(2014) 1 ABR 741 : (2014) 2 ALLMR 30 : (2014) 3 MhLj 167

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 4045 of 2005

Ahmednagar Municipal Corporation		APPELLANT
	Vs	
The State of Maharashtra		RESPONDENT

Date of Decision: Dec. 10, 2013

Acts Referred:

- Bombay Provincial Municipal Corporations Act, 1949 - Section 263
- Constitution of India, 1950 - Article 226

Citation: (2014) 1 ABR 741 : (2014) 2 ALLMR 30 : (2014) 3 MhLj 167

Hon'ble Judges: Ravindra V. Ghuge, J; B.P. Dharmadhikari, J

Bench: Division Bench

Advocate: P.M. Shah and Mr. Mukul Kulkarni, for the Appellant; S.K. Tambe, Assistant Government Pleader for respondent nos. 1 and 3, Mr. A.P. Bhandari, Advocate for respondent no. 2 and 4 and Mr. R.R. Mantri, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

B.P. Dharmadhikari, J.
Petitioner Municipal Corporation-a local authority constituted & functioning under the Bombay (Maharashtra) Provincial Municipal Corporations Act, 1949, (hereafter 1949 Act & earlier known as Bombay Provincial Municipal Corporation Act) in this petition under Art. 226 of the Constitution of India has sought the following reliefs:-

i) a direction or writ to restrain the Respondents from developing the final plot no. 194 located at Scheme 3 known as Wadia Park in derogation of the government resolution dated 8.2.2002 & Maharashtra Regional & Town Planning Act, 1966, hereafter referred to as 1966 Act. (prayer A in writ petition)

ii) to restore said final plot in possession of Petitioner. (Prayer B)

iii) to demolish the shopping plazas i.e. buildings A & B or to hand over those buildings to Petitioner for putting it to permissible use. (Prayer B-1)

iv) to restrain the Respondents or those claiming through them form putting the shopping plaza A & B or the periphery of the main building to any commercial use till occupancy certificate as per S. 263 of the Bombay Provincial Municipal Corporation Act. (Prayer B-2)

v) to demolish or remove the basement, ground floor, mezzanine cum first floor i.e. two level shopping in the periphery of the main stadium building & to restore the construction as per approved building plan dated 10.11.2001. (Prayer B-3)

vi) to direct Respondents to evict Respondent 5 by removing its corporate office in about 370.05 Sq. Mtrs. Area in southern side of the stadium near badminton hall and to put it to use as part of stadium. (Prayer B-4)

vii) to direct Respondents to remove the shops constructed in the space meant for entrance of stadium on western side between Sector I & II ad measuring about 120 Sq. Mtrs. & to restore said entrance. (Prayer B-5)

viii) interim payer to restrain the Respondents from further developing the site in derogation of the government resolution dated 8.2.2002 & Maharashtra Regional & Town Planning Act, 1966. (Prayer C)

ix) to deliver to Petitioner the possession of final plot no. 194 located at Scheme 3 known as Wadia Park continuing with the Respondents in derogation of the government resolution dated 8.2.2002. (Prayer D)

x) to direct the respondents to enforce compliance with the directions or writs issued or to permit the Petitioners to execute it & to reimburse the expenditure incurred. (Prayer B-6).

Writ Petition with prayers A to D came to be filed on 6.6.2005 while Prayers B1 to B6 came to incorporated as per Court orders dated 4.7.2012. Prayers E to G in Petition are consequential and hence, have not been stated above.

Petitioner was earlier a Municipal Council constituted as per the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965. Respondent 1 is the State of Maharashtra while Respondent 3 is the Collector of Ahmednagar district. Respondent 2 is the public trust registered under the Bombay Public Trust Act as per the policy of Respondent 1 with a view to manage the sports center on final plot 194 while Respondent 4 is its Chairman. It is also a District Sports Committee. The Respondent 1 State has nominated the trustees on said trust. Respondent 5, the registered partnership firm undertaking the development of the subject sports center as per its concession agreement with the Respondent 2, has been added as party on 12.9.2007.

2. This Court has on 12.9.2007 passed interim orders & directed the parties to maintain status quo regarding the shops forming part of commercial complex as on that day. Respondent 5 filed Civil Application 10151/2009 for vacating it. Order of this Court dated 21.12.2010 rejecting said prayer was questioned by the Respondent 5 developer in SLP (civil) 9466/2011 & while refusing to interfere, the Hon. Apex Court expected this Court to make all endeavours to decide the main writ petition at the earliest. Accordingly, We have heard Sr. Adv. P.M. Shaha with Adv. Mukul Kulkarni for Petitioner, Shri Suryawanshi, learned AGP for Respondents 1 & 3, Shri Bhandari for Respondents 2 & 4 and Adv. Mantri for Respondent no. 5 developer.

3. Shri Shaha, learned Sr. Adv. points out that Respondent no. 2 is established as per Government Resolution dated 16.11.1998 and registered as a public trust vide S/F/6670 (A" Nagar) dated 28.2.2002 under the Bombay Public Trusts Act. Respondent 3 Collector is made the ex-officio Chairman of the Respondent 2 Trust. The suit property i.e. final plot 194 in development plan (DP here after) of Ahmednagar ad measuring about 83,322.05 Sq. Mtrs. at scheme no. III, Chawrana (Bk) known locally as Wadiya Park which had a badminton hall & a pavilion etc. is earmarked for stadium & sports complex. On 29.9.1998, vide resolution no. 24, Petitioner resolved to construct a sports complex. Construction was to be through Respondent 2 District Sports Committee i.e. Trust. Condition no. 5 of the model terms prescribe that the control over such stadium & sports center has to vest with Respondent 2 Trust. This condition was specifically not accepted by Petitioner & it resolved to vest administrative control with a committee of its President, Vice-president, members of the Standing Committee & the President of the sports committee of the then Ahmednagar Municipal Council. Thereafter, the above policy decision dated 16.11.1998 was taken by Respondent 1 State & then Respondent 2 Committee (Trust) came to be constituted for Ahmednagar. A registered agreement was then executed between Petitioner & Respondent 2/3 on 22.9.1999 and suit property came to be transferred to Respondent 2. According to Petitioner, the terms & conditions in GR dated 16.11.1998 & resolution of Petitioner dated 29.9.1998 came to be adopted as part of this agreement. On 25.9.2001, Respondent 2 applied for permission to develop with a map & it was granted by the Petitioner vide order dated 1.10.2001 subject to fulfillment of its terms and conditions.

4. Adv. Shaha urges that Respondent 1 State then issued GR dated 8.2.2002 & allowed Respondent 2 to proceed through the schemes of Finance, Build, Transfer (FBT) & Build, Operate & Transfer (BOT) only in case of Petitioner. Similarly, it permitted commercial user also contrary to the reservation in DP under 1966 Act. Said GR also envisages execution of a memorandum of understanding (MOU) between Petitioner and Respondent 2/3 finalizing the terms & conditions of development and approval thereto by the Director, Youth & Sports, Government of Maharashtra. But no such MOU is ever executed. The terms & conditions are never settled & Respondents deliberately avoided the MOU. The Respondent 3 on 10.12.2003 moved an application seeking permission to construct as per fresh plan and memo of petition discloses that said request is still

pending. On 24.2.2004, an inspection was conducted by Petitioner & it learnt that Respondent 2 was unauthorizedly constructing a basement in the complex. Petitioner on 26.2.2004 issued a notice to stop it under 1966 Act as also under BPMC Act and called upon the Respondent 2 to pay development charges of Rs. 28,12,766/- as per S. 124 of 1966 Act. The notice was totally ignored & on 2.6.2004, Respondent 2 sought partial permission from the Petitioner with assurance to pay the development charges after same are determined by the Respondent 1 State. The "development body" of the Petitioner in meeting on 28.5.2004 resolved not to grant revised or fresh permission after noticing violation of general body resolution dated 29.9.1998, GR dated 16.11.1998 & 8.2.2002. General Body of Petitioner vide resolution no. 35 dated 20.11.2004 resolved to take back the suit property and constituted a committee consisting of Mayor, Commissioner, Deputy Municipal Commissioner, District Sports Officer and Town Planner. But the District Sports Officer who is secretary of Respondent 2 chose not to cooperate & kept away. On 6.1.2005, a notice pointing out numerous breaches was issued to Respondents 2 & 3. Thereafter, the writ petition came to be filed as Respondents 1 to 4 did not discontinue the unauthorized construction. Petition has been further amended to place the relevant developments date wise on record. Those events & dates have a bearing on the defence of deemed sanction raised by the Respondent 5. Hence, we feel it appropriate to refer to those details while discussing this defence little later.

5. Petitioner argues that as plot no. 194 has got DP reservations notified as cite no. 165 & 166. Reservation 165 is for stadium & sports complex while site no. 166 is meant for park. Thus. Commercial exploitation is totally prohibited. S. 2(2) of 1966 Act defines Amenity & it covers the sports complex. Hence, without proper modification either through S. 22A or S. 37 thereof, the shopping plazas can not be erected. The modification proposed vide EP 44 is rejected & in any case not approved by the Respondent 1 State Government. Hence, construction of two independent commercial buildings vide plaza A & B is not legal & those two structures must be demolished. He invites attention to the approved plan dated 1.10.2001 to submit that this is the only sanctioned building plan, revised permission is dated 10.11.2001 & any construction in its violation must be declared illegal & demolished. The place at which the commercial complexes i.e. building A & B have been built are earmarked for parking in the stadium cum sports center complex & hence, its other user can not be condoned. He also states that highhandedly, without obtaining the occupancy certificate, buildings have been occupied & put to commercial user also. Approved plan does not permit any basement but the same has been constructed illegally. The sanctioned plan allows 126 shops to be housed at circumference of the stadium in between its two outer walls i.e. at periphery. The Respondents have constructed about 252 shops by varying the size & area of the sanctioned shops & by increasing the number of floors., shops are provided in two tiers i.e. floors in periphery of stadium abutting Tilak Road. The approved entrance door of stadium is also closed to adjust these shops. Respondent 5 firm has also occupied huge area for its Corporate office. All these deviations are without any approval/sanction as required by law. Same

also are beyond the regularization & not compoundable. Inconsistent stand of the Respondents in correspondence or then in statutory appeal under S. 47 is also highlighted. The defence of "deemed sanction" is erroneous. He points out how Respondents were seeking sanction even on 13.5.2004 & 29.4.2005. Other dates & developments are also pressed into service to rebut said defence.

6. Adv. Shaha states that the Respondents nowhere specifically plead completion of project & in affidavit dated 21.7.2005, Respondent 2 has stated that construction is about 95% complete. He further contends that demand of the development charges or its payment does not & can not imply sanction to the unauthorized structure. Respondent 2, being a public trust, can not invoke S. 58(2)(i) of 1966 Act. It already resorted to S. 44 of said Act & has also filed an appeal under S, 47 thereof challenging the rejection of occupancy certificate on 30.9.2005 by Petitioner. Assistance is also taken from S. 45(5) & S. 46 to buttress the contention. The concession agreement dated 7.9.2003 entered into by Respondent 2 & Respondent 5 is not binding upon the Petitioner. Even otherwise, the shopping plaza on plot A & B was to be approved by the Petitioner as per DC Rules & Respondents could not have proceeded to construct it in its absence or in the face of objections thereto. Communication dated 31.10.2005 sent by Respondent 2 to Petitioner to persuade it to sign MOU is also relied upon. Complaint made by Respondent 2 to Chief Minister on 31.10.2005 about sanction-rejection dated 1.10.2005 by Petitioner & rejection of occupancy certificate dated 20.10.2005 is also read out. Learned Adv. Points out that after 10.11.2001, all subsequent steps in the matter are unilateral by Respondent 2 & without taking Petitioner in confidence. The stand of Respondent 4 in reply affidavit dated 30.7.2012 that ownership lies with it is also assailed as contrary to basic understanding between the Petitioner & Respondents 1 to 4 & schedule A with GR dated 16.11.1998. The Petitioners got knowledge of role of Respondent 5 only on 12.9.2007 when this Court passed orders of status quo. He has invited attention to letter dated 3.1.2006 pointing out the extent of unauthorized commercial construction by the Respondents.

7. Judgments at Esha Ekta Apartments Co-operative Housing Society Ltd. and Others Vs. Municipal Corporation of Mumbai and Others, --Manohar Joshi vs. State of Maharashtra, Ghanshyam Harwani and Others Vs. State of Maharashtra and Others, , Vithal Ramchandra Devkhar and Another Vs. State of Maharashtra and Others, & Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood and Others, are heavily relied upon by him to support the prayers.

8. Shri Mantri opened the arguments for Opponents. Arguing for Respondent 5 Developer, he submits that the Petitioner has got various powers & instead of putting the same to use, with oblique motive, present writ petition came to be filed that too belatedly. According to him the discussions in the meetings of Petitioner are sufficient to show its ulterior motive. On surmises, huge profits have been found possible and Petitioner, ignoring the FBT nature of contract, demanded 25% share in profits or then part of property itself. Feigning ignorance of the developer agency i.e. the Respondent 5 firm, writ petition was filed after undue delay and interim order was obtained almost after 2.5

years. This was only to put Respondent 5 who by then had invested huge amounts in the project, in problem. Letter dated 11.6.2004 & 3.1.2006 sent by the Petitioner to developer are relied upon to substantiate the bad faith. Resolution no. 5 of the general body of the Petitioner in meeting dated 20.11.2004 is read out to show that on that day Petitioner was aware of BOT development & permission given by the State to use 1/3rd of the available area for commercial purpose. It also notices that Mayor was/is managing committee member of Respondent 2 Trust. Approved plan does not show that shopping plaza i.e. building A & B have come up at parking place. The parking shown in it is only for 10 to 12 cars while building A & B have come up at place earmarked for fountain. Permission granted initially is only tentative and final permission is to be granted after the Respondent 2 submits "work done" plan. Fresh plan submitted is still pending & these assertions in paragraph 7 of the additional reply affidavit of Respondent 5 have remained uncontroverted. He contends that perusal of relevant Development Control Rules i.e. DCR is essential, if controversy as alleged, is to be adjudicated upon but the Petitioners have not even touched that facet.

9. Our attention is drawn to paragraph 9 of CA 10151 of 2009 to show how the deemed permission in terms of S. 48(4) of the 1966 Act resulted in June, 2004 when the plans submitted on 2.6.2004 & 11.6.2004 were kept pending without any action by the Petitioner. Huge area of 5285 Sq, Mtrs. is still available for parking. The law does not prohibit commercial user where reservation is for sports center or stadium. Similarly, the exact requirement of parking area or permissible commercial area can not be worked out as the Petitioner has not brought on record necessary data & law. Plea in paras 28 to 30 is pressed into service to show the specific defence already raised on these lines & to demonstrate loss sustained by Respondent 5. He invites attention to letters dated 1.10.2001 & 20.4.2004 sent by the Petitioner permitting construction of shops, offices etc. i.e. commercial user. Reply dated 31.1.2005 sent by Respondent 1 to Petitioner is also relied upon. This direction of State Government was acquiesced by accepting the proportionate development charges & as such, estoppel bars Petitioner from raising an objection to commercial user & to operation of S. 58 of 1966 Act. He invites attention to pleadings in paragraph 17-VII(a) & (b) of the writ petition to urge that there is admission of commercial user. No entrance or its part is blocked & he adds that if any such entrance door is blocked, Petitioner can force it open without any opposition on part of the Respondent 5. Constructed space available for use has been occupied by said Respondent for its corporate office as per law. Letter dated 3.1.2006 sent by Petitioner is pressed into service to show the knowledge of completion of construction, commercial user & malafides actuating the belated approach to this Court. He also states that the documents demanded either on 15.1.2004 or 30.9.2005 can not be supplied to the Petitioners as the revised plans sent by Respondent 2/5 are still pending. Resolution 1 dated 28.5.2004 of the General Body of Petitioner confirming partly the earlier proceedings dated 20.2.2004 & 31.3.2004 are criticized in this background as without any apparent reasons. S. 46 of 1966 Act casts an obligation upon the Petitioner & the revised plans submitted to it by the Respondents are not examined in the light of DCR provisions

& compoundability. Modifications sanctioned by the State Government in second revised DP of excluded part of Ahmednagar show that the proposal to club site 165 & 166 together as one site for stadium, sports complex & shopping center is still pending. Pending Appeal under S. 47 of 1966 Act read with S. 53(3), in this situation does not permit the Petitioner to remove any part of the construction. He also argues that application of S. 58 r/w S. 124F of 1966 Act is also a material aspect which needs to be examined. All these issues having direct bearing on the prayers made in the writ petition are being looked into by the competent authorities as per statutory scheme & till then no cognizance of the prayers made can be taken. Lastly, he points out that the ultimate purchasers who are owners of the shops or other parts/portions of the construction are not joined as parties before this Court, and hence, none of the prayers in memo of writ petition can be granted in their absence.

10. Adv. Bhandari on behalf of Respondent 2 & 4 states that on 4.7.2008, the Respondent 1 sanctioned E.P. Nos. 1 to 43 & 45 to 62 while the E.P. 44 is still under consideration. Municipal Council, Ahmednagar on 29.9.1998 resolved & accepted the commercial user i.e. shopping complex. The GR dated 16.11.1998 no where bars the shopping complex & on the contrary, it emphasizes importance of S. 58 of 1966 Act in the matter. The role of State Government & agreement dated 21.2.1999 being subject to State approval, absence of any term empowering the Petitioner to resume back the land, permission dated 1.10.2001 for shops & offices, approval dated 8.2.2002 by the State to user of part of area for commercial purpose, submission of revised maps/plans on 10.12.2003, no decision on it within 60 days by the Municipal Council & defence of deemed sanction are the important aspects according to learned Counsel. Respondent 2 on 7.7.2004 informed the resulting deemed sanction & intention to proceed with the construction to Petitioner. He also points out GR dated 24.2.2003 allowing commercial user of the 1/3rd area of final plot no. 194 is 83,322.05 Sq. Mtrs. Existing construction is on 1,35,000/- Sq. Ft. only. The approved plan dated 10.11.2001 also shows that shops are allowed to be constructed. Initial permission is for 60,000 Sq.ft. while the building A & B are 41,102 Sq.ft. only. Resolution of Petitioner dated 20.11.2004 shows its knowledge of BOT nature. He relies upon the resolution dated 29.7.2004 of the Special Committee of the Petitioner to show how it acquiesced in the structure & demanded 25% of the proposed 252 shops. The legal notice issued by the Petitioner also does not show alleged violation of DP as the ground. Communication dated 15.1.2004 sent by the Petitioner to Respondent 2 reveals that decision could not be reached & application of Respondents was kept pending. Earlier resolution & proceedings dated 20.2.2004 are relied upon to urge that burden of dealing with earlier occupiers & their court cases was also placed upon Respondent 2 & 4 only. Letter dated 20.4.2004 by Petitioner to State about mixed user, demand of development charge accordingly and direction of State to charge proportionate development charge are used to discredit the Petitioner. Adv, Bhandari submits that communication dated 20.10.2005 is the first disclosure of rejection of building permission on 1.10.2005. He also invites attention to paragraph 10 of the affidavit reply of Respondent 1 to show plea of deemed permission after 60 days from submission

of fresh plan on 10.12.2003 as said request is stated to be still pending by the Petitioner. Stand of Respondent 1 that 90% construction work is over & it is as per State policy is also pressed into service. Permission given by the Chief Officer of Municipal Council, Ahmednagar on 10.11.2001 sanctions shopping complex also. Direction of State Government dated 16.3.2005 to Petitioner to accord sanction as per S. 58(2) is also relied upon.

11. Learned Counsel further adds that as Respondent 2 is an authority of State Government, S. 58(2) of 1966 Act is squarely attracted. The Petitioner permitted things to become irreversible & then approached this Court & did not bother to seek any interim relief till 2007. There is also arbitration clause in concession agreement. Several disputed questions arise and controversy is mainly about breach of contract, Petitioner also suppressed material facts, therefore this Court should not entertain a writ petition as civil suit is the most appropriate remedy. He adds that the occupants are not paying any amount to Respondent 2 or 4 due to status quo order operating in the matter.

12. Learned AGP relies upon the reply affidavit of Respondent 1 to oppose the writ petition. He also adopts the arguments of adv. Bhandari.

13. Shri Shaha in reply arguments states that about 40,000 Sq.ft. of excess construction is effected & extra profit has been earned by the Respondent 5. GR dated 24.2.2003 is a general guideline & it does not affect the operation of S. 31 or other similar provisions of 1966 Act. GR dated 8.2.2002 is specially for Petitioner & it does not lay down any specific area for commercial purpose. The occupation & user without completion certificate as per S. 263 of the BPMC Act is unsustainable. The commercial user or activity can not be the dominant activity in the complex but it has to subserve the main purpose or object. Last application submitted for sanction is dated 29.4.2005 & there were total 9 such applications for revised sanction. The rejection was communicated & notice action for illegal construction was also taken. The theory of: work done plan" is a misleading defence. Respondent 2 is not a State but a trust & hence, S. 58 of 1966 Act is not attracted at all.

14. We find that the land i.e. final plot no. 194 undisputedly came from Petitioner Municipal Corporation. It is claimed by the Petitioner that it has not received any sum from any occupant towards occupation charges or taxes. Respondents also claim that they have not received anything from the persons in occupation because of the orders of this Court to maintain status quo passed on 12.9.2007 regarding the shops forming part of commercial complex as on that day. After Civil Application 10151/2009 moved by it for vacating the same was rejected on 21.12.2010, Respondent 5 developer questioned it in SLP (civil) 9466/2011 unsuccessfully. After hearing respective Counsel, several doubts do arise in our mind. Few such questions which call for consideration are:--

a--Why Petitioner did not challenge the tender invitation by Respondent 2 if it was opposing the commercial user totally?

b--Why Petitioner did not stop the process if it was opposed to handing over of management of Sports Center to Respondent 2?

c--Why it did not specifically enforce its representation & participation in meetings of Respondent 2 Trust?

d--Why Petitioner did not stop the construction of two commercial plazas "A" & "B" at sites proposed for parking?

e--Why the Municipal Commissioner &/or Mayor did not file & move the legal proceedings immediately to prohibit creation of 3rd party interests?

f--Why the Petitioner did not join Respondent 5 as party while approaching this Court? Why it has feigned ignorance of existence of Respondent 5?

g--Why the Petitioner did not challenge & stop said Respondent 5 from inviting the public at large to book in its scheme?

h--Why the Petitioner could not carry out the inspections of the ongoing work from time to time & produce the records thereof before this Court?

i--Why the Petitioner can not or could not point out the violations, if any, of the interim orders of this Court dated 12.9.2007?

j--Why neither Petitioner nor any of the Respondents 1 to 4 could secure a direction requiring the Respondent 5 to produce the accounts of bookings & details of occupants or the agreements with them?

k--Why the Petitioner did not levy or collect the municipal taxes form the occupants?

l--Why Respondents 1 to 4 proceeded with project in the face of objections of Petitioner when it had not signed MOU?

m--Why neither Petitioner nor Respondents are pointing out any specific provision either in DCR or Building byelaws regarding the extent of area to be earmarked for parking in case of stadium & sports center?

n--When stadium has seating capacity of 40,000 people, whether & why the Respondents 1 to 4 or Petitioner did not initially procure or prepare an estimate or project report pointing out the area available, its earmarking & details of construction with its type/user looking to the large area of open land to be used for the project?

o--When stadium has seating capacity of 40,000 people, whether the stand of Respondent 5 that parking in approved plan dated 1.10.2001 was only for 10 to 12 cars is plausible?

p--Who may be the ultimate victims if the legal provisions are strictly interpreted?

q--As of to-day, who is the likely beneficiary in this controversy?

r--Is this litigation being fought in collusion & with oblique motive?

s--Is any legal right of Petitioner violated? Prejudice to it?

t--What is impact of defence of deemed sanction?

u--What is impact of pending appeal under S. 47 of 1966 Act?

v--Whether S. 58 of 1966 Act has any relevance?

w--Whether compounding or regularization is open?

x--What can be the legal & workable solution?

y--What should be the precautionary measures in future?

z--Whether any disciplinary measures are called for?

However, before embarking upon the exercise to resolve the same, we find it appropriate to evaluate the controversy of deemed sanction as pleaded in defence by the Respondents. The question whether any such defence is open in present facts or not will be gone into thereafter.

15. One document in which defence of deemed sanction appears is the memo of appeal under S. 47 of 1966 Act by the Respondent 2. Said appeal appears to have been filed after receipt of letter dated 1.10.2005 on 20.10.2005 & letter dated 20.10.2005 on 21.10.2005. Both these letters are sent by the Petitioner Corporation and appeal is claimed to be within one month of receipts of said letters. This appeal mentions that State Government on 24.2.2003 instructed Respondent 2 to build a stadium & shopping complex & allowed 1/3rd land to be put to commercial purpose. Respondent 2 accordingly invited the tenders & as tender of Respondent 5 was found highest, work order came to be issued in its favour on 1.11.2003. As per sanction, in periphery walls of the stadium, shops were located on ground floor & offices on 1st floor. However, due to slope towards Tilak Road, to make adjustments, two level shopping became essential at that place. Thus, a revised plan came to be submitted on 12.2.2004 & 30.4.2004. Respondent 2 then wrote to Petitioner on 13.5.2004, 2.6.2004 & 11.6.2004 but no decision was taken by it. Hence, after 60 days & on 30.6.2004, in terms of S. 45(5) of 1966 Act, the deemed sanction followed. It was accordingly communicated to Petitioners on 7.7.2004. Respondent then points out a demand dated 26.2.2004 by the Petitioner towards the development charges and S. 124(F)1. This plea in Appeal, even if presumed to be correct, still is about the adjustments in periphery wall of the stadium & does not speak of shopping plazas A & B.

16. Respondent 2 has also filed a reply affidavit before this Court on 21.7.2005. Therein, it is stated that 95% of the construction is already complete. In para 9 of said reply, Respondent 2 states that it applied to the Petitioner for revised permission with the plan on 10.12.2003 & asserts grant of deemed sanction after 60 days therefrom. Statutory notice dated 26.2.2004 sent by the Petitioner is urged to be after said 60 days. Perusal of notice reveals a joint inspection on 24.2.2004, mention of sanction dated 1.10.2001 as revised on 10.11.2001 and work of basement digging in periphery of the Stadium. Respondent 2 has been warned to discontinue the illegal work & threatened with coercive steps as per 1966 Act. Thus, this insistence by the Petitioner to stick to 2001 sanctioned plans is after 12.2.2004 & hence, the plan submitted by Respondent 5 on 12.2.2004 or its deemed sanction as pleaded in appeal memo becomes redundant. The plan with application dated 10.12.2003 is of buildings A & B i.e. of shopping plazas. About plans dated 10.12.2003, on 15.1.2004, Respondent 2 was informed that shopping plaza plots A & B can not be allowed as per town planning scheme 3-final plot 194. Thus, in the face of express rejection on 15.1.2004, repeated request for same purpose by the Respondent or not taking same decision upon it again by the Petitioner, are the events not sufficient to infer the "deemed sanction". Moreover, this story of deemed sanction is not in consonance with the story in its S. 47 Appeal. On 29.4.2005, while depositing the development charges, said Respondent again seeks the building permission for shopping plazas A & B. Thus the Respondent 2 again seeks building permission for buildings A & B & this act also militates with defence of deemed sanction. Plea of Deemed sanction must be certain & all necessary ingredients must be disclosed and established.

17. In this background, the scheme of S. 44, 45 & S. 53 of 1966 Act needs appreciation. Chapter IV of the Act is about control of development & use of land included in D.P. S. 43 prohibits every person from carrying out the development or changing use of land without permission in writing of the planning authority. In present matter, inclusion of land within D.P., its user vide reservation site 165 & 166 are the facts not in dispute & Petitioner alleges development contrary to the DP while according to Respondents, commercial user is not prohibited by the said D.P. S. 44(1) mandates every person not being Central or State Government or Local Authority intending to carry out any development to apply to planning authority & seek its prior permission. This position is also not in dispute before us. S. 45 requires the planning authorities like Petitioner to communicate the grant or refusal of permission by an order in writing. Reasons are also required to be recorded for imposing conditions or for refusing the permission. Failure to communicate the decision either way results in grant of deemed sanction u/s 45 sub-section 5. But then the language of first proviso to this sub-section reveals that if the permission sought for violates any legal provisions or the DP requirement, or any draft or proposed plan, this deeming fiction is not attracted. Rigour of this proviso is further strengthened by the later or second proviso of S. 45(5), which creates a negative deeming fiction. Thus, if the development carried out by invoking deemed permission under S. 45(5) is in violation of any final DP or DCR or other legal provision, the same is deemed to be unauthorized for the purposes of S. 52 to S. 57 of 1966 Act. S. 52 to 57 deal with steps or measures for

removal of such unauthorized development. Thus, this deemed permission to develop is an exception & rather a stringent exception to normal rule & it permits an honest diligent owner or developer to proceed to construct/develop at his own risk. Thus, failure to communicate decision of planning authority within 60 days to such person does not result in transforming the otherwise inherent wrong construction or development into legal one. It is only concession given to the honest developer who must be certain that his work is in consonance with all legal provisions & does not violate it. Only such person can proceed to develop or construct, if he is ready & willing to do so at his own risk & costs. Respondents before this Court can not succeed only by pointing out non communication of a decision by the Petitioner within 60 days period. Here, on facts also we have already found such a plea of Respondents unsustainable & misconceived. Moreover, neither Petitioner nor Respondents have pointed out any law which enables commercial user of a site reserved in DP for Stadium & Sports center. Predecessor of the Petitioner viz. Municipal Council, Ahmednagar on 29.9.1998 resolved & accepted the commercial user i.e. shopping complex. Facts show that on 4.7.2008, the Respondent 1 sanctioned E.P. Nos. 1 to 43 & 45 to 62 while on the E.P. 44 relevant here, there is no decision. In law, resolution of local body does not amend the DP user & therefore only said EP 44 became necessary. Necessity of such a step in law & fact of its still being under consideration is not in dispute. Notification dated 4.7.2008 reveals that on 4.7.2005 excluded part of the draft development (second revised) plan was published & objections were invited under S. 31(1) of the 1966 Act. An officer was also appointed under sub-section 2 to hear the objectors & period for sanctioning the draft development plan of Ahmednagar (second revised-excluded part) was also increased upto 4.7.2008. The State had thereafter considered the objections & suggestions and then, decided to keep the proposed modification EP 44 pending. EP 44 appears at Sr. No. 44 & it is in respect of site no. 5 & 6. S. 26 of 1966 Act is on preparation & publication of the draft development plan. After following or through the process prescribed in S. 27, 28, 30 & 31; said proposal with or without modifications, then becomes the final development plan under S. 31(6) of the 1966 Act. As per proposal published under S, 26, site no. 5 was for stadium & sports complex while site no. 6 is for garden. In draft plan submitted to the State Government as per S. 30 by an officer appointed under S. 162, site no. 165 was proposed for stadium & sports complex while site no. 166 for garden. Through substantive modification republished under S. 31 of 1966 Act, both these sites were to become site 165 i.e. only one site with reservation for stadium & sports complex & shopping center. Thus earmarking of site no. 6 is for garden was proposed to be removed. This proposal is still not rejected and is claimed to be under its consideration by the State Government. The other EPs. have been suitably accepted & published under S. 31(1). Date 21.8.2008 was fixed as the date for coming in force of development plan of the said excluded part of Ahmednagar (second revised). S. 31(6) lays down that such development plan is called as final development plan & it is binding on everybody including the Petitioner also.

18. In present matter, this scheme of 1966 Act and events leading to GR dated 4.7.2008 are not in dispute. Petitioner, in para 3 of the writ petition pleads that the suit property i.e.

final plot no. 194 is reserved for stadium & sports complex and in support, document at Annexure A is relied. This document or narration does not specify the date of publication of plan & there is no disclosure of the date on which the final development plan of Ahmednagar came into force. Annexure A shows heading as "part plan of revised sanctioned development plan of Ahmednagar Plan showing T.P.S. No. III Wadia Park, F.P. 194 and surrounding area". Document at Annexure N-2 with petition is the communication dated 18.7.2001 sent by Assistant Director of town planning to the Chief Officer of Municipal Council, Ahmednagar which shows that final development plan for Ahmednagar is in force since 1.4.1978 after final sanction by the State & in it, entire area of Wadia Park is reserved as sports center & open play ground. It is stated that therefore, it can be used as stadium. Town planning scheme no. 3 is finally sanctioned in 1966 itself & there final plot no. 194 area 83,314 Sq. Mtrs. is for garden & sports complex. Second development plan for Ahmednagar was submitted to State under S. 30 for final sanction and it suggests two reservations in final plot 194. Site no. 165 is for stadium & sports complex while site no. 166 is proposed for park. The Assistant Director of town planning has opined that only site no. 165 therefore can be used as stadium & if site 166 of park is to be put to use as stadium, steps to have a minor modification under S. 37 are essential. This letter also discloses that small shops can be allowed in the structure of Stadium & prima facie, reservation on site 166 for park was not affected by the proposed structure. Here, the Respondents are using the entire area of final plot 194 and they do not state that site no. 166 i.e. Garden is left untouched by their construction. In this background, the importance of EP 44 becomes apparent. If it is accepted, both these sites become site 165 i.e. only one site with reservation for stadium, sports complex as also shopping center & the earmarking of site no. 166 for garden gets deleted. But then till this is done as per law, separate reservations on site no. 165 & 166 survive & need to be adhered to. The proposed change was not acceded to till 4.7.2008 & has not been cleared till date. The defence of "deemed sanction" needs evaluation in this background.

19. Judgment of Hon"ble Apex Court in 2012(3) SCC 619--Manohar Joshi vs. State of Maharashtra is the important landmark in such a situation. It also helps in understanding the law. There the State Government had directed Poona Municipal Corporation to shift the reservation on FP No. 110 under DC Rule 13.5. The question whether it was in consonance with the statutory scheme & permissible under DC Rule 13.5 cropped up. Hon. Apex Court holds that the scheme of the 1966 Act gives importance to the implementation of the sanctioned plan as it is and only in certain contingencies, the provision thereunder is permitted to be modified, that too after following the necessary prescribed procedure. The planning process under the MRTP Act i.e. 1966 Act is found to be quite an elaborate process. A number of town planners, architects and officers of the Planning Authority, and wherever necessary, those of the State Government participate in the process. They take into consideration the requirements of the citizens and the need for the public amenities. The planners consider the difficulties currently faced by the citizens, make rough estimate of the likely growth of the city in near future and provide solutions. The plan is expected to be implemented during the course of the next twenty

years. After the preparation of draft development plan, its notice is published in the Official Gazette u/s 26(1) of the Act with the name of place where copy thereof will be available for inspection to the public at large. Copies and extracts thereof are also made available for sale. The suggestions and objections are invited. The provisions of the regional plan are given due weightage u/s 27 of the Act and then the plan is finalized after following the detailed process u/s 28 of the Act. Hon. Apex Court states that Chapter III of the MRTP Act on development plans requires the sanctioned plan to be implemented as it is. It further points out that there are only two methods to modify the final D P. One where the proposal does not change the character of the development plan, it is known as minor modification and the procedure therefor is laid down u/s 37 of the Act. The other where the modification is of a substantial nature as defined u/s 22-A of the Act, the procedure as laid down u/s 29 is required to be followed. Hon. Apex Court states that one more analogous provision though slightly different u/s 50 of the Act is for deletion of the reservation where the appropriate authority (other than the Planning Authority) no longer requires the designated land for the particular public purpose, and seeks deletion of the reservation thereon. Discussion in judgment thereafter till paragraph 62 is on minor modifications, its scope etc. As the Respondents are not alleging any minor modification here, it is not necessary for us to dwell more on that part. The Respondents speak of GR dated 4.7.2008 & EP 44 which proposes deletion of reservation for garden & a provision only for stadium-sports complex & shopping center. The procedure being followed for modification is via S. 26 to 30 till S. 31(1) i.e. of modification of a substantial nature.

20. Observations of Hon. Apex Court on modification of a substantial nature are also material. It is held that Section 39 specifically directs that the Planning Authority shall vary the TP scheme to the extent necessary by the proposals made in the final development plan, and Section 59(1)(a) gives the purpose of the TP scheme viz. that it is for implementing the proposals contained in the final development plan. u/s 31(6) of the Act, a development plan which has came into operation is binding on the Planning Authority. The Planning Authority cannot act contrary to DP plan and grant development permission to defeat the provision of the DP plan. Hon. Apex Court notes that a duty is cast on every Planning Authority specifically u/s 42 of the Act to take steps as may be necessary to carry out the provisions of the plan referred to in Chapter III of the Act, namely, the development plan. Section 46 also lays down specifically that the Planning Authority in considering an application for permission for development shall have "due regard" to the provisions of any draft or any final plan or proposal submitted or sanctioned under the Act. It is found indicative of a stipulation that the moment a draft plan is proposed, a permission for a contrary development can not be granted, since it will lead to a situation of conflict. Section 52 of the Act provides for penalty for unauthorised development or for use otherwise than in conformity with the development plan. Hon. Apex Court holds that thus, when it comes to the development in the area of a local authority, a conjoint reading of the relevant sections makes the primacy of the development plan sufficiently clear. It is in this background that Section 59(2) is held to be only an enabling provision. Hon. Apex Court explains that in a given situation a suitable amendment of the development plan

may as well become necessary while seeing to it that the TP scheme is in consonance with the development plan. Section 59(2) only means that the legislature has given an elbow room to the Planning Authority to amend the development plan if necessary, so that there is no conflict between the TP scheme and the DP plan. In fact words that "it shall be lawful to carry out such an amendment" are held to be employed to convey the intention that normally such a reverse action is not expected, but in a given case, if it becomes so necessary, it will not be unlawful. Use of this phrase is found to show the superiority of the DP plan over the TP scheme. Besides, the phrase put into service in this sub-section is only "to provide for a suitable amendment". Hon''ble Court states that this enabling provision for an appropriate amendment in the DP plan cannot, therefore, be raised to the level of the provision contained in Section 39 which mandates that the Planning Authority shall vary the TP scheme if the final DP plan is in variance with the TP scheme sanctioned before the commencement of the MRTP Act. It also indicates that subsequent to the commencement of the Act, a TP scheme will have to be in consonance with the DP plan. It is declared that Section 59(1)(b)(i) cannot take away the force of the provision contained in Section 59(1)(a) of the Act. In present matter, the Respondents before us have not argued that DP has undergone any modification At the most, their defence is of permissibility of the shop blocks in periphery of the stadium structure. But then that defence is not enough as the reservation of site no. 166 for garden still stands. Hence, mere fact that proposal EP 44 suggesting deletion of the said reservation for Garden is pending can not legalize or regularize the development which is otherwise illegal. Government''s policy decision at State level dated 24.2.2003 & letter dated 10.3.2003 produced as Annex. R-1 by the Respondent 5 is addressed to Chairman of Respondent 2 i.e. Collector, Ahmednagar. It only mentions a policy decision to permit user of 1/3rd area for commercial purposes to support the sports & games activities. This decision can not & does not override DP and can not substitute the statutory procedure under 1966 Act for effecting the modifications in D.P. Same holds good in regard to the GR dated 8.2.2002. Observations made by the Hon. Apex Court on obligations of senior bureaucrats & politicians like C.M. are equally important & helpful but in the absence of any express plea of any dereliction of duties on their part, we do not wish to comment on that angle. Here, it is surprising to note that Respondent 2 has directly addressed a letter to Hon. Chief Minister on 31.10.2005 & made grievance against the Petitioner.

21. Letter dated 3.1.2006 sent by Petitioner to Respondent 2 is signed by its Town Planner, Deputy Municipal Commissioner as also the Municipal Commissioner. Its copies are given to Secretary of Sports Department of the State as also to the Respondent 1 State. It mentions several meetings between the parties as also large correspondence. It mentions that on 16.12.2005, there was a meeting of office bearers of the Petitioner & it was presided over by the Mayor. Purpose of the meeting was to decide the future policy of the Petitioner on the development. It also states that possession of land worth Rs. 18 Crores has been handed over retaining its ownership for the sports development of Petitioner. It regrets that Respondent 2 decided to complete the project on FBT basis without taking Petitioner in confidence & the development is practically complete.

Petitioner has in it demanded 60,000 Sqr. Feet commercial constructed portion in return for or in lieu of land. It is urged that Petitioner approved only 57,500 Sq.ft/commercial development & the agreement in favour of Developers is for 1,00,000 Sq. Ft. of commercial area. Fact that the actual commercial development is of 1,40,000 Sq.ft. i.e. much in excess is also disclosed. Profit of the developer is also estimated at Rs. 22 Crores. This letter also points out that on part of land a gallery for the spectators & badminton hall has been constructed in 1982 through the municipal funds. Need to continue that part in possession & under control of the Petitioner without any interference by the Respondent 2 is also expressed. Response from the Respondent 2 is sought so as to place it before the General Body of the Municipal Corporation. This letter is obviously & surprisingly after filing of the present writ petition & it shows impression of Respondent 2 that it could have approved the excess construction. Even prayer clause "B-1" in writ petition is also indicative thereof. This attitude is not in consonance with the law & challenge then already placed before this Court. Thus, looking to the facts of this matter, the provisos to S. 45(5) of 1966 Act do not enable the Respondents to even plead the grant of deemed sanction. On the contrary, in the light of second proviso to sub-section (5) of S. 45, it is clear that their construction needs to be treated as unauthorised one. Defence of deemed sanction or permission raised by the Respondents is erroneous & misconceived. Their story is apparently not consistent or convincing. Moreover as late as on 31.1.2005, the Desk Officer has asked Petitioner to examine the building plans submitted by the Petitioner under S. 58 of 1966 Act & it also militates with the stance of deemed permission. Moreover, this plan was found deficient & Respondent 2 was accordingly informed to remove the lacunae on 28.3.2005 with express mention that till compliance as demanded, the plans can not be considered. Thus the defence of deemed sanction is liable to be rejected. Contention of Adv. Bhandari that letter dated 20.10.2005 sent by the Petitioner is the first disclosure of rejection of building permission on 1.10.2005 is also irrelevant. Letter dated 20.10.2005 is rejection of request to issue the occupancy certificate.

22. This brings us to consideration of special status claimed by Respondent No. 2 and claim for exemption due to or under S. 58 & S. 124F. The construction is being made by the Respondent No. 5 on FBT basis. Thus, till it transfers the construction to the Petitioner or Respondent No. 2, Respondent No. 5 remains the person answerable for everything. It is not the case of Respondents that Respondent 5 was assured any special treatment or concession in these matters or then he was not to comply with S. 43 or 44 of 1966 Act. This aspect has to be regulated by the terms & conditions of the advertisement inviting public tenders, agreements & arrangements between the parties. No such term or condition is pressed into service by any of the Respondents. They also do not plead any estoppel. As grant of exemption under S. 124(F) of 1966 Act for the development except the commercial part, is not an issue before us, we are not expressing anything on this subject. S. 58 gets attracted only when the Government intends to carry out any development for the purpose of any of its departments or offices or authorities. Here, the State Government has not even stated that it is carrying out the development on FP 194

& it also has not informed the Petitioner accordingly at any time as mandated by its Sub-section (1). This plea is taken by Respondent Nos. 2 & 5 and is obviously by way of afterthought i.e. long after 1.10.2001 or 10.11.2001. Desk Officer of Respondent 1 on 31.1.2005 written to the Municipal Commissioner of Petitioner to scrutinize the plans as per S. 58(2)(1) of 1966 Act. This request was found incomplete & Respondent 2 was called upon to make amends on 28.3.2005. Respondent No. 2 in its letter dated 31.10.2005 sent to the Chief Minister refers to S. 58 but it nowhere points out any letter under S. 58(1) by Respondent No. 1 to Petitioner. Respondent No. 4 in additional reply affidavit dated 30.7.2012, in paragraph 13 has urged that S. 58 does not empower Petitioner to decide the rights & legality or otherwise of the construction. As the Respondent No. 5 has been given the right to finance, build & transfer the stadium, it is obvious that till the stadium is transferred to & vets in either Petitioner or Respondent No. 2, the Respondent No. 5 remains in charge. Activities of development undertaken by it do not become the activities of Respondent 1 State. This facet also can not be finally decided here due to absence of proper arguments or assistance from the respective Counsel. In fact while replying to a Court query on half hearted challenges, latches & equity etc. learned Senior Advocate candidly confessed to difficulties faced by him while assisting this Court. S. 43, in its opening part, expressly uses the word "no person" thereby taking State Government also within its fold. S. 44(1) only carves out an exception for Central or State Government & Local Authorities intending to carry out the development. Thus, everybody else has to apply for permission to develop. S. 58(1) also requires the State Government to apply 30 days prior to date scheduled for commencement of work for grant of such permission. The provisions of S. 44 do not prescribe any such time limit since the law does not normally envisage the commencement of development without prior permission. However, in case the work is being undertaken by the State Government itself, its officer incharge thereof has to apply to the planning authority. If the planning authority raises any objection, such officer can either make the desired amends or then submit the proposal for development with the objections raised by the planning authority to the State Government itself as per sub-section 2(ii) of S. 58. The State Government may, thereafter, in consultation with the Director of Town Planning, approve the proposal with or without modifications. Sub-section (4) of S. 58 only protects & furthers this special treatment to State Government by removing provisions like S. 44, 45 or 47 & by modifying S. 46 to bring the same in conformity with scheme of S. 58. It does not dispense with the scrutiny of the building plan submitted by such officer by applying the relevant norms.

23. In present facts, we have noted that Desk Officer of Respondent No. 1 on 31.1.2005 wrote to the Municipal Commissioner of Petitioner to scrutinize the plans as per S. 58(2)(1) of 1966 Act. This was first such move & Respondent 2 was called upon to complete the incomplete proposal vide letter dated 28.3.2005. Respondent no. 2 in its letter dated 31.10.2005 sent to the Chief Minister refers to S. 58 but it nowhere points out any letter under S. 58(1) by Respondent No. 1 to Petitioner before 1.10.2001 or 10.11.2001. Respondent No. 2 never approached the State in terms of S. 58(2) & State

also did not take steps under S. 58(3) of 1966 Act. In any case, S. 58 does not give license to anybody including the State to violate the DP settled under S. 31(1) of the 1966 Act. The special arrangement made via S. 58 is only to permit the State Government to complete its project with utmost speed. Therefore only, it requires submission of such application only one month before the date scheduled for commencement of actual work & excludes the need of commencement certificate. This reliance on S. 58 by the Respondents militates with their defence of deemed sanction after 60 days as its Sub-section (4) makes S. 45 itself unavailable to it. This special treatment & procedure for State Government is carved out only in public interest & due to confidence reposed (& inherent) that the State will never flout the mandatory provisions of 1966 Act and defeat requirements of D.P. Respondents can not plead S. 58 in an attempt to justify the violations of D. P. It also needs to be noted that the Respondent No. 2 has already filed an appeal under S. 47 in the matter. The emerging state of affairs is unsatisfactory & shows the roving attempts of Respondents to somehow justify its highhanded actions against the public interest. Reasons recorded by the Hon. Apex Court while interpreting S. 59 of 1966 Act in Manohar Joshi vs. State of Maharashtra (supra) also hold good here. Purpose of exemption provided to Governments or Local Body from certain provisions of the 1966 Act is due to faith reposed in them that they will, at no cost, compromise the DP or any of their legal obligations. It is this inbuilt faith placed by the democracy in these institutions of self-governance which resulted in framing the provision like S. 58. This provision or such provisions can not be construed to enable the Governments or Local Bodies to disregard the DP & to undertake or encourage the wanton acts of developers. In its landmark judgment in Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (supra) in paragraph 8, the Hon. Apex Court has observed--"At the outset, we would like to observe that by rejecting the prayer for regularization of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it." S. 58 does not derogate from the otherwise complete scheme of 1966 Act or does not dilute it.

24. The next question is whether the development in contravention of DP can be regularized or condoned. Pendency of EP 44 before the State Government is not in dispute & there are no prayers for its expeditious disposal by anybody. Time being spent prejudices general public as the construction in blatant breach of law continues & may encourage the others to follow the footsteps. It is bound to help Respondent No. 5 as it/he has inducted the occupants, obviously not free of charge. It has not brought on record the agreements subject to which the occupants have been introduced in the stadium or shopping plazas A & B. None of the parties before us have also shown that much diligence & have assisted & permitted Respondent 5 to continue to earn. Even no directions to disclose the names of occupants or to file the accounts periodically are

obtained. Recent judgment of Hon''ble Apex Court in Esha Ekta Apartments Cooperative Housing Society vs. Municipal Corporation of Mumbai (supra) clinches the law on regularization of such developments & it lays down that an analysis of the provisions of 1966 Act makes it clear that any person who undertakes or carries out development or changes the use of land without permission of the Planning Authority is liable to be punished with imprisonment. At the same time, the Planning Authority is empowered to require the owner to restore the land to its original condition as it existed before the development work was undertaken. The scheme of these provisions does not mandate regularization of construction made without obtaining the required permission or in violation thereof. While rejecting the arguments of occupants for leniency, Hon. Court also concluded that the flat buyers had consciously occupied the flats illegally constructed by the developers/builders. In this scenario, the only remedy available to them was held to be to sue the lessee and the developer/builder for return of the money and/or for damages and they cannot seek a direction for regularization of the illegal and unauthorised construction made by the developers/builders. Here also it was duty of the occupants to verify the sanctions & then only to buy or book. The relevant records could have been inspected by them in the office of Petitioner or Respondent Nos. 2 or 5. If assertions of all the parties before this Court are correct, then none of the occupants has paid either the occupation charges or taxes. The deviation from the sanctioned plan while providing shop blocks in peripheral wall of the structure of stadium itself may call for a little different perspective. But two buildings A & B of shopping plazas have come up at a place to be left either open to sky or then for parking, fountain etc. Need of huge parking space for a stadium with seating capacity of 40,000 spectators can not be overlooked & Respondents have not pointed out any alternate arrangements made by them for parking. They have increased the number of shop blocks and by adding the shopping plazas, added to the chaos. Obviously they have loaded public roads or lands in vicinity with the burden of that parking. By placing reliance upon CA 10151 of 2009, Shri Mantri, the learned Counsel has urged that about 5285 Sq. Mtrs. of open space is available for parking. However, said space is not shown to be part of the project or development undertaken by the Respondent 5. Respondents 2, 3 & 4 who must & ought to have realized the problem also conveniently turned a nelson''s eye. Petitioner as also respective Respondents Nos. 1 to 4 by observing silence assisted the cause of Respondent No. 5. It is difficult to accept submission of Adv. Mantri that Respondent No. 5 is also not in position to recover any amount from the occupants. If occupants are really not paying anything, neither in law nor in equity, they deserve any consideration. Here, the original reservations are on two different sites and for two mutually exclusive purposes. Now, the effort of Respondents No. 2 to 5 is to eliminate entire reservation for Garden & to club both sites together for supporting the development of stadium, sports complex & shopping center. EP 44 is aimed at this purpose but then State Government could not clear it till date. Hence, said modification is not legally in existence today and can not support the unauthorised illegal deviations of the Respondents. Current user contrary to law also can not continue. Commissioner of Municipal Corporation, Simla vs. Prem Lata Sood & Others (supra) is the other leading Apex Court judgment which shows

that when the law is breached & statutory restrictions are overlooked, there is no question of deemed sanction. It also shows that a vested right can not be taken away, because the amendment proposal is in offing. Division Benches of this Court in Ghanshyam Chandumal Harwani vs., State of Maharashtra (supra) & Vithal Ramchandra Devkhar vs. State of Maharashtra (supra) again follow these principles only. The expectations of wrongdoers that their leaders will dilute law again & again must be nipped off in bud. Politicians can not, on one hand take steps in larger public interest & make laws to redress the mischief i.e. for proper development of towns and then, on the other hand, kill that legislation by misusing their positions. Acceptance of such a course of conduct by Courts will legalise the backdoor breaches & violations of DP & result in a sick democracy in every sense. This is high time to note that neither the highest politician nor the top bureaucrat is above law & must obey it. Bureaucrats are bound to implement the law & policy. They will be right & must be strong enough to refuse to tow the line of such leaders & influential builders. If they lack this courage, they are unfit to hold the responsible positions which they occupy & in process, also disrespect the law of the land. Such dereliction of the duties on their part can never be countenanced & must be sternly dealt with. In view of clinching precedents of the Hon''ble Apex Court on the controversy, it is not necessary to deal with the judgments of this Court. Inevitable conclusion is regularization or compounding of the illegal development in present matter is not possible. Hence, pendency of an appeal u/s. 47 by Respondent no. 2 is of no consequence. It can also be noted here that the appeal has been filed only to prolong the life of & avoid action against the development in dispute. None of the Respondents have seriously prosecuted it. Pending arbitration proceedings also have got no bearing on the controversy involved in this petition.

25. The land of final plot no. 194 i.e. reservation site 165/166 is public property. Petitioner Municipal Corporation can not claim any exclusive right to deal with it or to earn out of it. Legally, it can not claim any prejudice if the sites are put to legitimate use. The vesting of stadium or sports center or power to control it, whether with the Petitioner or the Respondent No. 2, cannot in these facts be construed as an unforeseen eventuality. Petitioner was aware that the site is to be developed for stadium-sports center and also agreed to its development by Respondent 2. Not only this it was aware of the fact that Respondent 2 was not developing any garden. It still granted the sanction to the building plan on 1.10.2001 and then granted the revised permission on 10.11.2001. In this situation, merely because it did not sign MOU or then it did not accept the condition no. 5 of the model terms prescribing that the control over such stadium & sports center has to vest with Respondent No. 2, it can not oppose the development. Facts noted by us above also show that Petitioner was aware of the type, nature or extent of construction activities going on at the spot. Before this Court, effort has been made to show that the Petitioner became aware of the existence or role of Respondent No. 5 developer only on 12.9.2007 and hence, on that day, with the leave of this Court, Respondent No. 5 came to be impleaded. This Writ Petition with prayers A to D came to be filed on 6.6.2005 while Prayers B1 to B6 came to incorporated as per Court orders dated 4.7.2012. Petitioner did

not even attempt to seek any effective orders till 12.9.2007. Our comments on orders of this Court dated 12.9.2007 and the state of affairs have already come on record. The stand of Petitioner that it was not aware of Respondent No. 5 is clearly false. Inspection report of the structure in dispute dated 3.12.2004 filed on record is prepared by its town planner after spot visit on 22.11.2004. It mentions details of unauthorized developments like building A & B, without permission modifications in few sectors of the stadium. It also mentions name of Respondent No. 2 as person on whose behalf the development was being carried out. It also contains the name of M.R. Mutha as the developer. Copy of Reminder 3 dated 11.6.2004 sent by Respondent no. 2 to Petitioner is on subject of grant of permission to buildings A & B at the earliest. Copy of this reminder is sent by Respondent No. 2 to its architect and also to said Mr. M.R. Mutha - Respondent No. 5. These documents & contents thereof are not in dispute.

26. Respondent No. 2 has while inviting tenders has also used the words "and repair to existing & development of a shopping plaza". Work order given to Respondent No. 5 is dated 1.11.2003. The agreement between Respondents No. 2 & 5 also reveals mentions of a six sectors in stadium for shopping against entry 3-Shopping & Stadium while describing the details & scope of work. Against entry 13 dealing with Shopping Plaza (Plot A & B) it is stated that the designs of the commercial buildings on plots A & B are to be provided for by the Respondent No. 5 & Respondent No. 2. Further stipulation shows that the same is to be approved by the local authority i.e. Petitioner subject to compliance with DC Rules. Petitioner, admittedly is not signatory to this document & it never made any attempts to obtain its copies from the concerned Respondents. It also has not attempted to urge that while inviting tenders from the public at large, these shopping plazas were not pointed out and other aspirants, therefore, could not evaluate possibility of said commercial exploitation while submitting their offers. Respondent No. 2 appears to have published the tender invitation on 17.6.2003 & surprisingly its letter dated 12.7.2002 addressed to Respondent No. 5 speaks of CSD i.e. Common Set of Deviations. Shopping plazas at plots A & B find mention in this document. This letter is at record page 282. CSD document itself mentions doubts raised in pre-bid meeting held on 11.7.2003. Copy of said work order dated 1.11.2003 at record page 237 states that it is in furtherance of the concession agreement dated 7.9.2004 entered into between the parties. Handwritten endorsement on this work order shows that certified copy of volume 1 & 2 of bid document were enclosed with it. This endorsement is signed by the Secretary of the Respondent No. 2 & there is overwriting or correction while mentioning the month in the date placed below this signature. Not only this, neither the Petitioner nor any of the Respondents have thought it fit to point out how the booking for proposed shops was done by the Respondent No. 5. Did it publish any advertisements or circulate any brochure or leaflets! Has Respondent No. 5 entered into any agreements with the customers who booked the shops or whether the same are countersigned by Respondent No. 2 are the crucial aspects which needed disclosure, if Petitioner wanted to point out any injury to itself. It has not even bothered to demand the copies of those agreements and did not even choose to levy any tax on the commercial structures. It could have

obtained orders from this Court to procure these details, documents and recovered tax. The Petitioner did not approach this Court immediately to stop the further construction, came without impleading Respondent No. 5. Its role appears to be dubious as on 3.1.2006, its three top officers wrote an inconsistent letter to Respondent No. 2. They thought it convenient to overlook the mandate of DP at that juncture. Then by obtaining an order of status quo almost two years after filing of writ petition, Petitioner obliged none else but Respondent 5. Respondent Nos. 2 & 5 have invited our attention to some more letters sent by Petitioner to expose its double standards. However, we do not find it necessary to deal with the same. Petitioner did not carry out any inspections after 12.9.2007 & did not collect data relating to occupiers. Its earlier resolutions show demand for share in profits of Respondents No. 2 or 5 or then demand of 25% of the shops constructed. Thus the Chief Officers & Presidents of the Municipal Council, The Municipal Commissioners & The Mayors of the Petitioner Corporation. Incumbents holding the posts of Secretary & Chairman of the Respondent No. 2 & the Collectors of Ahmednagar have not acted in good faith or with due diligence with a view to protect the public property & revenue. The Respondents No. 2, 3 & 4 have also not attempted to sort out the issues or differences with Petitioner before issuing work order to Respondent No. 5. All the Respondents were acting with some haste, obviously undue in such maters. We also find it interesting to note that the Respondent no. 2 addresses representation or grievance directly to the Hon. Chief Minister. Thus, there are some aspects which may necessitate a proper investigation. Parties before this Court, by their deliberate inaction, permitted the illegal, unwarranted use & exploitation of public property. Petitioner did not file a proper writ petition & its half-hearted plea and prayers show only a face saving effort. Respondents also followed the suit. Thus, the process of this Court appears to be abused with ulterior motives jointly by the parties to confer undue benefits upon the developer Respondent 5. A stringent action needs to be taken against all these office bearers or officers and their estate to discourage its repetition in future. Responsibility for proper compliance and due completion of the exercise needs to be placed on shoulders of the Divisional Commissioner of the Revenue Division in which Petitioner Corporation is situate. Similarly, no leniency can be shown to those who are in occupation of shops in buildings i.e. commercial plazas A & B. They ought to have verified the sanction & approval by visiting the office of Petitioner and then parted with the consideration or premium. We therefore find it expedient to issue the following directions to the said Divisional Commissioner.

27. We direct said Divisional Commissioner to nominate a suitable officer below him to first complete the exercise of verification of names and addresses of the occupants in possession of the shop blocks in Stadium structure as also in buildings of shopping plazas on plots A & B. This exercise shall be completed within six weeks from today. Thereafter, said Divisional Commissioner shall proceed to place seal on the shopping plazas A & B within next two weeks. The occupants in possession of the any of the shop blocks in structure of the Stadium or the two buildings of shopping plazas on plots A & B due to any grant, license or allotment in their favour by any of the parties to this litigation,

either directly or indirectly, shall file details of the arrangement or agreements in their favour with the proof of payment made in the office of the Divisional Commissioner in the meanwhile. After the seal as above is put, the Divisional Commissioner shall wait for further period of six weeks & shall, thereafter, if there are no restraining orders or any orders to the contrary by the Hon. Apex Court, proceed to demolish the two buildings of shopping plazas on plots A & B as per law & attempt to complete the same within next three months. No elected representative politician or the bureaucrat shall in any way attempt to influence the said Divisional Commissioner or any officer acting under his orders or under any provision of Law to accomplish this. Any such attempt shall be treated as contempt of this Court. To enable the office of the concerned Divisional Commissioner to undertake this exercise, we direct the Petitioner, Respondent no. 1, 2, 3 to deposit an amount of Rs. 5 Lac each with the office of said Divisional Commissioner within 3 weeks from today. We direct the Petitioner to deposit amount of Rs. 10 Lac & Respondent No. 5 to similarly deposit the amount of Rs. 15 Lac with the office of the Divisional Commissioner. If the Respondent No. 5 does not deposit said amount accordingly, Divisional Commissioner shall also put seal on its corporate office immediately on expiry of said period. Non-deposit by others shall not enable the said Divisional Commissioner to delay or postpone the exercise as directed. However, the non-deposit shall render the party in default viz. the present Municipal Commissioner of Petitioner, present Secretary & Chairman of Respondent No. 2 for consideration of suitable action under the Contempt of Courts Act. If the Divisional Commissioner needs more funds for said purpose, the same shall be made available to him by the parties named above in very same proportion & ratio within 2 weeks of the receipt of such demand. Same consequences shall ensue in its default. We fasten the duty of pointing out any non-compliance with these directions upon the incumbent functioning as Divisional Commissioner.

28. We are sure that the original records in this matter may be required to fasten the personal responsibilities on individuals who at the relevant time were/are at the helm of affairs in Petitioner, Respondents no. 2, 3 & 4. We can legitimately presume that said records are properly preserved by the responsible officers of the State Government & other concerned public bodies. However, the Divisional Commissioner shall ascertain this aspect also within 4 weeks from today & file suitable affidavit of its responsible delegate on the record of this writ petition immediately thereafter. He shall also ascertain the names of all officers, office bearers and other influential persons who may have dealt with the matter or files while working in any capacity with the Petitioner, Respondents no. 2, 3 & 4. Simultaneously, he shall also nominate an officer to conduct a preliminary inquiry in to the lapses and acts of omissions or commissions against all such officers, office bearers to find out their culpability, if any. The name of officer nominated for this purpose shall also be reported to this Court within 4 weeks from today. The officer so nominated shall complete the preliminary inquiry against all concerned, whether in service or not, retired or deceased, ignoring the bar of limitation, if any and submit his report to the Divisional Commissioner within further 3 months. The Divisional Commissioner of the

Revenue Division in which Petitioner Corporation is situate shall then, within next two weeks, forward the said report to competent authorities functioning as disciplinary authorities in relation to the respective employees/office bearers as also to the competent authority under the Bombay Act No. XXV Of 1930 i.e. The Bombay Local Fund Audit Act, 1930, or the other relevant local fund audit enactment to determine the culpability & quantum of punishment &/or recovery as per law. An affidavit that it has been so forwarded shall be filed within two weeks by his responsible delegate alongwith copy of said report on the record of this writ petition.

29. We hope that the State Government is serious about proper & effective implementation of 1966 Act & not in creating the situations or finding out the excuses to condone its violations. To avoid the repetition of such abuses & misuses in future, we direct the State Government to consider providing of a website where all the sanctioned building plans & lay out plans will be displayed at the cost of the concerned builder or developer by the Planning Authorities or other authorities sanctioning the building plans or development plans or the layouts on lands. The grant of permission to develop should not come in to effect till such authorities place the duly approved plans/maps on such site. State Government shall also ensure that no development is commenced & no builder or developer can even advertise the scheme or start the booking & construction without such plan being first uploaded on website. Name of an individual having adequate interest & stake in the project to be held personally responsible for any lapse or omission or violations on part of the developers shall be mentioned on the plan/map submitted for seeking the sanction & shall also be contained in the advertisement or brochure or literature circulated by the developers.

30. In so far as shop blocks and other violations in the peripheral wall of Stadium are concerned, the Petitioner shall explore the possibility of its regularization if the same do not in any way militate with the sports activities & user of stadium as sports center. An application for said purpose will be moved jointly by the Respondents No. 2, 3 & 4 alongwith respective occupants complying with the above directions within 6 weeks from today. The applicants shall agree to remove within 6 weeks of the intimation of the decision on such application, such part of the construction as is found not sustainable by the Petitioner. Such of the occupants who do not apply or qualify to so apply shall handover the possession of their premises to the Divisional Commissioner within said six weeks. If Petitioner finds that regularization is feasible, it may undertake said exercise on such terms and conditions as it may deem expedient and conducive to progress of sports activities. It shall complete said exercise within period of four months from receipt of the application stipulated above.

31. We accordingly partly allow this writ petition by making the Rule absolute in terms of the directions issued above.

32. Though with these directions and by this judgment, the writ petition is being disposed of, we grant parties liberty to move necessary applications in this disposed of matter to

secure effective time bound compliance with the directions issued. C.A. No. 7338 of 2012 stands disposed of.