IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL
&
JUSTICE AMAR NATH (KESHARWANI)

WRIT APPEAL NO.318 OF 2018

BETWEEN :-

1. **COMMISSIONER, JABALPUR DIVISION, JABALPUR (MADHYA PRADESH).**
2. **JOINT DIRECTOR, TOWN & COUNTRY PLANNING, JABALPUR (MADHYA PRADESH),**

….APPELLANTS

(BY SHRI SUYASH THAKUR - GOVERNMENT ADVOCATE)

AND

SHAILENDRA CHOWDHARY, S/O SHRI R.K. CHOUDHARY, AGED ABOUT 40 YEARS, R/O 396/397, BEOHARBAGH, JABALPUR (MADHYA PRADESH).

…..RESPONDENT

(BY SHRI ATUL CHOUDHARI – ADVOCATE)

WRIT PETITION No. 6880 of 2017

BETWEEN:-

ASHA BAI PATEL, W/O SHRI RAMESH PRASAD PATEL, AGED ABOUT 45 YEARS, R/O JOTPUR PADAB, OPPOSITE- BHEDAGHAT MARBLE FACTORY, VILLAGE GHUNSAUR, TILWARA, JABALPUR (MADHYA PRADESH).

….PETITIONER

(BY SHRI ATUL CHOUDHARI – ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH, THROUGH PRINCIPAL SECRETARY, DEPARTMENT OF URBAN ADMINISTRATION AND HOUSING, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH).**
2. **THE COMMISSIONER, JABALPUR DIVISION, JABALPUR.**
3. **THE JOINT DIRECTOR, TOWN AND COUNTRY PLANNING DEPARTMENT, JABALPUR.**

.....RESPONDENTS

(BY SHRI SUYASH THAKUR – GOVERNMENT ADVOCATE)

Reserved on : 31/03/2023

Pronounced on : 05/04/2023

This Writ Appeal and Writ Petition having been heard and reserved for judgment, coming on for pronouncement this day, ***Justice Sujoy Paul*** *pronounced the following :*

J U D G M E N T

The *Intra* Court Appeal filed under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya Khandpeeth Ko Appeal Adhiniyam, 2005 takes exception to the order dated 15.12.2017 passed in W.P. No.1083 of 2015 (Shailendra Chowdhary Vs. Commissioner, Jabalpur Division, Jabalpur), whereby learned Single Bench has set aside the impugned orders dated 6.5.2014, 16.9.2014 and 13.1.2015 and directed the official respondents to allow the application dated 17.2.2015 seeking change of *land use* by the petitioner. W.P. No.6880 of 2017 filed by owner

containing the identical issue is also decided by this common order/judgment.

Factual Background and stand of appellants :-

2. The respondent/petitioner of W.P.No.1083 of 2015 entered into an agreement with the owners of lands bearing Kh. Nos. 337/1, 337/2 and 337/3 situated at N.B.-150, PH. No. 36/25 Mouja Gunsour, RNM, Jabalpur -2, Tahsil and District Jabalpur on 21.4.2012 (Annexure R-1).

3. **Madhya Pradesh Bhumi Vikas Rules 2012** (in short **'the Rules of 2012'**) were enforced by the State Government w.e.f. 30.5.2012. On 4.1.2013, a notification was published in the gazette under Section 24(3) of the **Nagar Tatha Gram Nivesh Adhiniyam 1973** (hereinafter called as 'the **Adhiniyam**') making the Rules of 2012 applicable to various planning areas. However, in this notification, (Annexure P-5), there was no mention about the Bhedaghat Planning Area.

4. The appellants submits that the State Government notified the 'modified' **Bhedaghat Development (Draft Plan) 2021 (**hereinafter called as **'Draft Plan')** clearly mentioning in Clause 7.2 of Chapter 7 that though Rules of 2012 have not been made applicable by issuing a notification, various provisions of Chapter 7 of Draft Plan make it clear that certain rules of Rules of 2012 are indeed applicable.

5. Respondent moved an application on 17.2.2014 (Annexure P-2) before the Joint Director of Town and Country Planning, Jabalpur seeking permission under Section 16 (2) of the Adhiniyam to change the use of aforesaid lands situated in village Gunsour falling within Bhedaghat

Planning Area from 'agriculture' to 'residential' to enable him to develop a residential colony.

6. The Joint Director, Town and Country Planning, Jabalpur by order dated 6.5.2014 (Annexure P-3) rejected the said application by stating that the land was earmarked for 'agricultural' purpose under the Draft Plan.

7. Aggrieved, the respondent of W.A. preferred an appeal against the order dated 6.5.2014 (Annexure P-3) before the Divisional Commissioner, Jabalpur. The said appeal preferred under Section 16 (5), r/w Section 13 of the Adhiniyam was dismissed on 16.9.2014 (Annexure P-4). The Review application filed by the respondent met the same fate and was rejected on 13.1.2015 (Annexure P-8).

8. In turn, W.P. No.1083 of 2015 was filed by respondent questioning the aforesaid orders dated 6.5.2014, 13.1.2015 and 16.9.2014.

9. Smt. Asha Bai, (owner of said lands), the petitioner of W.P. No.6880 of 2017 also preferred similar application seeking change of *land use* but the same was rejected by Joint Director, Town and Country Planning, Jabalpur on 9.2.2015 (Annexure P-1). The reason of rejection was that under the Draft Plan, no development permission contrary to the said *land use* can be granted.

10. On 2.6.2015 (Annexure P-2 in connected Writ Petition No.6880 of 2017), the Divisional Commissioner remitted the matter back to the Joint Director, Town and Country Planning, Jabalpur for fresh considering by holding that Rules of 2012 are not applicable and similar permissions have been granted.

11. The State Government by order dated 14.8.2015 took *suo moto* cognizance of the matter by invoking Section 32 of the Adhiniyam and stayed the operation of said order dated 2.6.2015 passed in favour of Asha Bai, the petitioner in connected W.P. No.6880 of 2017.

12. W.P. No.16324 of 2015 filed against the order dated 14.8.2015 had rendered infructuous because on 21.3.2017, the State Government passed final order holding that modified Bhedaghat Development (Draft Plan) mentions about applicability of various provisions of Rules of 2012 and thus, W.P. No.16324 of 2015 was withdrawn by Asha Bai on 24.4.2017 with the liberty to assail the said order dated 21.03.2017 in appropriate proceedings. Consequently, the connected writ petition, namely W.P. No.6880 of 2017 was filed challenging the order of State Government dated 21.3.2017.

13. Learned Single Judge allowed the W.P. No.1083 of 2015 and issued directions mentioned hereinabove.

14. Shri Suyash Thakur, learned counsel for the appellant – State submits that certain Sections of Adhiniyam are relevant for the purpose of adjudication of this matter. He placed reliance on certain Sections which are mentioned in the written submissions filed by the appellants.

15. After taking this Court to the relevant Sections, it is argued that learned Single Judge has erred in allowing the writ petition by erroneously holding that as per gazette notification dated 29.5.2013, whereby Bhedaghat Development (Draft Plan) was amended, the Bhumi Vikas Rules, 2012 were not made applicable to the said 'Draft Plan'. As per notification dated 29.5.2013 (Annexure P-1), the Government notified

the 'Draft Plan' by mentioning that Clause 7.2 of Chapter 7 although envisages that Rules of 2012 are not applicable, various other provisions of said Chapter clearly show applicability of the Rules of 2012 amended from time to time. To bolster this, heavy reliance is placed on Clause 7.17 which provides that application for permission under the development plan shall be made as per the proforma prescribed in Rule 14 of the Rules of 2012 and needs to be dealt with in accordance with said rules only.

16. Pointed reliance is placed on Rule 103 of Rules of 2012 and it was strenuously contended that this Rule and its effect has escaped notice of learned Single Judge while deciding the Writ Petition. As per Rule 103, the norms and regulations applicable in the 'plan area' shall be as per relevant development plan and a deeming provision was created that the Rules shall be deemed to have been modified *mutatis mutandis* in so far as their application to the relevant 'plan area' is concerned.

17. To bolster this submission, reliance is placed on the Division Bench judgment in the case of **Pradeep Hinduja vs. State of Madhya Pradesh & another, 2019(2) MPLJ 668**. It is urged that in the light of this judgment, it cannot be said that Rules of 2012 were not applicable on the lands in question.

18. Shri Suyash Thakur, learned counsel for the appellants submits that the order dated 06/05/2014 (Annexure P/3) rejecting the application of respondent seeking change of *land use* was rightly passed because the land in question was earmarked for 'agricultural' purpose as per the 1'Draft Plan'. The rejection is in consonance with

Rule 14(5)(b)(i) of the Rules of 2012 (applicable w.e.f. 30/05/2012). As per Section 16 of Adhiniyam, no permission of change of land use can be granted contrary to the 'Draft Plan'. At the cost of repetition, Clause 7.17 was pressed into service.

19. The rejection orders deserve to be approved in view of law laid down by this Court in **ILR 2007 MP 474 (Center For Environment Protection, Research And Development, Indore vs. State of Madhya Pradesh & others)** is the next submission.

20. The judgment of Supreme Court in **(2000) 4 SCC 357 (Raipur Development Authority vs. Anupam Sahkari Griha Nirman Samiti and others)** was relied upon to buttress the contention that when a 'draft scheme' is published, a sanction could only be given in terms of said scheme and no independent development plan in contradiction of said could be sanctioned.

21. In **2007 (2) MPHT 380 (M/s Pure Industrial Cock & Chemicals Ltd. vs. State of M.P. and others)**, the Division Bench followed the *ratio decidendi* of judgment of **Center for Environment Protection Research and Development, Indore** (Supra). Thus, it is prayed to allow the writ appeal and dismiss the connected writ petition.

<u>Stand of Owner/Coloniser</u> :-

22. Shri Atul Choudhari placed reliance on the notification dated 26.12.2012 (Annexure P-5) and submits that this gazette notification emphasizes that it covers 'Planning Area' of 145 cities. 'Bhedaghat' is

not included as 'Planning Area' under Jabalpur Division as per this notification.

23. During the course of argument, Shri Choudhari submits that so far 'locus' of coloniser is concerned, a conjoint reading of Section 2(n) and Section 29 of the Adhiniyam makes it clear that definition of 'owner' is very wide and includes an 'agent trustee'. For this purpose, reliance is placed on the meaning assigned to 'agent trustee' in Black Law Dictionary. Apart from this, it is argued that this point relating to 'locus' has lost its significance because challenge to similar order is also made by the owner, Asha Bai in connected writ petition, namely W.P. No.6880 of 2017.

24. The next argument is based on Section 30 of the said Adhiniyam and by placing reliance on I.A. No.14820 of 2019, it is urged by Shri Choudhari that the power of Director to take decision about change of land use was delegated to the Deputy Director, Additional Director and Joint Director. Section 30 (2) talks about 'Krishi Prayojan'.

25. Learned counsel for the owner/coloniser contended that the note-sheet dated 14.3.2014 of the proceeding before the Joint Director, which became foundation for passing of impugned order shows that the 'final plan' of Bhedaghat Development Scheme was not published. Another note- sheet (at page 135) is relied upon to submit that as per the note-sheet, it is clear that the Rules of 2012 are not published. However, during the course of hearing, it was admitted by Shri Choudhari that these note-sheets were prepared by the Clerk concerned

seeking direction from the higher/competent officer. However, attempt is being made to establish that till preparation of these note-sheets, Rules of 2012 were not made applicable.

26. The order dated 16.9.2014 (Annexure P-4) was relied upon to submit that the appellants/owners were subjected to hostile discrimination. The entries mentioned in Para-13 of this order shows that one such entry relating to Surendra Singh Ghurji is about the permission of change of land use granted to him on 18.10.2012. This date is subsequent to commencement of Rules of 2012, which came into being on 13th April 2012. So far other relevant entries nos. 3, 4, 5 and 9 are concerned, these are relating to Ravi Agency, Shri Suresh Kumar Gupta, Shri Nitin Barsaiya and Shri Gulshan Rai. In all these cases, the permission to change the land use was given before 15.9.2011. This order clearly shows that it was passed under the assumption that before 2012 Rules came into being, these permissions were granted. Shri Choudhari submits that even before enforcement of Rules of 2012, these entries Nos. 3, 4, 5 and 9 were relating to an area for which there existed a 'Draft Plan' which was in force since 1977-1978. Thus, the so called distinguishing feature shown by the State is of no assistance to them. For this purpose, schedule/list annexed with IA No.14820 of 2019 is pressed into service by Shri Choudhari.

27. Document No.961 of 2020 filed by appellants is relied upon to submit that it reflects 'modified Draft Plan' of Bhedaghat. A plain reading of Clause 7.2 leaves no room for any doubt that Rules of 2012 are not applicable. So far Clause 7.17 is concerned, Shri Choudhari

strenuously contended that this is a *directory* provision and, therefore not required to be scrupulously followed.

28. The conduct of the appellants is called in question by contending that when the present respondent/coloniser filed an application seeking permission to change the land use, the permission was declined by the Joint Director. Aggrieved, the coloniser filed an appeal, which was dismissed by the Commissioner on 16.9.2014 by holding that the Rules of 2012 are applicable. Interestingly, when Asha Bai/owner unsuccessfully preferred an application seeking permission to change land use and said application was dismissed by the Joint Director, she also preferred an appeal before the Commissioner and in her case, learned Commissioner opined that Rules of 2012 are not applicable and remitted the matter back before the Joint Director to decide it afresh. Pertinently, the Commissioner, who has taken two diametrically opposite views relating to applicability of Rules 2012 in relation to same land, filed the present writ appeal as an O.I.C. and for this reason alone, his writ appeal is liable to be rejected.

29. Shri Choudhari also placed reliance on preparation of 'zonal plan', which is mentioned in Section 20 of the said Adhiniyam.

30. Furthermore, it is submitted by Shri Atul Choudhari that proviso to Section 16(1) makes it clear that if permission of change of land use is for 'agriculture' purpose, the permission cannot be declined. Section 16(1) begins with the words 'no person' which *prima facie* shows that it is mandatory in nature but a complete reading of this sub-section (1)(a) makes it clear that permission can certainly be granted by Director for

change of land use. Thus, permission can be granted for land use other than agricultural. Otherwise, there was no occasion for the law makers to bring sub-section 16(1) in the said enactment. However, Rule 14(5)(b)(i) of Rules of 2012 does not permit any such change of land use. Thus, if argument of learned Government Advocate is accepted, Section 16 (1) of the main Adhiniyam will become redundant. This cannot be the intention of the legislature. In the teeth of judgment reported in **Kerala State Electricity Board and others Vs. Thomas Joseph and others (2022 SCC Online SC 1737)** rule/subordinate legislation must give way to the main enactment and cannot be an impediment for a benefit which is flowing from the main enactment.

31. Shri Atul Choudhari further submits that so far as the Division Bench judgment in the case of **Center for Environment Protection Research and Development, Indore** (Supra) is concerned, the said judgment makes it clear that it cannot be pressed into service in the instant case for twin reasons :-

Firstly, when judgment in aforesaid case was passed, sub-section 2 to 5 of Section 16 of the Adhiniyam were not there in the statute book. Thus, the Division Bench had no occasion to dwell upon the impact of sub-sections 2 to 5 of Section 16.

Secondly, the application in that case was filed after publication of 'final plan' under Section 19(5) of the Adhiniyam.

32. Shri Atul Choudhari has taken pains to submit that unless Section 19(5) notification is published, 'draft plan' cannot be a ground to reject the application seeking permission to change the land use.

33. The next contention is based on the Constitution Bench judgment of Supreme Court in the case of **Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405.** It is submitted that the validity of an order of a statutory authority needs to be judged on the basis of reasons mentioned therein and reasons cannot be substituted/supplemented by filing reply or counter- affidavit in the Court. In the rejection order, the singular reason assigned is the existence of a 'Draft Plan' and no assistance is taken from Rule 14(5)(b)(i) of Rules of 2012. Thus, citing those Rules for the first time in the Court is of no use in the light of judgment of Constitution Bench aforesaid. He also cited few more judgments on the same principle. To eschew repetition, we are not referring those judgments.

Department's rejoinder submission :-

34. Shri Suyash Thakur, learned Government Advocate for the State in his rejoinder submissions placed reliance on his written submission. It is submitted that so far conduct of appellants/OIC/Commissioner is concerned, no doubt, there exist two different orders of the Commissioner but this will make no difference because the subsequent order of Commissioner in the case of Ms. Asha Bai/owner was taken into *suo moto* revision by the State Government. The State Government reversed this order against which the W.P. No. 6880 of 2017 is pending. It is the final order dated 21/03/2017 passed by State Government in *suo moto* revision which became subject matter of challenge. The legal question in this present writ appeal and connected writ petition are same. Thus, on the ground of so called conduct of Commissioner, the appellants cannot be non suited.

35. Shri Suyash Thakur, learned counsel for the State, at the cost of repetition, placed heavy reliance on Clauses 7.2 and 7.17 of the Draft Plan filed with document No. 961/2020. It is submitted that if this 'Draft Plan' is read with the order passed in *suo moto* revision dated 21.03.2017, it will be clear like noonday as to why Government has mentioned in Clause 7.2 regarding non-applicability of Rules of 2012. Bhedaghat is a special area having special features and therefore Government intended to make it clear that Rules of 2012 are generally not applicable. However, the Rules were made applicable to the extent mentioned in Clause 7.17 of the said Plan. Thus, learned Single Judge was not correct in holding that Rules of 2012 are not applicable at all. More so, when learned Single Judge has not considered the effect and impact of Clause 7.17 of the Draft Plan and Rule 103 of Rules of 2012.

36. The judgment of **Center for Environment Protection Research and Development, Indore** (Supra) is pressed into service to counter the argument of Shri Choudhari. It is submitted that the factual backdrop of this judgment shows that the application was indeed preferred before publication of final plan even in this matter. So far sub-section (2) to (5) of Section 16 are concerned, the said sub-Sections were inserted in order to enforce the Division Bench Judgment in **Center for Environment Protection Research and Development, Indore** (Supra). The said sub-Sections do not improve the case of the owner/coloniser. Thus, this Division Bench judgment cannot be read in the manner suggested by Shri Atul Choudhari.

37. Rule 14(5)(b)(i) of Rules 2012 talks about 'draft development plan,' once in 'draft development plan' it is made clear that Rules of 2012

have to be taken into account while taking a decision, no fault can be found in the order/action of competent authorities declining permission contrary to the land use mentioned in the 'draft development plan'.

38. 2022 SCC Online 151 (Mutukumar and Others Vs. Chairman and Managing Director TANGEDCO and Others) is relied upon to submit that even assuming certain permissions have been granted to certain persons as mentioned herein-above, contrary to the draft plan/Rules of 2012, the said permissions not supported by law cannot become a reason or an example to follow. The examples cited by the owner/coloniser comes within the ambit of 'negative equality' which is not founded upon the equality Clause enshrined in Article 14 of the Constitution of India.

39. Lastly, it is submitted that in the Writ Petition No.1083 of 2015, there was no pleading about parity/discrimination. To elaborate, it is submitted that in this writ appeal, for the first time by filing I.A. No. 14820/2019, it is urged that owner/coloniser were subjected to discrimination. In absence of any pleading and foundation in the W.P. and in absence of any consideration on this aspect by learned Single Judge, said example cannot be a reason to affirm the order of learned Single Judge.

40. The parties confined their arguments to the extent indicated above. Both the parties filed their written submissions.

41. We have heard the parties at length and perused the record.

F I N D I N G S

Locus Standi :

42. The respondent in W.A. No.318 of 2018 is a coloniser. However, petitioner in the connected writ petition is admittedly the owner of the land. There is no quarrel about 'locus' of petitioner of the connected writ petition. Admittedly, legal questions involved in the writ appeal and writ petition are common. Considering the aforesaid, on a specific query from the Bench, learned Government Advocate fairly submitted that he is abandoning his objection regarding 'locus' of the coloniser. Thus, we need not deal with this aspect any further.

Conduct of appellant/O.I.C :

43. Since in the appeal filed by the coloniser and in the appeal filed by land owner, the learned Commissioner has passed different orders, eyebrows were raised by the respondent of writ appeal regarding his said conduct and it was submitted that writ appeal deserves to be dismissed on this score alone. We do not see any merit in this contention for the simple reason that Commissioner was not the final authority in the case. His subsequent and different order passed in the case of land owner became subject matter of revision by the State Government in exercise of *suo moto* powers. The final order of the State Government dated 21.3.2017 is called in question in the connected writ petition. Thus, different view taken by Commissioner fades into insignificance in the teeth of order of apex authority/State Government dated 21.03.2017. For this reason, we are not inclined to throw the writ appeal to winds.

Applicability of Rules of 2012 and validity of rejection orders :

44. The parties are at loggerheads on the question of applicability of Rules of 2012 in the present cases. The bone of contention of learned counsel for the owner and coloniser is that clause 7.2 of Draft Plan leaves to room for any doubt that said Rules are not applicable whereas appellant has taken a diametrically opposite stand by taking assistance of clause 7.17 of the said plan. It is apposite to quote the same :-

> "**7.2 क्षेत्राधिकार**
>
> 1. इस अध्याय में वर्णित विकास नियमन राज्य शासन द्वारा मध्यप्रदेश नगर तथा ग्राम निवेश अधिनियम, 1973 (क्रमांक–23–1973) की धारा 13 के अंतर्गत गठित निवेश क्षेत्र पर लागू होंगे। मध्यप्रदेश भूमि विकास नियम 2012 भेड़ाघाट निवेश क्षेत्र पर अधिसूचित कर लागू नहीं किया गया है, **किन्तु इस अध्याय में कई नियमन म.प्र. भूमि विकास नियम 2012 के प्रावधान अनुसार होने का उल्लेख किया गया है। अतः केवल उल्लेखित नियम की प्रभावशील होंगे, तथा उन नियमों में समय–समय पर होने वाले संशोधन विकास योजना का भाग माना जावेगा।**
>
> **7.17 विकास/ निवेश अनुज्ञा प्राप्ति की प्रकिया**
>
> विकास योजना प्रस्तावों के अंतर्गत आवेदनकर्ता को अनुज्ञा प्राप्त करने हेतु अपने आवेदन पत्र के साथ म.प्र. नगर तथा ग्राम निवेश अधिनियम, 1973 के प्रावधानानुसार निम्न दस्तावेज/ जानकारी संलग्नित किया जाना आवश्यक है।
>
> 1. म.प्र. भूमि विकास निगम 2012 के नियम 14 में निर्धारित प्रपत्र में अनुज्ञा आवेदन पत्र प्रस्तुत करना चाहिए। जिसमें समस्त जानकारी का समावेश हो।
>
> 1. आवेदक द्वारा प्रस्तुत योजना **प्रस्ताव के परीक्षण करते समय** राज्य शासन द्वारा समय–समय पर अधिनियम के प्रावधानों के अंतर्गत प्रसारित निर्देश एवं मार्ग दर्शन का कड़ाई से पालन किया जाएगा।
>
> 2. **भूमि विकास/ निवेश अनुज्ञा म.प्र. भूमि विकास नियम–2012 के प्रावधानों को भी ध्यान में रखना होगा।**"

(Emphasis Supplied)

45. In addition, Rule 103 of Rules of 2012 reads thus :-

> **"103. Provisions of development plan to take precedence.-** The norms and regulations applicable in the plan area shall be such as prescribed in the relevant development plan :
>
> Provided that if the norms and regulation as provided in the development plan are different or contrary to these rules, the Director shall examine and send his proposal to the Government. The decision taken by the Government in this regard shall be final and shall be integrated part of Development plan."
>
> **(Emphasis Supplied)**

46. Pausing here for a moment, it is worth remembering that learned counsel for both the parties during the course of hearing fairly admitted that impugned order of learned writ court dated 15.12.2017 is founded upon the finding that in the Bhedaghat Development (Draft) Plan, Bhumi Vikas Rules, 2012 were not made applicable (para-9 of the impugned judgment). In addition, learned Single Judge opined that Rules of 2012 were made applicable to 145 cities, in which, Jabalpur Division has also been included but it does not include Bhedaghat. The parties also agreed that learned Single Judge has not considered clause 7.17 of Bhedaghat Development (Draft) Plan and Rule 103 of Rules of 2012. Thus, pivotal question is whether in the teeth of these provisions, it can be said that Rules of 2012 are not applicable. In order to address this *conundrum*, it is apt to consider the intention of policy/draft plan makers and the purpose for which same were introduced and also the language employed therein.

47. The notification dated 26.12.2012 envisages that notification is applicable to certain 'planning areas' of 145 cities. The main stand of owner/coloniser is that since Bhedaghat is not included in those 145 'planning areas', the Rules of 2012 cannot be made applicable and cannot be an impediment for granting permission to change the land use. To examine this carefully, it is apposite to remember that Bhedaghat Development (Draft) Plan came into being on 19.4.2013. Thus, admittedly on the day applications were preferred by the owner/coloniser seeking change of land use, the 'draft plan' was in vogue. The State Government in the impugned order dated 21.3.2017 impugned in the writ petition made it clear that the purpose of enacting a 'Draft Plan' for Bhedaghat is to promote sustainable development by protecting the environment and to ensure that natural resources are not extracted in an irresponsible manner. Considering the special features of Bhedaghat (which is a destination of international tourist attraction because of its marble rocks and river Narmada flowing there), in general, made it clear that Rules of 2012 were not made applicable. In order to take care of special features of Bhedaghat, clause 7.17 was inserted in the Bhedaghat Development (Draft) Plan. As noticed above, learned Single Judge has based its order solely on clause 7.2 of the Draft Plan. A careful reading of clause 7.2 also shows that although Rules of 2012 were not specifically notified by including Bhedaghat in the 'planning area', it further provides that the Rules mentioned in the Development Draft Plan shall be applicable and shall form part of the development plan.

48. A conjoint reading of clause 7.2 and 7.17 is necessary considering the language employed in clause 7.2. Putting it differently, clause 7.2 leaves no room for any doubt that certain provisions of Rules of 2012 needs to be looked into which are mentioned elsewhere in the 'draft plan' and same shall form part of the Development Plan including the Rules amended from time to time.

49. As per sub-clause 1 of clause 7.17 of Draft Plan, the applicant must file application as per format prescribed under Rule 14 of Rules of 2012. Application so preferred in prescribed format must be pregnant with all necessary informations. Sub-clause 2 of clause 7.17 makes it obligatory on the part of the authorities to take a decision *having regard to* Rules of 2012. Thus, sub-clause 1 of clause 7.17 is an obligation on the part of the applicant whereas sub-clause 2 binds the authorities for the purpose of taking a decision on such application.

50. As per shorter **Oxford Dictionary**, the phrase '*have regard to*' is used '*when reference to a person or thing*' is intended. The exact significance of this phrase will depend on the context and the setting in which it is used. The Judicial Committee of Privy Council observed that the expression 'have regard to' or expression very close to this were scattered throughout this Act but exact force of each phrase must be considered in relation to its context and to its own subject matter. This observation of Judicial Committee was considered by the Apex Court in **AIR 1968 SC 377 (Union of India Vs. Kamlabhai Harjiwandas Parekh).** It is profitable to consider certain other judgments dealing with the expression 'having/have regard to'.

51. The Judicial Committee in ***CIT* v. *Williamson Diamonds Ltd.*** **[LR 1958 AC 41, 49 : (1957) 3 WLR 663]** observed with reference to the expression "having regard to" : (AC p. 49)

> "The form of words used no doubt lends itself to the suggestion that regard should be paid only to the two matters mentioned, but it appears to their Lordships that it is impossible to arrive at a conclusion as to reasonableness by considering the two matters mentioned isolated from other relevant factors. Moreover, the statute does not say "having regard only" to losses previously incurred by the company and to the smallness of the profits made. No answer, which can be said to be in any measure adequate, can be given to the question of "unreasonableness" by considering these two matters alone."
>
> See also *CIT* v. *Gungadhar Banerjee and Co. (P) Ltd.* [(1965) 3 SCR 439, 444-45 : AIR 1965 SC 1977 : 57 ITR 176] See also *Saraswati Industrial Syndicate Ltd.* V. *Union of India* [(1974) 2 SCC 630, 633 : (1975) 1 SCR 956, 959].

52. In ***State of Karnataka* v. *Ranganatha Reddy*** **[(1977) 4 SCC 471, 488 : (1978) 1 SCR 641, 657-58]** Apex Court stated :

> "The content and purport of the expressions "having regard to" and "shall have regard to" have been the subject matter of consideration in various decisions of the courts in England as also in this country. We may refer only to a few. In *Illingworth* v. *Walmsley* [(1900) 2 QB 142 : 16 TLR 281] it was held by the Court of Appeal, to quote a few words from the judgment of Romer C.J. at page 144:
>
> > "All that clause 2 means is that the tribunal assessing the compensation is to bear in mind and have regard to the average weekly wages

> earned before and after the accident respectively. Bearing that in mind, a limit is placed on the amount of compensation that may be awarded …."

In another decision of the Court of Appeal in *Perry* v. *Wright* [(1908) 1 KB 441 : 77 LJ KB 236] Cozens-Hardy, M.R. observed at page 451:

> "No mandatory words are there used; the phrase is simply "regard may be had". The sentence is not grammatical, but I think the meaning is this : Where you cannot compute you must estimate, as best as you can, the rate per week at which the workman was being remunerated, and to assist you in making an estimate you may have regard to analogous cases."

53. In **Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223**, it was poignantly held as under :-

> "30. The words "having regard to" in the sub-section are the legislative instruction for the general guidance of the government in determining the price of sugar. They are not strictly mandatory, but in essence directory. The reasonableness of the order made by the government in exercise of its power under sub-section (3-C) will, of course, be tested by asking the question whether or not the matters mentioned in clauses (*a*) to (*d*) have been generally considered by the government in making its estimate of the price, **but the court will not strictly scrutinized the extent to which those matters or any other matters have been taken into account.** There is sufficient compliance with the sub-section, if the government has addressed its mind to the factors mentioned in clauses (*a*) to (*d*), amongst other factors which the government may reasonably consider to be

> relevant, **and has come to a conclusion, which any reasonable person, placed in the position of the government, would have come to.**
>
> **49.**…….Where it is a finding of fact, the court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the court would have come to as a trier of fact."
>
> **(Emphasis Supplied)**

The Apex Court applied *Wednesbury* principle in this judgment.

54. Irrationality, illegality and procedural impropriety are the parameters on the anvil of which an administrative decision can be examined. **Lord Diplock, L.J.** in *Council of Civil Service Unions vs. Minister for the Civil Service* applied the said text as under :

> **(i) 'Illegality'** which means that the "decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it".
>
> It means that the decision-maker must keep within the scope of his legal power. Illegality means that the decision-maker has made an error of law; it represents infidelity of an official action to a statutory purpose. Such grounds as excess of jurisdiction, patent error of law, etc. fall under the head of "illegality".
>
> **(ii) 'Irrationality'** denotes unreasonableness in the sence of *Wednesbury* unreasonableness.
>
> **(iii) Procedural Impropriety** — The expression includes failure to observe procedural rules including

> the rules of natural justice or fairness wherever these are applicable.

55. This principle was followed by the Apex Court in **(1994) 6 SCC 651 Tata Cellular v. Union of India** and by this Court in **Mohanlal Patidar v. Bank of Maharashtra 2022 SCC OnLine MP 5387**.

56. If impugned orders before the Writ Court are examined on the anvil of these decisions, there will be no cavil of doubt that there exist 'no illegality' because the decision maker has clearly understood the law governing his decision making power and has given effect to it. In other words, it cannot be said that decision maker has taken the decision beyond the powers vested in him. The order cannot be said to be 'irrational' because it is based on the mandate of 'Draft Plan', Clause 7.2 r/w 7.17 of the Plan coupled with Rule 14(5)(b)(i) of Rules of 2012. No, 'procedural impropriety' is shown by learned counsel for the owner/coloniser in the entire decision making process.

57. In ***State of Orissa v. Gopinath Dash*, (2005) 13 SCC 495,** the Apex Court opined as under **:-**

> "7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere

even if a second view is possible from that of the Government."

(Emphasis Supplied)

58. In our considered opinion, the intention of 'Draft Plan' makers must be gathered by taking into account the legislative intent behind Sections 16, 18 and 19 of the Adhiniyam as well as the nature of 'Draft Plan' specially introduced for Bhedaghat.

59. To minutely examine the aforesaid, it is apposite to consider the following Sections :-

Section 16 : **Freezing of land use : (1)** On the publication of the existing land use map under Section 15-

(a) no person shall institute or change the use of any land or carry out any development of land for any purpose other than that indicated in the existing land use map without the permission in writing of the Director :

Provided that the Director shall not refuse permission if the change is for the purpose of agriculture;

(b) no local authority or any officer or other authority shall, notwithstanding anything contained in any other law for the time being in force, grant permission for the change in use of land otherwise than as indicated in the existing land use map without the permission in writing of the Director.

(2) The permission under sub-section (1) may be granted in such cases and subject to such conditions as may be prescribed.

(3) An application under sub-section (1) shall be made in writing to the Director in such form,

accompanied by such fees and documents as may be prescribed,

(4) The provisions of Section 30 for the grant or refusal of permission to an application under Section 29 shall *mutatis mutandis* apply to an application for permission under sub-section (1),

(5) The provision of modification, appeal, revision and lapse of permission under sub-section (3) of Section 29, Section 31, Section 32 and Section 33 respectively, which are applicable to an order granting or refusing permission under section 30 shall mutatis mutandis apply to an order made under sub-section (1).

18. Publication of draft development Plan. - (1) [The Director shall publish the draft development plan prepared under Section 14 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or the places where the copies may be inspected, inviting objections and suggestions in writing from any person with respect thereto, within thirty days from the date of communication of such notice, such notice shall specify in regard to the draft development plan, the following particulars, namely,-]

(i) the existing land use maps;

[(i-a) the natural hazard prone areas with the description of natural hazards;]

(ii) a narrative report, supported by maps and charts, explaining the provisions of the draft development plan;

(iii) the phasing of implementation of the draft development plan as suggested by the Director;

(iv) the provisions for enforcing the draft development plan and stating the manner in

which permission for development may be obtained;

(v) approximate cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

(2) The committee constituted under sub-section (1) of Section 17-A shall not later than ninety days after the publication of the notice under sub-section (1), consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (1) and shall, after giving reasonable opportunity to all persons affected thereby of being heard, suggest such modifications in the draft development plan as it may consider necessary, and submit, not later than six months after the publication of the draft development plan, the plan as so modified, to the Director together with all connected documents plans, maps and charts.

(3) The Director shall, within 30 days of the receipt of the plan and other documents from the committee submit all the documents and plans so received alongwith his comments, to the State Government.]

19. Sanction of development plans.- (1) As soon as may be after the submission of the development plan under Section 18 the State Government may either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a. fresh plan in accordance with such directions as the State Government may deem appropriate.

(2) Where the State Government approves the development plan with modifications, the State Government shall, by a notice published in the Gazette, invite objections and suggestions in respect of such modifications within a period of not less than

thirty days from the date of publication of the notice in the Gazette.

(3) After considering objections and suggestions and after giving a hearing to the persons desirous of being heard, the State Government may confirm the modification in the development plan.

[(4) The State Government shall publish a public notice in the Gazette and in such other manner as may be prescribed of the approval of the development plan approved under the foregoing provisions and the place or places where the copies of the approved development plan may be inspected.

(5) The development plan shall come into operation from the date of publication of the said notice in the Gazette under sub- section (4) and as from such date shall be binding on all Development Authorities constituted under this Act and all local authorities functioning with the planning area.]

(Emphasis Supplied)

60. Section 16 mandates that upon publication of 'existing land use map' under Section 15 of Adhiniyam, no person will be entitled to seek and get benefit of change of use of any land without written permission of the Director. As per the proviso to clause(a), such permission cannot be refused when change is for the purpose of agriculture. This proviso is of no assistance to the owner / coloniser because change sought for in the instant case is not for the purpose of 'agriculture'. The Division Bench in the case of **Center for Environment Protection Research (supra)** opined as under :-

"14. Sections 25 to 32 of the Adhiniyam to which reference was made by Mr. Mathur apply only after the development plan comes into force as would be clear from

the language of Sections 25 to 32 of the Adhiniyam. Sub-section (5) of Section 19 of the Adhiniyam states that the development plan comes into operation from the date of publication of the notice in the Gazette of the development plan as finally approved by the State Government under Section 19. Hence, the provisions of Sections 25 to 32 of the Adhiniyam do not lay down the procedure for grant of permission by the Director under Section 16(1) of the Adhiniyam when the development plan is under preparation and is in a draft stage and has not been finalized and published by the State Government under Section 19 of the Adhiniyam. We have therefore to look into the other provisions of the Adhiniyam to ascertain whether the power of the Director under Section 16 of the Adhiniyam to grant or refuse permission in writing for any change in use of land or for carrying out any development of land for any purpose other than that indicated in the existing land use map, is controlled or guided by any policy laid down by the legislature."

61. In **M/s. Pure Industrial Cock & Chemicals Ltd. (supra)** this Court opined as under :-

"**25.** We therefore hold that "town development scheme" in Section 50 of the Adhiniyam means a scheme to implement the provisions of a development plan and until a development plan for an area is published and comes into operation, a draft town development scheme cannot be published by the Town and Country Development Authority under Section 50(2) of the Adhiniyam and such a town development scheme cannot by itself without a development plan for the area restrict the right of a person to use his property within the area of the scheme in the manner he likes, but the Director in exercise of his powers

> under Section 16 of the Adhiniyam can refuse permission to a person to change the use of his property within the planning area if the change proposed is contrary to the development plan **under preparation**."
>
> **(Emphasis Supplied)**

62. The combined effect of Rule 16 read with Clause 7.2 and 7.17 of Bhedaghat Development (Draft) Plan shows that the intention of plan makers was to borrow the Rules of 2012 for the purposes mentioned in the 'Draft Plan' and the policy makers decided not to borrow the said Rules in general for all purposes. This practice followed by the authorities is not unknown to law. Thus, no eyebrows can be raised on this aspect. Indisputably, learned Single Judge has not considered the effect and impact of clause 7.17 and therefore, we find substance in the argument of learned Govt. Advocate that this clause is relevant for the purpose of examining the legality, validity and propriety of the order dated 21.3.2017 which became subject matter of challenge before the Writ Court. In addition, Rule 103 of Rules of 2012 is also significant.

63. Rule 103, in no uncertain terms, makes it clear that 'norms' and 'regulations' applicable in the plan area are dependent upon the clauses prescribed in the relevant development plan. The Rules of 2012 as a fiction, deemed to have been modified *mutatis mutandis* in so far as their application to the plan area is concerned. The wholesome reading of clause 7.2, 7.17 of Draft Plan and Rule 103 of Rules of 2012 shows that the argument of learned Govt. Advocate has substantial force that the decision to reject the applications seeking change of land use were

on these parameters and all these parameters escaped notice of the learned Writ Court.

64. The another limb of argument of Shri Atul Choudhari was that the language employed in clause 7.17 of draft plan is clearly directory in nature. Suffice it to say that even assuming it to be 'directory' in nature, if respondents have taken a decision *having regard to* the Rules of 2012, in the teeth of clause 7.17, no fault can be found in the said exercise of respondents. This is trite that if decision of administrative authority is based on a policy decision which, even if, is directory in nature and view taken by them is in consonance with such policy/draft plan mandate and is plausible in nature, the same cannot be interfered with in exercise of judicial review. The Apex Court in ***State of Orissa v. Gopinath Dash*** **(2005) 13 SCC 495** ruled thus :-

> "7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government."
>
> **(Emphasis Supplied)**

65. Similar view is taken by the Supreme Court in catena of judgments [See : **(2005) 5 SCC 181 (State of NCT of Delhi v.**

Sanjeev), **(2002) 3 SCC 496 (Haryana Financial Corpn. v. Jagdamba Oil Mills)**].

66. In other words, if orders before the Writ Court declining permission to change land use were in consonance with the 'Draft Plan' and Rules of 2012, this Court is under no obligation to disturb the same. The learned Writ Court, in our opinion, committed an error while interfering with the impugned orders therein solely for the reason that Rules of 2012 are generally not applicable as per clause 7.2. The area of Bhedaghat may not be part of the notification dated 26.12.2012, fact remains that the 'Draft Plan' for Bhedaghat came into being as per Sections 15 and 16 of the Adhiniyam. The legislative mandate ingrained in Section 16 is for the purpose of 'freezing of land use' cannot be ignored. This aspect was dealt with by Division Bench in **Center for Environment Protection Research (supra)** by holding thus :

> "**15.** ……..Accordingly, whenever permission is sought from the Director or his subordinates for change of the use of any land or for development of land **for any purpose other than as indicated in the existing land use map, the Director or his subordinates has to refuse such permission where such change in the use of any land or development of land would be inconsistent with the proposed land use in the development plans under preparation.** On the other hand, the Director or his subordinates may defer the grant of permission where the change in the use of any land or development of any land for any purpose other than as indicated in the existing land use map is

> consistent with the proposed land use in the development plan under preparation until the development plan is finalized, approved and published by the State Government under Section 19 of the Adhiniyam."
>
> **(Emphasis Supplied)**

67. We will be failing in our duty if the argument of Shri Choudhari is not considered that 'Draft Plan' and Rules of 2012 can be made applicable only when a final plan under Section 19(5) of Adhiniyam is published. The curtains on this aspect are also drawn by the Division Bench in **Center for Environment Protection Research (supra)**. The above quoted para of said judgment is the complete answer to this argument of Shri Choudhari. Para-15 of judgment deals with 'existing land use map' and hence this argument deserves rejection.

68. It is apposite to remember that the Apex Court in **Raipur Development Authority vs. Anupam Sahkari Griha Nirman Samiti and others 2000 (4) SCC 357** held that when a 'draft scheme' is published, any sanction could only be in terms of the said scheme and no independent development plan in contradiction of the same could be sanctioned.

To sum up, it is clear like cloudless sky that on the date owner/coloniser preferred applications seeking change of land use, 'Draft Plan' came into being. As per the 'Draft Plan', it was open to the Director/Competent Authority to take into account the Bhumi Vikas Rules or putting it differently, take a decision ***having regard to*** the said 'Draft Plan'. The language employed is 'भूमि विकास/ निवेश अनुज्ञा म.प्र.

भूमि विकास नियम–2012 के प्रावधानों को भी ध्यान में रखना होगा।'. The decision so taken was by taking into account and *having regard to* the Draft Plan. Thus, the decision so taken in consonance with 'Draft Plan' is a plausible decision taken by the authorities. Another view is possible, is not a ground for judicial review. After applying the *litmus test* to examine the validity of an administrative order, we have already held that there is no illegality, irrationality and procedural impropriety in the decision and in the decision making process. Thus, the impugned orders before the Writ Court deserve a stamp of approval from this Court and order of Writ Court impugned herein deserves to be jettisoned.

69. So far argument relating to insertion of sub-section 2 to 5 of Section 16 are concerned, we are only inclined to observe that said sub-sections advance the purpose of Section 16 and in no way make the claim of owner / coloniser better.

Validity of Orders / Reasons :

70. The argument of Shri Choudhari on the strength of Constitution Bench Judgment in **Mohinder Singh Gill (supra)** on the first blush appears to be attractive but lost much of its shine when examined minutely. In the impugned orders of rejection, the authorities have taken assistance of the reason of applicability of 'Draft Plan'. The relevant portion of order of Joint Director dated 06.5.2014 and appellate order dated 16.9.2014 reads thus :-

"उपरोक्त विषयान्तर्गत संदर्भित पत्र के परिपेक्ष्य में लेख है कि ग्राम धुन्सौर न.ब. 150 प.ह.न 36/ 25 राजस्व

निरीक्षक मंडल जबलपुर– 2 तहसील व जिला जबलपुर स्थित खसरा क्रमांक 337/1, 337/2, 337 /3 रकबा –6.69 हेक्टेयर भूमि पर आवासीय प्रयोजन हेतु अनुमति के लिए प्रस्तुत आवेदन पर एतद द्वारा मध्य प्रदेश नगर तथा ग्राम निवेश अधिनियम 1973 की धारा 16 (1) में निहित प्रावधानों के अन्तर्गत निम्न कारणों से अनुमति देने से इंकार किया जाता है :–

आवेदित भूमि भेड़ाघाट प्रारूप विकास योजना 2021 में कृषि प्रयोजन हेतु प्रस्तावित होने के कारण।''

(06/05/2014)

''12. भेड़ाघाट विकास योजना प्रारूप जो अधिनियम की धारा 18 (1) के तहत अधिसूचना जारी होने से उसके प्रावधान उसी प्रकार लागू है, जैसे कि वे विकास योजना के प्रावधान हों। विकास योजना प्रारूप में आवेदित भूमि जो मौजा घुन्सौर की है, का प्रयोजन कृषि विनिर्दिष्ट है। चूंकि इस प्रकरण के विचारण में मध्यप्रदेश भूमि विकास के नियम 2012 लागू होंगे, अतः विकास अनुज्ञा का विचारण इन नियमों के नियम 16 (1) के प्रावधान के तहत होगा। नियम 14 (5) के प्रावधान है कि यदि भूमि ऐसे क्षेत्र में स्थित है, जहा आवेदन में प्रस्वावित क्रियाकलाप प्रकाशित प्रारूप विकास रेखांक में प्रस्तावित नहीं है, तो नियम 16 के तहत विकास अनुज्ञा नहीं दी जायेगी। चूंकि भेडाघाट विकास योजना प्रारूप में आवेदित भूमि का प्रयोजन कृषि विनिर्दिष्ट है, अतः कृषि भिन्न प्रयोजन के लिये विकास अनुज्ञा नहीं दी जा सकती थी। परिणामतः प्राधिकृत अधिकारी / उत्तरवादी द्वारा आलोच्य आदेश से जिस आधार पर अपीलार्थी / आवेदक का आवेदन निरस्त किया गया है, वह विधिसम्मत है।''

(16/9/2014)

71. No doubt, the provisions (Clause 7.2 & 7.14) on the strength of which said reason was shown were not mentioned, the fact remains that clause 7.2, 7.17 of 'Draft Plan' and Rule 103 of Rules of 2012 put together permits the authorities to take such decision. This is equally

settled that non-mentioning or wrong mentioning of provision will not make the order as illegal if source of power of authorities can be otherwise traced from the parent statute / enabling provision. **(See : N. Mani Vs. Sangeetha Theatre reported in (2004) 12 SCC 278, Ram Sunder Ram Vs. Union of India reported in (2007) 13 SCC 255, P.K. Palanisamy Vs. N. Arumugham reported in (2009) 9 SCC 173).**

Section 16 of Adhiniyam & Rule 14(5)(b)(i) :

72. Another augment forcefully advanced was on the basis of judgment of Supreme Court in the case of **Kerala State Electricity Board (Supra)**. It was argued that Rule 14(5)(b)(i) of Rules of 2012 makes Section 16(1)(a) as redundant. We are unable to persuade ourselves with this line of argument. Section 16(1)(a) provides discretion to the competent authorities to grant permission whereas Rule 14(5)(b)(i) takes care of a situation where permission cannot be granted. There is no 'head on' between the said two provisions and therefore, aforesaid Supreme Court judgment is of no assistance to the respondent / petitioner. The argument of owner/coloniser that Rule 14(5)(b)(i) of the Rules of 2012 makes Section 16 (1) (a) as redundant deserves to be rejected for yet another reason. A careful reading of Section 16(1)(a) shows that it talks about 'freezing land use' in relation to an *exiting land use map* whereas Rule 14(5)(b)(i) of the Rules of 2012 talks about activity in published *Draft Development Plan.* Section 16 deals with freezing of land use as per exiting land use map and Section 18 of the Adhiniyam deals with *Draft Development Plan*. The scheme and

object behind insertion of Section 16 aforesaid in the statute book is to ensure that on publication of existing land use map under Section 15, the change of use of any land can take place only with the express permission of the Director/competent authority.

73. Section 14 of the Adhiniyam makes it obligatory for the Director to:-

(a) prepare an existing land use map,

(b) prepare a development plan.

74. In addition, the competent authority can carry out surveys, inspections and perform supplementary duties incidental and consequential for preparation of said map/plan. Section 15 of the Adhiniyam prescribes the procedure for preparation of existing land use map. Section 16 of the Adhiniyam deals with 'freezing of land use'. Section 17 of the Adhiniyam talks about the contents of the 'Development Plan'. Section 17-A of the Adhiniyam deals with constitution of a committee by the State Government. Section 18 prescribes the procedure for publication of 'draft development plan', which requires a sanction under Section 19 of the Adhiniyam from the State Government as per the procedure prescribed therein.

75. The Director/competent authority to whom powers are delegated is equipped to take a decision for grant of permission of change of land use in consonance with the provision of Adhiniyam and Rules made thereunder.

76. In **M/s Pure Industrial Cock & Chemicals Ltd. Vs. State of M.P. and others 2007 (2) M.P.H.T., 380 (DB**) in which it was held as under :-

> **"23.**.....Instead, the restrictions on the right of a person to change the use of his property located in the area of the town development scheme is because of the development plan under preparation or the development plan published for the area. Since the Director is aware of the details of the development plan under preparation and the development plan published by the State Government for the area, power has been vested by the Adhiniyam on the Director to grant or to withhold permission to a person to change the use of his property located in the area of town development scheme **so that such use is consistent with the development plan under preparation** or the development plan published for the area.
>
> **(Emphasis Supplied)**

77. The constitutionality of certain provisions of the Adhiniyam were tested before the Division Bench in **Center For Environment Protection, Research** (supra) and in **Madan Parmaliya Vs. State of M.P.** reported **ILR 2007, M.P. 468** and those provisions of Adhiniyam got stamp of approval from the Division Bench of this Court.

Discrimination / Parity :

78. The owner / coloniser has raised the question of discrimination by citing certain examples (**See : Para-26**). This argument also cannot cut any ice for the simple reason that there is no foundation laid in the writ petition regarding the aforesaid discrimination. Admittedly, for the first time, by filing an interlocutory application, the aspect of discrimination was sought to be highlighted. Learned Single Judge had no occasion to consider this aspect in absence of any foundation before the Writ Court. The impugned order of Writ Court is also not based on the ground of discrimination. Apart from this, the land use was

permitted to be changed in favour of certain persons for different reasons. Even assuming for the sake of argument that such permissions were erroneously granted, it cannot become a reason to follow as per theory of negative equality. An example which is not in consonance with law cannot be a reason to be repeated. The judgment of **R. Muthukumar (Supra)** deals with this aspect. Apart from this the Apex Court has taken similar view in **Jaipur Development Authority v. Daulat Mal Jain (1997) 1 SCC 35; State of Jharkhand v. Manshu Kumbhkar (2007) 8 SCC 249; State of Orissa v. Mamata Mohanty (2011) 3 SCC 436; Bank of India v. Aarya K. Babu (2019) 8 SCC 587** and **Atma Ram v. Charanjit Singh (2020) 3 SCC 311.**

79. In view of foregoing analysis, we are unable to countenance the order of learned Single Judge dated 15.12.2017 passed in W.P. No. 1083 of 2015. For the same reason, no relief is due in W.P. No. 6880 of 2017. As a consequence, the order dated 15.12.2017 passed in W.P. No.1083 of 2015 is set aside. W.P. No.6880/2017 is **dismissed**. W.A. is **allowed**.

(SUJOY PAUL)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

bks