



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

PUBLIC INTEREST LITIGATION (L.) NO. 81 OF 2017

Jan Mukti Morcha

....*Petitioner*

: *Versus* :

State of Maharashtra & Ors.

....*Respondent*

Alongwith

PUBLIC INTEREST LITIGATION NO. 40 OF 2019

Pankaj Rajmachikar

....*Petitioner*

: *Versus* :

State of Maharashtra & Ors.

....*Respondent*

Alongwith

PUBLIC INTEREST LITIGATION (L.) NO. 51 OF 2017

Bhagvanji Rayani

....*Petitioner*

: *Versus* :

State of Maharashtra & Ors.

....*Respondent*

Alongwith
PUBLIC INTEREST LITIGATION NO. 9 OF 2019

Santosh Daundkar

....*Petitioner*

: *Versus* :

Secretary, Ministry of Environment
Forest and Climate Change, Indira
Paryavaran Bhavan & 6 Ors.

....*Respondents*

Mr. Sunip Sen, Senior Advocate with Ms. Rujuta Patil and Mr. Yohaam Shah
i/b Negandhi Shah & Himayatullah, for Petitioner in PIL/40/2019.

Dr. Uday Warunjikar, for Petitioner in PIL(L)/81/2017.

Mr. Darius J. Khambata, Senior Advocate with Mr. Joel Carlos i/b Mr.
Yogesh Patil & Mr. Tushar Hathiramani, for Respondent No. 3 in
PIL(L)/51/2017, PIL/40/2019, PIL(L)/81/2017 & for Respondent No. 7 in
PIL/9/2019.

Smt. P.H. Kantharia, Govt. Pleader with Mrs. Jyoti Chavan, Addl. GP for
State-Respondent No. 1 in PIL(L)/51/2017, PIL/9/2019.

Smt. Jyoti Chavan, Addl. GP for State, Respondent No. 1 in PIL(L)/81/2017.

Mr. Milind More, Addl. GP for State, Respondent No. 1 in PIL/40/2019.

Mr. A.Y. Sakhare, Senior Advocate with Ms. Chaitalee Deochake i/b Ms.
Komal R. Punjabi, for MCGM, Respondent No. 2 in PIL/40/2019 &
PIL(L)/81/2017 and for Respondent No. 1 & 5 in PIL(L)/51/2017.

Mr. Vishal Kanade i/b Ms. Jaya Bagwe, for MCZMA, Respondent No. 4 in
PIL/9/2019.

Mr. Santosh Daundkar, Petitioner-in-person in PIL/9/2019, present.

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON : 24 JUNE 2025.

JUDGMENT PRONOUNCED ON : 1 JULY 2025.

JUDGMENT (*Per : Sandeep V. Marne, J.*) :

1) These Petitions, filed in public interest, take exception to the decision of the State Government in setting up Balasaheb Thackeray Rashtriya Smarak (**the Memorial**) at the site of Mayor's Bungalow located at Shivaji Park, Dadar, Mumbai. Though all the petitions oppose setting up of the Memorial at the site of Mayor's Bungalow, different prayers are sought in each Petition. Broadly speaking however, the challenge in the Petitions relate to:-

- (i) Government Resolution dated 27 September 2016 granting approval for setting up of Memorial at the site of Mayor's Bungalow as well as for establishment of the Trust to set up and manage the Memorial.
- (ii) Amendment to Section 92 of the Mumbai Municipal Corporation Act, 1888 by inserting clause (dd-1) therein empowering the Municipal Commissioner to grant lease of the land to the Trust on nominal rent of Rupee 1 per annum for 30 years.
- (iii) Notice dated 7 September 2017 for change of reservation of land from Mayor's Bungalow to the Memorial.

(iv) Notification dated 22 January 2019 sanctioning the change of use/zone of the land.

(v) Cabinet decision dated 20 December 2018 granting exemption for payment of stamp duty for lease of the land in question in favour of the Trust.

2) The Government of Maharashtra decided to erect a memorial to commemorate late Balasaheb Thackeray, founder of Shiv Sena Party and a political leader having substantial influence in the State of Maharashtra, particularly in Mumbai. Accordingly a High Power Committee (**HPC**) was set up vide Government Resolution dated 4 December 2014. The HPC was given a mandate *inter alia* to scout for land for setting up the Memorial, generate funds therefor, make recommendations for setting up of Memorial, etc. The HPC submitted its recommendations on 19 May 2015 after considering 8 different sites for setting up of the Memorial. The HPC recommended that bungalow of Mayor of Mumbai located at Shivaji Park, Dadar, Mumbai was most suitable for setting up the Memorial. The HPC also recommended that a public trust registered under the provisions of Maharashtra Public Trusts Act, 1950 (**MPT Act**) be set up for carrying out the work of erection of the Memorial. The HPC recommended that though the land would continue to be in the ownership of the Municipal Corporation, the same be allotted on lease to the Trust for a period of 30 years on payment of nominal rent of Rupee 1 per year.

3) This is how the site bearing the land at CTS No.501 as well as CTS No.1495 together with Mayor's bungalow standing thereat admeasuring 11,323 sq.mts. with constructed portion of 1,085.54 sq.mts. was selected by the HPC for construction of the Memorial. The HPC found that out of the recommended land, portion admeasuring 362.85 sq.mts. was granted on lease in favour of *Keralia Mahila Samajam*. The market value of

the land was approximately assessed at Rs.205 crores. The HPC observed that in the Development Control Regulations, 1991 (**DCR 1991**) the land was reserved for Mayor's bungalow and coming under Green Zone. The HPC also found that in the draft Development Control and Promotion Regulation, 2034 (**DCPR 2034**) the land which was not reserved for any purposes, came under residential and commercial zone. The HPC also recommended that the land comes under CRZ-II and could be developed only in accordance with DCR 1991.

4) After considering the recommendations of the HPC, Government Resolution dated 27 September 2016 was issued granting approval for setting up of the Memorial at Mayor's Bungalow and for constitution of Public Trust with the recommended persons on its Board of Governors /Trustees. In PIL (L) No.51 of 2017, Government Resolution dated 27 September 2016 has been challenged.

5) Thereafter steps were taken for effecting necessary amendment in the provisions of Mumbai Municipal Corporation Act, 1888 (**MMC Act**) and an Ordinance named Mumbai Municipal Corporation (Amendment) Ordinance, 2017 was issued vide Notification dated 3 January 2017 inserting Clause (dd-1) in Section 92 of the MMC Act empowering the Municipal Commissioner to grant lease of the land in question for the purpose of erection of the Memorial on land less than the market value. Thereafter the Municipal Corporation (Amendment) Act, 2017 was notified inserting Clause (dd-1) in Section 92 of the MMC Act. In PIL (L) No. 51 of 2017, the Ordinance dated 3 January 2017 as well as the Amendment Act are also under challenge.

6) The Municipal Corporation sent a proposal to the State Government on 17 April 2017 intimating adoption of resolution by the

Improvement Committee on 13 January 2017 as well as General Body of the Corporation on 27 February 2017 resolving to allot the Mayor's bungalow for setting up of the Memorial and requested for approval of the State Government. By letter dated 6 July 2017, the State Government communicated the terms and conditions to the Municipal Corporation for allotment of Mayor's bungalow for setting up of the Memorial. One of the conditions stipulated by the State Government was to carry out modifications in respect of reservation of the plot as well as to seek approval of the Heritage Committee and of the Maharashtra Coastal Zone Management Authority (**MCZMA**). The Municipal Corporation thereafter requested the State Government to initiate the process for modification of the development plan under Section 37(1AA) of the Maharashtra Regional Town Planning Act, 1966 (**MRTP Act**). Accordingly, Notice under Section 37(1AA) of the MRTP Act was published in Government Gazette dated 7 September 2017 publishing the proposed change in reservation and inviting suggestions and objections. It appears that 18 suggestions and objections were received, which included 15 suggestions in support of the proposed modification. One of the Petitioners-Mr. Pankaj Rajmachikar also raised his objection to the proposed modification. After hearing objections and suggestions, the Deputy Director of Town Planning, Greater Mumbai, submitted his report to the State Government on 11 December 2017. In the meantime, the State Government accorded sanction to the draft Development Plan-2034 of MCGM vide Notification dated 8 May 2018. The Development Plan 2034 was sanctioned by the State Government in which the label of Mayor's bungalow was changed as '*Balasaheb Thackeray Rashtriya Smarak*'. It appears that Corrigendum dated 29 June 2018 was issued to effect certain typographical corrections and after completing the process of inviting suggestions and objections, the modification in the plan was sanctioned by the State Government on 30 June 2018. Also in the sanctioned Development Plan 2034 vide Notification dated 22 January 2019 label in respect of the land in question is replaced from Mayor Bungalow to

Balasaheb Thackeray Smarak together with modifying the land use from Green Zone to Residential Zone. It appears that after taking the above steps, the work of setting up of the Memorial was undertaken by Balasaheb Thackeray Rashtriya Smarak Samiti **(the Trust)**.

7) In the above factual background, the present petitions are filed in the public interest challenging the decision of the State Government and MCGM in allotting the land together with the Mayor Bungalow for setting up the Memorial.

8) We have heard Mr. Sen, the learned senior advocate appearing for the Petitioner in PIL No.40 of 2019. He would submit that the change of use of Mayor's Bungalow has been effected in gross violation of provisions of the MRTP Act. That the proposed amendment under Notification dated 8 May 2018 and Corrigendum dated 29 June 2018 was only for change of label whereas final Notification dated 22 January 2019 illegally effected zoning of the land from '*Green Zone*' to '*Residential Zone*' without prior public notification or consultation. That such conversion was never proposed either in the draft Development Plan or in published Notifications. That therefore, direct deletion of '*Green Zone*' in the final notification dated 22 January 2019 is illegal and contrary to provisions of Section 31(1) of the MRTP Act. That Notification dated 7 September 2017 issued under Section 37(1AA) of the MRTP Act cannot justify deletion of Green Zone under DCPR 2034. That the impugned action suffers from procedural impropriety as there is denial of statutory opportunity of hearing. That though original Notification dated 8 May 2018 provided for raising of suggestions and objections, no fresh notice was issued after issuance of Corrigendum dated 29 June 2018. Mr. Sen further submitted that there is illegal conversion of Municipal Gymkhana (*Municipal House*) for Mayor's new bungalow. That Municipal Gymkhana is a public amenity and historically accessible to public use and could not be reserved for residence of Mayor. That there is

excessive reduction in public amenities. That Mayor's role under the MMC Act is merely ceremonial and there is no statutory mandate for providing a bungalow to the Mayor. That in any case alternate land can be scouted for residence of the Mayor without compromising public amenity space of Gymkhana. In support of his submissions, Mr. Sen has relied upon judgment of the Apex Court in Manohar Joshi Versus. State of Maharashtra and others¹ and Municipal Corporation of Greater Mumbai and others Versus. Hiranman Sitaram Deorukhar and others².

9) Dr. Warunjikar, the learned counsel appearing for the Petitioner in PIL (L) No.81 of 2017 would submit that the entire decision-making process for setting up of the Memorial at Mayor's Bungalow suffers from gross arbitrariness and irrationality. Though 8 sites were suggested for setting up of the Memorial, the site of Mayor's bungalow was arbitrarily selected by the HPC on account of intervention of Mr. Subhash Desai, the then Minister for Industries, who later became lifetime Secretary of the Trust. That though HPC recommended establishment of public Trust for setting up and management of the Memorial, the Government Resolution dated 27 September 2016 ultimately set up the Trust consisting of members belonging to a Shiv Sena political party and Thackeray family members as Trustees indicating that it is like a private trust, without any element of public interest. That almost all the trustees are made trustees for lifetime again indicating that the Trust is a close family affair. That the provisions of Section 92 of the MMC Act are arbitrarily amended in a manifest and illegal manner for the purpose of offering on platter of land admeasuring hundreds of crores of rupees to the Trust at nominal rent. That the reservation for Mayor's bungalow has also been illegally altered for setting up of the Memorial in gross violation of provisions of the MRTP Act.

¹ (2012) 3 SCC 619

² (2019) 14 SCC 411

10) Dr. Warunjikar would submit that though the Petitioner is in principle not opposing the setting up of the Memorial in the memory of late Balasaheb Thackeray, site chosen for setting up of the Memorial as well as the manner in which the Trust is formed is clearly illegal and therefore he would pray for setting aside of the impugned actions taken by the Respondents towards setting up of the Memorial at the site of Mayor's bungalow.

11) Ms. Chavan, the learned Additional Government Pleader would oppose the Petitions submitting that establishment of the Memorial at Mayor's bungalow is in the realm of policy decision in which this Court may not interfere. That all the procedure contemplated under the provisions of the MRTP Act has been followed while effecting the modification in the Development Plan. That suggestions and objections were invited before making the modifications in the Development Plan. That Petitioner-Mr. Pankaj Rajmachikar has objected to the proposed modification but did not thereafter object issuance of the Corrigendum. That the decision to set up the Memorial has been taken in interest of larger section of the society considering the contribution of late Balasaheb Thackeray during his lifetime. That no exception is made for allotting land for establishment of the Memorial as several such memorials have been established at various sites by allotting land by the State Government. That allotment of land for establishment of the Memorial for public purpose at concessional rate is a part of policy decision of the State Government and that no departure is made in the present case. She would accordingly pray for dismissal of the Petitions.

12) Mr. Khambata, the learned senior advocate appearing for the Trust would oppose the Petitions submitting that prescribed procedure for change in designation of the plot has been duly followed and that change of

designation of the plot does not alter the character of Development Plan and therefore does not amount to a change in the Development Plan. In support, he would rely on judgment of the Apex Court in Bombay Dyeing & Mfg. Co. Ltd. (3) Versus. Bombay Environmental Action Group and Others³, judgment of this Court in Mihir Yadunath Thatte Versus. State of Maharashtra and Ors.⁴ and Sadanand Varde and Ors. Versus. State of Maharashtra and Ors.⁵. He would submit that challenge raised by the Petitioner to amendment of provisions of Section 92(dd-1) of the MMC Act is clearly baseless as there is no challenge to the legislative competence of the State Legislature. That in absence of challenge to the legislative competence, it was necessary for the Petitioner to establish that amended provision is manifestly arbitrary. Reliance is placed on judgment of Apex Court in Shayara Bano Versus. Union of India and others⁶ and Association for Democratic Reforms and another (Electoral Bond Scheme) Versus. Union of India and others⁷. That Petitioners have failed to establish any manifest arbitrariness, which would vitiate the provision of Section 92 (dd-1) of the MMC Act. That setting up of Memorial for leaders and persons of reverence for their contribution constitute policy matter and such revered persons are separate class of persons. That setting up of Memorial to commemorate such person is a matter of policy of State and reliance is placed on judgments in Ashok Maruti Rawoot and others Versus. State of Maharashtra and others⁸, Annarao Baloba Gaikwad Versus. Solapur Municipal Corporation and others⁹ and Kanaiyalal Maneklal Chinai and others Versus. State of Gujarat and others¹⁰. That policy decision taken by the executive cannot be challenged by the Petitioner and he would rely on judgments in State of Orissa and others Versus. Gopinath Dash and others¹¹ and State of Uttar Pradesh and others

³ (2006) 3 SCC 434⁴ 2006 SCC OnLine Bom 1152⁵ 2006 SCC OnLine Bom 1151⁶ (2019) 9 SCC 1⁷ (2024) 5 SCC 1⁸ 2013 (3) All. M.R. 192⁹ 2004 (6) All. M.R. 601¹⁰ (1969) 3 SCC 456¹¹ (2005) 13 SCC 495

*Versus. Chaudhari Ran Beer Singh and another*¹². That in several instances in the past, lands have been allotted/leased out for construction of the Memorial and by way of illustration he would cite the illustrations of Memorial to Swantrya Veer Vinayak Damodar Sawarkar, Vatsalya Trust and Namdar Jagannath Shankarsheth / Nana Shankar Memorial. Reliance is also placed on judgment of this Court in *Prof. Mohan Prabhakar Bhide Versus. State of Maharashtra and Others*¹³ to demonstrate that this Court rejected the Petition challenging incurring expenditure of Rs.3,600 crores for consideration of Chhatrapati Shivaji Maharaj Memorial on the ground of decision being in the realm of policy decision of the State Government. That the Trust is in control of Shiv Sena party as only three trustees belong to Shiv Sena party of which two are family members of late Balasaheb Thackeray. That the Trust is registered as a public Trust and there is nothing illegal in appointing Trustees for the lifetime to ensure that the Trustees fulfill their responsibilities towards establishment of the Trust. Lastly, he would submit that the construction of the Memorial is complete. He would accordingly pray for dismissal of the Petitions.

13) Mr. Sakhare, the learned senior advocate appearing for MCGM would justify the decision of the Municipal Corporation in allowing the land for Mayor's Bungalow being used for setting up of the Memorial and the need to provide of Mayor's residence at the adjoining plot.

14) Mr. Kanade, the learned counsel appearing for MCZMA would submit that MCZMA has recommended the amended proposal from CRZ point of view as per CRZ Notification 2011 vide letter dated 29 January 2021.

15) We have also heard Ms. Kantharia, learned Government Pleader and Mr. More, Additional Government Pleader.

¹² (2008) 5 SCC 550

¹³ 2018 SCC OnLine Bom 16564

16) We have considered the contentions raised by the learned counsel appearing for rival parties.

17) The Petitioners have essentially challenged the decision of the State Government in setting up the Memorial at the site of Mayor's Bungalow. Apart from challenging the choice made by the State Government of the site of Mayor's Bungalow for setting up the Memorial, the decision to construct residence for the Mayor on the adjoining plot of land, by modifying the land use is also challenged in one of the PILs. It is complained that the public amenity of Gymkhana is being compromised for residence of Mayor, which is nothing but a direct consequence of handing over the Mayor's Bungalow for erecting the Memorial.

18) It must be observed at the very outset that both Mr. Sen as well as Dr. Warunjikar, during the course of their submissions, have fairly submitted that their clients are not *per-se* against setting up of a memorial to commemorate late Balasaheb Thackarey. They do not dispute the need for setting up of a memorial in Mumbai to acknowledge his contribution and to honour him. They however dispute selection of the site at which the Memorial is proposed to be set up. They also challenge the procedure adopted by the State Government in setting up the Memorial at Mayor's Bungalow in shifting of reservation, amendment to the provisions of the MMC Act, the manner of setting up of the Trust, charge of nominal rent of Rupee 1 for land valued at hundreds of crores, exemption in payment of stamp duty etc.

19) So far as the choice made by the State Government, with the approval of the landowner (MCGM), to set up the Memorial at Mayor's Bungalow is concerned, the same would undoubtedly fall in the realm of policy, in which this Court would be loathe to interfere. Once the Petitioners do not dispute that a memorial to honour late Balasaheb

Thackeray deserves to be set up, the choice of site made by the State Government and MCGM for setting up of the Memorial is something which would fall outside the scope of judicial review by this Court. It is well settled that matters of policy must be left to the Governments. Courts will not and should not substitute its own judgment for the judgment of the executive in such matters, unless it is noticed that the decision of the executive infringes a fundamental right [See *State of Orissa Versus. Gopinath Dash* (supra) and *State of Uttar Pradesh Versus. Chaudhari Ran Beer Singh* (supra)]. When it comes to setting up of memorials for leaders and persons revered for their contribution, it is also well settled that such act constitutes a public purpose and decision of the executive to set up a memorial to commemorate such persons, is a matter of policy of the State. In *Kanaiyalal Maneklal Chinai* (supra), the Apex Court held that setting up of a memorial to Mahatma Gandhi at a place associated with him was for a public purpose. The Apex Court held in para-9 as under :-

9. The High Court was of the view that setting up of a memorial to Mahatma Gandhi falls within the clause (42) of Section 66 of the Provincial Municipal Corporations Act, and therefore within the competence of the Municipal Corporation. Section 66(42) authorises the Corporation, in its discretion, to provide from time to time either wholly or partly, in the matters, inter alia, of any measure likely to promote public safety, health, convenience or instruction, and in the view of the High Court “setting up a Samadhi or memorial of the type could be fairly regarded as incidental to the right and power to give public instruction which is a matter within the competence of the Municipal Corporation under clause (42) of Section 66”. It is not necessary for us to express any opinion on this part of the case, for, we are clearly of the view that the notification under Section 4 of the Land Acquisition Act does not refer to any purpose of the Ahmedabad Municipal Corporation, nor is the acquisition for a purpose for which the Commissioner is required by the provisions of the Provincial Municipal Corporations Act, 1949, to acquire the land. The land is needed for setting up a memorial to Mahatma Gandhi at a place associated with him, and we regard, because of the universal veneration in which the memory of Mahatma Gandhi is held in our country, that the purpose was a public purpose. Counsel for the appellants has not attempted to argue that acquisition of land for setting up a memorial to Mahatma Gandhi at a place which has some association with him is not a public purpose. He merely argued that setting up of a memorial to Mahatma Gandhi is not a purpose for which the Commissioner is required by the Provincial Municipal Corporations Act, 1949, to acquire the land, nor is it a purpose of the Municipality under the Municipal Corporations Act. The purpose of acquisition being

one which falls within the normal connotation of the expression “public purpose” within the meaning of Section 4 of the Land Acquisition Act, it is unnecessary to rely upon the extended meaning of the expression “public purpose” as provided by Section 78(1) of the Provincial Municipal Corporations Act, 1949.

20) The Division Bench of this Court in *Ashok Maruti Rawoot* (supra) held that setting up of a memorial to Dr. Nanasaheb Dharmadhikari at a place, where he was not born and brought up, was held to be a matter of discretion of the authority.

21) Again in *Annarao Baloba Gaikwad* (supra), the Division Bench of this Court rejected the contention that the act of the State Government in erecting a memorial does not constitute a public purpose. The Division Bench held in para-2 as under :-

2. The next contention stated is only for being rejected. The contention is that land to be acquired for erecting memorial of Dr. Kotnis is not public purpose. The great deeds of the great Doctor are well known throughout the country. To say erection of a memorial of such a great man is not a public, purpose is in fact, in our opinion, an insult to great memories of the Doctor. Constructing memorials of National Heroes is undoubtedly a public purpose and this contention also is therefore rejected.

22) Keeping in mind the limitations for this Court in exercising the power of judicial review in respect of the decision of the State Government in setting up the Memorial and choosing the particular site therefor, we now proceed to deal with the objections raised by the Petitioners about the choice of site of Mayor’s Bungalow made by the State Government. As observed above, while narrating the facts of the case, the decision to set up a memorial of late Balasaheb Thackeray was a matter of well-considered decision making process by the State Government. Initially, a High Power Committee comprising of Additional Chief Secretary (GAD), Principal Secretary of Urban Development Department, Municipal Commissioner, Divisional Commissioner, Police Commissioner etc. was constituted. Eight sites were examined by the HPC for setting up a

memorial and after deliberations, the site of Mayor's Bungalow was selected by the Committee. The recommendations made by the HPC were deliberated upon by the State Government and after more than a year, the State Government finally granted approval for setting up the Memorial at the site of Mayor's Bungalow vide Government Resolution dated 27 September 2016. We find that the decision to choose the site of Mayor's Bungalow for setting up the Memorial is a well-considered decision, not warranting interference by this Court in exercise of power of judicial review. We accordingly repel the objections sought to be raised by the Petitioners about selection of site of Mayor's Bungalow for setting up of the Memorial.

23) The Petitioners have also questioned amendment to the provisions of Section 92 of the MMC Act. The Act was initially amended by issuance of Ordinance dated 3 January 2017 and later Mumbai Municipal Corporation (Amendment) Act, 2017 was enacted thereby inserting Clause (dd-1) in Section 92 of the MMC Act. The newly inserted Clause (dd-1) reads thus :-

(dd-1) notwithstanding anything contained in this section, the Commissioner may, with the sanction of the Corporation and with the approval of the State Government, grant a lease of immovable property belonging to the Corporation, namely CTS/FP No. 501, 502 and 1495, Mahim Division, along with structures situated thereon, for the purpose of erection of a memorial of late Bala Saheb Thackeray, to the society namely, the Bala Saheb Thackeray Smarak, a society registered under the Societies Registration Act, 1860, at a nominal rent of rupee One for the grant of such lease, and subject to the terms and conditions as may be decided by the State Government;

24) Thus, clause (dd-1) inserted in Section 92 of the MMC Act empowered the Municipal Commissioner to grant lease of land on which Mayor's Bungalow is located for the purpose of erection of the Memorial by the Trust at a nominal rent of Rupee 1 after obtaining sanction of the Corporation and approval of the State Government.

25) So far as the challenge to Clause (dd-1) of Section 92 of the MMC Act is concerned, it must be observed that there is no challenge to the legislative competence of the State Legislature to introduce the said provision in the MMC Act. Therefore, in absence of challenge to the legislative competence, the only ground on which Section 92 (dd-1) of the MMC Act can be challenged, is manifest arbitrariness. In *Shayara Bano* (supra) and *Association for Democratic Reforms (Electoral Bond Scheme)* (supra) the Apex Court has recognised the principle that a statute can be challenged on the ground that it is manifestly arbitrary. While testing the validity of law on the ground of manifest arbitrariness, the Courts have to determine if the statute is capricious, irrational and without adequate determining principle, or something which is excessive or disproportionate. A provision lacks 'adequate determining principle' if the purpose is not in consonance with constitutional values. A provision can also be held to be manifestly arbitrary if the provision does not make a classification to achieve factual equality. However, in the present petitions, Petitioners have failed to plead, much less establish, any manifest arbitrariness in enacting Section 92(dd-1) of the MMC Act. In absence of challenge to the legislative competency of the State Legislature to enact the amended provision and on account of failure to establish manifest arbitrariness, we are not inclined to entertain the challenge to the validity of Section 92 (dd-1) of the MMC Act.

26) The next challenge raised in these set of petitions is to the change of reservation of the plot of land in question on which Mayor's Bungalow is located. Before proceeding to examine the challenge raised by Petitioners to the alleged modification of development plan thereby changing the reservation of the land in question, it must be observed that this Court cannot go into the issue of need or purpose for shifting of reservation. It is settled position of law that preparation of development plan and/or effecting amendments or modifications thereto partakes the

character of legislative function. Reference in this regard can be made to the Apex Court judgment in Pune Municipal Corporation & Anr. Versus. Promoters and Builders Association & Anr¹⁴. Also, preparation of development plan and effecting modifications thereto is a process undertaken in consultation with the planning experts. MRTP Act, which deals with preparation of development plan for notified area and for amendments/modifications thereto, prescribes a detailed procedure to be followed involving consultation at various levels and application of mind by the planning experts. The process also involves consideration of suggestions and objections made by the citizens. Therefore, while determining challenge to the modification of a development plan, the Court would essentially limit the scope of exercise of power of judicial review to examine if there is any procedural impropriety in effecting the change/modification in the development plan. Except in cases where there is gross violation of planning norms while preparation or modification/amendment of development plan or where there is a procedural impropriety, this Court cannot sit as an appellate authority over the decision made by the planning experts in preparing, and/or amending the development plan. Also, being a part of legislative function, the limitations on challenge to a statute would equally apply to the challenge raised to a development plan.

27) It must also be borne in mind that the law is by now well settled that mere change in designation of a plot does not alter the character of Development Plan and therefore does not amount to a change in the Development Plan. Reliance by Mr. Khambata on judgments in *Bombay Dyeing & Mfg. Co. Ltd. (3)*, *Mihir Yadunath Thatte* and *Sadanand Varde* (supra) is apposite. Therefore, mere change of label of the structure from Mayor's Bungalow to the Memorial would not *ipso facto* amount to modification of development plan as such.

¹⁴ AIR 2004 SC 3502

28) Keeping in mind the above broad contours on the power of judicial review by this Court in entertaining challenge to modification effected in respect of the Mayor's Bungalow in the development plan, we now proceed to examine the challenge raised by the Petitioner to the action of the Planning Authority (MCGM) in proposing and of the State Government in sanctioning such modification. After going through the Affidavit-in-Reply filed on behalf of the State Government in PIL No.40 of 2019, it is seen that the procedure prescribed in MRTP Act has been followed to the hilt while effecting the modification under challenge. Ultimately, what is done is to merely change the label of the structure from 'Mayor's Bungalow' to 'Balasaheb Thackeray Rashtriya Smarak'. While effecting such change, suggestions and objections were invited. Another modification effected is to change the zoning of the land from Green Zone to Residential Zone. It appears that initially Petitioner in PIL No.40/2019 had raised his objections to the Notice dated 7 September 2017 by which it was proposed to modify the zoning. The objection raised by the Petitioner was considered and decided by the Planning Committee in accordance with the provisions of the MRTP Act. The Planning Committee recommended the proposal for change of zonal use from proposed garden/park to residential use after noticing that there was increase in the open spaces in the concerned area in the DCPR 2034 as compared to DCR 1991. It was considered that the provision of residence to the Mayor, a first citizen of a city, is also a public purpose. Thus, the case involved shifting of zoning in respect of the concerned land from 'Municipal Krida Kendra' to 'Municipal Housing' for the purpose of providing residential accommodation to the Mayor. As observed above, so far as the Mayor's Bungalow is concerned, the only change effected in the development plan is changing of label. Thus, Notification dated 22 January 2019 effects twin changes (i) changing the label of 'Mayor's Bungalow' into 'Balasaheb Thackeray Rashtriya Smarak' and (ii) deletion of Green Zone and

substitution by Residential Zone. The above changes are effected after following due procedure prescribed in the MRTP Act and we are unable to trace any procedural impropriety in effecting such change.

29) The Petitioners have also questioned the composition of the Trust for which approval was granted by Government Resolution dated 27 September 2016. By that Government Resolution, approval was granted by the State Government to set up a Trust comprising of following Board of Governors/Trustees :-

SR.NO.	NAME/DESIGNATION	DESIGNATION IN THE TRUST
1	Mr. Uddhav Thackrey	Chairman
2	Mr. Subhash Rajaram Desai	Member Secretary
3	Smt. Punam Mahajan	Member
4	Mr. Aditya Thackrey	Member
5	Mr. Shashikant Shrirang Prabhu	Member
6	Chief Secretary, Maharashtra Government	Designated Member
7	Secretary (Urban Development Dept) (UD-2)	Designated Member
8	Principal Secretary (Law and Justice Division)	Designated Member
9	Commissioner, MCGM	Designated Member
10	Vacant (to be chosen from the General Members)	Member
11	Vacant (to be chosen from the Life Member)	Member

30) The above composition was for establishment of initial board of Governors/Trustees. The Board of Governors/Trustees comprised of four *ex-officio* members holding the post of Chief Secretary, Secretary (Urban Development Dept), Principal Secretary (Law and Justice) and Municipal Commissioner (MCGM). Only three out of the 11 members apparently are members of the Shiv Sena political party and two out of them are actually family members of Late Balasaheb Thackeray. Since the Trust is created for setting up the Memorial and looking after it and since the memorial is to honour late Balasaheb Thackeray, we do not find any arbitrariness in the decision of the State Government to choose three members of Shiv Sena political party and two members of family of late

Balasaheb Thackeray to be the part of Board of Governors/Trustees. After all, late Balasaheb Thackeray founded Shiv Sena political party and it can hardly be contended that the decision of the State Government in taking on board three members of that party, two out of whom are infact family members of late Balasaheb Thackeray, would amount to arbitrariness. The objection that the Government Resolution dated 27 September 2016 provides for permanent appointment of most of the trustees also does not cut any ice. In any case, if any aggrieved party has any objection about nomination or continuance of any person as trustee of the Trust, there are adequate remedies under the provisions of the Maharashtra Public Trusts Act, 1950. We are therefore not inclined to entertain the challenge raised by the Petitioners to the composition of the Board of Governors/Trustees of the Trust.

31) The contention sought to be raised on behalf of the Petitioners about valuable piece of land being offered to the Trust virtually free of cost for setting up the Memorial also does not appeal to this Court. The Petitioners themselves do not question the need for setting up of the Memorial to honour late Balasaheb Thackeray. They also do not question the fact that such Memorial needs to be set up in Mumbai City where late Balasaheb Thackeray not only resided but had substantial influence. Any piece of land in the city of Mumbai is bound to be valuable and therefore it is not for this Court to decide which land needs to be chosen for setting up of the Memorial. As observed above, this a policy decision, in which this Court would be loathe to interfere. The land would continue to be in ownership of MCGM and merely a lease for a period of 30 years is granted in favour of the Trust. We are therefore not inclined to interfere in the impugned decision of the State Government and M.C.G.M. In fact, allotment of lease of land in favour of the Trust for setting up the Memorial is in accordance with the provisions of Section 92(dd-1) of the MMC Act and we have already repelled the challenge to the said provision

in the preceding paragraphs. We are therefore not inclined to interfere in the decision of the State Government and the MCGM in allotting the land in question on which Mayor's Bungalow is situated for setting up of the Memorial.

32) Since the MCZMA land at which the Memorial is being set up comes in CRZ-II, the project is cleared by the MCZMA from environment point of view. Therefore, there is no violation of environment norms in setting up the Memorial.

33) This Court also takes notice of the fact that the work of setting up of the Memorial is virtually complete by now. Mr. Khambata has taken us through the photographs of the site, which shows that the grandiose structure of Mayor's Bungalow has not only been kept intact, but has been restored. Its heritage significance is not disturbed. Since the work of setting up of the Memorial is virtually complete by now, this could be yet another reason for this Court not to interfere in the impugned decisions and actions.

34) Considering the overall conspectus of the cases, we do not find that any valid ground of challenge is made out in any of the petitions to the decision of the State Government and MCGM in establishing the Memorial. The petitions must fail. They are accordingly **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

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