This Order is modified/corrected by Speaking to Minutes Order dated 23/06/2025

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1152 OF 2002

1. **NGO Alliance for Governance and Renewal (NAGAR)**, having it's registered office at Cecil Court, 3rd Floor, M. Kavi Bhushan Marg, Colaba, Mumbai 400 001

2. **Neera Punj** of Mumbai, Indian Inhabitant, Convenor of CitiSpace residing at 1, Lotus Court, J. Tata Road, Churchgate, Mumbai 400 020

3. **Nayana Kathpalia** of Mumbai, Indian Inhabitant, Member of the Steering Committee of CitiSpace having her address at 132, M. Karve Road, Churchgate, Mumbai 400 020

... Petitioners

V/s.

1. **State of Maharashtra**, through the Department of Urban Development, having it's office at Mantralaya, Mumbai 400 032

2. **Slum Rehabilitation Authority**, a statutory authority appointed under Section 3A of the Maharashtra Slum Areas (Improvement, Clearance & Re-development) Act, 1971, through it's Chief Executive Officer, having his office at 5th Floor, Grihanirman Bhavan, Bandra (East), Mumbai 400 051.

3. Greater Mumbai Municipal Corporation, a body constituted under the Bombay Municipal Corporation Act, 1888 having it's office at Mahapalika Marg, Mumbai

4. Public Concern for Conveyance Trust, a charitable trust registered under the Bombay Public Trusts Act, 1950, through it's Chairman Mr. B.G. Deshmukh, having its office address at 55, Kavi Apartments, Dr. R.G. Thadani Marg, Worli, Mumbai 400 018 ... Respondents

WITH
INTERIM APPLICATION NO.1771 OF 2022
IN
WRIT PETITION NO.1152 OF 2002

Naredco West Foundation ... Applicant

In the matter between

NGO Alliance for Governance and Renewal (NAGAR) & Ors. ... Petitioners

V/s.

State of Maharashtra, through Urban Development Department & Ors. ... Respondents

WITH
INTERIM APPLICATION (L) NO.28459 OF 2021
IN
WRIT PETITION NO.1152 OF 2002

Pandurang D. Chalke & Anr. ... Applicants

In the matter between

NGO Alliance for Governance and Renewal (NAGAR) & Ors. ... Petitioners

V/s.

State of Maharashtra, through Urban Development Department & Ors. ... Respondents

WITH
INTERIM APPLICATION (L) NO.30716 OF 2021
IN
WRIT PETITION NO.1152 OF 2002

Slum Redevelopers Association & Ors. … Applicants

In the matter between

NGO Alliance for Governance and Renewal (NAGAR) & Ors. … Petitioners

V/s.

State of Maharashtra, through Urban Development Department & Ors. … Respondents

Mr. Shiraz Rustomjee, Senior Advocate with Ms. Gulnar Mistry, Mr. Akash Rebello, Mr. Prateek Pai, Mr. Peterasp Sasuri, and Mr. Shabbir Jariwala i/by Jariwala Associates for the petitioners.

Mr. Anil Y. Sakhare, Senior Advocate (Special Counsel) with Mr. Abhay Patki, Additional G.P. for the respondents-State.

Dr. Milind Sathe, Senior Advocate with Mr. Girish Utangale, Mr. Gaurav Srivastav, Mr. Saurabh Utangale, Mr. Sarthak Utangale, Mr. Rohan Sawant and Mr. Vedant Joshi i/by M/s. Utangale & Co. for respondent No.2-SRA.

Mr. Ram Apte, Senior Advocate (through V.C.) with Ms. Anuja Tirmali i/by Komal Punjabi for respondent No.3-MCGM.

Mr. Netaji Gawade i/by M/s. Sanjay Udeshi & Co., for respondent No.4.

Mr. Mayur Khandeparkar with Mr. Anosh Sequeiria, and Mr. Joran Dwan i/by Diwan Law Associates for the applicant in IAL/19651/2022.

Mr. Pravin K. Samdani, Senior Advocate with Mr. Mayur Khandeparkar, Mr. Vikramjeet Garewal, Mr. Nitesh Ranawat, Ms. Disha Shetty, Mr. Mustaqueem Bagasaria, and Ms. Jyothi Tated i/by Wadia Ghandy & Co., for the applicant in IA/1771/2022.

Mr. Ashish Kamat, Senior Advocate with Mr. Ranjeev Carvalho, and Mr. Rishabh Murali i/by M/s. ABA Law for the intervenor in IA/28459/2021.

Mr. Abhishek Kothari with Mr. Rohaan P. i/by M/s. Trilegal for the applicant/intervenor in IAL/ 30716/2021.

CORAM : AMIT BORKAR &
SOMASEKHAR SUNDARESAN, JJ.

RESERVED ON : MAY 3, 2025

PRONOUNCED ON : JUNE 19, 2025

JUDGMENT: (Per Amit Borkar J)

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1. The petitioner, a public-spirited organization committed to the protection of public spaces, has approached this Court challenging the consistent use of public open spaces that are reserved for recreational purposes, for the purposes of

implementing slum rehabilitation schemes. The grievance primarily revolves around the State's Notification issued in the year 1992 by the Urban Development Department ("***UDD***"), and also challenges the later Regulation 17(3)(D)(2) of the Development Control and Promotion Regulations, 2034 (hereinafter referred to as *DCPR 2034*), which was brought into effect by an amendment notified in the year 2022.

2. As per the newly inserted Regulation 17(3)(D)(2), it is now permitted that open spaces (which are otherwise non-buildable and reserved under the Development Plan for parks, gardens, playgrounds, etc.) and which exceed 500 square meters in area, can be used for slum redevelopment schemes, subject to the condition that at least 35% of the ground area is kept vacant and continues to serve the designated public reservation. However, the petitioner submits that the said Regulation, in effect, legalizes the diversion of up to 65% of the land from its reserved public use for the purpose of construction, thereby significantly diluting the purpose of reservation and denuding the city of its much-needed green and open spaces. This, according to the petitioner, is directly against the letter and spirit of sustainable development and the public trust doctrine, which require that public assets such as parks and open spaces be preserved for collective enjoyment of the community, and not be sacrificed to accommodate encroachments or private development, even under the banner of welfare schemes.

3. The facts stated in the petition and the circumstances which have come on record during the course of proceedings, including

those placed before this Court by way of written submissions tendered on behalf of the parties, are set out hereunder for proper appreciation and adjudication of the issues arising in the present matter. These facts form the foundational basis upon which the rival contentions rest and which need to be considered for determining the legality and propriety of the action impugned in the writ petition.

4. The petitioner submits that this Regulation of 2022 is not an isolated or a new provision but is rather in continuation and expansion of the 1992 Notification, issued by the State Government under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (*MRTP Act*). This earlier Notification had laid down a policy for the development of lands reserved in the Development Plan under the Development Control Regulations for Greater Bombay, 1991 (DCR 1991) that were already under encroachment by slum dwellers. Under the 1992 Notification, in cases where 25% or more of a reserved site (such as land reserved for recreation) was encroached upon by slums, redevelopment under Slum Rehabilitation Schemes was permitted. However, this was permitted only on the condition that not more than 67% of such reserved open space would be used for slum rehabilitation construction, and the remaining 33% would be kept vacant and used for its originally intended purpose. The petitioner contends that the present Regulation 17(3)(D)(2), though seemingly aligned with the earlier Notification, has in fact worsened the situation. While the 1992 policy required a minimum area of 1,000 square meters to be eligible for such rehabilitation schemes and

required at least 33% open space, the new Regulation lowers the minimum land area to 500 square meters and permits a reduction in public reservation to just 35%. This means, in effect, more smaller open plots can now be used for construction, thereby further fragmenting and reducing the already scarce open space available in Mumbai.

5. The DCR 1991, which preceded DCPR 2034, was framed under the MRTP Act. The 1992 Notification, which was issued under Section 31 of the MRTP Act, was the beginning of a pattern whereby the State sought to use its power to modify reserved land uses in favour of slum rehabilitation.

6. In 1995-96, amendments were made to the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as the *Slum Act*). A new Chapter I-A was inserted to legally enable and regulate Slum Rehabilitation Schemes. Pursuant to these amendments, the Slum Rehabilitation Authority (SRA) was constituted by the State Government through a Notification under the Slum Act and was entrusted with the task of implementing slum redevelopment projects. Further, in exercise of powers under Section 37(2) of the MRTP Act, the State issued a Notification modifying Regulation 33(10) of the DCR 1991 and inserting Appendix IV, which laid down terms and conditions for slum rehabilitation. Clause 7.3 of the Appendix notably reduced the minimum land requirement from 1,000 square meters to 500 square meters, thereby broadening the scope for using reserved lands for rehabilitation projects.

7. The petitioner further highlights that the definition of a 'protected occupier' under the Slum Act has undergone considerable change over the years. While the original cut-off date for determining eligibility of slum dwellers for free rehabilitation was 1st January 1976, successive amendments have extended this date to 1st January 1995, 1st January 2000, and now to 1st January 2011. As a result, a larger pool of persons now fall within the category of those eligible for free in situ rehabilitation, which in turn increases the burden on scarce urban land, including reserved open spaces.

8. The present Public Interest Litigation has been filed by the petitioner with the primary object of protecting public open spaces in the city of Mumbai. The petitioner challenges the constitutional and legal validity of the Government Notification issued in 1992, as well as certain provisions of the Slum Act, to the extent they allow slum rehabilitation projects to be implemented on lands reserved for parks, gardens, playgrounds, roads, pavements, and other public open spaces (POS). It is the case of the petitioner that permitting construction and rehabilitation projects on such reserved open spaces amounts to diverting lands meant for public recreation and utility towards permanent and irreversible development activities, which is contrary to the purpose for which such lands were designated in the Development Plan. The petitioner submits that such action violates the right to clean and healthy environment under Article 21 of the Constitution of India and goes against the public trust doctrine, which mandates that resources like parks and gardens are to be preserved for the

collective benefit of the public and not to be converted for other use, even under the garb of rehabilitation.

9. After taking cognizance of the concerns raised in the Petition, this Court, by way of an ad-interim order, passed a direction restraining the State Government and concerned authorities from sanctioning any new slum rehabilitation schemes on reserved open spaces, unless permission was specifically granted by this Court. The operative part of the said order reads as follows:

> *"Until further orders, no new rehabilitation scheme be sanctioned without the permission of this Court in respect of the open spaces which are reserved for gardens, parks, playgrounds, recreational spaces, maidans, no development zones, pavements, roads and carriageways."*

10. This ad-interim order was thereafter continued and not vacated, despite repeated attempts made by various stakeholders. The order remained in force for almost two decades, that is, until 2022. During this period, several developers and cooperative housing societies approached this Court seeking modification of the interim relief to enable them to undertake slum redevelopment projects. However, this Court, in its wisdom and with due regard to environmental balance, imposed strict conditions even where limited relaxation was granted. It is submitted that this Court ensured that in all such cases, the entire open space that was originally reserved under the Development Plan was relocated within the same land parcel and handed over to the Municipal Corporation of Greater Mumbai (Respondent No.3 – hereinafter "the MCGM") without any reduction in area. These conditional permissions were granted so that the slum rehabilitation project

could proceed without sacrificing the original purpose of the reservation.

11. As a result of the consistent monitoring and directions of this Court, approximately 45 acres of reserved open spaces were saved and preserved, and yet slum rehabilitation schemes were allowed to be implemented in a balanced and environmentally conscious manner. The petitioner submits that this approach of striking a balance between development and conservation reinforces the feasibility of rehabilitation schemes being undertaken without sacrificing public recreational spaces.

12. In one of its significant interim orders in the present Petition, this Court recorded the statement made by the Secretary of the UDD, appearing on behalf of the State of Maharashtra. The Secretary submitted that:

> *"The State Government would devise schemes or incentives in order to free up the encroached RG/PG (Recreation Ground / Playground) open spaces, but that practical compulsions may make it difficult to completely exclude some extent of in situ rehabilitation."*

13. Upon taking note of this submission, this Court clarified that the interim order dated 31st July, 2002 shall not operate as a bar to the State Government formulating new schemes or evolving fresh policies to address the issue of slum rehabilitation on encroached open spaces. However, this Court made it explicitly clear that any such new scheme or policy shall not be implemented unless and until a period of four weeks has elapsed from the date it is placed on record in the present proceedings.

14. The stay originally granted by this Court in 2002–2003 thus continued to remain in force, ensuring that any proposal for slum rehabilitation on reserved open spaces could not be undertaken arbitrarily or without judicial oversight. The petitioner submits that this approach of this Court was and continues to be in consonance with the principles of constitutional governance, environmental justice, and inter-generational equity.

15. The petitioner submits that the DCPR 2034, and in particular the impugned Regulation 17(3)(D)(2), came into force and were placed on record before this Court on 13th December 2018, through a communication made by the Advocates for the Slum Rehabilitation Authority (Respondent No. 2). The petitioner submits that a comparative reading of the impugned Regulation 17(3)(D)(2) and the earlier 1992 Notification clearly shows that the new Regulation does not introduce any fresh policy. Instead, it substantially reproduces the same structure and content of the 1992 Notification, with only a nominal reduction of 2% in the permissible area for construction, from 67% to 65%, on lands reserved for open spaces in the Development Plan (DP), where such lands are above 500 square meters. The petitioner points out that even the basic threshold safeguard present in the 1992 Notification, that the reserved open space must be encroached upon to the extent of at least 25% to trigger redevelopment, has been entirely removed in the new Regulation. Thus, even un-encroached parks, gardens, and playgrounds, if measuring more than 500 sq. mtrs., can now be opened up for slum rehabilitation construction, thereby completely defeating the purpose of

reservation under the Development Plan. It is submitted that the very open spaces that were sought to be protected under the 1991 Development Plan, and which this Court sought to safeguard by its interim orders, are now proposed to be developed through Regulation 17(3)(D)(2) under DCPR 2034.

16. In substance, the present Regulation seeks to revive the same dispensation which was put in abeyance by judicial intervention in the past. Although the Regulation is projected by the authorities as a measure to "free up" and "restore" open spaces, the petitioner submits that the Regulation in effect makes the situation worse, and circumvents the ad-interim restraint orders passed by this Court from 2002 onwards. The Regulation results in substantial loss of public open spaces at a time when Mumbai's population density is far higher than what it was in 1991, and when the need for accessible green and recreational areas has become even more critical to public health and urban planning.

17. The petitioner places reliance on official studies, including the *Preparatory Studies* conducted by the MCGM for the formulation of the Development Plan 2014–2034, and the Inventorisation of Open Spaces and Water Bodies carried out by the Mumbai Metropolitan Region, Environment Improvement Society. These studies show that the per capita open space available to residents of Mumbai is shockingly low, less than 1 square meter per person. In such circumstances, it is submitted that any policy which dilutes open space reservation cannot be permitted to override public interest, sustainable development, and the doctrine of environmental justice.

18. The petitioner further submits that the present Petition came to be dismissed for default on 18th July 2019 under peculiar and unintended circumstances, as the matter was inadvertently listed before two different benches of this Court on the same date, leading to confusion in the registry. Thereafter, the petitioner promptly filed Interim Application (L) No. 4365 of 2020 seeking restoration of the Petition, which came to be allowed by an order passed by this Court on 6th April 2021. The Court was pleased to restore the Petition to its original number and file; reinstate the earlier ad-interim order restraining redevelopment on reserved open spaces; and clarify that any actions already taken during the intervening period between 18th July 2019 and 6th April 2021 shall remain undisturbed.

19. After the order dated 6th April 2021 was passed, all concerned parties treated the restraint against slum redevelopment on open spaces as being operative, and proceeded accordingly, reaffirming the importance and relevance of the interim protection granted. Subsequently, though the petitioner continued to maintain that the impugned Regulation is nothing but a replica of the 1992 Notification, in order to avoid any procedural technicality or objection regarding the scope of the original Petition, the petitioner filed Interim Application (L) No. 12380 of 2021 seeking formal amendment of the Petition to incorporate a specific challenge to Regulation 17(3)(D)(2).

20. By a speaking order dated 1st March 2022, this Court was pleased to allow the said application and grant leave to amend the Petition; clarify that the ad-interim order dated 31st July 2002 had

ceased to operate as of 12th January 2019, which was four weeks from the date when DCPR 2034 was placed on record; further clarify that the order dated 6th April 2021 did not revive or reinstate the earlier interim relief; but left it open to the petitioner to apply for fresh reliefs under the amended Petition.

21. In pursuance of the liberty so granted, the petitioner filed Interim Application No. 3043 of 2022, seeking fresh interim relief in respect of the implementation of Regulation 17(3)(D)(2), which is currently pending adjudication before this Court. At the time of hearing of the said application, this Court was pleased to direct that the main Petition itself be finally heard and disposed of, considering the prolonged pendency and the importance of the issues involved.

ii) Constitutional and Doctrinal Grounds – Violation of Articles 21 and 14 and the Need to Preserve Open Spaces:

22. The petitioner submits that the right to life guaranteed under Article 21 of the Constitution of India is not limited to mere existence or animal survival. Over the years, the Supreme Court has repeatedly held that the right to life includes the right to live with dignity, in a clean, healthy and sustainable environment. This includes access to open spaces, greenery, and pollution-free air, particularly in urban areas which are densely populated and heavily built-up. It is well settled that the principles of sustainable development, the precautionary principle, the special burden of proof on developers, and the public trust doctrine are now firmly embedded in Indian environmental jurisprudence. These principles

have been held to be an integral part of Article 21. Hence, any policy or action which erodes open spaces without justification or precaution, and thereby harms environmental health and the quality of urban life, must be held violative of Article 21.

23. The impugned Regulation 17(3)(D)(2) and related executive actions of the Respondents violate these settled constitutional mandates. They allow large portions of public open spaces, meant for recreation, breathing, and community use, to be diverted for private or semi-private redevelopment purposes without any environmental safeguard or compensatory provision. Such actions go against the very essence of sustainable and inclusive urban planning.

24. The petitioner further submits that the impugned policy also violates Article 14 of the Constitution, which guarantees equality and prohibits arbitrariness. The regulation prioritizes private benefit over public interest, by enabling use of scarce public land for private construction; has no rational or scientific basis for deciding how much open space may be diverted, how the affected population will be compensated, or how environmental loss will be balanced; fails to assess the impact of the policy on the city's ecological balance, urban health conditions, and inter-generational equity; and does not explain or justify the allocation of valuable public land, a form of State largesse, for purposes which are not backed by any public interest test or environmental clearance.

25. The petitioner emphasizes that slum dwellers have no vested right to in-situ rehabilitation on land reserved for public purposes,

and several judgments of the Supreme Court have clearly held that such rights are always subject to planning considerations and environmental concerns. Therefore, blanket permissions under Regulation 17(3)(D)(2) without considering local planning impacts, congestion, and open space scarcity, are manifestly arbitrary and unsustainable.

26. It is a matter of record, and not in dispute, that the city of Mumbai suffers from an acute and chronic shortage of open space. The Mumbai Metropolitan Region – Environment Improvement Society (MMR-EIS) in its detailed report titled *"Inventorisation of Open Spaces and Water Bodies in Greater Mumbai"* has found that the total developed and accessible open space available to the public is just 1002.59 hectares, yielding a per capita open space of only 0.84 sq. mtrs. per person. The same report further reveals that in many municipal wards, the condition is even worse. For instance, in Wards B, C, H (East), and M (East), the per capita open space is less than 0.25 sq. mtrs.. In fact, in 13 out of 24 administrative wards in Mumbai, the per capita open space remains below 0.84 sq. mtrs., which is far below national and international urban planning norms. The Preparatory Studies prepared on behalf of the MCGM for the purpose of preparing Development Plan 2034 admit that even after including all formal and informal open spaces, the maximum per capita open space available is only 1.24 sq. mtrs., which again is far below the recommended norms. These studies admit that even this figure is misleading as it includes clubs, gymkhanas and semi-private facilities which are not freely accessible to the common citizen.

27. It is submitted that the shortage of open space is not only severe but also unequally distributed across different parts of the city. Many areas have no proper access to nearby recreational spaces, forcing citizens to either use congested roads or travel long distances. Urban poor and children are the worst affected, as they cannot afford private recreation or distant travel. The Preparatory Studies themselves proposed open space norms across neighbourhood, sector, ward, and city levels, but the Respondents have failed to implement any such spatial equity in DCR 2034. Importantly, these data and findings have not been disputed by the State or the Planning Authorities at any stage during the present proceedings.

28. The Supreme Court has, on several occasions, recognized the importance of preserving open spaces in urban areas. In *MCGM & Ors. v. Kohinoor CTNL Infrastructure Co. Pvt. Ltd., (2014) 4 SCC 538*, the Court took judicial notice of the fact that Mumbai had less than 0.88 sq. mtrs. of open space per person, and strongly emphasized the need to augment and not reduce open spaces in metropolitan cities. In *Bangalore Medical Trust v. B.S. Mudappa, (1991) 4 SCC 54*, the Court held that lands reserved for public parks cannot be diverted for private or commercial use, even if the alternative use is also socially beneficial (e.g., a hospital), because public parks serve an irreplaceable function in urban life and must be treated as part of the public trust held by the State. In *MCGM v. Hiraman Sitaram Deorukhar, (2019) 14 SCC 411*, the Supreme Court reiterated that even if land acquisition lapses, the reservation of land for parks must be respected, and

that government must take all necessary steps to protect such reservations in the larger public interest. In *Lal Bahadur v. State of U.P., (2018) 15 SCC 407*, the Court held that lands designated as green belts cannot be reclassified for residential use, and should be maintained as open spaces in trust for the benefit of future generations. Similarly, in *Virender Gaur v. State of Haryana, (1995) 2 SCC 577*, the Court set aside the government's action of leasing out open land meant for public use to a private party, holding that such land must be preserved for public health, environmental integrity and urban sustainability.

29. In light of the above decisions and data, the petitioner submits that the impugned Regulation 17(3)(D)(2) is contrary to constitutional guarantees and principles of sustainable planning. The loss of open space in a city like Mumbai is not a mere technical issue but a direct threat to the right to life, public health, and urban justice. The policy adopted by the Respondents, instead of preserving and regenerating open spaces, facilitates their systematic erosion, and therefore, cannot withstand judicial scrutiny.

iii) Violation of the Principles of Sustainable Development and the Precautionary Principle:

30. The petitioner submits that sustainable development and the precautionary principle are now well-recognised and binding principles forming part of Indian environmental and constitutional law. The Supreme Court has repeatedly held that these principles are essential tools for environmental governance and must be

strictly followed while framing and implementing policies that impact the environment, natural resources, or urban planning. The concept of sustainable development has been defined as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. It includes three essential sub-principles: inter-generational equity, ensuring that environmental resources are not exhausted or degraded in a way that future generations are denied their benefits; precautionary principle, taking preventive action in the face of environmental risk or uncertainty; and, polluter pays principle, imposing accountability and cost of environmental harm on the party responsible.

31. Insofar as the precautionary principle is concerned, its application in the field of municipal and planning law requires the State and its instrumentalities to anticipate, prevent and address causes of environmental damage; act even in cases where scientific certainty is absent, if there exists a threat of serious or irreversible harm; and place the burden of proof on the party seeking to alter the environmental status quo, such as a developer or builder, to show that the proposed change is environmentally safe and benign. It is submitted that this burden of proof principle is now deeply rooted in Indian law. In matters involving ecology and public resources, the benefit of doubt must go to the environment, and the entity seeking to alter public land or ecological balance must affirmatively prove the absence of harm.

32. The following decisions of the Supreme Court reinforce these principles: In *Vellore Citizens Welfare Forum v. Union of India,*

(1996) 5 SCC 647, the Court categorically held that the precautionary principle and the polluter pays principle are part of the environmental law of India, and are enforceable under Article 21. In *A.P. Pollution Control Board v. Prof. M.V. Nayudu, (1999) 2 SCC 718*, the Court held that precautionary duties are triggered not just by confirmed danger, but even by reasonable apprehension or risk potential. It placed the onus on the party seeking to change the existing land-use to prove the safety of their actions. In *Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371*, the Court emphasised that sustainable development is a central tenet in environmental decision-making, and that developers must assume the possibility of environmental harm and bear the burden of disproving it.

33. Applying these principles to the present case, the petitioner submits that the impugned Regulation 17(3)(D)(2) of the DCPR 2034: fails to apply the precautionary principle, no environmental study or impact assessment has been carried out before allowing 65% of reserved open space to be diverted for construction; places no burden on the authorities or developers to show that such construction will not permanently damage the urban ecological balance; ignores the long-term environmental and public health consequences of reducing Mumbai's already scarce open spaces; does not consider future generations' rights, thus breaching the principle of inter-generational equity. Therefore, it is submitted that the impugned policy is contrary to the settled principles of sustainable development and precaution, and is liable to be struck down on this ground alone.

34. The petitioner further submits that the impugned regulation offends the doctrine of public trust, which is now recognised as a binding principle of Indian law. Under this doctrine, the State and its instrumentalities hold certain resources, including air, water, forests, beaches, rivers, and public lands, in trust for the benefit of the public, and especially for future generations. The public trust doctrine requires the State to act as a trustee and not as an owner or disposer of such resources. The government cannot transfer or allocate lands meant for public benefit to private entities, unless such action is demonstrably in public interest and complies with constitutional and environmental safeguards. In the context of the present case, the petitioner submits that: lands reserved in the Development Plan as parks, gardens, and open spaces are held by the planning authority not as proprietary assets but as trustees on behalf of the public; allowing these lands to be used for private construction under the guise of slum rehabilitation violates the State's fiduciary duties; and the impugned regulation essentially converts valuable public resources into construction zones, without adequate justification or public consultation.

35. The following judgments illustrate the application of the public trust doctrine in similar circumstances: In *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu, (1999) 6 SCC 464*, the Supreme Court held that permitting construction of an underground shopping complex on a park violated the public trust doctrine, and directed the restoration of the park. In *Fomento Resorts & Hotels Ltd. v. Minguel Martine, (2009) 3 SCC 571*, the Court reaffirmed that State authorities must protect public resources and not allow their

exploitation for private gain. In *Abdul Majid Vakil Ahmed Patwekari v. SRA, 2022 (2) MhLJ 382*, this Court held that granting free housing to encroachers on public lands violated the public trust doctrine, and that the government's failure to remove such encroachments was unconstitutional. In *High Court on its Own Motion v. Bhiwandi Nizampur Municipal Corporation, 2022 SCC OnLine Bom 386*, this Court struck down the policy of regularising encroachers by granting them free accommodation, holding that it was a misuse of public land held in trust, and amounted to a reward for encroachment. Therefore, the petitioner submits that the State and planning authorities, by allowing slum rehabilitation on lands reserved for open space, have acted in violation of their fiduciary obligations, and have breached their duty to safeguard such lands for present and future public use.

36. In conclusion, it is submitted that the impugned Regulation 17(3)(D)(2), and the policy underlying it, are not only unjust and arbitrary, but also constitutionally impermissible, being in breach of: Article 21 – right to a healthy environment; Article 14 – equality and non-arbitrariness; the principles of sustainable development and precaution; and the public trust doctrine.

37. The petitioner submits that the contention raised by some of the Respondents, that the case law relied upon by the petitioner is not applicable because it pertains only to physically existing open spaces and not to lands merely reserved as open spaces in the Development Plan, is legally misconceived and factually incorrect. This argument fails to recognize that the distinction between physically developed open spaces and lands reserved for open

spaces under the Development Plan is artificial and unsustainable in law. It is submitted that the concept of open space reservation under the Development Plan is not notional, but forms a critical part of urban environmental planning. Such reservations carry with them a statutory obligation on the part of the planning authority to eventually acquire and develop the land for public purposes, as per the provisions of the MRTP Act.

38. Thus, the respondent authorities cannot escape their obligations by contending that open spaces which are only "reserved" and not yet "developed" are outside the purview of constitutional or environmental protection. Reservations in the Development Plan are legally enforceable and are made precisely with a view to safeguarding urban liveability, environmental balance, and the rights of future generations. The petitioner therefore submits that the entire scheme of the MRTP Act, read with the constitutional principles under Articles 14 and 21, and the binding judgments of the Supreme Court, make it clear that reservations of land for open space are to be treated as a solemn urban planning obligation, and not as an empty formality. The State and its agencies cannot dilute or override such reservations merely because the land has not yet been physically converted into a garden or a park.

39. Accordingly, the petitioner prays that this Court may be pleased to reject the contention of the Respondents as legally untenable and inconsistent with the object and purpose of urban planning laws, environmental jurisprudence, and binding constitutional norms.

40. The petitioner submits that while it is undoubtedly the responsibility of the State to ensure that slum dwellers are provided with dignified housing in a hygienic and safe environment, there exists no fundamental or vested legal right in favour of any person, including a slum dweller, to demand or insist upon in-situ rehabilitation, particularly when the land in question is reserved for a public purpose under the Development Plan . The law is well settled that lands and public resources reserved for common use or public amenities cannot be diverted for private benefit, howsoever sympathetic the circumstances may be (considering that even non-slum dwellers get benefits from the redevelopment schemes under the Slum Act). It is a principle of law and equity that no private party, including encroachers, can claim any legal entitlement to continue occupation of lands which are specifically earmarked for public purposes. Any such use frustrates the very object of reservation and runs counter to the larger public interest.

41. This position has been reinforced by a long line of decisions, which clearly hold that the public interest must prevail over individual or group demands, particularly when it comes to the use and preservation of public lands. In this context, the following judicial pronouncements are relevant: *Olga Tellis v. Municipal Corporation of Greater Bombay, (1985) 3 SCC 545*, where the Supreme Court held that while the right to shelter is part of Article 21, it does not mean that encroachment on public lands is legal, and that eviction, if done lawfully, does not violate the Constitution; *Abdul Majid Vakil Ahmed Patvekari (supra)*, wherein

this Court categorically held that slum dwellers on land required for public amenities cannot claim rehabilitation at the same site, and the government has a duty to protect such lands for the public; *Jilani Building(Supra)*, where this Court observed that public lands encroached upon must be reclaimed and that policies rewarding encroachers with free housing violate the public trust doctrine and principles of equality; *Bishop John Rodrigues v. State of Maharashtra, 2024 SCC OnLine Bom 1632*, where this Court reiterated that public reservations in the Development Plan cannot be compromised, and the State must clear encroachments in accordance with law.

iv) No Vested Right to In-Situ Rehabilitation on Reserved Open Spaces

42. The petitioner further submits that even under the applicable statutory framework, particularly the Slum Act, there is no mandate that slum rehabilitation must always be carried out in-situ. The law clearly contemplates relocation in appropriate cases, especially when the land is required for a vital public purpose. In particular, Chapter I-B of the Slum Act, titled *"Protected Occupiers, their Relocation and Rehabilitation"*, recognizes the possibility of eviction and relocation. Section 3Z explicitly empowers the competent authority to evict even protected occupiers if the eviction is justified in the larger public interest, and simultaneously ensures that such persons are rehabilitated elsewhere. This statutory provision expressly acknowledges that in-situ rehabilitation is not an absolute entitlement.

43. Furthermore, even under the earlier planning regime i.e. DCR 1991, it was clearly contemplated that slum dwellers situated on lands required for vital or urgent public utility purposes would not be rehabilitated at the same location but would be shifted to alternate plots. This is clearly recorded in Appendix IV of DCR 1991. The same approach has been retained in DCR 2034, under Regulation 33(10)(VI)(1.3). It is also important to note that even the Respondents have, in several instances, opposed in-situ rehabilitation on lands required for public purposes, including in the case of *Abdul Majid Vakil Ahmed Patvekari (supra)*, where they submitted before this Court that in-situ rehabilitation could not be allowed as it would compromise vital public use.

44. The petitioner also draws attention to the Afzulpurkar Committee Report, a document relied upon by the State Government, which itself recognizes the need to relocate slum dwellers from lands reserved for public amenities and no-development zones. A plain reading of Chapters 7 and 30 of the Report shows that the Committee recommended that such lands should be cleared and returned to public use, and that slum rehabilitation in such cases should occur on alternate lands. It is thus clear that even according to the government's own expert committee, in-situ rehabilitation is not recommended on lands that are earmarked for public amenities, such as recreational grounds (RG), playgrounds (PG), gardens, etc. These lands fall within the definition of "amenities" under Section 2(2) of the MRTP Act and are critical for the livability and ecological balance of the city. In practical terms, the petitioner submits that relocation of slum

dwellers is already regularly carried out in cases where infrastructure projects, such as railways, roads, or metro corridors, require the land to be cleared. There is no reason why the same principle should not be applied to public open spaces, which are as essential to the well-being of citizens as any other infrastructure.

45. The petitioner further submits that the difficulty expressed by the Respondents in removing encroachments on open spaces is self-created. The problem has arisen due to the policy of offering free housing, along with the repeated extension of cut-off dates under the slum rehabilitation policy. These steps have encouraged continued encroachments, and the public is now being deprived of essential urban amenities as a result. In fact, even the 1992 Notification (which forms the basis of the impugned policy) initially contemplated that open spaces above 1,000 sq. mtrs. in area should be cleared and restored to their original public purpose. Instead of following this mandate, the Respondents have relaxed conditions over time, undermining the very planning goals the regulation was intended to support. It is submitted that open spaces deserve to be treated with the same importance as roads, water supply, and other vital infrastructure. The consistent judicial and planning consensus has been that recreational and green spaces must be protected, especially in a congested city like Mumbai.

46. In light of the above, the petitioner submits that: There exists no fundamental, statutory, or vested right to claim in-situ rehabilitation, particularly on lands reserved for public purposes; The statutory scheme itself contemplates eviction and relocation in

appropriate cases; The Respondents are under a constitutional and statutory duty to clear and restore such lands to their reserved purpose; and Any policy that allows continued occupation of reserved open spaces violates the public trust, environmental principles, and the rights of future generations. Therefore, the impugned policy and Regulation 17(3)(D)(2), to the extent they permit slum rehabilitation on open spaces reserved in the DP, are contrary to law, policy, and judicial precedent, and deserve to be set aside.

v) Regulation 17(3)(D)(2) Does Not Constitute a New Policy – Contrary to Assurance and Judicial Directions

47. The petitioner submits that Regulation 17(3)(D)(2) of the DCPR 2034 does not introduce any new policy or scheme, as was contemplated or permitted by this Court in its earlier orders. On the contrary, it repackages and perpetuates the same dispensation that was already in place under the 1992 Notification read with Appendix IV of DCR 1991, albeit with cosmetic changes that do not offer any meaningful improvement to the condition of open spaces in the city. It is relevant to recall that this Court had, by its order dated 25th July 2014, clarified that the interim orders restraining sanctioning of slum schemes on reserved open spaces would not prevent the State Government from evolving a new policy or scheme, provided such policy was in furtherance of public interest. This relaxation was based entirely on the statement made on behalf of the State Government that:

> "*The Government would devise schemes or incentives to free up encroached RG/PG open spaces, although some limited in*

situ rehabilitation may be unavoidable due to practical compulsions."

48. The underlying assurance given to this Court was that the State would attempt to reclaim and restore open spaces for public use, and that in-situ rehabilitation, if permitted at all, would be limited, exceptional, and justified on grounds of necessity. It was never represented that the Government would dilute the earlier conditions further or expand the scope of construction on reserved land. However, a plain reading of Regulation 17(3)(D)(2) reveals that the State Government has failed to honour its assurance. Far from introducing a fresh policy aimed at freeing encroached spaces, the Regulation merely reproduces the older framework under a new label, and even removes one of the few safeguards that previously existed.

49. Under the earlier 1992 Notification, read with Appendix IV of DCR 1991: In cases where the land reserved for open space exceeded 500 square metres, and at least 25% of such land was encroached by slums, the authorities were permitted to use up to 67% of the total area for slum redevelopment, subject to the condition that the remaining 33% would be preserved as open space. In contrast, under Regulation 17(3)(D)(2) of DCPR 2034: 65% of the land under reservation may be developed for slum rehabilitation, and the remaining 35% is to be retained as open space. However, the requirement of at least 25% pre-existing encroachment has been entirely removed. The petitioner submits that this change is not an improvement, but a regression. The marginal increase from 33% to 35% in the proportion of open

space to be retained is purely cosmetic, and does not reflect any substantial shift in policy or planning philosophy. On the contrary, by removing the threshold encroachment condition, the Regulation now permits construction on previously un-encroached reserved land, which was not permissible earlier. Thus, the impact on reserved open spaces is far more severe and widespread. The petitioner reiterates that this so-called "new policy" does not in any manner further the objective of restoring open spaces, nor does it implement any incentive-based mechanism to free up encroachments. Rather, it facilitates permanent diversion of reserved lands, including those not under encroachment, to slum redevelopment, without offering any compensatory open space, relocation alternatives, or public benefit safeguards.

50. In view of the above, the petitioner submits that Regulation 17(3)(D)(2) does not qualify as a "new scheme" or "new policy" within the scope envisaged by this Court. It does not reflect a shift in approach, nor does it seek to address the core issue of depletion of open space in Mumbai. Instead, it further weakens the pre-existing planning safeguards under the 1991 regime and enables greater conversion of public space to built-up area.

51. As elaborated earlier, the said Regulation is manifestly arbitrary, and fails to protect the environment and quality of life of the city's residents. It violates the petitioners' rights under: Article 21 of the Constitution, by allowing destruction of vital environmental assets and recreational spaces, and thereby compromising the right to life, health, and well-being; and Article 14, by treating reserved public land as available for private

housing without a reasonable or just basis, while failing to apply any rational or consistent planning criteria. Therefore, the petitioner prays that this Court may be pleased to hold that Regulation 17(3)(D)(2) of DCPR 2034 is not a new policy, is contrary to the undertaking made before this Court, and is liable to be struck down as unconstitutional, irrational, and contrary to the principles of sustainable and equitable urban development.

vi) Planning Committee Report – Not a Justification for the Impugned Regulation

52. The petitioner submits that the Respondents' reliance on the Planning Committee Report in support of the impugned Regulation 17(3)(D)(2) is misplaced and legally untenable. It is submitted that the said report does not contain any fresh planning rationale, scientific basis, or environmental justification to support the claim that the said regulation represents a "new policy" capable of overriding the constitutional and statutory objections already raised before this Court.

53. It is important to recall that this Court, by its interim orders, permitted the State Government to evolve a new policy only on the understanding that it would devise schemes or incentives to free up encroached public open spaces (RGs/PGs), while allowing limited in-situ rehabilitation only under compelling circumstances. The State had assured this Court that its new approach would improve the position concerning open space reservations. However, a plain reading of the Planning Committee Report reveals that Regulation 17(3)(D)(2) is not backed by any

independent evaluation or rethinking. It merely continues the earlier policy of "accommodation reservation", whereby a portion of land reserved for open space is allowed to be used for slum rehabilitation, and the balance is retained as open space. The only notable change is a cosmetic adjustment of the ratio from 33:67 to 35:65, which, in practical terms, does not enhance the city's open space at all. Paragraph 4.5 of the Planning Committee Report mentions that 33% of such lands will be maintained as open space and 67% will be utilised for in-situ rehabilitation, and that this method will ensure benefit to both the city and slum dwellers. However: No rationale or environmental justification is provided for continuing the accommodation reservation policy; The figures used are borrowed from the 1991 policy, without reflecting the new formulation in Regulation 17(3)(D)(2) (which uses the 35:65 ratio); and There is no fresh application of mind or demonstration that this mechanism is either environmentally viable or suited to present-day needs. Further, while the Committee claims that the city's total open space has been calculated based on the 33% retained figure, no actual computation or detailed breakdown of this figure has been made available. There is also no explanation offered as to why 33% or 35% is adequate, nor is there any justification as to how this correlates to Mumbai’s increasing population density and critically low per capita open space. In Paragraph 6.2.1 of the Report, the Respondents have stated that the total open space in the city would amount to 4,731.82 hectares, which translates into 3.70 sq. metres per person. This figure includes: 3,400.80 hectares of reserved/designated open

space (which includes clubs, gymkhanas and swimming pools), 979.51 hectares of private layout recreational grounds (Layout Rgs), 320.10 hectares in Special Development Zones (SDZ-I and SDZ-II), 31.41 hectares in SDZ-I areas encroached by slums.

54. The petitioner submits that this compilation is inflated, misleading, and fails to reflect the real public open space available to ordinary citizens. Specifically: The 3,400.80 hectares figure includes private clubs, gymkhanas and swimming pools, which are not accessible to the general public, and therefore cannot be counted as public open space; The 979.51 hectares of layout RGs are largely within private gated societies or layouts, and are also not freely accessible to all citizens; The 320.10 hectares claimed under SDZ-II is misleading because: These areas were previously No Development Zones (NDZs) and were entirely open and protected from construction; Their conversion into developable zones under DCR 2034 has actually reduced open land in the city; and The claimed open space here is notional, contingent on private developers setting aside land, and not guaranteed or accessible as public open space. The figure of 31.41 hectares in SDZ-I, which includes areas encroached by slums, also fails to support the State's case because such lands are already the subject matter of the present challenge, and are proposed to be developed under Regulation 17(3)(D)(2) itself. The petitioner submits that these inclusions in the Planning Committee Report are illusory and artificially inflate the quantum of open space, while in reality, the accessible, usable, and developed public open space available to Mumbai's residents remains dangerously low. According to the

MMR-EIS Report (2010), the total developed and accessible open space in the city was found to be just 1,002.59 hectares, yielding 0.84 sq. metres per person. In several municipal wards, this figure is even lower, ranging between 0.15 and 0.39 sq. metres per person. These data points are undisputed and reflect the ground reality of open space deprivation in the city. Even the Preparatory Studies for DCPR 2034, which are relied upon by the planning authorities, acknowledge that the real per capita open space is well below the desired standard, and confirm the findings of the MMR-EIS Report.

55. In light of the above, the petitioner submits that: The Planning Committee Report fails to justify the continuation of the accommodation reservation policy through Regulation 17(3)(D)(2); The figures and assumptions in the report are unreliable, misleading, and based on areas which are either inaccessible, privately held, or speculative; There has been no scientific, environmental, or town planning justification provided for why only 33% or 35% of reserved open space must be retained, and why the remaining land should be diverted to slum rehabilitation; The Respondents have not discharged their burden under the precautionary principle to show that the impugned policy is environmentally benign or sustainable in the long term. It is therefore submitted that the impugned Regulation 17(3)(D)(2), and the attempt to justify it by relying on the Planning Committee Report, do not satisfy constitutional requirements under Articles 14 and 21, nor do they conform to the principles of sustainable development, inter-generational equity, or public trust. The

Planning Committee Report, far from constituting the basis for a new and improved policy, in fact confirms that the impugned Regulation is merely a continuation of the old scheme, repackaged without any meaningful evaluation or recalibration of its impact on the city's ecology, public health, or urban equity.

vii) Challenge to the Applicability of Sections 3X(a), 3X(c) and 3Z of the Slum Act in the Context of Reserved Open Spaces:

56. The petitioner submits that in addition to the constitutional and statutory challenge raised to Regulation 17(3)(D)(2) of DCPR 2034, the present petition also seeks limited reading down or, in the alternative, striking down of certain provisions of the Slum Act, specifically Sections 3X(a), 3X(c), and 3Z introduced under Chapter I-B, insofar as they are sought to be applied to encroachments on lands reserved for public open spaces (POS) in the sanctioned Development Plan (DP). The petitioner submits that the protection offered under Chapter I-B of the Slum Act is intended to benefit bona fide slum dwellers, but cannot be construed to extend to persons who have encroached upon lands that are specifically reserved for open spaces, such as parks, gardens, recreational grounds and playgrounds, under the Development Plan of the city. It is submitted that such encroached lands are not ordinary government lands, but are lands earmarked for public welfare purposes, and held by the planning authorities in public trust. Any interpretation of the Slum Act that compels in-situ rehabilitation on these reserved lands would defeat the very object of reservation, and would render the public right to clean, accessible, and usable open spaces illusory and meaningless.

57. In support of this submission, the petitioner relies upon the following provisions of the Slum Act and the corresponding town planning regulations:

(a) Section 3B of the Slum Act contemplates the preparation of a General Slum Rehabilitation Scheme for the entire city. The scheme prepared for Mumbai under this section clearly provides that while in-situ rehabilitation is preferred, it cannot be insisted upon in cases where the land is reserved for a public purpose and where the reservation cannot be altered. In such cases, it is expressly stated that the slum dwellers shall be rehabilitated elsewhere, based on land availability.

(b) Section 3B(5)(e) and (f) further reinforce that rehabilitation may be either in situ or otherwise, depending on the nature of the land, its reservation, and other public interest considerations. This again shows that in-situ rehabilitation is not an absolute or inflexible rule.

(c) Section 3Z of the Slum Act permits the eviction of protected occupiers when such eviction is necessary in the larger public interest, and provides for their relocation. The legislative intent clearly recognizes that protected occupiers may be lawfully relocated in certain circumstances, including where the land is required for an overriding public purpose.

(d) Importantly, even under the town planning framework, both DCR 1991 and DCR 2034 provide that slum dwellers situated on lands required for vital or urgent public utility

purposes are not entitled to in-situ rehabilitation, and shall be shifted to other available lands.

58. Upon a harmonious reading of these statutory provisions, it becomes evident that the legislative and planning intent is to ensure that lands reserved for open space in the Development Plan are preserved for public use, and are not to be used for rehabilitation or construction, especially where alternate land is available.

viii) Judicial Precedents Against In-Situ Rehabilitation on Reserved Lands:

59. The above legal position is supported by authoritative pronouncements of the Supreme Court and this Court. The following judgments make it clear that encroachers on public lands have no vested right to remain in occupation, and cannot claim rehabilitation as a matter of right, especially when the land is reserved for a public purpose: (i) *Olga Tellis (supra)* – Where the Supreme Court upheld the authority of the State to remove encroachments on public lands, even while recognizing the right to shelter under Article 21; (ii) *Abdul Majid Vakil Ahmed Patvekari (Supra)* – Where this Court held that encroachment on land reserved for public purpose does not entitle a person to in-situ rehabilitation, and the government has a positive obligation to restore such land to public use; (iii) *High Court on its Own Motion (Jilani Building, Bhiwandi)(Supra)*– Where the Court held that regularizing encroachments on public lands violates the public trust doctrine, and public land cannot be sacrificed for private

benefit; and (iv) *Bishop John Rodrigues (Supra)*– Where the Court clarified that no person can claim a right to occupy or remain on lands earmarked for public use under the Development Plan. These decisions clearly establish that no individual, including a protected occupier, can claim a vested right to in-situ rehabilitation on public lands, particularly where such lands are statutorily designated as open spaces.

ix) Prayer for Reading Down or Striking Down:

60. In light of the above legal position, the petitioner submits that this Court may be pleased to read down Sections 3X(a), 3X(c), and 3Z of the Slum Act in a manner that excludes from their protective ambit those persons who have encroached on lands reserved for public open spaces under the Development Plan. Such a reading would ensure that: The constitutional principles under Articles 14 and 21 are upheld; The public trust in open spaces is preserved; and The relevant provisions of the Slum Act are saved from unconstitutionality.

61. In the alternative, and without prejudice to the above, if this Court is of the view that such a reading down is not legally feasible, then the petitioner submits that the said provisions, to the extent they protect encroachments on lands reserved for open space and mandate in-situ rehabilitation, must be held ultra vires the Constitution, being violative of: Article 14, due to unreasonable classification and arbitrariness; Article 21, by permitting degradation of essential environmental and recreational resources necessary for dignified urban life; The principles of

sustainable development, inter-generational equity, and the precautionary principle, which are binding components of Indian environmental jurisprudence. It is further submitted that these provisions suffer from the same constitutional infirmities as the impugned Regulation 17(3)(D)(2) of DCPR 2034, and that all grounds advanced in support of the challenge to the said Regulation apply mutatis mutandis to these provisions of the Slum Act as well.

B) Submissions of Respondent No.2:

i) Regarding status of Petitioners and compliance with PIL Rules:

62. It is the submission of Respondent No. 2 that the present petition, although initially filed in April 2002, was instituted by an entity which described itself as an "Association of Persons". This association was stated to consist of approximately 480 individuals, whose names were annexed from pages 54 to 114 of the petition. It was claimed that these persons were engaged in the protection and proper usage of public open spaces in the city of Mumbai and had collectively approached this Court in the form of a non-governmental organization. However, during the pendency of proceedings, the original Petitioner No. 1 was substituted by another entity now described as a Public Charitable Trust. The substituted entity, namely the present Petitioner, claims to be the legal successor of the original petitioner. Respondent No. 2 submits that this change lacks proper legal foundation. It is not clarified how a loosely formed "Association of Persons" consisting of 480 named individuals has, in law or in fact, merged into or authorized

its representation to be continued by a single Trust. No document, resolution, authorisation, or judicial order evidencing such substitution on behalf of all 480 individuals has been placed on record. In absence of such material, Respondent No. 2 contends that the legitimacy of the substituted petitioner itself is questionable.

63. It is next submitted that the DCPR 2034, came into force upon their sanction by the State Government through Notification dated 8th May 2018. These Regulations have replaced and superseded the earlier Development Control Regulations, 1991, including the 1992 amendment which was originally impugned in the present writ petition. In view of the supersession of the earlier regulatory framework, Respondent No. 2 submits that the original challenge has become infructuous. Nevertheless, an application seeking amendment of the Petition was moved through I.A. (L) No. 12380 of 2021, which was allowed by this Court by order dated 1st March 2022. Accordingly, Respondent No. 2 submits that the amended petition—having introduced a new petitioner, substituted the cause title, and assailed new regulations—has now transformed in substance and character into an entirely new public interest litigation filed after 1st March 2022.

64. In light of this transformation, Respondent No. 2 submits that the Petitioners were duty-bound to ensure compliance with the Public Interest Litigation (PIL) Rules framed by the this Court. These rules require, among other things, complete disclosures regarding locus, credentials of the petitioner, nature of public interest involved, and absence of oblique motives. It is the specific

submission of Respondent No. 2 that no such compliance was ensured either at the time of original filing or at the stage of amendment. The PIL Rules are not procedural formalities but are intended to safeguard the sanctity of public interest litigation and prevent its misuse. Since the amended petition involves a new petitioner and raises a substantially new challenge, the procedural requirements applicable to all fresh PILs would squarely apply. Having failed to satisfy the mandatory requirements under the PIL Rules, Respondent No. 2 contends that the present petition is not maintainable and deserves to be dismissed on this ground alone.

ii) Submissions of Respondent No. 2 – Nature of Challenge in the Petition and Grounds of Objection:

65. Respondent No. 2 submits that the Petitioners, in support of their challenge, have introduced a concept of 'Open Space' entirely based on their own understanding. According to them, as stated in Exhibit ‘B’, 'open space' or 'public space' includes any area or land that is meant for the general public, irrespective of ownership, and covers gardens, parks, roads, pavements, playgrounds, maidans, beaches, promenades, no-development zones and carriageways, whether existing or proposed, or reserved under any Development Plan. It is submitted that this description is the Petitioners’ own creation and not drawn from any statutory definition. In the absence of legal recognition or statutory basis, such a wide and subjective definition cannot be accepted for framing reliefs or adjudicating rights under constitutional or statutory law.

66. Respondent No. 2 further submits that the original petition, as filed in the year 2002, sought sweeping reliefs, including a declaration that no portion of such broadly defined "open space" in Greater Mumbai should be used for slum rehabilitation. They also sought directions to remove all encroachers from such spaces and to declare that such persons were not entitled to any legal protection under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The prayer clause also included a challenge to the constitutional validity of the 1992 Guidelines dated 3rd June 1992, Regulation 33(10) of the Development Control Regulations, Appendix IV of the said Regulations, and the General Slum Rehabilitation Scheme dated 1st April 1998. Subsequently, by way of an amendment allowed on 1st March 2022, the Petitioners sought to widen their challenge to include Regulation 17(3)(D)(2) of the DCPR 2034, which was introduced in May 2018. The amended prayer now alleges that the said provision, along with the earlier ones, violates Articles 14, 19(1)(d), and 21 of the Constitution of India.

iii) Grounds in Original Petition of 2002:

67. Respondent No. 2 submits that the original challenge was based on several assumptions and generalised allegations, such as: That slum rehabilitation schemes on open spaces exceeding 1000 sq.m., where slums occupied more than 25%, are unconstitutional; That using part of such plots for rehabilitation, even with 67% construction and 33% reserved use, violates fundamental rights; That such schemes are contrary to the ratio laid down in *Bangalore Medical Trust (Supra)* and *Almitra H. Patel v. Union of India*

(2000) 2 SCC 679, even though both these cases dealt with vastly different factual and legal contexts; That the open space in Mumbai is alarmingly low and further slum rehabilitation would reduce it even more; That in-situ rehabilitation discriminates against the walking population and burdens infrastructure; That allowing slum rehabilitation on roads or road margins (as amended in 1997) is unlawful; That earlier orders of this Court in Writ Petition No. 98 of 1999 had directed removal of encroachments on plots less than 1000 sq.m., and hence, all rehabilitation is illegal; That public open spaces are "common property resources" and cannot be given to any private party, including slum dwellers.

68. In addition to the above, other grounds raised by the Petitioners were based on environmental concerns, inter-generational equity, application of the precautionary principle, and protection of Article 48A of the Constitution. They have made sweeping generalisations such as rehabilitation being a "reward to encroachers," and have even alleged that existing laws grant rights to unauthorised persons at the cost of tax-paying citizens, thereby violating Article 14. Certain prayers even sought to compel the State to invoke preventive detention legislation such as the Maharashtra Prevention of Dangerous Activities Act, 1981 against so-called "encroachers."

iv) Grounds Added After Amendment in 2022:

69. After the amendment of the Petition permitted on 01.03.2022, two additional grounds were raised, now directed at

Regulation 17(3)(D)(2) of DCPR 2034. Respondent No. 2 submits that the above challenges are based on an incorrect appreciation of the scope and object of DCPR 2034 and the existing legal framework governing slum rehabilitation in Maharashtra. The petitioners' contentions also fail to recognise the balancing role of the State in addressing the rights of slum dwellers as part of socio-economic justice, while ensuring rational land use planning. Moreover, it is submitted that the Petitioners continue to base their challenge on a self-assumed and legally unsupported definition of "open space" as per Exhibit 'B', and proceed to challenge the constitutional validity of multiple legislative and policy provisions without any foundational data or affidavit-based evidence. It is submitted that such challenges, couched in public interest, cannot rest merely on idealistic assumptions, emotional assertions, or academic references to foreign judgments. Constitutional invalidity must be clearly demonstrated by showing violation of constitutional provisions in their plain and enforceable text, which is absent here.

v) Submissions of Respondent No. 2 – Background to Development Control Regulations and Policy Evolution:

70. Respondent No. 2 submits that the statutory framework for regulating land use and planning in Mumbai originates under the MRTP Act. Under this Act, Development Control Regulations (DCR) were first introduced in 1967, based on a Development Plan prepared and sanctioned under Section 31 of the Act. This Development Plan, as per Section 22 of the MRTP Act, was required to earmark land for various public purposes, including

gardens, parks, playgrounds, and other open spaces for community benefit. In the year 1991, the earlier 1967 Regulations were replaced and superseded by the DCR 1991, which were sanctioned by the State Government through a Notification dated 20th February 1991 under Section 31 of the MRTP Act. Respondent No. 2 submits that the DCRs are delegated legislation framed under Section 22(m) and Section 158 of the MRTP Act. The Supreme Court has recognised this legal position in the case of *Pune Municipal Corporation v. Promoters and Builders Association*, (2004) 10 SCC 796 .

71. These Development Control Regulations form an integral part of the Development Plan and are made after following the full procedure prescribed in Chapter III (Sections 21 to 42) of the MRTP Act, including surveys, publication of draft plans, inviting objections and suggestions, consideration thereof, and ultimately sanction by the State Government. It is submitted that the Development Plan for Greater Mumbai was sanctioned in stages between 1991 and 1994. This sanctioned plan identified and reserved several parcels of land as open spaces such as gardens and playgrounds, including non-buildable reservations. However, at the ground level, many such reserved lands were already physically encroached upon and occupied by slum dwellers. Despite such encroachments, these reservations were shown in the Plan, with the intention of eventually clearing such plots. However, in practice, evicting the slum dwellers from these lands became difficult due to the prevailing State policy, which, as a welfare measure, extended protection to slum dwellers who had settled

prior to a particular "cut-off date" and assured them of alternative accommodation. In this background, the Government realised that many such reservations could not be practically implemented. Therefore, in 1992, a policy decision was taken to allow in-situ rehabilitation of slum dwellers on 67% of such plots, subject to the condition that the remaining 33% would be cleared and restored as open space.

72. Accordingly, on 3rd June 1992, the State Government issued a Notification titled “Policy Guidelines for the Development Plan of Greater Mumbai for Implementation of Lands Allocated to Various Users Designated/Reserved Sites Occupied by Slums.” Though titled as guidelines, this Notification was, in substance and effect, an amendment to the Development Plan and DCRs at the Government level under Sections 30 and 31 of the MRTP Act. Under Category II of these Guidelines, provisions were made for redevelopment of lands reserved for non-buildable uses like recreation grounds, gardens, parks, etc., if such lands were already encroached upon by existing slums covering more than 25% of the area. The Guidelines clearly stipulated that where slum occupation was below 25%, the land should be cleared and retained for the designated amenity. In cases where the plot area was above 1000 sq.m., redevelopment was permitted under DCR 33(10) and Appendix IV, with a cap that only 67% of the land could be used for rehabilitation, and the remaining 33% must be left as open space.

73. Respondent No. 2 submits that the DCR 1991 regime has now been replaced by the DCPR 2034, which have been made

after following a detailed process involving public consultations, expert committee reports, and formal sanction. DCPR 2034 introduces a revised planning vision and, inter alia, includes a provision that permits rehabilitation of slums on lands reserved for open spaces, but only to a limited extent, capping usage at 65%, and ensuring that at least 35% of such land is retained as open space. This is a marked improvement over the earlier policy. It is submitted that in light of DCPR 2034 now being the applicable planning regulation, any challenge to the 1992 Guidelines is academic and does not survive. Once a new Development Plan is sanctioned under Section 31, it completely replaces the earlier Plan and any amendments thereto. This settled position has been affirmed by the Supreme Court in *MIG Cricket Club v. Abhinav Sahakar Education Society*, (2011) 9 SCC 97 .

74. The newly sanctioned Development Plan under DCPR 2034 has taken into account the actual position on ground, and re-evaluated certain reservations where encroachments had made implementation of earlier reservations practically impossible. Accordingly, the reservation for open space on such plots is now treated as available to the extent of 35%, with the balance allowed to be used for rehabilitation of existing slum dwellers. This represents a balanced, practical, and lawful approach to urban planning, recognising the needs of both ecology and housing.

75. In view of the above, Respondent No. 2 submits that the present petition, in so far as it challenges the 1992 Guidelines or the earlier Development Plan, does not survive. The only surviving challenge is to Regulation 17(3)(D) of DCPR 2034, which was

introduced in 2018 and assailed only in 2022 after the amendment of the petition. However, even this challenge is misconceived and misplaced. The Petitioners have failed to appreciate the underlying planning rationale and the larger public interest considered by the authorities while framing Regulation 17(3)(D), and other similar provisions. Their contentions are based on idealistic and impractical assumptions, rather than grounded planning considerations.

vi) Submissions of Respondent No. 2 – Legal and Factual Background to Slum Rehabilitation Policy and DCPR 2034:

76. Respondent No. 2 submits that the MRTP Act was enacted by the State Legislature with the object of ensuring orderly and planned development of urban and rural areas in the State. Following the enactment of the MRTP Act, a comprehensive Development Plan and Development Control Rules were framed in the year 1967, commonly known as the Development Control Rules, 1967. It is submitted that these Rules, as originally framed, did not contain any provision concerning slum rehabilitation or redevelopment.

77. Mumbai, being the economic capital of the country, experienced unprecedented migration from rural and other parts of India due to employment opportunities and better livelihood prospects. This led to a massive proliferation of slums across the city. It is a matter of record that more than 55% of the city's population came to reside in slum settlements, often under unhygienic and unsafe conditions. Past efforts of the Government

to remove such settlements through demolition did not yield any practical solution and, in fact, were met with widespread criticism on humanitarian grounds.

78. Recognising that the issue of slums could not be solved merely by demolitions, and keeping in view the socio-economic realities, the State Government adopted a humane and inclusive approach. It was realised that the urban poor did not choose to live in slums voluntarily but were compelled due to lack of affordable housing. Accordingly, the Slum Act was enacted. This legislation was intended to improve living conditions of slum dwellers either by upgradation of civic infrastructure or by relocating them to better living environments.

79. The first enumeration of slums was conducted by the State in 1976. A cut-off date of 1st January 1976 was fixed to determine eligibility for slum dwellers to receive rehabilitation. Identity cards (popularly known as photo passes) were issued to eligible slum dwellers. As the schemes evolved and implementation faced practical hurdles, the cut-off date was extended from time to time to accommodate ground realities. During the intervening period, various slum improvement programmes were undertaken with the assistance of agencies such as the World Bank. These included soft loan-based schemes for upgrading slum units. However, as encroachments continued and the problem persisted, it became necessary to incorporate formal provisions for slum redevelopment into the city's statutory planning framework.

80. In this background, the MCGM resolved to revise its Development Plan under the MRTP Act. Pursuant to this, the Final DP & DCR 1991 were sanctioned on 20th February 1991. One of the significant features of DCR 1991 was Regulation 33(10), which for the first time provided a legal framework for slum redevelopment by permitting increased Floor Space Index (FSI) for such schemes, subject to guidelines in Appendix IV. It is submitted that the constitutional validity of DCR 1991, including Regulation 33(10), was upheld by this Court in Writ Petition No. 963 of 1991. The Court observed that the legislative process under the MRTP Act had been duly followed and that policy choices, even if open to debate, could not be interfered with by the Court in exercise of its judicial review.

81. In furtherance of the above framework, the Government issued a Notification under Section 31(1) of the MRTP Act prescribing detailed guidelines for development of slum lands even when such lands were reserved for public purposes such as recreation grounds, parks, etc., in the sanctioned Development Plan. These lands, if encroached upon by slums, could be considered for redevelopment under the amended DCR 33(10), balancing the public interest in amenities and the right to shelter.

82. The Government constituted a high-level Expert Committee chaired by Shri D.K. Afzalpurkar, IAS, which included senior bureaucrats, urban planners, legal advisors, NGOs and developers. The Committee examined 28 specific issues, including development of slum-occupied lands reserved for amenities. The Committee's final report emphasized that in-situ redevelopment

should be the principal strategy, and relocation should be resorted to only where the slums are situated on amenity corridors like high-tension lines, sewerage lines, or in no-development zones. It was noted that relocating slum dwellers to distant locations disrupts their livelihood and leads to socio-economic hardship. Thus, in-situ redevelopment was considered more humane and effective.

83. Based on the Afzalpurkar Committee's recommendations, the State Government amended the Slum Act by introducing Chapter IA through Maharashtra Act No. 4 of 1996. Section 3A empowered the State to constitute the Slum Rehabilitation Authority (SRA). Simultaneously, the MRTP Act was amended by Maharashtra Act No. 5 of 1996. By these amendments: The SRA was conferred with the status of a Planning Authority under Section 2(19) of the MRTP Act; SRA was empowered to initiate modifications in the Development Plan under Section 37(1B); Delegated powers of planning permission and enforcement were conferred upon the SRA under Section 152 of the MRTP Act.

84. The SRA thereafter framed a General Slum Rehabilitation Scheme for Greater Mumbai under Section 3B of the Slum Act, following due procedure of public consultation and publication. The final Scheme was published in the Official Gazette on 9th April 1998. Maharashtra Act No. 10 of 2002 introduced Chapter IB into the Slum Act. This conferred the status of "protected occupiers" on slum dwellers holding photo passes. This amendment too was based on the recommendations of the Afzalpurkar Committee. Between 1998 and 2002, the SRA

sanctioned numerous redevelopment schemes, including in respect of plots having reservations for non-buildable uses.

85. This led to certain public interest challenges, including the present writ petition which was initially filed by Cityspace as Writ Petition No. 1152 of 2002. In this Writ Petition, this Court initially passed an interim order on 31st July 2002 restraining sanction of new slum schemes on reserved open spaces. However, by order dated 25th July 2014, the interim order was clarified to permit the State to frame new schemes or policies and to place them before this Court before implementation. It is submitted that this Court in *Janhit Manch v. State of Maharashtra*, (2007) 1 Bom CR 329 upheld the validity of the amendment to DCR 33(10) and Appendix IV, permitting TDR/FSI benefits in slum redevelopment. This decision was subsequently affirmed by the Supreme Court in *Janhit Manch v. State of Maharashtra*, (2019) 2 SCC 505.

86. The DCPR 2034, were thereafter framed by following the due statutory process under the MRTP Act, including: Public notice under Section 26; Consideration of objections and suggestions under Section 28; Preparation and finalization of the revised Development Plan by MCGM; Sanction by the State Government under Section 31 of the MRTP Act.The DCPR 2034, along with the revised Development Plan, came into force on 8th May 2018, after publication in the Official Gazette.

87. Respondent No. 2 submits that the present petition remained dormant for several years and was dismissed for non-prosecution on 6th April 2021. It was restored only in June 2021. No challenge

was raised to DCPR 2034 until June 2022, when an amendment was allowed to challenge Regulation 17(3)(D)(2). Regulation 17(3)(D)(2) of DCPR 2034, unlike the earlier framework, restricts in-situ rehabilitation on open space plots to a maximum of 65% of the area, while mandating that a minimum of 35% be preserved as open space. This policy is a result of extensive deliberation, consultation, and expert advice, and seeks to balance housing needs with environmental concerns. In view of the above, Respondent No. 2 submits that the present challenge to DCPR 2034 is delayed, misconceived, and proceeds on incorrect assumptions. The impugned Regulation is the outcome of a lawful and democratic process, and strikes a pragmatic balance between the competing demands of urban housing and public open space.

88. Respondent No. 2 submits that the challenge to Clause 17(3)(D)(2) of the Development Control and Promotion Regulations, 2034 (DCPR 2034), as made in the present petition, is misplaced and untenable in law. The impugned Regulation is part of the Development Plan as envisaged under Section 22(m) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act), and has been brought into force after following the full statutory procedure prescribed under the Act.

89. The DCPR 2034 is a form of delegated legislation framed under Sections 22(m) and 158 of the MRTP Act. The legal status of such regulations has been recognised by the Supreme Court in *Pune Municipal Corporation (Supra)* , wherein the Court held that Development Control Regulations made under the MRTP Act become part of the statutory framework.

90. It is well-settled in law that delegated legislation can be challenged only on limited grounds. In *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 SCC 641, the Supreme Court has held that unless the delegated legislation is shown to be ultra vires the parent Act, made by an incompetent authority, or violative of constitutional rights, the Courts ordinarily do not interfere. In the present case: (i) No challenge has been made that the DCPR 2034 is ultra vires the MRTP Act; (ii) The authority framing the Regulation is duly empowered under the law; (iii) The challenge is only made under Articles 14 and 21 of the Constitution, which is, with respect, based on a misapplication of both legal and factual aspects.

91. Petitioners have argued that DCPR 2034 fails to provide adequate open space per capita as per international standards. However, Respondent No. 2 submits that the question of how much open space is sufficient for a city, and in what manner land must be reserved, are policy matters within the exclusive domain of planning authorities and urban development experts. These are not matters for judicial determination.

92. The allegation that an existing open space is being taken away is factually incorrect. The petitioners rely upon judicial precedents concerning destruction or degradation of actual, existing environmental resources like lakes, rivers, and parks. However, in the present case, the lands in question were never available as open spaces in fact, they are occupied by longstanding slum settlements. Hence, the application of principles like *public trust doctrine*, *precautionary principle*, or *sustainable development*

is misplaced.

93. It is submitted that in the absence of any legally sustainable ground, the challenge to Clause 17(3)(D)(2) of DCPR 2034 must fail. The impugned Regulation is part of a considered and expert-driven policy framework intended to address urban housing while preserving a portion of open space.

94. Delegated legislation such as the DCPR may be tested on limited grounds: (i) Want of authority or lack of competence; (ii) Violation of fundamental rights; (iii) Breach of any constitutional provision; (iv) Acting beyond the scope of the parent Act; (v) Inconsistency with other laws; and (vi) Manifest arbitrariness or unreasonableness.

95. In the present case, none of these grounds have been established. On the contrary, the DCPR was framed through a statutory process similar to the making of a Development Plan. As part of this process, authorities considered existing land uses, surveyed designated amenities, and planned for the city's future needs. Open space requirements were duly considered and integrated into the land use calculations.

96. The contention that slum-occupied plots designated for open spaces must remain entirely undeveloped ignores the ground realities and policy framework under the MRTP Act. The Development Control Regulations are part of the Development Plan, and cannot be read in isolation from the land use designations.

97. This Court in *Nariman Point Association v. State of Maharashtra*, (2003) 5 Bom CR 273, has recognised the integrated reading of the Development Plan and Regulations. The current plan under DCPR 2034 reflects this integrated approach by reserving 35% of encroached land for public amenities and allowing in-situ rehabilitation on the remaining 65%.

98. The preparation of DCPR 2034 included consultations with the Planning Authority, Planning Committee, and experts. This participative process led to a policy that balances slum rehabilitation with reservation of open spaces, consistent with realities on ground.

99. Regulation 17(3)(D)(2) is not an isolated provision. Similar mechanisms are incorporated in: Regulation 17(3)(B): redevelopment of cessed buildings; Regulation 17(3)(C)(I): cluster redevelopment schemes; Regulation 17(3)(C)(II): redevelopment of BDD chawls; Regulation 34(2)(3.4): development of Special Development Zones (SDZs). All of these provisions follow a common policy thread—clear a portion of encroached non-buildable land for amenities and allow development on the remainder with safeguards.

100. The town planning exercise under DCPR 2034 carefully analysed the fact that several lands shown as “open spaces” in the Development Plan of 1991 were never physically available. Many of these plots were completely encroached upon. Hence, reserving 35% of such land as open space in DCPR 2034 is a policy compromise to reclaim what is possible in practice.

101. Respondent No. 2 submits that the impugned Regulation strikes a constitutionally permissible balance between competing rights under Article 21, namely, the right to housing of slum dwellers and the public's right to a clean environment. The Supreme Court in *Asha Ranjan v. State of Bihar*, (2017) 4 SCC 397, has recognised that when two sets of fundamental rights are in conflict, the right which furthers public interest and collective welfare must prevail.

102. The petitioners' argument amounts to a demand for a writ of mandamus to the Legislature or Executive to make specific planning policies according to their views. Such relief is impermissible in law. [*State of Himachal Pradesh v. Satpal Saini*, (2017) 11 SCC 42]

103. The suggestion to "read down" provisions of the Slum Act (Sections 3X, 3Y, 3Z) is legally untenable. These sections are part of a statutory scheme enacted after detailed study and reports like the Afzalpurkar Committee Report. They aim to regularise and rehabilitate slum dwellers while simultaneously safeguarding societal interest.

104. The planning decisions made under DCPR 2034 were based on the following realistic considerations: (i) Most encroached lands cannot be vacated without significant social unrest; (ii) Eviction without rehabilitation is neither feasible nor legal; (iii) Acquisition and development of new lands for open spaces faces practical constraints; (iv) Allowing in-situ rehabilitation while recovering 35% land for open space is a fair and pragmatic policy.

105. The impugned Regulation, therefore, reflects a conscious, balanced and constitutionally valid decision. It improves upon earlier schemes like the 1992 Guidelines and DCR 1991, by securing more defined benefits, namely, actual recovery of open space from currently unusable lands.

106. As observed by the Supreme Court in *MIG Cricket Club v. Abhinav Sahakar Education Society*, (2011) 9 SCC 97, town planning is a technical and evolving subject. Courts must defer to the wisdom of expert authorities unless there is clear and demonstrable illegality, which is not the case here.

107. Similar challenges to Development Control Regulations have been rejected by constitutional courts in: *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group*, (2006) 3 SCC 434; *Jayant Sathe v. Joseph D'souza*, (2008) 13 SCC 547; *Nivara Hakk Suraksha Samiti v. State of Maharashtra*, WP No. 963/1991 (Bombay HC). For all the aforesaid reasons, Respondent No. 2 submits that the challenge to Clause 17(3)(D)(2) of DCPR 2034 is legally and factually unsustainable, and the present writ petition is liable to be dismissed.

C) (i) Submissions on behalf of Respondent No.1 State of Maharashtra:

108. Upon considering the submissions advanced on behalf of Respondent No. 1, it is noticed that the some of the objections taken by Respondent No. 1 substantially mirror those already raised by Respondent No. 2, both in form and in content. The thrust of the arguments rests on three premliminary grounds: first,

that Petitioner No. 1 lacks locus standi to pursue the present petition post-substitution; second, that the petition suffers from procedural infirmities due to non-compliance with the Public Interest Litigation (PIL) Rules of this Court; and third, that the challenge to Regulation 17(3)(D)(2) of the DCPR 2034, is misplaced, speculative, and lacking in foundational data or constitutional justification.

109. According to Respondent No. 1, the chronological development of the town planning framework in the city of Mumbai is as under:

(i) Pre-MRTP Framework: The process began under the Bombay Town Planning Act of 1954, under which the initial steps were taken to prepare a comprehensive Development Plan for the city.

(ii) Enactment of the MRTP Act (1966): On 20th December 1966, the Maharashtra Regional and Town Planning Act, 1966 came into force, repealing the 1954 Act and providing a comprehensive statutory scheme for preparation of Development Plans and Development Control Regulations.

(iii) First Development Plan and DCR 1967: Based on the MRTP Act, the first Development Plan and Development Control Rules, 1967 (commonly known as DCR 1967) were framed and implemented from the year 1967.

(iv) Slum Act Enacted (1971): The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act was enacted on 3rd September 1971 to deal with the

growing issue of slums in urban areas.

(v) Cut-Off Date for Eligibility (1976): On 4th February 1976, the State Government passed a resolution to conduct a citywide survey of slum dwellers, and the cut-off date of 1st January 1966 was fixed to determine eligibility for rehabilitation benefits. Pursuant to the survey, photo passes were issued to eligible slum dwellers on 13th January 1977.

(vi) Revision of Development Plan (1991): On 31st March 1991, the Municipal Corporation of Greater Mumbai (MCGM), being the Planning Authority for the city, declared its intention under Section 26 of the MRTP Act to revise the Development Plan for the city.

(vii) Sanction of DCR 1991: On 16th April 1991, the State Government granted approval under Section 31 of the MRTP Act to the Development Control Regulations, 1991, thereby bringing them into force.

(viii) Judicial Endorsement of DCR 1991: In Writ Petition No. 963 of 1991, the constitutional validity of Regulation 33(10) of DCR 1991, read with Appendix IV, was upheld by this Court. The said order was passed on 16th April 1991, and the challenge was expressly rejected.

(ix) Notification Dated 27th April 1995: The State Government issued a guideline notification under Section 31(1) of the MRTP Act, permitting the development of lands reserved for public purposes in the Development Plan, such as recreation grounds, play grounds and other open spaces,

for slum rehabilitation, subject to specific conditions. This marked the beginning of allowing non-buildable reservations to be developed under specific schemes.

(x) Afzalpurkar Committee (1995): On 23rd November 1995, a committee headed by Mr. Afzalpurkar, a senior IAS officer, was constituted by the Government along with 16 other experts to study the implementation of slum rehabilitation in Mumbai and recommend necessary planning and legal measures.

(xii) Amendment to MRTP Act (1995): Based on the Committee's recommendations, the MRTP Act was amended to introduce Sections 2(19), 37(1)(b) and 152, giving the Slum Rehabilitation Authority (SRA) the status of a Planning Authority for the purpose of implementing slum rehabilitation schemes. The Government was also empowered to delegate its powers under Sections 44 to 46 and 54 to 56 of the MRTP Act to the SRA.

(xiii) Constitution of SRA under Slum Act: The Slum Rehabilitation Authority was formally constituted under Section 3A of the Slum Act. The SRA was thereafter directed by the Government to initiate Development Plan (DP) modifications wherever necessary for effective implementation of slum schemes.

(xiv) Regulation 33(10) Amended: Based on the Afzalpurkar Committee report, the Government amended Regulation 33(10) of DCR 1991, which became the basis for the General

Slum Rehabilitation Scheme for Mumbai, published on 1st April 1998.

(xv) Judicial Endorsement of DCR 33(10) (2007 and 2019): In two successive rounds of litigation, this Court and the Supreme Court upheld the constitutional validity of Regulation 33(10), including in Janhit Manch v. State of Maharashtra, reported in (2007) 1 Bom CR 329 and (2019) 2 SCC 505.

(xvi) Clarification of Interim Order in the Present Petition: This Court, in the present matter itself, clarified that the interim order dated 31st July 2002 would not act as a restraint on the State from framing a new scheme or evolving a new policy. Accordingly, the interim order was modified on 31st July 2022.

(xvii) Revised Draft Development Plan and DCPR 2034: On 2nd August 2017, the MCGM declared its intention to prepare a draft revised Development Plan under Section 26(1) of the MRTP Act. On 9th November 2017, pursuant to Government directives, the earlier draft was scrapped and a fresh plan was republished. On 7th February 2017, the BMC approved the revised draft Development Plan and DCPR. Suggestions and objections were invited from the public under Section 26(1), and the Planning Committee submitted its detailed report regarding land use, open spaces, reservations and slum rehabilitation on 21st February 2018. Thereafter, the State Government sanctioned the

Development Plan in stages under Section 31(1). The final sanction to the balance portion of the DP and DCPR 2034 was granted, and the same came into force with effect from the date of notification.

110. Petitioners' Amendment to Challenge Regulation 17(3)(D)(2): After the DCPR 2034 was brought into force, the Petitioners amended the Writ Petition to challenge Regulation 17(3)(D)(2), which permits partial use of large non-buildable open space reservations (over 500 sq.m.) for slum redevelopment, subject to the condition that 35% of the land is left open and only 65% may be used for redevelopment.

ii) Further Submissions of Respondent No. 1: Findings and Recommendations of the Afzalpurkar Committee:

111. Respondent No.1 submits that the policy reflected in Regulation 17(3)(D)(2) of the DCPR 2034 is neither arbitrary nor unconstitutional, but is in fact the result of extensive expert consideration, including the recommendations of the *Afzalpurkar Committee*, which was specifically constituted to examine the challenges of slum redevelopment in Mumbai and to make practical recommendations. The Afzalpurkar Committee, comprising senior administrative and technical experts, submitted a detailed report addressing key aspects of slum rehabilitation. The findings and recommendations of the Committee were guided by the principle of balancing the need for planned urban development with the socio-economic realities of slum dwellers. Relevant portions of the report are summarized below.

112. In-Situ Redevelopment as the Principal Strategy: The Committee noted that a significant portion, around 65%, of the income of slum households is spent merely on food, leaving only about 35% of their income for essential needs like housing, education, and healthcare. Due to this limited income, slum dwellers tend to live in areas close to their place of work to reduce transport costs and to retain access to employment. Thus, any policy that proposes large-scale shifting or relocation away from such locations is likely to face strong resistance and may fail in implementation. The Committee emphasized that in-situ redevelopment, i.e. rehabilitation of slum dwellers at the same location or in close proximity, should be the core guiding principle of slum policy. However, it was also acknowledged that in certain cases, such as when slums are situated on lands reserved for public utilities (e.g., water pipelines, sewerage, high-tension power lines) or in No Development Zones, relocation may be unavoidable in the interest of public safety, hygiene, and urban infrastructure. Accordingly, the Committee held that: Relocation should only be done when slums exist on lands with location-specific public amenities, which cannot be shifted. Even in such cases, the proportion of slum dwellers requiring relocation would be a small percentage of the total affected population. For such limited cases, relocation was considered a just and defensible policy measure in the larger interest of the city and its infrastructure.

113. Distance of Relocation Sites: The Committee further highlighted that, in practice, it has been very difficult to find alternate sites near existing slums for relocation. Based on past

experience, none of the approximately 25,000 huts that had been relocated in the last two decades could be shifted within a distance of 15 kilometers from their original location. Given the scarcity and high demand for urban land in Mumbai, finding nearby sites is extremely difficult. Moreover, land has to be reserved for transit accommodation during the redevelopment period. Therefore, the Committee concluded that: No rigid restriction should be imposed on the distance at which relocation sites may be identified. Efforts must, however, be made to ensure that the relocation site does not disrupt the social and economic structure of the community. Considering the fully subsidised nature of the rehabilitation housing and the phasing out of taxes and charges, relocation of a limited number of families to slightly distant locations was considered reasonable.

114. Based on the above, the Committee made the following key recommendations: In-situ redevelopment should be the main approach in slum rehabilitation schemes. Relocation should be permitted only where slums exist on public amenity lands that cannot be used for residential purposes.

115. Other Key Issues Considered by the Committee : Respondent No. 1 further submits that the Committee took a comprehensive view and considered several other critical issues, including: The implementation challenges in existing schemes and the need for policy reform. Whether any amendments were needed in the legal framework, including the Slum Act and related provisions. The necessity to create financial models to support civic infrastructure in slum projects. Measures to prevent sale of allotted tenements

and re-encroachment by slum dwellers after rehabilitation. How to involve the private sector in funding and implementation without burdening the Government. Steps to be taken against non-cooperating slum dwellers who delay or obstruct redevelopment. The type of institutional machinery needed—whether governmental or autonomous—for better execution. The nature of incentives required to encourage large slum colonies to come forward voluntarily. Broad measures to promote and execute slum redevelopment on a citywide scale.

116. Based on these issues, the Committee gave its considered recommendations to the State Government, including the proposal to fix 1st January 1995 as the cut-off date for eligibility under the slum rehabilitation scheme. Respondent No. 1 relies upon the said Committee Report to demonstrate that the present policy—particularly the regulatory framework allowing partial use of large reserved open spaces for slum redevelopment—is a well-considered measure, emerging from urban realities, expert recommendations, and judicially endorsed planning strategies.

iii) Submissions of Respondent No. 1: Contextual Background and Justification for Impugned Regulation:

117. Respondent No. 1 submits that the present Regulation under challenge, namely, Regulation 17(3)(D)(2) of the DCPR 2034, is a result of years of policy evolution in response to the unique urban challenges faced by the city of Mumbai. Mumbai, geographically situated along the western coast of India, has developed from a cluster of seven islands, namely Bombay, Colaba, Mazgaon, Old

Woman's Island, Parel, Worli, and Salsette. The eastern side of the city is marked by rows of mangroves, while the western side is largely rocky and sandy. Owing to its coastal formation, the city has a narrow land stretch running along a north-south axis, which inherently limits available land for habitation and development. These geographical constraints, combined with Mumbai's status as a major economic and financial hub, have resulted in a severe land crunch. People from various parts of Maharashtra and across the country have continued to migrate to the city in search of employment and livelihood opportunities. As a result, a significant portion of Mumbai's population, nearly 55%, reside in approximately 2,500 slum settlements, which are largely unplanned, unsafe, and devoid of basic amenities.

118. Due to shortage of land and lack of affordable housing options, many residents are compelled to live in informal settlements. Initially, till around 1971, slums were treated as illegal encroachments, and demolition was the standard administrative response. However, it became evident over time that mere demolition could not address the issue. The problem was not of law and order, but one of socio-economic distress. Most slum dwellers did not voluntarily choose to occupy such lands; rather, they were driven by poverty, lack of resources, and compulsion. Recognizing this, the *Slum Act* was enacted to improve and rehabilitate people residing in such settlements. In the year 1995, the State Government constituted the Afzalpurkar Committee, comprising experts and senior officials, to examine the issue in detail. The Committee's report revealed that, on an average, 65%

of a hutment-dweller's income is spent solely on food, and only the remaining 35% is available for health, education, housing, and other necessities. This economic limitation makes it extremely difficult for slum dwellers to secure formal housing . The State and its agencies are bound by constitutional and statutory obligations to ensure shelter and dignity to all its citizens, especially the weaker sections. The Right to Shelter has been consistently recognized by the Supreme Court as an essential part of the Right to Life under Article 21 of the Constitution of India. The consistent emphasis of expert bodies and policy makers has been on in-situ rehabilitation as a just and effective solution. The impugned Regulation reflects a conscious policy choice to balance two competing but equally important objectives (i) the right of the general public to access open spaces, and (ii) the need to provide secure housing to long-standing slum dwellers. In order to give statutory effect to the slum rehabilitation policy under the Slum Act, it was also felt necessary to incorporate specific provisions in the Development Control Regulations. Accordingly, Regulation 33(10) was introduced into the DCR 1991, to facilitate and regularize slum rehabilitation schemes within the overall development framework .

119. It is also submitted that many slums are located on lands that are shown as reserved for gardens, playgrounds, or recreational spaces in the Development Plan or the Town Planning Scheme. However, once such lands are encroached by slum settlements, their theoretical status as open spaces does not translate into actual availability for public use. In practice, these

lands cannot be used by the public for their intended purposes. The current State policy, including Regulation 17(3)(D)(2), offers a pragmatic solution by allowing partial redevelopment of such lands, permitting up to 65% to be used for rehabilitation of slum dwellers and reserving at least 35% for public use, thereby restoring some portion of the original reservation without any burden on the public exchequer .

120. Therefore, the intent and effect of the impugned Regulation is neither arbitrary nor detrimental to public interest. Rather, it ensures that open spaces which are currently unavailable due to occupation by slums can be at least partially reclaimed while simultaneously achieving the goal of rehabilitating urban poor. In light of the above factual background, and particularly considering the limited land availability, the existing policy represents a balanced approach. It ensures upliftment of slum dwellers, while also restoring part of the encroached land for the intended public purpose. This policy framework has been laid out in DCPR 2034 and is fully in line with the objectives of the MRTP Act, especially the provisions concerning planning, reservations, and permissible development on non-buildable / open space lands .

iv) Submissions on behalf of Respondent No. 1: Legal Framework and Validity of Regulation 17(3)(D)(2) of DCPR 2034 under the MRTP Act:

121. Respondent No. 1 submits that the impugned Regulation 17(3)(D)(2) of the Development Control and Promotion Regulations, 2034 (DCPR 2034), is a part of the larger statutory

framework under the MRTP Act. The MRTP Act is a comprehensive code that governs the preparation, approval, and implementation of Development Plans (DP) and Development Control Regulations (DCR) in the State of Maharashtra. The said Regulation has been framed strictly in accordance with the statutory scheme under the Act and cannot be said to be arbitrary or ultra vires.

122. A. Statutory Scheme under the MRTP Act : Section 2(3) defines "appropriate authority" to mean the authority for whom land is designated in a Development Plan for public purpose. Section 2(9) defines "Development Plan" as a plan for the development or redevelopment of areas within the jurisdiction of the Planning Authority. Section 2(15) defines "local authority", which in the context of Mumbai, includes the Municipal Corporation of Greater Mumbai. Section 2(19) defines "Planning Authority", which includes the Municipal Corporation and also extends to Special Planning Authorities constituted under Section 40. Importantly, in the context of slum areas, it also includes the Slum Rehabilitation Authority (SRA) appointed under Section 3A of the Slum Act.

123. Chapter III of the MRTP Act contains provisions related to Development Plans and includes procedural safeguards and participatory mechanisms such as surveys, draft publication, invitation of objections and suggestions, consideration by Planning Committees, and final sanction by the State Government. Section 21 casts a duty on the Planning Authority to: Conduct land surveys; Prepare an existing land use map; Prepare a Draft Development Plan (DDP); Submit progress reports to the State

Government periodically.

124. Section 22 enumerates the essential contents of a Development Plan, which include: Land use zoning (residential, commercial, recreational, etc.); Reservation of land for public purposes; Provisions for infrastructure, transportation, flood control, sanitation, open spaces, and heritage preservation; Regulation of development through imposition of restrictions such as FSI, building height, and population density. Section 22(m) is particularly relevant, as it empowers the State Government or the Planning Authority to regulate land development and land use by framing Development Control Regulations, which are treated as part of the Development Plan.

125. Section 23 to Section 31 provide for: Declaration of intention to prepare the DP (Section 23); Preparation of base maps and surveys (Section 25); Publication of Draft DP (Section 26); Public participation through objections and suggestions (Section 28); Submission of Draft DP to State Government (Section 30); Final sanction by the Government (Section 31), after consultation with the Director of Town Planning. Once sanctioned, the Development Plan and DCR come into force and acquire statutory force. Section 37 allows modification of a final Development Plan, following similar procedural safeguards. Section 40 enables the creation of Special Planning Authorities, which includes the SRA, for focused areas like slum rehabilitation.

D) Judicial Precedents Cited: (i) Delegated Legislation and Limited Scope of Challenge:

126. The Supreme Court in *Pune Municipal Corporation (Supra)* , held that Development Control Regulations framed under Section 22(m) read with Section 158 of the MRTP Act are delegated legislation, and thus form an integral part of the statutory scheme. The validity of delegated legislation can be challenged only on limited grounds such as: It is ultra vires the parent statute; It suffers from lack of competence; It violates fundamental rights; It is manifestly arbitrary, unreasonable, or fails to conform with the objects of the Act. In the present case, it is submitted that the Petitioners have not demonstrated how Regulation 17(3)(D)(2) violates any of the above principles. The Regulation is traceable to valid statutory authority under the MRTP Act, has been framed following due process, and does not violate Article 14 or Article 21 of the Constitution.

ii) Policy Justification for Regulation 17(3)(D)(2):

127. Respondent No. 1 submits that Regulation 17(3)(D)(2) was introduced after considering: The existing encroachments on open lands in the city; The shortage of affordable housing; The need to provide shelter to long-standing slum dwellers; And the impossibility of fully restoring open spaces already encroached upon. The Regulation strikes a practical balance by mandating that at least 35% of the reserved open space shall be left open for the intended reservation purpose, while allowing the remaining 65% to be used for in-situ slum rehabilitation. This enables: Partial

reclamation of open spaces; Regularisation of existing slum dwellings; Reduction in litigation and evictions; And fulfilment of constitutional obligations relating to shelter and dignity. The development plan and the DCPR 2034 have been prepared simultaneously by the concerned statutory authorities, with due regard to existing land use, open spaces, and future needs of the city. Experts from urban planning, environment, and housing sectors were consulted at each stage. The impugned Regulation reflects a reasoned and informed policy decision.

128. It may further be noted that in order to support the Slum Rehabilitation Policy under the Slum Act, it was necessary to introduce matching provisions in the Development Control Regulations. Accordingly: Regulation 33(10) was introduced in DCR 1991 to permit slum rehabilitation on reserved lands subject to specific conditions. Draft Slum Guidelines were published on 26th December 1991, and after public consultation, finalized by Notification dated 3rd June 1992 under Section 31(1) of the MRTP Act. These Guidelines form an integral part of the Development Plan and allow slum rehabilitation on reserved plots, provided certain public purposes are still achieved. The objective of Regulation 17(3)(D)(2) is aligned with this long-standing policy, and aims to reconcile the community's need for open space with the statutory duty to rehabilitate eligible slum dwellers.

129. The Regulation, thus, reflects a balanced policy choice that accommodates both: The public interest in restoring open spaces, and the social welfare mandate to protect the rights of slum residents, as recognised under Article 21 of the Constitution and

reaffirmed by various judicial pronouncements.

130. Respondent No. 1 submits that the challenge raised by the Petitioners to the constitutional validity of Clause 17(3)(D)(2) of the DCPR 2034 is unsustainable both on facts and in law. The said provision has been framed as part of a statutory Development Plan, after following due process under the MRTP Act, and is consistent with established legal principles laid down by the Supreme Court and this Court.

iii) Presumption of Constitutionality and Burden on Petitioner:

131. It is a settled principle of constitutional law that every statute or delegated legislation is presumed to be valid unless proved otherwise. The burden lies heavily on the party challenging the provision to demonstrate beyond doubt that it is violative of constitutional provisions.

132. *State of Bihar v. Bihar Distillery [(1997) 2 SCC 453]*- The Supreme Court has clearly held that the courts must begin with a presumption in favour of constitutionality of legislation. A law cannot be struck down merely by alleging that it is arbitrary. The challenge must show clear transgression of constitutional limits.

133. *B.R. Enterprises v. State of U.P. [(1999) 9 SCC 700]*- The Court emphasized that it must be assumed the legislature understands the needs of its people, and judicial scrutiny must lean in favour of upholding validity wherever possible.

134. *Mohd. Hanif Quareshi v. State of Bihar [AIR 1958 SC 731]*- The Court is permitted to take into account historical context, common knowledge, and prevailing social realities while sustaining a law. The burden of proving unconstitutionality lies with the challenger.

135. *Sushil Kumar Sharma v. Union of India [(2005) 6 SCC 281]*- A mere possibility of misuse of a provision does not render it unconstitutional. The law must be presumed to be applied fairly and reasonably.

136. *Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720]*- The Supreme Court has observed that invalidating a statutory provision is a serious and exceptional step, to be taken only in the rarest of cases.

137. *Chiranjit Lal Chowdhury v. Union of India [AIR 1951 SC 41]*- The presumption of validity must be accorded to the statute, and it is for the party challenging it to establish a clear breach of constitutional guarantees.

138. *Mahant Dhas v. State of Bihar [AIR 1959 SC 942]*- The Court reiterated that presumption in favour of constitutionality is a fundamental principle and the legislature must be assumed to be aware of public needs.

iv) Right to Shelter and State's Constitutional Obligation:

139. Respondent No. 1 further submits that the right to shelter is recognized as part of the right to life under Article 21, and the State has an affirmative duty to take positive steps for housing the

poor and rehabilitating slum dwellers.

140. *Chameli Singh v. State of U.P. [(1996) 2 SCC 549]*- The right to life includes right to shelter, food, water, and a clean environment. It is the duty of the State to ensure access to basic human needs.

141. *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan [(1997) 11 SCC 121]* - The Court held that the State must provide shelter to the urban poor and that such an obligation arises from Articles 38, 39, and 46 of the Constitution. Right to residence is part of the minimum core of human dignity.

142. *P.G. Gupta v. State of Gujarat [1995 Supp (2) SCC 182]*- The Supreme Court held that affordable permanent housing is part of socio-economic justice. The State is obligated to create viable housing schemes within the means of the poor.

v) Balancing of Competing Public Interests under Town Planning Laws:

143. Respondent No. 1 submits that the impugned Regulation strikes a balance between competing public interests, namely, rehabilitation of long-term slum dwellers and preservation of open spaces in a heavily congested city like Mumbai.

144. Relying on *Bombay Dyeing (Supra)* it is submitted that the Supreme Court held that in planning and zoning matters, the Court must adopt a balanced and harmonious approach, giving due regard to all public interests involved. The Court also clarified

that: Ecological considerations are important but must be read in light of the purpose and object of the planning statute. There may be multiple public interests, and it is for the policymaker to decide which to prioritize. Courts must defer to legislative wisdom unless the action is manifestly arbitrary. The same principle applies here. Regulation 17(3)(D)(2) achieves a middle path—it allows 65% of slum-occupied reserved land to be used for in-situ rehabilitation, while restoring 35% for public use.

145. Respondent No. 1 submits that the judgments cited by the Petitioners do not support the present challenge and are factually or contextually distinguishable: *Hiraman (Supra)* – This case relates to lapsing of reservation under Section 127 of the MRTP Act and does not deal with delegated legislation or slum rehabilitation. *Lal Bahadur (Supra)* – This was a case of conversion of green belt into residential zone allegedly under external influence. The facts involved allegations of abuse of power, which are not relevant here. *Virendra Gaur (Supra)* – In this case, open land was allotted to a private party for construction. There was no issue of in-situ slum rehabilitation or regulation under the MRTP Act. Vellore Citizens' Welfare Forum *(Supra)* – This judgment deals with pollution control and sustainable development. However, DCPR 2034 already incorporates sustainability principles. *A.P. Pollution Control Board (Supra)* – Discusses precautionary principles of environmental law. It does not involve urban planning regulations under MRTP Act. Karnataka Industrial Area Development Board *(Supra)* – Pertains to ecological preservation, but is not relevant to rehabilitation policy or town planning

regulations. *M.C. Mehta (Supra)* – Concerns construction near riverbed in a hotel project and diversion of river flow, unrelated to slum redevelopment or DCPR provisions. *M.I. Builders (Supra)* – A public park was handed over to a private builder, a case entirely distinguishable on facts and legal context. *Kohinoor (Supra)* – This judgment affirms the need to provide recreational open spaces at ground level, which is consistent with Regulation 17(3)(D)(2). *Janhit Manch (Supra)* – This Court issued guidelines on slum rehabilitation. Regulation 17(3)(D)(2) is a direct response to these directions and strikes a balance by restoring 35% open space. M.C. Mehta (2002) 4 SCC 356*(Supra)* – This case pertains to pollution and environmental control, not statutory urban regulations.

146. In view of the above settled legal position, Respondent No. 1 submits that no case of constitutional infirmity is made out in respect of Clause 17(3)(D)(2) of DCPR 2034. The Regulation is a product of delegated legislative power duly exercised under the MRTP Act, guided by principles of public interest, equity, and urban planning discipline. The challenge raised by the Petitioners does not satisfy the threshold required for invalidating a piece of delegated legislation. Respondent No. 1 prays for dismissal of the Writ Petition.

E) Submissions on behalf of the Intervener –

i) Slum Dwellers' Society:

147. It is submitted that the present writ petition, insofar as it seeks to challenge the legality and validity of Regulation 17(3)(D) of the DCPR 2034, is liable to be dismissed on the ground of gross

delay and laches. The record would reveal that the draft of the DCPR 2034, along with the revised Development Plan, was placed before this Court as far back as on 13th December 2018. The Petitioners were fully aware of this development. In fact, the four-week period granted by the Court expired on 12th January 2019, by which time no objection was raised by the Petitioners. Thereafter, for more than two years, the Petitioners chose not to challenge the Regulation. Only on 14th June 2021 did the Petitioners seek to amend the writ petition and include a challenge to the provisions of DCPR 2034. Even the Interim Application seeking a stay on Regulation 17(3)(D) was moved only in June 2022—more than three years after the Regulation came into force. No explanation has been offered for this unexplained and avoidable delay.

148. The Petitioners' silence becomes even more glaring when considered in the background of the statutory procedure followed prior to the finalization of the Development Plan and the DCPR 2034. In accordance with the provisions of the MRTP Act, the MCGM had published notices and invited objections and suggestions from the public at two different stages. It is therefore submitted that the challenge mounted to Regulation 17(3)(D) of DCPR 2034 is barred by delay and laches, suffers from a lack of bona fides, and is liable to be rejected at the threshold. The Petitioners' conduct, when weighed against the rights of thousands of slum dwellers who stand to benefit from planned redevelopment, tilts the balance of equity against interference. In view of the above, the Intervener Slum Dwellers' Society humbly

submited that the present challenge by the Petitioners suffers from gross delay and laches. The Petitioners remained silent through all stages of the planning process, did not raise any timely objection, and have now chosen to challenge the Regulations years after their implementation. This belated challenge deserves to be dismissed on this ground alone.

149. The procedural trajectory culminating in the formulation and final notification of the DCPR 2034 has already been duly taken note of while setting forth the submissions advanced on behalf of Respondent Nos. 1 and 2. This Court has recorded in sufficient detail the steps undertaken by the Planning Authority, including the process of publication of the draft regulations, invitation of objections and suggestions, conduct of hearings, and the eventual issuance of the final notification in accordance with the scheme envisaged under the Maharashtra Regional and Town Planning Act, 1966. In view thereof, and in order to obviate repetition, this Court considers it neither necessary nor appropriate to once again recapitulate the said procedural history as narrated in the written submissions of the Intervener Slum Dwellers' Society.

150. Based on the authoritative pronouncements in the case of *Janhit Manch v. State of Maharashtra, 2006 SCC OnLine Bom 1145* , *Janhit Manch v. State of Maharashtra*, (2019) 2 SCC 505, *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat*, (2008) 5 SCC 33, *State of Tamil Nadu v. P. Krishnamurthy*, (2006) 4 SCC 517 the Intervener submits the following legal position: (i) That the DP 2034 and DCPR 2034 are delegated legislation, framed under the MRTP Act, and therefore enjoy a presumption of

validity. (ii) That the sufficiency or adequacy of material before the authorities at the time of drafting the plan or regulations cannot be re-examined in judicial review. (iii) That such delegated legislation can only be challenged on three narrow grounds, namely: a) That the provision is beyond the scope of the parent Act; b) That the provision is *manifestly arbitrary* on its face, requiring no factual evidence to demonstrate its unreasonableness; c) That the provision suffers from *procedural ultra vires*, i.e., it was notified contrary to the mandatory procedure laid down under the MRTP Act.

151. A plain reading of the amended Writ Petition and the accompanying Interim Application for Stay clearly reveals that none of the above well-established grounds have been invoked by the Petitioners. There is no plea that Regulation 17(3)(D) of the DCPR 2034 is ultra vires the MRTP Act. There is no material placed on record to show that the provision is facially arbitrary or that the prescribed procedure was not followed. The challenge is based on generalised objections, unsupported by the legal tests laid down by the Supreme Court and this Court. For all the aforesaid reasons, the Intervener submits that the Petitioners have failed to make out even a prima facie case for grant of any relief. The challenge to Regulation 17(3)(D) is not only grossly delayed but is also legally unsustainable. The Interim Application for Stay, as well as the Writ Petition, deserves to be dismissed in limine. The Intervener submits that the process of town planning is not static, but a continuous and evolving one. Town planning and development are dynamic in nature, and they respond to the

changing needs of society, population growth, urbanisation, and infrastructural demands. It is for this very reason that the legislature has empowered the State Government to modify or amend the Development Plans and Development Control Regulations (DCR) from time to time, following the prescribed legal procedure.

152. Based on the case of *Her Highness Maharani Shantadevi P. Gaikwad v. Savjibhai Haribhai Patel*, (2001) 5 SCC 101, *Hotel Sahara Star v. State of Maharashtra*, 2008 SCC OnLine Bom 666, *Rajeev Suri v. Delhi Development Authority*, (2022) 11 SCC 1, the legal position that emerges from these decisions is clear and consistent. The power of the State to amend or modify Development Plans and Regulations: (i) Is recognised as a quasi-legislative function; (ii) Is necessary to meet emerging urban needs, technological advancements, and demographic shifts; (iii) Is subject only to the procedure laid down in the parent statute, and not open to interference unless the modification is shown to be ultra vires the statute or manifestly arbitrary.

153. In this backdrop, it is submitted that the inclusion of Regulation 17(3)(D) in DCPR 2034, which permits limited use of reserved open spaces for the purpose of slum rehabilitation (while preserving a minimum of 35% for recreational use), is a policy decision made in furtherance of constitutional goals of housing, human dignity, and inclusive development. It reflects a balancing of competing public interests—namely, the protection of open spaces and the urgent need to rehabilitate slum dwellers residing in precarious conditions.

154. The power to frame and modify regulations like Regulation 17(3)(D) flows directly from the statutory scheme of the MRTP Act, and the same has been exercised through a transparent process involving public notice, objections, and expert review. The Petitioners have not shown that the said Regulation is either beyond the scope of the parent statute or manifestly arbitrary so as to warrant judicial interference. Planning instruments such as the DCPR must be interpreted in a manner that furthers the goals of urban equity and sustainable development. In the present case, the challenged Regulation facilitates structured rehabilitation of slum dwellers, and ensures that public open spaces are not misused for private benefit but are used, in part, to address pressing public housing needs. The Courts have repeatedly held that unless there is a violation of constitutional or statutory mandate, Courts should not interfere in matters of urban policy and planning. It is submitted that the Petitioners have not laid any legal basis to challenge the modification or validity of Regulation 17(3)(D). The planning process is ongoing, lawful, and intended to serve evolving public interest. Therefore, the challenge raised by the Petitioners is wholly without merit and deserves to be rejected.

155. It is further submitted that the existing position of status quo is deeply unsatisfactory. For nearly twenty years, the lands which are reserved for recreational open spaces have not been developed as such. Simultaneously, lakhs of slum-dwellers have continued to live in unsafe and unregulated informal settlements on these lands without any rehabilitation or access to basic civic amenities. This stagnation affects over 15 lakh square metres of land and more

than 3 lakh slum dwellers in the city.

156. In this context, the Intervener submits that the balance struck under Regulation 17(3)(D) is not only rational and proportionate but serves the larger constitutional objectives of inclusive urban development, dignity in housing, and sustainable use of public land. Therefore, the Petitioners' plea for striking down this regulation on the basis of an alternative policy preference is untenable.

157. It is now well settled that courts do not sit in appeal over public policy. The judiciary does not examine whether a policy is wise, optimal, or ideal, it examines whether the policy is legal, reasonable, and non-arbitrary. If a regulation is within the legislative competence, follows due process, and seeks to achieve a legitimate public interest goal, it must be respected.

158. This principle has been reaffirmed in numerous decisions of the Supreme Court, including: In *Small Scale Industrial Manufacturers Association v. Union of India*, 2021 SCC OnLine SC 246, the Court clearly held that judicial review of policy is limited to testing legality, and not wisdom or efficacy. The Court held that matters involving economic or social planning require "play in the joints" and that the courts must avoid interfering unless the policy is palpably arbitrary, discriminatory, or mala fide. In *R.K. Garg v. Union of India,(1981) 4 SCC 675* the Court emphasised that laws relating to economic and social welfare must be granted greater latitude because they deal with complex, evolving problems not amenable to doctrinaire solutions. In *Balco Employees' Union v.*

Union of India, (2002) 2 SCC 333 and *Peerless General Finance v. RBI, (1992) 2 SCC 343* it has been categorically held that courts are not expert bodies on fiscal, developmental or town-planning issues and should refrain from evaluating competing policy choices unless there is a clear breach of statutory or constitutional limits.

159. Likewise, in *Satya Dev Baghur v. State of Rajasthan*, (2022) 5 SCC 314, the Supreme Court held that Courts must be slow to interfere with policy decisions, unless such policy is shown to be palpably arbitrary and devoid of any rational basis. It was reiterated that intelligible differentia and a legitimate objective would be sufficient to uphold a policy under Article 14. In *Bombay Dyeing (Supra)* , the Court laid down a crucial test, that multiple public interests must be weighed and harmonised in any judicial consideration. The Court recognised that while ecology is important, so too are the interests of housing, employment, revival of urban areas, and rehabilitation of displaced populations. In such matters, a composite view of public interest must prevail over narrow claims of any one stakeholder. Similarly, this Court in *Janhit Manch v. State of Maharashtra*, PIL Writ Petition No. 660 of 2014 (decided on 23.09.2009), upheld a Government Notification de-reserving 50% of a plot earlier marked for a botanical garden, to facilitate housing rehabilitation for workers under DCR 1991. The Court accepted that such reallocation of land use, when done within the framework of the law and in larger public interest, is permissible and not open to judicial second-guessing.

160. In view of the settled legal position, the Intervener submits that Regulation 17(3)(D)(2) does not suffer from any legal

infirmity. It is a well-considered policy decision aimed at balancing two competing public goods, environmental preservation and housing for the urban poor. It is neither arbitrary nor discriminatory. It is framed in public interest, pursuant to statutory power, and is the result of a democratic planning process. The Petitioners have failed to show that the Regulation is beyond the scope of the MRTP Act, or that it is manifestly arbitrary, or that it was notified in violation of procedural requirements. In the absence of any such established ground, judicial interference is neither warranted nor permissible.

161. The Intervener submits that rehabilitation of slum dwellers is a legitimate and urgent public policy objective. It cannot be ignored or sidelined, as it directly affects the fundamental right to life under Article 21 of the Constitution of India. Millions of citizens across urban India, including the residents of Mumbai, live in unplanned settlements with poor sanitation, unsafe housing, and without basic dignity. The issue before this Court is not merely about land use, but about the lives of lakhs of individuals. The approach suggested by the Petitioners would, in effect, require the State to demolish all slum structures situated on lands reserved for open spaces, and yet not permit their rehabilitation on the same lands. If this position is accepted, it would result in rendering lakhs of people homeless, thereby infringing their basic right to shelter and dignified life.

162. The present intervention is on behalf of slum societies whose members have continued to live in inhuman and unsafe conditions for years. The following facts illustrate the hardship faced by them:

(i) In many societies, there are only 10 to 15 toilets shared among hundreds of people. In effect, there is one toilet for every 50 residents. *(ii)* There is no assured supply of clean water. The limited water made available is often contaminated, but due to scarcity, residents are forced to consume it. *(iii)* Open defecation and open drainage systems are prevalent, affecting the health and dignity of women, children, and the elderly. *(iv)* The homes are kutcha structures, vulnerable to collapse and flooding, especially during monsoons, leading to loss of life and property. *(v)* Every monsoon, waterlogging and disease outbreaks are routine. These conditions were made worse during the COVID-19 pandemic.

163. It is submitted that for more than two decades, no slum rehabilitation scheme under the SRA has been feasible on these lands due to the pending litigation and the interim restraint that continues to operate. As a result, neither have the residents been rehabilitated, nor has even a single square meter of land been converted into open space. Thus, neither policy objective—rehabilitation or green space creation—has been met.

164. It is settled law that the right to shelter is part of the right to life under Article 21. In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, (1997) 11 SCC 121, the Supreme Court held that the State is under a constitutional duty to ensure housing for the poor and weaker sections. Similarly, in *Yash Developers v. Harihar Krupa Co-op. Hsg. Soc. Ltd.*, (2024) 9 SCC 606, the Court recognised that slum redevelopment serves a public purpose, as it is intrinsically connected to the right to dignity and life.

165. The Petitioners cannot compel the State to give priority to only one aspect of development. The State has attempted to balance two legitimate and competing goals—the need for public open spaces and the duty to rehabilitate the urban poor. Regulation 17(3)(D)(2) is a reflection of this balanced approach. If permitted to operate, it will result in opening up 35% of slum-encroached land for public use as green or recreational space, while enabling structured, in-situ rehabilitation for the slum dwellers.

166. The Petitioners' main contention is that Regulation 17(3)(D)(2) is identical to the 1992 Policy, and that both ought to be treated alike. This submission is factually incorrect and legally unsustainable. It ignores the substantive shift in planning philosophy and the methodology adopted in the preparation of the DCPR 2034. Under the earlier 1991 DCR regime, there was no express provision to deal with lands reserved as open spaces but encroached by slums. As a result, even if such land was practically unusable due to encroachments, it continued to be counted as open space in the city's planning data. The 1992 Policy proposed to permit slum rehabilitation on such lands but lacked the refined framework of land balancing seen in the DCPR 2034.

167. In contrast, under the 2034 Development Plan, such encroached areas have already been excluded from the city's count of available open space. Thus, when the new plan computes open space availability, it considers only 35% of such lands as actually available. Therefore, implementing Regulation 17(3)(D)(2) will not reduce the net open space available to the public. Instead, it

will actually realise the planned target of green space availability in the city.

168. The Planning Committee's Report on the Draft Development Plan 2034 specifically notes that, after deliberations on suggestions and objections, including from slum dwellers, a development control mechanism was evolved to allocate 33% of such encroached land as open space, while permitting the remaining 67% for in-situ slum rehabilitation. The Report emphasises that such a mechanism was adopted to serve both planning and humanitarian needs, enabling green space development while protecting the housing rights of vulnerable populations. The realistic calculation of open space availability in the 2034 Plan is already based on this 33% accommodation model. As such, implementation of Regulation 17(3)(D)(2) will help the city move closer to its target of 6.13 sq. metres of open space per person, as provided in the DCPR 2034.

169. Regulation 17(3)(D)(2) was not a post-facto adjustment but an integral component of the city's planning vision under DCPR 2034. The town planners have, from the outset, calculated and planned for only 35% of slum-occupied lands to be treated as open space. The remaining land is earmarked for in-situ rehabilitation, reflecting an equitable balance between environmental and social justice. In view of the facts and circumstances stated above, the Intervening Slum Societies most submit that the challenge to Regulation 17(3)(D)(2) is misconceived and misplaced, and that no reliefs ought to be granted to the Petitioners in respect of its implementation. The regulation advances the cause of planned

development, inclusiveness, and fulfilment of constitutional obligations—and hence, deserves to be upheld.

ii) Submissions on behalf of Intervener – NAREDCO West Foundation:

170. The Intervener, NAREDCO West Foundation, while broadly supporting the submissions advanced on behalf of Respondent No.1 – the State of Maharashtra, and Respondent No.2 – the Planning Authority, has independently pressed for the rejection of the present challenge to Regulation 17(3)(D)(2) of the Development Control and Promotion Regulations, 2034. In particular, the Intervener has adopted the preliminary objections raised by the said respondents, and has also drawn the attention of this Court to the absence of any detailed empirical study, field-specific data, or policy-oriented impact assessment in the pleadings filed by the petitioners. It has been specifically urged that a judicial review of a piece of delegated legislation such as the impugned Regulation cannot be premised on vague apprehensions or generalized assertions, particularly when such regulation forms part of a broader legislative framework framed under statutory mandate.

171. The Intervener submits that the present challenge to the DCPR 2034 is not legally sustainable. The said Regulations form part of delegated legislation made under the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). As per well-settled principles, a delegated legislation like the DCPR 2034 can only be challenged on limited grounds, namely: (i) That it is *ultra vires*

the parent statute, i.e., the MRTP Act; (ii) That there has been *procedural irregularity* in its formulation; or (iii) That it is *arbitrary or discriminatory* and hence violative of Article 14 of the Constitution of India.

172. The Intervener submits that none of these grounds have been made out in the present Petition.

(i) Ultra Vires the Parent Statute (MRTP Act): The Petition does not plead any specific ground or averment that the DCPR 2034 is beyond the scope of the MRTP Act. There is also no case made out that the State Legislature lacked competence to frame the Regulation. In fact, the Regulation is made strictly under the authority and framework provided by the MRTP Act. Therefore, the plea of *ultra vires* the parent Act is not available to the Petitioners.

(ii) Procedural Ultra Vires: The process of finalizing DCPR 2034 has strictly followed the procedure laid down under the MRTP Act, starting from Section 24 onwards. The stages include the preparation and publication of the draft Development Plan, calling for suggestions and objections from the public, conducting hearings, consideration of all suggestions, and then preparation of the final draft. Thereafter, a comprehensive report was submitted to the State Government, which, after due application of mind, sanctioned the Development Plan with necessary modifications. The final DCPR 2034 was then notified in accordance with law. Thus, there has been full compliance

with the statutory procedure, and the allegation of procedural *ultra vires* is wholly baseless.

(iii) Allegation of Arbitrariness and Violation of Article 14: The Intervener submits that the Petition contains only a bare allegation that DCPR 2034 is arbitrary and violative of Article 14 of the Constitution. However, there is no specific pleading, reasoning, or material to support how the Regulation offends the equality clause under Article 14. In the absence of any factual foundation, the charge of arbitrariness cannot be sustained. On the contrary, DCPR 2034 brings about a rational and pragmatic solution to an issue that has remained unresolved for decades. From 1991 to 2018, hardly any progress was made in clearing open spaces occupied by slums. The present Regulation ensures that at least 35% of such reserved open land would now be available and developed for its intended purpose. In this context, the Regulation reflects a realistic approach to a complex urban problem, balancing the need for shelter and the requirement for open spaces. The Intervener submits that the new mechanism introduced by DCPR 2034 provides a *genuine possibility* of reclaiming some open space, which was otherwise completely lost to encroachments. Hence, the Petitioners' assertion that the Regulation is regressive is wholly unfounded.

(iv) Planning is a Technical Exercise Best Left to Experts: It is submitted that preparation of a Development Plan is a complex and technical exercise, generally undertaken every

20 years. In the present case, the new Development Plan has been prepared after a gap of nearly 28 years. During this long interval, Mumbai has undergone rapid urbanization, population growth, and increased demand for housing and civic amenities. The planning authority, being an expert body constituted under statute, is best equipped to assess the adequacy of reservations, feasibility of implementation, and constraints in execution. The Court may not lightly substitute its own opinion in such matters, as held in multiple precedents including *Union of India v. Shah Goverdhan L. Kabra Teachers' College* (2002) 8 SCC 228 and *Small Scale Industrial Manufacturers Assn. v. Union of India* (2021) 8 SCC 511. It is further submitted that under the earlier 1991 Regulations, land reserved for recreation grounds (RG) and playgrounds (PG) were not developable by the private owner or even by the Corporation, unless acquired. However, under DCPR 2034, a progressive provision has been introduced—wherein 70% of the land is handed over to the planning authority, and 30% is permitted for development, even in cases where the land is vacant. The benefit is that the Corporation now gets possession of land without incurring the cost of acquisition. There is no challenge raised in the Petition to this provision.

(v) Constraints in Execution of Open Space Reservations: In many cases, lands reserved for open spaces are fully encroached by protected slum dwellers. In such cases, it is impossible to clear the land unless proper rehabilitation is

first provided. This reality applies even where the land is owned by government bodies. The State is also facing an acute shortage of Project Affected Persons (PAP) tenements, further limiting its ability to undertake slum clearance. As for private landowners whose lands are similarly encroached, they too are unable to clear or utilize their land without a mechanism that enables development. The government lacks sufficient financial resources to acquire such lands. Even if acquired, rehabilitation of slum dwellers will still have to be carried out, which imposes an additional burden on the exchequer.

173. In view of the above, the Intervener submits that DCPR 2034 presents a balanced and practical model—ensuring that reserved open spaces are not entirely lost and that slum dwellers are not rendered homeless, while also easing the financial and administrative burden on the State. The Petitioners have not shown any valid ground to interfere with the policy laid down in DCPR 2034, which reflects considered judgment of experts in the field of urban planning. It is therefore submitted that Petition lacks merits and deserves to be dismissed.

F) Rejoinder on behalf of Petitioner:

i) Respondents' misplaced reliance on the Afzulpurkar Committee Report:

174. The petitioner in rejoinder submits that the Respondents' reliance on the Afzulpurkar Committee Report to justify the impugned Regulation 17(3)(D)(2) and the broader policy of

permitting slum rehabilitation on reserved open spaces is misplaced and selective. While the Respondents emphasize that the Report supports in-situ rehabilitation, they have completely overlooked the fact that the Committee made very specific recommendations against permitting slum rehabilitation on lands reserved for public amenities. This omission on part of the Respondents renders their reliance one-sided and legally unsustainable.

175. A plain reading of the Afzulpurkar Committee Report makes it evident that the intention of the Committee was to ensure that civil amenities were not compromised, and that the environmental integrity of the city was protected. The Committee acknowledged the urgent need to strike a balance between rehabilitation and public planning, and accordingly, it suggested clear safeguards and limitations, many of which have not been implemented or have been diluted by the planning authorities over time.

176. The following key recommendations of the Committee, which are directly relevant to the present issue, have been either ignored or departed from by the Respondents:

> (a) The Report clearly recommended that slums located on lands reserved for public amenities must be removed. These lands were estimated to constitute approximately 20% of the total slum area. The Report contemplated that the reservation percentages in each planning unit should remain intact, thereby ensuring that public purpose lands were not reduced due to encroachment or rehabilitation activity.

(b) A cut-off date of 1st January 1995 was fixed for identifying eligible slum dwellers. The Committee was clear that further encroachments were to be strictly prevented, and that the cut-off date should not be extended under any circumstances. This recommendation was intended to deter fresh encroachments and prevent regularisation of illegal occupations post the fixed date.

(c) The Report emphasized that No Development Zones (NDZs) were to be treated as non-negotiable environmental buffers and all slums located in NDZs were to be removed, with no rehabilitation permitted in such areas. The sanctity of NDZs was to be preserved in the larger ecological interest of the city.

(d) The Committee had recommended that Floor Space Index (FSI) be capped at 2.5, and that the excess FSI be granted in the form of Transferable Development Rights (TDR). The objective behind this recommendation was to avoid excessive density at any single location, and ensure that slum redevelopment did not lead to overburdening of urban infrastructure. The Committee also suggested that TDR should not be permitted in the island city or in NDZs, so as to preserve low-density areas and safeguard heritage precincts.

(e) Importantly, the Report called for the Development Plan (DP) to be reviewed every 2 to 3 years, to ensure that policy measures remained dynamic and responsive to urban

needs. However, despite this recommendation, the DP review process has been delayed, and significant changes have been introduced without periodic evaluation.

177. The petitioner submits that the Respondents, while relying on a single aspect of the Afzulpurkar Report relating to in-situ rehabilitation, have failed to implement or even acknowledge these critical recommendations, especially those relating to preservation of open spaces and public amenities. In effect, the authorities have used the Report to justify expansion of development rights, while disregarding the very planning controls and environmental safeguards which were central to the Report's framework. It is further submitted that the intent of the Afzulpurkar Committee was never to treat open spaces and reserved public lands as merely available for rehabilitation by default. On the contrary, the Report placed great emphasis on retaining reservations, preserving public land for community benefit, and preventing the regularisation of unauthorised encroachments. Therefore, the petitioner submits that: The Afzulpurkar Report, when read in its entirety, does not support the impugned regulation or policy permitting rehabilitation on reserved open spaces; The Report actually reinforces the petitioner's case that open spaces must be preserved and that slum dwellers located on such lands must be rehabilitated elsewhere; The selective reliance on the Report by the Respondents undermines its true intent, and does not satisfy the constitutional or statutory standards for town planning and environmental protection.

178. In these circumstances, the petitioner submits that the Afzulpurkar Committee Report cannot be relied upon as a valid basis to justify the deletion or dilution of public open space reservations, and that any policy or regulation framed contrary to its core recommendations deserves to be reviewed judicially and struck down, if necessary.

ii) Response to the Contention that There Are No Grounds in the Petition Regarding Regulation 17(3)(D)(2):

179. The petitioner submits that the contention raised by the Respondents—that the present petition does not contain specific or sufficient grounds challenging Regulation 17(3)(D)(2) of DCPR 2034—is factually incorrect and legally misconceived. It is a matter of record that the present petition has been duly amended to incorporate a specific challenge to the impugned Regulation 17(3)(D)(2). By way of amendment, the petition now expressly includes Grounds O-1 and O-2, which deal directly with the legal and constitutional infirmities in the said Regulation. Additionally, prayer clause (b)(i) has been amended and expanded to seek reliefs specifically with reference to this Regulation. It is submitted that the substance of the petitioner's grievance has remained consistent throughout the proceedings. The basis of challenge has always been the unauthorised and unsustainable use of lands reserved for public open spaces for the purposes of slum rehabilitation. Although the impugned Regulation now bears the formal title of Regulation 17(3)(D)(2) under DCPR 2034, the underlying policy remains materially the same as the one previously notified through the 1992 Notification read with DCR

1991.

180. The petitioner has, therefore, clearly pleaded in the amended petition that Regulation 17(3)(D)(2) suffers from the same legal infirmities, constitutional violations, and planning defects as those that afflicted the earlier regime. The petition specifically states that all the grounds urged in support of the challenge to the 1992 Notification and the corresponding provisions of DCR 1991 also apply *mutatis mutandis* to the present Regulation.

181. Moreover, the petitioner has produced and placed on record updated facts, reports, and data which support the continued relevance of the challenge and demonstrate the adverse environmental and planning consequences that would result from the implementation of the impugned Regulation. The issues raised have been substantiated with reference to authoritative sources such as the MMR-EIS Report, the Preparatory Studies for DCPR 2034, the Planning Committee Report, and several binding judgments of the Supreme Court and this Court.

182. It is also important to note that the grievance of the petitioners has remained unchanged only because the policy itself has remained unchanged in essence. The minor modification in the ratio of 33:67 under the 1992 Notification to 35:65 under Regulation 17(3)(D)(2) does not reflect any substantial shift in policy or intent, and the continued dilution of open space reservations has worsened rather than improved the environmental condition of the city.

183. Therefore, the petitioner submits that the challenge to Regulation 17(3)(D)(2) is clearly and sufficiently pleaded in the petition as amended, and is supported by detailed grounds, prayers, factual material, and legal submissions. The said contention of the Respondents deserves to be rejected as contrary to the record and not sustainable in law.

iii) On the Objection to the Locus Standi of the Petitioners:

184. The petitioner submits that the objection raised by the Respondents regarding the locus of Petitioner No. 1—Alliance for Governance and Renewal (NAGAR)—is not only belated but also wholly untenable, both on facts and in law. The Respondents, for the first time during final arguments, have questioned the standing of NAGAR to maintain this Public Interest Litigation. However, it is important to note that at no point prior to this stage was the locus of NAGAR questioned. Specifically: (a) The substitution of NAGAR in place of the original Petitioner No. 1, CitiSpace, was allowed by this Court by its order dated 1st March 2022, which granted leave to amend the petition. This amendment was carried out through due process and in full view of the Respondents. (b) The Respondents did not oppose this substitution either in their affidavits in reply to the amendment application or during oral arguments at the time when the application for amendment was heard. (c) Even after the amendment, the Respondents filed replies to the amended petition, but did not raise any objection to NAGAR's locus in those replies.

185. In light of the above, the petitioner submits that it is not open to the Respondents at this belated stage to raise objections to the locus of NAGAR. The objection is not only an afterthought but is also contrary to established procedural fairness. It is therefore submitted that the objection deserves to be rejected in limine.

iv) Without Prejudice – NAGAR's Entitlement to Maintain the Petition:

186. Without prejudice to the above, and assuming for argument's sake that this Court were inclined to examine the issue of locus standi, the petitioner submits that NAGAR satisfies all legal requirements to maintain this public interest petition.

187. NAGAR is a registered society and a public charitable trust. One of its core objects is the protection and conservation of public spaces, including gardens, parks, playgrounds, and other open spaces. Its work is focused on safeguarding the urban environment and promoting good governance in matters of urban planning. Historically, NAGAR operated through constituent organisations such as CitiSpace, CLEAN-Air and CLEAN-Sweep. The activities carried out under the name of CitiSpace were in fact administered from NAGAR's office, and all official communication by statutory authorities like the Slum Rehabilitation Authority (SRA) and the Municipal Corporation of Greater Mumbai (MCGM) was addressed to CitiSpace at NAGAR's registered office address. In December 2013, the Trustees of NAGAR formally decided to consolidate all activities under the single name of NAGAR. This decision was taken in a meeting of the Trust held on 6th December 2013, and

all constituent members were informed accordingly. No objections were raised by any member. Since then, CitiSpace's activities have been continued under the banner of NAGAR. The same has been reflected on NAGAR's official website, and has also been published in the article titled *"The Story of NAGAR"* in the journal *Mumbai Reader 22/23* published by the Urban Design Research Institute, a reputed urban research body. In fact, NAGAR has continued to participate in the planning process in relation to DCPR 2034 in its own name: On 21st June 2018, NAGAR filed formal objections to the impugned Regulation 17(3)(D)(2). The SRA itself has acknowledged in its records that NAGAR had submitted objections. NAGAR appeared before the Planning Committee and put forth its objections. The Planning Committee Report expressly records NAGAR's participation, indicating its recognised status in the process.

188. NAGAR's Track Record and Public Standing: The petitioner further submits that NAGAR has consistently worked in the field of urban environmental protection and has a credible and demonstrated track record. NAGAR is the petitioner in PIL No. 79 of 2015, challenging the erection of telecommunication towers on lands reserved for recreational and garden use. Rule has been issued and interim relief has been granted in that matter. NAGAR has intervened in Suo Motu Writ Petition No. 1 of 2024 pending before this Court, concerning the audit of the implementation of the Slum Act, 1971. NAGAR is a member of the Town Vending Committee (Zone 1) constituted by the MCGM under the Street Vendors Act, where it represents civil society on urban vending

issues. The trustees of NAGAR include eminent personalities such as Mr. D.M. Sukthankar, former Chief Secretary to the Government of Maharashtra, Additional Municipal Commissioner, and Chairman of the Mumbai Heritage Committee, who has an unmatched record of public service and city administration. In light of the above facts, it is submitted that NAGAR possesses both the legal status and the moral authority to espouse the cause of public open spaces and sustainable urban development. Its locus standi in filing the present petition is well established, and its credentials as a public-spirited body with domain expertise are beyond doubt.

G) Analysis and Findings:

i) Reasoning on preliminary objections.

189. At the threshold, Respondent No. 2 along with other respondents has raised several preliminary objections to the maintainability of this Public Interest Litigation ("PIL") as amended. These objections pertain to: (i) the alleged insufficiency or obscurity of grounds in the amended petition; (ii) the locus standi of the substituted Petitioner No. 1, *Alliance for Governance and Renewal (NAGAR)*, to continue the PIL; (iii) non-compliance with the Bombay High Court Public Interest Litigation Rules in prosecuting the petition; (iv) the permissibility of pursuing the petition after substantial amendments in 2022 introducing a challenge to Development Control & Promotion Regulation 2034; and (v) a supposed lack of clarity in the use of the term "open space" by the petitioner.

190. We consider each objection in turn, in light of the submissions of the petitioner and Respondent No. 2, relevant constitutional provisions, and binding precedents.

191. Upon careful consideration of the rival submissions, it becomes necessary to test the preliminary objection raised by Respondent No. 2 on the ground that the amended petition lacks a proper legal foundation and does not clearly spell out the grounds of challenge to Regulation 17(3)(D)(2) of the DCPR 2034 . Respondent No. 2 has contended that the amended petition merely reiterates broad assertions and fails to set out any specific constitutional or statutory infirmity in the impugned Regulation. According to the Respondent, the Petitioners have only raised a general opposition to the idea of in-situ rehabilitation of slum dwellers on reserved recreational grounds, without substantiating how such rehabilitation violates the Constitution or the parent statute – the MRTP Act. On the other hand, the Petitioner has drawn the attention of this Court to the fact that the present petition was amended with the leave of this Court and now specifically challenges Regulation 17(3)(D)(2), both in the prayer clause and through Grounds O-1 and O-2. It has been argued that the substance of the challenge is not new, and that the present Regulation is only a rebranded continuation of the earlier policy under the 1992 Notification and DCR 1991, albeit with a marginal alteration of the ratio from 67:33 to 65:35. The learned Senior Counsel appearing for the Petitioners has submitted that the amendment only introduces a formal challenge to the updated Regulation which, in essence, retains the same policy of permitting

slum rehabilitation on open lands reserved for recreation. The Petitioner maintains that the core grievance – namely, the consistent erosion of reserved public spaces in the city for the purpose of regularising encroachments – remains untouched in spirit, and that the amended Regulation continues the same scheme under a different title.

192. It is further submitted that the amended petition clearly identifies the legal infirmities of the Regulation. These include the alleged arbitrariness of permitting 65% construction on lands reserved for open spaces; the reduction of amenities envisaged in the Development Plan; the undermining of citizens' right to a healthy environment under Article 21 of the Constitution; and the unfair advantage granted to encroachers over law-abiding citizens, thereby offending Article 14. It is also pointed out that the impugned Regulation permits what earlier court orders and planning norms discouraged, and hence constitutes a regressive policy action.

193. We find that the objection of Respondent No. 2 cannot be sustained. A Public Interest Litigation, unlike an adversarial civil suit, is governed by a liberal construction of pleadings. In PIL matters the Court must focus more on the substance of the grievance and the broader public interest rather than the form or precision of pleadings.

194. Moreover, it is now well settled that delegated legislation, including Development Control Regulations framed under the MRTP Act, is subject to judicial review. Such a Regulation may be

struck down if it is found to be: Ultra vires the parent statute, or Violative of fundamental rights, or Arbitrary, unreasonable or lacking in intelligible basis. (See *Indian Express Newspapers v. Union of India*, (1985) 1 SCC 641; *Cellular Operators Association of India v. TRAI*, (2016) 7 SCC 703.)

195. Tested on the above touchstone, the present petition, as amended, does raise a bona fide and justiciable challenge. It alleges that the impugned Regulation dilutes the integrity of the Development Plan – which, under Section 22 of the MRTP Act, is required to provide for adequate public amenities, including gardens, parks and playgrounds. The grievance is that instead of protecting these spaces, the Regulation permits construction over 65% of them, contrary to the scheme of the parent Act. Further, the Regulation is alleged to transgress the right to environment – a right which is an integral part of Article 21 as held by the Supreme Court in *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598 and *Virender Gaur (Supra)* . It is also alleged to violate Article 14 by according preferential treatment to those who have encroached upon public lands over citizens who comply with zoning laws. Whether or not the impugned Regulation ultimately passes the test of constitutionality is a matter for final adjudication. However, the contention that the petition does not disclose any legal grounds is untenable. The petition articulates a serious public grievance, based on a discernible legal premise, that permitting construction on reserved open spaces adversely affects environmental and civic rights, and may amount to a misuse of planning power. It may also be noted that a reading of the amended Grounds O-1 and O-2, in

conjunction with the facts and legal material annexed to the petition, shows that the Petitioners have taken due care to establish the foundation of their challenge. The issues raised relate to environmental justice, good governance, and the rule of law in urban planning. They cannot be characterised as vague or abstract.

196. In conclusion, this Court is of the view that the amended petition does not suffer from any foundational defect as alleged. The challenge to Regulation 17(3)(D)(2) has been specifically pleaded, supported by relevant facts, data, and judgments. The plea that there is "no cause of action" or that the challenge is inadequately framed is therefore rejected. The petition raises vital questions touching upon constitutional rights and the duties of the State under the MRTP Act, and must proceed to be considered on its merits.

197. The next preliminary objection raised by Respondent No. 2 pertains to the standing, or *locus standi*, of Petitioner No. 1, Alliance for Governance and Renewal (NAGAR), to pursue the present public interest litigation. It is argued that NAGAR, not being the original petitioner in the PIL filed in 2002, could not have simply stepped into the shoes of CitiSpace (the original petitioner), and ought to have instituted a fresh writ petition if it wished to challenge Regulation 17(3)(D)(2) of DCPR 2034. It is further submitted that the substitution of NAGAR amounts to an impermissible change in the character of the petition and that the merger of CitiSpace into NAGAR is not adequately supported by legal documentation.

198. We have carefully considered the aforesaid objections. In our view, they do not merit acceptance for several reasons, both factual and legal. Firstly, it must be noted that this Court, by its order dated 1st March 2022, permitted the amendment of the petition whereby NAGAR was substituted in place of CitiSpace. This substitution was not challenged by the Respondents in the Supreme Court. Secondly, and more importantly, it is well established in Indian constitutional law that in public interest litigation concerning issues of environmental protection, urban governance, and preservation of public resources, the conventional and technical rules of *locus standi* do not apply with full rigour. The Supreme Court in *S.P. Gupta v. Union of India*, AIR 1982 SC 149, laid down that any person acting *bona fide* and having sufficient interest may approach the court for redressal of public injury, especially where the affected parties may not have the means or opportunity to do so. This principle has been consistently reiterated in several subsequent decisions, including *Municipal Council, Ratlam v. Vardhichand*, (1980) 4 SCC 162; *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 . In each of these cases, public-spirited individuals or groups were permitted to invoke the jurisdiction of constitutional courts, provided they demonstrated a genuine concern for the public good and not any oblique personal interest.

199. In the present case, NAGAR is a registered public charitable trust engaged in urban civic issues, including the protection and conservation of public open spaces and there is no allegation that this transition was improper or untrue. It is further established

from documents placed on record that NAGAR has actively participated in the planning process concerning DCPR 2034, including submitting formal objections to Regulation 17(3)(D)(2), appearing before the Planning Committee.

200. The settled law is that in PILs relating to collective environmental and civic rights, the identity of the petitioner is less material than the nature of the grievance and the public interest involved. It is the bona fides of the petitioner and the seriousness of the public injury that guide the Court's threshold scrutiny, not the legal formalities of succession or organizational history.

201. It bears repetition that the present litigation was never rooted in private rights of CitiSpace, but was always a representative petition filed to protect public open spaces from being lost to ad hoc or policy-led slum rehabilitation schemes. This objective has remained unchanged even after the substitution of NAGAR. Indeed, the very order allowing NAGAR's substitution expressly records that "the challenge to the relevant DCR 2034 regulation would not change the nature of the original petition". This acknowledgment by the Court implies that the underlying cause—preservation of reserved open spaces—is the unifying thread of the PIL, and NAGAR's continued prosecution of the petition is in aid of that cause.

202. Lastly, there is nothing in the PIL Rules or in the general principles of public law that precludes a successor organization from pursuing a PIL that has remained pending for years. Judicial precedents are replete with examples where public-spirited

organisations have carried the mantle of public interest litigation without facing objections on formalistic grounds of title or succession. In the *Bombay Dyeing* mill land litigation, *BEAG* was permitted to continue representing civic interests; similarly, *Bangalore Medical Trust* was pursued by a local residents' group; and in the Delhi Ridge cases, public associations were found to have adequate standing to raise environmental concerns. We may also note that NAGAR's track record is not in doubt.

203. In view of the above, the objection to the locus standi of Petitioner No. 1, NAGAR, is found to be misconceived and without legal merit. The substitution of NAGAR was lawfully permitted by this Court, and the organization continues to represent a genuine public interest, arising from a cause already entertained and pending before this Court. We therefore reject the objection as to maintainability on this ground.

204. Another preliminary objection raised by Respondent No. 2 pertains to alleged non-compliance with certain procedural requirements under the Public Interest Litigation Rules framed by this Court. It is contended, albeit without particularizing any specific breach, that the petitioner, upon seeking amendment of the petition and substituting the cause title, failed to comply fully with the mandatory procedural steps required under the PIL Rules. It is suggested that the petitioner may not have furnished detailed affidavits, omitted to file requisite declarations, or failed to give prior notice of the new challenge to the concerned authorities.

205. Upon careful consideration, we find this objection to be

largely technical and devoid of substantive merit. We say so for the following reasons:

a) First, the petitioner's application for amendment was duly filed, served upon all respondents, and granted by a reasoned and speaking order dated 1st March 2022 passed by this Court. The said order permitted the substitution of Petitioner No. 1 and also allowed the incorporation of a specific challenge to Regulation 17(3)(D)(2) of the Development Control and Promotion Regulations, 2034 (DCPR 2034). At the time of allowing the amendment, the Court was fully cognizant of the nature and scope of the changes sought. No objection was then raised by Respondent No. 2 regarding non-compliance with the PIL Rules. The amendment having been judicially approved after notice and hearing, any technical or formal deficiencies, such as lack of verification, absence of annexures, or failure to issue advance notice, must be deemed either cured or waived at that stage.

b) Third, it must be recalled that the present public interest litigation was originally instituted in 2002 and has since proceeded through various judicial stages—interim orders, policy framing directions, compliance hearings, and ultimately the present amended challenge. The matter has been in seisin of the Court for over two decades. The issues raised have attracted the attention of the State and planning authorities, who have responded

by way of affidavits, statements, and participation in hearings. In such a backdrop, it would be both unrealistic and contrary to the spirit of Article 226 to insist that the petition be tested afresh for compliance with every procedural step laid down for newly filed PILs. The test in such cases is one of substantial and meaningful compliance and absence of prejudice, not rigid adherence to form at the cost of substance.

c) Finally, it is worth reiterating that the very maintainability of a PIL, particularly in environmental or town-planning matters, is to be assessed not merely on the basis of who the petitioner is or how the petition is titled, but whether the grievance raised discloses a public injury and presents a justiciable issue of law. In the present case, the petition squarely raises concerns regarding the use of reserved public open spaces for in-situ slum rehabilitation, the impact of Regulation 17(3)(D)(2) on the Development Plan, and the broader constitutional implications of environmental and spatial equity. These are clearly matters within the legitimate domain of PIL adjudication.

206. In view of the foregoing, we are of the considered view that the alleged non-compliance with the PIL Rules, assuming without holding that there was any, has no bearing on the maintainability of the present petition. Whatever minor deviations may have occurred stand either cured by subsequent steps or rendered inconsequential by the Court's own orders allowing amendment and continuation of the proceedings. This objection is accordingly

overruled.

207. Yet another objection raised by Intervener (Slum Dwellers Societies) pertains to what is described as a delay on the part of the petitioner in challenging the validity of Regulation 17(3)(D)(2) of the DCPR 2034. It is urged that since the said Regulation was brought into force in the year 2018 and the amended challenge came only after the restoration of the petition in 2021, the petitioners have approached this Court belatedly. It is argued that the delay is both unexplained and significant, and that the petitioners have lost their right to assail the Regulation by their own inaction. This argument is presented under the legal doctrine of laches.

208. We have considered this submission carefully. In our considered view, the objection does not merit acceptance for multiple reasons.

a) First, the facts on record indicate that the timeline of events offers a reasonable and satisfactory explanation for the petitioner's conduct. It is not disputed that in the year 2014, this Court, by a reasoned order, had permitted the State Government to frame a fresh policy for dealing with slum rehabilitation on lands reserved for public open spaces. In doing so, the Court granted liberty to the petitioners to challenge such a policy as and when notified. What followed was the issuance of an interim policy by the State Government in 2014, which, as noted by both parties, proposed that 100% of the land area of such reserved plots

would eventually be restored for recreational use. It appears that the petitioner was satisfied with this interim policy to some extent, and reasonably believed that the matter had been addressed in public interest. It was only subsequently, upon the notification of the Development Control and Promotion Regulations, 2034, wherein Regulation 17(3)(D)(2) made a departure from the interim policy by allowing 65% of such lands to be used for in-situ rehabilitation, that the petitioner's concerns were reactivated. However, by then, the petition had already stood dismissed for want of prosecution in the year 2019. After the dismissal, the petitioner moved an application for restoration, and upon revival of the petition in 2021, the challenge to the newly notified Regulation was promptly incorporated by way of amendment. In such circumstances, it cannot be said that the petitioner's conduct was willfully negligent or lacking in bona fides. The delay, if any, stands explained by the intervening policy developments and the procedural status of the pending litigation.

b) Second, and more fundamentally, it is a well-established principle of constitutional jurisprudence in India that in matters involving environmental protection, public amenities, and communal natural resources, delay does not operate as an absolute bar. This principle was affirmed by the Supreme Court in *Bombay Dyeing & Manufacturing Co. Ltd. (Supra)*, wherein the Court held that issues of urban ecology, public health, and sustainable development must be

approached with a broad constitutional lens and not merely through technical filters of limitation or laches.

c) Third, petitions raising issues of environmental degradation and loss of open spaces under the public trust doctrine cannot be dismissed solely on the ground of delay. Public interest must not be sacrificed at the altar of procedural rigidity, especially when the subject matter involves Article 21 of the Constitution and the right to a clean, healthy and wholesome environment. The present petition raises core constitutional questions, including the implementation of Article 48A of the Constitution, which casts a duty on the State to protect and improve the environment, and the corresponding fundamental right of citizens under Article 21 to access public open spaces as part of the right to life and well-being. These are not private grievances, nor are they commercial rights that lapse with time. They are continuing concerns of public interest that remain alive so long as the policies in question continue to operate and impact the urban environment and collective welfare.

d) Fourth, significantly, there is no material placed before us to demonstrate that, during the interregnum when the petition stood dismissed, any irreversible third-party rights have crystallised in reliance upon the Regulation. No specific development permission, construction activity, or project approval has been pointed out that would render the challenge inequitable or disruptive. In the absence of such prejudice, the mere lapse of time between the issuance of the

Regulation and its formal challenge cannot extinguish the public cause being pursued.

209. Public interest litigation, by its very nature, allows for greater flexibility in the application of procedural rules. When the subject matter is one of such public impornstitutional relevance, as in the present case, involving the preservation of open spaces in a highly congested metropolitan city, the Court must adopt a substantive and purposive approach, balancing administrative efficiency with constitutional accountability.

210. For all these reasons, we find no substance in the plea that the petition should be dismissed on the ground of delay or laches. The cause of action is a continuing one; the environmental and civic concerns raised by the petitioner remain active and unresolved. Dismissing the petition on such a ground would cause greater harm to public interest than any inconvenience claimed by the respondents. The rule of law must not be sacrificed for procedural exactitude in matters of collective concern. Accordingly, we overrule the objection raised by Respondent No. 2 based on laches. The amended petition, though brought after a time gap, is maintainable, and is entitled to be heard and decided on its merits.

211. We now consider the final preliminary objection raised by Respondent No. 2, which relates to the terminology employed by the petitioner while framing the prayer and articulating the grievance. It is contended that the petition suffers from an inherent vagueness inasmuch as the expression “open space” has been used by the petitioner without drawing any distinction

between different categories of land, thereby creating ambiguity as to the exact scope of the relief sought. In particular, it is argued that the petition as originally filed included a wide array of lands such as parks, gardens, maidans, roads, no-development zones, and even road margins, without clarifying whether all such lands fall within the same planning classification. It is further submitted that the expression “open space” has a specific meaning under the Development Control Regulations and the MRTP Act, and may refer to various distinct concepts, such as mandatory open spaces around buildings, amenity open spaces within layouts, and public open spaces reserved in the Development Plan. The respondent contends that by failing to specify which of these is being challenged, the petition fails to raise a justiciable issue.

212. We do not find this objection to be well-founded. When the petition is read as a whole, there is no real doubt about the nature of the grievance or the category of lands in question. The petitioner has consistently challenged the policy of permitting construction and in-situ slum rehabilitation on lands that are *reserved for public open spaces* in the Development Plan, specifically playgrounds, recreation grounds, parks, and gardens. The reference to "open space" is clearly intended to mean these public amenity spaces reserved under the Development Plan, not incidental open margins, setbacks around buildings, or internal layout spaces within private properties. In fact, the impugned Regulation 17(3)(D)(2) itself limits its scope to *plots reserved as a recreation ground or playground* exceeding 500 square metres. The very language of the Regulation makes it clear that it applies

to lands earmarked in the statutory Development Plan for public use, not general open-to-sky areas. The petition merely adopts the same terminology and, for ease of reference, describes these as "open spaces." Therefore, when viewed in the context of the pleadings, the prayer clause, and the statutory framework, there is no confusion as to what the petitioner seeks to protect.

213. The MRTP Act itself recognises the expression in a similarly inclusive sense. Section 22(c) of the Act authorises the planning authority to reserve lands for "open spaces, playgrounds, parks, gardens, etc." This provision confirms that "open space" in statutory planning discourse encompasses such public recreational and environmental amenities. Our courts have, time and again, treated these spaces as crucial for public health, community well-being, and ecological balance. The Supreme Court in *B.S. Muddappa (Supra)*, recognised the sanctity of such reservations and struck down a scheme that sought to convert a public park into a private hospital. The Court held that lands reserved for parks serve the welfare of the people and cannot be diverted for private or alternative public use contrary to the planning object. Similarly, in *Bombay Dyeing & Mfg. Co. Ltd. (Supra)*, the Court underscored the need to balance developmental needs with environmental protection and held that public open spaces are an essential facet of Article 21. This Court, too, has reiterated the special status of open spaces in urban planning. In *Janhit Manch (Supra)*, the Division Bench of this court warned against gradual depletion of open space in Mumbai and stressed that such reservations must be honoured to uphold the right to a wholesome

environment.

214. The present petition falls squarely within this body of jurisprudence. It seeks to preserve public lands reserved for parks, playgrounds and recreation grounds in the Development Plan of Mumbai from being partially built over under the guise of rehabilitation. The right being asserted is the community's right to accessible green areas for recreation, health and ecological balance, a right rooted in Article 21 and enforceable through judicial review. Therefore, we find no vagueness in the use of the term "open space" as employed by the petitioner. It is employed in a legally cognizable sense, consistent with statutory and judicial usage. The objection that the terminology is overbroad or undefined is misplaced and does not raise any bar to the maintainability of the petition.

215. Having addressed all the preliminary objections raised by Respondent No. 2 in respect of the maintainability of the petition, we are of the considered view that the amended petition is maintainable in law.

ii) Issues for Determination:

216. The principal issue is whether Regulation 17(3)(D)(2) of DCPR 2034 is constitutionally valid. This entails examining (i) whether the Regulation violates Article 14 of the Constitution by being arbitrary or discriminatory, and/or Article 21 by infringing the right to a healthy environment and public spaces; (ii) whether the Regulation is consistent with environmental law principles such as the precautionary principle, sustainable development, and

the public trust doctrine; and (iii) whether the policy rationale underlying the Regulation, of balancing slum rehabilitation needs with preservation of recreational open spaces, satisfies the requirements of reasonableness and public interest under our constitutional and statutory framework. We will also assess the legal competence of the delegated legislation and consider relevant precedents, before arriving at a conclusion and operative directions.

We have carefully considered the detailed arguments made by both sides. The issue before us lies at the juncture of two important public concerns, on one hand, the need to protect the environment by preserving public open spaces like parks and gardens, and on the other hand, the need to ensure justice and dignity for slum dwellers by providing them proper housing. Both these concerns are supported by fundamental rights under our Constitution. The protection of open green spaces is connected to the right to life under Article 21 for all citizens, and the right of slum residents to proper shelter and dignified living also flows from Article 21, along with the right to equality under Article 14, which requires the State to treat the poor with fairness and care. The real question before us is whether Regulation 17(3)(D)(2) creates a fair and constitutionally valid balance between these two interests, or whether it crosses the limits set by the Constitution or the law.

iii) Planning History and Rationale (1991–2034):

217. To properly examine the impugned regulation, it is necessary to first understand how the city's approach towards planning has evolved, from the Development Plan of 1991 (sanctioned in 1993) to the present Development Plan 2034. The material placed on record, including portions of the Planning Committee Report, along with affidavits filed by planning officials, show that there has been a major shift in how slum settlements situated on reserved lands are being dealt with.

218. In the earlier planning regime, when the Development Plan was being prepared, the presence of slums on reserved lands was, for the most part, overlooked. The plan would merely label a particular land as reserved for a public purpose (such as a garden or playground), without articulating that a slum already existed on that site. It appeared to have been assumed that, at some stage in future, those slums would be removed and the reservation would be implemented. During the 1990s and 2000s, slum redevelopment was mainly carried out under Development Control Regulation 33(10), which allowed free housing for slum dwellers with additional construction benefits (incentive FSI) to private developers. But importantly, this mechanism could not be used on lands that were reserved for non-residential purposes like parks, unless such reservations were first changed through formal procedures under the MRTP Act.

219. Although the Municipal Corporation had a dedicated department for encroachment removal and certain policies to deal

with unauthorised slums, in actual practice, due to political, social and humanitarian considerations, many such slums were allowed to continue. The Corporation also had the power to acquire such lands under the MRTP Act and then use them for the intended reservation, but this required financial resources and also relocation of existing slum dwellers. The record shows that very few such reserved plots, particularly those affected by slums, were ever acquired or developed for the reserved purpose. By the time the 2034 Plan was under preparation, a large number of reserved lands were still occupied by slum colonies, with no definite timeline for developing them as parks or open spaces.

220. Faced with this long-standing problem, the planners of DP 2034 appear to have taken a different and practical approach. They acknowledged that removing all the slums in one go would mean evicting thousands of families, many of whom had lived there for decades. This would not only be logistically difficult but would also lead to social and humanitarian complications. Therefore, a new strategy was proposed, one that would use slum redevelopment itself as a tool to implement the reservation. The result was Regulation 17(3)(D), which now forms the subject of challenge.

221. The Planning Committee Report, as highlighted in the affidavit, appear to justify the 35% figure fixed for retaining open space. The record shows that planners considered actual site-level examples, such as a 10,000 square metre plot fully occupied by slums, which previously gave the public no access at all. Under the new policy, at least 3,500 square metres would be carved out and

developed as a formal garden, while the remaining 6,500 square metres would be used to construct high-rise buildings for slum dwellers. In this manner, both the objectives, rehabilitating slum dwellers and creating a usable open space, could be partly achieved. The Planning Committee, it appears, considered this approach to be better than continuing with a policy that, although ideal in theory, had failed in practice.

222. It must also be noted that the Development Plan 2034 includes other provisions aimed at increasing the city's green cover, such as using salt pan lands and other sites for creating new open spaces. Hence, the trade-off on encroached lands was part of a broader and balanced strategy.

223. At the same time, the Petitioner has rightly pointed out that past failures by the State to clear slums cannot be used as a permanent justification to abandon the reservations. Merely because the authorities did not succeed in removing such encroachments earlier cannot mean that the reserved use must now be diluted permanently. However, the response from the State and planning authorities is that previous failures will not be resolved by simply sticking to old rules and ignoring ground realities. Doing nothing would continue to serve neither purpose, neither redevelopment nor open space creation.

224. Therefore, the planning history is not to be seen as an excuse, but as a context in which the policy was evolved. The record does not show that the State chose to "give away" public open spaces casually or arbitrarily. On the contrary, the revised

approach came after multiple prior efforts had stalled and after genuine consultations were held.

225. From this historical and factual background, the Court draws certain useful lessons that help in testing the necessity and fairness of the impugned policy:

(i) The shift in DP 2034 from an "all-or-nothing" model, of either enforcing the entire land as open space or foregoing the encroached land as slum, to a "mixed" model allowing partial development was a conscious policy decision. It aimed to break the impasse and reflects the State's attempt to respond to practical challenges on the ground. This cannot be faulted in principle, though it involves difficult trade-offs.

(ii) The 35% figure for retaining public open space may not be based on any precise scientific calculation, but it clearly represents a genuine effort to preserve a significant portion of the land for the original public purpose. In many existing slum rehabilitation layouts, providing even 15% to 20% of the area as recreational space is considered difficult. Therefore, 35% is, comparatively, a higher requirement. This indicates that the State did not intend to wholly abandon the reservation; rather, it tried to salvage the space to an extent considered practical.

(iii) The planning record suggests that authorities have, wherever possible, aimed to retain even more than 35% open space, especially in areas where the need for public amenities is greater or where the slum footprint is less dense.

While we have not been shown any particular empirical evidence of this, we are prepared to trust that in implementing the policy, the authorities will exercise such discretion responsibly. For instance, if a reserved garden is in a locality where there is no other open space nearby, and if a part of the slum can be shifted, the Corporation may well retain more than 35%. There is nothing in the regulation that prevents this. The 35% is the minimum threshold, not the ceiling.

(iv) Experience over the years from 1991 to 2018 shows that a rigid insistence on 100% reservation has mostly led to "paper parks", that is, areas shown as gardens or playgrounds on paper, in the Development Plan but never developed on the ground. The policy in DP 2034, by contrast, at least ensures that some actual open space is created. In this way, it promotes the real enjoyment of constitutional values. A plan which only exists on paper and is never implemented cannot fulfil the right to a clean and healthy environment under Article 21. On the other hand, even a smaller park that is actually built and accessible to the public is a real gain.

(v) Therefore, the policy under Regulation 17(3)(D)(2), while not perfect, is a practical compromise. It seeks to give slum dwellers proper housing and at the same time, create open spaces that were previously inaccessible. It may not satisfy the original objective of the reservation entirely, but it ensures that at least part of the benefit reaches the public,

instead of waiting endlessly for an ideal solution.

226. In light of the above, this Court is of the view that it should not act as an idealistic body that overlooks practical considerations. Our constitutional duty is to ensure that law is followed, and that people's rights are protected to the fullest extent possible within the boundaries of reality, also adjusting for competing entitlements to constitutional rights. The planning approach adopted in DP 2034 appears to be guided by a sincere desire to improve the existing situation, and not by any mala fide or arbitrary intent.

227. The Petitioner is right in saying that the policy does dilute the full purpose of reservation. But we must also recognise that the reserved purpose had already become difficult to realise due to long-standing encroachments. In that context, the new approach attempts to recover part of what was lost. That cannot be termed manifestly arbitrary, illegal or irrational, warranting interference in the writ jurisdiction.

iv) Validity of Regulation 17(3)(D)(2) of DCPR 2034:

228. At the outset, it is important to understand the legal nature and authority of the Regulation that is challenged in this petition. Regulation 17(3)(D)(2) is a part of the DCPR 2034, which have been made under the MRTP Act. In law, it is well settled that when a delegated or subordinate legislation like this Regulation is made properly under a law passed by the legislature, and the correct procedure is followed, it has the same legal force as any other law. Therefore, such a Regulation cannot be set aside lightly by a High

Court under its writ powers under Article 226 of the Constitution. The law allows courts to interfere only in certain specific situations.

229. It is now well established that delegated legislation can be challenged on the following grounds: (*i*) lack of legislative competence to make delegated legislation; (*ii*) violation of fundamental rights guaranteed under the Constitution; (*iii*) violation of any provision of the Constitution; (*iv*) failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act; (*v*) repugnance to any other enactment; and (*vi*) manifest arbitrariness. Unless at least one of these grounds is clearly made out, courts must act with caution and respect the wisdom of the executive and legislature, especially in matters involving town planning or civic policy. [*See: Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641; *State of T.N.* v. *P. Krishnamurthy*, (2006) 4 SCC 517].

v) Ultra Vires (Substantive or Procedural):

230. Upon considering the submissions of the petitioner, it is seen that the petitioner has not pointed out any specific provision of the MRTP Act that has been directly violated by the impugned Regulation. No clause or sub-section of the Act has been demonstrated to have been breached by the Planning Authority while framing the said Regulation. On the contrary, when one reads Section 22 of the MRTP Act, it becomes clear that the Planning Authority has been entrusted with wide-ranging powers

for preparing a Development Plan for the area under its jurisdiction. This Section expressly allows the Authority to make proposals not only for reservation of lands for public amenities like parks, playgrounds, and open spaces, but also for slum improvement, redevelopment schemes, and provision of housing.

231. In fact, Clause (g) of Section 22 specifically authorises the Planning Authority to include proposals for the improvement and clearance of slum areas. Similarly, Clause (m) permits the framing of Development Control Regulations as a part of the Development Plan. Thus, when a Regulation is made with the objective of rehabilitating slum dwellers, especially those who are residing on lands which may have been earlier reserved for recreation or other public purposes, it cannot be said that the Regulation is beyond the powers given under the MRTP Act. The language of Section 22 is broad and inclusive. It supports the view that slum rehabilitation and public interest planning can co-exist, so long as the Development Plan continues to reflect a balance between various civic and environmental needs.

232. Urban planning, as envisaged under the MRTP Act, is not rigid or uni-dimensional. It is a dynamic process which aims to address ground realities of population growth, housing shortages, and urban inequality. Therefore, a Regulation which enables the regularisation or rehabilitation of existing informal settlements on reserved lands, while still retaining a portion of such land for public use, can be seen as a lawful exercise of planning powers under the Act. In this light, we are unable to accept the argument that the Regulation falls outside the legal authority granted under

the MRTP Act. Rather, it appears to be a step taken within the framework of the law, keeping in mind both the constitutional objective of providing housing to the poor and the statutory mandate of planned development.

233. We also find that the procedure for framing DCPR 2034 was indeed properly followed. As required under the MRTP Act, the authorities issued a public notice under Section 26, considered objections and suggestions under Section 28, finalised the Development Plan, and the same was sanctioned by the State Government under Section 31. No specific fault has been shown to us in this process. From the record, it appears that the Regulation was framed after proper consultation, discussions, and application of mind. Therefore, we do not find any substance in the argument that the Regulation suffers from any procedural illegality.

234. From the pleadings and submissions before us, it is clear that the petitioner's real grievance is not about how the Regulation was made, but about what it allows. The substantive grievance of the petitioners appears to be with the wisdom or the alleged lack of it, in the Regulation. In other words, the complaint is not about irregularities in the procedure, but about whether the policy reflected in the Regulation is fair and constitutional. The real question is whether the Regulation is so arbitrary or unreasonable that it violates the fundamental rights guaranteed under Part III of the Constitution.

235. This brings the case within the scope of what is called "substantive judicial review." In such matters, the Court must strike

a careful balance between ensuring that policies respect constitutional rights and not interfering with decisions that lie in the realm of government policy. The Court is not here to say whether a wiser or more ideal policy could have been made. Its role is limited to checking whether the existing policy, as stated in the Regulation, goes against the letter or spirit of the Constitution.

236. As held by the Supreme Court in *Indian Express Newspapers (Supra)*, and in many decisions thereafter, the Courts do not act as appellate bodies over policy matters. Courts will step in only if the policy is clearly arbitrary, discriminatory, or violates some legal or constitutional standard.

237. We shall therefore now examine the content of Regulation 17(3)(D)(2) from this perspective. The burden is on the petitioner to show that the Regulation is not just a matter of disagreement or preference, but that it is unconstitutional at its core. Under law, any legislation, whether primary or delegated, is presumed to be constitutional. That presumption can only be displaced by clear, convincing arguments that are backed by the Constitution, legal principles, and judicial precedents.

vi) Constitutional Grounds – Article 14 (Arbitrariness):

238. We now turn to the petitioner's argument based on Article 14 of the Constitution, which guarantees equality before the law and equal protection of the laws. The main point made by the petitioner is that Regulation 17(3)(D)(2) unfairly benefits persons who have encroached upon public lands reserved for recreation, by allowing them to be rehabilitated on the same land, while giving

no similar benefit to law-abiding citizens who have followed the rules. According to the petitioner, this sends a wrong message, encourages illegal occupation, and undermines civic responsibility.

239. At the very outset, we must observe that the equality clause under Article 14 is not offended by every unequal outcome. The jurisprudence that has evolved under Article 14, ever since the decision in *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75, through *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3, and culminating in *Shayara Bano v. Union of India*, (2017) 9 SCC 1, has emphasized that the true test under Article 14 is not mere inequality in treatment, but whether the classification created by law is arbitrary, unreasonable, or not founded on an intelligible differentia having a rational nexus to the object sought to be achieved.

240. In the present case, the impugned Regulation makes a distinction between two classes of open spaces: (i) lands reserved for recreational use under the Development Plan which are presently encroached by slum settlements, and (ii) lands reserved for similar purposes which remain un-encroached. The question is whether this classification is irrational or perverse, and whether it offends the equality clause of the Constitution.

241. We are of the considered view that the distinction drawn is not only intelligible, but also necessary for the practical implementation of any urban renewal policy in a metropolitan city like Mumbai. It cannot be gainsaid that a public park or recreational ground which is significantly encumbered by long-

standing slum dwellings ceases, in effect, to serve the purpose for which it was reserved. The designation, though present on the Development Plan map, becomes a notional reservation solely on paper, incapable of being utilized as a public space in its current state. On the contrary, an open space which is free from encroachment is capable of being enjoyed by the public and retains its intended utility.

242. The Legislature and the executive are entitled to recognize this real-world difference and frame policies that cater to the ground realities. It would be unrealistic and administratively unworkable to treat both classes of land identically. The classification is therefore not only intelligible, but also founded on a rational nexus to the object sought to be achieved, namely, the twin goals of (i) rehabilitating slum dwellers humanely without rendering them shelterless, and (ii) recovering a portion of the public land for its original purpose by ensuring that a part thereof is retained as open space under mandatory prescription.

243. The petitioner has based his argument mainly on ethical grounds, urging that persons who obey the law and follow civic responsibilities should be treated favourably. While this Court fully acknowledges the importance of such lawful conduct, it must be noted that in constitutional matters, decisions have to be taken based on legal principles and objective reasoning. Merely because a particular policy appears to give some benefit to persons who have encroached upon land, it does not automatically mean that the policy is arbitrary. What is important is whether the classification made by the policy is reasonable and whether it

serves a legitimate public purpose. Especially in matters where constitutional rights like the right to shelter and the right to a clean environment are both involved, a balance must be maintained.

244. Further, the Regulation which is under challenge does not grant benefits without any restrictions or guidelines. It applies only when certain conditions are fulfilled, such as, the reserved land in question must be more than 1000 square metres in size, and out of this, not more than 65% can be used for slum rehabilitation, while at least 35% must be mandatorily kept for public recreational use. These conditions are part of policy decisions made by planning authorities, taking into account administrative needs. It is a well-settled principle of law that such classifications or threshold criteria, like area of land or number of people, can be fixed by the authorities, as long as they are not absurd, unreasonable, or discriminatory.

245. In our constitutional system, arbitrariness goes against the basic principle of the rule of law. However, it cannot be assumed that a policy is arbitrary simply because it involves making a choice or balancing conflicting interests. As long as the policy is made after considering relevant facts, is in line with the object of the law, and is applied equally to all eligible cases, it cannot be struck down under Article 14. In the present case, the petitioner has not shown how the 1000 square metre condition or the 35% retention clause are illogical or unrelated to the objectives of the Regulation. On the contrary, the overall scheme of the policy appears to maintain a thoughtful balance between the need to preserve open

spaces and the pressing requirement of housing for the urban poor.

246. Therefore, the challenge on the ground of arbitrariness cannot be accepted. The Regulation clearly discloses a guiding principle, is applied equally in all cases, and there is nothing to show that it is motivated by bad faith or any form of unfair discrimination. The law does not insist that every policy must be perfect, but it does require that the policy must be reasonable, proportionate, and serve a lawful purpose. Regulation 17(3)(D)(2) satisfies all these requirements.

247. The petitioner has argued that persons who have encroached upon public open spaces are being "rewarded" under the impugned Regulation, whereas those citizens who have followed planning laws are left with reduced access to recreational areas. With respect, this argument is based more on a sense of morality than on a proper constitutional foundation. Undoubtedly, it is a matter of public concern that law-abiding citizens should not feel that their compliance with planning norms is meaningless, especially when unlawful conduct appears to be regularised. However, constitutional courts cannot enforce abstract ideas of fairness or moral outrage unless there is a clear violation of constitutional principles or evident arbitrariness.

248. Under Article 14 of the Constitution, the test is not whether benefits are distributed equally, but whether the classification or benefit is based on irrational or unreasonable grounds. The law declared by the Supreme Court in *E.P. Royappa (Supra)* and further clarified in *Maneka Gandhi v. Union of India*, (1978) 1 SCC

248, has established that even if a government policy looks fair on the surface, it must still be free from arbitrariness or irrelevant considerations. The doctrine of arbitrariness is a powerful safeguard, but it cannot be applied to challenge policies just because they may appear lenient or debatable. What must be shown is that the policy has no clear basis, is unreasonable, or has no connection to its intended purpose.

249. In the present matter, the Regulation in question deals with a complex problem in urban governance, namely, slums constructed on lands that were reserved for public use. This situation presents a conflict between two important public interests: on one side is the public's right to enjoy open spaces, and on the other is the right of slum dwellers to housing and shelter. The Regulation seeks to resolve this issue by allowing part of the land to be used for in-situ rehabilitation of the slum dwellers, while mandating that at least 35% of the land must be kept for its original public purpose. This is a policy compromise that can be made within the domain of the subordinate legislation, not one that accepts illegality, but one that attempts to balance rights and ground realities.

250. The reasoning behind the Regulation is neither unclear nor unjustified. It reflects a broader urban development policy that understands that slum removal cannot happen only through eviction. There must be practical and humane alternatives. By allowing rehabilitation on a portion of the land, the Regulation achieves two things: (i) it gives permanent homes to those living in poor conditions without any legal status, and (ii) it restores part of the encroached land back to the public for recreational use, which

was otherwise completely blocked.

251. It would be wrong to label this approach as a "reward for encroachment." Rather, it is a controlled policy of regularisation, framed with public interest safeguards, designed to prevent the total loss of public land. The idea of "manifest arbitrariness," as explained by Courts, does not prevent such policies balancing competing realities. Instead, the law expects that such measures must follow clear reasoning, aim at lawful purposes, and apply equally to all similar cases. In this context, the goal of removing slums and ensuring decent housing is not only constitutionally valid but also recognised under international human rights commitments. The method adopted, rehabilitation on-site with a compulsory condition to retain open space, clearly relates to that goal.

252. The petitioner's concern, in truth, is not that the policy is unstructured or illogical, but that it is too lenient towards a particular section of society. However, the role of Courts is not to examine whether a policy is strict enough or generous. Courts are not meant to interfere unless a policy clearly violates constitutional rights or principles. The wisdom and soundness of policy is not for courts to adjudge. Judicial review must not cross into the territory of policy-making.

253. Accordingly, we do not find merit in the argument that the impugned Regulation is arbitrary in the constitutional sense. The Regulation does involve a compromise—but it is a thoughtful, structured, and purpose-driven compromise. It reflects an attempt

to balance environmental, social, and planning considerations, and cannot be declared invalid merely because a stricter or more idealistic approach could have been imagined.

254. We are also not convinced by the petitioner's argument that the impugned Regulation causes unfair discrimination which violates Article 14 of the Constitution. Article 14 does not prohibit every kind of distinction or classification. It only forbids those classifications which are arbitrary, unreasonable, or not connected to a valid objective. As held in *Budhan Choudhry v. State of Bihar* (AIR 1955 SC 191), and followed in later decisions such as *E.P. Royappa*, and *Maneka Gandhi*, a valid classification must meet two tests: first, there must be an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; second, that differentia must have a rational relation to the object sought to be achieved by the statute or policy.

255. Applying this test to the present Regulation, we find no violation of the equality clause. The Regulation treats all slum dwellers on reserved lands equally, provided certain conditions like minimum plot size and retention of 35% land as open space are met. There is nothing on record to show that this policy is applied unfairly or that some similarly placed encroachers are being treated differently. On the contrary, the policy appears to be applied uniformly on the basis of fixed and objective standards.

256. The petitioner tries to compare slum dwellers who are given the benefit of in-situ rehabilitation with law-abiding citizens who

have not encroached upon public land but are now unable to access parks. This comparison is not valid for the purposes of Article 14. Equality under Article 14 means similar treatment of persons who are similarly situated. The two categories being compared must be legally and factually equal. But here, they are not.

257. Both slum dwellers and law-abiding citizens are part of the urban population. However, they stand on different legal and constitutional footing. Slum dwellers are economically weaker and are recognised by the Constitution, especially under Article 39, as a group that the State must protect through affirmative action. Various welfare laws like the Slum Act also reflect this responsibility. Providing housing to slum dwellers is not an act of generosity by the State, it is a part of its duty to ensure social and economic justice. On the other hand, law-abiding citizens benefit from civic amenities under the general responsibility of the State. The difference lies in the nature of the obligation: in one case, it is redistributive and corrective; in the other, it is routine and general.

258. We do understand that loss of access to parks or open areas can lead to dissatisfaction among residents. But it must be remembered that the Regulation only applies to lands which were already encroached and not being used by the public in any practical sense. The Regulation in fact tries to recover some portion—35%—of that land for public use while also ensuring housing for the slum dwellers. So, the public is not losing a facility that was in active use, but rather, getting back part of a space that was already fully encroached. The grievance, therefore, is based on

an expectation of use, not on actual withdrawal of an existing amenity. While such disappointment is understandable, it does not amount to a legal wrong under Article 14 unless the State's action is shown to be arbitrary or discriminatory.

259. It is well-settled that Article 14 does not mean equal treatment in all situations. Different situations can be treated differently if the differentiation in the classification is based on valid reasons. The concept of equality is broad and evolving, it cannot be restricted to narrow and rigid definitions. When the State frames welfare policies, it is allowed to make distinctions based on levels of need and vulnerability. Denying housing to slum dwellers just to stick to a land reservation that has not been practically available for years would go against the spirit of social justice.

260. We must also consider the wider impact of the Regulation on urban fairness. In a city where inequality is visible in how space and services are distributed, providing formal housing to slum dwellers—within the city and not on its outskirts—is a step towards real equality. It ensures that rights and services are not limited to the privileged, but also reach those living on the margins. This Regulation aims to reduce the gap between the formally housed and the informally settled population, and therefore promotes inclusive planning. Rather than violating equality, it supports it by correcting urban imbalances.

261. In conclusion, we are of the considered view that the impugned Regulation does not create an unjust or unconstitutional

distinction. It does not result in hostile discrimination between similarly situated persons, nor does it confer benefits in a manner that is arbitrary or selective. It adheres to the permissible limits of reasonable classification under Article 14 and is consistent with the constitutional vision of a just and inclusive society.

vii) Article 21 (Environment vs Shelter):

262. We now consider the arguments raised by the petitioner under Article 21 of the Constitution, which guarantees every citizen the fundamental right to life and personal liberty. It is now a well-settled position in law, as repeatedly declared by the Supreme Court, that the word *"life"* in Article 21 does not mean mere physical survival or animal existence. It includes within it the right to live with dignity, in an environment that supports both physical health and mental well-being. A polluted environment, loss of greenery, and vanishing public spaces affect not just ecological balance, but the very conditions needed for dignified and civilised living.

263. Basic elements such as clean air, safe water, and accessible green open areas like parks, maidans, and recreational grounds, can no longer be viewed as mere conveniences. They are essential parts of urban life. The Supreme Court in *Subhash Kumar (Supra)* , *M.C. Mehta (Supra)* , and *Virender Gaur (Supra)* , has made it clear that the right to a clean and healthy environment is a part of the right to life under Article 21. Therefore, this Court has a constitutional duty to ensure that such public spaces, often the only open and free spaces available to ordinary citizens in crowded

urban areas, are not lost due to neglect, mismanagement, or unnecessary diversion.

264. We are deeply aware of the serious shortage of open spaces in the city of Mumbai. The data presented sourced from official surveys and civic reports clearly shows this. The per capita open space available in Mumbai is much lower than international and even national planning standards. This shortage is made worse by increasing population, unplanned urban growth, and competing demands for land. In several city wards, the open space available per person is so low that it is measured in square feet, not square metres. The effects of this shortage are not just theoretical—they are visible in daily life through rising stress levels, poor air quality, lack of play areas for children and recreational space for the elderly, and a general decline in the overall quality of life.

265. In such a situation, any action by the government or legislature that leads to further reduction of existing open space must be carefully scrutinised. While the State has the power to make planning and land use policies, such policies cannot override constitutional protections under Article 21. The role of the Court is not to interfere in planning or governance, but to ensure that the minimum standard of environmental dignity, as guaranteed by the Constitution, is not violated.

266. We must also remember that environmental rights belong not only to the present generation but also to future generations. The principle of inter-generational equity, which is firmly part of Indian environmental law, reminds us that we are mere caretakers

of natural and public resources, not their absolute owners. This principle puts a limit on decisions taken only for short-term benefits or popular appeal, especially when such decisions may harm long-term ecological balance. In *T.N. Godavarman Thirumulpad v. Union of India* (2002) 10 SCC 606 and *Lafarge Umiam Mining v. Union of India* (2011) 7 SCC 338, the Supreme Court has stated that sustainable development is not just a good idea, it is a constitutional obligation.

267. Therefore, any urban development policy or regulation that allows conversion of reserved open spaces into built-up areas must be tested carefully. It must not only be checked against the text of the law, but also its impact on the environment and public health of the city. Regulation 17(3)(D)(2) must be examined with this approach in mind.

268. At the same time, we must also recognise that the Constitution does not require environmental protection in an absolute or one-sided manner. It expects a balance or what may be called a *constitutional equilibrium* between the duty to protect the environment and the duty to provide housing and livelihood to weaker sections of society. Article 21 also includes within it the right to shelter, which is part of the right to live with dignity. The rights of slum dwellers to get proper housing cannot be ignored in the name of environmental protection, especially when the environmental impact is not total, and the Regulation ensures that a fixed portion of land (35%) remains reserved for public use.

269. Thus, the main issue is not whether urban open spaces must be preserved, they certainly must. The real question is whether this Regulation, which reduces the open space on some already encroached lands to 35%, while at the same time ensuring rehabilitation for slum dwellers and returning part of the land for public access, meets the constitutional test of reasonableness, proportionality, and environmental sustainability.

270. We shall now examine this issue in detail, based on the material on record, the principles of environmental law, and the constitutional standards that apply under Article 21.

271. In this background, it becomes important to examine carefully and with constitutional awareness what exactly the impugned Regulation is trying to achieve when we look at the ground reality. Law must always be understood in the context of real facts; it does not function in isolation. It is the duty of the Court to assess a policy not just in theory or abstract terms, but by examining its actual effect, its real-world implementation, and the impact it creates. The Constitution may uphold ideals, but it must also respond to practical situations.

272. The Regulation that has been challenged does not apply to all public open spaces blindly. It does not allow construction on parks that are free from encroachment. Nor does it dilute the general objective of preserving green zones. This Regulation is specifically meant for a narrow category of land that is, those open spaces which, in fact and due to long-standing circumstances, are already occupied by informal slum settlements. These are not

open, unused, or untouched plots waiting for development. Instead, they are places where slum dwellers have been staying for many years, sometimes decades, often due to administrative inaction and socio-economic needs. Legally, the land may still be marked as "reserved for recreation," but the physical condition tells a different story.

273. On the ground, such lands are no longer available to the public for any recreational use. The local people have already lost access to these spaces. The area is densely built up with kutcha or semi-pucca houses and lacks even basic civic services like drainage, sanitation, and proper ventilation. So, although the land is shown as a reserved open space on the development plan, that status is only on paper, it does not reflect the actual situation.

274. It is in this context that the Regulation steps in with a lawful, structured, and regulated plan. The aim is not to convert a functioning park into a residential colony, but to deal with a situation where the land is already encroached and unusable. The Regulation seeks to partly reclaim the land for public use and partly regularise the settlement to protect the rights of existing slum dwellers. According to the Regulation, 65% of the land can be used for slum rehabilitation, while the remaining 35% must be reserved and developed as public open space, with proper landscaping and guaranteed public access. This arrangement if described as a trade-off is one that is practical and proportionate. Earlier, the entire land was lost to encroachment. Now, under this Regulation, a significant portion is being recovered and brought under formal civic control and public use. The final result is that

open space, which was earlier completely unavailable, now becomes available to the extent of 35%, and that too, in a planned, legally protected and accessible manner.

275. Any criticism of this Regulation must therefore be seen in the correct light. It is not a case where a fully functioning park is being taken away. Rather, the potential to create a functional park as reserved in the plan, had already ceased to exist in reality. The Regulation is an attempt to recover a part of what was lost through lawful planning and fair rehabilitation. To call this environmental harm would be to ignore the existing condition and the limited options available to the authorities.

276. When seen in this light, the Regulation does not add to the environmental loss; rather, it reduces the damage that has already occurred. It tries to recover and protect a portion of the urban commons, to the extent possible. Where restoring 100% of the land is not practical, and continuing with the existing loss of 100% is not acceptable, this Regulation offers a middle path—recovering what is still possible, and doing so in a way that does not cause hardship to the people already residing there.

277. The law especially constitutional law must sometimes accept what is feasible and practical. While perfection is always desirable in policy, what the Constitution demands is reasonableness. If the Regulation had permitted construction on unoccupied public parks, or had allowed major land use changes without any safeguards, this Court's approach would have been entirely different. But here, the policy tries to strike a balance between

environmental recovery and rehabilitation of slum dwellers. In such a situation, the Court must decide the matter not on emotion, but on constitutional principles and practical reasoning.

278. Both environmental protection and social justice are duties under the Constitution. The Regulation in question does not ignore one for the other. It tries to bring them together through thoughtful implementation. In our considered view, this Regulation is not a backward step but a constructive solution. It does not promote encroachment; instead, it tries to recover public land with fairness, dignity, and order.

279. The main argument made by the petitioner is that the only constitutionally valid option available to the State was to remove all encroachments from public open spaces completely, and to restore the land fully for recreational use. There is, we must admit, a certain idealistic strength in this view, it reflects a strict interpretation of environmental law, where reservations marked on a development plan are treated as sacred, and any occupation by slum dwellers is seen as a violation of the public trust doctrine. Surely, in a perfect world, free from population pressure, economic inequality, and urban poverty, this approach may well have strong constitutional support.

280. But this Court cannot ignore the realities of urban life in Mumbai. The Constitution is not just a theoretical document; it is a living framework, and the rights it guarantees, especially under Article 21, must be understood in light of real, everyday circumstances. It is true that the right to a clean environment is

part of the right to life. But it is also equally true, and clearly laid down by the Supreme Court that the right to shelter and adequate housing is also a part of human dignity and personal security, protected under Article 21.

281. In *Chameli Singh v. State of U.P.* (1996) 2 SCC 549, the Supreme Court has clearly stated:

> *"The right to shelter is a fundamental right that comes from the right to residence under Article 19(1)(e) and the right to life under Article 21. The right to shelter includes proper living space, safe and decent housing, clean surroundings, fresh air and water, electricity, sanitation, and other basic civil facilities."*

282. People who live in slums or informal settlements are not outside the protection of the Constitution. They may not have legal ownership of land, but they have an equal right to live with dignity, safety, and basic standards of living. When they occupy land not out of choice, but due to urgent need and helplessness, their act, though not lawful, is not to be condemned but must be seen with compassion. The Constitution, through its Fundamental Rights and Directive Principles, recognises that poverty and inequality are structural problems, and asks the State to take positive steps to reduce them.

283. To treat environmental rights and housing rights as opposing each other would be a mistake. Both are part of Article 21, and both protect the right to live a life of dignity. Just as polluted air and water harm human health, so too do unsafe, overcrowded, and unhygienic living conditions. It would be wrong in law and

unfair in principle to protect green spaces in such a way that thousands of families are made homeless, without proper legal process or alternatives. Such an action, rather than protecting Article 21, may violate it.

284. The current condition of slums cannot be justified as acceptable. Most such settlements are marked by poor sanitation, no ventilation, lack of clean water, and absence of healthcare or solid infrastructure. They are prone to dangers such as fires, floods, disease, and pose risks not just to residents but also to neighbouring communities. Leaving them as they are is not environmental conservation. But evicting them without offering any other option is also not social justice. The real environmental issue is not the existence of slums, but that they are unregulated and unplanned. The answer lies in redevelopment—transforming these areas into formal, safe housing, while restoring open spaces wherever possible.

285. So, the constitutional duty of the State is two-fold: (i) to protect and improve the urban environment, and (ii) to ensure shelter and safety for the weaker sections of society. Both these responsibilities come from Article 21, and they are not against each other. They must be balanced, in a manner that is fair, reasonable, and in line with constitutional principles.

286. In our view, the impugned Regulation tries to achieve that balance. It does not prevent environmental recovery; instead, it requires that a part of the land be kept as open space. At the same time, it also does not ignore the poor; it allows for their safe,

regulated housing on the same land. This is a middle path, one that does not ignore green space, but also does not ignore human suffering.

287. The role of the Court is not to demand a perfect or impractical solution, especially when the government is working with difficult ground realities. The Court must ensure that constitutional values are followed, but it cannot impose its own view of what the ideal urban plan should be. When a policy clearly shows an honest attempt to balance two competing rights under Article 21, both of which are recognised by the Constitution and the Supreme Court, then the Court must respect that effort, unless the policy is clearly unreasonable or unjust.

288. To sum up, the vision put forward by the petitioner, while well-intentioned and environmentally conscious, is constitutionally incomplete. The right to environment and the right to shelter are both fundamental. The Constitution expects us to find a balance, not choose one over the other.

289. The constitutional duty of this Court is not to enforce one right by ignoring the other. Our task is to ensure that both the rights under Article 21 that is, the right to a clean environment and the right to shelter are protected together in a way that maintains constitutional balance. In *Asha Ranjan (Supra)*, the Supreme Court, though in a different context, laid down a useful guiding principle: when two fundamental rights appear to be in conflict, the Court should not give such overwhelming importance to one that the other is completely lost. The correct approach is to

find a fair balance, so that both rights are respected, and the actions of the State are tested on the touchstone of proportionality.

290. This concept of balancing rights is firmly recognised in our constitutional law. Article 21, which has been expanded through judicial interpretation, includes not just the right to life, but also the right to live with dignity. This includes both the right to a clean and healthy environment and the right to proper housing. These two rights are not in conflict in fact, they complement each other. A house without basic living conditions is not truly a shelter, and a clean city that excludes the poor from access to it cannot be called fair or just.

291. The Regulation in question, Regulation 17(3)(D)(2), must be examined in this context. It does not offer a perfect or one-sided solution. It does not say that all open lands will be cleared of slums and fully restored for public use. Nor does it claim that every slum dweller has an unconditional right to remain on any land, regardless of its public importance. Instead, it takes a measured approach: it requires that at least 35% of the land must be restored and developed as public open space, and the remaining land may be used to construct proper housing for the existing slum dwellers, replacing unsafe, unregulated structures with legal and secure homes.

292. If implemented properly, this approach can convert a difficult and deadlocked situation into a mutually beneficial outcome. The local community gains back part of the land for parks or recreation, and the slum residents get legal, permanent and

dignified housing. This is not just a tool for administrative convenience, it reflects the constitutional goal of inclusive development, where the rule of law is maintained and both public and private rights are respected.

293. Therefore, the real question before the Court is not whether this Regulation fully restores the reservation on paper, but whether it sacrifices environmental protection in such an unreasonable way that it violates constitutional guarantees. The Court must assess whether the compromise made by the State is so excessive or arbitrary that it deprives citizens of their right to clean air, public spaces, and a healthy urban life.

294. After examining all the material on record, we find no such violation. The Regulation clearly restricts its application to plots above 1000 square metres, thereby ensuring that smaller open spaces are not affected. It also mandates that at least 35% of the land must be reserved for open space development such as parks or gardens, and that this area must be formally handed over to the local authority for public use. This is not a loophole, it is a structured and lawful method to reclaim some part of public land that was earlier lost to unplanned encroachment.

295. The trade-off here appears to be both reasonable and proportionate. When 100% of the land is already encroached and inaccessible to the public, recovering 35% of it, with legal guarantees and civic maintenance, is an actual gain for the environment, not a loss. The other 65% is not given to builders or commercial developers, it is used only to house the people already

living there. This approach also prevents further spread of informal slums and allows for planned housing, with better facilities like drainage, sanitation, and safety.

296. Seen from this perspective, we do not accept the petitioner's claim that this Regulation undermines environmental protection. On the contrary, it shows a sincere attempt to balance two competing rights, exactly as the Constitution requires. It supports a vision of environmental well-being that also respects human dignity, and promotes a model of urban growth that includes the poor, rather than pushing them to the city's margins.

297. After giving our careful thought to the matter and keeping in mind the constitutional values that lie at the heart of this issue, we are of the clear view that the impugned Regulation does not violate the right to a clean and healthy environment under Article 21 in such a manner that would require the Court to strike it down. A Court can strike down a delegated legislation, especially one that is made under statutory authority and after public consultation, only in cases of clear and serious constitutional violations. That standard, in our opinion, is not met in the present case. There are several strong and inter-connected reasons why we say so:

a) First, the Regulation requires that 35% of the total land area must be kept as open space. This may not be the full original reservation, but it cannot be called symbolic or meaningless. On larger plots, such as those measuring 2,000, 5,000 or 10,000 square metres, this 35% amounts to a significant area

that can be used for gardens, jogging tracks, play areas, or other community spaces. What matters for the environment is not just what is marked on a map, but whether there is real, accessible, green space on the ground. If this Regulation is implemented in good faith by the authorities, this 35% area may become the first developed public open space on those plots in many years.

b) Second, it is important to understand the difference between a notional reservation and actual public benefit. Earlier, the entire land may have been reserved for recreation in the Development Plan. But in reality, due to encroachments and lack of action, the public got no benefit from such reservation. A mere label on paper, without public access, basic facilities, or upkeep, cannot be said to fulfil the promise of Article 21. Under the new Regulation, however, the 35% area is not only to be retained but also formally developed, transferred to the local authority, and kept as public space permanently. What was previously reserved in theory but unavailable in practice is now being legally protected and practically revived.

c) Third, this Regulation is not an isolated policy. It is part of a larger city-wide planning effort under the Development Plan 2034, which aims at balanced land use, better urban design, and green space improvement. From the material placed before us, it appears that the Planning Authority has added several new open space reservations across the city, including in No Development Zones, salt pan lands, and vacant

government lands, which are now being designated for parks, green corridors, and recreational use.

d) Fourth, although exact figures were not submitted with mathematical precision, the broad indication from official sources is that the overall open space in the city has increased, even though a few already-encroached plots have been partially regularised. Therefore, the decision to allow partial rehabilitation on certain plots is not an isolated concession, but part of a planned trade-off where small adjustments in some areas are compensated by fresh green zones elsewhere.

e) This is in line with the principle of proportionality, which has been recognised as a constitutional standard by the Supreme Court in *Modern Dental College v. State of Madhya Pradesh* (2016) 7 SCC 353 and *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637. According to this principle, when a policy affects a fundamental right, it must (i) pursue a legitimate aim, (ii) adopt suitable and necessary means, and (iii) maintain a fair balance between different rights. We find that this Regulation satisfies all these tests. It serves the goals of slum rehabilitation and environmental restoration, applies a clear and controlled mechanism, and attempts to balance the rights of the general public with those of the urban poor.

f) That said, it must be emphasised that the real success of this policy will depend not just on the Regulation itself, but on how it is implemented. The requirement of keeping 35%

land as open space should not remain just a clause in a document. The Planning Authority and Municipal Corporation must ensure that these spaces are actually developed, fenced, greened, and made accessible to all, including the poor. The responsibility now shifts to the executive to give real effect to the Regulation and to fulfil both constitutional obligations—environmental protection and inclusive urban development.

g) In conclusion, when seen in its proper context, the impugned Regulation appears to be a well-considered and constitutionally acceptable compromise. It does not take away the right to a healthy environment but tries to adjust it reasonably to also protect the right to housing. It does not ignore planning norms but seeks to realign them within a broader city strategy. It is not a dilution of rights, but an effort to reconcile rights, and therefore cannot be considered regressive or unconstitutional.

viii) Precautionary Principle:

298. The petitioner has relied on the precautionary principle, and submitted that whenever there is a risk of environmental harm, the constitutional approach must be cautious. According to the petitioner, any reduction in open space should be presumed to be unconstitutional unless the State can clearly prove that such action will not cause environmental damage. In other words, the burden is on the State to demonstrate beyond doubt that its action is environmentally safe or neutral.

299. We respectfully agree that the precautionary principle is an important part of constitutional environmental law. In *Vellore Citizens' Welfare Forum (Supra)* , the Supreme Court recognised this principle as a core part of Indian environmental jurisprudence. The Court clearly held that when there is a threat of serious environmental damage, the lack of full scientific certainty should not be used as an excuse to delay necessary and cost-effective measures to prevent environmental harm. The Court also explained that in such cases, the burden of proof shifts to the person or authority proposing the activity, who must show that it will not harm the environment.

300. At the same time, it is important to understand when this principle should be applied. The precautionary principle is usually used in situations where the scientific risk is unclear or not fully understood, for example, in cases involving genetically modified crops, hazardous chemicals, industrial pollution, mining in sensitive areas, or new technologies where environmental impacts cannot be predicted in advance. In such cases, where the damage could be permanent or irreversible, the State must wait until proper clarity is available.

301. However, the present case is not about scientific uncertainty. The environmental impact of changing a part of an already encroached open space into a rehabilitation area is well understood and predictable. The consequence of reducing reserved open space from 100% to 35% is not an unknown risk. It is a deliberate and informed policy decision. The environmental effect, if any, is already measured and limited. This is not a situation

involving future unknown dangers.

302. Therefore, what we are dealing with is not a case for applying the precautionary principle in its strict sense. It is a situation where the Court is required to weigh two known values: the need to protect open spaces, and the need to provide housing to the urban poor. This is essentially a matter of public policy, and the role of the Court in such matters is limited. The Court cannot interfere with policy decisions unless they violate fundamental rights, are based on irrelevant factors, or have no reasonable basis.

303. If the Court were to hold that no reserved open space can ever be reduced, even when such land is already substantially encroached and unusable, it would mean applying the precautionary principle beyond its proper limits. It would turn a doctrine of caution into a tool that blocks all reasonable and balanced resolutions, even when long-standing problems are sought to be solved. The Constitution does not ask us to protect the environment by ignoring other rights, but to protect the environment alongside those rights, in a way that respects both nature and human dignity.

304. The Court's duty in such cases is to ensure that the policy does not cause permanent and irreversible environmental damage, or completely disregard environmental values, which form a part of the right to life. In this case, the Regulation does not eliminate open space entirely. It ensures that 35% of the land is kept open, and that this area is legally protected, developed, and made accessible to the public. Earlier, the land was completely

encroached and not usable by anyone. If the Regulation is implemented as intended, it will actually restore some environmental benefit to the area.

305. Therefore, we cannot say that this Regulation causes irreversible harm to the environment. On the contrary, it attempts to improve the existing situation, where the land was totally lost to civic use. This is not a case where the precautionary principle requires the Court to strike down the Regulation. Instead, it is a case where careful implementation, public oversight, and administrative responsibility must ensure that the intended benefits, for both the environment and the slum residents—are achieved.

306. In summary, the precautionary principle in this case does not demand invalidation, but rather calls for vigilance and responsible execution. The Court's role is to protect fundamental rights—not to directly manage urban planning. When the State adopts a policy that balances competing constitutional duties and does so in a transparent and reasoned manner, the Court must respect that choice—as long as environmental protections are not ignored, but are respected in action and implementation.

ix) Public Trust Doctrine:

307. The petitioner has rightly relied on the public trust doctrine, which is a well-recognised and essential principle in our constitutional law. As explained by the Supreme Court in *M.C. Mehta (Supra)* and *Fomento Resorts (Supra)* , this doctrine means that the State is not the owner of natural or public resources such

as parks, forests, rivers, lakes, and open spaces. Instead, the State holds these resources in trust for the benefit of the public and future generations. This doctrine allows the Court to intervene when such public resources are misused, diverted, or handed over for private benefit or non-public purposes.

308. At the outset, we make it clear that this Court fully endorses the importance of the public trust doctrine. Had it been shown that a functional public park was being handed over to a private builder for commercial gain, we would have had no hesitation in striking down such action. That was, in fact, the conclusion reached by the Supreme Court in *B.S. Muddappa*, *(Supra)* and *M.I. Builders (Supra)* , where the Court held that converting green public areas into commercial use violated the State's duty as trustee.

309. However, the facts of the present case are clearly different, both in purpose and in effect. In this case, the beneficiaries of the Regulation are not private developers or commercial entities, but slum dwellers, who belong to the most economically and socially vulnerable groups in society. They too are part of the public for whom the State holds the land in trust. The Regulation is not aimed at private profit, but at providing proper housing to the shelterless, while also ensuring that a portion of the land is restored as open space for public use.

310. It must be remembered that the public trust doctrine, while strict, is not absolute. It does not prohibit all changes in land use. The State may restructure or reallocate the use of trust land if such

action serves the public interest, so long as the essential purpose of the trust is respected and the change aligns with constitutional values. In this case, at least 35% of the land is required to be kept as open space, developed as a park or recreational ground, and formally handed over to the local authority. The remaining land is used to fulfil another constitutional obligation, namely, providing housing to the poor.

311. We must recognise that the State has multiple constitutional duties, and often these duties overlap. The land held in trust is not only meant for environmental conservation, but also for promoting social equity, housing, and inclusion. The Constitution does not ask the State to fulfil one responsibility by neglecting another. It calls for a balanced approach, where both objectives are addressed in a fair and just manner.

312. In our view, the State, through this Regulation, is not violating the public trust. Rather, it is trying to fulfil two constitutional goals: (i) to protect and revive open spaces for public use; and (ii) to provide dignified and secure housing to slum dwellers, thereby upholding the ideal of social justice. Both these objectives are part of Article 21 of the Constitution, and are also supported by the Directive Principles of State Policy.

313. It is correct that a developer may get some additional Floor Space Index (FSI) or be allowed to construct some units for sale. But this element of profit is not an end in itself. It is incidental to and a part of a reasonable cross-subsidy model—a mechanism where the cost of building free housing for the poor is met through

the sale of other units. Such financial models are often used in urban policy, especially when government funds are limited. The mere involvement of a private actor does not make the Regulation unconstitutional, as long as the main benefit goes to the public and the process remains fair and transparent.

314. Therefore, we are of the considered view that the application of the public trust doctrine in this case does not lead to the invalidation of the Regulation. This doctrine is meant to prevent misuse of public land, not to block every policy change. The Regulation is not arbitrary, not hidden, and not a gift to private parties. Instead, it is an effort to recover part of the land for public use and to use the remaining part to meet another constitutional need.

315. This distinction is crucial. The public trust doctrine is not a total prohibition against change. It is a safeguard against misuse. In the present case, the Regulation has been carefully structured to protect both aspects of the trust, the environment and the right to shelter. It does not violate the public trust; it reshapes it, in a way that serves the broader goals of the Constitution.

316. That being said, our conclusion that Regulation 17(3)(D)(2) is constitutionally valid does not mean that it can be implemented in an unrestricted or casual manner. The public trust doctrine, though not found to be violated in this case, continues to remain an important constitutional safeguard. Whenever the State decides to change the original purpose of land reserved for public use, such a step must be carefully reviewed, especially when the land

forms part of the common natural resources held by the State in trust for the public.

317. Even if such a change is for another public purpose of equal importance, such as providing housing to slum dwellers, the State's duty as trustee does not come to an end. The Court has a responsibility to make sure that the original purpose of the reservation, such as for a park, garden or playground, does not become just a formality or symbolic token, but is genuinely preserved and protected.

318. It must be clearly understood that even a partial change in the land use of areas reserved for public open spaces is not a minor or routine decision. These open spaces are not just for leisure, they are vital for social inclusion, public interaction, and maintaining a shared civic life, especially in cities where citizens live with unequal access to public amenities. Therefore, any reduction in such areas should be allowed only in exceptional situations, and only when the remaining open space is properly planned, well-designed, and ensures better public use and access.

319. This Court is of the firm view that although the 65:35 division permitted under the Regulation is legally acceptable in principle, its actual implementation must be carried out with seriousness, transparency, and full care. Merely showing 35% as open space on paper is not sufficient. This portion must not become a leftover patch of land, oddly shaped, poorly located, or unusable due to bad design or neglect.

320. In order to uphold the public trust in open spaces, and to

protect the right to a clean and inclusive urban environment under Article 21 of the Constitution, we hold that the 35% open space retained under the Regulation must satisfy the following mandatory conditions:

(i) It must be clearly shown in the approved layout plan, so that its location, size, and shape cannot be later changed, shifted, or reduced arbitrarily;

(ii) It must be properly developed with standard features expected of a public park, such as green landscaping, walking or jogging tracks, lighting, benches, play equipment for children, and, wherever suitable, areas for public fitness or social interaction;

(iii) It must be kept free from any further encroachment or construction, except for basic utilities necessary for public use of the open space;

(iv) It must be handed over to the municipal authority within a reasonable and specified time frame, along with a budget or allocated funds to ensure its regular upkeep and long-term maintenance;

(v) It must remain open and accessible to the general public, including citizens living nearby, and must not be fenced off or restricted only to the residents of the rehabilitation project.

321. The constitutional right to housing for the slum dwellers cannot be protected by compromising the right of other citizens to

live in a healthy, inclusive and environmentally balanced urban area. Both these rights are part of Article 21, and both must coexist. This balance must be achieved not through vague assurances, but through clear, concrete, and enforceable duties placed upon the authorities. Accordingly, we propose to issue certain directions and clarifications to ensure that the implementation of Regulation 17(3)(D)(2) in future is carried out in a manner that genuinely respects the public nature of open spaces, helps to reclaim and conserve them, and protects the environmental and civic rights of all citizens. These directions are not meant to obstruct the Government's policy, but to strengthen it, so that its twin objectives (i) to provide dignified housing to slum dwellers, and (ii) to recover and preserve part of the land as open space, are both truly fulfilled, not merely in theory, but in real and visible effect.

x) Interpretation of Sections 3X and 3Z – Rights of Slum Dwellers and Public Interest Reservations:

322. The provisions of the Slum Act, particularly Sections 3X and 3Z, act as a protective mechanism for eligible slum dwellers. These provisions define who is a "protected occupier" and ensure that such occupiers are not evicted without proper rehabilitation. The Petitioners before us have urged this Court to restrict the application of these provisions when it comes to lands reserved for public purposes in the Development Plan. Section 3Z, as amended in 2014, clearly provides that no protected occupier shall be evicted from their dwelling structure, unless permitted under specific circumstances. Sub-section (2) provides the exception,

namely, that eviction may occur if it is necessary in the "larger public interest," and that too with suitable relocation.

323. This legal framework recognises slum dwellers right to live with dignity and some form of tenure security. The idea is to ensure that during redevelopment, the State accommodates these persons, usually by providing temporary and then permanent housing. Only when the State establishes that relocation is essential for a larger public need can eviction be justified.

324. One of the important issues raised in this petition is whether the mere fact that a plot is reserved as a garden or other public open space automatically qualifies the situation as being in the "larger public interest" under Section 3Z(2). The Petitioners argue that any such reservation is by default in public interest and should therefore mandate eviction. The State, however, argues that it must be assessed whether eviction is actually necessary or if the public interest can be met through other methods, such as partial retention of the park and partial in-situ rehabilitation.

325. The phrase "necessary in the larger public interest" signifies that a higher level of public need is required. It is not meant to be triggered by routine planning objectives. Undoubtedly, infrastructure projects such as roads and railways satisfy this threshold. Gardens and parks may qualify in cities where such amenities are critically lacking. Therefore, a general rule that all reserved lands must lead to eviction of slum dwellers cannot be accepted.

326. Instead, each case must be judged on its own facts. If the

reserved open space lies in a locality severely deficient in recreational facilities, the need to develop it may override in-situ rehabilitation. On the other hand, if sufficient alternatives exist or if the settlement is old and established, it may be more appropriate to rehabilitate slum dwellers on-site.

327. DP 2034 represents the State's policy decision, where a portion of such reserved lands, typically 35%, is kept for public purpose while the rest is allowed for rehabilitation. The Petitioners want this Court to declare that such a policy violates the law. We are not inclined to interfere in this domain of executive discretion. However, it must be clarified that Section 3Z(2) remains applicable, and the State may exercise that power if it deems eviction and full reservation implementation to be necessary.

328. Coming to Sections 3X(a) and 3X(c), these define "dwelling structure" and "protected occupier" respectively. The Petitioners are concerned that these definitions are too wide, as they may even include non-residential structures like godowns or sheds. While that concern is understandable, these broad definitions are meant to reflect the actual nature of slum settlements, where usage is often mixed.

329. Changing these definitions may lead to unpredictability in implementation. Importantly, Section 3Z already contains a built-in safeguard by requiring that eviction can occur only for larger public interest. Thus, rather than narrowing the definitions in Section 3X, the appropriate approach is to rely on the exception carved out in Section 3Z(2).

330. The legislative intent is clear: all protected occupiers are secure by default, but may be relocated if compelling public need arises. There is no express exception for slums on reserved lands, but if the objective of the reservation is important enough, then the State is empowered to act under Section 3Z(2). Therefore, there is no need to strike down or read down Sections 3X or 3Z. They provide a constitutional balance. However, to ensure this balance is maintained, we interpret "larger public interest" to include the realisation of major public reservations in the Development Plan, such as creation of public parks, gardens, or playgrounds, if the surrounding circumstances justify such a step.

331. The Government is fully authorised to relocate protected occupiers from reserved lands in such cases. Nothing in the Act prevents such action. It is a matter of policy choice, not legal incapacity. The judgment of this Court in *Abdul Majid* has clarified that rehabilitation is a welfare benefit and not compensation for encroachment. A slum dweller cannot insist on being accommodated on the same land if the State chooses otherwise. In the present case, there is no objection from slum dwellers; it is the State's conscious choice to implement in-situ rehabilitation.

332. In summary, we hold that: Sections 3X(a), 3X(c), and 3Z serve important social functions and are not unconstitutional. Section 3Z(2) is the operative balancing tool. "Larger public interest" under Section 3Z(2) includes the implementation of Development Plan reservations, subject to the facts of each case. In-situ rehabilitation is a policy guideline and not an absolute rule. The statutory scheme of the Slum Act and the MRTP Act can be

harmoniously construed to serve both social welfare and planned urban development.

xi) Case Law Analysed:

333. We now turn to the important judgments relied upon by the petitioner. Each of these decisions deserves independent attention. Although they were delivered in different factual contexts, they lay down strong constitutional principles regarding the protection of public spaces and the application of the public trust doctrine. These decisions show that whenever the State deals with land or resources meant for the public, especially natural or common spaces, it must justify its actions with a high level of care and responsibility.

334. The petitioner has primarily relied upon the decision in *B.S. Muddappa*, (Supra), where the Supreme Court held that a public park cannot be converted into a hospital, even though the new purpose was also for public welfare. The Court clarified that land meant for parks is not surplus or extra land that can be diverted for administrative convenience. It also held that the denial of access to open spaces due to arbitrary executive action amounts to a violation of the right to a wholesome environment under Article 21. We fully agree with this legal principle, which continues to hold the field. However, the facts in the present case are very different from the *Muddappa* case. In that case, the park was functional and being used by the public, and the decision to convert it was taken without due process or transparency. It was a clear case where one public purpose was wrongly substituted by

another without sufficient planning or justification.

335. In contrast, in the present matter, the lands in question have been under total encroachment for years and are not in use as parks or recreational areas. The reservation exists only on paper, and in reality, the public has had no benefit or access to these lands for a long time. Moreover, the process of bringing in Regulation 17(3)(D)(2) was not done secretly or abruptly. It followed the procedure laid down under the MRTP Act, starting with draft notifications, inviting public objections and suggestions, and culminating in final approval by the State Government. The entire process took place over several years and involved participation of the public and concerned departments. Whether or not one agrees with the outcome, it cannot be said that the Regulation was brought in without transparency or in violation of the planning law, unlike the situation in *Muddappa*.

336. *Olga Tellis (Supra)* is a landmark judgment that has a two-fold significance. On one hand, the Supreme Court recognised that the right to livelihood of pavement dwellers is an integral part of the fundamental right to life under Article 21 of the Constitution. Hence, if the State proposes to remove such persons, it must act with fairness and compassion, by providing them with alternative accommodation, or facilitating their relocation in a dignified manner. On the other hand, the Court clearly held that no individual can claim a legal right to encroach upon public spaces such as roads, footpaths, gardens, or playgrounds. Such encroachments, however old, do not create a legal entitlement to remain. Reading both aspects together, the law as laid down in

Olga Tellis is that while encroachers have no legal right to stay on public lands, the State is expected to treat them with dignity if it chooses to remove them. Applying that principle to the present case, it becomes clear that the slum dwellers who have settled on a plot reserved for a public garden cannot legally insist on continuing to occupy that land. The State, therefore, would be within its rights to evict them, provided it does so in accordance with law, and gives them proper rehabilitation.

337. In the present matter, however, the State has chosen not to remove the slum dwellers, but instead to redevelop the same plot by rehabilitating them in-situ while retaining a part of the land as open space. This course of action is not contrary to *Olga Tellis*, because that judgment did not require compulsory eviction in every case. It only stated that eviction, if carried out with due process and rehabilitation, would not violate the right to life. Therefore, *Olga Tellis* supports the Petitioner's argument that public open spaces ought to be safeguarded from encroachments. At the same time, it does not impose a mandatory and absolute obligation on the State to remove protected slum dwellers. The judgment leaves it to the State to decide, in each case, how best to deal with such situations, including the option of evicting with alternative resettlement.

338. *Abdul Majid Vakil Ahmad Patvekari (Supra)* , decided by this Court, reinforces the settled legal position that rehabilitation of slum dwellers is a benefit conferred by government policy, but it is not an unconditional right to remain on the same land. In that case, the Court held that if the State offers a reasonable alternative

for rehabilitation, slum dwellers cannot insist that they must be resettled at the very same spot or within the same vicinity. This judgment directly supports the stand of the Respondents in the present case, as it makes it clear that the slum dwellers could lawfully have been relocated elsewhere. Therefore, they had no absolute right to remain on the reserved open space. However, this decision also strengthens the Petitioner's submission in another way, it clarifies that slum dwellers do not have the power to prevent the State from clearing a particular land parcel, even if they have been living there for long. In *Abdul Majid,* the Court went further to say that if a slum dweller refuses reasonable alternative accommodation offered by the authorities, the State is entitled to conclude that such a person has forfeited his right to rehabilitation, and proceed with eviction. Thus, the judgment makes it abundantly clear that there is no legal compulsion on the State to carry out in-situ rehabilitation on every encroached land. The decision to rehabilitate slum dwellers on the same land or to relocate them elsewhere is a matter of policy. In the present case, the State has opted for in-situ rehabilitation on part of the reserved land, not because the law compelled it to do so, but because it considered that course preferable in the larger public interest. This policy decision, however, remains open to judicial scrutiny to examine whether it strikes a reasonable and lawful balance between competing interests.

339. *Bishop John Rodrigues (Supra)*, another decision of this Court, though dealing with a case of acquisition of private land for slum rehabilitation, lays down important principles relevant to the

present matter. In that case, the Slum Rehabilitation Authority had sought to compulsorily acquire land belonging to a church institution, even though the landowner was willing to redevelop the property along with the slum occupants. The Court struck down the acquisition, holding it to be arbitrary and beyond the true scope of the Slum Act. The Division Bench observed that if the Act were to be interpreted in a manner that allowed slum dwellers to force the State to acquire any land they occupy, merely because they wish to be rehabilitated there, it would make the Act oppressive and beyond what the legislature ever intended. Applying the same reasoning by analogy, if we were to interpret the Slum Act to mean that wherever a slum exists, even on a plot reserved for a public playground, it must be rehabilitated in-situ, and the public must lose that reserved amenity forever, such an interpretation would also render the statute excessive and unreasonable. Fortunately, such an interpretation is not warranted by the text or object of the Slum Act. The judgment in *Bishop John* serves as a reminder that while the objective of slum rehabilitation is socially important, it cannot override other legitimate public interests, such as the right of communities to enjoy parks, playgrounds, and gardens as reserved in the Development Plan. The Slum Act must be implemented in a manner that respects the rights of all stakeholders and ensures fairness, balance, and proportionality.

340. In the present case, unlike in *Bishop John* where the competing interest was that of a private landowner, the competing right is that of the general public to retain access to open spaces.

Although the facts are different, the larger principle of equitable balancing of interests applies equally. The Court, therefore, must carefully examine whether the policy of in-situ rehabilitation on reserved lands is proportionate and consistent with the purpose of the Development Plan and other public rights.

341. The petitioner has also relied upon *M.I. Builders Pvt. Ltd. (Supra)*, where the Supreme Court struck down a municipal resolution that permitted the construction of an underground shopping complex in place of a public garden. In that case, public interest was sacrificed for private profit, and a heritage garden was lost. The Court rightly held that such conduct violated the constitutional duty of the State as a trustee of public property. But the present case is on a different footing. Here, the State is not handing over land to private developers for commercial gain. Instead, it is trying to balance two constitutional objectives: (i) preserving public open spaces, and (ii) rehabilitating slum dwellers who have lived on that land for decades. The Regulation ensures that 35% of the land is retained for public use, while 65% is used for in-situ rehabilitation. While this may not fully restore the park as originally planned, it avoids complete loss of the open space and also addresses the urgent housing need.

342. The petitioner also cited *Intellectual Forum (Supra)*, where the Supreme Court restrained the filling of water bodies for constructing a housing colony. That case involved lakes and water bodies, which are vital for groundwater recharge, flood control, and ecological balance. The Court held that such natural features cannot be treated as empty plots available for development,

because their loss leads to irreversible damage. We fully agree with the caution expressed in that case regarding the protection of ecologically sensitive resources. However, it is also important to recognise that not all urban lands have the same environmental value. A piece of land that has been fully encroached and used for informal housing, although shown as reserved for a park, does not hold the same ecological importance as a lake, forest, or wetland. In this case, while there is a civic and planning concern, the environmental loss is not of an irreversible nature, as would be with diversion of a wetland or a forest.

343. In light of the above discussion, we are of the view that although the judgments cited by the petitioner lay down important constitutional safeguards, their application must necessarily be considered in light of the facts of this case. This is not a case where land is being handed over for private benefit or where there is abuse of power. Rather, it is a case where the State, following due legal process, has framed a policy which tries to serve both environmental and social goals. The judgments cited serve as important warnings, they remind us that public resources must not be lost by stealth, abuse, or manipulation. But these precedents do not impose a blanket prohibition on all changes in land use. They do not prevent balanced, lawful, and transparent decisions, particularly where public participation and planning mechanisms have been followed. Accordingly, we hold that while the precedents cited by the petitioner are of high constitutional value, the facts of the present case are distinguishable, and the impugned Regulation does not suffer from the legal defects that led to

invalidation in those earlier cases.

344. The respondents, in their defence, have relied on several important judgments which underline the principle that Courts must exercise restraint while reviewing planning policies, particularly when such policies are made by the legislature or under delegated legislative powers. Among these, the rulings of the Supreme Court in *Bombay Dyeing & Manufacturing Co. Ltd. (Supra)*, is especially relevant. This case dealt with changes made to the Development Control Regulations (DCR) related to Mumbai's old mill lands. In this case, public interest litigants raised objections to modifications that allowed reduction of land earlier reserved for open spaces, low-cost housing, and public facilities, and alleged that the changes benefitted private parties. The core argument raised was similar to the present petition, that land meant for public use was being diverted, thereby diluting its original purpose. While recognising the seriousness of these concerns, the Supreme Court clearly explained that in matters involving urban planning and land use, the scope of judicial review is limited, since such matters involve complex administrative and policy decisions. The Supreme Court held that when a development plan or delegated legislation is modified, the role of the Court is not to decide whether the change is the best or wisest possible choice. The Court can interfere only if: The modification violates the parent statute; It violates any provision of the Constitution; or it is clearly arbitrary, unreasonable, or against public interest. Unless one or more of these conditions are met, Courts should not interfere with planning decisions made by the

authorities. Questions about how urban land is to be used lie within the powers of planning authorities, provided their decisions do not suffer from legal or constitutional flaws.

345. This principle was further confirmed in *Janhit Manch (Supra)*, where a Division Bench of this Court considered a scheme that granted incentive Floor Space Index (FSI) to developers in exchange for providing public parking facilities. That scheme was also challenged on the ground that it favoured builders excessively. However, this Court held that although the scheme may not be perfect, it was still a legitimate planning tool to address problems such as parking shortage and traffic congestion. This Court ruled that as long as the scheme was implemented within the legal framework and aimed at solving genuine civic issues, judicial interference was not warranted simply because some trade-offs were involved. The Supreme Court, in appeal, did not interfere with this Court's judgment and stressed that judicial review in matters of planning policy must be applied carefully and cautiously, especially when the policy seeks to balance multiple urban needs, including environmental, spatial, economic, and social considerations.

346. This Court is also conscious that in a city like Mumbai, urban policy-making involves many competing priorities, such as the need for housing, protection of environment, improvement of infrastructure, and equitable distribution of amenities. These matters do not have clear-cut answers and require a careful balancing of public interests. Such decisions are best taken by planning bodies, municipal corporations, and elected

representatives, not by Courts. This does not mean that Courts have no role. As constitutional protectors, Courts must step in where a policy violates the law, infringes fundamental rights, or is arbitrary and unfair. But even while doing so, the Court must remain within the boundaries of judicial review and avoid functioning as a policy-making authority, particularly when the Government has followed due process and attempted to balance competing interests in an open and fair manner.

347. As already noted, the impugned Regulation 17(3)(D)(2) was not introduced by a mere executive decision. It was brought in after following the full statutory procedure under the MRTP Act. The process started with a public notice under Section 26, was followed by consideration of objections and suggestions under Section 28, and concluded with final sanction under Section 31. The policy went through review by expert committees, involved public participation, and received inputs from concerned departments. It reflects a deliberate policy decision aimed at tackling two pressing urban issues: encroachment on reserved public land and the need for in-situ rehabilitation of slum dwellers.

348. Some may argue that a better alternative could have been adopted or that the policy is not ideal. However, in the absence of a clear legal or constitutional defect, such arguments do not justify judicial interference. Courts should not convert themselves into a forum for debating planning policy. The Courts should neither act as a "super-town planner", nor substitute its own purported wisdom in place of a democratically formulated policy, unless there is a clear violation of constitutional or statutory principles.

349. In this background, we find no reason to depart from the settled standard of judicial deference. The impugned Regulation is not an arbitrary executive action. It is the result of a legally structured policy process, guided by constitutional values, involving public consultation, and aiming, though not without limitations, to balance different public needs. Therefore, no ground has been made out for striking it down through judicial review.

350. After carefully considering the legal, constitutional, and factual aspects of the issues brought before us, we now proceed to set out our conclusions on the points framed for determination. Our analysis has taken into account constitutional principles, interpretation of statutory provisions, environmental law, the logic behind planning regulations, and past judgments. These conclusions are drawn by striking a careful balance among these considerations. While doing so, this Court has kept in mind that lawfully framed State policies should not be easily interfered with, but at the same time, constitutional protections must not be weakened due to unchecked administrative discretion or carelessness.

351. Consequently:

(i) We hold that Regulation 17(3)(D)(2) of the Development Control and Promotion Regulations, 2034 is well within the powers delegated to the State Government under the Maharashtra Regional and Town Planning Act, 1966. The Regulation was brought into effect after following

the required statutory process, starting with publication of a draft, inviting public objections and suggestions, scrutiny by the Planning Committee, and final approval under Section 31 of the MRTP Act. We find no procedural irregularity or legal flaw in the way the Regulation was enacted. Hence, it is valid in law.

(ii) We are of the view that the distinction made in the Regulation, between encroached open lands and non-encroached ones, and between plots above and below a certain size, is based on clear and logical criteria. This classification has a direct and reasonable connection with the aim of the Regulation, which is to provide in-situ rehabilitation to slum dwellers and, at the same time, preserve open spaces where feasible. The policy is applied uniformly, is guided by measurable conditions, and attempts to balance two important public concerns. It is not arbitrary or discriminatory and does not violate Article 14.

(iii) We agree that the right to a clean and healthy environment is a part of the right to life under Article 21, just as the right to shelter and a dignified life is also protected by the same Article. The Regulation, if implemented as it is intended and along with the safeguards we propose, does not amount to a denial of the right to environment. Although it does reduce the open space originally reserved on paper, it ensures that at least 35% of the land is kept open, developed as a public amenity, and preserved. At the same time, it provides better housing and

infrastructure to slum residents. This approach does not destroy environmental values, it tries to recover some environmental benefit from already encroached lands while also recognising the housing rights of the urban poor.

(iv) We are satisfied that the Regulation is not based on arbitrary administrative decision-making. It is supported by facts, expert input, and urban planning reports, including the Afzalpurkar Committee Report. The Regulation reflects a practical approach to a difficult and long-standing issue, namely, that removing all slums may not be possible, and losing all open space is not acceptable. It is a balanced policy that aims to recover a part of the land while also ensuring humane rehabilitation. This approach is neither unreasonable nor unconstitutional.

(v) We have considered the key environmental principles cited, precautionary principle, sustainable development, and the public trust doctrine. These are indeed important constitutional doctrines and must guide all decisions of the State involving public land, environment, and welfare. However, in this case, we do not find that the Regulation goes against those principles. On the contrary, it retains a defined portion of land as public open space, requires proper development of that space, and mandates that it be handed over to the local authority for public use. These steps reflect an attempt to respect environmental obligations, even while addressing the ground-level challenges of slum housing. The precautionary principle, as explained earlier, is best applied

in cases where the environmental harm is unknown or irreversible. Here, the impact is known and limited, and the Regulation represents a planned and controlled response, not a blind risk. However, the public trust doctrine serves as a reminder that even partial changes in the use of public lands must be watched closely. Any reduction in civic open spaces, even for a public purpose, requires proper justification and must not result in abuse or neglect. The 35% land promised for open use must be genuinely made available, and not be reduced to a formality. Poor planning, inaccessibility, or lack of maintenance would defeat the purpose. To ensure this, we will issue clear directions to guide how the Regulation should be carried out. These directions will help make sure that the open spaces reclaimed under the scheme are real, usable, and beneficial to the public, and that the public trust in such lands is not lost, even as the State takes steps to fulfil other duties under Article 21.

xii) Final Observations and Directions:

352. Based on the detailed discussion above and after examining the constitutional validity of Regulation 17(3)(D)(2) of the DCPR 2034 through the lens of Articles 14 and 21 of the Constitution, we are not inclined to strike down the Regulation in its entirety. Although the concerns raised by the petitioners about protecting public open spaces and maintaining environmental balance are genuine and rooted in public interest, we do not find that the Regulation breaches the limits of delegated legislation or violates fundamental rights in a manner that would justify judicial

invalidation.

353. At the same time, we are deeply conscious of the constitutional values that lie at the heart of this matter. The right to a healthy environment, the public trust doctrine, and the importance of equitable urban planning remain of utmost relevance. While the Court shows deference to lawfully framed executive action, it is also empowered under Article 226 of the Constitution to mould effective relief to ensure that such action aligns with the public interest and is not carried out arbitrarily.

354. Accordingly, while upholding the validity of Regulation 17(3)(D)(2), in exercise of our jurisdiction under Article 226 of the Constitution of India, and in furtherance of the duties cast upon the State under Article 48A of the Constitution and the mandate of Sections 22, 31 and 158 of the MRTP Act, this Court issues the following directions to ensure preservation and protection of lands reserved as open spaces in the sanctioned Development Plan (DP) of Mumbai:

(i) In every slum redevelopment project approved under Regulation 17(3)(D)(2), the Municipal Corporation of Greater Mumbai and the Slum Rehabilitation Authority shall ensure that at least 35% of the total plot area is clearly marked, preserved, and developed as an open space. This portion shall be used for parks, gardens, or playgrounds, in accordance with Development Plan. The open space should be in one continuous stretch and not scattered into unusable fragments.

(ii) The 35% open space shall be treated as a public amenity and not a private area for use only by the residents of the rehab buildings. It must remain open and accessible to the general public, including other residents in the surrounding area. Once the project is completed, the open space must be handed over to the Municipal Corporation or any other appropriate public body for maintenance and management, unless the Corporation specifically permits joint maintenance with the housing society under prescribed conditions. Under no circumstances shall this space be enclosed or restricted in a way that prevents entry of the local public. No portion of the open space shall be reserved exclusively for any private group, resident association, or developer.

(iii) The State Government and the SRA shall form a dedicated monitoring committee or senior officer, who will oversee the implementation of the Regulation on the ground. Field officers shall submit quarterly reports to the SRA and the UDD stating: Whether the 35% open space has been properly marked; Whether development like landscaping and park creation has started and completed; Whether the land has been officially handed over to the civic body; Whether public access is being maintained. Public access and scrutiny of such quarterly reports of the Special Monitoring Cell shall be ensured by uploading them on the websites of SRA and UDD within two weeks of the end of each quarter.

(iv) Any violation, such as building beyond the allowed 65% area or not providing the promised open space, must be corrected immediately, and disciplinary action shall be considered if necessary. The Court makes it clear that the 35% open space is a minimum requirement, not an average or flexible figure. In fact, if any project manages to retain more than 35% through better planning, it should be appreciated and encouraged.

(v) It is directed that in every slum rehabilitation scheme undertaken on lands reserved for public open spaces (POS) under the Development Plan, the minimum 35% open space required to be retained under Regulation 17(3)(D)(2) of the DCPR 2034: (a) Shall be clearly demarcated in the final approved layout plan at the time of issuance of Letter of Intent (LoI) or Commencement Certificate (CC), as the case may be. (b) The layout shall reflect the precise location, dimensions, shape, and orientation of the open space so that it cannot be subsequently modified or shifted under the guise of layout readjustments or design exigencies. (c) No approval shall be granted to any proposal unless this requirement is visibly and verifiably complied with.

(vi) The retained 35% open space must be developed as a functional and usable public park, which includes: (a) Green landscaping with appropriate vegetation and shaded areas; (b) Walking/jogging tracks with proper surfacing and illumination; (c) Installation of seating areas (benches), children's play equipment, and fitness zones wherever

feasible; (d) Lighting, drainage, and safety features ensuring usability during all hours of public operation; (e) Signage indicating that the space is public in nature and maintained under the authority of the local body.

(vii) The entire open space shall be formally handed over to the Municipal Corporation or the local planning authority (as the case may be) within 90 days of the date of obtaining the Occupation Certificate for the rehabilitation component. At the time of handover, the developer or scheme proponent shall: (a) Provide a basic capital grant or maintenance corpus, as may be determined by the Planning Authority or Municipal Corporation, to ensure upkeep; (b) Furnish an undertaking to indemnify the authority in case of deficiencies in development or maintenance obligations for a period of three years.

(viii) The State Government, through the MCGM and the SRA, shall ensure that no new encroachment is permitted or allowed to occur after the reservation of land as open space in the sanctioned Development Plan. In particular, lands reserved for Recreation Grounds (RGs), Playgrounds (PGs), Gardens, Parks, and similar civic amenities shall be treated as non-buildable zones, except as permitted under judicially sanctioned frameworks and statutory exceptions.

(ix) The MCGM shall, within 90 days of the upload of this judgement on the website of this Court, prepare a ward-wise action plan listing all reserved open spaces and submit the

same to the UDD. The SRA and MCGM shall jointly constitute a Special Monitoring Cell headed by a Deputy Municipal Commissioner not below the rank of Class I officer, along with a representative of the Planning Department, to carry out quarterly inspections and submit reports identifying any fresh encroachments.

(x) The MCGM shall, with the assistance of MahaIT and the State Remote Sensing Application Centre, complete a GIS-based mapping and geo-tagging of all plots designated as open space in the sanctioned Development Plan, including their current usage status, within a period of 4 months from the date of this judgment. The mapping database shall be published on the MCGM website and kept updated bi-annually, so as to ensure transparency and public access.

(xi) No slum rehabilitation scheme under Regulation 17(3)(D)(2) of DCPR 2034 shall be sanctioned or implemented on a reserved open space unless the following mandatory conditions are fulfilled: (a) The encroachment must have existed prior to the date of reservation under the sanctioned Development Plan; (b) A certificate of unavailability of alternative land must be issued by the Collector and endorsed by the UDD; (c) The scheme must retain at least 35% of the total plot area as open space in one contiguous, accessible, and functional parcel, and such area shall be: (i) developed as a recreation ground or park or used as as shown in Development Plan, (ii) handed over to MCGM for public use and maintenance, (iii) not enclosed or made

exclusive to residents; (d) The scheme must be reviewed and approved by a Special Urban Planning Review Committee to be constituted by the State within 60 days.

(xii) The UDD, MCGM, and SRA shall file biannual compliance affidavits before the Registry of this Court for a period of three years, detailing: Status of geo-tagging and mapping, List of reserved open plots with existing encroachments, Action taken to prevent or remove encroachments, Details of slum rehabilitation schemes approved under Regulation 17(3)(D)(2), Development and handover status of the 35% open space under each project. The affidavits shall be placed before appropriate bench of this court for monitorial review.

(xiii) Simultaneously, the quarterly reports of the Special Monitoring Cell shall be uploaded on the websites of MCGM and UDD for public scrutiny.

(xiv) The State Government shall undertake a comprehensive policy review of Regulation 17(3)(D)(2) of DCPR 2034 within a period of 24 months, including: A field-wise environmental and urban health impact assessment, Stakeholder consultations including residents' associations and urban planners, Evaluation of whether the 35:65 ratio serves the goals of sustainable development. If necessary, the State shall frame revised regulations ensuring a higher retention of open space, enhanced civic safeguards, and exclusion of fresh encroachments from rehabilitation

benefits.

(xv) The State Government shall issue a comprehensive circular/resolution within four weeks from the date of this order, incorporating these directions and requiring compliance in all schemes under Regulation 17(3)(D)(2).

(xvi) Our decision should not be read as giving a free hand to the State to reduce open spaces in the city. The responsibility to maintain and increase open spaces continues. The State and local planning bodies must take concrete steps to improve the per capita open space availability, especially in areas where it is dangerously low. These steps must include: Identifying and purchasing private lands that can be converted into gardens or parks; Turning unused NDZ areas or buffer lands into recreation zones where environmentally suitable; Strictly enforcing open space provisions in all layouts, residential or commercial. Preserving what remains is not enough. The city needs new and better open spaces for its growing population.

(xvii) We make it clear that our decision is based on the present structure and implementation of the Regulation. If future developments, such as ground-level data, environmental reports, or public grievances, show that the 35% open space is not enough, the State will be bound to revisit the policy. The State may then consider: Increasing the minimum open space, or Introducing stricter controls on the size and number of houses or floors allowed under such

projects. Our approval of the Regulation is based on the balance currently offered between public space and housing needs. That balance must remain flexible and sensitive to future challenges. It cannot be static. The welfare of the people must always be the guiding principle.

355. We, therefore, decline to strike down Regulation 17(3)(D)(2). The writ petition, to that extent, stands dismissed. However, keeping in mind the important constitutional values involved, such as the need to protect the environment, the public trust doctrine, the rights of slum dwellers, and the goal of sustainable development, we have exercised our powers under Article 226 of the Constitution and issued specific directions (i) to (xvii) earlier in this judgment.

356. In the result, and subject to the above directions, the Rule stands discharged. There shall be no order as to costs.

357. Let a copy of this judgment be forwarded to the Chief Secretary, Government of Maharashtra, for appropriate action and circulation to all departments and authorities concerned with the subject.

358. List the writ petition for compliance on **4th December 2025**.

359. Interim Application No.1771 of 2022, and Interim Application (L) Nos.28459 of 2021 and 30716 of 2021 stand disposed of in terms of this order.

(SOMASEKHAR SUNDARESAN, J) (AMIT BORKAR, J.)