the development control rules/ regulations together comprise the development plan under Section 22. The land-use map indicates the zone in which a piece of land falls, in regard whereto the permissible uses are specified in the rules/ regulations. In each of such zonal plan, although the industrial areas have been delineated separately but existence of each of the cotton textile mills therein has specifically been shown which evidently shows that cotton textile mills had been given a special status.

The regional plan is drawn up by the State Government in terms of Section 14 read with Section 17 of the MRTP Act. Section 14 inter alia mandates specification of land uses, i.e., residential, industrial, agricultural, etc., reservation for open spaces, gardens, etc., reservation and conservation of areas of natural scenery as also infrastructure such as transport, water supply, drainage, sewerage, etc. Section 21 mandates drafting of a Development Plan by every Planning Authority for the area within its jurisdiction. Section 22 lays out the contents of such development plan indicating the manner of use and development of land. As far as possible, the same is to provide for:-

a) Allocation of land for residential, industrial, commercial, agricultural uses, etc;

b) Designation of land for public purposes;

c) Designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;

d) Transport and communication;

e) Public utilities and amenities;

f) Reservation of land for community facilities and services.

Section 37 permits modification of a Development Plan by the Planning Authority or in cases of urgency by the State Government in exercise of its power under Sub-section 1AA of Section 37 which reads as under:

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

[Emphasis supplied] Section 38 provides for periodic revisions of the development plan making it mandatory to revise the same at least once in every 20 years. Section 43 restricts change in use or development of land without the written permission of the Planning Authority. Such application is required to be made in terms of Section 44 of the Act.

Section 45 confers power to grant such permission whereas Section 46 makes it mandatory for the planning authority to have due regard to the provisions of the draft of final plan or a sanctioned plan.

Section 159 of the MRTP Act empowers any Regional Board or Development Authority to make regulations consistent with the provisions thereof or the rules made thereunder inter alia to carry out the purposes thereof. Sub-section (2) of Section 159 empowers the State Government to make special development control regulations consistent therewith and the rules made thereunder to carry out the purpose of executing a Special Township Project and such regulations may be a part of Development Control Regulations or Development Plan or Regional Plan, as the case may be.

In terms of the MRTP Act, Development Control Rules (DCR), 1967 were framed. The State Government took a policy decision to frame new DCR in 1990 wherefor suggestions / opinions from the public were invited.

The State of Maharashtra in exercise of its power conferred on it under Section 159(2) of the MRTP Act framed the Development Control Regulations, 1991 (for short "the 1991 Regulations"). The Development Plan had been notified in the year 1981 and the Development Control Regulations formed a part thereof. The said regulations, indisputably, were framed upon carrying out the requisite formalities. The expression "existing building" is defined in Regulation 2(28) to mean "a building or structure existing authorisedly before the commencement of these regulations. The expression Floor Space Index (FSI) is defined under Regulation 2(42) to mean "the quotient of the ratio of the combined gross floor area of all floors, excepting areas specifically exempted under these Regulations to the total area of the plot. Regulation 3(1) makes the regulations applicable to " all development, redevelopment, erection and/ or re-erection of a building, change of user, etc., as well as to the design, construction, reconstruction, and additions and alterations to a building".

Regulation 3(2) reads as under:

"Part construction where the whole or part of a building is demolished or altered or reconstructed/ removed, except where otherwise specifically stipulated, these regulations apply only to the extent of the work involved."

In terms of Regulation 21 whenever more than one building is proposed on any land or where the land development measures more than 1000 sq. m. in a residential, commercial or industrial zone, it is mandatory to prepare a lay-out plan. A lay-out plan would also be necessary where sub-divisions are required to be made. Such plan inter alia has to include "a table indicating the size, area and use of all the plots in the sub-division/ lay- out plan". It should also contain "a statement indicating the total area of the site area utilized under roads, open spaces for parks, playgrounds, recreation spaces and development plan designations, reservations and allocations, schools, shopping and other public places along with their percentage with reference to the total area of the site "

Land uses have been provided for in Regulation 9 stating that uses of all lands should be regulated in regard to type and manner of development/ redevelopment as specified in Table 4. In Table 4 inter alia the following uses have been mentioned:

(a) Residential

(b) Commercial

(c) Industrial

(d) Transportation

(e) Public and semi-public Regulation 32 read with Table -14 prescribes the floor space indices in relation to the town of Bombay stating that for residential zone, it would be 1.33 whereas for the service zone it would be 1.00.

Item 3 of Table 14 specifies different zones stating:

"Service Industrial Zone (I-1) General Industrial Zone (I-2) Special Industrial Zone (I-3)

(a) For users permissible in the zone in the Island City and in Suburbs and Extended Suburbs 1.00

(b)Textile Mills -

1.00 Island City and Suburbs and Extended Suburbs.

In the case of reconstruction, modernization or renovation, where a textile activity is to be continued, the FSI shall not exceed 1.33 in the Island City and 1.00 in the Suburbs and Extended

Suburbs."

Regulation 34 provides for available Transferable Development Rights (TDR) if the development potential of a plot is separated from the land. TDR so granted can be alienated in the manner prescribed by the regulation. Regulation 35, in the matter of calculating the floor space index built up area in respect of a plot, requires exclusion of certain areas for large plots in residential and commercial zones, i.e., plots exceeding 2500 sq. m. approx., i.e., 15% of the area has to be excluded for recreational amenity, open space, etc. Regulation 51(1) speaks of ancillary uses. Regulation 52 provides that what could be done in terms of Regulation 51 can be done also in terms of Regulation 52; whereas Regulation 53 provides that what could be done in terms of Regulations 51 and 52 could be done also in terms of Regulation

53. Regulation 54(1)(i) provides for industries in C-2 zone wherein also commercial uses as specified therein are permissible. Regulations 56 to 58 provide for user of land for industrial zones. Regulation 56 of the 1991 Regulations provides for the General Industries Zone (I-2 Zone) which includes any building or part of a building or structure in which products or materials of all kinds and properties are fabricated, assembled or processed. Sub-regulation (2) of Regulation 56, inter alia, enumerates textile' manufacture except manufacture of rope, bandage, net and embroidery using electric power upto 37.5 KW. It is not disputed that all the mill lands fall in either residential or I-2 Zones. The I-2 zones permits buildings and premises to be used for industrial and accessory uses except one category under sub-regulation (2) of Regulation 56 new textile mills cannot be constructed in the said areas. Sub-regulation (3) of Regulation 56 contains a non-obstante clause providing that service industries and service industrial estates shall be permitted in the General Industries Zone. Sub-regulations 3(b), 3(c) and 3(d) of Regulation 56 read as under:

> "(b) With the previous approval of Commissioner and on such conditions as deemed appropriate by him, the existing or newly built-up area of unit, in the General Industrial Zone (Zone I-2), (including industrial estates) excluding that of cotton textile mills, may be permitted to be utilized for an office or commercial purposes as a part of a package of measures recommended by the Board of Industrial and Financial Reconstruction (BIFR), Financial Institutions and Commissionerate of Industries for the revival/ rehabilitation of potentially viable sick industrial units.
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> (c) With the previous approval of the Commissioner, any open land or lands or industrial lands, in the General Industrial Zone (I-2 Zone) be permitted to be utilized for any of the permissible users in the Residential Zone (R-1 Zone) or the Residential Zone with shop line (R-2 Zone) or for those in the Local Commercial Zone (C-1 Zone) subject to the following.
>
> (d) With the previous approval of the Commissioner, and subject to such terms as may be stipulated by him, open land in existing industrially zoned land or space, excluding land or space of cotton textile mills, which is unoccupied or is surplus to requirement of the industry's use may be permitted to be utilized for office or commercial purposes but excluding warehousing."

Sub-regulation (4) of Regulation 56 deals with other uses in the General Industrial Zone.

Regulation 57 of the 1991 Regulations provides for Special Industrial Zone known as I-3 Zone. Manufacture of textile goods do not come within the purview thereof. In terms of the said Regulation, similar restrictions on land user have been provided except service industries and service industrial estates. Change of user is allowed for lands other than lands of cotton textile mills.

Regulation 57(4)(c) is in pari materia with Regulation 56(3)(c).

LEGAL HISTORY OF DCR 58 DCR 58 of 1991 provided for development or redevelopment of lands of cotton textile mills; in terms whereof, modernization of mills and development of surplus lands in the manner specified therein was to be promoted. It, furthermore, provided for development of mill lands as a part of package of BIFR approved rehabilitation schemes and also for modernization and shifting thereof. Pursuant to the said Regulation, the cotton textile mill owners could give one of the options out of the following:

> (i) The mill owners could continue to operate their mills even though it was running into losses. This was the status quo option which entailed no land being surrendered to MHADA as well as for public greens.
>
> (ii) The second option entailed retaining the outer shell of the mill structures and building commercial structures within the mill structure.
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> (iii) The third option entailed two steps. The first step was raising of construction within the old structure and the second step was to construct on the part of open spaces.
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> (iv) The fourth option ensured demolition of the entire old structures and sharing the entire mill lands in approximately three equal proportions.

The first part would remain with the mill owner which he would be entitled to redevelop. The second part would go to MHADA and the third part would go to public greens.

In terms of the said offer, only two mills exercised the second option and three opted for the third. Nobody had opted for the fourth option presumably because pursuant thereto about 2/3rd of the land possessed by the owner of the mill was required to be surrendered.

DCR 58 provides for a complete code. A distinction, therein has been made between cotton textile mills on the one hand and non-cotton textile mills, on the other.

In 2001, DCR 58 was amended/ modified. DCR 58 as amended in the year 2001 reads as under:

> "58. Development or redevelopment of lands of cotton textile mills;

(1) Lands of sick and/or closed cotton textile mills. -- With the previous approval of the Commissioner to a layout prepared for development or redevelopment of the entire open land built-up area of the premises of a sick and/or closed cotton textile mill, and on such conditions deemed appropriate and specified by him, and as a part of a package of measures recommended by the Financial Institutions and Commissionerate of Industries for the revival/rehabilitation of a potentially viable sick and/or closed mill, the Commissioner may allow;

(a) The existing built-up areas to be utilised-

(i) for the same cotton textile or related user subject to observance of all other Regulations;

(ii) for diversified industrial users in accordance with the industrial location policy, with office space only ancillary to and required for such users, subject to and observance of all other Regulations;

(iii) for commercial purposes, as permitted under these Regulations;

(b) Open lands and balance FSI shall be used as in the Table below:

Sr. No.	Extent	Percentage to be earmarked for recreation Ground /Garden, Play ground or any other open user as specified by the Commissioner	Percentage to be earmarked and handed over for development by MHADA for public housing /(for mill worker's housing as per guidelines approved by Government to be shared equally)	Percentage to be earmarked & marked & to be developed for residential or commercial user to be developed (including users permissible in residential or commercial zone as per these Regulations) or diversified industrial users as per Industrial Location Policy) to be developed by the owner

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(1) (2) (3) (4) (5)

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inclusive of 5 Ha.

2. Between 5 upto 10 Ha.

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

(ii) Segregating distance as required under these Regulations shall be provided within the lands intended to be used for residential/commercial users.

(iii) The owner of the land will be entitled to Development Rights in accordance with the Regulations for grant of Transferable Development Rights as in Appendix VII in respect of the lands earmarked and handed over as per column (4) of the above Table. Notwithstanding anything contained in these Regulations, Development Rights in respect of the land earmarked and handed over as per column (3) shall be available to the owner of land for utilisation in the land as per column (5) or as Transferable Development Rights as aforesaid.

(iv) Where FSI is in balance but open land is not available, for the purposes of column (3) and (4) of the above Table, land will be made open by demolishing the existing structures to the extent necessary and made available accordingly.

(v) Where the lands accruing as per columns (3) and (4) are, in the opinion of the Commissioner of such small sizes that they do not admit of separate specific uses provided for in the said columns, he may, with the prior approval of Government, earmark the said lands for the use as provided in column (3).

(vi) It shall be permissible for the owners of the land to submit a composite scheme for the development or redevelopment of lands of different cotton textile mills, whether under common ownership or otherwise upon which the lands comprised in the scheme shall be considered by the Commissioner in an integrated manner.

(2) Lands of cotton textile mills for purpose of modernisation:-

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

Notes:

(i) The exemption of 30 per cent as specified above may be availed of in phases, provided that, taking into account all phases, it is not exceeded in aggregate.

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

(3) Lands of cotton textile mills after shifting:

If a cotton textile mill is to be shifted out side Greater Bombay but within the State, with due permission of the competent authorities, and in accordance with a scheme approved by Government, the provisions of Sub-clauses (a) and (b) of sub- regulation (1) of its Regulation shall also apply in regard to the development or redevelopment of its land after shifting. (4) The condition of recommendation by the Board of Industrial and Financial Reconstruction (BIFR) shall not be mandatory in the case of the type referred to in sub-regulations (2) and (3) above.

(5) Notwithstanding anything contained above, the Commissioner may allow additional development to the extent of the balance FSI on open lands or otherwise by the cotton textile mill itself for the same cotton textile or related user. (6) With the previous approval of the Commissioner to a layout prepared for development or redevelopment of the entire open land and/or built up area of the premises of a cotton textile mill which is either sick and/or closed or requiring modernisation on the same land, the Commissioner may allow,:

(a) Reconstruction after demolition of existing structures limited to the extent of the built up area of the demolished structures, including by aggregating in one or more structures the built up areas of the demolished structures;

(b) Multi-mills aggregation of the built up areas of existing structures where an integrated scheme for demolition and reconstruction of the existing structures of more than one mill, whether under common ownership or otherwise, is duly submitted, provided that FSI is in balance in the receiving mill land.

(7) Notwithstanding anything contained above-(a) if and when the built up areas of a cotton textile mill occupied for residential purposes as on the 1st of January 2000 developed or Page 359 redeveloped, it shall be obligatory on the part of the land owner to provide to the occupants in lieu of each tenement covered by the development or redevelopment scheme, free of cost, an alternative tenement of the size of 225 sq. ft. carpet area;

(b) if and when a cotton textile mill is shifted or the mill owner establishes a diversified industry, he shall offer on priority in the relocated mill or the diversified industry, as the case may be, employment to the worker or at least one member of the family of the worker in the employ of the mill on the 1st January 2000 who possesses the requisite qualification or skills for the job;

(c) for the purpose of Clause (b) above, the cotton textile mill owner shall undertake and complete training of candidates for employment before the recruitment of personnel and starting of the relocated mill or diversified industry takes place.

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

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

9(a) In order to oversee the due implementation of the package of measure recommended by the Board of Industrial and Financial Reconstruction (BIFR) for the revival/rehabilitation of a potentially sick and/or closed textile mill, or schemes approved by Government for the modernisation or shifting of cotton textile mills, and the permissions for development or redevelopment of lands of cotton textile mills granted by the Commissioner under this Regulation, the Government shall appoint a Monitoring Committee under the chairmanship of a retired High Court Judge with one representative each of the cotton textile mill owners, recognised trade union

of cotton textile mill workers, the Commissioner and the Government as members.

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

(c) Without prejudiced to the generaility of the functions provided for in Clause (a) of this sub-regulation, the Monitoring Committee shall, --

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

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

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

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

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

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

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

REASONS FOR AMENDMENT We may, at this juncture, take notice of the stand taken by the State before the High Court. The State of Maharashtra filed several affidavits before the Bombay High Court stating the backdrop of events leading to amendment in 2001. It is accepted that the State appointed several committees to make an in depth study of the matter. In an affidavit affirmed by one Shri Ramanand Tiwari, Principal Secretary, Urban Development Department, Government of Maharashtra, on 22nd March, 2005, it was stated:

> "I say that the deteriorating condition of the textile units and need to have sites for public purpose and public housing, prompted Government to have a policy which threw open these lands for development or redevelopment to facilitate revival and modernization of mills. Thus, in the year 1991, when the Revised Development Control Regulations were sanctioned, Regulation 58 for development of mill land and premises for cotton textile mills was introduced for the first time."

In the said affidavit, it was categorically stated that a committee under the Chairmanship of the then Minister for Textiles, Shri Ranjit Deshmukh was constituted on or about 27th March, 2000. The report by the said Committee was submitted on 6.7.2000. It was stated that the Government duly

considered the report of the said Committee and the Cabinet approved its recommendations on 11.10.2000.

DCR 58 was modified upon following the procedure under Section 37(1AA) of the MRTP Act and in terms of the decision of the Cabinet. However, in a second affidavit affirmed by Shri Ramanand Tiwari on 10th August, 2005, some clarification as regard the stand of the State was given. While meeting the contentions raised by the Writ Petitioners, it was stated:

> "I say that a reference to the Ranjit Deshmukh Committee has been made in my earlier affidavit dated 22nd March, 2005. I say that in the said affidavit, the genesis of the amended Regualtion 58 have been elaborately stated. I say that the Petitioner's contention that the said report has not been disclosed by the State, is totally unjustified and unwarranted. I say that when a mention of the said report has been made in my earlier affidavit, the Petitioners could have sought a copy of the said report from the State. Since the Petitioners have never done so as it can be presumed that the Petitioners already have a copy of the said report in their possession but are only putting a pretence that they do not have a copy. It is also unbelievable that the Petitioners who otherwise have all the relevant information including various reports on which they rely in the petition as filed as well as the amended petition do not have a copy of the said Ranjit Deshmukh Committee Report. In any event, the State has no objection to furnishing a copy of the report of the Ranjit Deshmukh Committee if the Petitioners so desire."

The deponent of the said affidavit further denied and disputed the contention raised on behalf of the petitioner that the Government intended to side with the private developers at the cost of the city as a whole and had not made any amendment in furtherance of the Charles Correa Committee Report. It was stated:

> " I say that as stated in my earlier affidavit dated 22.3.2005, the State Government has culled out certain recommendations of the Correa Committee as also certain recommendations of the Ranjit Deshmukh Committee whilst coming to a conclusion the need for, and thereafter incorporating suitable amendments to the said DCR 58."

The said stand of the State, however, underwent some change when the same deponent in his third affidavit dated 17th August, 2005 in purported clarification of the earlier stand of the State stated:

> "I am making this further affidavit in order to explain the position with regard to the change made with regard to Regulation 58(1)(b) and the clarification issued on March 28, 2003. The Ranjit Deshmukh Committee gave its report on July 06, 2000. Thereafter, the report was circulated to all the concerned departments, the Urban Development Department, the Labour Department, the Textile Department and the Industries Department. A detailed Cabinet note was prepared for consideration by the Cabinet which not only included the recommendations of the Ranjit Deshmukh Committee report but also specifically the views of the various departments. On this

> aspect, the views of the Urban Development Department were that in view of the prevailing regulation 58 which required sharing of lands after demolition under Regulation 58(1)(b) the Mill Owners were not willing to come forward with proposals since the same would not be viable for them. It was the view of the Department that in order to make revival feasible and possible the area available after demolition of existing structure should be excluded from computation of the land to be shared. After the Cabinet decision, the then Secretary whilst formulating the amendments and the proposed modification to regulation 58 specifically included the deletion of the words beginning with "lands after demolition" upto "scheme to" and substitution thereof by the words "balance FSI shall". This was the subject matter of Item (A-6) of schedule I to the Public Notice which was issued on November 29, 2000."

Evidently, the Charles Correa Committee Report had not been given effect to, but the same as would appear hereinafter had been taken note of by the Deshmukh Committee.

A fourth affidavit again came to be filed by the same deponent on 29th August, 2005.

REPORTS OF THE TWO COMMITTEES RELEVANCE It may also be of some interest to refer to the report of the two Committees.

The State of Maharashtra appointed a committee headed by Shri Charles Correa, Architect/ Planner in 1996. The development under 1991 Regulation was put on hold from 1996 to 2001. In Part I of the Report, the Committee lamented that out of the 53 mills, they could gain access only to 26 mills. They advocated for aggregation of mills. They identified those which were viable or considered viable and suggested that the lands of unviable mills should be disposed of. It proposed a holistic development of the mill lands. It also noticed the need for leaving open spaces. It took into consideration other factors, namely, transport, urban form, open spaces and employment generation. As regard open spaces, it stated:

> "The Public Open Spaces proposed (see fig 23) vary in size from large Maidans to small Neighbourhood Parks, so that a variety of different open-air activities can take place. In front of the Railway Stations, large Pedestrian plazas have been proposed, surrounded by shopping arcades (so that the people can pick up their vegetables and other purchases on their way home a classic pattern found all over Mumbai). Then again, the principal roads can be widened and lined with trees, so that they are converted into leafy boulevards."

A second committee was constituted but it did not submit any report. Another Committee was constituted under the Chairmanship of Shri Ranjit Deshmukh, the then Minister for Textiles and included a representative of all the Ministries and Departments concerned including the Urban Development Department. The Committee appointed a sub- committee. The sub-committee inter alia took into consideration the recommendations of the Charles Correa Study Group, prevailing provisions belonging to textile mills, prevailing state of affairs with respect thereto, demands of the National Textile Industries Board. It also held discussions with various bodies including the mill

workers and mill owners as also MPs and MLAs of the town of Mumbai. It, however, carried out actual site inspection of some textile mills only. The Committee recommended:

> "Since rule 58(1)(a) contains the term "newly built-up", it is presumed that it permits new construction. But, carrying out such new construction means using the balance Floor Space Index and consequently using the adjoining open space. Thus, using open space in this manner under the provisions of rule 58(1)(a) means indirectly to override the provisions of rule 58(1)(b). Hence, in order to more clearly distinguish the boundary line between rule 58(1)(a) and 58(1)(b) following amendments are required to be carried out in this rule under section 37.
>
> (a) The words "or newly" in rule 58(1)(a) should be excluded.
>
> (b) The words "permissible FSI and" in rule 58(1)(a)(i) should be excluded.
>
> (c) The words "FSC of 1.00 and" in rule 58(1)(a)(ii) should be excluded.

Upon making aforesaid changes the rule 58(1)(a) shall be limited to the extent of new use of the existing buildings of the mills only and exercise of rule 58(1)(b) shall be regarding development of the available open lands and land becoming vacant upon demolition of the existing buildings.

However, such development shall be subject to permissible FSI."

In Paragraph 19.1, it made some suggestions for giving encouragement to revival of mills stating:

> " Hence the provisions of rule 58(1)(b) should be made more attractive and in order to promote revival, the mills owners should be permitted to use the development rights of the open lands, to be handed over to municipal corporation, in the lands of their share as per column (5) of the aforesaid Table (even if such lands are situate in Mumbai island) and for this purpose the prevailing provision of rule 58(1)(b) should be amended as per section 37. Such recommendation is also made by the Korea (sic Correa) Study Group."

It furthermore encouraged modernization of mills. It suggested certain incidental amendments also.

From what has been noticed hereinbefore, it is evident that as per the suggestion of Ranjit Deshmukh Committee the words "or newly" were omitted as according to it, it may give rise to a lot of confusion. From paragraph 18.8 of the report also, it appears that the said Committee suggested use of different language, namely, "lands after demolition of structure". We find from the said report that the Committee suggested a draft in respect of DCR 58(1)(b) of the Regulations. It is in that context, we may have to consider the second affidavit affirmed by Shri Ramanand Tiwari when he stated that the Cabinet had approved the report albeit not in its entirety.

The draft regulations thereafter were notified for considering the objections thereto, if any. Several objections were filed, they were considered by the appropriate authority including the planning authority. Evidently, the said two reports were considered by the Cabinet but it intended to give more to the mill owners than what was recommended inter alia by introducing sub-regulation (6) of DCR 58. The intent and purport of the State is apparent from DCR 58. It accepted a major part of the recommendations of the Deshmukh Committee but thought that the mill owners should be given something more.

PUBLIC INTEREST LITIGATION : SCOPE OF While entertaining a public interest litigation of this nature several aspects of public interest being involved, the Court should find out as to how greater public interest should be subserved and for the said purpose a balance should be struck and harmony should be maintained between several interests such as (a) consideration of ecology; (b) interest of workers

(c) interest of public sector institution, other financial institutions, priority claimed due to workers; (d) advancement of public interest in general and not only a particular aspect of public interest; (e) interest and rights of owners; (f) the interest of a sick and closed industry; and (g) schemes framed by BIFR for revival of the company.

The courts in doing so would have to take into consideration a large number of factors, some of which may be found to be competing with each other. It may not be proper to give undue importance to one at the cost of the other which may ultimately be found to be vital and give effect to the intent and purport for which the legislation was made. Scope of Public Interest Litigations in view of several decisions of this Court has its own limitations. We would hereinafter notice a few of them.

In Raunaq International Ltd. v. I.V.R. Constructions Ltd. & Ors. [(1999) 1 SCC 492], this Court highlighted that the public interest litigation should not be a mere cloak. The court must be satisfied that there is some element of public interest involved in entertaining such a petition. The court also cautioned that before entertaining a writ petition and passing an interim order overwhelming public interest should be taken into consideration therefor. It was further observed :

> " It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers."

In Ashok Lanka v. Rishi Dixit [(2005) 5 SCC 598], this Court opined:

> " it is well settled that even in a case where a petitioner might have moved the Court in his private interest and for redressal of personal grievances, the Court in

> furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice."

This was also the view taken in Guruvayoor Devaswom Managing Committee v. C.K. Rajan [(2003) 7 SCC 546 at para 50], Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi [(1987) 1 SCC 227] and Chairman & MD, BPL Ltd. v. S.P. Gururaja and Others, (2003) 8 SCC 567. In K.K. Bhalla v. State of M.P. & Ors. [2006 (1) SCALE 238], it was stated:

> "The Appellant has brought to the notice of the High Court that a malady has been prevailing in the department of the State of Madhya Pradesh and the JDA. It may be true that the Appellant did not file any application questioning similar allotments but it is well-settled if an illegality is brought to the notice of the court, it can in certain situations exercise its power of judicial review suo motu "

This Court times without number, however, has laid down the law as regard limited scope of public interest litigation. It sounded note of caution for entertaining public interest litigation in service matters [See Dr. B. Singh v. Union of India and Others, (2004) 3 SCC 363], in questioning the validity or otherwise of a statute or when a statute is enacted in violation of the direction of a superior court [See Ashok Kumar Thakur v. State of Bihar & Ors. [(1995) 5 SCC 403]. But, we cannot also shut our eyes to the fact that this Court has entertained a large number of public interest litigations for protection of environmental and/ or ecology. [See .M.C. Mehta group of cases and T.N. Godavarman Thirumulpad v. Union of India and Others, (2006) 1 SCC 1] Public interest litigations, thus, have been entertained more frequently where a question of violation of the provisions of the statutes governing the environmental or ecology of the country has been brought to its notice in the matter of depletion of forest areas and/ or when the executive while exercising its administrative functions or making subordinate legislations has interfered with the ecological balance with impunity. The High Court of Bombay, therefore, cannot be faulted with for entertaining the writ petition as a public interest litigation.

PRINCIPLES OF INTERPRETATION Before us, the learned counsel appearing for the parties have relied on several principles of interpretation of statute. The golden rule of interpretation is that unless literal meaning given to a document leads to anomaly or absurdity, the principles of literal interpretation should be adhered to. [See Compack (P) Ltd. v. CCE, (2005) 8 SCC 300, Gurudevdatta VKSSS Maryadit v. State of Maharashtra, (2001) 4 SCC 534, Dayal Singh v. Union of India, (2003) 2 SCC 593 and Swedish Match AB v. Securities and Exchange Board, India, (2004) 11 SCC 641]. The learned Judges of the High Court as also this Court have been taken through the provisions of the MRTP Act, those of the DCR and in particular DCR 58 as framed in 1991 as well as in 2001 times without number. With the assistance of different counsel appearing for different purpose, we have read, re-read and re-read several provisions. Before us, several principles, canons and rules of interpretation have been emphasized. We have not only been taken through various decisions of this Court but also various authorities and treatises dealing with the subject of interpretation of statutes.

We have also been asked by the learned counsel for the parties to interpret the impugned legislation in the light of constitutional scheme and in particular Articles 14 and 21 of the Constitution of India, the provisions of the MRTP Act, the doctrine of sustainable development and various other principles. In the aforementioned situation, it is not possible for us to take recourse to the golden rule.

As would appear from the discussions made hereinafter, we are, however, of the opinion that for correct interpretation of DCR 58, the principles of purposive interpretation should be applied.

In Francis Bennion's Statutory Interpretation, purposive construction has been described in the following manner:

> 'A purposive construction of an enactment is one which gives effect to the legislative purpose by
>
> (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
>
> (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-

strained construction).' In K.L. Gupta & Ors. v. The Bombay Municipal Corporation and Ors. [1968 (1) SCR 274], it was stated:

> " Before examining the contentions on the points of law raised in this case, it is necessary to appreciate what the Act sought to achieve and why it was brought on the statute book. In order to do this, it is necessary to take stock of the position at the time of its enactment so that attention may be focussed on the situation calling for a remedy and how the legislature sought to tackle it..."

However, the pith of this statement has now found form in the doctrine of purposive construction, as accepted by this Court in several cases.

In Maruti Udyog Ltd. v. Ram Lal and Others [(2005) 2 SCC 638], while interpreting the provisions of Industrial Disputes Act, 1947, the rule of purposive construction was followed.

In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] this Court stated:

> " If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the

> Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act "

In 'The Interpretation and Application of Statutes', Reed Dickerson, at p.135 discussed the subject while dealing with the importance of context of the statute in the following terms:

> '... The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called "conceptual map of human experience".' In Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court, Chandigarh [(1990) 3 SCC 682], this Court referred to the following passage from Hans Kelsen's Pure Theory Law of Law:
>
> " The legal act applying a legal norm may be performed in such a way that it conforms (a) with the one or the other of the different meanings of the legal norm, (b) with the will of the norm- creating authority that is to be determined somehow, (c) with the expression which the norm- creating authority has chosen, (d) with the one or the other of the contradictory norms, or (e) the concrete case to which the two contradictory norms refer may be decided under the assumption that the two contradictory norms annul each other. In all these cases, the law to be applied constitutes only a frame within which several applications are possible, whereby every act is legal that stays within the frame."

[See also High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712, Indian Handicrafts Emporium and Others v. Union of India and Others, (2003) 7 SCC 589 and Deepal Girishbhai Soni and Others v. United India Insurance Co. Ltd., Baroda, (2004) 5 SCC 385, para 56] In Balram Kumawat v. Union of India and Others, [(2003) 7 SCC 628], this Court held that if special purpose is to be served even by a special statute, the same may not always be given any narrow and pedantic, literal and lexical construction nor doctrine of strict construction should always be adhered to.

In Pratap Singh v. State of Jharkhand and Another [(2005) 3 SCC 551], this Court emphasized assignment of contextual meaning to a statute having regard to the constitutional as well as international law operating in the field. Strict adherence to the procedure, subject to just exceptions, was highlighted therein.

However, in P.S. Sathappan (Dead) By LRS. v. Andhra Bank Ltd. and Others [(2004) 11 SCC 672], it was observed that in the guise of purposive construction one cannot interpret a section in a manner which would lead to a conflict between two sub-sections of the same section. Having noticed the principles of purposive construction, we may take note of certain other principles which are necessary to be considered for proper interpretation of DCR 58.

It is well-settled principle of law that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the latter as is given to them in the earlier

statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. When the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the words. In Venkata Subamma and another v. Ramayya and others [AIR 1932 PC 92], it is stated that an Act should be interpreted having regard to its history and the meaning given to a word cannot be read in a different way than what was interpreted in the earlier repealed section. It is also a fundamental proposition of construction that the effect of deletion of words must receive serious consideration while interpreting a statute as this has been repeatedly affirmed by this Court in a series of judgments. [See Commr. Of Income-tax/Excess Profits Tax, Bombay City v. Messrs. Bhogilal Laherchand including Batliboi and Co., Bombay, AIR 1954 SC 155, The Mangalore Electric Supply Co. Ltd. v. The Commissioner of Income Tax, West Bengal, (1978) 3 SCC 248, His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Another, (1973) 4 SCC 225 and M/s. Onkarlal Nandlal v. State of Rajasthan and Another (1985) 4 SCC 404].

It is furthermore well-known that when the statute makes a distinction between the two phrases and one of the two is expressly deleted, it is contrary to the cardinal principle of statutory construction to hold that what is deleted is brought back into the statute and finds place in words which were already there in the first place.

In Charles Bradlaugh v. Henry Lewis Clarke [(1883) 8 AC 354], Lord Watson as regards conscious omission from the statute stated the law, thus:

> "I see no reason to suppose that all these omissions were accidental, and as little reason to suppose that the enactments with regard to personal disabilities were intentionally left out, whilst the express mention made of common informers was omitted through accident or inadvertence."

It is also a well-settled principle of law that common sense construction rule should be taken recourse to in certain cases as has been adumbrated in Halsbury's Laws of England (Fourth Edition) Volume 44(1) (Reissue). We would refer to the said principle in some details later.

INTERPRETATION OF ACT AND REGULATIONS DCR 58 has been attempted to be interpreted in more than one manner by the learned counsel appearing for the parties. DCR 58 was made to revive and resurrect neighbourhoods, foster development, regenerate lands which had become sterile, encourage the shifting of textile mills (thereby reducing the attendant strain and industrial activity places on civil amenities) and pay off chronic arrears and dues of workers, banks institutions, statutory dues, etc. In its operation and implementation new DCR 58 would also unlock large real estate and make it available to residents.

A statute, it is well known, is to be read as a whole. Subordinate legislation indisputably has to be read in the light of the provisions of the Act whereunder it has been made. It, however, must be read having regard to the purpose and object for which the statute is made. The MRTP Act provides for formulation of regional plans and development plan. The planning authority, before a plan is finalized, is required to see that the provisions thereof have been fully complied with. The MRTP Act

provides for appointment of a town planning officer who possesses requisite qualification. The MRTP Act lays down the matters which are mandatorily required to be considered by the planning authority in all the stages, namely, survey, preparation, submission and sanction of development plan. While doing so, it is bound to take into consideration a large number of factors as specified therein. The State has been conferred with a special power to frame development control regulations in terms of Section 159(2) of the MRTP Act. Development Control Regulations have been framed in terms of the said provisions. The State has furthermore been given a power to supervise and maintain control over the planning authorities. Such control may be exercised in more than one manner. The planning authority is not only required to obtain statutory sanction and approval wherever applicable, but the State, has also been conferred with a special power to make a development plan subject, of course, to the condition that the same shall not change the character of such development plan.

Section 22 of the MRTP Act provides for the contents of the development plan, i.e., to be divided into several areas for allocating the use of land for the purposes as, for example, residential or commercial, proposals for designation of land for public purposes, proposal for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries, dairies, transports and communications, such as roads, highways, parkways, railways, waterways, canals and airports, including their extension and development, water supply, drainage, sewerage, etc. and reservation of land for community facilities and services. Whereas designation and/ or reservation of areas for certain public purposes would vary from place to place, ut must take care of not only the public purposes but also several others including open spaces. Water supply, drainage, sewerage, and other public utilities including electricity and gas or highways or waterways, schools, etc., however, would be considered to be equally important.

A planning authority, therefore, must take into consideration all the relevant factors, although in a given case, one gets priority over the other. Ordinarily, it would not be for the court to substitute its decision to that of the planning authority unless an appropriate case is made out therefor. When, however, question of public interest comes up, the court indisputably would try to delicately balance the different factors, if possible. Both open space as also the other factors relevant for making the regulation would be in public interest. The question would, however, be as to which is of greater public interest. Public interest, thus, would be a relevant factor also for interpretation of the statute. Public interest so far as maintenance of ecology is concerned pertains to a constitutional scheme comprising of Articles 14, 21, 48A and 51A(g) of the Constitution of India, the other factors are no less significant. [See also T.N. Godavarman Thirumalpad vs. Union of India and Others, (2002) 10 SCC 606, N.D. Jayal and Another vs. Union of India and Others, (2004) 9 SCC 362 and Vellore Citizens' Welfare Forum vs. Union of India and Others, (1996) 5 SCC 647]. All concerned, namely, operating agencies, the State Government, the National Textile Mills as also BIFR interpreting the said regulation opined that sharing of land is imperative, but the question remains, to what extent? Whether radical changes were made in the year 2003, when the State made the aforementioned clarification would again be a question which is required to be posed and answered. Was such a clarification in consonance with the reports of Charles Correa Committee and the Ranjit Deshmukh Committee? Did 2000 acres of vacant land which would have been otherwise available come down to 50 acres? Had any balance been struck between the original concept of sharing of lands by

Bombay Municipal Corporation, MHADA and the mill owners? It is in the aforementioned backdrop, the nature of change must be considered. The amendment in 2001, therefore, must be interpreted having regard to the provisions of the MRTP Act which professed increase in the ecological interest by providing more open space and not decreasing the same, but again the question would be "was there any reduction"? The amendments in the regulation must be construed in furtherance of the legislative policy and not in derogation thereof. But, while doing so, the past experience of the State which paved the necessities for modifying the earlier regulation should not be forgotten. A statutory scheme herein also by way of Section 22 clearly speaks about open spaces. The Legislative Act confers guidelines which advocates the necessity of environmental impact assessment. The State, when it exercises its power under Section 37 of the MRTP Act is required to act within the four-corners of the Act. Any modification or amendment must address the environmental consequences together with other relevant factors. As a logical corollary, it must also be determined as to whether the amendments amounted to a minor modification or substantive one. Literal interpretation of the Act and the Rules would give rise to many anomalies. It would not advance the object and purport of the Act. It would also create difficulties in implementing the statutory scheme. Having said so, we have no other option but, as indicated hereinbefore, to take recourse to the principles of purposive construction and interpret DCR 58 in accordance with the scope and object of the Act. For the said purpose, we may also have to consider various aspects of the matter. We would make an attempt in this behalf.

SCOPE OF JUDICIAL REVIEW VIS-@-VIS LEGISLATIVE POLICY A policy decision, as is well known, should not be lightly interfered with but it is difficult to accept the submissions made on behalf of the learned counsel appearing on behalf of the Appellants that the courts cannot exercise their power of judicial review at all. By reason of any legislation whether enacted by the legislature or by way of subordinate legislation, the State gives effect to its legislative policy. Such legislation, however, must not be ultra vires the Constitution. A subordinate legislation apart from being intra vires the Constitution, should not also be ultra vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith. In P.J. Irani v. The State of Madras [(1962) 2 SCR 169], this Court has clearly held that a subordinate legislation can be challenged not only on the ground that it is contrary to the provisions of the Act or other statutes; but also if it is violative of the legislative object. The provisions of the subordinate legislation can also be challenged if the reasons assigned therefor are not germane or otherwise mala fide. The said decision has been followed in a large number of cases by this Court. [see also M/s. Punjab Tin Supply Co., Chandigarh and Others vs. Central Government and Others, (1984) 1 SCC 206].

It is interesting to note that in Secretary, Ministry of Chemicals & Fertilizers, Government of India v. Cipla Ltd. & Ors. [(2003) 7 SCC 1], this Court opined :

> "It is axiomatic that the contents of a policy document cannot be read and interpreted as statutory provisions. Too much of legalism cannot be imported in understanding the scope and meaning of the clauses contained in policy formulations. At the same time, the Central Government which combines the dual role of policy-maker and the delegate of legislative power, cannot at its sweet will and pleasure give a go-by to the

> policy guidelines evolved by itself in the matter of selection of drugs for price control. The Government itself stressed on the need to evolve and adopt transparent criteria to be applied across the board so as to minimize the scope for subjective approach and therefore came forward with specific criteria. It is nobody's case that for any good reasons, the policy or norms have been changed or have become impracticable of compliance."

[Emphasis supplied] The parameters of judicial review in relation to a policy decision would depend upon the nature as also the scope and object of the legislation. No hard and fast rule can be laid down therefor. The court normally would not, however, interfere with a policy decision which has been made by experts in view of the fact that it does not possess such expertise. Divergent opinions, however, have been expressed by the authorities in this behalf. The scope and extent of judicial review of legislation, it is trite, would vary from case to case.

Reliance has been placed by the Appellants on Maharashtra State Board of Secondary and Higher Secondary Education and Another v. Paritosh Bhupesh Kuamr Sheth and Ors. [(1984) 4 SCC 27] wherein this Court was concerned with a regulation laying down the terms and conditions for revaluating the answer papers. Indisputably, there exists a distinction between regulations, rules and bye-laws. The sources of framing regulations and bye-laws are different and distinct but the same, in our opinion, would not mean that the court will have no jurisdiction to interfere with any policy decision, legislative or otherwise.

In R.K. Garg v. Union of India & Ors. [(1981) 4 SCC 675], this Court noticed that the legislature is presumed to understand and correctly appreciate the needs of its own people, but the same again would not mean that judicial review of legislation is impermissible. In Balco Employees Union v. Union of India [(2002) 2 SCC 333], this Court while dealing with new economic policies of the elected government held:

> " Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.
>
> Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts "

The embargo as regard exercise of power of judicial review may not be beyond the aforementioned dicta.

Here, however, we are not at all dealing with an economic policy of the State, but a special planning statute of which economic factor is only one of the components. Even then, it has no bearing with the economic policy affecting the State or general public. DCR 58 deals with only a class of people who owned and possessed cotton textile mills and want revival/ rehabilitation of their sick or closed textile mills or intend to modernize or shift their mills.

We may notice that in State of Rajasthan & Ors. v. Basant Nahata [AIR 2005 SC 3401], it was pointed out :

> "The contention raised to the effect that this Court would not interfere with the policy decision is again devoid of any merit. A legislative policy must conform to the provisions of the constitutional mandates. Even otherwise a policy decision can be subjected to judicial review "

Furthermore, interpretation of a town planning statute which has an environmental aspect leading to application of Articles 14 and 21 of the Constitution of India cannot be held to be within the exclusive domain of the executive.

There cannot be any doubt whatsoever, that the validity and/or interpretation of a legislation must be resorted to within the parameters of judicial review, but it is difficult to accept the contention that it is totally excluded.

Unreasonableness is certainly a ground of striking down a subordinate legislation. A presumption as to the constitutionality of a statute is also to be raised but it does not mean that the environmental factors can altogether be omitted from consideration only because the executive has construed the statute otherwise.

It is interesting to note that the scope of judicial review is now being expanded in different jurisdictions. Even judicial review on facts has been held to be permissible in law. [See Manager, Reserve Bank of India, Bangalore v. S. Mani and Others, (2005) 5 SCC 100, Sonepat Cooperative Sugar Mills Ltd. v. Ajit Singh, (2005) 3 SCC 232 and Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241]. In Anil Kumar Jha v. Union of India, (2005) 3 SCC 150, it was held that in an appropriate case, the Supreme Court may even interfere with a political decision including an action of the Speaker or Governor of the State although it may amount to entering into a political thicket. [See also Rameswar Prasad & Ors. v. Union of India & Anr. 2006 (1) SCALE 385]. Furthermore, there are innumerable cases where this Court has even issued directions despite the fact that the field is covered by some statute or subordinate legislation. Such directions issued are clear pointers to show that when a question involving greater public interest or public good including enforcement of fundamental right arises, this Court bestowed enormous consideration to public interest. [See Vineet Narain and Others v. Union of India and Another, (1996) 2 SCC 199, Union of India and Another v. C. Dinakar, IPS and Others, (2004) 6 SCC 118 and Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1].

Such directions have more often than not been issued even where the question involved relates to enforcement of a human right or environmental aspects. Interpretation and application of constitutional and human rights had never been limited by this Court only to the black letter of law. Expansive meaning of such rights had all along been given by the Courts by taking recourse to creative interpretation which lead to creation of new rights. By way of example, we may point out that by interpreting Article 21, this Court has created new rights including right to environmental protection.

The Wednesbury principles to which reference has been made in The Trustees of the Port of Madras v. M/s Aminchand Pyarelal and Ors. [(1976) 3 SCC 167] in some jurisdiction are being held to be not applicable in view of the development in constitutional law in this behalf. [See e.g. Huang and Others v. Secretary of State for the Home Department [(2005) 3 All. ER 435], wherein referring to R. v. Secretary of State of the Home Department, ex. P Daly [(2001) 3 All ER 433], it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury, but involves a full-blown merits judgment, which is yet more than Ex p. Daly requires on a judicial review where the court has to decide a proportionality issue. Law is never static; it changes with the change of time. [See Motor General Traders and Anr. v. State of Andhra Pradesh and Ors.,(1984) 1 SCC 222 and John Vallamattom v. Union of India, (2003) 6 SCC 611].

For the foregoing reasons, we are of the opinion that in cases where constitutionality and/ or interpretation of any legislation, be it made by the Parliament or an executive authority by way of delegated legislation, is in question, it would be idle to contend that a court of superior jurisdiction cannot exercise the power of judicial review. A distinction must be made between an executive decision laying down a policy and executive decision in exercise of its legislative making power. A legislation be it made by the Parliament/ Legislature or by the executive must be interpreted within the parameters of the well-known principles enunciated by this Court. Whether a legislation would be declared ultra vires or what would be the effect and purport of a legislation upon interpretation thereof will depend upon the legislation in question vis-`-vis the constitutional provisions and other relevant factors. We would have to bear some of the aforementioned principles in mind while adverting to the rival contentions raised at the bar in regard to interpretation of DCR 58 as well as constitutionality thereof.

DCR 58 : INTERPRETATION For the purpose of interpretation of DCR 58, it may be beneficial to notice the changes effected by 2001 Regulations vis-`-vis 1991 Regulations:

Old DCR 58 New DCR 58

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

(1) Lands of sick and/or closed cotton textile mills. - With the previous approval of the Commissioner to a layout prepared for development or redevelopment of the entire open land built-up area of the premises of a sick and/or closed cotton textile mill, and on such conditions deemed appropriate and specified by him, and as a part of a package of measures recommended by the Board of Industrial and Financial Reconstruction (BIFR), Financial Institutions and

Commissionerate of Industries for the revival/rehabilitation of a potentially viable sick mill, the Commissioner may allow;

(a) The existing or newly built-up areas to be utilised-

(i) for the same cotton textile or related user subject to permissible FSI and observance of all other Regulations;

(ii) for diversified industrial users in accordance with the industrial location policy, with office space only ancillary to and required for such users, subject to FSI of 1.00 and observance of all other Regulations;

(iii) for commercial purposes, as permitted under these Regulations:

> Provided that in the Island City, the area used for office purposes shall not exceed that used earlier for the same purpose.
>
> (b) Open lands and lands after demolition of existing structures in case of a redevelopment scheme to be used as in the Table below
>
> 58. Development or redevelopment of lands of cotton textile mills;

(1) Lands of sick and/or closed cotton textile mills. -- With the previous approval of the Commissioner to a layout prepared for development or redevelopment of the entire open land built-up area of the premises of a sick and/or closed cotton textile mill, and on such conditions deemed appropriate and specified by him, and as a part of a package of measures recommended by the Financial Institutions and Commissionerate of Industries for the revival/rehabilitation of a potentially viable sick and/or closed mill, the Commissioner may allow;

(a) The existing built-up areas to be utilised-

(i) for the same cotton textile or related user subject to observance of all other Regulations;

(ii) for diversified industrial users in accordance with the industrial location policy, with office space only ancillary to and required for such users, subject to and observance of all other Regulations;

(iii) for commercial purposes, as permitted under these Regulations;

Provided that in the Island City, the area used for office purposes shall not exceed that used earlier for the same purpose.

(b) Open lands and balance FSI shall be used as in the Table below A bare comparison of the said provisions would show that in sub- regulation (1) of DCR 58, the language remains the same. However, in clause (a) thereof the words "or newly" have been omitted in the 2001 Regulations.

Clause (a) of sub-regulation (1) provides for change of user in relation to the existing built-up area, subject to the recommendations of BIFR as a package. The question as to whether the mills which are closed but were not referred to BIFR come within the purview of the said clause would be dealt with a little later.

Sub-regulation (1) of DCR 58 provides for an approval of the Commissioner to a layout prepared for the development or redevelopment of the entire open land as well as built-up area of the premises of a sick and/or closed textile mill. For the purpose of grant of sanction as regards change of user, the Commissioner may specify certain conditions as it may deem appropriate. Such an approval was sought to be a part of the measure of the package recommended by BIFR for the revival/rehabilitation of a potentially viable sick mill. Only if such conditions are specified, clause (a) shall apply which provides for change of user relating to existing built-up area. We have noticed hereinbefore that Regulation 56(3)(b) and Regulation 57(4)(c) also makes specific provisions for grant of change of user in respect of sick mills as a part of a package of measures recommended by BIFR.

The drastic changes have, however, been made in clause (b) of Sub- regulation (1) of DCR 58. It refers to a case of redevelopment. In clause (b) the words "after demolition of existing structures in case of a redevelopment scheme" have been deleted.

DCR 58 as made in 1991 consisted of four different concepts:

> (1) Existing built up areas;
>
> (2) Newly built up areas in DCR 58(1)(a); (3) Open land and (4) Lands after demolition of existing structures in the case of a redevelopment scheme in DCR 58(1)(b).

It is not in dispute that the scheme framed thereunder did not work or in any event did not work to the satisfaction of all the mill owners and other players including the State.

In view of the limited options contained therein and the consequences flowing therefrom in terms of the Old Regulations a mill owner could

(i) continue to use the existing cotton textile mill;

(ii) redevelop the existing structure without changing its shell and without touching the open land in which event, no sharing of land or structure was necessary;

(iii) retain existing structure and develop the open land in which event the mill owners were required to share 2/3rd of the open land used;

(iv) demolish the existing structures and develop the entire land, meaning thereby, the open land as also the land available after demolition of the existing structure in which event sharing of entire land

was contemplated.

We have noticed that only five mills opted in terms of the old Regulation. Hardly any development took place. Thus, most textile mills continued with status quo. Closed mills remained closed, workers had not been paid their wages, banks and financial institutions did not receive back their dues. Even the statutory dues and taxes continued to mount. The structures might have become more dilapidated and ten years went down the line in the aforementioned scenario. Even otherwise, mills like Phoenix Mills retained more than 100 years old shell and glassed it up and even in the said shell, malls, supermarkets, night clubs and restaurants were constructed. Thus, it resulted in unplanned and unregulated development. It is in that situation, the State might have thought that workable changes are necessary wherefor, after taking into consideration some reports, they had come out with a draft. When the draft was published in terms of Section 37(1AA) of the MRTP Act, 24 objections were received. The writ petitioners admittedly were not amongst them. The said objections were placed before the planning authorities. The Bombay Municipal Corporation had also put inputs as a planning authority. Only thereafter the matter went back to the State.

The effect of amendment in clause (b) must be seen from the Table appended thereto. In terms of the Old Regulation in respect of land covering more than 10 hectares, for green area 33% land was to be set apart, and for MHADA 37% thereof, whereas the owner retained 30%. Under the new DCR 58, admittedly the owner of the mill at least obtains construction rights over 63% of the land as the land in terms of Column 3 gets loaded in Column 5. The mill owner furthermore even according to the writ petitioners gets TDR of 37%. Open land in clause (b) is what is not covered by the built-up area. The balance FSI, indisputably, is not open area. The meaning of 'open land' must be construed as land other than land required to sustain the built up area. We may now attempt to understand the effect of FSI having regard to a concrete example. If the area of a plot is 1000 sq. m., applying the FSI of 1.33, a person will be entitled to construct a built up area of 1330 sq. m. If he intends to build a two-storeyed building, he will utilize 665 sq. m. of land whereas in a case of ground plus four storeyed building, he will be using 266 sq. m. of land and in case of nine storeyed structure, he will be using only 133 sq. m. The greater the height of the building, more lands will be available either by way of public green or private green as also for MHADA. However, in such a case, the plinth area will vary significantly. Whereas in the first case, it would be 665 sq. m., in the third case, it would only be 133 sq.m. although the built up area remains the same. Taking the illustration as mentioned hereinbefore, the open land in each case shall vary. Thus, open land would not mean land occupied by the plinth but would mean land other than that is necessary to sustain the built up area.

We do not accept the contention of Mr. Salve that clause (b) applies to open land as also lands after demolition of existing structure in case of a redevelopment scheme and only because the words "and lands after demolition of existing structures" had been deleted, the same may not be of much significance inasmuch as clause (b) of the new regulations will have to be construed in the light of clause (a). It will bear repetition to state that whereas clause (a) refers to change of user in relation to the existing built-up area, clause (b) provides for open lands. The manner in which the development and/ or redevelopment should take place has been clubbed in sub-regulation (1) of DCR 58 read with sub-regulation (6) thereof. For proper interpretation, all the relevant provisions are required to be read harmoniously.

DCR 58(1)(a) deals with a case of non-sharing of a land as is evident from the fact that no sharing percentage is provided therein. It, therefore, envisages change of user for the three purposes mentioned therein, in the event the existing built-up area is utilized. In terms of the said provision, the internal area of such structure remains the same although they can be redesignated or reconstructed. The only benefit conferred by reason thereof is grant of change of user indicated therein. The State while making this regulation contemplated that the change of user would enable earning of additional sums of money from the assets which were unproductive. Clause

(b), however, expressly provides for sharing of land as specified in the Table therein. The question, however, is as to what would be the extent of open land available on the spot.

Existing built-up area, in our view, would not be open land. We have also to take note of the fact that the newly built-up area, as existing in the old clause (a) of sub-Regulation (1) of DCR 58 has been omitted, the effect whereof would be noticed a little later.

We are not oblivious of the fact that the word "and" has been used twice in sub-regulation (1) of DCR 58. It ordinarily shall be read conjunctively and not disjunctively. However, for the purpose of giving effect to the said provisions, the rule of purposive construction is required to be taken recourse to. Sub-regulation (1) speaks of entire open land as well as built-up area. It speaks of the necessity of having the recommendation of BIFR as a package of measures. Such recommendations must be for the revival/rehabilitation of a potentially viable sick mill. The provisions, therefore, may not apply to a mill which is neither sick nor otherwise not potentially viable, subject, of course, to the explanation contained in Note

(vi) appended thereto as also sub-regulation (6) thereof. For the aforementioned purpose, let us at this juncture also notice the tables appended to clause (b) of sub-Regulation (1) of DCR 58. Column (2) of the Table refers to the extent of land. Column (3) provides for percentage to be earmarked for recreation ground/ garden, playground or any other open user as specified by the Commissioner. Column (4) refers to percentage to be earmarked and handed over for development by MHADA for public housing/ for mill worker's housing as per guidelines approved by the Government to be shared equally. Column (5) provides for percentage to be earmarked and to be developed for residential or commercial user (including users permissible in residential or commercial zone as per these regulations or diversified industrial users as per Industrial Location Policy) to be developed by the owner. There is no change in Note (i) or Note (ii). Changes have been made in Note (iii) and Notes (iv), (v) and (vi) have been added. Interestingly, from Note (iii), after the words "Transferable Development Rights as in Appendix VII" and before the words "in respect of the lands earmarked for open spaces in column (3)", the expression "only" has been omitted. Thus, whereas earlier transferable development rights could be granted only for the purpose of the open lands which were to be handed over to MCGM, i.e., about 33%, now apart from that, development rights in respect of lands earmarked and handed over as per Column (3) have been made available to the mill owners for utilization thereof as per Column (5) as TDR as aforesaid. The mill owner, therefore, gets FSI of 1.33. He, furthermore, gets corresponding TDR to be utilized in the sub-urbs area or to sell the same. The idea appears to be to give more FSI and TDR to the person who surrenders the lands.

Things, however, may be different in a case where the mill owner demolishes a portion of the existing structure and construct new areas so as to be called 'newly built-up' area on that part of the land remaining the other part of the structure that it will come within the purview of clause (a) inasmuch as approval for development would be necessary for the newly built-up area for change of user. In such a case, requirements of clause (b) were not required to be complied with as it would squarely fall within the purview of clause (a).

The omission of the words "or newly" from clause (a) provides for a guideline. If the entire structure is to be demolished, the newly built-up area will have to be in terms of clause (b) read with sub-regulation (6). Such newly built-up structure, having regard to omission from clause (a) would have no role to play if no built-up area existed. Thus, all new constructions including constructions on lands after demolition of the existing structure and new constructions whether under a development or redevelopment scheme would be covered by clause (b) read with sub-regulation (6) thereof. If new constructions are raised, FSI, in a case of such development or redevelopment, being covered by clause (b) would be for the entire plot, except the built-up area which was existing, FSI having regard to its statutory definition would, thus, have to be calculated having regard to the ratio of the total construction to the area of the plot except the land component of the existing built up area.

There is no dispute as regard grant of better facility to the mill owners through TDR. The only dispute is what meaning should be attributed to the expression `balance FSI'.

In order to determine whether vital changes have been effected by way of the amendment of 2001, both the sub-clauses of sub-regulation (1) would be necessary to be taken into consideration for construing the words "balance FSI".

The expression "balance" would mean "apart from" which in turn would mean apart from the area for which protection has already been given. Balance FSI would, thus, mean FSI which is available for construction after excluding the FSI relatable to an already consumed by the existing built-up structure.

Both the phrases "open lands" as also "balance FSI" contained in DCR 58(1)(b) play significant role. The word "balance" is crucial which would naturally mean FSI which is available to be utilized upon open land. Such balance FSI must be apart from the existing FSI. Indisputably, the built-up area had consumed some FSI and, thus, when the expression "balance FSI" is used, the same would mean additional built-up area. It contemplates that where the entire plot has been used by existing built-up areas and some open land has been left out on the remaining non-built up area of the plot additionally unconsumed FSI could be used. It is in that sense separate. It is true that DCR 58(1) uses the word entire land but the said expression is followed by the expression "built-up area". "Balance FSI" in the aforementioned situation would not mean the FSI which is involved for the purpose of construction of structures not only on the open land which had been existing but also the land which had become open by reason of the demolition of the existing structures. It is only in that sense, as would be amplified from the discussions made hereinafter that the State intended to give additional protection to the mill owners. If open land is given its natural or dictionary meaning, no

distinction could be made in between DCR 58(1)(a) and DCR 58(1)(b), which ex facie would lead to an anomaly.

In view of the fact that the built up area was to be protected in terms of sub-regulation (1) of DCR 58, a'fortiori the land component thereof could be protected under clause (b) thereof. Thus, the same land which was protected under clause (a) could not become shareable under clause (b) which would render the distinction between the said provisions otiose. Balance FSI on open lands or otherwise had also been used in sub-regulation (5) of DCR 58. It also, thus, gives a significant clue to find out the meaning of balance FSI. Additional reason for the aforementioned conclusion is that development or redevelopment of entire open land and built up area of the premises referred to in DCR 58(1), in the event, the findings of the High Court are accepted, there would not be any necessity for the State to use two different words "open land" and "built-up area" separately and distinctly. The words "built-up area" find its source from the definition of existing building, as noticed hereinbefore. The existing built-up area was not to be shared and the same if read with the word "existing", it may be contrasted with a built-up area additionally but separate and distinct from the old existing built-up area. The existing built-up area, thus, was sought to be protected which would mean that they were sought to be protected from non-shareable land component thereof. It is thus possible to come to the conclusion that the obligation to share was intended to be absent only so long as no additional built-up area was created. In a case where the existing structure is demolished in part, the balance FSI would be available but in relation to the entire open lands, FSI has to be calculated taking into account the area of open land appurtenant to the existing structures. Thus, no basic change had been effected in drafting the regulation to segregate newly built-up areas from existing built-up areas. It cannot be denied that the State intended to give more benefits to the mill owners by reason of 2001 Regulations and, thus, if after demolition of the entire structure the whole plot is treated to be open land and FSI is calculated on the basis thereof the purport and object of the amendment will be defeated. The fact that the State intended to consider the matter relating to amendment having regard to the fact that there had hardly been any takers for the 1991 Scheme as it failed to provide sufficient incentives, cannot be ignored.

Indisputably, though, the Regulations made by the State which is a piece of subordinate legislation should be read in the light of the statutory scheme made under the legislative act as also having regard to the constitutional scheme as contained in Articles 14, 24, 48-A and 51-A(g) of the Constitution of India, but while doing so the effect and purport for which such amendment were brought about cannot be lost sight of. The amendments carried out in the MRTP Act from time to time and clearly the provisions of Sub-section (2) of Section 26 of the MRTP Act point out that the State had been leaning towards environmental aspects but that was not the sole objective.

The title of the regulation reads as a modification to DCR 58. It was, therefore, not in substitution of the resolution of 1991 nor was it framed by way of recasting thereof.

In the marginal note, the expression "development or redevelopment"

> of land of cotton textile mills has been mentioned. What, therefore, in focus was the land of cotton textile mills. The expression "land", thus, plays an important role.

Although a marginal note may not be determinative of the content of the provision, it may act as an intrinsic aid to construction. [See Smt. Nandini Satpathy v. P.L. Dani and another , AIR 1978 SC 1025, para 33].

The expression "development or redevelopment" in the marginal note does not advance the contention of the writ petitioners that DCR 58 does not frame change of user to non-textile mill users. Indisputably, having regard to the provisions of the entire Regulation, DCR 58 is a special provision. It is a self-contained code. It provides for a large number of things. The State while making the said legislation was required to provide for almost all the eventualities in respect of the different categories of cotton textile mills. They could be, apart from the sick mills referred to BIFR; (a) closed, (b) non-closed mills intending to modernization, (c) non-closed mills intending to shifting, (d) sick mills which have not been referred to BIFR under SICA and, thus, no scheme wherefor was made. There were multiple options and one mill or the other may fall in more than one category. A closed mill may come within the purview of DCR 58(1)(a) or 58(1)(b) or 58(6). Some of the NTC mills also may come within one or more categories. It is possible and in fact some of the mill owners had opted for one or more of the multiple options of development/ redevelopment activity in terms of the said regulation. By way of example, Ruby Mill opted for both modernization and shifting and permission had been granted therefor. The fact that DCR 58 is a self-contained code is evident from sub-regulation (8) which provides that funds accruing to a sick, closed or mill requiring modernization or shifting shall be credited to an escrow account, which shall be utilized only for revival/ rehabilitation, modernization or shifting of the industry. Sub- regulation (9) provides a mechanism for putting this into place. The State, not only endeavoured to take care of needs of various categories of cotton textile mills but also made attempts to find out a solution having regard to the fact that the 1991 Regulations did not work. By framing DCR 58, therefore, a mechanism was sought to be provided for achieving the purpose of providing some relief to all players in the field. The said Regulations were framed under Section 22(m) of the MRTP Act for controlling and regulating the use and development of land. They are not, and cannot be, treated to be provisions for compulsory acquisition of land. It also does not provide for reservation and/ or designation in a development plan.

In sub-regulation (1) of DCR 58, the phrase "lands of sick and/ or closed cotton textile mills" has been used. The same phrase has been used in Regulations 58(6), 58(8)(a) and 58(9)(a). DCR 58(1) read with DCR 58 (4) although postulates recommendations by BIFR, the words "closed mills"

also find place both in Regulations 58(1) and 58(6). We have heretobefore noticed the statutory meaning attributed to the expression "exiting building". DCR 58(1)(a) deals with existing structure which could have been subjected to modification internally. DCR 58(1)(b) deals with the rest of it, namely, open land. Under old regulation, the expression "open land" would mean such lands which were required to sustain built-up area. The concept finds place in DCR 58(6). In terms of DCR

58(1)(a), thus, no demolition is contemplated which in turn would mean that no sharing of land also is contemplated, i.e., the land owners are not required to surrender any land. However, it contemplates change of user. It contemplates:

(i) the old cotton textile mills may continue to operate;

(ii) Alternatively, it may take recourse to "related user", i.e., user related to such mills.

(iii) It could also take recourse to "diversified industrial user", meaning thereby, user other than cotton textile mill and would include uses for other industries in terms of the industrial location.

It is not in dispute that a long list of industries is contained in the said policy. It could further be used for commercial purpose and the same having regard to the regulations would also include residential purposes. In terms of DCR 58(1)(a), there could be no demolition and only the existing structures, namely, those which were existing prior to coming into force of the said Regulation should be developed by utilizing the existing structure which could not either be demolished or reconstructed or relocated.

The contention of Mr. Salve that the word "demolition" brought about by reason of 1994 amendment in Section 2(7) of the MRTP Act plays a significant role also cannot be accepted for more than one reason. The amendment of 1994 appears to be clarificatory in nature, having regard to the fact that prior thereto the land owners could carry on demolition without prior intimation and/ or obtaining permission from the corporation. The High Court, therefore, in its judgment wrongly laid undue emphasis thereupon.

Furthermore, in DCR 58 the word redevelopment had all along been used. By reason of the said amendment, no different meaning which would not be in consonance with the object should be attributed. Whatever that may mean, redevelopment contemplates in its ordinary parlance a renewal or substitution of development and involves pulling down of the structures. Development by way of demolition cannot mean that DCR 58(1) would permit not just the retention of the structure (shell) but also demolition of structure (shell). The purpose for introducing the said amendment, therefore, was for a different purpose and could not have been used for the purpose of construction of DCR 58.

It has not been disputed that keeping in view of the fact that the structures of the mills had been built long long time back, they had sprawling existing structures. Ranjit Deshmukh Committee Report does not categorically state that the balance FSI has to be calculated only from the open land which was available before demolition and not from the land which became open by reason of demolition of structures existing thereon. It is true that the lands of different mills had different built-up areas. Balance FSI was required to be calculated on the basis thereof. The extent of vacant land available for the purpose of distribution would indisputably depend upon the extent of structures which had been standing on the lands but the same is a fortuitous circumstance. Only

because in a given case, the extent of the area to be given to MHADA or MCGM would be comparatively less than the case of land belonging to other mills, the same by itself cannot be a ground for construing DCR 58 differently. Furthermore, in Note (iv) of DCR 58(1)(b) itself, it is categorically stated that land would become open by demolishing the existing structure which also points to the fact that the contentions of the Respondents Writ Petitioners are not correct in view of the fact that if the land after demolition was already subsumed under open land, it was not necessary to deal with the same subject specifically with land which had become open on demolition. It is also interesting to note that in DCR 58(6)(a) the words "reconstruction after demolition of existing structures limited to the extent of the built up area of the demolished structure " have been used with reference to "development/ redevelopment of the entire open land and/ or built up area of premises " which would also go to show that in the event, the interpretation as advocated by Mr. Salve is accepted, such detailed and specific references to the specific contingency of openness of land arising after and upon demolition or reconstruction done after demolition would become wholly meaningless.

It is, thus, clear that the expression "open lands" is meant to connote lands other than lands available after demolition of existing structures. [See Lennon v. Gibson, (1919) AC 709 at 711, Craies on Statute Law, Seventh Edition, page 141 and G.P. Singh's Principles of Statutory Interpretation, Ninth edition, page 258].

Having said so, let us take a re-look at sub-regulation (6) of DCR 58. Sub clauses (a) and (b) of sub-regulation (6) refer to built-up areas which would mean that such area which the owner of the mill had built whether existing or after demolition. The statute contemplates retention of the built-up area that means the same area which the owner could retain had the building been not demolished. The area which the structure had occupied is intended to be left with the mill owner. However, how much area would be allowed to be retained, would inevitably differ from mill to mill. Sub- regulation (6) merely provides for a guiding principle that the owners of the mill would be permitted to retain the existing structure and built-up area; precisely that is the concept of sub-regulation (6). In other words, rebuilding to the same effect or aggregation between different plots is permitted so long the existing built up area is demolished and the same would not require sharing of any land thereunder, provided of course that existing built up area is not enhanced. DCR 58(6) is carved out of DCR 58(1)(b). In terms of it only the construction is permitted for the same area for the purpose of reconstruction. It is also worth noticing that both old and new regulation speak of retention of same structure. DCR 58(6), thus, confers an additional benefit in respect of cases falling within DCR 58(1)(a) allowing inter alia:

(a) demolition which it could not do under DCR 58(1)(a);

(b) it does not require any sharing for which benefit was also available under DCR 58(1)(a);

(c) built up area remaining the same, the shape, size and nature of the existing structure could be changed which could not be done under DCR 58(1)(a);

(d) The second part of sub-regulation (6) permits aggregation on the same single mill plot, which was not available under DCR 58(1)(a), subject of course to the existing built up area remaining the same.

The contention of BEAG is that the implementation of DCR 58 would lead to a disastrous result and in this behalf our attention was drawn to a sanctioned plan in respect of Mill No. 4 to show that the consequences thereof would be that the share of MCGM and MHADA would come to 662.61 sq. m. and 542.13 sq. m. respectively, although the plot area of Mill No. 4 is 58,458.36 sq. m. We do not find any merit in the said contention as keeping in view of our finding aforementioned, the built up area was required to be deducted therefrom. With a view to examine the said contention, we may hereinbelow notice some charts in respect of Mill No. 1 and Mill No. 4:

Existing Development PLOT AREA (EXCL. SET BACK AREA) 47,730.28 SQ.M. EXIST. PLINTH AREA 22,950.58 SQ.M. RATIO OF GROUND COVER 48.08% EXISTING R.G. AREA ALMOST NIL Proposed Development PLOT AREA (EXCL. SET BACK AREA) 47,730.28 SQ.M. PROP. PLINTH AREA 3,980.00 SQ.M. RATIO OF GROUND COVER 8.34% LAYOUT R.G. DCR 21 11,910.00 SQ.M. M.C.G.M. 4,058.65 SQ.M. R.G. + M.C.G.M. 15,968.65 (33.5%) Computation of Open Land

1.

PLOT AREA (EXCL. SET BACK AREA) 47,730.28 SQ.M.

2. LAND COMPONENT OF EXISTING B.U. AREA UNDER DCR 58(6) i.e. EXISTING BU AREA PERMISSIBLE FSI 47,123.67 SQ.M. 1.33 35,437.29 SQ.M.

3.

(i)

(ii)

(iii) BALANCE OPEN LAND TO BE SHARED UNDER DCR 58(1)(b) SHARE OF MCGM (33%) SHARE OF MHADA (27%) SHARE OF OWNER (40%) 12,298.99 SQ.M. 4,058.67 SQ.M. 3,320.73 SQ.M. 4,919.60 SQ.M. OWNER'S HOLDING [2+3(iii)] 40,356.89 SQ.M. Existing Development PLOT AREA (EXCLU. SET BACK AREA) 58,458.36 SQ. M. EXIST. PLINTH AREA 39,304.83 RATIO OF GROUND COVER 67.20% EXISTING R.G. AREA ALMOST NIL Proposed Development PLOT AREA (EXCL. SET BACK AREA) 58,458.36 SQ.M. PROP. PLINTH AREA 10,789.40 SQ.M. RATIO OF GROUND COVER 18.45% LAYOUT R.G. DCR 21 17,423.51 M.C.G.M. 662.61 SQ.M. R.G. + M.C.G.M. 18086.12 SQ.M. Computation of Open Land

1. PLOT AREA (EXCL. SET BACK AREA) 58,458.36 SQ.M.

2. LAND COMPONENT OF EXISTING B.U. AREA UNDER DCR 58(6) i.e. EXISTING BU AREA PERMISSIBLE FSI 75,079.11 SQ.M. 1.33 56,450.46 SQ.M.

3.

(i)

(ii)

(iii) BALANCE OPEN LAND TO BE SHARED UNDER DCR 58(1)(b) SHARE OF MCGM (33%) SHARE OF MHDA (27%) SHARE OF ONER (40%) 2,007.90 SQ.M. 662.61 SQ.M. 542.13 SQ.M. 803.16 SQ.M. OWNER'S HOLDING [2+3(iii)] 57253.62 SQ.M. For computing the extent of the land required to be shared, the plinth area will have no relevance. So far as Mill No. 4 is concerned, having regard to the existing built up area, the share of MCGM and MHADA would be on a low side, but it is evident that so far as Mill No. 1 is concerned, whereas the plot area was only 47,730.28 sq. m., having regard to the built up area, the share of MCGM and MHADA would come to 4,058.67 sq. m. and 3,320.73 sq. m. respectively. These are indicative of the fact that the extent of open land to be shared by the owners with MCGM and MHADA would depend upon the built up area of the structure which existed on site. The share of MCGM and MHADA, therefore, would vary from case to case and, thus, we cannot determine the question keeping in view only the case of one mill and not the others.

We do not furthermore agree with the approach of the High Court in interpreting the aforementioned provisions having regard to certain other factors, namely, deluge in Bombay in the year 2005 as also the requirements of the entire population of Bombay from environmental aspect. Such factors cannot be taken into consideration for interpretation of a statute. We cannot look to a statute with a coloured glass, we have to consider the provisions as the legislature thought. The same should be subject, of course, to the constitutional and other limitations.

At this juncture, we may consider the cases of the closed mills.

CLOSED INDUSTRIES No specific provision has been made for industries which are closed but for one reason or the other had not been referred to BIFR. A mill may be closed although the company which owns it and having other businesses or other properties is not sick company in terms of SICA. From its other resources, it can modernize or shift the industry. But, there may be a case where the mill is the only property, if it lies closed and no action is taken for its revival, the same may defeat the purpose for which DCR 58 was made, or the company although as such is not sick but finds it difficult to arrange funds for revival of the closed mill. The doctrine of purposive interpretation in such a case has to be applied. The expression "sick and/ or closed" used in sub-regulation (1) of DCR 58 must be read as disjunctive and not conjunctive.

Furthermore, in this behalf the principles of common sense construction, as noticed hereinbefore, should be taken recourse to. In Halsbury's Laws of England (Fourth Edition) Volume 44(1) (Reissue), the law is stated in the following terms:

"1392. Commonsense Construction Rule. It is a rule of the common law, which may be referred to as the commonsense construction rule, that when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, the court should presume that the legislator intended common sense to be used in construing the enactment.

1477. Nature of presumption against absurdity. It is presumed that Parliament intend that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction which produces an absurd result, since this is unlikely to have been intended by Parliament. Here 'absurd' means contrary to sense and reason, so in this context the term 'absurd' is used to include a result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial or productive of a disproportionate counter- mischief.

1480. Presumption against anomalous or illogical result. It is presumed that Parliament intends that the Court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction that creates an anomaly or otherwise produces an irrational or illogical result. The presumption may be applicable where on one construction a benefit is not available in like cases, or a detriment is not imposed in like cases, or the decision would turn on an immaterial distinction or an anomaly would be created in legal doctrine. Where each of the constructions contended for involves some anomaly then, in so far as the court uses anomaly as a test, it has to balance the effect of each construction and determine which anomaly is greater. It may be possible to avoid the anomaly by the exercise of a discretion. It may be, however, that the anomaly is clearly intended, when effect must be given to the intention. The court will pay little attention to a proclaimed anomaly if it is purely hypothetical, and unlikely to arise in practice."

If such an interpretation is not given, a very valuable asset would be rendered sterile. If it is to be construed that a scheme made by BIFR is the condition precedent for applicability of DCR 58 by reason whereof the benefit conferred thereunder would not be available in like cases for no apparent reasons whatsoever particularly when it was the intention of the State that all categories of the mills which require rehabilitation, revival or modernization should be brought within the purview of DCR 58.

It is, thus, not possible to accept Mr. Salve's submission that even a closed mill although not covered under DCR 58 may be utilized for purposed mentioned in Regulation 56.

Indisputably, there may be closed mills which have not been referred to BIFR or otherwise not capable of being referred to. The spirit of making DCR 58 was to revival and/ or rehabilitation of the cotton textile mills. Revival of closed mill was also, thus, a component part of the scheme behind framing of DCR 58. It may be true that in terms of sub-regulation (1) of DCR 58 recommendation of

the BIFR is contemplated but recommendation of BIFR would be necessary where it is otherwise available. If it is insisted that the recommendation by BIFR was mandatory even for closed mill, much of the significance for using the words `and/or closed' after the word `sick' is lost. A closed mill would mean a mill in respect whereof closure has been effected in accordance with law. Such closure can be effected in accordance with law in terms of the provisions of the Industrial Disputes Act. Before effecting a closure under the Industrial Disputes Act, notice has to be given to the State and in certain cases its prior permission is also required to be obtained. Thus, all cases, which entail closure of an industry, would be within the knowledge of the State. The State through its machinery can furthermore verify the genuineness or otherwise of such closure. In such a case, even in terms of the provisions of the Industrial Disputes Act having regard to the purport and object for which the same had been enacted, the authorities thereunder as also for the State a duty is cast to restore back the industrial peace. [See State of Rajasthan & Anr. v. Mohammed Ayub Naz, (2006) 1 SCALE 79].

SICK MILLS SICA is a special statute. It is an Act made by the Parliament. It was enacted in the public interest so as to make special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies, the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto. SICA was enacted for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution of India. It would prevail over other statutes including MRTP and the Regulations framed thereunder.

Section 3(e) of SICA defines "industrial company" to mean "a company which owns one or more industrial undertakings." "Industrial undertakings" has been defined in Section 3(f) of SICA. "Sick industrial company" has been defined in Section 3(o) of SICA to mean "an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth". Section 15 of SICA provides for reference to a Board where an industrial company has become a sick industrial company for determination of the measures which should be adopted with respect thereto. Section 17 provides for the power of Board to make suitable orders on the completion of inquiry. Various provisions have been laid down in Chapter III of SICA enabling the Board to issue several directions. Section 32 of SICA provides for a non-obstante clause stating that the provisions thereof shall prevail notwithstanding anything contained in any other law for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law except enactments specified therein.

The question as regards the interpretation of the sick industries contained in sub-regulation (6) of DCR 58 must be considered from that perspective.

DCR 58(6) is adjunct to the other provisions. Although on some occasions, DCR 58(2) may apply without DCR 58(6). However, there is no such machinery so far as sick mills are concerned, it is, therefore, difficult to comprehend that those mills which are sick but not referred to BIFR also can take advantage of sub-regulation (6). How an industrial undertaking belonging to a company which

is sick should be determined to be so as laid down under the provisions of SICA. Only in a case where a company is sick in terms of the 1985 Act, an industrial undertaking belonging to it may be subject matter of the provisions thereof. The State for that matter neither has any statutory power or competence to deal with sick undertakings. Furthermore, the extent to which such sick company requires protection to the extent of the sickness of the industrial undertaking cannot also be gone into by the State or for that matter by any other authority apart from BIFR.

MODERNIZATION/ SHIFTING Sub-regulation (2) of DCR 58 deals with cases requiring modernization. For invoking the said provision, certain steps are required to be taken which are as under:

> (i) Application for Scheme of Modernization to Government (Competent Authority i.e. Corporation and Textile Department, Government of Maharashtra) as per DCR 58(2) read with 58(6)(a)(b) as the case may be.
>
> (ii) Scrutiny by the Department of Textiles.
>
> (iii) Approval to Scheme by Government (with direction to approach MCGM for further approval as per Regulation 58(2) read with 58(6)(a)(b).
>
> (iv) Application by Owner to Municipal Commissioner for a layout prepared for development or redevelopment of the entire open land and/ or built up areas of the premises of mill. With regard to the utilization of built up area (if reconstruction, aggregation is proposed then it has to be read with 58(6)(a)(b) as the case may be), the provisions of clause (a) of sub-regulation 1 of these regulations shall apply and if the development of open lands and balance FSI exceeds 30% of the open land and balance FSI, the provision of clause (b) sub-

regulation 1 of this regulation shall apply.

As per Notes (ii) in case of more than one cotton textile mills owned by the same company, the exemption of 30%, as specified above, may be permitted to be consolidated.

Permission for development or redevelopment granted as per 58(2) read with 58(6)(a)(b).

(v) Ready for Implementation for Scheme of Modernization.

(vi) As per 58(8)(a)(b) Funds accruing in ESCROW Account, monitored by Monitoring Committee as per DCR 58(9)(a).

If it fulfills the said requirements, it becomes entitled to utilization of open land and FSI to the extent of 30% of the balance FSI available. Under 1991 Regulation, the mill owners in terms of the similar provision was entitled to the exemption of 15% which by reason of 2001 Regulations had been raised to 30%. Furthermore, for providing the incentive for modernization where there exists

more than one textile mill, the exemption may also be consolidated on any of the mill land subject to the extent of balance FSI in the receiving land without having to share land as would be evident from Note (ii) appended thereto.

However, sub-regulation (6) of DCR 58 may not be available to an applicant intending to modernize its mill where aggregation is not resorted to and no demolition of the existing built up area is involved as also open lands/ balance FSI are utilized for additional constructions as per DCR 58(1)(b) but in appropriate cases, evidently it has to share. For the purpose of change of user of the lands, previous approval of the Commissioner to a layout plan in accordance with the Scheme approved by the Government is necessary. In terms of the said provision, Clause (a) of Sub-regulation (1) thereto shall apply as regard utilization of the built-up area and clause (b) shall apply in relation to development of open lands and balance FSI exceeds 30% of the open land and for balance FSI clause (b) of sub-regulation (1) shall apply. Sub-regulation (3) applies in respect of the cotton textile mills which intend to shift with the permission of the competent authorities and in accordance with the scheme approved by the Government. In terms of the said provision also, Clauses (a) and (b) of sub- regulation (1) of DCR 58 would apply in regard to the development or redevelopment of its land after shifting. Sub-Regulation (4) provides that in case of modernization and shifting, recommendation by BIFR would not be mandatory which implies that such recommendation shall be mandatory. DCR 58(3) provides for shifting. Shifting of industries outside the town is encouraged.

Ruby Mills Limited, which is one of the Appellants in civil appeal arising out of SLP (C) No. 23634 of 2005, is one of the companies which had opted for shifting. It had, however, made a scheme for shifting-cum- modernization under the said provisions as also commercial development of a portion of its textile mill land.

OTHER REGULATIONS Sub-regulation (5) provides for additional development to the extent of balance FSI on open lands or otherwise by the cotton textile mill itself not only for the same cotton textile but also for related user. The calculation of FSI indisputably would be in terms of the Appendix VII. Sub-regulation (6) provides for multi-mill aggregation. This provision in certain respects is to be considered with Note (vi) of sub- regulation (1) of DCR 58. The aforementioned clause cannot be read in isolation. It has to be read in conjunction with the other regulations. It would apply to a case which might have otherwise been covered by sub- regulations (1), (2), (3) and (5). But the same would not mean that a part of sub-regulation (1) and a part of sub-regulation (2) cannot be applied in a given case. Although sub-regulation (6) does not specifically refer to the recommendations of BIFR as imperative where the other sub-regulations are applicable, sub-regulation (6) cannot be read as a 'stand alone' clause. The writ petitioners contended that sub-regulation (6) should be read independently so that its benefit may not become obtainable while obtaining benefit under one or the other sub-regulation. Such a construction would defeat the other provisions of the regulation. We have noticed hereinbefore that Regulations 56 and 57 deal with industries located in I-2 and I-3 zones. Both in Regulations 56 and 57 cotton textile mills had expressly been excluded from a general power to convert the user into a residential or commercial purpose. If such a provision was required to be made in making an exception in relation to the cotton textile mill, it was not necessary for the State to frame the regulation in its present form. If

sub-regulation (6) of DCR 58 is read in the manner suggested by the learned counsel for the Respondents, other parts of DCR 58 would have been unnecessary. Sub- regulation (6) specifically refers to sick and/ or closed or requiring modernization on the same land. Such cases would, thus, bring within its purview only closed mills which had not been referred to BIFR but the change of user, must be confined to DCR 58 itself and not under DCR 56. The construction that we have put on DCR 58(6), furthermore, does not cause any injustice to any party. If an industrial undertaking is really sick within the provisions of the 1985 Act, for the purpose of availing the benefits under DCR 58, it can refer the question to BIFR and once a scheme is framed as regard revival and/ or rehabilitation, the owner of the mill can take recourse thereto. The lands of the cotton textile mills, thus, although become open lands available but therefor they cannot be used for purposes specified in I-2 Zone. Sub-regulation (6) of DCR 58 must be read in sharp contrast to Sub-regulation (3)(c) of Regulation 56 and Sub-regulation 4(c) of Regulation 57 which permits a change of user to industrial lands other than lands of cotton textile mills. Sub-regulation (6) of DCR 58 although contains no power to change of user but the same had been provided in other clauses. If it is not held that sub-regulation (6) contains the power to change user in respect of existing structures, a'fortiori it may not be possible to give effect thereto as there would be no power to user of change of land under existing structures.

So far as NTC mills are concerned, development had taken place as a package of measure recommended by BIFR. Indisputably, the same would come within the purview of sub-regulation (1) of DCR 58 but in certain cases sub-regulation (6) also may be attracted. Each of the relevant sub-regulations of DCR 58 confers regulatory power upon the Commissioner of the State. Development or redevelopment in terms of sub-regulations (1), (2), (3) and (5) are required to be made in terms of a layout plan as approved by the Commissioner and in case of modernization as per the scheme approved by the State. As the said provisions, contain a safeguard, namely, prior approval of the Commissioner, all the mill owners irrespective of the fact that they fall in different categories in terms of the regulations would, thus, be entitled to take benefit of clause (6) subject to strict compliance of other provisions.

CONSTITUTIONALITY OF DCR 58 The constitutionality of DCR 58 had been questioned principally on three grounds, namely, it is violative of: (i) Article 21; (ii) Article 14; and

(iii) it is not in consonance with Article 48-A of the Constitution of India. The High Court, however, read DCR 58 on the touchstone of Article 21 as also Article 48-A of the Constitution of India. The High Court did not go into the question of its constitutionality. It proceeded on the basis that if the said provision is read down, the same would render the provision constitutional. It is no doubt true that a planning regulation which requires to meet environmental challenges may not be interpreted in the same fashion as economic legislation. But whether it is necessary to apply the strict scrutiny test or not, would depend upon the statute. The State, while exercising its power to make a subordinate legislation, may or may not obtain expert opinion. But invariably the Court would satisfy itself as to whether relevant factors as laid down in the legislative act had been taken into consideration.

The question, however, raised in these appeals is as to whether requirements to obtain such expert opinion so as to enable the court to look at the quality of the input both with reference to its source as also the scope thereof is mandatory in nature. In this case, in our opinion, the said question need not be gone into in great detail. We would, however, broadly consider the same. The court ordinarily is required to consider the constitutionality of the subordinate legislation within the accepted norms. We have hereto before, noticed the parameters of judicial review. The question raised, therefore, will have to be considered having regard thereto. A matter involving environmental challenges may have to be considered by a superior court depending upon the fact as to whether the impugned action is a legislative action or an executive action. In case of an executive action, the court can look into and consider several factors, namely,

(i) Whether the discretion conferred upon the statutory authority had been property exercised;

(ii) Whether exercise of such discretion is in consonance with the provisions of the Act;

(iii) Whether while taking such action, the executive government had taken into consideration the purport and object of the Act;

(iv) Whether the same subserved other relevant factors which would affect the public in large;

(v) Whether the principles of sustainable development which have become part of our constitutional law have been taken into consideration; and

(vi) Whether in arriving at such a decision, both substantive due process and procedural due process had been complied with.

It would, however, unless an appropriate case is made out, be difficult to apply the aforementioned principles in the case of a legislative act. It is no doubt true that Articles 14, 21, 48-A of the Constitution of India must be applied both in relation to an executive action as also in relation to a legislation, however, although the facet of reasonableness is a constitutional principle and adherence thereto being a constitutional duty may apply, the degree and the extent to which such application would be made indisputably would be different. Judicial review of administrative action and judicial review of legislation stand on a different footing. What is permissible for the court in case of judicial review of administrative action may not be permissible while exercising the power of judicial review of legislation. It may, however, be a different thing to contend that the legislation had been enacted without constitutional principles in mind. The real question is whether the constitutional mandates had been complied with in making such legislation.

We do not agree with the contention of Mr. Jethmalani, that Article 21 of the Constitution of India should be literally construed as was done in A.K. Gopalan v. State of Madras [1950 SCR 88]. In view of the fact that the factors governing the quality of life have been included in the expression "life" contained in Article 21 by reason of creative interpretation of the said provision by this Court, is it possible to argue that Article 21 does not provide for an absolute immunity? Article 21 does not only refer to the necessity to comply with procedural requirements, but also substantive rights of a

citizen. It aims at preventive measures as well as payment of compensation in cases human rights of a citizen are violated. So far as the question of compliance of the procedural due process is concerned, it was conceded before the High Court by the writ petitioners Respondents that the procedural requirements laid down in provisions of Section 37 of the MRTP Act had been complied with.

We, however, are unable to uphold the contention of Mr. Salve, as at present advised, that before making DCR 58 in the year 2001, it was obligatory on the part of the State to accept in toto the recommendations made by the Expert Committees who had undertaken certain exercises; the equities should have been adjusted and the provisions of the pollution laws including the provisions of sub-section (2) of Section 28 of the MRTP Act should have been considered. A presumption arises as regards the constitutionality of a statute. Such a presumption would also arise in a case of subordinate legislation. As indicated hereinbefore, a subordinate legislation, however, shall be susceptible or vulnerable to challenge not only on the ground that the same offends Articles 14, 21 read with Article 48-A of the Constitution of India but also that the provisions of the MRTP Act are unreasonable.

In the instant case, the State appointed two committees. They have been taken into consideration by the State, may albeit be only in part. The State might not have agreed with the entirety of the report. The State might have taken into consideration other factors which would subserve the purport and object of the regulation. But, it will be difficult for us to arrive at a finding that the environmental aspects had totally been ignored. To what extent, DCR 58 would be commensurate with the ideal ecological condition as is suggested by the experts is one thing but it is another thing to say that no consideration at all in this behalf had been made by it. The State in its affidavit categorically stated that the said reports had fallen for consideration and had been accepted by it but in the third affidavit it has merely been stated that the State intended to give more than what was suggested in the said report. It has been accepted by the parties that certain suggestions have been accepted in toto and the provisions have been amended pursuant thereto or in furtherance thereof. The Ranjit Deshmukh Committee, not only visited some mills but also took recourse to the consultative process. Even the Charles Correa Committee visited all the public sector textile mills. While taking the said reports into consideration, the State acquainted itself with the existing ground realities as they then existed.

For the purpose of striking down a legislation on the ground of infraction of the Constitutional provisions, the court would not exercise its jurisdiction only because the recommendations of the committees had not been accepted in toto but would do so inter alia on the ground as to whether they otherwise violate the constitutional principles. Arbitrariness on the part of the legislature so as to make the legislation violative of Article 14 of the Constitution should ordinarily be manifest arbitrariness. What would be arbitrary exercise of legislative power would depend upon the provisions of the statute vis-`-vis the purpose and object thereof. [See Sharma Transport v. Government of Andhra Pradesh, (2002) 2 SCC 188, para 25, Khoday Distillery v. State of Karnataka, (1996) 10 SCC 304 and Otis Elevator Employees' Union S. Reg. and Others v. Union of India and Others, (2003) 12 SCC 68, para 17].

In Om Prakash and Others v. State of U.P. and Others, [(2004) 3 SCC 402], this Court has held that the test of reasonableness is nothing substantially different from social engineering, balancing of interests or any other formulae which modern sociological theories suggest as an answer to the problem of judicial interference.

In Cipla Ltd. (supra), this Court in relation to a legislation while interpreting the statutory provisions on the touchstone of Article 14 of the Constitution of India, was of the opinion:

> " . the Government exercising its delegated legislative power should make a real and earnest attempt to apply the criteria laid down by itself. The delegated legislation that follows the policy formulation should be broadly and substantially in conformity with that policy, otherwise it would be vulnerable to attack on the ground of arbitrariness resulting in violation of Article 14."

It was further opined:

> " Broadly, the subordinate law-making authority is guided by the policy and objectives of the primary legislation disclosed by the preamble and other provisions. The delegated legislation need not be modelled on a set pattern or prefixed guidelines. However, where the delegate goes a step further, draws up and announces a rational policy in keeping with the purposes of the enabling legislation and even lays down specific criteria to promote the policy, the criteria so evolved become the guideposts for its legislative action. In that sense, its freedom of classification will be regulated by the self-evolved criteria and there should be demonstrable justification for deviating therefrom. "

The amendment to DCR 58 was carried out 10 years after the original DCR 58 was introduced. Before doing so, due consultative process as laid down in Section 37 of the MRTP which involves suggestions and objections from public and the concerned statutory authorities was taken recourse to. Consideration of the same by Dy. Director of Town Planning and thereafter promulgation of the same in the form of direct regulation establishes that the same is not ex facie arbitrary in nature, particularly when most of the suggestions of the said Committees were accepted. So far as the argument based on violation of Article 48-A of the Constitution is concerned, the provisions thereof are required to be construed as a part of the principle contained in Article 14 of the Constitution of India. A statute may not be ultra vires Article 48-A itself if it is not otherwise offensive of Articles 14 and 21 of the Constitution of India. What, however, cannot be done for striking down legislation can certainly be done for striking down executive action. [See K.K. Bhalla v. State of M.P. & Ors., 2006 (1) SCALE 238 and S.N. Chandrashekar and Anr. v. State of Karnataka and Ors., [JT 2006 (2) SC 202].

Ecological factors indisputably are very relevant considerations in construing a town planning statute. The court normally would lead in favour of environmental protection in view of the creative interpretation made by this Court in finding a right of environmental including right to clear water, air, etc. under Article 21 of the Constitution of India. But, in this case, we are not dealing with a

similar problem. It must be borne in mind while interpreting DCR 58 that there exists a stark distinction between the interpretation of planning and zoning statutes enforcing ecology vis-`-vis industrial effluents and hazardous industries and those relating to concerted efforts at rehabilitating the industry. It is around this pivot that interpretation must revolve. It is also interesting to note that in American Jurisprudence 2d, wherein at page 496 of vol. 82, it is stated that zoning laws should be construed strictly in favour of the property owners and that they should not be extended by implication to include restrictions not clearly prescribed. Ecology in terms of DCR 58 has not been marginalized. The statute does not prescribe any fixed norm. It provides for guidelines. It has not been shown that the said guidelines have been violated. The environmental aspect considered in DCR 58 may not be to everybody's satisfaction but the regulation in question has to be interpreted having regard to the purport and object for which the same was enacted, meaning thereby, a holistic approach to a large number of problems.

DCR 58 was made in a special situation. In any other situation, probably this Court might have interpreted a similar provision differently. But, DCR 58 seeks to strike a balance between different public interest. The State has its own limitations. DCR 58 cannot be struck down solely on the ground that the interest of the common citizen (from the ecological point of view) has been affected, unless its actions are considered to be unfair. The State indeed in making the regulation intended to solve a longstanding problem wherewith it was beset. The State while framing the aforementioned regulation had to deal with various objectives in mind. It might have taken recourse to trial and error method. It started with an experiment in the year 1991 but having failed therein it introduced a new policy. The State considered the same to be fair on its part. We must take notice of the fact that the 1991 Regulation failed to achieve the desired objective forcing the State to take a conscious policy decision, which according to it, would satisfy everybody's need. All players may not feel happy as evidently a group of workers and the writ petitioners are not. Even the Bombay Municipal Corporation and MHADA had shown its reservation but the same by itself would not resist us in any manner in arriving at a correct interpretation. In Forward Construction Co. and Others vs. Prabhat Mandal (Regd), Andheri and Others [(1986) 1 SCC 100], it was clearly recognized that in a given case there can be more than one public interest and these interests can be in conflict with each other. The law maker has to make his choice and preferring one to the other is inevitable. A substantive law as also delegated legislation raises a presumption of constitutionality. Attempt is, thus, required to be made for upholding the same.

Sale of lands belonging to mills which are absolutely unviable and/ or those which are lying closed for one reason or the other as also those who intend to modernize their mills and/ or shifting the same and/ or part of it must be kept for consideration in the matter of interpretation of DCR 58. Applying the principles which can be culled down from the aforementioned decisions, we are unable to hold that DCR 58 is unconstitutional.

CLARIFICATION The State of Maharashtra admittedly issued a clarification on 28.03.2003. It did so in purported exercise of its power under sub-regulation (2) of Regulation 63 of Regulations. The High Court held the said clarification to be ultra vires Section 37 of the Act on the premise that by reason thereof, amendment to the regulation had been carried out. As of fact we may, however, notice that the State of Maharashtra started granting approvals in terms of DCR 58 of 2001 much

prior to 28.03.2003. It is, therefore, not correct to contend that the permission had been granted after issuance of the said clarification. In terms of such approvals, combined permission had been granted invoking one or more sub-regulations of DCR 58.

However, the submission of the learned counsel appearing on behalf of the Appellants to the effect that the said clarification is binding and conclusive upon all concerned cannot be accepted. No interpretation of a State can be said to be binding on courts. It may have a persuasive value. The court in certain situations, in the event two interpretations are possible including the one as interpreted by the State, may accept the latter but the same would not mean that once a statutory power of interpretation or clarification had been exercised by the State, the court's hands are tied. In fact, the learned Advocate General appearing on behalf of the State of Maharashtra accepted the said legal position.

We may, however, place on record that similar interpretation must be held to have been made by MCGM as it granted sanction in respect of several plans in the line of interpretation made by the State. The clarification was issued having regard to a letter of MCGM dated 28.08.2001 to the Urban Development Department stating as to how it understood DCR 58 of 2001 which was confirmed by the Urban Development Department. Thus, although at one point of time they interpreted DCR in the same manner as that of the State; only much later they raised a doubt which was bona fide. Only with a view to clear the air of doubt, the clarification was issued by the State.

It is interesting to note that in paragraph 23 of the writ petition, the writ petitioners treated the purported reduction in area attributable to DCR 58 as amended in 2001 and not because of any purported change brought about by clarification made in 2003.

Furthermore, it is one thing to say that the clarification is beyond the statutory power of the State or plainly contrary to the regulations, the effect whereof is required to be determined, but it is another thing to say that while doing so the State gives out its mind as to what it meant thereby as an author of the regulations. The grievance of the writ petitioner respondents primarily in that behalf is that in terms of the said clarification, reconstruction on land made available after demolition of the existing structure is to be in terms of sub-regulation (6) of DCR 58 and the user thereof is proposed to be changed from industrial to commercial or residential under sub-regulation (1)(a)(iii). We have interpreted the aforementioned provision independently and we agree that such construction of DCR 58 was possible. But, we also do not agree therewith in its entirety as has been indicated hereinbefore. The writ petitioners intend to construe sub-regulation (6) of DCR 58, as a stand alone clause, with which for the reasons stated hereinbefore, we do not agree. If some mill owners claim the right to change of user under sub-regulation (6) alone, the same would be in the teeth of the interpretation of DCR 58. It cannot be said that by taking recourse to the said power of clarification the State has improperly exercised its power. Reference to resolution dated 27.08.2003 passed by MCGM, does not have the effect of clarification being set at naught for DCR 58. Similarly, the letter dated 24.07.2003 issued by the Chief Executive Officer of MHADA to the Housing Board or the State Government also does not talk about the incorrectness or otherwise of the clarification issued by the State but as regards the effect of DCR of 2001. MAHDA before us categorically stated that it would abide by the decision of the State of Maharashtra despite the letter dated 24.07.2003, which

was made the only basis for filing the affidavit before the High Court. Mr. Singhvi appearing for MCGH did not raise any contention contrary to that of the State. According to Mr. Chagla, the clarification made by the State will have the following legal effects:

(i) Excluding lands after demolition of existing structures;

(ii) Excluding the land required to support the FSI of existing built up areas;

(iii) Introducing change of user in DCR 58(6)

(iv) Altering the meaning of "existing built up areas" in DCR 58(1)(a).

(v) Permitting residential user under DCR 58(1)(a)(iii);

(vi) Obviating surrender of land under DCR 58(6) in respect of newly built up areas despite change of user.

(vii) Dispensing with prerequisite of BIFR in DCR 58(1).

Most of the contentions raised by Mr. Chagla stand answered by our findings recorded hereinbefore. They may, however, be briefly dealt with in seriatim.

(i) The exclusion of land after demolition of existing structure was not brought about by 2003 clarification for the first time but it is apparent from 2001 Regulations themselves. We have heretobefore held that DCR 58 as interpreted by the State was valid to a large extent.

(ii) As permissions as regard the layout plans had been given, sanctioning building plans by the statutory authorities and/or approval of scheme by the State Government in 2001 and 2002, i.e., after DCR 58 came into force and much prior to the 2003 clarification, no change as such was brought about thereby.

(iii) If sub-regulation (6) of DCR 58 is to be read along with other regulations, the stand of the State must be held to be correct. Reading of sub-regulation (6) with other parts of DCR 58 is not only for the purpose of change of user but also as regard the restrictions and limitations imposed thereby. It is, therefore, not correct to contend that the approach of the State was to somehow find an interpretation that furthered the purpose of not requiring sharing of land by the land owners and by reason of the clarification that end was attained substantially.

(iv) & (v) These submissions are not dependent upon 2003 clarification. The meaning of the words "entire land" and "built up area" vis-`-vis permissibility of residential user arose from 2001 Regulations which had merely been reiterated in 2003 clarification.

(vi) DCR 58(6) itself contemplates absence of sharing obligation so long as there was no increase in the built up area of the existing structure. The 2003 clarification of the State is in tune therewith.

(vii) The expression 'sick' used in sub-regulation (6) must necessarily be those industries which were are referred to BIFR and not any other sick mill, as the State or any other statutory authority under regulations are not authorized to determine as to whether a mill is sick or not or the extent thereof and/ or remedial measures therefor within the meaning of the provisions of the said regulations.

CONTEMPORANEOUS EXPOSITO/ EXECUTIVE CONSTRUCTION It was contended by the petitioners before us that the High Court ought to have applied the doctrine of contemporanea exposito while interpreting DCR 58 of 2001 and the Clarification of 2003. We have indicated hereinbefore that we do not agree with the said contention but as the learned counsel appearing for the appellants have relied upon some decisions of this Court, the same may be noticed at this juncture. In Union of India and Another v. Azadi Bachao Andolan and Another [(2004) 10 SCC 1], this court was concerned with a statutory power exercised by the Board of Direct Taxes in issuing directions to the Income Tax Officers as to how they should deal with the cases falling within the purview of Indo-Mauritius Double Taxation Avoidance Convention, 1983. The Court itself held that the principles adopted in interpretation of treaties are not the same as those in interpretation of a statutory legislation on the ground that the principle which needs to be kept in mind in the interpretation of the provisions of an international treaty, including one for double taxation relief, is that treaties are negotiated and entered into at a political level and have several considerations as their basis; whereas a statute has to be interpreted keeping in mind the well known principles or canons of interpretation of statutes.

It is in the aforementioned context the court therein took recourse to the doctrine of contemporanea expositio. The court itself referred to a decision of the Calcutta High Court in Baleshwar Bagarti v. Bhagirathi Dass [ILR 1908 (35) Cal. 701] wherein it was held that the court interpreting the statute would give much weight to the interpretation. The said decision, therefore, is not an authority for the proposition that the court has no jurisdiction to take a contrary view.

It is interesting to note that the Bench referred to a judgment of the Constitution Bench of this Court in Collector of Central Excise, Vadodara v. Dhiren Chemical Industries [(2002) 2 SCC 127], wherein S.N. Variava, J. was a party. Therein, it was laid down :

> "11. We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue."

However, in Kalyani Packaging Industry v. Union of India and Another, (2004) 6 SCC 719], Variava, J. explained the said decision and clarified that in a case of conflict between circulars of the Board and the judgment of the court, the latter will prevail.

It is also of some interest to note that House of Lords in Gullick v. West Norfolk Area Health Authority, [1986 AC 112] opined that an incorrect statement of the law appearing in a circular can be struck down. In Municipal Corpn. for City of Pune v. Bharat Forge Co. Ltd. [(1995) 3 SCC 434], it was stated:

> "What has been stated relating to "executive construction" or "practical construction" which has been relied on by the learned Advocate General, would not persuade us to agree with him in this submission, though it may be permissible to take note of post-enactment history to find out as to how an enactment was understood on the principle of "contemporanea expositio"

[See also Ajay Gandhi v. B. Singh, (2004) 2 SCC 120] In Jamshed N. Guzdar v. State of Maharashtra [(2005) 2 SCC 591], it is stated:

> " We are afraid, when it comes to interpretation of the Constitution, it is not permissible to place reliance on contemporanea expositio to the extent urged. Interpretation of the Constitution is the sole prerogative of the constitutional courts and the stand taken by the executive in a particular case cannot determine the true interpretation of the Constitution..."

From what we have noticed hereinbefore, it is abundantly clear that the principle of contemporaneous expositio cannot be said to have universal application. Each case must be considered on its own facts. An executive construction is entitled to respect but is not beyond the pale of judicial review.

ARE REGULATIONS AND CLARFICIATION ULTRA VIRES SECTION 37 OF THE MRTP ACT ?

We may, with a view to examine the said question more closely, take note of the following facts which more or less are undisputed. Certain plots were reserved and uses were designated for specified purposes in the development plan. The mill lands are constituted in wards of the Bombay Municipal Corporation, namely, A, E, F (South), F (North), G(South), G(North) and L. The lands of the mills were designated as I-2, I-3 or Residential (Retention Activity) Zones. The contention of the writ petitioners is that DCR 58 changes the character of development plan which would include all regulations framed under the MRTP Act. Section 37 (1AA) of the MRTP Act itself suggests that the changes would be of such nature that would not change the character of such development plan which would be otherwise permissible in terms of Section 37. Fundamental changes or even very significant changes would not normally apply to such a situation. It has not been suggested that while effecting the change of user, designation of uses for specified purposes would change. The identified reservation for open spaces in the development plan did not include mill lands. In spite of modification, the mill lands are not to be included in any such reservation. To the said extent, there would not be any change at all. Another question which has been raised is as to whether major modification has been effected although Section 37 contemplates only minor changes. It is axiomatic that for the said purpose Section 37 of the MRTP Act must be read in the context of Section 22-A thereof which provides for substantial changes.

It is also to be borne in mind that whereas the heading of Section 37, prior to amendment, provided for minor modification, the word "minor" has been deleted and in that view of the matter emphasis should be laid on the fact or as to whether such modification alters the basic character of the development of Greater Bombay or not. It would give rise to a further question, namely, as to

whether by reason thereof a radical transformation has taken place as regards its basic features, including its identity, which a'fortiori would mean as to whether the modified development plan stands unrecognized from the original one. Such a conclusion could have been arrived at if a green area has been eliminated or a green area has been allotted to be used for commercial purposes as was the case in Bangalore Medical Trust v. B.S. Muddappa & Ors. [(1991) 4 SCC 54]. In that case, this Court, while construing the Town Planning Act, opined that reservation of open spaces for parks and playgrounds is universally recognized as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanization stating:

> "The statutes in force in India and abroad reserving open spaces for parks and playgrounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality.."

Here, the court was considering the question as to whether discretion vested in the executive head had correctly been exercised or not. We are not concerned with such a question in the instant case. If certain number of sites were reserved in the development plan for public purposes and change of user had been effected as for example, whether some of the green areas had been converted to commercial uses, the matter might have been different. The terms 'modification' or 'change' have often been the subjects of judicial interpretation.

The meaning of the expression "change" came up for consideration in Forward Construction Company v. Prabhat Mandal [(1986) 1 SCC 100], wherein after noticing its dictionary meaning, it was observed:

> " So, the general meaning of the word "change"

in the two dictionaries is "to make or become different, to transform or convert". If the user was to be completely or substantially changed only then the prior modification of the development plan was necessary."

The question as regard the process of modification of a plan came up for consideration in Legg v. Ilea [1972 (3) All ER 177] wherein it was stated:

> " the process involved in modification is thus one of alteration and it must be considered how radical the alteration is. The alteration may consist of additions or subtractions or other changes in what is already there or, no doubt, any combination of these. But, throughout, there must, I think, be the continued existence of what in substance is the original entity. Once one reaches a stage of wholesale rejection and replacement, the process must cease to be one of modification "

Yet again in Puran Lal v. President of India [(1962) 1 SCR 688], it was stated:

"The word modification means the action of making changes in an object without altering its essential nature or character "

Mr. Chagla strongly relied upon a decision of a Division Bench decision [Coram Justice B.P. Singh, CJ (as His Lordship then was) and Justice Ranjana Desai] of the Bombay High Court in M.A. Panshikar v. State of Maharashtra through its Urban Development Department & another, [2002 (5) BCR 318] wherein the Bench observed that Section 37(1AA) empowers the State to effect changes both minor and even major so long it does not change the character of the plan. In that case itself the Bench held that the modification in question did not bring about a change in the character of development plan on account of the increased FSI specified therein.

Reliance has also been placed by Mr. Chagla on Pune Municipal Corporation and Another v. Promoters and Builders Association and Another [(2004) 10 SCC 796] wherein while interpreting Section 37 of the Act a passing reference was made that such changes should be minor in nature. This Court therein did not consider the amendment carried out in the marginal note thereof. In that case, the State Government while allowing a proposal for modification submitted by Pune Municipal Corporation added some words which were challenged on the ground that the same was beyond the powers of the State Government under Section 37. Such a contention was upheld by the High Court. This Court, however, reversed the said decision. In the said decision, the meaning and scope of the phrase "character of plan" did not directly or indirectly fall for consideration. The expression "minor changes" were used by this Court only for holding that the State Government exercises wide discretion. The said words were not used for determination of the scope and ambit of the phrase "character of the plan".

Reliance has also been placed by Mr. Chagla upon a decision of this Court in Balakrishna H. Sawant and Others v. Sangli, Miraj & Kupwad City Municipal Corpn. and Others [(2005) 3 SCC 61] wherein also a case of this nature did not fall for consideration.

We may place on record that the total area affected by the change on an average would be approximately 3.07% of the total area of the wards and the mill lands occupy only 0.6% of the entire land area of Bombay. When the question as regard validity or otherwise of the 1991 Regulations came up for consideration before the Bombay High Court, Sujata Manohar, J. (as the learned Judge then was) speaking for the Division Bench in Nivara Hakk Samiti [WP No. 963 of 1991] wherein the writ petitioners also were parties observed that the word "modification" being somewhat indefinite in its ambit must be distinguished from a radical illustration.

A development plan is an organic document in the sense that periodic changes are contemplated thereby. A development plan is required to be changed every 20 years. Such changes are to be brought about keeping in view the past experience of the planning authority and the intended future development of the town. While, therefore, interpreting the words "change in the character of plan" the question would be as to whether the change in the character is referable to alteration of the entire plan. The change in the character would, therefore, necessarily mean the change in the basic feature thereof and the entire plan as a whole wherefor the same must be read in totality. In this case, the changes made do not brought about any significant changes so as to come to a conclusion

that its basic features are altered. For the reasons aforementioned, we are of the considered view that the clarification issued by the State is not violative of Section 37 of the MRTP Act.

SUSTAINABLE DEVELOPMENT AND PLANNED DEVELOPMENT VIS-@-VIS ARTICLE 21 OF THE CONSTITUTION OF INDIA It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the entrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs. The Indian judiciary has time and again recognised this principle as being a fundamental concept of Indian law.

In Vellore Citizens' Welfare Forum v. Union of India and Others [(1996) 5 SCC 647], this Court laid down the salient principles of sustainable development consisting of the Precautionary Principle and the Polluter Pays Principle being its essential features stating:

> "The "Precautionary Principle" in the context of the municipal law means:
>
> (i) Environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.
>
> (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
>
> (iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.

12. "The Polluter Pays Principle" has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action v. Union of India. The Court observed: (SCC p. 246, para 65) "... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country".

The Court ruled that: (SCC p. 246, para 65) "... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

This Court, referring to Articles 48-A and 51-A(g) of the Constitution of India, observed that the aforementioned principles are part of the constitutional law.

In Intellectual Forum, Tirupathi v. State of A.P. & Ors. [JT 2006 (2) SC 568], it was stated:

> "In light of the above discussions, it seems fit to hold that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellants allege."

The MRTP Act does not exclude these principles. Unless they are so excluded, they are to be read in the statute both in the substantive legislation as also delegated legislation.

In A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Others [(1999) 2 SCC 718], this Court reiterated the necessity of institutionalizing scientific knowledge in policy-making or using it as a basis for decision-making by agencies and courts.

In Narmada Bachao Andolan v. Union of India and Others, [(2000) 10 SCC 664], this Court emphasized the exercise which is required to be undertaken by the committees before policy decisions are taken. In M.C. Mehta v. Union of India and Others [(1996) 4 SCC 351], this Court directed shifting of industries which are not in conformity with the provisions of the Master Plan.

Yet again in M.C. Mehta v. Union of India and Others [(2004) 6 SCC 588], this Court negatived the attempt on the part of the State for in situ regularization by way of change of policy. The court emphasized that in terms of Article 243-W of the Constitution of India, the Municipalities have constitutional responsibilities of town planning stating:

> "The Municipal Corporation has the responsibility in respect of matters enumerated in the Twelfth Schedule of the Constitution of India, regulation of land use, public health, sanitation, conservancy, solid-waste management being some of them "

In M.C. Mehta v. Union of India and Others [(2005) 2 SCC 186], this Court issued further directions stating that the Government must have due regard in letter and spirit to aspects that have been mentioned in the earlier place including rights of individuals who are residents of the localities

under consideration for in situ regularization by amendment of the Master Plan. In M.C. Mehta v. Kamal Nath and Others [(1997) 1 SCC 388], it was stated:

> " The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

[Emphasis supplied] In Consumer Education & Research Society v. Union of India and Others [(2000) 2 SCC 599], this Court issued certain directions directing the State to constitute a committee consisting of experts for study of the relevant environmental aspects as also for study of the effects of the present limited mining operation permitted by this Court. The State Government was further directed to take steps to monitor air and water pollution in that area. Such a Committee having been constituted and the report having been submitted, this Court in [(2005) 10 SCC 185] issued some directions to the State:

> "Considering all these aspects, we are of the view that the recommendation of the expert body to the effect that the mining operations should not be allowed within 2.5 km beyond the boundaries of Narayan Sarovar Wildlife Sanctuary which obviously means the notified boundary in force, is prima facie acceptable and could serve as a guideline in the matter of grant or renewal of mining leases by the State Government. Final orders in this regard will be passed after the details mentioned in the next paragraph are furnished."

This Court, therefore, in appropriate cases may monitor implementation of the constitutional policy of sustainable development upon directing the State to appoint expert committees. In Sushanta Tagore and Others v. Union of India and Others [(2005) 3 SCC 16], this Court was concerned with interpretation of the provisions of Visva-Bharati Act, 1951 which was enacted to preserve and protect the uniqueness, tradition and special features of Visva-Bharati University. Therein, this Court opined:

> "It may be true that the development of a town is the job of the Town Planning Authority but the same should conform to the requirements of law. Development must be sustainable in nature. A land use plan should be prepared not only having regard to the provisions contained in the 1979 Act and the Rules and Regulations framed thereunder but also the provisions of other statutes enacted therefor and in particular those for protection and preservation of ecology and environment.

> As Visva-Bharati has the unique distinction of being not only a university of national importance but also a unitary one, SSDA should be well advised to keep in mind the provisions of the Act, the object and purpose for which it has been enacted as also the report of the West Bengal Pollution Control Board. It is sui generis."

In that case, this Court interfered as the planning authorities were found to have violated the provisions of a Parliament Act which had a direct ecological impact of a special nature on the area over which the Visva Bharati University had jurisdiction.

Mr. Chagla relied upon some decisions of this Court in this behalf which we may notice now.

In Indian Handicrafts Emporium and Others v. Union of India and Others [(2003) 7 SCC 589], wherein one of us was a party, this Court opined:

> "The provisions of the said Act must be construed having regard to the purport and object it seeks to achieve. Not only, inter alia, wild animal is to be protected but all other steps which are necessary therefor so as to ensure ecological and environmental security of the country must be enforced. "

In Virender Gaur and Others v. State of Haryana and Others [(1995) 2 SCC 577], it was stated:

> "It is seen that the open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme "

Lahoti, J. (as the learned Chief Justice then was) speaking for a Division Bench of this Court in Friends Colony Development Committee v. State of Orissa and Others [(2004) 8 SCC 733] stated the law in the following terms:

> "In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan

> development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified."

These decisions do not lay down any law which is different from what we have said herein. The development of the doctrine of sustainable development indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore inter- generational interest, it is also not possible to ignore the dire need which the society urgently requires.

In a case of this nature, an endeavour should be made in giving effect to the intention of the legislature. For the said purpose, it is necessary to ascertain the object the legislature seeks to achieve. It may also be necessary to address questions as regards the nature of the statute. Does the statute ex facie point out degradation of the environment? Would by change of user envisaged by the legislature, the existing open space be decreased? Would it be necessary in view of the legislative scheme to invoke the precautionary principles?

Answers to the said questions in this case are to be rendered in the negative. The main purpose of the legislation is revival of industry inter alia by modernisation and shifting of industry. Article 21 guarantees a right to a decent environment and, thus, what should be the parameters therefor would essentially be a legislative policy. Undoubtedly, different criteria may be laid down to achieve different purposes. When the discretionary power under a statute is arbitrarily exercised, evidently the court will not tolerate the same and strike it down. DCR 58, however, ex facie does not impair sustainable development of the town of Bombay.

Mr. Salve has placed before us several decisions of American Courts to suggest that environmental considerations into town planning laws have got the upper hand in the matter of interpretation of the town planning provisions in a broad manner. The said discussions are not relevant for our purpose. He further relied upon a decision of House of Lords in South Bucks District Council v. Porter Chichester District Council v. Searle and others [(2003) 3 All ER 1] wherein it was held:

> "Over the past 60 years there has been ever- increasing recognition of the need to control the use and development of land so as to prevent inappropriate development and protect the environment. This is, inevitably, a sensitive process, since it constrains the freedom of private owners to use their own land as they wish. But, it is a very important process, since control, appropriately and firmly exercised, enures to the benefit of the whole community."

The statement of law propounded by us do not lay anything contrary to the said dicta. Herein, an attempt has been made to interpret DCR 58 in such a manner so that it not only enures to the benefit of the whole community but also give effect to the purport and object thereof.

REDUCTION IN GREEN AREAS IS-@-VIS ENVIRONMENTAL IMPACT ASSESSMENT While considering the environmental aspect, we must not forget that before constructions are allowed to be commenced and completed, the exercise for environmental impact assessment is mandatorily required to be done by the competent authority. An expert body albeit within the fourcorners of the regulatory provisions would be entitled to consider the entire question from the environmental aspect of the matter which would undoubtedly take into consideration all relevant factors including the question as to whether the same is likely to have adverse effects on ecology or not. Consideration of ecological aspects from the court's point of view cannot be one sided. It depends on the fact situation in each case. Whereas the court would take a very strict view as regard setting up of an industry which is of a harazardous nature but such a strict construction may not be resorted to in the case of town planning. The counsel before us referred to the decision in Padma v. Hiralal Motilal Desarda and Others [(2002) 7 SCC 564], wherein it was stated:

> "The significance of a development planning cannot therefore be denied. Planned development is the crucial zone that strikes a balance between the needs of large-scale urbanization and individual building. It is the science and aesthetics of urbanization as it saves the development from chaos and uglification. A departure from planning may result in disfiguration of the beauty of an upcoming city and may pose a threat for the ecological balance and environmental safeguards."

This, however, has no relevance in the present case. Whereas even in a case of town planning, the court may consider the action on the part of the State while exercising its discretionary jurisdiction in changing the user with all seriousness; it deserves particularly when it is contrary to the development plan, it may not do so where it is within the contours thereof. The question has to be considered having regard to the fact that in stead and place of industries which would have otherwise a far larger environmental impact vis-`-vis the buildings which would be constructed would be used for residential or commercial purposes. The problem will have to be addressed from the point of view that as a part of the scheme framed by the State in making DCR 58, the money would be invested not only for the purpose of revivial and / or rehabilitation of the sick or closed mills, the same would also give a boost to modernization and/ or shifting of mills and/ or parts thereof from residential area to outside the town of Bombay. It is not disputed that modernization and shifting of the mills from Bombay to the suburbs would go a long way in solving ecological problems of the town. If some mills opt for modernization, the ecological impact would be lesser than the mills which are existing for a very long time. While setting up modern mills in place of old ones, evidently approval of the Commissioner and sanction of the State in relation to the scheme would be imperative and while doing the exercise of scrutiny as regard environmental impact assessment would be required to be gone into. Furthermore, such a step would also be in consonance with the present economic policy of the State viz. the policy of disinvestment and privatization. Such a policy is not alien to the scheme of MRTP Act. We, however, fail to understand that if raising of construction by the mill owners had been questioned on ecological considerations why the Appellants failed and/ or neglected to raise such a contention as regard the constructions to be raised by MHADA. Construction of buildings, if results in an impact on ecology; it was expected that the writ petitioners Respondents would question the validity thereof. They might have not done so having regard to the fact that the same would invite adverse comments from the workers.

Even the mill owners did not question the constitutionality of such a provision presumably because they considered the provisions of DCR 58 as part of a package deal. Presumably, they also thought that if change of user is granted, even sale of a portion of land would compensate them for the portion they are required to surrender to MCGM by way of public greens and/ or housing schemes to be undertaken by MHADA.

The notification of 7th July, 1994 under the Environment Protection Act, 1986 sought to amend the notification dated 27th January, 1994. The primary purpose for issuing such notification was to state in detail the nature of the project, the extent of work carried on in respect thereof which would require environmental impact assessment clearance from the committee. Before us, the findings of the High Court as regard requirement to comply with the statutory directions issued by the Central Government for the purpose of getting the environmental impact assessment in respect of each and every project is not in question. Parties before us have raised rival contentions. It was contended by some of the Appellants that the said notification will have no application in the matters they represent; contentions have also been raised that despite the said notification having come into force, the building plans are being sanctioned and constructions to a large extent are being carried out without obtaining clearance from the E.I.A. Committee. We do not intend to determine the factual dispute keeping in view the fact that in cases in which the said notification would apply, the committee required to assess the environmental impact as regard each project shall go into the individual cases and pass appropriate orders. The apprehension that by reason of the 2001 Regulations, the existing green area would be reduced, does not appear to be based on any factual data. According to the Respondent Nos. 1 and 2, in terms of 1991 Regulations, the residents would have got 165 acres for greens whereas under the new Regulations, they would get approximately 32 acres of greens.

'Reduction in green areas' envisages reduction of an area which was existing.

The said submission does not have any factual foundation. No actual greens existed by way of designation under Section 22(c) of the MRTP Act or otherwise under any other legislation. In any event, DCR 58 of 1991 did not work. Increase in FSI by reason of 2001 Regulations even according to Mr. Salve would have added many more floors which thus became otherwise permissible in law. It ensures giving of some areas voluntarily by the mill owners. It is, however, one thing to say as to what actual area would be available for public greens but it is another thing to say that by reason thereof a change in the character of plan itself has taken place as a result whereof the green areas would be reduced. The Appellants have contended that in terms of the 2001 Scheme, the extent of actual surrender has substantially gone up in comparison to the offer of surrender made during the period 1991-2001. They have contended that the lands available to MCGM and MHADA would also be higher. It is also the contention of the Appellants that larger volumes of private greens which would be available although the same may not be a substitute for public greens, but would certainly enhance the ecological balance. It is also contended that the land area available towards the owner's component would be higher and the private green areas emerging therefrom would also be correspondingly higher. Dr. Singhvi has further submitted that by reason of implementation of the Zonal Regulations, three more Shivaji Parks would be added. The contentions raised by the Appellants may or may not be correct. However, only because the ideal situation could not be

brought about by the State while inserting 2001 Regulations, the same, in our opinion, would not lead to a conclusion that the same would be ultra vires Section 37(1AA) of the MRTP Act.

If the government intends to create more green areas in mill lands it has to avail of one of three alternatives, namely:

(a) designation/reservation in terms of Section 22(c);

(b) acquisition of land; or

(c) voluntary surrender of land.

It was contended by the NTC that DCR 58 of 2001 is an attempt to induce higher voluntary surrender of land by the mill owners. The first two alternatives would only put additional time and costs for the government in terms of procedures for acquisition and payment of compensation. It was also contended that through the Integrated Development Scheme, NTC have made themselves liable to surrender 26 acres of land to MHADA and 23 acres to MCGM. It is estimated that for all the mills more than 70.00 acres of land would be available for public greens and value thereof would approximately be 750 crores (calculated on the basis of auction price).

It is not at all in dispute that all the 58 cotton textile mills are spread over seven wards of MCGM, namely, A, E, F (South), F (North), G(South), G(North) and L. They are not spread over the entire town of Bombay. The mill lands occupy only 3.07% of the wards and 0.65% of the entire town of Bombay as is evident from the following chart:

S.No. Name of Ward No. of mills % of area occupied by mills

1.

A 0.31%

2. E 6.61%

3. F(South) 5%

4. F(North) 0.67%

5. G(South) 9.95%

6. G(North) 1.43%

7. L 0.88% From the affidavit affirmed by Shri Raoul S. Thackersey, it appears that the mill lands available for development, both open and built-up area, aggregate 400 acres approx. and not 600 acres of land as contended by the writ petitioners. Approximately, 200 acres of mill lands

comprising running textile mills are not available for development. Out of the total lands, 87% of the lands occupied by the mill owners are freehold lands and 13% of the lands are lease-hold either from the State or private parties. All the textile mills are not within I-2 Zones. 13 cotton textile mills are situated within the residential zone. As per the provisions of DCR 58 of 1991, it was in the discretion of the owner whether to come forward for total redevelopment of the mill and/ or to utilize the existing built up area for commercial purposes, etc. However, out of the area which would have been available for sharing lands with M.C.G.M./ MHADA under DCR 58 of 1991 in the cases of the proposals which were approved for total/ partial redevelopment would have been as under:

S.No. Name of the Mill Land for MCGM in sq. m.

Land for MHADA in sq. m.

Others (for public housing) in sq. m.

1.

Matulya Mill 5641.40 4616.46 Nil

2. Swadeshi Mill 24482.00 12612.13 12612.13

3. Moder Mill 8626.56 7058.12 Nil However, the area available for M.C.G.M. & MHADA for the proposals approved under modified DCR 58 of 2001 for total/ partial redevelopment are as under:

S.No. Name of the Mill Proposed as per the provisions of modified DCR 58(1)(b) MCGM in sq. m.

MHADA in sq. m

1.

Standard Mill (China Mill) 1525.14 1247.84

2. Standard Mill Prabhadevi 1247.80 1020.93

3. Morarjee Goculdas Unit No. 4479.37 1276.96 Located at Kandivli Unit

4. Morarjee Goculdas Unit No.

5. Piramal Mill 1533.46 1254.65

6. 588.41 481.43

7. Matulya Mill 474.68 388.37

8. Modern Mill 1163.31 Nil

9. Shreeram Mill 1848.25 1572.20

10. Victoria Mill 545.34 4537.10

11. Hindustan Spg. & Wvg.

662.61 542.12

12. Hindustan Spg. & Wvg.

Mill (Crown Mill Division) 1134.81 928.67

13. Simplex Mill 1363.54 1115.63

14. New Great Eastern Spg. & Wvg. Mills 1533.30 1254.52

15. Swan Mill (Kurla) 4663.70 3815.76

16. 2628.00** 2946.54***

17. 7873.63** 8828.01***

18. Elhpinstone Mills 2796.40** 3135.35**

19. Jupiter Mills 1484.75** 1664.72***

20. New Hind Textile Mills 2034.88** 2281.54***

21. Mumbai Mills (Sakseria Mills) 10631.02** 11919.63***

22. Apollo Mills & its property i.e. Morarka Bungalow 4714.81** 5286.33***

23. Swan Mill (Seweree) 4059.00 3321.00

24. Western India Spg. & Wvg.

Mill 1436.00 1175.00

25. Bombay Dyeing (Spring Mill Wadala) 25775.24 26556.30

26. Bombay Dyeing Textile Mill (Lower Parel) 7052.86 5770.52 ** Proposed to be earmarked and handed over at India United Mill No. 2 & 3.

*** Proposed to be earmarked at New Hind Textile Mill and India United Mill No. 2 & 3"

The difference can, thus, at once be felt.

The main features of the new DCR 58 will have to be construed having regard to the changes brought about thereby. For the aforementioned purpose, we may notice the following chart showing the purported reduction of space:

Ward A E F(South) F(North) G(South) G(North) L % of total Open Space in each ward as per old DCR 58 5.79% 9.29% 4.47% 6.12% 12.43% 4.40% 19.30% % of total Open Space in each ward as per new DCR 58 5.73% 7.84% 3.37% 5.97% 10.29% 4.08% 19.11% Ward wise reduction in open space 0.06% 1.45% 1.1% 0.15% 2.14% 0.32% 0.19% If Regulation prior to 1991 was implemented, the average of the Green Areas would have come to 8.33% whereas after 1991, it comes to 8.16%. From what has, thus, been noticed hereinbefore, it is difficult to agree with the contentions of the writ petitioners that there had been substantial reduction in green area. It must also be placed on record that civic load in respect of residential construction so far as land occupied by the mills owners was more than the present ratio of FSI at 1.33%. FSI given for construction of buildings to MHADA itself would be 1.596 i.e. almost 1.6%.

It is contended on behalf of the Appellants that out of the total area of 2,430,000 sq. m., the lands which would be available to MCGM as public green is 11.53% and the private greens works out to be 20.87%, thus, totalling 32.43%. It is also contended that the purported reduction ward- wise will vary from 0.06% to 2.14% and in most cases it would be 1.1% or less. From what has been noticed hereinbefore, it is evident that the purported reduction in green area compared to pre-1991 situation, would not create much difference so far as maintenance of the ecological balance is concerned by giving effect to 2001 Regulations vis-`-vis the 1991 Regulations.

SALE OF LANDS OF NTC MILLS A large number of cotton and other textile mills were situate in the town of Bombay. The workmen of the said cotton textile mills resorted to a strike as a result whereof a large number of textile mills were closed. The mills occupied lands measuring about 600 acres. The Parliament of India enacted the Sick Textile Undertakings (Nationalisation) Act, 1974 (for short "the 1974 Act") for acquisition and transfer of the sick textile undertakings, and the right, title and interest of the owners thereof specified in the First Schedule appended thereto. The said Act received the assent of the President of India on 21st December, 1974. It came into force from 1st day of April, 1974. In terms of Section 3 of the said Act, every sick textile undertaking and the right, title and interest of the owners thereto stood transferred to and vested absolutely in the Central Government with effect from the appointed day. The sick textile undertakings which stood vested in the Central Government by virtue of sub-section (1) of Section 3 of the said Act had been transferred to and vested in the National Textile Corporation.

The Parliament of India again enacted the Textile Undertakings (Nationalisation) Act, 1995 (for short "the 1995 Act") for acquisition and transfer of textile undertakings specified in the First Schedule appended thereto with a view to augmenting the production and distribution of different

varieties of cloth and yarn so as to subserve the interests of the general public for matters connected therewith or incidental thereto. In terms of the provisions of the said Act, 25 mills notified thereunder vested in NTC. It, inter alia, has two subsidiaries, viz., National Textile Corporation (South Maharashtra) and National Textile Corporation (North Maharashtra). By reason of the 1974 Act and the 1995 Act, about 119 textile mills situate throughout the country were nationalized. Out of the 25 mills of National Textile Corporation which are in the town of Bombay, 18 mills were lying closed. 14,800 employees were retrenched. National Textile Corporation together with its six other subsidiary corporations were referred to BIFR under SICA sometime between 1992-1993. The said proceedings remained pending for nearly ten years. BIFR formulated eight schemes. The schemes were approved by all concerned as well as the operating agencies. The matter came up before this Court and by an order dated 27.9.2002 the scheme as sanctioned by BIFR was directed to be implemented. The said order was passed in a special leave petition filed by NTC (IDA) Employees Association v. Union of India & Ors. [SLP No. 16732 of 1997 dated 7.5.1999] which is in the following terms :

> " We have been informed that BIFR has already formulated right schemes which stand approved by all concerned and agencies. Let the schemes as sanctioned by BIFR be implemented. The Special Leave Petition and the Transfer Petition stand disposed of accordingly."

The salient features of the said schemes are as under:

> (a) One time settlement qua banking institutions;
>
> (b) Identification of closed unviable mills;
>
> (c) Sale of surplus assets including land;
>
> (d) Rehabilitation/revival of unviable mills;
>
> (e) An Asset Sale Committee (ASC) under Section 32(1) of the SICA Act for the sale of the assets was to be constituted. A nominee of BIFR was one of the members thereof. It was constituted to ensure transparency in the sale of assets of the mills.

Guidelines for the said ASC had also been set out. Pursuant to or in furtherance of the said schemes, National Textile Corporation closed down unviable mills and mobilized a large sum towards implementation thereof. Some of the steps taken in this behalf are as under:

> (a) An amount of Rs. 643.94 crores were spent by the National Textile Corporation for payment of Modified Voluntary Retirement Scheme to workers. The said amount was disbursed before April, 2003.
>
> (b) National Textile Corporation issued bonds (series No. IX) whereby a sum of Rs. 2028 crores was raised. The said bonds carried interest ranging from 6.10% to 10%

per annum.

(c) Expenses have been incurred towards wage bills amounting to Rs.

1839 crores. The accumulated total loss of National Textile Corporation was about Rs. 4055.35 crores including the amounts payable to the banks/ financial institutions.

(d) An amount of Rs. 84 crores had been paid to the workers on account of Provident Fund and ESI dues.

(e) Having regard to the one time settlement arrived at with banks and financial institutions, a sum of Rs. 72 crores had been paid.

Pursuant to the said Scheme dated 25.7.2002, National Textile Corporation submitted an Integrated Development Plan on 3.5.2005 for all the 25 mills situate in the town of Bombay. The said scheme was prepared keeping in view DCR 58 as modified in 2001.

On or about 27.10.2004, Municipal Corporation of Greater Mumbai (MCGM), however, approved the scheme only for seven mills, permitting sale of five mills and surrender of India United Mills 2 and 3 as well as New Hind Textile Mill as share of Maharashtra Housing and Area Development Authority (MHADA) and MCGM.

An integrated plan was set out for sale of lands in terms whereof lands situate in other mills were kept aside to provide open lands which may be required in the event the writ petition filed by the Writ Petitioners - Respondents was allowed. Negotiations were held between the purchasers and NTC as regards sale of the said land. Several queries were made by the intending purchasers which were duly answered. Specific assurances were given to the bidders by NTC that deficiencies in open space shall be made good by making available equivalent open space from its other mills in the vicinity, in the event the writ petition was allowed. Clarifications were also issued to the effect that NTC was committed to sell lands specified in respect of each mill as well as specified in FSI as approved by the Bombay Municipal Corporation and, thus, any extra surrendering of land, if any occasion arises therefore, would be borne by it. It was furthermore clarified that "assuming that the court decides otherwise, then NTC has other mills to offer as far as the share of MHADA and MCGM is concerned and NTC will take care of the interest of the purchasers". An undertaking had also been given by it in the High Court which was duly recorded in its interim order dated 1.4.2005 which reads as under :

> "On behalf of NTC the learned counsel submits that they should be allowed to proceed with the sale of Jupiter Mills. The matter is pending before this Court. However, considering the urgency which counsel make out any further as NTC has 25 mills the request for confirming the sale can be agreed to, subject to the following conditions:

> (i) NTC will file an undertaking in this Court, that on the Court passing an order on interim relief they will comply with the order of the Court including if a situation arises of reserving the land in the other mills for which development is sought in terms of the order that may be passed by the Court.

On such undertaking being filed, it is open to NTC to confirm the sale of Jupiter Mills."

It was further directed:

> "(ii) Considering that the matter has now been adjourned to 20-4-2005 Respondent 2 Municipal Corporation directed not to approve any further layouts, issue IOD, or CC without the permission of this Court or till further orders."

As regard, sale of lands from NTC Mills, the High Court in its judgment opined that the sale of its mills by NTC was contrary to this Court's orders dated 11.05.2005 and 27.09.2002 as also contrary to the BIFR scheme in the following terms :

> "273. It is very clear from the order of the Supreme Court dated 11th May, 2005, that every sale after the said order by either NTC-MN or NTC-SM will be only in terms of the scheme framed by the BIFR. Only sale of land from Jupiter Mills had taken place earlier.
>
> 274. But even the sale of land from Jupiter Mills will have to be in accordance with the BIFR scheme, as per earlier order of the Supreme Court dated 27th September, 2002.
>
> 275. The sanctioned scheme of BIFR, clearly provides that the surrender of land to MCGM and MHADA in respect of each mill shall be out of the land of such mill itself and not out of the land of some other mill. Hence, the integrated scheme in respect of 7 mills approved by MCGM on 27th October, 2004 (which provides for aggregation of land to be surrendered to MCGM and MHADA in respect of the five mills sold, on two other mills) is contrary to the sanctioned scheme, which clearly does not contemplate any such integration, (emphasis supplied).
>
> 276. In paragraph 5 of the affidavit dated 12th September, 2005 filed by NTC, it is expressly admitted that the integrated development scheme submitted to MCGM is a modification of the sanctioned scheme of BIFR. It is stated that a proposal for modification of the sanctioned scheme has been made to BIFR about a year ago. It is submitted by the Petitioners that this application for sanction of the BIFR to such modifications was made in view of the direction of the Supreme Court dated 27th September 2002 "Let the scheme as sanctioned by BIFR be implemented". It is stated in the said affidavit of NTC that "The sanction of BIFR is awaited and Respondent Nos. 3 and 4 will implement the same after approval of BIFR". However, contrary to the aforesaid statement and in breach of the orders of the Hon'ble Supreme Court,

> NTC has sold five mills under the integrated development scheme approved by MCGM without the approval of the BIFR to the modifications in the sanctioned scheme.
>
> 277. Hence we are clearly of the view that the sale of lands by NTC from 5 mills viz. (a) Apollo Textile Mills (SM), (b) Mumbai Textile Mills (SM), (c) Elphinstone Mills (SM), (d) Kohinoor Mill No. 3 (MN) and (e) Jupiter Mills are clearly contrary to the sanctioned BIFR Scheme and both the orders of Supreme Court dated 11th May, 2005 and 27th September, 2002."

We for the reasons stated hereinafter are not in agreement with the conclusion of the High Court in this behalf.

It is not in dispute that in the special leave petition wherein the said order dated 27.09.2002 was passed, the parties therein were not concerned with the sale of any mill lands or for enforcement and/or interpretation of any regulation framed under the MRTP Act. The said observations were made while entertaining an application filed on behalf of the workmen and not for any other purpose. The observations were not made for the purpose of determination of any of the issues involved in the matter. It could not, thus, be treated to be a direction on the part of this Court. The question of the sale of mill lands by NTC could be held to be invalid if the same had been effected contrary to the direction of this Court and not otherwise.

ORDER OF THIS COURT DATED 11.5.2005 The order of this Court dated 11th May, 2005 reads as under:

> "So far as transactions relating to seven mills belonging to the National Textile Corporation are concerned, including sale of Jupiter Mills, it is not in dispute that transactions have reached a final stage. The purchasers of Jupiter Mills have already paid Rs 16 crores and a sum of Rs 376 crores would pass hands if the transaction is completed. If the transactions in respect of the mills are not allowed to be completed, the scheme framed by BIFR would come to a standstill resulting in accrual of interest payable by the National Textile Corporation to the financial institutions besides other hardships which may be caused to various other persons including the workers.
>
> We, therefore, having regard to the facts and circumstances of this case as also the law operating in the field, are of the opinion that interest of justice would be subserved if the National Textile Corporation is permitted to complete the transactions in terms of the scheme framed by BIFR but the same shall be subject to the condition that in the event, the writ petition ultimately succeeds, the vacant land available from other mills, if necessary, shall be offered by way of adjustment."

In the said order, it was recorded:

> "Mr Parasaran and Mr Rohatgi, learned Senior Counsel appearing on behalf of the National Textile Corporation would contend that keeping in view the fact that in respect of seven mills, negotiations have been entered into, they should be allowed to be sold off and in the event, the writ petition succeeds, the order of the Court can be complied with by adjusting vacant land belonging to the other mills.
>
> Mr Iqbal Chagla, learned Senior Counsel appearing on behalf of the writ petitioner respondents, on the other hand, would urge that the undertaking directed to be given by the National Textile Corporation is commensurate with the suggestion given by Mr Parasaran before this Court."

So far as order of this Court dated 11.05.2005 is concerned, again the validity or otherwise of the BIFR scheme and/or implementation thereof was not in question. An order of this Court, it is well-known, must be construed having regard to the text and context in which the same was passed. For the said purpose, the orders of this Court were required to be read in their entirety. A judgment, it is well settled, cannot be read as a statute. [See Sarat Chandra Mishra and Others v. State of Orissa and Others, 2006 (1) SCC 638 and State of Karnataka and Others v. C. Lalitha, 2006 (1) SCALE 73]. Construction of a judgment, it is well settled, should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Any observation made in a judgment, it is trite, should not be read in isolation and out of context.

While passing the order dated 11.05.2005, this Court merely noted the terms of the BIFR scheme. It did not issue any direction to the effect that the sale of the mill land should be effected strictly in terms thereof or in a particular manner. The BIFR scheme evidently was referred to as this Court noticed that even statutory authorities constituted under a Parliamentary Act found it necessary to direct sale of the mill lands in public interest. While considering a writ petition on an environmental issue, the focus of the court should have been confined thereto. It was in our considered opinion impermissible for the High Court to examine the BIFR scheme as if the environmental issues were considered therein. The BIFR exercises its jurisdiction under a statute; the objects whereof are distinct and different from a town planning scheme. The BIFR is not a town planner. It is not a development authority. It has nothing to do with the town planning or development scheme or maintenance of ecological balance. The BIFR was concerned only with the manner in which sick industrial undertaking should be made to revive. Before passing the said order, it was required to hear all concerned, namely, the management, the workmen, the financial institutions, banks etc. as also the operating agencies. It did so.

BIFR appointed IDBI as an operating agency. The authorities were concerned with obtaining maximum amount by way of sale of mill lands. It was in any event not concerned with the interpretation and/or applicability of the provisions of the MRTP Act or the Regulation framed thereunder. BIFR was not concerned with the interpretation of DCR 58 and, thus, only because this Court in its aforementioned orders dated 27.09.2002 and 11.05.2005 had referred thereto, the same would not mean that thereby any direction was issued either directly or indirectly that the sale of the lands pertaining to cotton textile mills must strictly be conducted in accordance with the said

scheme. This Court merely asked the authorities to effect sale of mill land upon following the scheme framed by BIFR and in accordance with the procedure laid down therefor. This Court in its order dated 11.5.2005 categorically observed that if the transactions in respect of mills are not allowed to be completed, the scheme framed by the BIFR would come to a standstill resulting in accrual of liability of a huge amount by way of interest payable by NTC to the financial institutions besides other hardships which may be caused to various other persons including the workers. The scheme framed by the BIFR, therefore, was taken to be a relevant factor only for the purpose of determining the issues involved in the appeal which arose out of an interim order. It was only in that situation mention was made to the scheme framed by the BIFR and not for any other purpose. This Court, as would appear from the submissions made by the counsel for the parties therein merely intended to give effect to the consensus arrived at the bar that an undertaking by the NTC to the effect that the order of this High Court would be complied with by way of adjustment of lands from other mills would subserve the interest of justice. The validity or otherwise of the transaction of sales of seven mills of NTC were, thus, not open to a further determination by the High Court.

The High Court furthermore appeared to have committed a manifest error in reading down para 5 of the affidavit of Shri Deodutt B. Pandit. It has been contended before us that the proposed modification by IDBI as has been referred to therein was not in respect of the five NTC mills, including Jupter Textile Mill proposed to be sold but was as regards shifting of the activities of Finlay Mills to Digvijay Textile Mills and that of Gold Mohur Mills to Sitaram Mills. The proposed modification by the IDBI had nothing to do with sale of five mill lands and, thus, no attempt was made by NTC to get the order of the BIFR modified in regard thereto as opined by the High Court. In any view of the matter, the BIFR scheme did not postulate that the surrender of lands to MCGM and MHADA should be out of the lands of each individual mill itself and not out of the lands of some other mills. The BIFR had no occasion to say so nor could it do so having regard to the provisions contained in DCR 58. The writ petitioner-respondents have nowhere denied or disputed that the seven mills which were put up for sale were unviable ones. The lands pertaining to the mills were found to be surplus. For the purpose of giving effect to the scheme framed by the BIFR, indisputably an Asset Sale Committee was constituted to discharge the functions of overseeing the sale of surplus assets of the said mills. It is furthermore not in dispute that an Integrated Development Scheme was framed by NTC with the assistance of the architects which was submitted to MCGM and the same was duly approved. Sanction of sale of two mills out of seven mills was not granted evidently in view of the pendency of the writ petition. The BIFR scheme or the said Integrated Development Scheme framed by NTC was not in question in the writ petition. Even when the interlocutory application was being heard, no submission was made as regard violation of the BIFR scheme or the aforementioned order dated 27.09.2002. Before this Court as also the High Court the question which arose was as to whether sufficient lands were available in the event the writ petition was to be allowed.

BIFR SCHEME The order of the BIFR dated 25.07.2002 passed in Case No.536 of 1992 clearly shows that after hearing the concerned parties it has been noticed that the Government of Maharashtra although had not given clearance to sell the surplus lands of all the 13 mills in Mumbai and 5 mills outside Mumbai, as has been done in other states, agreed that with a view to compensate therefor MCGM would give additional Floor Space Index (FSI) and MHADA would give Transfer Development Rights which would not enable the NTCMNL to earn full consideration for the land. It

further appears that the Government of Maharashtra had not been asked to make assessment regarding sacrifice, if any, made by them in this behalf or any benefit which would accrue to them with the sale so that the Board could consider such a sacrifice/benefit in line with the sacrifices made with others and if the final stand is not conveyed by the Government, the Board would decide to confirm winding up of the company which would be detrimental to all who made sacrifices, wherefor some power was granted. It had further been noticed therein that the Government of Maharashtra by a letter dated 30.03.2002 i.e. after the 2001 Regulation came into force, although expressed its inability to give exemption from payment of stamp duty, categorically stated that necessary permission would be given by the competent authority strictly as per DCR 58 which also shows that DCR 58 of 1991 was not directed to be taken recourse to. The Board had further noticed the submissions of the GOI-MOT (promoters) as contained in their letter dated 08.05.2002, inter alia, to the following effect :

> "iii) Appointment of Monitoring Committee to oversee implementation of the package would not only run contrary to the provisions of SICA but would also result in duplication of authority and control. BIFR may direct State Government to exclude NTC package from the purview of such a committee."

It directed constitution of another committee, namely, Assets Sale Committee (ASC) for bringing in transparency in the sale of assets. Para 21 of the said order runs thus :

> "21. Since the GOM had indicated in regard to sale of land that the necessary permission in this regard would be given by competent authority strictly as per the provisions of Regulation 58 of the Development Control Regulation (DCR) the promoters (GOI-MOT) should ensure that in the event of any shortfall of funds, which would be utilized for rehabilitation of other NTC units, would be brought in by them for rehabilitation of NTCMNL."

It is, therefore, evident that the Board had all along in its mind the modified regulations only. Yet again it is evident that for the purpose of valuation only they had referred to DCR 58 which also goes to show that they had only in mind the 2001 Regulations and not the 1991 Regulations. From what we have noticed hereinbefore, it is evident that the High Court was not correct in holding that the sale of mill lands was contrary to the scheme framed by the BIFR. Even otherwise it is preposterous to suggest that having regard to its statutory function. BIFR would issue any direction which would be to a great extent defeasive of the purpose for which the schemes were made. We have noticed hereinbefore the anxiety expressed by the BIFR to have/ save more funds for NTC. Our attention has also been drawn to the fact that there is nothing to show that the BIFR scheme provided that the lands were to be surrendered to MCGM and MHADA from each of the mills and not out of the land of some other mill. The High Court, therefore, committed an error of records. Even otherwise, the scheme should have been read in the light of the factual matrix obtaining therein as also the extant regulation. It is furthermore not in dispute that sale of the lands was approved by ASC. One of the directors of the BIFR, again indisputably, was a member of the said Committee. Once approval of ASC was obtained, the sales were to be treated as confirmed. The order of this Court dated 11.05.2005 had, thus, been given effect to.

It is furthermore not in dispute that conveyance deeds had duly been executed and registered between the parties. It is also not in dispute that additional lands for open space were available from the two mills which had not been the subject-matter of sale. The purchasers yet again indisputably had created third party interest. They had also created financial liabilities by taking loans from banks/financial institutions. The writ petitioners in the writ proceedings, we have noticed hereinbefore, at no point of time questioned the sale of surplus land by NTC. In fact, challenge to such sale even could not be permitted by the High Court. Even assuming that the NTC failed and/ or neglected to comply with the directions contained in the scheme framed by the BIFR and, consequently, the orders of this Court, the persons aggrieved thereby could have gone back to BIFR.

It is not in dispute that NTC was a sick company. As a sick company, it might not have in a position to reopen any close mill at all. Reference to BIFR in terms of Section 16 of the Act evidently was made for the aforementioned purpose. If the schemes sanctioned by BIFR are given effect to, at least some of the NTC mills indisputably would be revived. SICA, we have noticed hereinbefore, is a special statute. It was enacted by the Parliament only with a view to meet the contingencies contemplated therein. The validity or otherwise of the reference made by NTC to BIFR is not in question. The writ petitioners did not question the validity of the statutory schemes. No material has been brought before us to show even the workmen were in any way aggrieved thereby. Had they been so, they could have preferred an appeal before the BIFR. Even there does not exist any material to show that at any point of time they had approached the High Court in judicial review. The workmen were parties in the proceedings before BIFR. Presumably BIFR made the said schemes after hearing of parties concerned including the workmen.

It is not in dispute that the writ petitioners merely filed an affidavit on 12th July, 2005 before the High Court alleging that the sale of surplus land by NTC was in violation of this Court's order and/ or the scheme framed by the BIFR. If the prayer in the writ petition had not been amended, we fail to understand as to on what premise the High Court proceeded to consider the question as regards the alleged violation of the order of this Court, as also the BIFR Scheme by NTC for the purpose of setting aside the sale. In a collateral proceeding, the High Court, in our opinion, could not issue any direction which would not only be contrary to a statutory scheme but defeasive of the purport and object for which SICA was enacted. Furthermore, it was none of the concern of the writ petitioners Respondents as to how BIFR calculated the financial viability by way of sale of surplus land by NTC. It was equally impermissible for the High Court to consider as to whether despite their being a provision for multi-mill aggregation in terms of DCR 2001, the same had been taken into consideration under BIFR Scheme or not. We have noticed hereinbefore that for the purpose of considering the validity or otherwise of the sale in terms of BIFR Scheme itself, ASC was appointed wherein a member of the BIFR was also represented. We are, therefore, of the firm opinion that the judgment of the High Court in this behalf is not correct.

EFFECT OF SUCH SALES ON AUCTION PURCHASERS NTC issued advertisements in several newspapers for sale of five mills, viz., Jupiter Textile Mill, Mumbai Textile Mill, Apollo Textile Mill, Kohinoor Mill No. 3 and Elphinstone Spinning and Weaving Mills. Some of the Appellants herein pursuant to or in furtherance of the said advertisements submitted their tenders.

It is, furthermore, not in dispute that out of the five mills sold full payments have been received by National Textile Corporation from the purchasers of four mills, viz., Jupiter Textile Mill, Mumbai Textile Mill, Apollo Textile Mill and Kohinoor Mill No. 3. As regards the fifth mill, viz., Elphinstone Spinning and Weaving Mills, full payment is yet to be received. It is, however, not in dispute that the processes of auction sales are complete and the applicants are bonafide purchasers in duly concluded sales. Bona fide purchasers in an auction sale for certain purposes are treated differently. A distinction has all along been made between a decree holder who came in to purchase under his own decree and a bona fide purchaser who came in and got at the sale in execution of a decree to which he was not a party. In a case where the third party is a bona fide auction purchaser, even if decree is set aside, his interest in an auction sale is saved [See Zain- ul-Abdin Khan v. Muhammad Asghar Ali Khan - 15 IA 12]. The said decision has been affirmed by this Court in Gurjoginder Singh v. Jaswant Kaur (Smt.) and Another [(1994) 2 SCC 368].

In Janak Raj v. Gurdial Singh and Anr. [1967 (2) SCR 77], this Court confirmed a sale in favour of the Appellant therein who was a stranger to the suit being the auction purchaser of the judgment-debtor's immovable property in execution of an ex parte money decree in terms of Order XXI Rule 92 of the Code of Civil Procedure. Despite the fact that ordinarily a sale can be set aside only in terms of Rules 89, 90 and 91 of Order XXI of Code of Civil Procedure, it was opined that the court is bound to confirm the sale and direct grant of a certificate vesting the title in the purchaser as from the date of sale when no application in term of Rule 92 was made or when such application was made and disallowed.

In Padanathil Ruqmini Amma v. P.K. Abdulla [(1996) 7 SCC 668], this Court upon making a distinction between the decree-holder auction purchaser himself and a third party bona fide purchaser in an auction sale, observed :

> " The ratio behind this distinction between a sale to a decree-holder and a sale to a stranger is that the court, as a matter of policy, will protect honest outsider purchasers at sales held in the execution of its decrees, although the sales may be subsequently set aside, when such purchasers are not parties to the suit. But for such protection, the properties which are sold in court auctions would not fetch a proper price and the decree- holder himself would suffer. The same consideration does not apply when the decree-holder is himself the purchaser and the decree in his favour is set aside. He is a party to the litigation and is very much aware of the vicissitudes of litigation and needs no protection.
>
> We are not oblivious of the fact that the decisions referred to hereinbefore have no direct application in the instant case as the sale of NTC mill lands were not effected in execution of decrees passed by a competent court of law, but, we have referred thereto only to highlight that having regard to the principles analogous to the ratio laid down in the aforementioned decisions the court should make an endeaour to safeguard the interest of the bona fide purchasers unless and until there exists any statutory interdict.

It is, thus, absolutely clear that the purchasers of the cotton textile mills of the NTC cannot be made to suffer for no fault on their part and, thus, the High Court committed a manifest error in that behalf.

DELAY AND LACHES Each one of the learned counsel appearing on behalf of the Appellants had advanced lengthy submissions in regard to the irretrievable injuries caused to their respective clients by reason of delay and laches on the part of the writ petitioners in filing the writ petition. We may notice that the writ petitioners although raised objections when DCR 58 was proposed to be made in the year 1990 but no such objection was raised when the State proposed to amend the same in 2000. The writ petitioners filed a writ petition before the Bombay High Court questioning the validity of DCR 58 which was dismissed. They did not prefer any appeal thereagainst. Some of the mill owners, as noticed hereinbefore, submitted their scheme as also applications for grant of sanction of their layout plans much before the clarificatory order dated 28.3.2003 was issued by the State. Requisite statutory sanctions had been obtained in most of the cases.

Plans were also sanctioned pursuant whereto and in furtherance whereof some of the Appellants had not only entered into development agreements with third parties; in some cases they demolished the structures, carried on excavations, raised constructions; in some cases construction activities are complete and flats had been sold, the purchasers whereof in turn incurred huge financial liabilities. In almost all the cases, the workers had been paid a large sum of money which may not be possible to be recovered. Loans and other financial assistances had been obtained from banks and other financial institutions by the auction purchasers - appellants for the said purpose. In some cases, the development agreements have been fully acted upon.

Some of the mills, as noticed hereinbefore, were closed but not referred to BIFR. One mill, viz., Bombay Dyeing and Manufacturing Company Limited wanted to modernize its plants and machines. Ruby Mills Limited had a scheme of shifting-cum-modernization. Schemes were submitted by them in terms of the extant regulations. The same had been approved by the State.

Although the State issued the clarificatory notification as far back on 28.3.2003, no step had been taken by the writ petitioners to question the validity thereof within the reasonable time. The writ petition was filed on 18.2.2005. Even on 21.3.2005, the writ petitioners filed an affidavit and in paragraph 27 thereof it was categorically averred that the BIFR Scheme had no bearing on the validity of the rule. Although, permission for multi-mill aggregation was granted on 27.10.2004, the validity or legality thereof had not been questioned in the writ petition. Yet again on 19.4.2005, another affidavit was affirmed on behalf of the writ petitioners wherein it was averred that the scheme framed by the BIFR was irrelevant for the purpose of its decision. An application for amending the writ petition was filed only on 7.7.2005 wherein a contention as regard the interpretative effect of the clarification was raised. Only in

the third affidavit dated 12.7.2005, the writ petitioners raised the question in regard to the correctness or otherwise of BIFR Scheme for the first time only whereupon an interim order was passed on 1.4.2005 by the High Court.

On 11th May, 2005, this Court set aside the interim order passed by the High Court whereafter an advertisement was issued by NTC. Tender documents were published in newspapers and put on website on 21.6.2005 The last date for submission of the bid was 27.7.2005. On 12.7.2005, the writ petitioners had put an affidavit that such sale was permissible. The bid was accepted on 13.8.2005 whereafter ASC approved the sale. After the writ petition was heard and the judgment was reserved on 14.9.2005, the writ petitioners only in their written submissions filed on 15.9.2005, raised a contention that the sales were contrary to BIFR Scheme as also orders of this Court. The purchasers on different dates in October/ November purchased lands of the textile mills and took possession after the deeds of conveyances were executed in their favour. The purchasers indisputably borrowed a huge amount from banks/ financial institutions and they are required to pay interest on the said borrowed sums.

Delay and laches on the part of the writ petitioners indisputably has a role to play in the matter of grant of reliefs in a writ petition. This Court in a large number of decisions has categorically laid down that where by reason of delay and/ or laches on the part of the writ petitioners the parties altered their positions and/ or third parties interests have been created, public interest litigations may be summarily dismissed. Delay although may not be the sole ground for dismissing a public interest litigation in some cases and, thus, each case must be considered having regard to the facts and circumstances obtaining therein, the underlying equitable principles cannot be ignored. As regards applicability of the said principles, public interest litigations are no exceptions. We have heretobefore noticed the scope and object of public interest litigation. Delay of such a nature in some cases is considered to be of vital importance. [See Chairman & MD, BPL Ltd. v. S.P. Gururaja and Others, (2003) 8 SCC 567]. In Narmada Bachao Andolan v. Union of India [(2000) 10 SCC 664], this Court held:

" Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them."

In R. & M. Trust v. Koramangala Residents Vigilance Group [(2005) 3 SCC 91], this Court laid down the law in the following terms:

> " sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of the vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purposes of serving their private ends."

It was further stated:

> "There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb a third party interest created on account of delay. Even otherwise also why should the Court come to the rescue of a person who is not vigilant in his rights."

In State of Maharashtra v. Digambar [(1995) 4 SCC 683], this Court held:

> " where the High Court grants relief to a citizen or to any person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches, or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the state."

However, we do not intend to lay down a law that delay or laches alone should be the sole ground for throwing out a public interest litigation irrespective of the merit of the matter or the stage thereof. Keeping in view the magnitude of public interest, the court may consider the desirability to relax the rigours of the accepted norms. We do not accept the explanation in this regard sought to be offered by the writ petitioners. We have no doubt in our mind that the writ petitioners are guilty of serious delay and laches on their part.

M/s. Lohia Machines (supra), whereupon the High Court placed strong reliance, was not a case where a third party interest was created. Therein, the validity of Rule 19-A of the Income Tax Rules, 1962 was in question. It may be true that therein the validity of the rule was challenged after 19 years but the plea of dismissing the writ petition on the ground of delay was negatived holding that the challenge in regard to the constitutionality of the said rule was otherwise well-founded. It was not a case where during the interregnum, the parties altered their position and third party interest was created. It is in that situation this Court observed that if a rule made by a rule making authority is found to be outside the scope of its power, it is void and it is not at all relevant that its validity has not been questioned for a long period of time; if a rule is void it remains void whether it has been acquiesced in or not.

The High Court in this case did not declare DCR 58 to be ultra vires the Constitution or the provisions of the MRTP Act. In Proprietary Articles Trade Association v. AG of Canada [(1931) AC 310], the validity of the rule was in question. The decision of the Privy Council in Attorney General of the Commonwealth of Australia v. Queen [95 CLR 529] is to the same effect. In this case, the delay is enormous. Most of the Appellants and, particularly, those who are purchasers have been suffered considerable financial loss and embarrassment. It had calamitous consequence to the entrepreneurs who are required to pay lakhs and lakhs of rupees by way of interest to the banks and

other financial institutions per day. The bona fide of the purchasers of NTC Mill lands had never been in question in the sense that as the writ petitioners at no point of time questioned the validity or otherwise of the sale of the lands by filing any application for amendment of the writ petition, and as noticed hereinbefore, only during arguments such a contention was raised. The High Court, in our considered opinion, thus, committed a manifest error in acting thereupon. Before us, we may notice, a statement has been made across the bar that keeping in view the orders passed by this Court dated 11th May, 2005, the sale of NTC mills is seriously not in question.

As we have considered the matter on merits, evidently, we are not dismissing the writ petition on the ground of delay and laches alone but we have taken the same as one of the factors in determining the questions raised before us.

CONFLICTING STAND OF WORKMEN The workers are vertically divided. Whereas Rashtriya Mill Mazdoor Sangh (RMMS) sides with the mill owners, Girni Kamgar Sangharsh Committee (GKSS) sides with the writ petitioners. They contradict each other not only from their own stand point vis-`-vis the point of view of the workers, but also as regards the interpretation and constitutionality of DCR

58. RMMS complains that the High Court did not consider its principal submissions at all which were placed before it by way of written submissions, but merely considered only those which were raised by way of further written submissions. According to them, RMMS is the only representative and approved trade union under the Bombay Industrial Relations Act for Greater Bombay. According to them, closure of the cotton mills affected 2,00,000 workers and because of the strike the mills defaulted in making payment of wages, provident funds dues, gratuity, etc. to the workers causing great hardship to them. It played an active role in the revival / rehabilitation of the NTC mills and other sick mills by representing the workers' cause before BIFR. It also agrees with the reasons put forward by the appellants as regards the validity of DCR 58 of 2001. It highlights the policy/ objectives thereof in great details. It also states:

> (i) RMMS has entered into VRS Agreement with the management of several mills.
>
> (ii) Nearly 10,000 workers of the NTC mills and more than 25,000 workers of private mills, aggregating in all more than 35,000 workers stand to benefit by the VRS Schemes.
>
> (iii) As on date, the NTC mills have discharged their entire liabilities under the VRS Schemes by making payment to the extent of 398.76 crores payable to these workers.

(iv) The Maharashtra State Textile Corporation has also cleared the outstanding dues of its workers to the extent of Rs. 22 crores. As regards the private mills, out of the total amount due to the workers under VRS Schemes amounting to 808.75 crores, approximately a sum of 631.05 crores has been paid.

(v) However, approximately Rs. 373 crores remain outstanding to be paid to approximately 20,000 workers which payments are directly linked to the development of the lands by the mill owners.

It further argues that if the judgment of the High Court is implemented, it would cause irretrievable injury and extreme prejudice to the workers.

Mr. Colin Gonsalves, learned counsel appearing on behalf of GKSS, on the other hand, not only laid emphasis on the so-called defaults of the mill owners but had gone to the extent of urging that the workers' dues have not been paid substantively. He further contended that revival scheme has not been given effect to and the amount required to be spent therefor had in fact not been spent. It has further been contended that no guidelines had at all been framed for the Monitoring Committee by the State for overseeing the disbursement of funds. According to it, in the case of Mafatlal Centre although the scheme was sanctioned in 2001, no payment has been made despite the fact that the company received a sum of Rs. 16 crores from the sale of the built up areas of Mafatlal Centre at Parel. The workers' dues being to the extent of 93 crores, the same are in excess of the legal dues of the workers and only a paltry sum had been paid to them whereas the dues of the banks had been cleared.

In these appeals, we are not concerned with the said issues. We may, however, place on record that according to Mr. Sorabjee the statement of Mr. Colin Gonsalves that nothing had been paid to the workers is baseless and irresponsible. It was contended that the Union represented by Mr. Gonsalves impleaded itself in the writ petition filed by it before the High Court against the MCGM as regard non-disposal of layout plan, etc. wherein they categorically stated that it would have no objection to the development of their property subject to realization of the cheques given in favour of the workers. It is stated that the cheques had been fully realized and the workers have enjoyed the benefit of payment.

We have pointed out these factors only for the purpose of showing that this litigation was treated to be a platform for even championing the cause of the workers although neither the High Court nor this Court is concerned therewith.

In terms of the Regulations, the entire amount is to be deposited in the funds specially created therfor. It is the Committee appointed by the State alone which can spend the amount. The priority as regard disbursal of such amount has categorically been laid down in the regulation itself. If the fund created is not being expended for the purposes mentioned therein, a separate cause of action will arise therefor. It is, thus, not necessary for us to delve deep into the said contentions. Guidelines for the Committee are also not necessary to be laid down. In any event, we are not called upon nor is it necessary to make any attempt in that regard. However, if any occasion arises for any of the parties in this behalf, the aggrieved party indisputably would be at liberty to agitate the same before appropriate forums CONCLUSION The upshot of our aforementioned discussions is:

(i) The Public Interest Litigation was maintainable.

(ii) DCR 58 is valid in law. DCR 58(1) applies also to closed mills but sub-regulation (6) of DCR 58 does not apply to sick industries which have not been referred to BIFR.

(iii) The clarification made by the State is neither ultra vires Section 37 of the MRTP Act nor is violative of the constitutional provisions.

(iv) DCR 58, as inserted in 2001 and as clarified in 2003, is not contrary to the principles governing environmental aspects including the principles of sustainable and planned development vis-`-vis Article 21 of the Constitution of India.

(v) Judicial review of DCR 58 was permissible in law.

(vi) Sale of NTC mills was not contrary to the BIFR Scheme as also the orders passed by this Court.

(vii) Although, delay and laches play an important role, as we have considered the merit of the matter, the writ petition filed by the Respondent Nos. 1 and 2 is not being dismissed on that ground alone.

(viii) It is not necessary for us to go into the question as to whether worker's dues have been paid and also as to whether the committee had been applying the fund in terms of DCR 58 or not. However, all such contentions shall remain open.

For the reasons aforementioned, these appeals are allowed, the impugned judgment of the High Court is set aside. However, in the facts and circumstances of the cases, there shall be no order as to costs.