

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
ORIGINAL APPLICATION NO. 25 OF 2023**

IN THE MATTER OF:

DILEEP B. NEVATIA

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

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APPLICANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI

DATED: 21.2.2026

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

ORIGINAL APPLICATION NO. 25 OF 2023

IN THE MATTER OF:

DILEEP B. NEVATIA

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RESPONDENTS

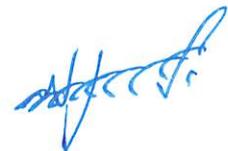
REJOINDER TO RESPONDENT NO. 4 TO ITS REPLY TO
ADDITIONAL AFFIDAVIT OF THE APPLICANT TO BRING
ON RECORD OF THE FRAUD PLAYED BY RESPONDENT
NOS. 8 TO 12 IN THE HON'BLE HIGH COURT AND THIS
HON'BLE TRIBUNAL

MOST RESPECTFULLY SHOWETH:

1. That on 10.12.2025 the Respondent No. 4 - BMC served a copy of its Reply dated 9.10.2025 on the Applicant (at page Nos. 1292 to 1294), whereby admitting that regularisation Application for the Pan Har property filed by Respondent Nos. 8 to 12 is under its review, namely:-



- “2. As Respondent No.8 to 12 had filed Application for regularisation of the Project on CS No 730 at Village Worli.
 3. The said Application is forwarded by SE (BP) to AE (BP) - VI (G Ward) after that it is forwarded to EE (BP) City-1 and on 01.12.2025 it is forwarded to Dy.Ch.E(BP) City, Dy.Ch.E(BP) City forwarded the file to Ch.Eng.(D.P.) on 05.12.2025 **it is under review of the said Department.**
 4. After that it will be forwarded to Competent Authority (Municipal Commissioner). Accordingly the Application expected to be decided and the same shall be informed.”
2. Also annexed alongwith the above Reply is the copy of the “Proposal Status Flow” from “18/04/2023 to 05/12/2025” for proposed addition and alteration of existing Residential building i.e. Pan Har.



For the sake of convenience, the copy of the said Reply of BMC dated 9.12.2025 alongwith the “Proposal Status Flow” from “18/04/2023 to 05/12/2025” is annexed hereto and marked as **Annexure A-1**.

3. That from the above Reply it is evident that the Affiant has tried his best to suppress providing the relevant information to this Hon’ble Tribunal, namely:-
 - (a) When the Respondent No.8 to 12 had filed Application for regularisation of the Project on CS No 730 at Village Worli?
 - (b) When the Application will be decided and when will the BMC inform of the same?
4. That the “Proposal Status Flow” from “18/04/2023 to 05/12/2025” indisputably establishes that for over last 2 and half years the Respondent No. 4 - BMC and the Project Proponents i.e. Respondent No. 8 to 12 have been deliberately and wilfully playing fraud on this Hon’ble Tribunal so as to enable the Project Proponents to wrongfully use and occupy a



patently illegal construction, as more particularly set out hereunder.

5. That the Regularisation Application of one Jinish Narendra Soni, the Architect of Respondent Nos. 8 to 12, was filed with the BMC on 18.4.2023 as so stated i.e. "I/W: 18/04/2023 11:45:27 AM".
6. That after scrutiny, on 9.6.2023 BMC rejected the said Regularisation Application with the following endorsement:

"O/W - 09/06/2023 09 30 26 PM

Remarks:

Document Rejection : Documents Rejection

Technical Rejection : Technical Rejection.

Sir, various requisite documents such as NOC from Estate Department, CRZ NOC, NAVAL NOC, Tax clearance certificate, Stability certificate from structural engineer & report etc as per EODB are not found attached.



kindly reconcile & resubmit in consonance with
DCPR 2034.”

7. That the next entry after the rejection of the proposal on 9.6.2023 is only made after a period of 2 years and 2 months i.e. on 1.8.2025 as is shown by the following endorsement:-

“On Hold : JINISH NARENDRA SONI
(License Engineer)

1/W : 09/06/2023 09:30:36 PM

O/W: 01/08/2025 12:38:19 PM

Remarks: **File resubmitted for in principal approval of necessary concessions required for Repairs /Renovation/ Expansion to existing building subject to obtaining NOC from MCZMA, Estate Dept, Naval NOC and Assessment Dept. On receipt of in principal approval from Hon’ble MC file shall be referred to MCZMA for its NOC.”**



8. That undoubtedly for over two years, after the regularisation proposal of Respondent Nos. 8 to 12 was rejected and returned to the project proponents, the Respondent No. 4 - BMC was not at all dealing with the matter any further. However, this has not deterred the BMC and the Respondent Nos. 8 to 12 from making false statements and filing false affidavits before this Hon'ble Tribunal that the regularisation proposal is still under consideration and therefore the present O.A. be not heard.

9. That the order of the Planning Authority, which in the present case is the BMC, refusing permission can only be challenged by way of Appeal to the State Government as provided for under Section 47 of The Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). Moreover, the Appeal has to be filed within 40 days time i.e. 40 days from 9.6.2023 when the Order of rejection was put in public domain. However, no Appeal is preferred against the Order dated 9.6.2023 and the Order has long reached its finality and yet



the BMC and the Respondent Nos. 8 to 12 have managed to stall the present proceedings for over two years.

10. That after receiving the BMC Reply dated 9.12.2025, the Applicant has downloaded a number of documents, including BMC's official Note Sheets from the BMC portal of BMC, namely "autodcr.mcgm.gov.in/ BPAMSCClient2/Login.aspx", which are in respect of its vain attempt to retain the large scale unauthorised construction of Pan Har property and include the following.

11. That on 27.3.2025 the BMC Municipal Commissioner accepted the Application dated 24.3.2015, filed by the architect of Respondent Nos. 8 to 12, to review the Order dated 9.6.2023 and directed his officers "To verify and give Report", with intention to once again attempt to regularise large scale unauthorised construction within the CRZ-II area. Needless to say, the Municipal Commissioner had no powers to review the earlier Order as the statutory remedy is provided by way of Appeal to the State Government. This further goes



to show that BMC and its officers are working in collusion with the Respondent No. 8 to 12 and acting in clear contravention of law in order to save the unauthorised construction put up by Respondent Nos. 8 to 12.

The copy of the said Application dated 24.3.2015 bearing the endorsement of the Municipal Commissioner dated 27.3.2025 is annexed hereto and marked as **Annexure A-2**.

12. That by his Note Sheet dated 5.12.2025 the Deputy Chief Engineer (Building Proposals), City of the BMC forwarded the proposal to the Chief Engineer (Development Plan) / Municipal Commissioner for giving his approval to various concessions and with a rider that before approval the NOC / Clearance from MCZMA Department from CRZ point of view and NOC / Clearance Estate Dept (BMC) for ownership point of view be insisted.

The copy of the said Note Sheet dated 5.12.2025 of the BMC Deputy Chief Engineer (Building Proposals), City is annexed hereto and marked as **Annexure A-3**.



13. That the Chief Engineer (Development Plan), BMC by his Note Sheet dated 15.12.2025 forwarded the proposal to the Municipal Commissioner for approval of various concessions and **further that an Undertaking cum Indemnity Bond to be insisted from Owner before approval of plans indemnifying BMC and its officers against any adverse order by NGT in future, if any, and compliance of its conditions in To-To.**

The copy of the said Note Sheet dated 15.12.2025 of the Chief Engineer (Development Plan), BMC is annexed hereto and marked as **Annexure A-4.**

14. That evidently the officers of the BMC are fully aware that they are in the process of giving illegal approvals to the Pan Har property of Respondent Nos. 8 to 12 and that this may invite the displeasure and wrath of this Hon'ble Tribunal. Therefore, in order to safeguard them from any adverse action of this Hon'ble Tribunal, the Chief Engineer (Development Plan) has added the condition of an Undertaking cum



Indemnity Bond to be insisted from Owner before approval of plans whereby indemnifying BMC & its officers.

15. That the BMC Municipal Commissioner by his Note Sheet dated 29.12.2025 sought further clarification, namely:-

“Please clarify -

1. **Since the plot is CRZ area sr.no.2 is not permissible.**
2. Sr.No.6 is to be processed as per the policy.
3. Auto DCR scrutiny is not done.”

The copy of the said Note Sheet dated 29.12.2025 of the BMC Municipal Commissioner is annexed hereto and marked as **Annexure A-5.**

16. That by his third application dated 12.2.2026 the architect of the Respondent Nos. 8 to 12 has applied to the BMC to process the file and further informing that before approval of plans the necessary NOCs from MCZMA, Estate Department, etc. shall be submitted.



The copy of the Application dated 12.2.2026 of the architect of the Respondent Nos. 8 to 12 to BMC is annexed hereto and marked as **Annexure A-6**.

17. That the Division Bench of Hon'ble Bombay High Court in its Judgment dated 11.2.2016 in Writ Petition No. 315 of 2013 in the matter of "Mahendra Builders versus State of Maharashtra and others" has held that:-

a) Para 7

"Respondent no. 5 had also simultaneously filed a statutory appeal under section 47 of the MRTP Act before the State Government challenging the rejection of regularization of the mezzanine floor and the additional rooms with toilet by the said communication of the Executive Engineer dated 18 March 2004 which was Appeal No.4303/600/2004.

b) Para 32



“It is now well established that quasi judicial authority cannot review its own order, unless the power of the review is expressly conferred on it by the statute. The power of review is not an inherent power, it must be conferred by law either by specifically or by necessary implication. (Refer: AIR 1987 SC 2186, (Dr. Smt. Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.R) & Ors.)” In our opinion, though the Municipal Commissioner has observed that the impugned order would not amount to a review, the Municipal Commissioner has in fact reviewed the earlier order dated 28 November 2008 without any power to review the same under the MRTTP Act. On this count also the impugned order is rendered illegal.”



The copy of Hon'ble Bombay High Court Judgment dated 11.2.2016 in Writ Petition No. 315 of 2013 "Mahendra Builders versus State of Maharashtra and others" is annexed hereto and marked as **Annexure A-7**.

18. That from the records of the BMC and its Affidavits filed from time to time, it is indisputably clear that:-

- (a) On 9.6.2023 the delegated authority of the BMC passed a quasi judicial Order, whereby rejecting the Regularisation Application filed by Respondent Nos. 8 to 12.
- (b) After rejection, BMC returned the Application to Respondent Nos. 8 to 12 and over the next two years and two months the Respondent No. 4 - BMC was not at all dealing with the matter any further.
- (c) However, during this period of over two years, the Respondent No. 4 - BMC and Respondent Nos. 8 to 12 unabashedly and consistently made false statements and filed false affidavits before this Hon'ble Tribunal that



the regularisation proposal is still under consideration and therefore the present O.A. be not heard.

- (d) No statutory Appeal is preferred by the Respondent Nos. 8 to 12 before the State Government against the Order of rejection dated 9.6.2023 within 40 days time and therefore the Order has long reached its finality.
- (e) The BMC Municipal Commissioner had no powers to review the earlier Order as the earlier Order can be challenged only by way of Appeal.
- (f) That before approval of the plans by the BMC, it is mandated that the CRZ Clearance is received from MCZMA, NOC from Indian Navy, NOC / Clearance from Estate Dept (BMC) is received, etc. However, for almost the last three years nothing has been done by the Respondent Nos. 8 to 12 in obtaining these NOCs / Clearances.
- (g) The Respondent Nos. 4, 8 to 12 are also fully aware that the regularisation process cannot proceed further and plans cannot be approved unless MCZMA gives



the CRZ clearance, Indian Navy gives its NOC, Clearance from Estate Dept (BMC) is received, etc.

- (h) Since 1.8.2025 the BMC and its Officers are merely pushing the concerned files from one desk to another, despite knowing that that they cannot give the approval without the mandatory NOCs. This clearly shows that the BMC and its Officers are illegally aiding and abetting the Respondent Nos. 8 to 12 and thereby enabling them to unauthorisedly occupy and use the massive increase of FSI of 300% in the Pan Har property.

19. In the circumstances, the Applicant submits that this Hon'ble Tribunal may be pleased to take appropriate action against the Respondent Nos. 8 to 12 and expeditiously proceed with the final hearing of the present O.A.



APPLICANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
ORIGINAL APPLICATION NO. 25 OF 2023

IN THE MATTER OF:

DILEEP B. NEVATIA

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

AFFIDAVIT

I, Dileep Nevatia, S/o Shri Balkrishna Nevatia, R/o Shashi Deep, 5-A, Worli Sea Face, Mumbai-400030 aged about 76 years, do hereby state on oath that the contents of this Rejoinder Affidavit are true and correct to the best of my knowledge and belief.

DEPONENT

VERIFICATION:-

Verified on this the 21st day of February, 2026 that the contents above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

DEPONENT

R. R. MISHRA
B.Com LLB,
ADVOCATE & NOTARY GOVT. OF INDIA
Regd. No. 6226
Resi.: 502, Maruti Tower, 5th Floor,
G. K. Marg, Lower Parel, Mumbai-13.
Mobile: +91-98202 76589

Seen the Driving Licence
No. MH01 – 20090127799
DOI – 6.9.1967



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE AT PUNE

ANNEXURE A-1

Original Application No. 25 of 2023

Dilip B. Nevatia

..... Applicant

Vs

Union of India & Ors

..... Respondents

Herein the Reply Affidavit on behalf of the Respondent BMC :

1. I, Shri. Nakul Manohar Patil, Age 47 years, Occ. working as Assistant Engineer (Building Proposal) City -VI, of Brihanmumbai Municipal Corporation, having office at Office of Deputy Chief Engineer (BP) City, Bhagwan Walmiki Chowk, Vidyalkar College Marg, Wadal (East), Mumbai - 400037, do state solemn affirmation as under:
2. As Respondent No.8 to 12 had filed Application for regularisation of the Project on CS No 730 at Village Worli.
3. The said Application is forwarded by SE (BP) to AE (BP)- VI (G Ward) after that it is forwarded to EE (BP) City-I and on 01.12.2025 it is forwarded to Dy.Ch.E(BP) City, Dy.Ch.E(BP) City forwarded the file to Ch.Eng.(D.P.) on 05.12.2025 it is under review of the said Department.
4. After that it will be forwarded to Competent Authority (Municipal Commissioner). Accordingly the Application expected to be decided and the same shall be informed.



BEFORE ME

Solemnly affirmed at Mumbai **V.K. KADAM**
 This day of December, 2025 **NOTARY**
 Government of India
 Mumbai

[Handwritten Signature]

Respondent No.4

Identified by Me

09 DEC 2025

Adv for Respondent

NOTED & REGISTERED
 Sr. No. 739 Page No. 120...
 Book No. 0 Date.....

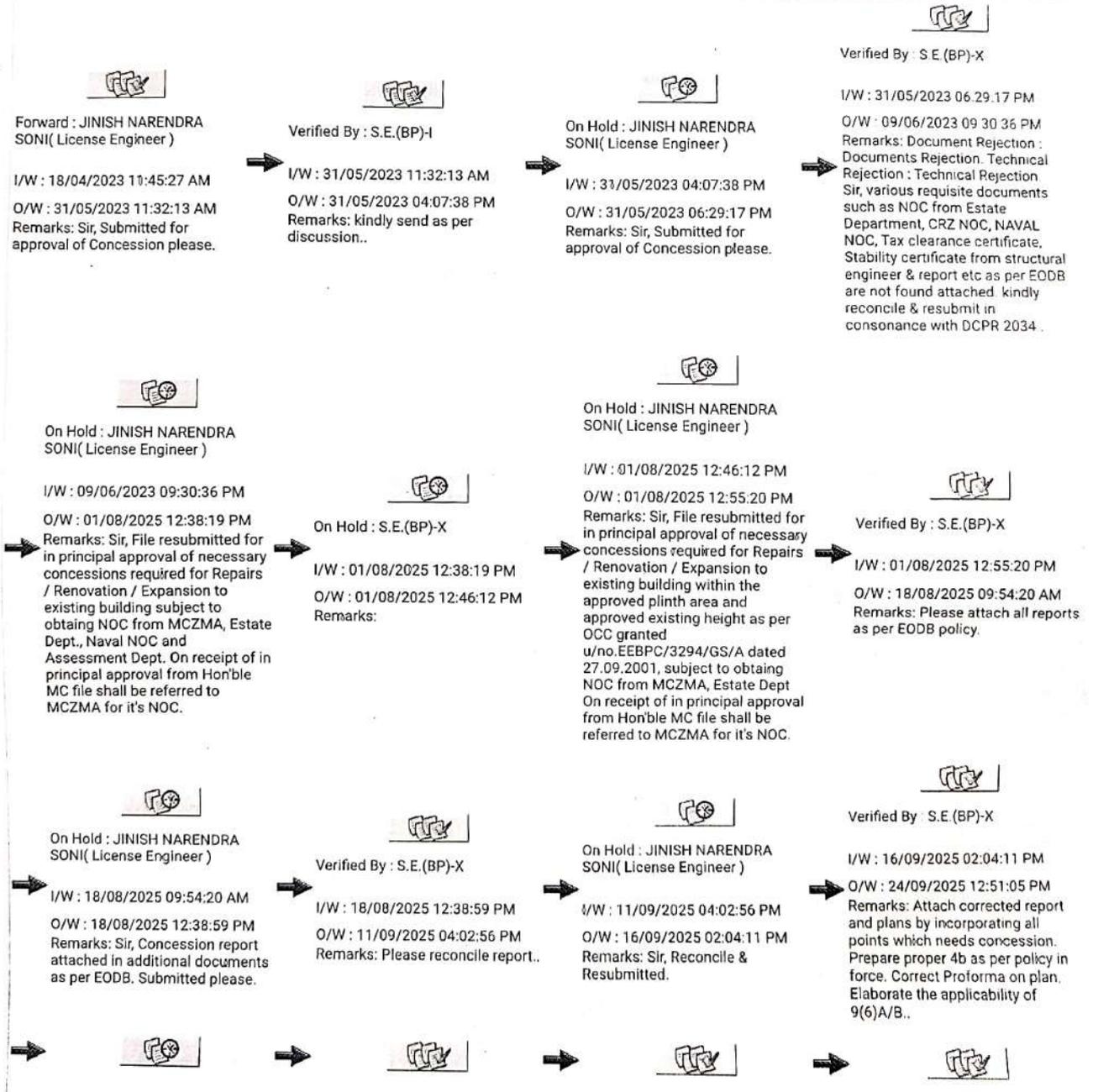
09 DEC 2025



Application Details

File No. : P-16330/2023/(730)/G/South/WORLI/342/1/New
 SAC No. : NA,
 Title/Subject : Proposed Addition & Alteration of existing Residential building on plot bearing CS No. 730 of Village Worli, Division at Khan Abdul Gaffar Khan Road, Worli (Mumbai), 400 018, G/South Ward.
 Project Proponent : Private Owners / Developers (Building Proposal)
 Zone Name : City Ward Name : G/South
 Plot No. : 730 CS No./ CTS No. : 730
 Road/Street Name : Khan Abdul Guffar Khan Road TP Scheme : 0
 Division / Village : 2045 Gut No. :
 CTS No. : 730
 Architect/LE/SE Name : JINISH NARENDRA SONI Inward Date : 7/4/2023
 Notice Letter No. : 342/1172/23
 Structural Engineer : Hiten R Mahimtura

Approval Flow



On Hold : JINISH NARENDRA
SONI(License Engineer)

I/W : 24/09/2025 12:51:05 PM
O/W : 13/10/2025 05:24:45 PM
Remarks: Sir open space
deficiency plan and other
compliances attached please.



Forward : Dy.Ch.E(BP)City

Forward : S.E.(BP)-X

I/W : 13/10/2025 05:24:45 PM
O/W : 04/11/2025 05:49:39 PM
Remarks: Submitted please.

Forward : A.E.(BP)-VI (G Ward)

I/W : 04/11/2025 05:49:39 PM
O/W : 25/11/2025 02:13:22 PM
Remarks: Sir, Submitted please.

Forward : E.E(BP) City-I

I/W : 25/11/2025 02:13:22 PM
O/W : 01/12/2025 09:05:48 PM
Remarks: Sir, Submitted please.



Under Review : Ch.E.(DP)

I/W : 05/12/2025 06:44:13 PM
O/W : -
Remarks:

TRUE COPY

ANNEXURE A-2



24th March, 2025

To,
The Municipal Commissioner,
 Municipal Corporation Greater Mumbai,
 2nd Floor MCGM Head Office,
 Mumbai Mahanagar Palika Marg,
 Fort, Mumbai-400001.

DyCE (B P) City)
Pl. verify & put up
report.
JW 27/3

Subject:- Proposed repairs / renovation / expansion of existing building on Plot bearing C.S No. 730, Village Worli, Division at Khan Abdul Gaffar Khan Road, Worli Mumbai – 400 018, G/South Ward ("said property").

File No: - P-16330/2023/(730)/G/South/Worli.

Sir

Brief History of the Case: -

In this case, initially the plans for the building comprising of Basement for Parking + silt for parking + 1st to 6th Residential floors + 7th (pt.) for utilities by utilizing plot potential to the tune of 1.33 FSI and staircase, lift & lift lobby are free of FSI were approved as per the provisions of DCR 1967 in the year 1993. The Occupation Certificate for the said building was granted on 27.09.2001.

Thereafter, the said property was purchased by Shri Ghanshyambhai Dholakia, Managing Director of M/s. Hari Krishna Exports Pvt. Ltd. (The Applicant herein) for his family and personal use. The same was renovated and interior work was carried out as per their requirements. Since the entire building was now used for single family use, the alterations carried out in the building were as per their requirements. Elevation features earlier approved were merged within the rooms and some were converted into part /pocket terraces. The building was renovated from external face and the features such as swimming pool and canopies were altered and demolished.

Mr. Dilip B Nevatia complained to the G/S Ward office, who pursued the matter and G/S ward had issued a notice dated 24.05.2023 to the owner under Section 53(1) r/w Section 52(1)(b) and (d) of MRTP Act. The said Applicant

replied stating that the L.S on behalf of owner have submitted the proposal for repairs / renovation / expansion within the plinth area in the office of Building Proposal department on 18.04.2023.

The said Impugned Notice dated 24.05.2023 was challenged in Writ Petition (L) No. 18045 of 2023 by the owner Hari Krishna Exports Pvt. Ltd. before the Hon'ble High Court of Bombay. The Hon'ble Court vide Order dated 11.07.2023, directed MCGM to decide the application in accordance with law and till the same is decided and communicated, no coercive action to be taken against Hari Krishna Exports Pvt. Ltd. The Copy of the order dated 11.07.2023 is attached herewith for your ready reference and marked as "**Annexure A**".

The complainant, Mr. Dilip B. Nevatia also filed Original Application No. 25 of 2023 before the Hon'ble National Green Tribunal, Western Zone Bench *inter alia* seeking demolition of the structure of the said property for alleged violations of CRZ Notification. After various hearings and affidavits filed by MCGM and MCZMA, on 05.02.2025, the Hon'ble Tribunal was pleased to direct MCGM to file an affidavit as to whether the application submitted by the owner is declined/ rejected within two weeks. The Copy of the order dated 05.02.2025 is attached herewith for your ready reference and marked as "**Annexure B**".

The owner thus humbly prays to process –the proposal of Repair / renovation / expansion within the plinth area as per the provisions of DCPR 2034 in principle subject to obtaining various documents as per the F.P letter issued by the Building proposal of MCGM.

As the plot was affected by CRZ II area under the Coastal Regulation Zone ("**CRZ**") Notification, the NOC for Repair / renovation / expansion within the Plinth area as per the norms of MCZMA shall be obtained before approval of plan. The Hon'ble Bombay High Court in Writ Petition No. 751 of 2008 has passed a judgement wherein it is allowed to carry out repairs / renovation / expansion to the structure without changing the plinth area. The copy of Judgement is enclosed herewith for ready reference and marked as "**Annexure C**".

In view of the above, we humbly request your goodself to process the said proposal for repair / renovation / expansion within the Plinth area for concessions and grant in Principle approval i.e. concessions without insisting on the required NOC's from various departments and to process the file as stated below:

1. **To convert the entire proposal as per the provisions of Reg 9 (6) B of DCPR 2034 and counting all the elevation features in FSI.**
2. **To condone Open space deficiency by charging premium as per Reg 6(b) of DCPR 2034.**

3. To apply the provisions of the circular under no CHE/DP/110/Gen dated 2019-2020 to be read with earlier circular CHE/23227/DP/Gen 21/11/2017.
4. To submit the proposal to MCZMA for clearance in CRZ II.

This letter is without prejudice to the owner's rights, contentions and remedies in law, which are expressly reserved.

Thanking You,
Yours Faithfully,

For. **M/s. 3 Dimensional Consultants LLP**

Jinish

Narendra

Soni

Digitally signed by
Jinish Narendra Soni
Date: 2025.03.26
16:41:03 +05'30'

Shri Jinish Soni
Licensed Surveyor
S/588/LS

TRUE COPY





ANNEXURE A-3

BRIHANMUMBAI MUNICIPAL CORPORATION

Notesheet

Application Number :	P-16330/2023/ (730)/G/South/WORLI/342/1/Ne w	Ward Name :	G/South
Zone Name :	City	Inward Date :	07 Apr 2023
Architect/LE/SE Name :	JINISH NARENDRA SONI	Issued On :	05 Dec 2025

Authority Remark:

Sir,

The proposal under reference is for addition & alteration in existing building approved under the provisions of DCR 1967 in the year 1993.

The OC was granted on 27.09.2001 for the building comprising of Basement For Parking + silt for parking + 1st to 6th Residential floors + 7th (pt.) for utilities by utilizing plot potential to the tune of 1.33 FSI

The Owner through their Architect had represented the matter to Municipal Commissioner dated 24/03/2025 wherein the Municipal Commissioner had directed, Dy Che (BP) City "to Verify & put up report".

Arch has now proposed amended plans under Reg 9(6)(a) of DCPR 2034, for the building which is already constructed with some internal changes with respect to the room sizes and uses as the entire building is now purchased by a single owner.

The building which was constructed earlier is now proposed to be amended by utilizing plot potential + additional FSI on payment of premium + Admissible TDR as per the road width as per the provisions of DCPR 2034.

The plot under reference falls in CRZ II and is on the land ward side of the existing road.

Architect has submitted the proposal in light of the regulation 9(6)a of DCPR 2034 and has requested to process the file for approval subject to submission of necessary required NOC, compliances & NOC/ Clearance from MCZMA Department and Estate Dept. of MCGM before issue of approval.

The proposal scrutinized by SE/AE/EE and submitted 4A fact sheet report, 4B scrutiny report, 4C concession report & draft plans in the note sheet of SE/AE/EE for consideration & approval of Competent Authority.

In view of above, Ch.Engg(DP)/Hon.M.C.'s approval is requested to the concessions required in 4C report and Corrected plans, required NOC & compliances, NOC/ Clearance from MCZMA Department for CRZ point of view and NOC/ Clearance Estate Dept(BMC) for ownership point of view will be insisted before issue of approval.

Submitted please.



Dy.Ch.Eng. (B.P.) City



TRUE COPY

A handwritten signature in blue ink is written below the 'TRUE COPY' text.

**ANNEXURE A-4****BRIHANMUMBAI MUNICIPAL CORPORATION****Notesheet**

Application Number : P-16330/2023/
(730)/G/South/WORLI/342/1/Ne
w
Ward Name : G/South
Zone Name : City
Inward Date : 07 Apr 2023
Architect/LE/SE Name : JINISH NARENDRA SONI
Issued On : 15 Dec 2025

Authority Remark:

Sir,

Reference is requested to the representation by L.S to Hon.M.C detailing the history of the existing building affected by CRZ-II & requesting therein to process the proposal for approval of concessions involved within the existing plinth and Hon.M.C's endt. thereon dt. 27.3.2025 as: "Pl. verify & put up report"

Accordingly, L.S has submitted the plans as per Reg. 9(6)(a) for the proposed additions/alterations to the existing building with internal changes in planning as per the requirement of single family owned building in lieu of potential as per Reg. 30(A), Table-12 + FCA + staircase, lift, lift lobby areas free of FSI and has requested to grant the approval for the concessions involved in the proposal.

It is reported by EE(BP)City/Dy.Ch.Eng.(BP)City that OCC to the existing building comprising of Basement + Stilt + 6 + 7(pt.) flrs. In lieu of Zonal FSI of 1.33 was issued on 27.9.2001, as per the then prevailing D.R.Rules -1967.

It is also reported that D-Ward had issued notice u/s. 53(1) for carrying out additions/alterations in the existing building, which was challenged in Hon. High Court vide W.P.(L) No. 18045 of 2023 & the same was disposed off vide order dt. 11.7.2023 directing BMC to decide the application on merits and till then, no coercive action is to be taken in this regard. The complainant also filed complaint vide Application No. 25 of 2023 before NGT, Pune, however; no adverse orders have been passed in the matter by NGT.

As regards Sr. No. 1 of 4C, considering that the existing building is a low-rise building with OCC dt. 27.9.2001 & since the open spaces are now measured from extended building line, the deficiency in open spaces may be condoned by charging premium as per policy subject to NOC from CFO of BMC before approval of plans.

As regards Sr. No. 2 & 6 of 4C, the sanctioned MOEF & CC notification dt. 29.9.2021 vide Sr. No. 4 states that proposals received henceforth for CRZ clearance shall be considered as per CRZ notification-2019. As reported, since the work is already carried out and now there is no increase in footprint/total construction area, the request to allow the work already carried out by charging penalty & insistence of NOC from MCZMA before approval of plans is submitted for the consideration of Hon.M.C.

As regards Sr. No. 3 & 4 of 4C, considering that the existing building is a low-rise building with OCC dt. 27.9.2001 & NOC by Fire Consultant dt. 25.5.2023, the inadequate width of staircase may be permitted by charging premium as per Sr. No. 3 of T-4 policy. In view of the existence of a family owned building, the separate substation may not be insisted subject to specific NOC from BEST, before approval of plans.

The double height balcony to be counted 1.5 times in FSI. NOC from A.C(Estates) shall be insisted & requirement of NOC from Navy, if any, to be verified at zonal level. The section through basement to be corrected as per plan. A RUT cum Indemnity Bond to be insisted from Owner before approval of plans indemnifying BMC & it's officers against any adverse order by NGT in future, if any, and compliance of its

In view of Hon.M.C's endt. dt. 27.3.2025 & details brought out vide 4C report, Hon.M.C.'s consideration is requested to Sr. No. 2 & 6 of 4C report & approval is requested on the concessions listed vide Sr. No. 1, 3 to 5 & 7 of 4C report as recommended by Ex.Eng.(BP)City/Dy. Ch. Eng.(BP)City subject to compliance of above observations, prevailing policies in vogue & provisions of DCPR-2034.

Submitted please.



TRUE COPY



ANNEXURE A-5

BRIHANMUMBAI MUNICIPAL CORPORATION

Notesheet

Application Number : P-16330/2023/
 (730)/G/South/WORLI/342/1/Ne
 w
Ward Name : G/South
Zone Name : City
Inward Date : 07 Apr 2023
Architect/LE/SE Name : JINISH NARENDRA SONI
Issued On : 29 Dec 2025

Authority Remark:

Please clarify -

1. Since the plot is CRZ area sr.no.2 is not permissible.
2. Sr.No.6 is to be processed as per the policy.
3. Auto DCR scrutiny is not done.



TRUE COPY

ANNEXURE A-6



Date: 12/02/2026

To,
The Executive Engineer,
(Building Proposal) City,
 Municipal Corporation Greater Mumbai,
 New Municipal Building, C.S No. 255/B,
 Bhagwan Valmiki Chowk, Vidyalankar Marg,
 Antop Hill, Wadala (E), Mumbai – 400 037.

Subject : Proposed Addition and Alteration of Existing Building known as “Aikyam” on Plot Bering CS No. 730, Village Worli, Division at Khan Abdul Gaffar Khan Road, Worli Mumbai – 400 018. G/South Ward

Reference : 1.) P-16330/2023/(730)/G/South/WORLI
 2.) Hon. MC’s Note sheet dated 29/12/2025

Sir,

In this case the file was submitted for obtaining necessary concessions wherein Hon. MC wide his note sheet dated 29/12/2025 has asked to give clarification as stated below:

1. Since the plot is CRZ area sr.no.2 is not permissible.
2. Sr.No.6 is to be processed as per the policy.
3. Auto DCR scrutiny is not done.

With regards to the above the gist of the proposal is as stated below:

Said Property: Existing Building known as “Aikyam” on Plot bearing C.S. No. 730, Village Worli, Division at Khan Abdul Gaffar Khan Road, Worli, Mumbai-400 018, G/South Ward

- 1.) The said property comprising of basement for parking + stilt for parking + 1 to 6th residential floors + 7th floor (pt.) for utilities was constructed by utilizing plot potential to the tune of 1.33 FSI and staircase, lift & lift lobby free of FSI were approved as per the provisions of DCR 1991 and OCC for the same was granted on 27/09/2001.
- 2.) Thereafter, the said property was purchased by Shri Ghanshyambhai Dholakia, Managing Director of M/s. Hari Krishna Exports Pvt. Ltd. ("Owner") for his personal use.
- 3.) The owner of the said property carried out certain repair/renovation/ alteration in the existing building (within the existing plinth of the original structure) as it stood.
- 4.) The said property falls in CRZ-II as per CZMP plan and it is on the land ward side of the Existing Road (Khan Abdul Gaffar Khan Road, Worli). Further to state that as per the CRZ Notification 2019, development will be permitted in CRZ -II with the FSI/FAR governed by the local Regulations as on the date of notification i.e. 18/01/2019.

- 5.) (i) The repair/ renovation/ alteration carried out is differently oriented to the plot than what was earlier existing at site but does not exceed the existing plinth area of the said existing building.
- (ii) The existing structure has not been demolished by the Owner, and no new structure has been constructed but only ornamental projections have been added to the existing structure within the meaning of repair/ renovation/alteration and within the existing plinth area.
- (iii) Since the repair/renovation/alteration is within the existing plinth area, change in FSI due to ornamental projections as per applicable DCPR which otherwise do not harm the environment, require no CRZ Clearance from Maharashtra Coastal Zone Management Authority ("MCZMA").
- (iv) The same is fortified by the Hon'ble Bombay High Court in Theodore Fernandes & Anr. v. State of Goa & Ors., 2020 (1) Mh. L.J 235 (Para No. 13-18, page 24). EX 'A'
- (v) Therefore, the repair/renovation/ alteration of the said Existing Building has not resulted in any change from CRZ point of view and is permissible subject to the approval of the Competent Authority, i.e., MCGM as well as MCZMA in accordance with the applicable laws, including DCPR 2034 and CRZ Notification 2019.

However, in the event any construction was undertaken beyond the approved plan (outside the existing plinth line), such unauthorized construction shall be liable for demolition and may be proposed as a Fresh Proposal for future approval subject to MCGM and MCZMA.

The work has been undertaken within the existing plinth area and within the existing approved building height and now, we are submitting the proposal (within the existing plinth line) to count all the area covered under elevation features, basement part and in the stilt (i.e. ground floor), which were earlier given free of FSI as per the then Regulation, Now requesting the same to be approved under the provisions of 9 (6) (a) of DCPR 2034. (EX 'B')

As regarding the clarification required for Sr. No. 2 of Hon. MC's Note sheet, after obtaining in principal approval from MCGM, before issuing amended plans, MCZMA NOC shall be insisted. The FSI in the proposal is in accordance with the provision of CRZ notification of 18/01/2019.

Auto DCR Scrutiny Report shall be carried out before issue of plans.

In view of the above, we request you to please process the file for obtaining necessary concessions with regards to conversion of the entire proposal as per the provisions of 9 (6) (a) of DCPR 2034, and before approval of plans, necessary NOC's from MCZMA, Estate, etc. shall be submitted.

Yours Faithfully,
For, **M/s. 3 Dimensional Consultants LLP**

L.S.: Shri. Jinish N. Soni
Lic. No. S/588/LS

Enclosed as above.

TRUE COPY





IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.315 OF 2013

M/s Mahendra Builders }
 A Partnership Firm registered under }
 Indian Partnership Act }
 having its office at Cliffiet, }
 Pochkhanawala Road, Worli, }
 Mumbai-400 030 }...Petitioners

vs.

1. The State of Maharashtra }
 through the Principal Secretary }
 Department of Urban Development }
 Mantralaya, Mumbai-400 032. }

2. The Municipal Corporation of }
 Greater Mumbai, Mahapalika Marg, }
 Mumbai-400 001. }

3. The Municipal Commissioner }
 The Municipal Corporation of }
 Greater Mumbai, Mahapalika }
 Bhavan, Mahapalika Marg, }
 Mumbai-400 001. }

4. The Executive Engineer }
 Building Proposal City-II }
 E Ward 10-S.K.Hafijuddin Marg }
 Bycylia Mumbai-400 008 }

5. Parvez S/o Mohammed Hussain }
 Ghaswalla carrying on business }
 in the name of the Empire Royale }
 Hotel,3rd Floor, Mahendra Chamber }
 situated at 134-136, D.N.Road }
 Fort Mumbai-400 001. }

6. Ruksana Khalid Ghaswalla }
carrying on business in the name }
of The Empire Royale Hotel, }
3rd floor, Mahendra Chamber, }
situated at 134-136, }
D.N.Road, Fort Mumbai-400 001. }
7. Kashan Khalid Ghaswalla }
carrying on business in the name }
of The Empire Hindu(Royale) Hotel, }
3rd Floor, Mahendra Chamber, }
situated at 134/136, D.N.Road, }
Fort, Mumbai-400 001. }...Respondents

...

Mr.Aspi Chinoy Sr.Advocate a/w Mr.PS.Dani Sr.Advocate i/b Mrs.Janhvi Bejoy for Petitioners

Ms.Geeta Shastri Additional Government Pleader a/w Ms.Anjali Helekar Assistant Government Pleader for Respondent no.1

Mr.Kevic Setalwad Sr.Advocate a/w Mr.H.C.Pimple for Respondent nos.2 to 4.

Mr.Zai Andharujina a/w Ms.Sonal i/b Ms.Kavita Shah for Respondent nos.5 to 7.

...

**CORAM: ANOOP V.MOHTA AND
G.S.KULKARNI, JJ**

**JUDGMENT RESERVED ON : 29TH JANUARY, 2016
JUDGMENT PRONOUNCED ON: 11TH FEBRUARY 2016**

JUDGMENT (Per G.S.Kulkarni, J)

1. Rule Returnable forthwith. By consent and at the request of

the parties heard finally.

2. By this Petition under Article 226 of the Constitution of India, the petitioners seek quashing and setting aside of the order dated 24 January 2013 passed by the respondent no.3- the Municipal Commissioner of the Mumbai Municipal Corporation, whereby it is held that the proposal for regularization submitted by the respondent nos.5 to 7 of additions and alterations namely additional rooms and toilets at the premises namely 'Empire Royale Hotel' 3rd Floor, Empire Building, 147, Dr.D.N.Road, Fort, Mumbai, be processed by the Executive Engineer (Building and Proposals). The petitioners are also seeking quashing of the communication of the Assistant Engineer (Building and Proposal) dated 22 March 2012 by which certain compliances are sought from Respondent Nos.5 to 7. A further prayer is made that the notice dated 10 October 2003 issued under section 53 (1) of the Maharashtra Regional Town Planning Act 1966 (for short the M.R.T.P. Act) and order dated 18th March 2004 passed by the Executive Engineer (Building and Proposal) declaring the said additional construction on the 3rd floor with intended toilets as unauthorized be implemented.

3. The litigation between the parties has a chequered history

which needs to be noted in a little detail. The Petitioners claim to be the owners of a property being a heritage building known as 'Mahendra Chambers' situated at C.S.No.1390, Dr.D.N.Road, Fort Mumbai acquired by virtue of a Deed of Assignment and Agreement dated 23rd August 1974 entered with the predecessor-in-title of the Petitioners namely the Parsi Panchayat Trust. These premises stand on the land leased by the Municipal Corporation for Greater Mumbai. There is a litigation pending in regard to the issue of subsistence of the lease. However, that may not be relevant in the context of the present dispute as the subject matter pertains to the additions and alterations namely the construction of the additional rooms and intending toilets on the 3rd floor of the said premises by Respondent No. 5 to 7, who are admittedly in occupation of the same. The 3rd floor premises were used by Respondents for a lodging house business under the name and style of "Empire Hindu Hotel."

4. It is the Petitioner's case that the respondent no.5 under the guise of carrying structural repairs had made unauthorized construction on the 3rd floor of the said premises without the consent of the petitioners or of the Municipal authorities by constructing several additional rooms with attached toilets as also a mezzanine floor so as to multiply number of rooms and profit therefrom. This unauthorized construction casted a

huge load on the 100 year old heritage building.

5. The Municipal Corporation had issued a notice dated 10th October 2003 under section 53 (1) of the M.R.T.P Act calling upon respondent no. 5 to demolish the mezzanine floor as also the additional rooms with intended toilets. Petitioners aver that even as per the plans dated 28 June 2001, approved by the Corporation it was evident that there were only 16 number of rooms on the 3rd floor with only two toilet blocks on other side of the 3rd floor, which revealed non-existence of the mezzanine floor and the additional rooms with attached toilets. Respondent no. 5 attempted to seek regularization of this unauthorized construction after receipt of the demolition notices dated 10 October 2003 and 5 January 2004 issued by the Corporation under section 53 (1) of the M.R. & T.P Act. The Executive Engineer (Building and Proposal) by his communication dated 18 March 2004 rejected the regularization proposal. In this communication it was recorded that as per the municipal records of the Assessment Department there was no proof/documents to prove existence of mezzanine floor above 3rd floor of the building and that as regards the additional rooms constructed on the 3rd floor with intended toilets the same amounted to additions and alterations which are not permissible as per Municipal policy regarding repair permission. For these



reasons, the amended plans for regularization of the mezzanine floor and the additional rooms with intended toilets on the 3rd floor of the said premises were rejected.

6. Against this rejection of the regularization plans by the Executive Engineer of the Corporation, respondent no.5 approached the City Civil Court at Bombay, by filing L.C.Suit No.1517 of 2004, inter alia challenging the rejection of the regularization proposal and action initiated by the Municipal Corporation to demolish the mezzanine floor and the additional rooms. A notice of motion seeking injunction in which initially an injunction was granted which came to be ultimately rejected by the Civil Court by an order dated 10 July 2009. It is stated that subsequently the suit came to be unconditionally withdrawn by the respondent no. 5 on 21 July 2010.

7. Respondent no. 5 had also simultaneously filed a statutory appeal under section 47 of the MRTP Act before the State Government challenging the rejection of regularization of the mezzanine floor and the additional rooms with toilet by the said communication of the Executive Engineer dated 18 March 2004 which was Appeal No.4303/600/2004. The Petitioners were not served with a copy of the Appeal and that they

were kept in dark of the proceedings about the said Appeal. However, after much correspondence with the Urban Development Department and the Municipal Corporation it was revealed that the Hon'ble Chief Minister had passed an order dated 6th October 2004 remanding the matter to the Municipal Corporation for re-consideration. As the petitioners were not served with any of the proceedings of the statutory appeal as preferred by the respondent no. 5 and that copies of the documents and the entire correspondence was not being furnished to the petitioners, the petitioners approached this Court in Writ Petition No.1838 of 2008. By an order dated 25th September 2008 passed by the Division Bench the Municipal Commissioner was directed to hear the petitioners as well as respondent nos. 5 and 6, in taking a decision on the application of the respondent no. 5 being decided by the Municipal Commissioner in pursuance of the orders passed by the Hon'ble Chief Minister.

8. Parties accordingly appeared before the Municipal Commissioner by filing their respective written submissions as also various documents were placed for consideration of the Municipal Commissioner. The Municipal Commissioner passed an order dated 24 November 2008 whereby it was held additional rooms with attached toilets and construction of mezzanine floor on the 3rd floor was

unauthorized and the same are required to be demolished.

9. Respondent no.5 being aggrieved by this order of the Municipal Commissioner preferred an Appeal before the Hon'ble Chief Minister under section 47 of the M.R.& T.P. Act. It is the case of the petitioners that the Appeal was filed only in respect of the mezzanine floor which the Petitioners say was clear from the reading of the memo of appeal and the grounds as raised in the appeal which contained no grounds in respect of additional rooms and toilets. The petitioners aver that the Appeal preferred by respondent no. 5 was only on the limited aspect of re-consideration of the three documents so as to ascertain the existence of the mezzanine floors and that the only issue as agitated was the mezzanine floor.

10. On this Appeal the Hon'ble Chief Minister passed an order dated 29th June 2009. The Hon'ble Chief Minister noting the three documents and the case of respondent no 5 in respect of the mezzanine floor held that the appeal was accepted and the impugned order of the Municipal Commissioner dated 24th November 2008 was set aside and directed that the Municipal Commissioner shall re-consider the documents submitted by the respondent no. 5 regarding existence of mezzanine floor,

before 15th August 1997 and process the regularization of mezzanine floor as per revised Development Control Regulations no. 38 (6) and take a decision within two months thereof. The entire controversy in the petition revolves around the fact whether the Hon'ble Chief Minister by this order has at all set aside Municipal Commissioner's order dated 24 November 2008 upholding demolition qua the additional rooms with attached toilets being unauthorized.

11. In pursuance of the said orders passed by the Hon'ble Chief Minister dated 29 June 2009 the Municipal Commissioner heard the parties and passed a reasoned order dated 22 October 2009 holding that the documents submitted by the respondent no.5 before the Hon'ble Chief Minister were not adequate to prove the authenticity of the existence of the mezzanine floor on the third floor prior to 15 August 1997 and the same cannot be regularized as per revised Development Control Regulations.

12. Against the said order dated 22nd October 2009 of the Commissioner the respondent no.5 again approached the Hon'ble Chief Minister in an Appeal under section 47 of the M.R. & T.PAct. The petitioners have contended that despite the grievance of the petitioners

that they were not served with copy of the Appeal, the Hon'ble Chief Minister proceeded with the hearing and passed an order dated 15 July 2010 allowing the appeal and once again remanding the matter back to the Municipal Commissioner for re-consideration of the documents.

13. The Petitioners therefore being aggrieved by the orders dated 15 July 2010 passed by the Hon'ble Chief Minister of repetitive interference and the third successive remand to the Municipal Commissioner approached this Court in writ petition No.1511 of 2010, inter alia seeking quashing of the said order of the Hon'ble Chief Minister as also sought an effective implementation of the demolition notice issued under section 53 (1) of the M.R.& T.P Act dated 18th March 2004. By an order dated 20 April 2011 the Division Bench allowed said Writ Petition setting aside the order dated 15 July 2010 of the Hon'ble Chief Minister and upholding the order dated 22 October 2009 of the Municipal Commissioner holding that the mezzanine floor cannot be regularized as per revised Development Control Regulations 38 (6). The Division Bench made the following observations in allowing the Writ Petition :

"In our opinion, therefore this overwhelming evidence on record negates existence of mezzanine floor before 1997 and therefore, really speaking, there was n room for the State Government to interfere with the order of the Municipal Commissioner. In our opinion, if the respondent no.5 was relying on the documents, it was for him to prove the authenticity of the documents especially in view of the report that those documents are not traceable on the record of the

Corporation In our opinion the State Government was not at all justified in interfering with the order of the Municipal Commissioner. The reason given by the State Government for interfering with the order is unacceptable. In our opinion, the State Government should have considered that admittedly on the third floor, mezzanine floor was put up without getting prior permission of the Corporation though in law obtaining prior permission for putting up the construction was necessary. The State Government should also have taken into consideration the nature of construction. From record, it is clear that the mezzanine floor has been put up on the entire third floor with the result the usable area of the third floor has become double and the entire area is being used for commercial purpose. One can understand that in a small residential flat, a mezzanine floor is created in one of the rooms to increase the usable area without seeking permission but putting up a mezzanine floor to cover the entire third floor and using it for commercial purpose in our opinion has rightly not been regularized by the Corporation. The State Government should have seen that increasing usable area to such an extent and when the entire area is being used for commercial purpose like hotel puts additional burden on already overburdened civil amenities. In the result therefore, the petition will have to be allowed. Petition therefore succeed and is allowed, the order passed by the State Government dated 15th July 2010 is set aside and the order passed by the Municipal Commissioner dated 22nd October 2009 is maintained. Rule is made absolute with no order as to costs.”

(emphasis supplied)

Against this judgment of the Division Bench respondent no.5 preferred Special Leave Petition (Civil) NO.13430 of 2011 before the Supreme Court which came to be rejected by an order dated 13th May 2011.

14. The Petitioners also moved a Writ Petition bearing No.1594 of 2008 seeking a direction that in view of the unauthorized and illegal construction on the 3rd floor by respondent nos. 5 and 6 the licensing authority should take appropriate steps for cancellation and/or revocation of the licence to conduct a hotel on the said premises. By an order dated 2 March 2009 the Division Bench directed the Municipal Corporation

and/or licensing authority not to permit respondent nos.5 to 7 to conduct business of hotel unless the respondent no.7 meets all requirements of the Development Control Regulations and building bye laws. A Review Petition preferred by the respondent no.5 against the said order was also permitted to be withdrawn by an order dated 10th June 2009.

15. After rejection of the Special Leave Petition by the Supreme Court the Petitioners made a representation to the Corporation to execute the notice date 18 March 2004 issued under section 53 (1) of the M.R.& T.P.Act and to demolish the unauthorized additional rooms and toilets and the mezzanine floor. Accordingly, demolition work was initiated on 24th May 2011. When the demolition work was in progress Writ Petition (Lodging) No.1045 of 2011 was preferred by the respondent nos.6 and 7 seeking a stay of the demolition work on the ground that another proposal for regularization has been submitted by respondent nos.6 and 7. This writ Petition came to be dismissed by an order dated 7th June 2011 passed by the Division Bench. The petitioners thereafter made various representations to the Municipal Commissioner to initiate action for demolition and to complete the demolition of the mezzanine floor and additional rooms. However, as no action was being initiated by the Municipal Corporation and according to the petitioners on account of the

Municipal Commissioner's high-handed approach of entertaining subsequent regularization proposals, the petitioners again approached this Court in Writ Petition No.168 of 2012. The Division Bench at the interim stage passed an order dated 6 March 2012 recording a statement of the counsel appearing for the respondent-Corporation that the notice issued under section 53 of the M.R.& T.P Act is executed in part meaning thereby that the entire construction of the mezzanine floor is removed. It was recorded that so far as additional rooms and toilets are concerned regularization application was made by the occupants (respondent nos. 5 to 7) to the Municipal Commissioner and an appropriate decision would be taken by the Municipal Commissioner on the said application expeditiously and in any case within two months, and the same would be produced before the Court on the adjourned date of hearing.

16. Immediately thereafter the Assistant Engineer (Buildings & Proposals) issued a communication dated 22 March 2012 to the Architect of the respondent nos.5 and 7 informing that the Municipal Commissioner had principally approved the proposal for regularization of the additions and alterations and regular approval would be issued only after submission of NOC's as listed in the said letter.

17. Thereafter **the** Division Bench of this Court decided Writ Petition No.168 of 2012 by its judgment and order dated 17th December 2012. The Division Bench set aside the order passed by the Hon'ble Chief Minister dated 15 July 2010 and all communications and/or decisions of the Corporation on the application for regularization made by respondent nos.5 and 6 after the decision dated 18 March 2004 and more particularly after the decision of this Court and the Supreme Court. A serious doubt was raised as to whether the appropriate authority of the Corporation could have entertained the second application for regularization and that too after the decision dated 18th March 2004 of the Corporation, which was upheld by the Division Bench in Writ Petition No.1511 of 2010 as also S.L.P. against the same being dismissed by the Supreme Court. As regards the earlier interim order dated 6th March 2012 the Division Bench clarified by observing as under :

“We are of the opinion that the said order cannot be interpreted to mean that it was open for the Corporation to entertain the second regularization application of respondent nos.6 and 7 even if the law does not permit the Corporation to do so. In fact, our understanding of the said order to which one of us (R.D.Dhanuka, J) was a party is that it has only recorded the statement made by the counsel for the Corporation and not the opinion of the Court as such. In fact it is noticed from the said order that the Court's attention was not invited to the communication dated 18th March 2004 Exhibit D at page 61 at the relevant time which clearly deals with the issue regarding regularization of additional rooms with intended toilets constructed on third floor of the building. As aforesaid, Commissioner may have to consider the controversy on its own merits uninfluenced even by the order dated 6th March 2012 and in accordance with the law keeping in mind the observations made by this Court hitherto.”

The issue was accordingly left to be decided by the Municipal Commissioner as noted in the above observations.

18. Accordingly, the Municipal Commissioner heard the parties on the regularization application and passed the impugned order inter alia observing that, what was concluded up to the Supreme Court was in respect of the mezzanine floor which came to be demolished by the Corporation in the month of November 2011. It was observed that the Hon'ble Chief Minister by his order dated 29th June 2009 set aside the order of then Municipal Commissioner dated 24th November 2008 in toto and remanded the matter for consideration of regularization of mezzanine floor. The issue of regularization of the additional rooms was thereafter agitated and hence the application for regularization namely additional rooms and toilets can be considered and will not amount to review of the earlier order passed by his predecessor. It is recorded that the Municipal Commissioner by his order dated 16th March 2011 granted in-principle approval for regularization for additions and alterations. The operative order of the impugned order of the Municipal Commissioner reads thus :

ORDER

“The proposal for regularization submitted vide application dated 18/07/2011 by the Respondent nos.6 and 7 for additions and alterations at the premises of the Empire Royal Hotel third floor, empire Building, 146, Dr.D.N.Road Fort, Mumbai -400 001 will be processed further by E.E.B.P After the compliance of the condition

is recorded in the letter under No.EB/4855/AA dated 22/03/2012. However, Respondent nos.6 and 7 are hereby directed to demolish the covered portion of the chowk at the third floor on sought side as mentioned in the aforesaid letter dated 22/03/2012 before the regularization proposal is processed.”

19. In assailing the impugned order, learned Senior counsel appearing for the petitioners has made the following submissions:-

(i) The issue as regards additional rooms with attached toilets being unauthorised and consequently requiring demolition, had attained finality in view of order dated 24 November 2008 passed by the Municipal Commissioner upholding the action under Section 53(1) of the MRTP Act.

(ii) The challenge to the order dated 24 November 2008 of the Municipal Commissioner in the statutory appeal of Respondent Nos.5 to 7 before the Hon'ble Chief Minister was limited only in respect of mezzanine floor. This was clear from the reading of the Memo of Statutory Appeal No.4309 /45/CR-75/09/UD-11 and the grounds contained therein which pertain only to the mezzanine floor. The consequent order of the Chief Minister dated 29 June 2009 also clearly records that the appeal was filed in respect of the mezzanine floor only and that the documents which were placed for consideration pertaining to only mezzanine floor, and, thus the



directions as contained in the order dated 29 June 2009 are required to be understood in the context the appeal was filed and considered by the Chief Minister.

(iii) Even if the order of the Hon'ble Chief Minister dated 29 June 2009 records that the appeal is accepted and the impugned order of the Municipal Commissioner dated 24 November 2008 is set aside, the same cannot be understood to mean that the same is set aside in the context of additional rooms with attached toilets inasmuch as the same was neither the subject matter of the appeal nor the subject matter of consideration by the Hon'ble Chief Minister. The operative portion of the order dated 29 June 2009 passed by the Hon'ble Chief Minister cannot be considered de hors the discussions and the reasons preceding the same.

(iv) It is submitted that Respondent Nos.5 to 7 accepted order dated 24 November 2008 passed by the Municipal Commissioner in totality by not raising a challenge in respect of the additional rooms and the toilets in the successive appeals before the Hon'ble Chief Minister. It is urged that this position also becomes clear from the order dated 20 April 2011 passed in Writ Petition No.1511 of 2010 which also pertains only to the mezzanine floor and which order was upheld by the Supreme Court in Special Leave

Petition No.13430 of 2011 filed by Respondent Nos.5 to 7 which came to be rejected by order dated 13 May 2011.

(v) It is urged that the observations in the judgment and order dated 17 December 2012 in Writ Petition no.168 of 2012 are significant inasmuch as the Division Bench has raised a serious doubt as to whether the Corporation could entertain a second application for regularization after the decision dated 18 March 2004 of the Corporation, which was upheld by this Court in the Writ Petition filed by the Petitioners.

(vi) It is contended that the Municipal Commissioner did not have any powers under the MRTP Act to review its order dated 18 March 2004 and entertain the successive regularization application.

(vii) The impugned order in no manner can reopen the issue of regularization of unauthorised additional rooms with intended toilets.

(viii) The counter affidavit as filed on behalf of the Corporation also admits of the said position that Appeal under Section 47 of the MRTP Act filed on behalf of Respondent Nos.5 to 7 against the order dated 29 June 2009 was in respect of mezzanine floor. The averments in paragraph 4(j) in the counter filed by the

Respondent-Corporation are clear to that effect and no other interpretation, therefore, can now be made that Respondent Nos.5 to 7 had not accepted order dated 24 November 2008.

20. On the other hand on behalf of the Corporation, learned Senior counsel made the following submissions :-

(i) The statutory Appeal under Section 47 of the MRTP Act filed by Respondent Nos.5 to 7 before the Hon'ble Chief Minister in fact pertained to the challenge to the entire order dated 24 November 2008 passed by the Municipal Commissioner.

(ii) The operative portion of the order passed by the Hon'ble Chief Minister when it categorically records that the "appeal is accepted and the impugned order of the Municipal Commissioner dated 24 November 2008 is set aside." Thus, there is no impediment for the Corporation to consider the second regularization application as made on behalf of Respondent Nos.5 to 7.

(iii) The order dated 20 April 2011 passed by the Division Bench in Writ Petition No.1511 of 2010 filed by the Petitioners pertained only to the mezzanine floor.

(iv) On the basis of the letter dated 23 August 2011 of the

Petitioners addressed to the Municipal Commissioner and more particularly from the dates and events as set out at item No.11 and 15 it is clear that even the Petitioners had sought action only in respect of demolition of mezzanine floor and not the additional rooms.

(v) It was open to the Corporation to consider the second regularization proposal as submitted by Respondent Nos.5 to 7.

(vi) The impugned order, therefore, does not require any interference by this Court, as the same is legal and valid.

21. Learned Counsel for Respondent Nos.5 to 7 submits that the order dated 29 June 2009 passed by the Hon'ble Chief Minister is clear and unambiguous inasmuch as it has set aside the order dated 24 November 2008 passed by the Municipal Commissioner. It is submitted that the Petitioners had neither asked for clarification of paragraph (1) of the operative portion of the said order nor had the petitioners at any point of time challenged the same. It is submitted that the order dated 20 April 2011) in Writ Petition No.1511 of 2011 is required to be read to pertain only to the mezzanine floor. It is contended that in fact there was change in circumstances after the mezzanine floor was demolished inasmuch as height becomes available for the rooms and, therefore, regularization

surely could be considered in this changed circumstances.

22. Learned Senior Counsel appearing for the Petitioners in rejoinder has taken us through the Appeal Memo as filed by respondent no. 5 before the Hon'ble Chief Minister and more particularly paragraphs 2, 3 and all the grounds in Statutory Appeal no.4309/45/CR-75/09/UD-11, to contend that Respondent Nos.5 to 7 have clearly accepted the order dated 24 November 2008 ordering demolition of the additional rooms and intended toilets. It was urged that in fact the entire proceedings arising out of the order dated 24 November 2008 and the remand order dated 29 June 2009 were in the context of the mezzanine floor. The orders passed by the Statutory Authorities as also the orders passed by the Division Bench of this Court in the earlier round of litigation clearly shows that the same pertain only to mezzanine floor and that Respondent Nos.5 to 7 had given up their challenge to the unauthorised construction of additional rooms with attached toilets and the consequent order of the Municipal Commissioner demolishing the same. Respondent Nos.5 to 7 cannot sub silentio by reference to clause (1) of the operative portion of the order dated 29 June 2009 of the Hon'ble Chief Minister contend that they have succeeded in the appeal and that the order directing demolition in respect of additional rooms with attached toilets has been set aside. (It is

submitted that the observations of the Municipal Commissioner in the impugned order that the earlier order of the Municipal Commissioner dated 24 November 2008 was set “aside in toto” by the Hon'ble Chief Minister in the order dated 29 June 2009 is not correct inasmuch as the order of the Hon'ble Chief Minister does not record that the order dated 24 November 2008 is set aside in toto. It is submitted that the order is required to be read in the context of what is urged in the appeal before the Hon'ble Chief Minister and the appeal cannot be read de hors the subject matter as urged and considered by the Hon'ble Chief Minister.

23. We have heard the learned Counsel for the parties and perused the relevant documents as placed on record with their assistance.

24. The issue which falls for our consideration in the facts of the case would be :

(i) Whether a second regularization application could have been made by Respondent nos.5 to 7 in regard to the additional rooms and the toilets in question;

(ii) Whether the order dated 24 November 2008 passed by the Municipal Commissioner inter alia ordering demolition of the additional rooms alongwith toilets was accepted by Respondent Nos.5 to 7 so as to preclude Respondent Nos.5 to

7 from agitating the same in a subsequent regularization application.

(iii) Whether by the impugned order dated 24 January 2013 the Municipal Commissioner could have directed that the proposal of Respondent Nos.5 to 7 for regularization of additional rooms and attached toilets on the third floor of the said premises be processed further by Executive Engineer (Building & Proposal);

25. It is an admitted position that a notice under Section 53(1) of the MRTP Act dated 10 October 2003 came to be issued to Respondent Nos.5 to 7 informing Respondent Nos.5 to 7 that they had carried out work of a mezzanine floor and additional rooms with attached toilets on the third floor, contrary to the approved plans. Respondent Nos.5 to 7 were called upon to restore the work as per the approved plans failing which Respondent Nos.5 to 7 were to be liable for prosecution and also for demolition. After receipt of this notice dated 10 October 2003, respondent Nos.5 to 7 resubmitted plans for approval to the Executive Engineer (Building and Proposal) in regard to the mezzanine floor and additional rooms. The Executive Engineer (Building & Proposal) by communication dated 18 March 2004 rejected the proposal to approve the



amended plans for mezzanine floor and the additional rooms with intended toilets. It appears that in the meantime Respondent Nos.5 to 7 moved a regularization application before the Municipal Commissioner seeking to regularise the mezzanine and additional rooms. As the said application was kept pending and was not being decided, the Petitioners had approached this Court in Writ Petition No.1838 of 2008 in which by order dated 25 September 2008 this Court directed the Municipal Corporation to decide the regularization application. The Municipal Commissioner after hearing all the parties and considering the documents as placed on record in the regularization application as filed on behalf of Respondent Nos.5 to 7, passed an order dated 24th November 2008. The operative order reads thus :-

“

ORDER

I have heard the above parties and also gone through the file papers available with the Building Proposal Department and discussed the matter with my Officers. I have come to the conclusion that there was no existing mezzanine on 3rd floor of the building. From the papers, it is seen that during the course of repairs, occupiers of the 3rd floor has constructed mezzanine floor and additional rooms with attached toilets on 3rd floor. All the additional rooms with attached toilets and mezzanine floor constructed on 3rd floor are unauthorized and same has to be demolished as per provision of M.M.C. Act and M.R. & T.P Act. The action has already been taken by M.C.G.M. u/Sec.53(1) of M.R. & T.P.



Act 1966 and the same will be pursued further. However, as stated in the order of Hon'ble High Court, demolition action will not be executed so long as injunction order/ stay order issued by Bombay City Civil Court in the Suit No.1517 of 2004 is in force.

Sd/-

Municipal Commissioner”

26. Respondent Nos.5 to 7 being aggrieved by the above order dated 24 November 2008 of the Municipal Commissioner moved a statutory Appeal under Section 47 of the MRTP Act before the Hon'ble Chief Minister, State of Maharashtra. We have perused the appeal memo and the grounds as set out therein which clearly reveal that the subject matter and the scope of the appeal was only in regard to the mezzanine floor. There are no grounds whatsoever raised in regard to the additional floors and attached toilets. Further, we find that there was no material placed on record justifying the legality of the additional rooms and attached toilets in question even if it is assumed that the appeal was filed in respect of additional rooms and the toilets. If Respondent Nos.5 to 7 were to be aggrieved by the findings as recorded in respect of the additional rooms and the attached toilets in the order dated 24 November 2008, surely the appeal would have contained specific grounds to assail such findings as made by the Municipal Commissioner. However, neither any material is placed to show that the additional rooms and the attached

toilets, would be required to be considered legal nor any specific ground are urged in the Appeal Memo as regards the additional rooms and attached toilets in question.

27. It is quite clear that the Hon'ble Chief Minister also considered the appeal as stood before him and only in the context of the mezzanine floor. This is clear from the very first paragraph of the order dated 29 June 2009 passed by the Chief Minister which categorically records that '*the appeal under Section 47 of the MRTP Act is in respect of mezzanine floor in Empire Royal Hotel, Empire Building, D.N.Road, Fort, Mumbai.*' Further the discussion and observations in the order also go to show that there is no issue specifically urged in respect of the additional rooms and toilets. What was urged in the appeal was in respect of three documents which were in the context of the mezzanine floor and to show that the mezzanine floor was in existence. There was no other material concerning the additional rooms and thus, the Hon'ble Chief Minister considering the case of Respondent Nos.5 to 7 only in respect of these three documents pertaining to the mezzanine floor made the following observations which are necessary to be noted:-

“Accordingly, I am of the opinion that the Municipal Commissioner while passing impugned order has not considered BMC's own records about the mezzanine

floor and therefore, the said order need to be set aside. Accordingly, I pass following order:-

“ ORDER

1) Appeal is accepted and impugned order of Municipal Commissioner dated 24/11/08 is set aside.

2) The respondent shall consider the documents submitted by the appellant regarding existence of mezzanine floor before 15/8/97 and process regularization of mezzanine floor on 3rd floor of M/s.Empire Royale Hotel, Empire Building, Fort, Mumbai, as per revised Development Control Regulation 38(6) and take a decision within 2 months of this order.

Place: Mumbai

sd/-

Date:29th June,2009

(Ashok Chavan)

Chief Minister of Maharashtra”

(emphasis supplied)

A conjoint and plain reading of the above paragraphs of the order passed by the Hon'ble Chief Minister (which we have underlined) makes it very clear that the order dated 24 November 2008 was set aside only in respect of the mezzanine floor. Clause (1) of the operative portion of the order is required to be read with the preceding paragraph wherein the Hon'ble Chief Minister has categorically recorded that the Municipal Commissioner while passing the order dated 24 November 2008 has not considered the Corporation's own record about the mezzanine floor and, therefore, he is setting aside the order in that regard. Clause (2) of the operative portion also makes it abundantly clear that the Municipal Commissioner is directed to reconsider the documents submitted by

Respondent Nos.5 to 7 regarding existence of mezzanine floor before 15 August 1997 and accordingly process regularization of mezzanine floor by taking a decision thereon. It is, therefore, clear that when Clause (1) of the order of the Hon'ble Chief Minister (supra) records that the appeal is accepted and the order dated 24 November 2008 passed by the Municipal Commissioner is set aside, it would mean that the same is set aside only in respect of the mezzanine floor and not in respect of the additional rooms and attached toilets which was not the subject matter of the appeal nor the subject matter of any consideration or material as placed for consideration in the statutory appeal before the Hon'ble Chief Minister. We are, therefore, of the clear opinion that the issue as regard the additional rooms and attached toilets as declared to be unauthorised and illegal in the order dated 24 November 2008 stood accepted by Respondent Nos.5 to 7.

28. Further it can be very well seen that after the remand by the Hon'ble Chief Minister, the Municipal Commissioner reconsidered the matter only in respect of mezzanine floor and by his order dated 22 October 2009 held that the documents submitted by Respondent Nos.5 to 7 were not adequate to prove the authenticity of existence of mezzanine floor and hence, same cannot be regularised as per the Development Control Regulations. Here also it is clearly seen that the issue was



pertaining to mezzanine floor and not the additional rooms with attached toilets as also the same was not agitated. The same is the position again when Respondent Nos.5 to 7 approached in a statutory appeal before the Hon'ble Chief Minister, the issue which was raised was of the mezzanine floor and it can be seen from the order dated 15 July 2010 that the Hon'ble Chief Minister again remanded the matter to the Municipal Commissioner only qua the mezzanine floor and to take a decision on regularization of the mezzanine floor. Nevertheless this order which was a third indulgence granted to Respondent Nos.5 to 7 by the Hon'ble Chief Minister, was assailed in Writ Petition No.1511 of 2010 and in the Judgment dated 20 April 2011 of the Division Bench of this Court, the order dated 15 July 2010 of the Hon'ble Chief Minister was set aside and the order dated 22 October 2009 holding the mezzanine floor to be illegal was maintained. A perusal of this order makes it clear that the orders dated 24 November 2008 of the Municipal Commissioner declaring additional rooms and attached toilets to be unauthorized and illegal requiring them to be demolished remained undisturbed even in the second round before the Municipal Commissioner in the order dated 22nd October 2009. The Special Leave Petition preferred before the Supreme Court by Respondent Nos.5 to 7 against the order dated 20 April 2011 passed by the Division Bench also came to be rejected by the Supreme

Court by order dated 13 May 2011. Further also by an order dated 2 March 2009 passed in Writ Petition No.1594 of 2008 the Division Bench directed the Municipal Corporation and the Licensing Authority not to permit Respondent Nos.5 to 7 to conduct business of hotel unless Respondent No.5 would meet the requirement as per the Development Control Regulations and bye laws.

29. It would be pertinent to note the observations of the Division Bench of this Court in its order dated 17 December 2012 in Writ Petition No.168 of 2012 regarding the stand of the Corporation that as the earlier proceedings pertained only to the mezzanine floor and that the Corporation was competent to entertain the second application for regularization. A serious doubt was expressed by the Division Bench as regards the said contention of the Corporation. In fact, the Division Bench observed that if at all such second application was pending for regularization qua additional rooms and attached toilets then the Municipal Corporation will have to consider at the outset whether it was open to the authorities to entertain the second application and that to the decision dated 18 March 2004 of the Corporation which was upheld by the Division Bench of this Court by an order dated 24 April 2011 in Writ Petition No.1511 of 2010 and which was confirmed by the Supreme Court by dismissal of Special Leave Petition of Respondent Nos.5 to 7. It was



further observed that even if it was assumed that the additional rooms and attached toilets were not the subject matter of the proceedings before the High Court and the Apex Court, whether the respondent – Corporation could review the decision dated 18 March 2004 in the absence of any express power of review by entertaining successive application filed on behalf of Respondent Nos.5 to 7. Another facet which is required to be noted from this order is the contention of the Corporation on the basis of the interim order dated 6 March 2012 passed in the very same petition asserting that it was open to the Corporation to consider the successive second regularization application. The Division Bench in paragraph 5 categorically recorded that in the order dated 6 March 2012 the Division Bench has recorded only a statement on behalf of the Counsel for the Corporation to contend that the issue regarding additional rooms and intended toilets was kept open and would be decided by the Authority on its own merit and it was in no manner the order of the Court accepting the position that whether any such application could be held to be maintainable. The Division Bench rejected such interpretation to the order dated 6th March 2012 as considered by the Corporation. This is clear from the observations of the Division Bench as noted in paragraph 5 which we have already noted (*supra*).

30. Considering the facts of the case, we feel certain that

Respondent Nos.5 to 7 had given up their rights in totality to assail order dated 24 November 2008. The several proceedings which are taken out on behalf of Respondent Nos.5 to 7 after the order dated 24 November 2008 came to be passed by the Corporation, clearly go to show that unauthorized construction of additional rooms and the toilets was never assailed. The issue had attained finality in view of the order dated 18 March 2004 confirmed by the order dated 24 November 2008 passed by the Municipal Corporation which accepted that the additional rooms and intended toilets on the mezzanine floor on the third floor of the premises in question were unauthorized and illegal and were required to be demolished. This position was not assailed by Respondent Nos.5 to 7 in the subsequent proceedings and thus as observed above the entire scope of the subsequent proceedings was the mezzanine floor. Respondent Nos.5 to 7, therefore, could not have taken a reverse position to reopen the issue under the garb of successive regularization application. The contention on behalf of Respondent Nos.5 to 7 that the order dated 24 November 2008 was set aside by the Hon'ble Chief Minister by the order dated 29 June 2009 is also unfounded, inasmuch as the construction of additional rooms and toilets was not the subject matter of the appeal. Therefore, what was not the subject matter of the appeal cannot be attributed to be a subject matter of the operative portion of the order

dated 29 June 2009. In view of this clear position on facts, the Respondent Nos.5 to 7, in our opinion, could not have reopened the issue by filing a regularization application once it had become final in view of order dated 24 November 2008 passed by the Corporation. If the contention raised on behalf of Respondent Nos.5 to 7 is to be accepted, then finality of the proceedings under the MRTP Act could never be achieved as also no sanctity would be left to such orders as passed under the Act. This definitely is not the intention of the Legislature. The rights which accrue to the parties can very well be given up by the parties by their own volition, conduct and actions. This is a case where Respondent Nos.5 to 7 acquiesced in the order dated 24 November 2008 qua the additional rooms and toilets. No other inference can be drawn looking at the legal proceedings adopted by Respondent Nos.5 to 7 before the second regularization application in question came to be filed. Respondent Nos.5 to 7 cannot at their whims and fancies and at their convenience take recourse to statutory remedies, overlooking their earlier actions and the consequences of the orders passed against them. Thus, taking into consideration these facts making a second regularization application after having not agitated the issue in that regard in the earlier proceedings, in our opinion, was impermissible in law. The Municipal Commissioner could not have entertained the said application overlooking these

glaring facts as we have noted above. The observations as contained in paragraph 13 of the order passed by the Municipal Commissioner, therefore, in our opinion, are inappropriate nay perverse and completely overlook the factual position that Respondent Nos.5 to 7 had accepted the earlier order dated 24 November 2008 passed by the Municipal Commissioner. The Municipal Commissioner has also misread the order passed by the Hon'ble Chief Minister dates 29 June 2009.

31. We may also note the observations of the Municipal Commissioner in paragraph 14 of the impugned order which record that the then Municipal Commissioner vide his order dated 16 March 2012 had granted in-principle approval for regularization of additions and alterations in respect of the said premises and that the said order was already communicated by a letter dated 22nd March 2012. In making these observations the Municipal Commissioner has completely overlooked the binding observations of the Division Bench of this Court in its Judgment dated 17 December 2012 whereby the Division Bench observed and directed in paragraph 4 as under :

“ For the time being, we are inclined to quash and set aside all the communications and/or decisions of the Officers of the Corporation on the application for regularization made by respondent nos.6 and 7 after the decision dated 18th March 2004 Exhibit D at page 61 and more particularly after the decisions of the High Court and of the Apex Court upholding

the said order of the Corporation.”
(emphasis supplied)

The Municipal Commissioner therefore, in any event could not have taken into consideration the order of the Municipal Commissioner dated 16 March 2012 in view of the above categorical directions of the Division Bench that the said decision/order of the Municipal Commissioner would stand set aside. Admittedly, the in-principle approval dated 16 March 2012 as referred by the Municipal Commissioner is not on the second regularization application. Thus looked from any angle the impugned order cannot be sustained.

32. Apart from what we have observed above, there is no dispute that order dated 24 November 2008 of the Municipal Commissioner was a quasi judicial order. We have come to a conclusion that this order qua additional rooms and toilets was not assailed and was not the subject matter of the various proceedings before the authorities, this Court and the Supreme Court and thus qua the additional rooms and the toilets being illegal was not disturbed and continued to remain in operation. If this is the situation, then a question would arise as to how the same can be reviewed by the Municipal Commissioner. The Division Bench in its order dated 20 April 2011 in Writ Petition No.1511 of 2010 had made

specific observations raising serious doubt as to whether the action of the Corporation in entertaining a second regularization application would not amount to review of the order dated 28 November 2008 and whether such a review as permissible. The learned Counsel for the Respondents have not drawn our attention to any provision which would confer power with the Municipal Commissioner under the MRTP Act to review an earlier decision taken under Section 53 of the MRTP Act. It is now well established that quasi judicial authority cannot review its own order, unless the power of the review is expressly conferred on it by the statute. The power of review is not an inherent power, it must be conferred by law either by specifically or by necessary implication. **(Refer: AIR 1987 SC 2186, (Dr.Smt.Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) & Ors.).**” In our opinion, though the Municipal Commissioner has observed that the impugned order would not amount to a review, the Municipal Commissioner has in fact reviewed the earlier order dated 28 November 2008 without any power to review the same under the MRTP Act. On this count also the impugned order is rendered illegal.

33. We may also observe that the unauthorized construction in question is in a heritage building. Any addition or alterations in a heritage building

would necessarily have far reaching implications to its structural stability and the safety of the occupants therein. Therefore, as a matter of legal requirement and necessarily any additions or alterations are required to be undertaken only after obtaining prior permission from the authorities concerned and only after such permission is granted, additions or alterations can be carried out. In the present case, as noted above, large additions and alterations are done and that too without a prior permission, of which regularization was sought. We cannot overlook this aspect of the matter. On a perusal of the impugned order, we are of the clear opinion that the nature of the premises being a heritage building and such peculiarity of the premises has completely missed the attention of the Municipal Commissioner and/or there is no application of mind in this regard in passing the impugned order.

34. In the light of the above discussion, we have no hesitation to allow the writ petition. Writ petition is accordingly allowed in terms of prayer clauses (a) and (b) of the Petition. No order as to costs.

35. At this stage, learned Counsel appearing for Respondent Nos.5 to 7 seeks stay of the effect and operation of the judgment. Though the facts do not justify delaying the removal of unauthorised constructions which is in heritage building, we are of the opinion that the request as made on behalf of Respondent Nos.5 to 7 be granted. Accordingly, the

effect and operation of the Judgment is stayed for a period of six weeks from today.

(G.S.Kulkarni, J.)

(Anoop V. Mohta, J.)

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