

Case Note: The Public Interest Litigation has been filed to oppose the construction of fly overs in Mumbai. The principal contention of the petitioner, all along has been that, unless appropriate directions are issued, unplanned and impermissible commercial development under the fly overs will be detrimental to the urban environment. The High Court dismissed the petition and ordered the construction of fly-over to continue in compliance of the conditions imposed at the time of the clearance and as per the recommendations of expert committee appointed by the court to avoid any further adverse impact on the environment.

This document is available at www.ielrc.org/content/e0117.pdf

Equivalent Citation: (2002)104BOMLR434

IN THE HIGH COURT OF BOMBAY

Writ Petitions Nos. 657 and 2838 of 1999

Decided On: 05.07.2001

Bombay Environmental Action Group and Anr.

Vs.

The State of Maharashtra and Ors.

Hon'ble Judges:

B.P. Singh, C.J. and V.C. Daga, J.

Case Note:

(A) Constitution of India, 1950 - Article 226 - Public Interest Litigation - Challenge to the policy decision of Government - Should be taken before undertaking the execution of the project - Challenge taken after commencement of the execution - Cannot be maintained on the ground of laches - Considering importance of the matter challenge restricted to the proposed commercial use of the space before the Andheri Fly over.

Held:

The Apex Court in the case of Narmada Bachao Andolan (cited supra) also made it clear that the Court, no doubt has a duty to see that in undertaking the decision, no law is violated and people's Fundamental Rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. 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 P.I.L. does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them. The petition in question could have been thrown out at the very threshold on the ground of laches. The vigilant environmentalist like petitioners ought to have approached this Court well before the commencement of

project in question. It was not that the project was undertaken secretly. However, considering the importance of the matter having considerable impact involving the substantial issue relating to the environment, this Court vide order dated 7th May, 1999 thought it fit to restrict this petition to the proposed commercial use, if any of the space below Andheri Fly over and by further order dated 28th July, 2000, the State Government was permitted to make payment to the contractor without prejudice to the rights and contentions of the parties in the writ petition and on such payments being made it was expected Hint the contractor shall resume construction and complete the work within eight months from the date of payment, however, subject to the result of this writ petition.

(B) Maharashtra Regional and Town Planning Act, 1966 - Sections 31, 37 and 154 and Regulation 68 - Construction of fly over - Commercial user of the space below fly over - Amendment to Regulation 68-A minor modification - Original use indicated in the Development Plan - Not a different or total change - Commercial use below the fly over permissible.

The next question which requires consideration is whether directive issued under Section 154 of the M.R.T.P. Act relating to Regulation 68 is ultra vires. The original Regulation 68 was introduced by treating it as substantial change in terms of Section 31 by following procedure prescribed by the M.R.T.P. Act, as a result thereof, underground parking and shopping below existing proposed Development Plan road below land reserved for recreational ground, play ground, garden/park and open space both existing and proposed are permissible. It appears that the State Government thought that the minor additions to the existing Regulation 68 would be necessary since there was no provision for permitting such use below any such road which was elevated i.e. fly over. Hence directive under Section 154 of the M.R.T.P. Act was given. As a matter of fact, the said directive was not at all necessary as the then existing Regulation 68 was capable of taking care to meet the situation faced by the State Government in this case. The amendment to the Regulation 68 was not at all necessary. At any rate this amendment was a minor modification to the existing Regulation 68.

The designated area of the Development Plan is highway or road and there is, therefore, no change in user. The area is mainly used for road. The original use is indicated in the Development Plan and when coupled with some other use making the original use of designated area possible, is not a total change or not a totally different use. Therefore, commercial use of the space below fly over is permissible under M.R.T.P. Act considering the facts and circumstances of the present case.

(C) Maharashtra Regional and Town Planning Act, 1966 - Section 154 - Power of State Government to issue directives - Ad hoc decisions taken sometimes - Does not mean that there is no regulatory regime - The provisions of Maharashtra Regional and Town Planning Act and Regulations framed thereunder from time to time and authorities designated there in with adequate powers to implement the provisions of the Act is a well formulated regulatory regime or scheme - Directions can be issued in furtherance of the powers conferred therein and that by itself can be called a regulatory regime.

The third submission that there was no regulatory regime and that the decisions were taken on ad hoc basis and the same are illegal is also without any merit and must be rejected for the same reasons for which the earlier contentions are rejected. At the cost of repetition, it may be observed that the provisions of M.R.T.P. Act. and regulations framed thereunder from time to time and, authorities designated therein with adequate powers to implement the provisions of the Act is a well formulated regulatory regime or scheme. Merely because some ad hoc decisions were taken sometime does not mean that there is no regulatory regime. While formulating the scheme for large scale malls, the existing rules and regulations and building by-laws are sufficient to take care of such projects though it may need minor modifications here or there to meet unforeseen, un contemplated contingencies considering the peculiar nature of the particular project. The rules, regulations, by-laws and other statutory provisions cannot be static. They have to be modified from time to time based on new experiences so as to maintain and keep pace with scientific modern development But that does not mean that there is complete absence of regulatory regime.

It is, therefore, clear that the directives under Section 154 of the M.R.T.P. Act could be issued in furtherance of the powers conferred therein and that by itself can be called as regulatory regime. Thus, as already stated, the contention in this behalf is also devoid of any substance. It has to be rejected at the threshold.

JUDGMENT

V.C. Daga, J.

1. Rule in terms of order dated 7.5.1999. Since all the parties are ready for final hearing, with consent of the counsel for the parties the petitions are taken up for disposal.

The above petitions, giving rise to the Public Interest Litigation assail the decision of the State of Maharashtra to construct fly overs in the island city of Mumbai in general and Andheri Fly over in particular for north and south traffic along Western Express Highway covering three Junctions, namely, Bahar Junction, Gold spot Junction and Andheri Kurla Road Junction at Mumbai.

FACTUAL BACKGROUND MATRIX

2. Broadly indicated, the facts taken from Writ Petition No. 657/1999 are as under:

Petitioner No. 1 is a Society registered under the Societies Registration Act ("Society" for short). The aims and objects of the society are inter alia, to look after the environment in all its aspects. The petitioner No. 2 is the Honorary Secretary of the society and has been working in the environmental movement for past 25 years.

3. The Respondent No. 1 is the State of Maharashtra. The 2nd Respondent is the Mumbai Metropolitan Regional Development Authority, constituted under the Mumbai Metropolitan Region Development Act ("M.M.R.D. Act" for short) and is responsible, inter alia, for the development of the Mumbai Metropolitan Region. The Respondent No. 3 is the Maharashtra State Road Development Corporation ("M.S.R.D.C." for short), and is responsible for implementing diverse road

development projects entrusted to it by the State Government, including construction of fly overs in Greater Mumbai. Respondent No. 4 is a recipient of the tender to construct the Andheri Fly over. The Respondent No. 5 is the Municipal Corporation of Greater Mumbai, (hereinafter referred to as "the Corporation" for short.

4. The city of Mumbai has grown to become a huge international centre for trade and commerce with mass rapid transport system with high rise buildings. The transport is one element without which Mumbai life cannot sustain. Vehicular traffic is one of them. Therefore, the road way network management in Mumbai is regarded as one of the primary duties of the Government to ensure proper roads, bridges including transportation terminals. In order to meet the emergent need of the growing city and after making survey for the management of the traffic, it was noticed by the Government of Maharashtra that on Western Express Highway (W.E.H.) at Andheri and Santacruz Junctions were operating at more than its capacity. Therefore, the decision was taken by the State of Maharashtra, Public Works Department, sometime in the year 1994 to undertake the work of construction of split fly overs covering three Junctions and three sub-ways on the Western Express Highway near Andheri Mumbai on Build Operate and Transfer (B.O.T.) basis. Tenders were invited by the Public Works Department of the State some time in the month of November, 1994. Tenders were received up to 2nd December, 1996. The Letter of Intent came to be issued on 8th August, 1997 and the work contract came to be issued to respondent No. 4.

5. The instant Public Interest Litigation has been initiated in the month of February, 1999 to oppose the construction of fly overs in Mumbai. When this petition came for consideration, this Court by an order dated 7.5.1999 restricted enquiry to the large scale commercial use of the space below the Andheri Fly over. The principal contention of the petitioner, all along has been that, unless appropriate directions are issued, unplanned and impermissible commercial development under the fly overs will be detrimental to the urban environment.

6. This Court, considering the prima facie impact of the various challenges set up by the petitioner, vide order dated 7th May, 1999 had issued directions to the State Government, whereby the High Court, inter alia, required the respondents to place on record:

(A) The extent of such space and proposed user, whether for parking office, shop complex or show windows;

(B) Whether such space for commercial use has already been put to sale. If so, details thereof;

(C) Whether various statutory provisions including Section 37 of the Maharashtra Regional and Town Planning Act, 1966 have been complied with. If so, details thereof;

(D) The record of studies that had undertaken from the view point of smooth traffic flow, environment and security.

In compliance with of the above direction the Respondents have placed on record necessary report in this behalf. The same would be referred to at the appropriate stage of the judgment.

7. This Court, keeping in view the public interest and to serve the larger interest of the society, by further order dated 27th March, 2000 constituted an Expert Committee comprising of (1) Shri. V.K. Phatak, Chief, Town and Country Planning Division, M.M.R.D.A.; (2) Prof. S.L. Dbingra, Professor of Transportation Systems Engineering, I.I.T., Powai and (3) Shri. H.S. Khan, Chief Engineer (Development Plan), Municipal Corporation of Greater Mumbai. The Committee was also allowed to seek assistance of Shri. S.S. Yadav D.I.G. (Training). The Committee was requested to furnish its expert opinion on the following issues:

(A) Whether there will be adverse environmental impact. If the place below the fly over is permitted to be put to commercial use as specified and may be specified by Respondent No. 4?

(B) If commercial use is to be permitted then the extent of the use and the type of commercial use that may be allowed.

Pursuant to the above request, the lucid and comprehensive report dated 13.4.2000 was submitted by the Committee to this Court. In the report some precautionary and mitigating measures were suggested to minimize the likely adverse environment impact. Amongst others, one of the important and significant recommendations made was stage wise occupation and concurrent monitoring of traffic, air and noise pollution. The relevant contents thereof are reproduced here in below:

Stage wise Occupation and Concurrent Monitoring

Stage of Development : Considering the serious problems of congestion and pollution currently being faced the commuters and the residents we strongly recommend that the fly over should be completed and opened to traffic at the earliest. We therefore recommend following stage wise development;

Stage 1 : Completion and commissioning of fly over.

Stage 2 : Widening of low-level roads to 5 lanes on the western side and 4 lanes on the eastern side.

Stage 3 : Occupation of commercial space close to the completed subways but not exceeding 9000 sq. m.

Stage 4 : Occupation of remaining commercial space after the results of concurrent monitoring are available and subject, to additional precautionary or mitigating measures that may be imposed as explained below.

It was also indicated by this Court in subsequent order dated 4th May, 2000 that there was no order preventing or staying the construction of the fly over. It was open to the concerned respondents to resume construction of the fly over pending consideration of the user of the space below fly over. By further order dated 28th July, 2000 this

Court had permitted the State Government, if so advised to pay to the contractor the amounts due for the work done and also for further work against current bills submitted by the contractor. Upon such payment being made, the contractor was given liberty to resume the construction and complete the work within eight months of the date of receipt of the payment.

THE ISSUE

8. In the above backdrop, the only crucial question which arise for consideration is : whether commercial user of the space below the fly over is legally permissible ?

RIVAL CONTENTIONS

Submission of the Petitioners:

9. Learned Counsel Mr. Diwan appearing for the petitioners contends that the commercial user of the space below the fly over will have an adverse environmental impact by increasing congestion that will be felt for generations to come. According to him, ample material is available on record to show that no proper planning preceded implementation of the commercial use component of the Andheri Fly over and diverse provisions of town planning laws have been violated by the respondents. The decision to construct fly over has been taken without inviting public objections or informing the public or seeking independent expert opinion. Furthermore, the State Government has unilaterally decided to permit commercial use of the space below the fly over. Such commercial user is likely to result in the Floor Space Index (F.S.I.) of 2 or more which would be in breach of permissible F.S.I.

10. The submissions of the petitioners can broadly be categorised under the following five heads:

(I) Commercial user of space under the Andheri Fly over amounts to an *unlawful change of user* and ought not to be permitted.

(II) The Government order dated 27.10.1997 is *ultra vires Section 154 of the M.R.T.P. Act*.

(III) There is no regulatory regime permitting large commercial complexes or malls beneath fly overs and hence the proposed development is illegal.

(IV) The *commercial development is against the weight of expert material* on record; and

(V) The impugned development *violates the public trust doctrine and the precautionary principles* laid down by the Supreme Court.

(Emphasis supplied) Here italicised.

I. Unlawful Change of User :

11. The learned Counsel appearing for the petitioners contends that the land on which commercial development of a very great magnitude is undertaken by the respondent does not permit commercial user. The existing land use map for Andheri (Regional Plan and Development Plan) designate the subject strip as the Western Express Highway. The change of user from a Highway/non-commercial zone to a commercial zone has not been carried out in accordance with law. According to him, the Draft Revised Regional Plan for M.M.R., 1996-2011 holds the field. It was published on 16.1.1996. The Development Plan for Greater Mumbai, 1991 came into force from 25.3.1991. In his submission, neither the Regional Plan nor the Development Plan envisage commercial use of space on the subject strip of the Western Express Highway. The statutory procedure for change of user so as to enable commercial user under the Western Express Highway (Andheri) of the Regional Plan as contemplated under Section 20(2) and (3) of the M.R.T.P. Act has not been followed in respect of the Development plan. He went on to submit that for change of user from a highway to commercial use is contrary to existing permissible use envisaged in the Development Plan.

12. The learned Counsel for the petitioner tried to impress upon us that no notification has ever been issued inviting objections for permitting commercial use of the space admeasuring about 45,000 sq. metres below the fly over at Andheri. In his submission such a huge change of user is bound to substantially change the entire character of the locality contrary to the existing permissible land use. The petitioner relied upon the Judgment of the Supreme Court in the case of Dr. G.N. Khajuria v. Delhi Development Authority: AIR1996SC253 , in support of his contention. He further contended that at the point of time when a change of user was intended if the regulations did not permit such change the Authority concerned had no power to allow such change of user. In support of his submission, he relied upon a Judgment of the Supreme Court in the case of Dadar Avanti Cooperative Housing Society Ltd. v. Municipal Corporation of Greater Mumbai: [1996]2SCR353 .

II. IMPUGNED ORDER DATED 27.10.1997 IS ULTRA VIRES SECTION 154 OF THE M.R.T.P. ACT.

13. The learned Counsel invited our attention to the order issued by the State Government dated 27.10.1997 in exercise of the power conferred under Section 154 of the M.R.T.P. Act and contends that the said order is ultra vires provisions of Section 154 of the M.R.T.P. Act. He further submits that the order issued under Section 154 to the effect that the modified Regulation 68 be brought into immediate effect pending Section 37 procedure is also bad and illegal. In his submission the M.R.T.P. Act contemplates a detailed procedure for inviting objections and suggestions from members of the public being an essential part of the planning process. He thus urged that it was incumbent on Government to strictly follow the procedure under Section 37 of the Act. In absence of compliance with the procedure laid down under the provisions of Section 37 of the Act, millions of citizens residing in Bombay and the unborn generations are likely to be affected by this development. He, therefore, contended that considering the impact of the order of the State Government it was necessary for the State Government to follow the mandate of the Section strictly in its true letter and spirit. In his submission, the participatory dimension of town planning cannot be overridden by resort to Section 154. He urged that the interpretation of Section 154 should be such which will advance the object of

the Act, not defeat it. In his submission, the impugned direction defeats the participatory process; shuts out the affected citizen from decision making; present citizens with a fait accompli situation; which is contrary to good governance and the public trust doctrine and tried to persuade this Court to lean in favour of citizens participation in town planning process because such participation is likely to improve the quality of the final decision and reduce grievances of public at large. To support his submission, he tried to borrow help from the Judgment of the Supreme Court in the case of Bangalore Medical Trust v. B.S. Muddappa : [1991]3SCR102 , and draw our attention to the observations; wherein the Apex Court held that (para - 29):

The residents of the locality are the persons intimately, vitally and adversely affected by any action of the B.D.A. and the Government which is destructive of the environment and which deprives them of facilities reserved for the enjoyment and protection of the health of the public at large. The residents of the locality, such as the writ petitioners, of that petition were naturally aggrieved by the impugned order and, therefore, they ought to have provided with an opportunity of hearing.

He further went on to submit that when administrative power is to be exercised affecting public interest, it should be exercised objectively, rationally, intelligibly, fairly and non-arbitrarily. The decisions should not be taken in undue haste disregarding the procedure, nor should it be ultra vires the powers conferred by the Statute. The learned counsel for the petitioners, relying upon this principle, urged that in absence of Amendment to Regulation 68 commercial development under the fly over was not and is not permissible and, even if Section 37 can be said to have been complied with, in respect of Regulation 68, insertion of Regulation 68 could only be prospective, that too after the receipt of the Government sanction and the project authorities would be required to reapply for permission. In this submission, even the pre-publication process has not been adequately complied with inasmuch as the newspapers "Daily" and "Mumbai Tarun Bharat" enjoy a very limited circulation. There should have been meaningful pre-publication. In support of his submission he relied upon the unreported judgment of the Gujarat High Court delivered in the case of Centre for Social Justice v. Union of India Special Civil Application No. 8529 of 1999 decided on 17.2.2000, 29.2.2000 and 2.6.2000. He thus urged that the order dated 27.10.1997 be declared as ultra vires provisions of Section 154 of the M.R.T.P. Act and the powers exercised thereunder be treated as in violation of Article 14 of the Constitution of India.

III. NO REGULATORY REGIME FOR MALLS BENEATH FLYOVERS:

14. The learned counsel for the petitioners further urged that it was incumbent on the part of the Corporation under Section 22(m) of the Corporation Act to provide for regulations in respect of development within the city. The detailed regulations in the form of the Development Control Regulations, 1991 have been framed. These regulations make no provision, whatsoever; for establishment of malls under fly over. No town planner has had regard to the special conditions, situations and requirements of such malls as such he urged that no regulatory regime exists. In his submission, in contrast, specific and detailed building requirements exist under the DC Regulations controlling, vital parameters, such as, F.S.I., nature of commercial use, ventilation, size of rooms, sanitation, fire fighting, access and passage ways parking requirement, etc. for buildings in general as well as specific provisions are made for educational

buildings, institutional buildings, assembly buildings, residential buildings, etc. Existing governing regime is extremely vague and is made to govern by general set of conditions appended to Government Notification dated 27.10.1997. What is required for a metropolis like Mumbai, under Section 22(m) are detailed provisions in this behalf, in the absence of which there is failure on the part of Government to carry out its duties under Section 22. The regime of conditions issued in the impugned notification falls far short of an adequate reasonable set of regulations and for this reason too, the conditions are ultra vires Section 154. The power of Government has been used to defeat the provisions under Section 22(m) of the Corporation Act. In his submission, by no stretch of imagination such huge malls which are likely to cause severe impact on the environment can be permitted without detailed regulations being, first, enacted in accordance with law. Otherwise, the adverse civic consequences on amenities, water supply, electricity, congestion, sanitation, public health, pollution etc. will increase, in absence of statutory framework. He tried to emphasis his submissions with the help of absence of a regulatory regime on various aspects of the project, detailed reference of which is not necessary for deciding the question raised.

IV. COMMERCIAL DEVELOPMENT IS AGAINST THE WEIGHT OR EXPERT MATERIAL ON RECORD AND NO PROPER ENVIRONMENTAL IMPACT ASSESSMENT STUDIES HAVE BEEN CONDUCTED :

15. The learned counsel appearing for the petitioners relying upon the affidavit of Mr. A.V. Gangurde, Chief of the Transport and Communications Division, Mumbai Metropolitan Region Development Authority, tried to emphasis the need for better Environmental Impact Assessment studies and pressed into service various reports such as W.S. Atkins Report, T.C.S. Draft and final Report and, the reports of two Experts dated 22.11,1999, one submitted by Mr. Dinesh Mohan and another submitted by Ms. Beena Balakrishnana, and also tried to borrow support from the Report of the Expert Committee with regard to Andheri Fly over (dated 12th April, 2000). He also invited our attention to the report of the World Bank in this behalf and urged that the impugned development is bad because the mandatory environment impact assessment procedure under the Regional Plan has not been followed or adopted. He further explained as to how Regulation 1.3.3. and 15 of the Revised Draft Regional Plan for M.M.R. has been violated and urged that considering the said reports, necessary directions be issued to the Respondents before the space below fly over is allowed to be used so as to prevent degenerations of environment in the town in general and in the concerned area in particular where the fly over is being constructed.

V. VIOLATION OF THE PUBLIC TRUST DOCTRINE AND THE PRECAUTIONARY PRINCIPLES :

16. The learned counsel appearing for the petitioner, relying upon the judgment of the Apex Court in the case of M.I. Builders v. Radheyshyam Sahu : [1999]3SCR1066 , contends that the impugned development violates the public trust doctrine and the precautionary principle as laid down therein and tried to emphasis that the permission for commercial user of the space below the fly over will bring more congestion and the area will get more polluted. Any commercial activity, if allowed, will put additional burden on the locality. In his submission, primary concern of the courts should be to eliminate the negative impact which the underground shopping complex

will have on environmental conditions in the area and the congestion which will aggravate the same on account of increased traffic and number of people visiting the complex. He thus submits that there is no alternative but to prevent the commercial use of the space below the fly over and prayed for appropriate directions in this behalf. Learned Counsel appearing for the petitioners also drew our attention to the Judgment of the Supreme Court in the case of A.P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.) and Ors. : [1999]1SCR235 , and tried to press into service the concept of right to healthy environment borrowing assistance from Article 21 of the Constitution of India. In his submission in today's emerging jurisprudence, environmental rights which encompass a group of collective rights are described as "third generation" rights. The "first generation" rights are generally political rights such as those found in the International Convention on Civil and Political Rights while "Second generation" rights are social and economic rights as found in the International Covenant on Economic, Social and Cultural Rights. He, therefore, urged that the concept of healthy environment, as a part of the fundamental right to life as developed by the Apex Court, is finding acceptance in various countries side by side with the right to development. In this backdrop, he tried to urge that permission to occupy the space below the fly over for commercial use would be in violation of the concept of right to healthy environment and would be in violation of Article 21 of the Constitution of India. Lastly, he urged that considering the magnitude on the environmental impact with commercial development under fly over, is likely to have, the respondents be directed to conduct over all Environmental Impact Assessment (E.I.A.) of the commercial use not restricted to impacts on congestion, pollution, amenities, etc. but also with regard to all proposals for commercial development under fly over. He further urged that the said report (E.I.A.) be allowed to be placed before members of the public at the time of inviting suggestions and objections, and in alternative, urged that directions directing complete prohibition of any commercial activity under the Andheri Fly over, be issued to the Respondents with further direction to examine alternate commercial utilisation of the space created under the fly over including warehousing, pay and park schemes, etc. which would minimise congestion and other adverse environmental impacts.

Submissions of the State :

17. Per contra, the learned senior counsel appearing for the State, Shri. C.J. Sawant, submitted that the question of improving the traffic and transportation in Mumbai Metropolitan Region (M.M.R.) particularly in Greater Mumbai was under active consideration of Government for a long time. The likely cost of projects known as Mumbai Urban Transport Project II (M.U.T.P. -II) which includes the improvements in Suburban Rail, Road base Mass Transport, Road Improvements etc. being very huge and beyond the capacity of the State and Central Government, the approach was made to the World Bank for financial assistance. At the request of World Bank, a Comprehensive Transportation Study (C.T.S.) was carried out through M/s. W.S. Atkins of U.K. as Consultants, who recommended programme for improvement of traffic and transport in M.M.R. and the said report contained recommendations broadly classified as : (1) Priority to Rail based and Road based Mass Transport throughout M.M.R.; (2) Suggestions for some Road Improvement works and, (3) Recommendations for Traffic restrain measures and Demand Management in Island city of Mumbai. He thus contended that the decision to construct the fly over bridge was taken consciously with a view to improve the traffic and transportation situation

prevailing in Mumbai. He thus refuted the allegations of the petitioners that the decision taken by the State Government to build the fly overs was highly imprudent.

18. The learned counsel appearing for the State brought to our notice the Development Control Regulation (D.C.R.) for Greater Mumbai which have been sanctioned on 20.2.1991 and were brought into force w.e.f. 25.3.1991 vide Notification dated 17.9.1994, whereby Regulation No. 68 was sanctioned which forms part of the D.C.R. sanctioned in 1991, which permits underground parking, shopping below existing and proposed roads, one or two levels below the ground. He thus urged that in order to make overall project of construction of fly over bridges economically viable, the Municipal Corporation of Greater Mumbai had approached Government. However, considering financial restraints, the Mumbai Municipal Corporation of Greater Mumbai was not in a position to construct fly over on their own but at the same time, the Government of Maharashtra was keen to implement such proposals by adopting Build, Operate and Transfer (B.O.T.) principle for which purpose some commercial use had to be allowed. He further tried to bring to our notice that the Government issued directives under Section 37(1) read with provisions of Section 154 of the M.R.T.P. Act on 27.10.1997 to the Municipal Corporation of Greater Mumbai to initiate modification to D.C.R. No. 68 by following due procedure laid down under the Act and also drew our attention to the addendum dated 18.3.1998 to the said directives and contended that all these efforts were to expedite construction of fly over by making them economically viable. He further tried to emphasis the necessity to have number of fly over so as to solve traffic congestion to Improve traffic transportation system in Mumbai. Considering the financial resources of the State it was not necessary for the State Government to undertake such projects. Therefore, in order to attract entrepreneurs, it was found necessary to allow utilization of space below fly over for commercial activity. He further urged that even as per the unamended Regulation 68, Municipal Commissioner is empowered to permit parking and shopping below existing or proposed Development Plan Roads and below lands reserved for Recreational Ground/Playground/Garden/Parks and open spaces both existing and proposed and to be used at one or two levels below the ground subject to exceptions provided therein. He, therefore, contended that no such amendment, as a matter of fact, was necessary for commercial utilization of the space below the fly over, however out of abundant caution the same was done in exercise of powers conferred under Section 154 of the M.R.T.P Act, 1966 with a view to specifically provide for utilization of the space below the fly overs, which are nothing but elevated roads, and that is how he tried to support the order issued by the State Government in exercise of powers under Section 154 of the M.R.T.P. Act.

19. He further brought to our notice that with a view to have a best possible offers for the said Andheri Fly over Project global tenders were invited by inserting advertisement in almost all the leading national newspapers, such as (1) The Hindu (All editions); (2) The Times of India (New Delhi); (3) Rashtriya Sahara; (4) Indian Express (Mumbai); (5) Loksatta (Mumbai); (6) Sakal (Pune); (7) Shri Profit (Mumbai); (8) Times of India (Mumbai); (9) Economic Times (Mumbai and Calcutta). He further pointed out that the last date up to which blank tender form could be sought was extended from time to time (14 occasions) to facilitate better participation in the said tender. With the said extensions 14 entrepreneurs purchased the blank documents; out of whom three entrepreneurs, viz. M/s. Gammon India Ltd., M/s. Shapoorji Pallonji & Co.; and M/s. V.M. Jog Engineering Ltd. submitted their

offers before the stipulated last date and time i.e. 2nd of December, 1996. He explained elaborate procedure followed by the State Government in inviting the tenders, opening and acceptance thereof and pointed out that ultimately the Respondent No. 4 was adjudged as acceptable tenderer. He further tried to emphasize various circumstances giving rise to various issues which had cropped up related to the said Andheri Fly over project and the consequent meetings held in Mantralaya of all the concerned parties from time to time. He pointed out that on 5.5.1997 a meeting was held in Mantralaya; wherein Municipal Commissioner clarified that instead of Mezzanine floor, first floor will be permitted in the commercial complex, if separate staircases are provided. The Municipal Commissioner further indicated in the said meeting that minimum width of the footpath should be of 2 meters. Thereafter, again another meeting was held on 20.5.1997, in the office of M.S.R.D.C., to decide the issues related to the general layouts of the fly over wherein representatives from M.M.R.D.A., B.M.C., Traffic Police, P.W.D. M.S.R.D.C., were present. In this meeting, there was a consensus that instead of the split fly over, a centrally constructed fly over which has many advantages should be preferred. The major disadvantage of a split fly over was chaotic weaving of fast and slow traffic at the beginning and at end of the split fly over. Accordingly, the Respondent No. 4 was asked to submit modified layout for centrally located fly over with first floor instead of mezzanine floor as per the initial recommendations of the B.M.C. In view of this, Respondent No. 4 submitted its modified offer suggesting total equivalent proposed area to be used for commercial purpose admeasuring about 30,000 sq. mtrs. In the original offer submitted by the Respondent No. 4 the selling rate was @ Rs. 45,000/- per sq. mtr. was assumed by him. In the modified offer, this rate was reduced to Rs. 32,500/- per sq. mtr. due to various factors like; accessibility etc. He further pointed out that this reduction in rate was compensated by increase in the commercial area from 21,600 to equivalent 30,000 sq. mtrs. The Cabinet Committee for infrastructure approved this modified proposal in a meeting chaired by the Honourable Chief Minister wherein Ministers and Secretaries of all other concerned departments were present. In the said meeting it was noted that, in spite of the wide publicity given to invite by tenders for the said project, the response was very lukewarm as could be seen from the fact that only one responsive offer of the Respondent No. 4 was received. The Committee was, therefore, of the opinion that there was no likelihood of receiving a better offer than the one given by the Respondent No. 4 and, therefore, the Committee reached a decision that the modified offer of the Respondent No. 4 should be accepted. Accordingly, the learned Counsel for the State tried to explain a total transparent procedure adopted and followed in awarding the contract to the Respondent No. 4.

20. The learned Counsel for the State submitted that as per the conditions mentioned in the Regulation 68, the Respondent No. 4 submitted his plans to the M.M.R.D.A. for approval, as the said plans were already approved by the B.M.C. The M.M.R.D.A., vide their letter dated 9th December, 1998, sought various clarifications from the Respondent No. 4 and endorsed a copy of the said letter to the Public Works Department of the State Government (P.W.D). The said letter was suitably replied by Respondent No. 4 as well as Government of Maharashtra and necessary clarifications were tendered for consideration of the M.M.R.D.A. He also tried to urge that the State Highways are vested in the P.W.D. It being a State Highway Authority, it need not have sought permission of the local authorities, while carrying out improvement of the roads or the facilities and further pointed out that for studying various issues

raised by M.M.R.D.A. an expert consultant was appointed by the Government, viz. Mr. V.N. Abhyankar, Retd. Chief Engineer, B.M.C. as decided in the meeting convened by the Chief Secretary on 3rd June, 1999. In the meeting on 15th June, 1999 the terms of references for the study were discussed and finalised, and thereafter further two meetings were held by the Consultant on 24th June, 1999, and 1st of July, 1999; wherein the representative of M.M.R.D.A., Traffic Police, Traffic Cell of B.M.C., M/s. Jog Engineering Ltd. (Respondent No. 4) and P.W.D. did participate and the final report was submitted by said Consultant on 16th July, 1999. In the final report the Consultant had suggested some minor modifications. The said report of the Consultant was accepted by Public Works Department of the State Government and accordingly, necessary directions for modifications in the proposal were Issued to the Respondent No. 4 with direction to submit modified proposals incorporating the modifications suggested by the Consultant of M.M.R.D.A. for obtaining approval under Regulation 68.

21. The learned counsel appearing for the State in order to meet argument of the petitioners relating to the traffic congestion due to the commercial exploitation of the space below the fly over, submitted that the original proposal of the fly over on B.O.T. basis with utilization of the space below the fly over was discussed by the P.W.D. officials with Dr. Pasricha in 1995 when he was Additional Commissioner of Police (Traffic). The Additional Commissioner of Police (Traffic) was again consulted after the offers were invited by the respondents. The N.O.C. for the said project was given by the Traffic Police vide its letter dated 19th April , 1996. As per the suggestions of the Traffic Police the location and design of the fly over was changed from the split fly over at the side of the carriage way to the centrally located fly over. The work of the said fly over was commenced by the Respondent No. 4 after getting necessary permission from the present A.C.P. of Traffic vide letter dated 24th March, 1998. Therefore, the learned counsel tried to point out that the final design of the fly over has been formulated in consultation with various departments including the Traffic Police and contended that the problems of unauthorised parking on the main carriageway of the Highway will have to be tackled by enforcing proper traffic management. He also pointed out that one exclusive lane on the west side of the carriage way is proposed to provide for entry and exit of the vehicles to the underground parking area proposed by the Respondent No. 4. He further submitted that the pedestrian traffic is not expected on the Highway. However, provision will be made in due course of time by way of footpaths connecting with bus stops and auto rickshaw stands. He further pointed out that shops dealing in hazardous chemicals/explosives are prohibited as per the tender conditions and Respondent No. 4 will be responsible for maintenance and safety of the commercial area during the period of the lease. He, therefore, urged that the apprehension of the petitioners has no foundation.

22. The learned counsel for the State further submitted that in so far as environmental clearance for the said project is concerned, the proposals in that regard were submitted in the prescribed form to the M.O.E.F., Government of India, New Delhi, by the Superintending Engineer vide letter dated 8th October, 1999 and whilst the said application was pending, the M.O.E.F., published a Notification dated 10th April, 1997, wherein, it has been stated that "Highway Project relating to improvement works including widening and strengthening with marginal land acquisitions along with the existing alignment, provided it does not pass through ecological sensitive

area; such as, National Parks, Sanctuaries, Tiger Reserves, Reserve Forest, do not require environmental clearance". Since the above fly over falls under the said category i.e. it is a project relating to the improvement in the existing road facilities and also within the existing land width, the Environment Department of the Government of Maharashtra, by its letter dated 1st of September, 1997, had confirmed what has been stated in the notification of the M.O.E.F., Government of India, as such, it was not necessary to obtain environmental clearance for the said project.

23. The learned counsel for the State, to counter arguments advanced by the petitioners relating to the breach of Floor Space Index (F.S.I.) submitted that the concept of F.S.I., did not attract to the utilization of space below the bridges/fly overs. Alternatively, he submitted that assuming that the concept of F.S.I., was attracted in the present case the consumption of the alleged F.S.I. would be 0.766 i.e. lesser than the F.S.I., applicable for the area, and, therefore, he contended that the submissions made by the learned counsel for the petitioner in this behalf were fallacious and imaginary. In nutshell, he prayed for dismissal of the petition looking to the public importance of the project and public purpose which the said project is going to serve.

Submissions of Respondent No. 4:

24. The learned senior counsel appearing for Respondent No. 4 Mr. Tulzapurkar submits that the commercial use of the space below the fly over is legally permissible and there is absolutely no violation of law and the environmental impact has already been considered by the concerned authority. He, in all humility pointed out that the present petition should not be entertained as the same was filed after a considerable delay. In his submission, the petitioners are guilty of serious laches. In support of his submission, he pointed out that the tenders for the work of construction of the fly over at Andheri were invited by the Public Works Department of the Government of Maharashtra in November, 1994. The tenders were submitted on 2nd December 1996. The Letter of Intent was issued on 8th August, 1997. The total costs of the project in question is in the sum of Rs. 110 crore. As against this cost of the project, the contribution of the Government is hardly in the sum of Rs. 9 crore. The Respondent No. 4 has made all the arrangement for finance from I.C.I.C.I. Ltd. and borrowed huge funds from various financial institutions like, I.C.I.C.I., I.D.B.I., out of which Rs. 40 crore are disbursed and till the dated of petition an amount of Rs. 71 crore has already been spent on the instant project. He pointed out that the project work has already commenced from the date of the work order itself, and the work has not only progressed to a considerable extent but more than 65% of the work has already been completed. In view of this, he at the cost of repetition, urged that the belated approach to this Court, after a considerable delay, is still unexplained. Thus, in his submission, the petition deserves to be dismissed on the ground of delay and laches alone.

25. He further submits that the use of the space below the fly over for commercial purpose is not at all illegal. He tried to point out that the area is not in non-commercial zone. In the area in question, the land can be used for residential as well as commercial purposes as per the Development Plan. The fly over under construction fall under R2 zone, where commercial use of land is permitted. As a result of the road being elevated the land below can be put to any use permitted by the R2 zone as per Regulation No. 52. He, therefore, urged that there was no need to change the Regional

Plan or Development Plan. Land use is governed by the Development Plan which permits commercial use of the land as per Regulation 52.

26. The learned Counsel for the respondent No. 4 alternatively, contends that the designation of the area on the Development Plan is "highway or roads". There is no change of user. The area is mainly used for roads. The change mean a total change or totally different use. In his submission, if the original use as indicated in the Development Plan coupled with some other use for making the originally designated use possible, then such use is permissible. To say that there is a change of user it must be shown that the original use no longer exists or survives. He, in support of his submission, placed reliance on the judgment of the Supreme Court in the case of *Forward Construction Co. v. Prabhat Mandal (Regd.) Andheri* : AIR1986SC391 . In that case the Development Plan showed the area to be used as a bus depot. Contract was given to a contractor to build a bus depot by selling a portion of the land for commercial use for raising funds. The said action was challenged. The challenge was repelled by the Supreme Court by holding that there was no change of user since the original use continue along with the commercial user which made the original use possible. Thus, taking assistance from this judgment, the learned counsel for the Respondent No. 4 at the cost of repetition urged that there is absolutely no change as contemplated by law so far as the land use is concerned. The area is being used for road along with commercial user which made original use possible. The learned counsel for respondent No. 4 also tried to distinguish the case of *Dr. Khajuria* (cited supra) wherein the land used was designated for public park. It was changed to Nursery School. It was held to be illegal that, there was a total change and the original use did not continue. Similarly, on facts, he also tried to distinguish another judgment of the Apex Court relied upon by the petitioner in the case of *Dadar Avanti Society Ltd.* (cited supra) and contended that even in that case there was a total change of user from residential to non-residential and the original use did not continue. He urged that such is not the position in the present case.

27. The learned counsel for respondent No. 4 further submits that the commercial user of the space below the fly over is permissible because there is no violon of Regional Plan. The contention that Regulation 15.3.1. of the Draft Regional Plan required Environmental Impact Assessment report has not been followed is also not cornet, In order to borrow support to this submission, he relied on the affidavit filed by the Respondent No. 2 (page 54) so as to contend that firstly, the Development Plan would apply and not the Regional Plan and, secondly, the Draft Regional Plan itself is proposed to be changed which change has, been, published in the Gazette and under which change the area, is shown as UI zone which means than the Environmental Impact Assessment Report is not required.

28. The learned counsel also refuted the arguments of the petitioners that the directive under Section 154 of the M.R.T.P. Act relating to Regulation 68 is ultra vires. He urged that the tenability of the petitioners' contention needs to be considered in the light of the facts of the present case. He pointed out that original Regulation 68 was introduced by treating it a substantial change in terms of Section 31 by following the procedure prescribed by the M.R.T.V. Act, 1966. As a result thereof, underground parking and shopping below existing and proposed Development Plan roads and below land reserved for Recreational Ground/Playground/Garden/Parks and open spaces both existing and proposed became permissible, except the specified grounds

such as the Oval Maidan, Cross Maidan, Shivaji Park etc. Since there was no provision for permitting such use below any road which was elevated i.e. fly over a very minor addition to the then existing Regulation 68 was thought of, though it was not necessary. However, in order to avoid technical objections, the directives under Section 154 were issued for the efficient administration of the M.R.T.P. Act, 1966. In order to meet the urgent situations; if it becomes necessary for the Government to issue directions, then such directions can be issued under Section 154. To Interpret Section 154 so as to prevent the Government from issuing directives thereunder to provide for urgent situations is nothing but to nullify the object of that provision. Further no blank or unguided or unfettered discretion is conferred on the authorities. The directive is not contrary to the Act but is in furtherance of the Act. The directive under Section 154 can be issued for efficient administration of the Act. The Development Plan, which provides for the area to be used for highway or road enables the Government to take all steps which are necessary for using that area for highway, which use below an ordinary road, not elevated due to having a fly over was permitted under Original Regulation 68. In his submission a flyover, is a road and in order to build the fly over commercial use below the fly over is necessary to raise finances. Thus the directive whereby Regulation 68 was modified was for efficient administration of the Act. The same is not running counter to the object of the Act. He tried to distinguish the case of the Bangalore Development Authority (cited supra) and tried to urge that the directives under Section 154 were for the effective administration of the Act to construct fly over by raising funds.

29. The learned counsel for the Respondent No. 4 further submits that the Development Plan is a creature of the statute unlike the Town Planning Scheme, which is equivalent to the statute itself. The directive is a part of the directives, which provide for modification of the Regulation. The object was to see that the fly overs were constructed by raising funds. The object of the Act is not defeated as the area permits commercial use. He also tried to demonstrate the different wordings used in Section 65 of the Bangalore Act in comparison to the phraseology used in Section 154 of the M.R.T.P. Act and tried to highlight that the directive in that case was contrary to the Scheme. As against this, in the instant case the directive is for efficient administration of the Act. Regulation 68 permitted user of the space below the roads. The directive is only to clarify that the roads would include fly over. This power was exercised in good faith under Section 154 to meet the change of the concept, i.e. road above the ground level. Thus he contends that the directive issued is not at all ultra vires the provisions of the Act.

30. He also tried to meet the argument of the petitioners that there is no regulatory Scheme or Regime or that ad hoc decisions were taken, therefore, the same are illegal. In his submission, if the decision was taken to meet the emergent situation within the framework of the statute that by itself, would not make the decision illegal merely because a novel way was invented by the authorities/respondents. The decision does not become arbitrary merely because a new method is followed. He tried to emphasize that the commercial use of the space available below the fly over is very much permissible.

31. The learned Counsel for the Respondent No. 4 while supporting the contention advanced on behalf of the State submitted that there was enough material before the concerned authorities which took the decision for use of space below fly overs for

commercial purposes. The High Power Committee meeting held on 20th May, 1997 took into considerations all the aspects. The enormous correspondence clearly shows that the concerned authorities have applied their mind and in order to avoid traffic congestion the fly over was designed to be built in the centre of the road instead of split fly overs on two sides. The views of the fire brigade, Additional Commissioner of Traffic; Municipal Corporation were taken. All this material on record would show that the environmental impact have also been considered and, therefore, use of space below fly over for commercial purpose would not result in any adverse environmental impact.

32. The learned counsel for the Respondent No. 4 also pointed out that there is no access to the constructed portion from the East. Only one lane on the West will be available for access to the constructed portion of the flyover which lane goes to the basement. There is no access to any constructed portion of the fly over except from within the constructed portion. He also tried to impress upon us that presently the total car parking space to be provided for 550 cars is about 3,07,500 sq. ft. He, on arithmetical calculations, tried to submit that one car will require about 559.09 sq. ft. space to park and not 1,266.08 sq. ft. as canvassed by the petitioners. He also urged that the concerned authorities have put restrictions on the commercial use of the area which are sufficient to avoid any adverse environmental impact on the residents or the members of the public using the fly over. The fly over will have 6 lanes for use for vehicles. Outside the constructed portion of the fly over, for the northbound traffic, there will be 5 lanes and for the southbound traffic, there will be 4 lanes. He took us through the entire material available on record and also drew our attention to the various reports of the Experts and the Study Groups and tried to impress upon this Court that no illegality has been committed either by the respondents in formulating, projecting, implementing and carrying out and/or promoting construction of Andheri Fly over and by allowing the commercial use of the space below the fly over. In conclusion, he prayed for dismissal of the petition, being without any substance.

33. Before proceeding further with the discussion, it may be proper to read the relevant provisions for break up of statutory limbs and to set the contours of Public Interest Litigation to answer the issue involved in this petitions.

STATUTORY PROVISIONS

34. With a view to ensure the Plan, Development and Use of the land in appropriate manner and their execution made effective, the Maharashtra Regional and Town Planning Act, 1966 ("M.R.T.P. Act" for short) was enacted. The relevant provisions thereof are as under;

Section 22. Contest of Development Plan:

A Development Plan shall generally indicate the manner in which the use of land in the area of the Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any other following matters, that is to say,-

... ..

(d) transports and communications, such as roads, highways, parkways, railways, waterways, canals and airports, including their extension and development:

... ..

Section 37. Minor modification of final Development Plan.-

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

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

(2) The Government may make such enquiry after consulting the Director of Town Planning by notification in the Official Gazette, sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction, If a modification is sanctioned, the final Development Plan shall be deemed to have been modified accordingly.

Section 154. Control by State Government.-

(1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final.

35. In exercise of powers conferred under Section 37(1) read with the provisions contained in Section 154 of the M.R.T.P. Act, the following directions were issued by the Government of Maharashtra on 27th October, 1997.

(a) The said Corporation shall take up the steps to modify Uie said Regulations as per "Annexure A" attached hereto and submit the modification proposal (hereinafter referred to as the "said modification proposal") to the Government for sanction after following the procedure laid down under Section 37 of the said Act.

(b) Under the provisions of Section 154 of the said Act, the said Corporation is further directed to bring into effect the said modification proposal with immediate effect, pending its final sanction by the Government in as much as it relates to the construction, of new fly over bridges viz., application of the said modification proposal shall be prospective.

By order and in the name of Governor of Maharashtra.

Sd/
(S.V. Deshpande)
Under Secretary to Government.

CONTOURS OF PUBLIC INTEREST LITIGATION (P.I.L.) AND SCOPE OF P.I.L. JURISDICTION

36. Public Interest Litigation (P.I.L.) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time, the scope of P.I.L. jurisdiction has been widened so as to bring within its scope and ambit subjects such as probity in public life, granting of largesse in the form of licences, protecting environment and the like. The Public Interest Litigation has to be kept within its own boundaries. The Apex Court in *Narmada Bachao Andolan v. Union of India* : AIR2000SC3751, observed as under:

While exercising jurisdiction in P.I.L. cases, Court has not forsaken its duty and role as a Court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the Court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the Fundamental Rights or other legal provisions. While protecting the rights of the people from being violated in any manner, utmost care has to be taken that the Court does not transgress its jurisdiction. There is in our Constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the Executive has sought to impinge upon the Court's jurisdiction. At the same time, in exercise of its enormous power the Court should not be called upon or undertake governmental duties or functions. The Courts can not run the Government nor the administration, indulge in abuse or non use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and rights of Indians. The Courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest, it is precisely for this reason that it has been consistently held by this Court that in matters of policy, the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner, the Court ought not to without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

In respect of public projects and policies which are initiated by the Government, the Courts should not become an approving authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy, welfare of the

people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those area which are the functions of the Executive. For any project which is approved after due deliberation, the Court should refrain from being asked to review the decision just because a petitioner in filing a P.I.L., alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision, it is then not the function of the Court to go into the matter freshly and, in a way, sit in appeal over such a policy decision.

37. Considering the above boundaries of the P.I.L. jurisdiction, this Court has to consider rival contentions advanced by the parties. There are three stages with regard to the undertaking of an infrastructural project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project is to be regarded as a policy decision. While there is always a need for such projects not being unduly delayed, it is at the same time expected that as thorough a study as is possible will be undertaken before a decision is taken to start a project. Once such a considered decision is taken, the proper execution of the same should be taken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a Court may have to play is to see that the system works in the manner, it was envisaged.

ANALYSIS OF SUBMISSION

Preliminary objection:

38. The Respondent No. 4 in its affidavit has pointed out that the petition in question was filed after considerable delay. The Petitioners are guilty of laches. It is absolutely clear from the record that the tenders for the work of constructing fly over at Andheri were invited by the P.W.D. of the Government of Maharashtra in November, 1994. The tenders were received on 2.12.1996. The Letter of Intent came to be placed on 8.8.97. The Respondent No. 4 made arrangement for finance from I.C.I.C.I. Limited (Rs. 20 crores), Industrial Development Bank of India (Rs. 15 crore), Unit Trust of India (Rs. 10 crore) and Small Industries Development Bank of India (Rs. 10 crore). The Project Work had already commenced from the date of work order itself and by the time the petition was filed and came up for consideration, almost 55% work valued at Rs. 61 Crore was already completed and the total investment made in the project was Rs. 71 Crore. Considering this factual data, one has to reach the conclusion that the petition in question suffers from laches and the petitioners are guilty of laches. Needless to mention that when the tenders were floated, the public at large was made known that such a project is likely to come up in the town in general, and in area in particular. By the time the petition was filed, the execution of the project had commenced.

On laches:

39. The Apex Court in the case of Narmada Bachao Andolan (cited supra) also made it clear that the Court, no doubt has a duty to see that in undertaking the decision, no law is violated and people's Fundamental Rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. 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 P.I.L. does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them. The petition in question could have been thrown out at the very threshold on the ground of laches. The vigilant environmentalist like petitioners ought to have approached this Court well before the commencement of project in question. It was not that the project was undertaken secretly. However, considering the importance of the matter having considerable impact involving the substantial issue relating to the environment, this Court vide order dated 7th May, 1999 thought it fit to restrict this petition to the proposed commercial use, if any of the space below Andheri Fly over and by further order dated 28th July, 2000, the State Government was permitted to make payment to the contractor without prejudice to the rights and contentions of the parties in the writ petition and on such payments being made it was expected that the contractor shall resume construction and complete the work within eight months from the date of payment, however, subject to the result of this writ petition. During the course of hearing we were informed that almost 80% work of the project is complete. As a result of the above orders, the only question that remains to be considered is whether commercial use of the space below the fly over is legally permissible.

On Merits:

Tenders for the work of construction of fly over at Andheri were invited by the Government of Maharashtra. This invitation to bid was on globally, competitive basis. The pre-tender conference was held on 22.11.1994 and the last date for submission of tenders was 15th December, 1994. These dates were extended to 10th August, 1996 and 2nd December, 1996. The tenders were invited by inserting advertisement in almost 9 National Dailies. The last date of blank tender form, was extended from time to time, almost 14 times to facilitate the better participation in the said tender. The blank tender documents were purchased by almost 14 Entrepreneurs. Out of which, 3 Entrepreneurs had submitted their offers before the stipulated last date and time i.e. 2.12.1996. The tenderers were required to submit 3 envelopes containing : (i) works experience; (ii) technical bid/proposal and (iii) financial bid. As per the procedure, the envelopes were required to be opened one after the other. If the work experience was satisfactory and qualifying, then only the second envelope of the tenderer was to be opened. If the technical bid or proposal in the second envelope was found to get at least 75% marks, then only the third envelope was to be opened. Out of the three Tenderers, M/s. Gammon India Limited was declared disqualified. Second tenderer M/s. Shapoorji's bid did not fetch 75% marks. Hence only respondent No. 4's third envelope could be opened as the respondent No. 4 got 81% marks. Considering the said fact and commercial viability, the respondent No. 4 submitted two alternate financial bids. In a meeting between B.M.C. and respondent No. 2 held on 5.5.97, followed by the meeting held on 20.5.97, a decision was taken not to have split fly

over but one fly over in centre of the road and the respondent No. 4 was asked to submit a modified proposal. The respondent No. 4 submitted modified proposal for use of equivalent of 30,000 sq. meters for commercial use. The calculations were made in view of the change in decision and ultimately the respondent No. 4 was given the work order.

41. After placing of the work order, several meetings took place with various officials connected with the question relating to Andheri fly over project, such as Municipal Commissioner, representatives from M.M.R.D.A., P.W.D., M.S.R.T.C., B.M.C. and the concerned Ministers were also involved in the decision making process. Under these circumstances, it can safely be concluded that so far as the second stage of taking decision to undertake the project was considered and taken in consultation with the wings of the State. Under these circumstances, no fault can be found with the decision making process. The small area of the decision making process was a cause of concern for this Court, which resulted in increased commercial use of the space below the fly over. Consequently, this Court passed an interim direction on 7.5.99, inter alia requiring the respondents to place on record the material referred to in the said order, the details of which were already referred to in the opening paras of the Judgment. In consequence with the said directions, the State of Maharashtra placed the following informations on record : (a) With regard to the extent of commercial space and proposed user, whether for parking, office, shop complex or show windows, this Court was informed that considering the plot area of width of fly over proper, the F.S.I. worked out to less than the permissible F.S.I. of 1.00 for Mumbai Suburban area. It was also clarified in the affidavit that the nature of the commercial use shall be strictly conforming to B.M.C.'s D.C. Rules as stipulated in the contract conditions and other stipulations informed by the Chief Fire Officer, B.M.C. With regard to the question as to whether parking, office, shop complex, spaces for commercial use have been leased out, it was informed that, no such permission was granted by the Respondent No. 1 to enter into sub-lease agreement of commercial area. So far as compliance of various statutory provisions under Section 37 of the M.R.T.P. Act is concerned, it was informed that the Regulation No. 68 dated 17th September, 1994 was issued only after following the procedure of inviting objections, public hearing etc. The said Regulation permitted the use of the space below existing or proposed road for the purpose of shopping/parking at one or two levels. The amended Regulation 68 was meant only and simply to clarify the interpretation of the said Regulation No. 68 and to make it applicable to the space below the fly over to be used for commercial use since after construction of the fly over the existing road gets raised and, therefore, issuing amended Regulation No. 68 did not involve any major change in the policy resulting into far-fetched implications In urban planning. By and large, it was thus, pointed out that the statutory provisions were complied with. That so far as the record of studies that may have been undertaken from the view point of smooth traffic flow, environment and security to be kept, it was informed that the environmental impact of the project was assessed by W.S. Atkins in the feasibility study for the Andheri fly over and it was observed therein that the overall impact of the fly over will be positive. M.O.E.F. Government of India vide its Gazette Notification dated 10.4.97 has exempted highway projects relating to improvement works along the existing alignment from obtaining environmental clearance. This was confirmed by the Environmental Department of the Government of Maharashtra. Even according to the Draft Revised Regulation Plan and the Regulations submitted to the State Government for sanction in August 1996, the Respondent No. 1 was not

required to obtain M.M.R.D.A.'s concurrence. Thus, there was no statutory requirement of obtaining environmental clearance and carry out Environmental Impact Assessment for the present project. It was, however, pointed out that Impact study of commercial use on vehicular and pedestrian traffic was made by appointing Mr. Abhyankar, Retired Chief Engineer of B.M.C. and the Terms of Reference for the same was finalised in consultation with M.M.R.D.A., Traffic Police, P.W.D. and B.M.C. Authorities. The issue of impact of additional height of the fly over has also been replied to in an affidavit of Shri A.M. Prabhu in para 10. Regarding W.S. Atkins report, it was stated that the study for Planning of Road Systems for B.M.R. was carried out through renowned Research Institute of India i.e. Central Road Research Institute who have recommended construction of fly over at Andheri on priority basis. Similarly, the respondent No. 1 had also carried out detailed study and survey through their in house staff and prepared proposals for fly over at Andheri. The respondent No. 1 found that the study of M/s. Atkins was not sacrosanct. This relevant information sought by the Court vide its order dated 7.5.99 was placed before this Court and prima facie this Court recorded its satisfaction so far as the compliances of the statutory rules are concerned.

42. The next question which requires consideration is whether directive issued under Section 154 of the M.R.T.P. Act relating to Regulation 68 is ultra vires. The original Regulation 68 was introduced by treating it as substantial change in terms of Section 31 by following procedure prescribed by the M.R.T.P. Act, as a result thereof, underground parking and shopping below existing proposed Development Plan road below land reserved for recreational ground, play ground, garden/park and open space both existing and proposed are permissible. It appears that the State Government thought that the minor additions to the existing Regulation 68 would be necessary since there was no provision for permitting such use below any such road which was elevated i.e. fly over. Hence, directive under Section 154 of the M.R.T.P. Act was given. As a matter of fact, the said directive was not at all necessary as the then existing Regulation 68 was capable of taking care to meet the situation faced by the State Government in this case. In our opinion, the amendment to the Regulation 68 was not at all necessary. At any rate this amendment was a minor modification to the existing Regulation 68.

43. At this Stage, it will be relevant to note that similar challenge came up for consideration before the Division Bench of this Court at Nagpur in group of writ petitions, filed by various persons notable amongst them were Indian Institute of Architects and Environment and People Rights Protection Forum and some other practising architects of the city, challenging the construction of proposed fly over at Nagpur. It was contended therein that the construction of the proposed fly over would amount to modification under Section 37 of the M.R.T.P. Act, as such, it should have been notified for inviting objections. This argument was rejected by the Division Bench, Nagpur while deciding the said petitions which were heard in group bearing Indian Institute of Architects and others v. State of Maharashtra Write Petition Nos. 1118, 1194, 1195 and 1157 of 1996 decided on 25.9.1996, The Division Bench observed as under:

We have heard the matter threadbare and have no hesitation in holding that there is no modification whatsoever inasmuch as user of the road continues to be that for passage of vehicle both on ground level and at an elevated level, namely fly over.

44. In the above petitions, one more ancillary challenge was set up by the petitioners that the construction of the fly over was constituted modification of "substantial nature". The said challenge was also rejected by the Court after taking survey of Section 22A of the M.R.T.P. Act. The Division Bench held as under:

From the above it is patently clear that the proposed construction of fly over does not fall in any of the categories mentioned hereinabove. Therefore, the challenge that the modification is "of a substantial nature" is also baseless and cannot be sustained.

45. In view of the above decision and in the above backdrop, two things are clear : firstly, amendment to the then existing Regulation 68 was not necessary. However, only to prevent repeated objections being taken in this behalf, the State Government thought of amending the Regulation 68. Hence directive under Section 154 was issued to meet the urgent situation that too for the effective administration of the M.R.T.P. Act. Thus, directive was not at all contrary to the object of the Act. Secondly, the Development plan which provides for area to be used as highway or road enables the Government to take all steps which are necessary for using that area for highway. The area in which the fly over is being constructed falls in R2 zone, not a non-commercial zone. In this area, land can be used for commercial as well as residential purposes as per the Development Plan of the M.R.T.P. Act. As a result, the road being elevated, the land below it can be used for any commercial purposes without changing original land or Development Plan. It is not a substantial change as held by the Division Bench of this Court at Nagpur in the case of Indian Institute of Architects (cited supra).

46. The designated area of the Development Plan is highway or road and there is, therefore, no change in user. The area is mainly used for road. The original use is indicated in the Development Plan and when coupled with some other use making the original use of designated area possible, is not a total change or not a totally different use. Therefore, commercial use of the space below fly over is permissible under M.R.T.P. Act considering the facts and circumstances of the present case. The Apex Court judgment in Dr. G.N. Khajuria case (cited supra) relied upon by the petitioners is hardly of any help to them. That was a case wherein land designated for public park was changed to nursery school. It was held that there was total change and the original use did not continue. As such, the total change was held to be illegal. Present one is not of that type. Similarly, for the same reasons, another judgment of the Supreme Court relied upon by the petitioners in the case of Dadar Avanti Co-operative Housing Society Ltd. (cited supra) is also not applicable to the facts of the present case because in the case cited there was a complete change of the user from residential to non-residential and the original use did not continue. We are in agreement with the view taken by the Division Bench at Nagpur that by construction of elevated road i.e. fly over, the user of the road continues to be for passage of vehicles. Therefore, the submission of the Petitioners that the commercial user of the fly over amounts to unlawful change of user deserves to be rejected.

47. The third submission that there was no regulatory regime and that the decisions were taken on ad hoc basis and the same are illegal is also without any merit and must be rejected for the same reasons for which the earlier contentions are rejected. At the cost of repetition, we may observe that the provisions of M.R.T.P. Act, and regulations framed thereunder from time to time and, authorities designated therein with adequate powers to implement the provisions of the Act is a well formulated

regulatory regime or scheme. Merely because some ad hoc decisions were taken sometime does not mean that there is no regulatory regime. While formulating the scheme for large scale malls, the existing rules and regulations and building by-laws are sufficient to take care of such projects though it may need minor modifications here or there to meet unforeseen, uncontemplated contingencies considering the peculiar nature of the particular project. The rules, regulations, by-laws and other statutory provisions cannot be static. They have to be modified from time to time based on new experiences so as to maintain and keep pace with scientific modern development, but that does not mean that there is complete absence of regulatory regime.

48. In *Surinder Singh v. Central Government* : [1986]3SCR946 , the issue before the Apex Court was that in the absence of framing rules the provisions of the Act could not be given effect to. In that case, consequent to partition, Government of India enacted the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The Apex Court in para 4 of the judgment posed the question as to whether in the absence of the Rules the Central Government had authority in law to provide for disposal of urban agricultural land by auction sale. The High Court took the view that in the absence of Rules, the Central Government had no power to issue administrative directions providing for the transfer of the urban agricultural land by auction sale. The Apex Court observed as under:

In our opinion, the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of Rules unless the statute expressly provides for the same. In other words, framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the Rules" means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute.

49. It is, therefore, clear that the directives under Section 154 of the M.R.T.P. Act could be issued in furtherance of the powers conferred therein and that by itself can be called as regulatory regime. Thus, as already stated, the contention in this behalf is also devoid of any substance. It has to be rejected at the threshold.

50. The petitioners had also contended that no proper surveys were carried out to determine the impact of commercial development and the same is against the weight of expert material on record. In this behalf, in the opening paragraph of the judgment, while extracting the submission made on behalf of the State, it was noticed that the High Power Committee met on 21st July, 1997 to take into consideration all aspects of the said project, the correspondence clearly shows that the concerned authorities have applied their mind. In order to avoid traffic congestion the fly over was designed to be built in the centre of the road instead of there being two fly overs on two sides. The Fire Brigade put conditions in their letters dated 10th March, 1997 and 5th May, 1997. The other letters including the Work Order clearly show that the relevant facts were considered. In this connection, the clearance given by the Chief Fire Officer on 5th May, 1998, Additional Commissioner of Traffic on 24th March, 1998, Municipal

Corporation D.P. Project on 27th July, 1998 and Municipal Corporation Building Project on 6th October, 1998, Municipal Corporation Executive Engineer Traffic Controller on 5th June, 1998 and by M.M.R.D.A. by letter dated 29th July, 1999 clearly shows that environmental impact has also been considered. We are thus satisfied that more than adequate steps were taken and are being taken by the State while Implementing the said project.

51. The learned counsel for the petitioners while relying upon the judgment of the Supreme Court in the case of A.P. Pollution Control Board II(cited supra) submitted that in a case pertaining to environment the onus of proof is on the person who wants to change the status quo and, therefore, it is for the respondents to satisfy the Court that there will be no environmental degradation. In A.P. Pollution Control Board II case the Apex Court was dealing with the case where an application was submitted by a Company to the Pollution Control Board for permission to set up an industry for production of "B.S.S. Castor Oil Derivatives". Though later on Letter Of Intent had been received by the said Company the Pollution control Board did not give its no-objection certificate to the location of the industry at the site proposed by it. The Pollution Control Board, while rejecting the application for consent, inter alia, stated that the unit was a polluting industry which fell under the red category of polluting industry and it would not be desirable to locate such an industry in the catchment area of Himayat Sagar, a lake in Andhra Pradesh. The appeal filed by the Company against the decision of the Pollution Control Board was accepted by the Appellate Authority. A writ petition was filed in the nature of Public Interest Litigation and also by the Gram Panchayat challenging the order of the Appellate Authority but the same was dismissed by the High Court. On the other hand, the writ petition filed by the Company was allowed and the High Court directed the Pollution Control Board to grant consent subject to such conditions as may be imposed by it. It is this decision which was the subject matter of challenge in the Apex Court. After referring to the different concepts in relation to environmental cases like the 'precautionary principle' and the 'polluter pays principle'. The Apex Court relied upon their earlier decision in *Vellore Citizens' Welfare Forum v. Union of India* : AIR1996SC2715 , and observed that there was a new concept which places the burden of proof on the developer or industrialist who is proposing to alter the status quo and has become part of our environmental law. It was noticed that inadequacies of science had led to the precautionary principle and the said 'precautionary principle' in its turn had led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed is placed on those who want to change the status quo.

52. The Apex Court clarified in the judgment in the case of *Narmada Bachao Andolan v. Union of India* (cited supra) and observed that 'precautionary principle' and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. When there is a state of uncertainty due to lack of data or material about the extent of damage or pollution likely to be caused then, in order to maintain the ecological balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution. On the other hand, where the effect on ecology or environment of setting up of an industry is known, what has to be seen is that if the environment is likely to suffer, then what mitigative steps can be taken to offset the

same. Merely because there will be a change is no reason to presume that there will be ecological disaster. It is when the effect of the project is known then the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.

53. In the present case we are concerned with the construction of the fly over which is neither a nuclear establishment nor polluting industry. The construction of the fly over would undoubtedly result in increasing vehicular traffic but it will not be correct to presume that the construction of fly over will result in complete disaster. The traffic management is one of the important weapon which can take care of the situation which fly over may create. The experience does not show that the construction of fly overs lead to environmental degradation. On the contrary, construction of fly overs would lead to traffic management. No doubt, to some extent it might cause air pollution but many a times a balance has to be struck between two competing public interests. Therefore, in our opinion, merely because the vehicular traffic is going to cause some air pollution that by itself cannot be the ground to stop the construction of the fly over which also serves public interest. What would be the impact with the construction of the fly over is well known in India and therefore the decision in the case of A.P. Pollution Control Board II will have no application in the present case. At this juncture, it will not be out of place to mention that the expert opinion is available with the authorities. The expert opinion has given sufficient indications as to what steps the State Government should take to manage the vehicular traffic. Under these circumstances certain direction which we propose to give in this judgment in this behalf, in our opinion, should take care of the anxiety which the petitioners are entertaining.

54. In the result, we do not see any reason to stop the commercial use of the space below the fly over. In this behalf, it will be profitable to make reference to the judgment of the Apex Court in the case of G.B. Mahajan v. Jalgaon Municipal Council AIR1991SC1153 , wherein the Municipal Council had sponsored a project for development of real estate. The project was to be executed by the developer who was required to take up and execute the project at his own cost and that the developer was obliged to rehabilitate the occupants of the area, 83 adtias and other 60 traders who had encroached upon the land. In addition to this, the administrative block comprising of ground plus 17 floors was intended to be handed over to the Municipal Council free of cost for its own use and of its tenants. The developer was given liberty to dispose of occupancy rights in respect of rest of the accommodation in "commercial complex" and retain the premta paid by the disponees so to reimburse itself the financial outlays on the project as well as the profits. The said project and the contract thereto was the subject matter of challenge before the Supreme Court. While dealing with the said controversy, the Apex Court observed as under:

The plea that a project envisaging a self-financing scheme, by reason alone of the particular policy behind it was beyond the powers of the local authority would not be tenable. A project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The criticism of the project being "unconventional" does not add to or advance the legal

contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. There is, no doubt, a degree of public accountability in all governmental enterprises. But, the question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of Government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost over-runs in projects, balancing of costs against time-scales, quality-control, cost-benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with non combatant economic expediciencies. These are essentially matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority.

In the ever increasing tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the statute should be held permissible. In the context of expanding exigencies of urban planning it would be difficult for the Court to say that a particular policy option was better than another. Thus the project cannot be said to be ultra vires of the powers of the Municipal Council.

DIRECTIONS IN GENERAL

55. Considering the status of Mumbai, its all round growth including increase in the population of the city, the main challenge before the Government would always be to build and provide infrastructure in a planned way for the teeming millions. Otherwise Mumbai cannot survive. In order to fulfil its obligation many more public projects of such types shall have to be undertaken. We cannot restrain ourselves from observing that whenever project of this magnitude is taken up for consideration, the need thereof must be first established, considering traffic management alternatives; that too, after carrying out comprehensive surveys and studies for traffic planning of the city.

56. After need is established the Government is expected to prepare cost benefit analysis which is essential part of any project undertaken by the Government. In order to mobilise finances the Government is expected to work out the scheme for financing such projects with further work, like; preparation of strategic land use plan for transport development; survey keeping in view traffic engineering and management and system selection, detailed engineering studies and preparation of detailed project reports, appointment of consultants for carrying out supervision. The study and planning with regard to environmental impact and negative implications of such projects on the surroundings must precede construction. Public participation in such projects should be encouraged. The M.R.T.P. Act promotes public participation in the process of planning and development but in the instant case we find that no such systematic steps were taken. It is highly irregular to take series of decisions when the project is in progress. Without comprehensive studies, surveys, mobilisation of proper financial resources, high chances of serious mistakes cannot be ruled out.

57.If the aforesaid steps are taken in proper perspective, we are sure that the litigations having effect of stalling public projects can be curtailed. Had these steps been taken by the State in a systematic manner before proceeding with the construction, the instant Public Interest Litigation could have been avoided and the project would not have been unduly delayed.

DIRECTIONS IN PARTICULAR

58. Since the respondents have failed to follow the aforesaid procedure, we are left with no alternative but to issue following directions while disposing of this petitions :

(1) The construction of the Andheri Fly over to continue and the project to be completed at the earliest, ensuring compliance with conditions on which clearance of the project was given by various authorities together with the restrictions put by concerned authorities to avoid any adverse environmental impact on the surrounding residents.

(2) The occupation of the commercial area shall be stage wise, strictly as per the report submitted by the Expert Committee appointed by this Court, the details of which are reproduced in para 7 (supra) subject to concurrent monitoring of traffic, air and noise pollution.

We hope that the Government of Maharashtra will also implement other important recommendations made by the aforesaid Expert Committee with regard to other environmental aspects so as to avoid adverse traffic and environmental impact.

59. We have had the advantage of comprehensive and in-depth opinion of the expert opinion of the Expert Committee for which we compliment all the members of the Committee.

In the result, these petitions are dismissed in the aforesaid terms. Accordingly, rule is discharged in each of the petitions with no order as to costs.

Before we part with the case, we wish to place our appreciation on record for the assistance rendered to us by all the learned counsel appearing for the respective parties to the petition.

Note: This document has been provided online by IELRC for the convenience of researchers and other readers interested in water law. IELRC makes no claim as to the accuracy of the text reproduced which should under no circumstances be deemed to constitute the official version of the document.