IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 22398 OF 2022

1. Kaalkaa Real Estates Private Limited,)
Through its Director -)
Mr.Kanta Ramchandra Rane,)
having its registered office at)
Khar Sant Niwas CHS Ltd. 2nd Floor,)
Plot No.3, 14th Road, Khar West,)
Mumbai – 400 052.)

2. Kanta Ramchandra Rane,)
Aged 56 years, Indian Inhabitant,)
Director – Kaalkaa Real Estates Pvt. Ltd.)
Having its registered office at :)
Khar Sant Niwas CHS Ltd., 2nd Floor,)
Plot No.3, 14th Road,)
Khar West, Mumbai – 400 052.) ….. Petitioners

VERSUS

1. Municipal Corporation of Greater Mumbai,)
5, Mahapalika Marg, Dhobi Talao,)
Chhatrapati Shivaji Terminus Area,)
Fort, Mumbai, Maharashtra – 400 001.)

2. Municipal Commissioner,)
Municipal Corporation of Greater Mumbai,)
5, Mahapalika Marg, Dhobi Talao,)
Chhatrapati Shivaji Terminus Area,)
Fort, Mumbai, Maharashtra – 400 001)

3. Executive Engineer, Building Proposals)
(WS),)
Municipal Corporation of Greater Mumbai,)
K Ward, New Majas Market, Plot)

bearing CTS No.171/2, 175/A3,)
Village Majas, Poonam Nagar at)
J V Link Road, Jogeshwari (East),)
Mumbai) ….. Respondents

Mr.Shardul Singh, a/w. Mr.Preet Chheda, i/b. Ms.Prerna Gandhi for the Petitioners.

Mr.Anil Y. Sakhare, Senior Advocate, a/w. Ms.Madhuri More for the Respondent – MCGM.

Mr.Navnath Ghadge, E.E.(B.P.) 'K' Ward and Mr.Amit Patil – A.E. (B.P.) K/WS – I and Mr.Pankaj Bansod, Assistant Engineer, (B & F) K/ W Ward present in Court.

CORAM: R. D. DHANUKA AND
KAMAL KHATA, JJ.
RESERVED ON : 23RD AUGUST, 2022

PRONOUNCED ON : 20TH SEPTEMBER, 2022

JUDGMENT (Per R.D.Dhanuka, J.):-

By this petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of mandamus directing the respondents to consider and decide the new application No. P-12001/2022/K/W Ward/FP/342/1/New dated 11th July, 2022 under section 44 of the MRTP Act filed by the petitioners in accordance with law and on its own merits. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. M/s.Artline Properties Pvt. Ltd. was the original owner of Aadish Bungalow at CTS Nos. 997 and 997A of Juhu, Mumbai. The said M/s.Artline Properties Pvt. Ltd. has been amalgamated and merged into

the petitioner no.1 company on 18th October, 2017. The petitioner no.1 company is a closely held family concern of Mr. Narayan Rane and his family who held shares in the petitioner company. It is the case of the petitioners that by an indenture made at Mumbai on 25th April, 2006, Mr.Piroj Nowroji Dagora and Ms.Banoo Nowroji Daroga granted lease of the land and premises admeasuring about 1080.2 square meters or thereabouts of the land being part of Plot No.12 and bearing C.T.S.No. 997 and 997A, Santacruz Town Planning Scheme No.2. The said M/s.Artline Properties Pvt. Ltd. had applied for permission to carry out construction on the said land.

3. On 11th June, 2007 the Ministry of Environment and Forests addressed a letter to the Chairman, Maharashtra State Coastal Zone Management Authority & Principal Secretary, Environment Department, the Management Authority and accorded clearance in respect of the said plot bearing C.T.S.No. 997 and 997-A under Coastal Regulation Zone Notification, 1991 for construction of bungalow on the said plot subject to various conditions. One of the conditions prescribed under the said sanction was that the said construction should be undertaken with the Floor Space Index (FSI) 1.0 as existed on 19th February, 1991. The proposed development should be taken up on the landward side of the existing (constructed prior to 19th February, 1991) authorized structure/road.

4. On 23rd January, 2013, the Municipal Corporation granted full occupation certificate for the work of residential building comprising of basement + stilt + 1st to 7th and 8th (Pt.) upper floors on plot bearing

CTS Nos. 997 and 997A. It is the case of the petitioners that an inspection notice was issued by the Municipal Corporation in the name of the erstwhile company M/s.Artline Properties Pvt. Ltd. under section 488 of the Mumbai Municipal Corporation Act, 1888 (for short the said MMC Act) dated 17th February, 2022 and 18th February, 2022. On 21st February, 2022, the Deputy Commissioner, K/West Ward of Corporation along with other officers visited the said premises and made a Panchnama/report.

5. On 25th February, 2022, the Designated Officer of the Corporation issued a notice under section 351(1A) of the said MMC Act calling upon the petitioners to show cause that the work elucidated in the schedule appended to the said notice was in accordance with the provisions of sections 337, 342 and 347 of the MMC Act. In the schedule to the said notice, the Corporation had alleged various unauthorized addition, alterations and change of user in contravention to the approved plan by the petitioners.

6. On 3rd March, 2022 the erstwhile directors of M/s.Artline Properties Pvt. Ltd. with the consent of the petitioner no.1 company replied to the said notice. On 4th March, 2022, the Corporation issued a letter to the noticees, the erstwhile directors of the M/s.Artline Properties Pvt. Ltd. directing them to appear before the Office of the Executive Engineer (B & F), K West Ward on 7th March, 2022.

7. On 4th March, 2022, the Corporation issued another notice alleging that there was change of use in respect of the said premises.

The Municipal Corporation thereafter rendered hearing to the petitioners through an advocate on 10th March, 2022. On 10th March, 2022, the petitioners through its architect made an application to the Municipal Corporation for retention of the structures that were categorized by the Corporation to be unauthorized under section 44 of the Maharashtra Regional Town Planning Act, 1966 (for short the said MRTP Act) without prejudice to its rights and contentions for retention of the portion of the said premises which were alleged to have been in contravention of the sanctioned plan by the petitioners. It is the case of the petitioners that they submitted various documents in support of the said application.

8. The petitioners also gave response to the notice dated 4th March, 2022 issued by the Municipal Corporation. On 14th March, 2022, the Designated Officer of the Corporation scheduled the hearing in pursuance of the notice dated 4th March, 2022. It is the case of the petitioners that the Designated Officer proceeded to pass the second order dated 16th March, 2022 without sufficient reasonings and directed that the unauthorized change of use works be removed within 15 days by the petitioners or the same would be removed departmentally.

9. The petitioners filed a writ petition bearing (L) No. 8672 of 2022 in this Court impugning the notices dated 25th February, 2022 and 4th March, 2022 and the orders dated 11th March, 2022 and 16th March, 2022 in this Court. By order dated 22nd March, 2022, this Court recorded that the petitioners had already filed retention/regularization application under the provisions of the said MRTP Act. This Court

disposed off the said writ petition by directing that unless the pending application of the petitioners for retention/regularization is decided, no coercive/precipitative action shall be taken by the Corporation on the basis of the impugned orders. This Court also clarified that if the decision on the retention/regularization application is adverse to the petitioners, no coercive/precipitative action shall be taken by the Corporation for a further period of three weeks from the date of receipt of the decision by the petitioners.

10. On 21st March, 2022, the Sub-Divisional Officer passed an order directing that the unauthorized constructions be removed or the Sub-Divisional Officer shall on his own motion remove the same on 28th March, 2022. On 22nd March, 2022, the petitioners addressed a letter challenging the authority of the Sub-Divisional Officer to pass such order. The petitioners filed a writ petition bearing (L) No. 9308 of 2022 impugning the said letter dated 21st March, 2011 in this Court. By order dated 29th March, 2022, this Court disposed off the said writ petition as infructuous, by keeping all contentions of the parties expressly open including the contention of the petitioners that the respondents have no authority to take such action.

11. This Court recorded the statement made by the learned Advocate General that “Reserving right to take action, if as also ‘as and when’ found requisite, albeit, in accordance with law, in respect of the subject matter of the impugned communication/order dated 21st March, 2022, copy of which is produced in the present proceedings at Exhibit-A (Page 39), the same is hereby withdrawn. All contentions of all the

parties to the present proceedings, in regard to the said communication/ order dated 21st March, 2022, be expressly kept open for consideration, if as also 'as and when' such action is taken".

12. It is the case of the petitioners that District Coastal Zone Monitoring Committee (DCZMC) issued a show cause notice dated 24th May, 2022 calling upon the owners of the said premises to show cause as to why the alleged structures should not be deemed unauthorized on account of being violative of Ministry of Environment and Forest (MOE&F) NOC dated 11th June, 2007. The petitioners filed a writ petition bearing (L) No. 18112 of 2022 in this Court on 8th June, 2022.

13. On 16th June, 2022, this Court observed that the Maharashtra Coastal Zone Management Authority (MCZMA) had received a complaint regarding violation of CRZ norms in constructions of a bungalow at Juhu, Mumbai and called for records from the Municipal Corporation. The Municipal Corporation had submitted a report to the MCZMA. On perusal of the report of the Corporation, the MCZMA formed an opinion that there were multiple violations in construction of the said bungalow. The petitioner was issued a notice to attend the hearing and to explain as to why the construction of the bungalow beyond the permissible FSI should not be regarded as an unauthorized construction and therefore in violation of the NOC issued by the Ministry of Environment and Forest by its communication dated 11th June, 2007.

14. This Court was of the opinion that the interest of justice would be sufficiently served if, instead of examining the objection raised by the petitioner as regards lack of jurisdiction, authority and competence of the Committee to issue the impugned notice, the Committee itself would be directed to give its rulling on such objection that was raised by the petitioner at the personal hearing. This Court disposed off the said writ petition by its order dated 16th June, 2022. It is the case of the petitioners that the petitioners in the meanwhile submitted various documents in response to the requisition made by the Municipal Corporation by further particular letter dated 7th April, 2022. On 3rd June, 2022, the Municipal Corporation rejected the said application for proposed addition/alteration/retention made by the architect/licensed surveyor of the petitioners under section 44 of the MRTP Act on various grounds.

15. On 6th June, 2022, the petitioners addressed a letter to the Executive Engineer, of the Building Proposal (WS) stating that the petitioners had claimed FSI on the plot area leased out to M/s.Artline Properties Pvt. Ltd. and has claimed FSI to the extent to the petitioners' entitlement only.

16. Being aggrieved by the said order dated 3rd June, 2022 passed by the Municipal Corporation, the petitioners filed a writ petition bearing (L) no. 19398 of 2022 in this Court. The said writ petition was vehemently opposed by the Municipal Corporation. On 23rd June, 2022, this Court after hearing the learned counsel for the parties and after recording the reasons, rejected the said Writ Petition (L) No.

19398 of 2022. The petitioners did not challenge the said order dated 23rd June, 2022 and prayed for continuation of the interim relief in force in the writ petition before this Court while dismissing the said writ petition.

17. The petitioner no.1 filed a fresh application (hereinafter referred to as the 2nd application) on 11th July, 2022 for retention of the unauthorized construction. It is the case of the petitioners in the present writ petition that the architect of the petitioner no.1 thereafter followed up with the respondents who informed the said architect that on account of the order dated 23rd June, 2022 having been passed by this Court dismissing Writ Petition (L) No.19398 of 2022, the Municipal Corporation will require an order/directions from this Court to consider the fresh application.

18. On 19th July, 2022, this writ petition was heard by this Court when the matter was vehemently argued by the learned counsel for the petitioners. This Court directed the Municipal Corporation to address this Court on the next date on whether the second application for retention made under section 44 of the MRTP Act was at all maintainable or not in view of the first application for retention made by the petitioners having been already rejected by the Municipal Corporation and upheld by this Court by an order dated 23rd June, 2022 in the Writ Petition (L) No. 19398 of 2022.

19. This matter appeared on board on 25th July, 2022. During the course of the arguments, learned counsel for the petitioners invited our

attention to the reworking of permissible FSI according to the petitioners annexed at page 214 of the petition and submitted that the petitioners do not propose to take into consideration the net area of the entire plot but restrict themselves to apply for regularization/retention only in respect of the land admeasuring 532.18 sq.mtrs. It was submitted that the benefits according to the petitioners are available under the provisions of the Development Control and Promotion Regulation, 2034 (DCPR 2034), and the entire construction carried out by the petitioners in excess of the sanctioned plan would be covered and on that basis, the application for regularization can be considered by the Municipal Corporation.

20. Learned counsel for the petitioners urged before this Court that in view of the order passed by the Municipal Corporation rejecting the first application for regularization/retention being in the nature of an administrative order, the second application cannot be rejected on that ground by applying the principles of estoppel or *res judicata*. Learned counsel for the petitioners submitted notes of arguments on behalf of the petitioners and made various submissions based on the said written arguments.

21. This Court in an order dated 25th July, 2022 directed the Municipal Corporation to file affidavit and to indicate the following :-

> (i) whether the second application filed by the petitioners for regularization/retention under section 44 of the MRTP Act is maintainable even if the first

application for regularization/retention which was made for the larger plot was rejected on various grounds on merits by the Municipal Corporation and the said order having been upheld by this Court in the writ petition filed by the petitioners, by recording various findings in respect of unauthorized constructions carried out by the petitioners,

(ii) whether various benefits claimed by the petitioners under the provisions of the DCPR 2034 while submitting the calculation annexed at page 214 of the petition can be availed of in case of an existing building having substantial part being unauthorized and if so, whether regularization can be considered and on what ground.

22. This Court directed the Municipal Corporation to disclose on affidavit and to address the issue whether the application for regularization can be considered even if there is large scale unauthorized construction and the case not being a case of mere irregularity in carrying out construction. This Court directed the petitioners not to carry out any further construction or any alteration without prior permission of the Municipal Corporation and directed the Municipal Corporation not to take any coercive steps against the impugned structure which was subject matter of the second application filed by the petitioners under section 44 of the MRTP Act and adjourned the matter to 23rd August, 2022 for further arguments. In

pursuance of the said order dated 25th July, 2022 passed by this Court, the Municipal Corporation filed an affidavit on 5th August, 2022.

23. The Municipal Corporation in the said affidavit, after adverting to the order passed by this Court recording various findings on 23rd June, 2022 dismissing earlier writ petition filed by the petitioners, stated that the Municipal Corporation has received a revised proposal of the petitioners' through architect for basic zonal FSI 1.00 + 0.50 additional FSI on payment of premium + admissible T.D.R. + BUA for rehabilitation of AH/R & R tenaments transferred to other plot as per regulation 33 (20) (B) + BUA for sale component against AH/R & R tenaments transferred from other plot as per regulation 33 (20) (B) of DCPR 2034.

24. In paragraph (13) of the said affidavit, the Corporation contended that under sections 44 and 45 of the MRTP Act, there is no bar/restriction imposed on project proponent to submit proposal for retention/regularization of existing building once earlier proposal is rejected or recorded. It is further contended that in the BMC Auto DCR System no restrain is put on the project proponent from submitting his application once earlier application is rejected. Further as per prevailing practices dormant proposals can be continued and recorded proposals can be resubmitted by taking approval of competent authority by recovering fresh scrutiny fees.

25. It is contended that after DCPR – 2034 having been published on 21st September, 2018 along with certain regulations/promotions, all the

development permissions are dealt with as per provisions of DCPR 2034. The Corporation placed reliance on regulation 3(1) of DCPR 2034 and section 342(a) of MMC Act. The Municipal Corporation in the said affidavit placed reliance on the judgment of Supreme Court in case of ***Shree Ram Urban Infrastructure Limited & Another vs. State of Maharashtra & Ors., (2019) 20 SCC 228*** in support of the submission that there is no scale defined for quantum of regularization, which can be done by the authority.

26. Insofar as FSI computation submitted by the architect of the petitioners is concerned, in the said affidavit the Municipal Corporation gave its tentative remarks. Insofar as additional FSI as per regulation 30 of DCPR 2034 claimed by the petitioners as 266.09 sq.mtrs. is concerned, it is contended by the Corporation that the said additional FSI as 266.09 sq.mtrs. can be availed by paying the premium to the State Government and the Corporation. Insofar as additional TDR claimed by the petitioners as 532.18 sq.mtrs. under DCPR 2034 is concerned, it is contended by the Corporation that such additional TDR can be availed by purchasing TDR from market.

27. Insofar as BUA (Built-Up-Area) or rehabilitation of AH/R & R tenaments transferred to other plot and BUA for sale component against AH/R&R tenaments transferred from other plot as per regulation 33(20)(B) under DCPR 2034 is concerned, it is contended by the petitioners that the said benefits of 399.13 sq.mtrs. + 399.13 sq.mtrs. can be availed after handing over of the project affected persons to the Corporation free of FSI. The plans would be approved

only after handing over of project affected persons to Corporation within 5 km of radius from site under reference and by paying unearned income equal to 40% difference of sale value of shifted BUA of AH/R&R component as per ASR. In paragraph (20) of the said affidavit, it is contended by the Municipal Corporation that the proposal for regularization/retention may be processed on merits with permissible 4 FSI.

28. Learned counsel for the petitioners invited our attention to various averments/submissions made by the Municipal Corporation in the affidavit in reply dated 5th August, 2022 and submitted that in view of the stand taken by the Municipal Corporation the proposal for regularization/retention may be processed on merits with permissible 4 FSI and confirming that additional FSI, TDR and BUA as claimed by the petitioners can be accepted by the Municipal Corporation, the Municipal Corporation shall be directed to decide the application for retention filed by the petitioners accordingly.

29. Mr.Shardul Singh, learned counsel for the petitioners made following submissions :-

(a) The Corporation is not estopped from considering a new/fresh/second application since the said application is based on (i) fresh/new ground or provision of the DCR and/or (ii) a material change of circumstances which may have effect of eliminating, removing and/or curing the defect that led to rejection of the first application, (iii) equitable consideration of

estoppel and/or *res judicata* do not apply to Planning Laws, (iv) a decision of the Planning Authority cannot be equated with a decree in a suit.

(b) The fresh/second application would be maintainable if (i) it eliminates/removes/cures the defect in the first application and (ii) does not re-agitate the same ground which led to rejection.

(c) The function of Planning Authority in deciding the application under section 44 of the MRTP Act is administrative in nature and thus open to review.

(d) The application filed for permission to retain development is statutorily equivalent to being an original application under section 44 of the MRTP Act and reliance is placed on Rule 10 of Maharashtra Development Plan Rules, 1970 in this regard.

(e) It would be unfair and unjust to treat the decision of granting/rejecting of a building permission as one to which the principles of *res judicata*, constructive *res judicata* or analogous principles would apply or to hold that no fresh application can be made.

(f) A blanket prohibition/ban would be essentially act as an estoppel which would give *de*

facto validity to all actions including those which may be ultra vires.

(g) Even if *res judicata* or estoppel are applied, the introduction of these principles will only be limited to those cases where the very same reason that brought about the rejection is re-agitated.

(h) The Corporation itself does not treat a subsequent application for fresh permission as a bar.

30. Learned counsel for the petitioners made further submission as under :-

(a) This Court be pleased to grant the prayer of petitioners for considering the application made for retention for the reason that (i) the irregularity in the building of the petitioner no.1 was essentially imbalance of FSI (free of FSI areas such as passage between rooms etc. were put to use by the petitioners),

(b) The first application for retention was filed by quoting an area of 1187 sq. mtrs. as the footprint for assessing FSI. The Corporation has noted that the original permission was granted on an application quoting area of 745.24 sq.mtrs. and the occupation certificate was also granted for that area of 745.24 sq.mtrs. The Corporation had rejected the application

for retention on the ground that there was no sub-division of land on which there are two other societies and thus the petitioners could not claim the footprint of 1187 sq.mtrs.,

(c) The rejection was on the ground that without sub-division of land, the petitioners cannot claim the area of 1187 sq.mtrs.

(d) The petitioners have now filed second application for retention by claiming to the original area of 745.24 sq.mtrs. only and invoked regulation 33(20)(B) which permits 0.75 FSI more, which if granted, would resolve the issue of imbalance in FSI.

(e) The second application filed by the petitioners completely removes the requirement of a sub-division and as such eliminates, removes and/or cures the defect which was the basic of rejection of the first application and thus is maintainable in law and in fact it would be open for the Corporation to consider such application.

(f) The effect of making a second application in the Scheme of section 53 of the MRTP Act would act as a stay to the notice under section 53(1) till the decision on the application for retention. Such self-operative stay would cease to have effect on rejection

of the first application. A second application will not revive the reprieve under section 53(3).

(g) The building in question is a private residence made on privately owned land and is not a commercial building. It is not a residential building made with commercial motive and is not a building made on public property. There is admittedly no hazard to public convenience, public safety or public health, there are no in-roads in public rights, the public at large is not affected.

31. Learned counsel for the petitioners relied upon the judgment of Supreme Court in case of ***Regina (Reprotech (Pebsham) Ltd.) vs. East Sussex County Council (2020) SCC OnLine Sc 968.*** He placed reliance on Rule 10 of the Maharashtra Development Plans Rules, 1970. He made an attempt to distinguish the judgment of this Court in case of ***Mahendra Builders vs. State of Maharashtra, 2016 SCC OnLine Bom 99*** and in case of ***Overseas Chinese Cuisine (India) Pvt. Ltd. & Anr. vs. The Municipal Corporation of Greater Bombay & Others, (2000) 1 Bom CR 341***.

32. Mr.Sakhare, learned senior counsel for the Corporation submitted that the second application filed by the petitioners for retention being made under different provisions of the Development Control Regulations/DCPR 2034 is maintainable. Upon raising a query by this Court as to what extent the Municipal Corporation and in

respect of what type of unauthorized construction if carried out by the applicant can be regularized by the Corporation and if so, under which provision of the Mumbai Municipal Corporation Act, MRTP Act or DCPR 2034, learned senior counsel submitted that the provisions of the Development Control Regulation or DCPR 2034 are silent on the volume of unauthorized construction that can be tolerated and regularized or allowed to be retained by the Municipal Corporation.

33. This Court raised further query to the learned senior counsel for the Municipal Corporation as to whether the order passed by the Municipal Corporation in the earlier round of litigation directing the petitioners to demolish the offended structure which order has been upheld having not been impugned by the petitioners and having attained finality can stand automatically stayed till the petitioners obtain FSI, TDR or BUA as mentioned in the petition are complied or not. Learned senior counsel submits that till the petitioners comply with all the provisions being such FSI, TDR or BUA or pay the premium to the Municipal Corporation, the earlier directions of the Corporation to demolish the standing structure and the said order having been upheld by this Court in the earlier round of litigation would remain suspended.

34. Mr.Singh, learned counsel for the petitioners in rejoinder submits that the sanctity of the order passed by this Court rejecting the earlier writ petition filed by the petitioners is not affected in any manner whatsoever even if the second application for retention is allowed to be made by the petitioners and even if considered by the Municipal

Corporation. He submits that if the second application made by the petitioners would have been on the same ground, the principles of constructive *res judicata* or *res judicata* would have been attracted and not otherwise.

REASONS AND CONCLUSIONS :

35. We have heard the learned counsel for the parties at length and have given our anxious consideration to the submissions made. We shall first decide the issue of whether the said second application dated 11th July, 2022 filed by the petitioners through their architect for retention under section 44 of the MRTP Act is maintainable or not.

36. It is not in dispute that the application made by the petitioners for retention under section 44 on 10th March, 2022 came to be rejected by the Municipal Corporation on 3rd June, 2022 after recording various reasons. The writ petition filed by the petitioners bearing (L) No. 19398 of 2022 impugning the said letter of rejection of the application for retention came to be dismissed by this Court by a judgment dated 23rd June, 2022. The petitioners admittedly did not challenge the said judgment dated 23rd June, 2022 before the Supreme Court though had obtained stay of the operation of the order dated 23rd June, 2022 for a period of six weeks. The petitioner no.1 through its architect made an application dated 11th July, 2022 (second application) for retention.

37. The question that also arises for consideration of this Court is whether the said order dated 3rd June, 2022 passed by the Municipal Corporation rejecting the first application made on 10th March, 2022

was quasi judicial order or an administrative order and accordingly whether the principles of *res judicata* or constructive *res judicata* would apply to the application dated 11th July, 2022 in view of the said order dated 3rd June, 2022 having been upheld by this Court by judgment dated 23rd June, 2022 or not.

38. The petitioners as well as the Municipal Corporation have come together before this Court with an identical plea that the second application dated 11th July, 2022 filed by the petitioners for retention under section 44 is maintainable even though the first application dated 10th March, 2022, rejected on 3rd June, 2022 has been upheld by this Court by the judgment dated 23rd June, 2022 and not having been impugned by the petitioners. There is no opposition from the Corporation on various issues raised by the petitioners.

39. This Court thus will have to decide whether the order dated 23rd June, 2022 passed by this Court upholding the earlier order dated 3rd June, 2022 thereby rejecting the first application for retention made by the petitioners would be a bar against the petitioners from making an application for retention again for the same property and would be bar against the Municipal Corporation from considering the second application on its own merits or not.

40. It is the case of the petitioners themselves in the writ petition that after filing the second application dated 11th July, 2022 by the petitioners, the architect of the petitioner no.1 has followed up respondents' Corporation who informed the petitioners that on account

of the order dated 23rd June, 2022 having been passed by this Court in Writ Petition (L) No. 19398 of 2022, the Corporation would require an order/directions from the Court to consider the fresh application. This Court thus has to decide this issue though various concessions on various legal issues are made by the Corporation which if accepted, will have serious consequences on the regularization of the illegal and rampant unauthorized construction in the City of Mumbai.

41. The petitioners as well as the Municipal Corporation have raised a common ground that the second application filed by the petitioners have been filed invoking different provisions of the DCPR 2034 and hence the order passed by the Municipal Corporation on 3rd June, 2022 rejecting the first application for retention made on 10th March, 2022 and upheld by this Court would not amount to estoppel or bar the second application for retention made on 11th July, 2022.

42. We have perused the pleadings filed by the petitioners in this writ petition and the order passed by this Court in Writ Petition No. 3116 of 2022. When the first application for retention was made by the petitioners, the provisions of DCPR 2034 were already brought in effect. This Court in case of ***Mahendra Builders*** (supra) has held that once the order rejecting regularization that was passed by the Corporation had become final, second application for regularization after having not agitated the issue in that regard in the earlier proceedings, is not permissible in law.

43. It is not the case of the petitioners that in the second application for regularization/retention, the petitioners have applied for retention of the additional structure which were not the subject matter of the first application for retention. In the first application for retention/regularization, the petitioners had already invoked the provisions of the DCPR 2034. The provisions now invoked by the petitioners for additional FSI as per regulation 30 or additional TDR by availing the TDR from market or for BUA by invoking regulation 33(20) (B) were already provided in the DCPR 2034 when the first application for regularization/retention was made by the petitioners. The order passed by the Municipal Corporation for regularization/retention under section 44 is a *quasi* judicial order appealable under section 44 of the MRTP Act and not an administrative order.

44. In the said order dated 3rd June, 2022 rejecting the first application for retention, the Municipal Corporation had clearly recorded that the architect of the petitioners had claimed FSI as per DCPR 2034. The Municipal Corporation held that the FSI of the entire plot cannot be loaded on the particular structure as other structures/occupants on the same plot could not be adversely affected, as it would amount to use of FSI which the other owners/occupants of the same plots may be entitled to. The Corporation held that the additional proposed work at every floor already exists at site hence proposal does not fall within the ambit of proposed work. There is no FSI admissible for the retention/regularization work.

45. The Municipal Corporation also rejected the said application on the ground that NOC from the Fire Department for high rise building was not submitted which was mandatory document as the refuge area was encroached upon. Habitable user was proposed on 1st and 2nd recreation floor and 7th refuge floor and terrace. In OCC plans, 1st recreation, second recreation and entire refuge floor were approved free of FSI. Due to additional work which has been carried out making the said floors habitable now, the free of FSI area on these floors will not be allowed as per provision of DCPR 2034 which will result in an increase in FSI. It is held that as the decks claimed free of FSI on the earlier approved building are not accessible by common staircase/lift/lift lobby, the same are not allowed free of FSI as per provision of DCPR 2034 and policy in force.

46. In paragraph (6) of the said order dated 3rd June, 2022, it was held that the petitioners had not submitted the prior clearance of the MCZMA for proposed regularization/retention of unauthorized work as stated in the submission.

47. The said order dated 3rd June, 2022 was challenged on various grounds raised in the Writ Petition No. 3116 of 2022. It is not the case of the petitioners that the FSI, additional TDR, BUA under regulation 30 or 33(20)(B) or any other provision invoked now could not have been invoked in the first application for retention. Admittedly the petitioners had claimed additional FSI also in the first application for regularization.

48. The said Writ Petition No. 3116 of 2022 filed by the petitioners impugning the order passed by the Corporation rejecting the first application for retention was vehemently opposed by the Municipal Corporation on various grounds including the ground that the petitioners had carried out large scale unauthorized construction. Per contra, it was vehemently urged by the petitioners that the petitioners had not carried out any unauthorized construction. It was contended that on the basis of the FSI available on the date of making application for retention application under section 44 of the MRTP Act, the Municipal Corporation ought to have considered the FSI upto 2.5 and ought to have allowed the petitioners to retain the entire structure. It was further contended that if the FSI of 2.5 would have been considered on the date of filing application for retention, the respondents could not have rejected the application for retention filed by the petitioners.

49. The Municipal Corporation vehemently urged before this Court in the Writ Petition No. 3116 of 2022 while advancing the oral submissions that there was no sub-division of plot admeasuring 2209 sq.mtrs. The Corporation had rightly considered FSI at 745.25 sq.mtrs. as applied by the petitioners. The petitioners had not challenged the order passed by the Municipal Corporation on 22nd March, 2022 under section 351 of the said MMC Act and the said order had attained finality.

50. It was vehemently urged by the Corporation that since the regularization/retention prayed for by the petitioners was incapable of regularization, in view of there being no FSI, and in view of various other breaches committed by the petitioners, the Corporation rightly rejected the application for retention made by the petitioners. The constructions carried out on the larger plot is existing. The Municipal Corporation vehemently urged that the petitioners had committed flagrant violation of the provisions of the MMC Act and Development Control Rules and MRTP Act.

51. This Court in the said order dated 23rd June, 2022 held that the Municipal Corporation had already passed order holding the status of the portion of the structure as unauthorized under Section 351(1A) of the MMC Act. This Court has rendered a finding that there was large scale unauthorized alterations carried out by the Petitioners after getting the plan sanctioned on the plot admeasuring 1187.84 sq. mtrs. As per occupation certificate, plot area was 2209 sq. mtrs and 2814.81 sq.mtr. was already consumed in terms of DC Regulations. The architect has now claimed FSI as per DC Regulations. The architect is not allowed to claim FSI on the basis of DCR on the entire plot. This Court has upheld the reasons recorded by the Municipal Corporation in the order rejecting the first application for retention that it was not possible to regularize the portion which was the subject matter of the application for retention under any provisions of law.

52. This Court also recorded a finding that the petitioners had carried out alteration to the extent of three times of the sanctioned area. This

Court held that there is no automatic sub-division of the plot merely on the execution of lease agreement in favour of the petitioners for portion of the larger plot. The Corporation had permitted construction only on 745.24 sq. mtrs. as claimed by the petitioners. The constructions carried out earlier on the said larger plot is still existing. This Court held that the existing buildings on the larger plot has not been demolished. This Court after recording the detailed reasons dismissed the said writ petition having found the same as devoid of merit.

53. Since the petitioners wanted to challenge the said order passed by this Court before Supreme Court, the petitioners were granted six weeks stay to enable the petitioners to challenge the said order passed by this Court. Admittedly the petitioners have not impugned the said order passed by this Court. The order passed by the Municipal Corporation on 3rd June, 2022 rejecting the first application for retention has attained finality. It is clear beyond reasonable doubt that the findings of the Municipal Corporation that there is large scale unauthorized construction carried out by the petitioners has been confirmed by this Court while rejecting the Writ Petition No. 3116 of 2022.

54. In our view, since the order passed by the Municipal Corporation for retention under section 44 is quasi judicial order and is appealable, there is no merit in the submission of the learned counsel for the petitioners that the said order is an administrative order and the principles analogous to constructive *res judicata* or *res judicata* would not apply to the facts of this case. The order passed by the Municipal

Corporation on 3rd June, 2022 has merged with the order passed by this Court which has attained finality.

55. In our view the second application made by the petitioners for retention under section 44 claiming FSI or TDR under various provisions of DCPR 2034 and seeking regularization by availing the benefits of those provisions which were partly availed of and could have been availed of but not availed of, the principle analogous to the principle of constructive *res judicata* or *res judicata* will apply to the second application made by the petitioners for retention.

56. If the arguments of the petitioners and the submissions of the Municipal Corporation not disputing the submission of the petitioners are accepted, the order passed by the Municipal Corporation rejecting the application for retention on various grounds including the ground that the construction carried out by the petitioners were unauthorized and having been upheld by this Court by recording specific finding of fact that there was large scale unauthorized construction carried out by the petitioners, would have no legal sanctity and without having any force of law. The Municipal Corporation cannot ignore the finding already recorded by this Court that there was a large scale unauthorized construction carried out by the petitioners and could not have been regularized. The petitioners jointly with the Municipal Corporation cannot be allowed to nullify the effect of the order/bypass the order passed by the Corporation and upheld by this Court in the guise of making a second application.

57. In our view, the stand taken not only by the petitioners but also by the Municipal Corporation that any number of applications for retention are maintainable as sought to be canvassed is *ex facie* contrary to law. The stand now taken by the Municipal Corporation is totally contrary to the stand taken by the Municipal Corporation while deciding the first application for retention and while opposing the said Writ Petition No. 3116 of 2022 for the reasons best known to the Municipal Corporation. The Municipal Corporation in this case has taken a total u-turn while dealing with this writ petition and has determined to consider an untenable application for regularization/retention under section 44 though the second application is not maintainable in law. Since there is no opposition in this writ petition from the Municipal Corporation for whatsoever reason, this Court has after hearing the parties at length raised various queries upon both the sides and agreed to decide these issues to protect the sanctity of the order passed by this Court.

58. If the stand taken by the Municipal Corporation is accepted by this Court, any member of public in this city can first carry out large scale unauthorized construction and if at some stage, any action is initiated by the Corporation for taking action against such wrongdoer, on application for retention under section 44, the Corporation would tolerate such unauthorized construction and would grant regularization on one or the other ground. The stand taken by the Municipal Corporation in our view is totally illegal, untenable, contrary to the provisions of the Mumbai Municipal Corporation Act, DCPR 2034 and

the provisions of the MRTP Act.

59. Insofar as the judgment of House of Lords in case of ***Regina (Reprotech (Pebsham) Ltd.) vs. East Sussex County Council, (2003) 1 WLR 348*** relied upon by the petitioners is concerned, the provisions of law considered by the House of Lords in the said judgment and the question whether equitable consideration of estoppel and/or *res judicata* apply to Planning Laws or not, are totally different. The said judgment is clearly distinguishable on facts and would not assist the case of the petitioners.

60. Mr.Singh, learned counsel for the petitioners relied upon the following judgments:-

(i) ***State of U.P. & Ors. Vs. Maharaja Dharmander Prasad Singh & Ors. (1989) 2 SCC 505;***

(ii) ***Raja Bahadur Motilal Poona Mills Ltd. & Anr. Vs.State of Maharashtra & Ors., (2003) 1 Bom C R 251;***

(iii) ***City of Nagpur Corporation, Nagpur Vs. Indian Gymkhana, Nagpur, 2010 (3) Mh.L.J. 196;***

(iv) ***Susme Builders Private Limited Vs. Chief Executive Officer, SRA, 2014 SCC OnLine Bom 4822;***

(v) ***State of Jharkhand & Ors. Vs. Brahmputra Metallics Ltd., Ranchi & Anr., 2020 SCC OnLine SC 968;***

(vi) ***Consumer Action Group & Anr. Vs.State of T.N. & Ors., (2000) 7 SCC 425;***

(vii) ***Friends Colony Development Committee Vs. State of Orissa & Ors., (2004) 8 SCC 733;***

(viii) ***Sharad Nago Chinawale Vs. Ulhas Devram Sable & Ors., 2017 SCC OnLine Bom 8179.***

61. In our view, reliance placed by the learned counsel for the petitioners on the judgment in support of the submission that Planning Authority in deciding the application under section 44 of the MRTP Act or similar application granting/rejecting fully or partly is administrative in nature, is totally misplaced. Sections 44, 45 and 47 of the MRTP Act have to be read together.

62. On a conjoint reading of these provisions of 44, 45 and 47 of the MRTP Act it clearly indicates that if the Planning Authority passes an order in writing on the application made under section 44 granting permission unconditionally or subject to such general or special condition with the previous permission of the State Government or

refuses to grant permission is appealable under section 47 of the MRTP Act within the time prescribed to the State Government or to an officer appointed by the State Government for that behalf not below the rank of Deputy Secretary to the Government. The Appellate Authority has to grant personal hearing. The State Government is required to give the particulars to the appellant and the Planning Authority has to hear before passing any order on the said appeal.

63. Under Rule 10 of Maharashtra Development Plan Rules, 1970 any person aggrieved by the notice served by the Planning Authority under section 53(1), and who seeks to apply for permission under section 44 has to furnish various details, particulars and documents to the Planning Authority that would have been required to be submitted under sub-rule (2) of Rule 6, had he applied for permission under section 44 before the development was carried out. Rule (8) of the said Rules provides that every appeal under section 47 shall be made to the officer appointed by the State Government under that section and shall clearly state the grounds of appeal. Rules 8 and 10 of the said Maharashtra Development Plan Rules, 1970 would not advance the case of the petitioners but on the contrary clearly indicate that the order that is passed by the Municipal Corporation on an application under section 44 being an appealable order, cannot be termed as an administrative order.

64. There is no substance in the submission made by the learned counsel for the petitioners that the blanket prohibition/ban for making a second application for any further application in future would act as an

estoppel which would affect the validity of action including those which may be ultra vires. There is also no merit in the submission of the learned counsel for the petitioners that even if *res judicata* or estoppel are applied, the introduction of these principles will only be limited to those cases where the very same reason that brought about the rejection is re-agitated.

65. The stand taken by the Municipal Corporation in the affidavit in reply is that the second application for retention under section 44 is not barred once earlier proposal is rejected or recorded. It is contended by the Municipal Corporation in the affidavit that in the BMC Auto DCR system, no restrain is put on the project proponent from submitting application once earlier application is rejected. It is further contended that as per prevailing practices dormant proposals can be continued and recorded proposals can be resubmitted by taking approval of competent authority by recovering fresh scrutiny fees.

66. In the facts of this case, it is not the case of the petitioners that the first application for retention filed by it under section 44 remained dormant or was 'filed' and not considered by the Municipal Corporation for non compliance of certain procedural requirements or the documents for curing the defect in the said application were not submitted or that the said application was not rejected on merits. The first application made under section 44 of the MRTP Act has been rejected by the Municipal Corporation by recording the reasons which order has attained finality in view of the dismissal of the writ petition filed by the petitioners impugning the said order of Municipal

Corporation on merits after recording the finding that the petitioners had carried out a large scale violation of the provisions of law and has carried out unauthorized construction. Various mandatory permissions were not obtained by the petitioners before carrying out additions and alterations. The Corporation had recorded a finding that due to additional work carried out making various floors habitable now, the free of FSI area on those floors will not be allowed as per DCPR 2034 which will result in increase in FSI. Decks claimed free of FSI on earlier approved buildings are not accessible by common staircase/lift/lift lobby. The same are not allowed free of FSI as per provisions of DCPR 2034. The petitioners also did not submit the prior clearance of MCZMA for proposed regularization/retention of unauthorized work. Stand now taken by the Corporation is exactly contrary to the order passed earlier which has attained finality.

67. Insofar as judgment of Supreme Court in case of ***Shree Ram Urban Infrastructure Limited & Another*** (supra) relied upon by the Municipal Corporation is concerned, the Supreme Court had considered the issue whether deemed permission accrued, and concerning the determination of refuge area as per order passed by the Municipal Commissioner. The order passed by the Municipal Corporation regarding the refuge area came to be upheld by the Supreme Court in the said judgment. In our view, the said judgment does not even apply remotely to the facts of this case and does not advance the case of the petitioners or the Corporation.

68 This Court in case of ***Mahendra Builders vs. State of Maharashtra*** (supra) under the MRTP Act has held 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 specifically or by necessary implication. In our view, the petitioners by filing second application for retention under section 44 of the MRTP Act seeks review of the earlier decision by the Municipal Corporation rejecting its first application for retention which decision has been admittedly upheld by this Court and the same is not permissible. There is no provision of review under the provision of the MRTP Act. The principles laid down by this Court in case of ***Mahendra Builders vs. State of Maharashtra*** (supra) apply to the facts of this case.

69. In the said judgment, this Court had considered the facts where the applicants who had applied for regularization had acquiesced their right in the impugned order *qua* the additional rooms and toilets. It was held that no other inference could 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. This Court held that the said applicant 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.

70. This Court accordingly held that taking into consideration these facts making a second regularization application after having not agitated the issue in that regard in the earlier proceedings, was

impermissible in law. This Court accordingly held that Municipal Commissioner could not have have entertained the said application overlooking these glaring facts as noted by this Court in the said judgment. The principles laid down in the said judgment applies to the facts of this case. In this case also the Municipal Corporation admittedly rejected the first application for retention/regularization filed by the petitioners. The said order passed by the Municipal Corporation has been upheld by this Court. The order passed by this Court has not been challenged by the petitioners before Supreme Court. The petitioners having accepted the findings rendered by the Municipal Corporation rejecting the first application for retention and upheld by this Court, could not have filed second application for retention under section 44 in respect of the same property having same cause of action.

71. We now decide the issue whether the petitioners though having carried out the large scale violation of the provisions of law and more particularly the sanction granted by the Municipal Corporation, the Municipal Corporation can still consider such application for retention or not. We are astonished with the stand taken by the Municipal Corporation in the affidavit in reply and across the bar that there is no scale defined for quantum of regularization Corporation can consider retention irrespective of the volume of unauthorized construction and breach of provisions which cannot be tolerated. If the arguments of the petitioners as well as the Municipal Corporation that there is no bar in considering an application for regularization of the unauthorized construction irrespective of the scale or violation of such unauthorized

construction is accepted, every inch of land of Mumbai City even if developed in breach of sanction plan and other mandatory provisions of law would be tolerated by the Municipal Corporation. The entire object and the purpose of obtaining mandatory prior permission of the Municipal Corporation before carrying out construction keeping in mind the public interest would be frustrated and would defeat the legislative intent.

72. In this backdrop, we shall now decide whether the Municipal Corporation can be allowed to consider an application for retention even in case of large scale violation of the sanctioned plan for carrying out construction granted by the Municipal Corporation itself or to what extent and in what circumstances application for retention/regularization of violations can be considered.

73. It is not in dispute that, in the notice issued under section 351 of the MMC Act by the respondent Corporation on 25th February, 2022, the Municipal Corporation had found the work carried out by the petitioners beyond the approved plans and unauthorized. In the order passed by the Municipal Corporation on the said notice issued under section 351, the Municipal Corporation found such structure unauthorized to the large extent. The said order passed under section 351 of the MMC Act has not been admittedly impugned by the petitioners till date. The findings of the large scale violation of the provisions of the Act and the sanctioned plan by the petitioners against the petitioners rendered by the Municipal Corporation has attained finality.

74. This Court in the said judgment delivered on 23rd June, 2022 has recorded a finding that the petitioners have carried out large scale unauthorized construction and more particularly to the extent of three times of the sanctioned construction. This Court in the said judgment delivered on 23rd June, 2022 accepted the arguments advanced by the learned senior counsel for the Municipal Corporation vehemently opposing the said petition and justifying the order passed by the Municipal Corporation rejecting the application for retention under section 44. There is thus no dispute that the petitioners have carried out large scale unauthorized construction in blatant violation of the sanctioned plan and the provisions of law. Various reasons recorded by the Municipal Corporation while rejecting the first application for retention made by the petitioners are accepted by this Court in the said judgment dated 23rd June, 2022.

75. The petitioners or even the Municipal Corporation cannot be allowed to brush aside the finding of large scale unauthorized construction rendered by the Corporation and accepted by this Court under the guise of considering the second application made by the petitioners for retention.

76. It is not disputed by the Municipal Corporation that, under section 342 of the Mumbai Municipal Corporation Act, any person who intends to make any addition to a building or change of existing user of the building, has to give to the Commissioner notice of such intention to make additions or change of user of the building. Various

restrictions are imposed under section 342 of the MMC Act providing the nature of work requiring permissions under the said provision. Under section 44 of the MRTP Act, an application for development is necessary in such form and containing such particulars and accompanied by such documents, as may be prescribed not being Central or State Government or local body intending to carry out any development or any land interest or otherwise provided by rules.

77. Under section 45 of the MRTP Act, the Planning Authority is empowered to grant permission on an application made under section 44 of the MRTP Act unconditionally or subject to such general or special conditions as it may impose with the previous approval of the State Government or refuse the permission. In this case, various conditions were imposed by the Municipal Corporation while granting permission to the petitioners for carrying out the constriction. After enactment of DCPR 2034 published on 21st September, 2018, these regulation shall apply to all development, redevelopment, erection and/ or re-erection of a building, change of user etc. as well as to the design, construction or reconstruction of and additions or alterations to a building.

78. Under section 351 of the MMC Act, the respondent Corporation is empowered to take action, if the erection of any building or the execution of any such work as described in section 342, is commenced contrary to the provisions of section 342 or 347, by serving a written notice and is empowered to remove, alter or pull down such unauthorized construction. In this case, the action initiated by the

Municipal Corporation against the petitioners for carrying out such large scale unauthorized construction has already attained finality.

79. Under section 53 of the MRTP Act, the Planning Authority is empowered to serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place, where any development of land has been carried out as indicated in section 52(1)(a) or (c). The said provision further provides that if the owner, developer or occupier fails to restore the land, the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor.

80. The Planning Authority is empowered to issue notice requiring such permission to demolish or alter. If any action is taken under section 53(1) of the MRTP Act, any person aggrieved by such notice is entitled to apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

81. Section 53(5) provides the consequences in case if permission applied for retention is granted by the Planning Authority or is refused. If the permission for retention of unauthorized construction is rejected by the Planning Authority, any person who has carried out such unauthorized construction can be punished for such term as is provided

in section 53(7) of the said Act. Under the said provision of section 53, the Planning Authority is empowered to issue notice upon person who has carried out unauthorized work to restore the construction to the original position as sanctioned by the Planning Authority.

82. The Urban Development Department of Maharashtra issued a notification on 8th May, 2018 and sanctioned the Development Plan (DP 2034) and Development Control and Promotion Regulation, 2034 (DCPR 2034). The said DP 2034 and DCPR 2034 provides the regulations for carrying out any kind of development in the City of Mumbai. The said DCPR 2034 forms an integral part of the DP 2034.

83. Supreme Court in case of ***Mahendra Baburao Mahadik & Ors. vs. Subhash Krishna Kanitkar & Ors., (2005) 4 SCC 99*** after considering various case laws and construing sections 44, 52, 53, 124-E, 143, 2(15) & (19) of the MRTP Act held that the power to grant permission for construction as contained in section 44 of the MRTP Act whether at the initial stage or when a notice is served under section 53(2) of the MRTP Act could be exercised only within the purview of the Building Bye-laws. The Municipal Corporation has no jurisdiction to direct regularization of such unauthorized constructions beyond the scope of section 44 of the MRTP Act. The power of the Municipal Corporation, it is trite, being confined to the provisions of the said Acts, no action could be taken by them contrary thereto or inconsistent therewith.

84. Supreme Court in case of ***Mahendra Baburao Mahadik & Ors.*** (supra) adverted to an earlier judgment in case of ***Friends Colony Development Committee vs. State of Orissa (2004) 8 SCC 733*** in which the Supreme Court held that though the municipal laws permit deviations from sanctioned constructions being regularized by compounding, but that is by way of an exception. Only such deviations deserve to be condoned as are *bona fide* or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. It is held that other than these, deliberate compounding of deviations ought to be kept at a bare minimum.

85. Supreme Court also considered in the said judgment, a judgment in case of ***M.I. Builders (P) Ltd. vs. Radhey Sham Sahu (1999) 6 SCC 464*** holding that no consideration should be shown to the builder or any other person where construction is unauthorized. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. It is held that a discretionary power must be exercised

having regard to the larger public interest.

86. A Division Bench of this Court in case of ***Sharad Nago Chinawale vs. Ulhas Devram Sabale, 2017 SCC OnLine Bom. 8179*** after construing Regulation 16.2 of the Development Control Regulation held that what is unauthorized and illegal cannot be regularized in law. Regulation 16.2 of the Development Control Regulation is not meant to serve that purpose else every unauthorized and illegal work can be regularized. It is only what is irregular that can be regularized and this is succinctly clarified by the Supreme Court in ***Mahendra Baburao Mahadik & Ors.*** (supra).

87. A Division Bench of this Court in case of ***Overseas Chinese Cuisine (India) Pvt. Ltd. & Another*** (supra) after construing various provisions of the Development Control Regulation held that the application for regularization is a notion alien to the provisions of the Bombay Municipal Corporation Act or MRTP Act, both of which dealing with situation of the construction / development of the land contrary to the Regulations. This Court after considering the application of Wednesbury test of rationality in the said judgment distinguished the judgment in case of ***Girish Vyas (Writ Petition No.4433 of 1998 with Writ Petition No.4434 of 1998)*** on the ground that the construction housed a large number of tenaments which were already occupied by tenants and it would have been wholly harsh and unjust to demolish the building and dishouse the tenants without giving them an opportunity to challenge the judgment and order before

the Supreme Court. In the facts in the said judgment in case of ***Overseas Chinese Cuisine (India) Pvt. Ltd. & Another*** (supra) the facts were totally different and were accordingly distinguishable. This Court dismissed the said writ petition filed by the petitioners with costs.

88. This Court in case of ***Savitribaiphule Shikshan Prasarak Mandal, Kamlapur Vs. Solapur Municipal Corporation & Anr., 2019 SCC OnLine Bom 1771*** has held that the jurisdiction under Article 226 of the Constitution of India is not only extraordinary but equitable and discretionary as well. It will not be permitted to be invoked so as to subvert the law or to make a mockery of the rule of law. If this Court allows the Petitioner to retain the construction activity carried out at site or the Municipal Corporation to tolerate it we would be not only acting contrary to law but making a mockery of the rule of law.

89. This Court held that the Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction. Strict action has been taken by courts repeatedly. The principles of law laid down by this Court in

case of ***Savitribaiphule Shikshan Prasarak Mandal, Kamlapur (supra)*** applies to the facts of this case.

90. Division Bench of this Court in case of ***Divgi Metal Wares Pvt. Ltd. Vs. Municipal Corporation of the City of Pune & Ors. (2019) 5 Mah LJ 484*** has dealt with the issue whether while allowing retention nothing other than what is prescribed or permitted by law can be done by the Planning Authority or not. This Court held that Resolution and Circular prescribing compounding charges to retain activity carried out is not sustainable and are set aside. This Court held that the core issue is that even for such imposition and recovery, there has to be an authority in law. After construing Sections 44 to 47, 52 & 53 of the MRTP Act, this Court held that while Section 52 makes the acts specified therein to be an offence and for which penalty can be imposed, and for a continuing breach Section 53 confers power to require removal of unauthorized development.

91. This Court found that there are two distinct provisions – one by which the Planning Authority can serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the development took place when it finds that such development is without the permission required under the Act or in contravention of any permission which has been duly modified. If the owner, developer or occupier fails to restore the land though required to do so, then the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor.

92. It is held that where the development has been carried but that is not in accordance with any permission granted, or is in contravention of any condition subject to which the permission has been granted, or is in contravention of any permission which has been duly modified, then, a distinct notice can be served under Section 53 (1A) requiring the person/noticee to carry out the acts enlisted in the sub-section and if the person aggrieved by such notice seeks to retain the activity carried out, then he can approach the Authority under subsection (3) of Section 53 for retention. This Court observed that none of the parties had shown any provision either under that section or any other sections of the law which would enable the Planning Authority to recover such fees.

93. Supreme Court in case of ***Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Others, (2021) 10 SCC (1)*** dismissed the civil appeal filed by the applicant whose construction was declared as unauthorized and its writ petition was dismissed by the High Court. The Supreme Court held that the 'rampant increase in unauthorized constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of the Supreme Court. This state of affairs has often come to pass in no small measure because of the collusion between developers and planning authorities.' Supreme Court held that the 'regulation of the entire process is intended to ensure that constructions which will have a severe negative

environmental impact, are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards.' Supreme Court held that 'illegal construction has to be dealt with strictly to ensure compliance with the rule of law.'

94. Supreme Court in the said judgment in case of ***Supertech Limited*** (supra) adverted to the judgment in case of ***K.Ramadas Shenoy vs. Town Municipal Council, Udipi, (1974) 2 SCC 506*** which held that the municipality functions for public benefit and when it 'acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess.' It is held that 'if under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative.' Supreme Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by

unauthorized construction.

95. The Supreme Court also adverted to the judgment in case of ***Priyanka Estates International (P) Ltd. vs. State of Assam, (2010) 2 SCC 27*** in which it was held that the 'illegal and unauthorized constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free.'

96. The Supreme Court further adverted to the judgment in case of ***Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corporation of Mumbai, (2013) 5 SCC 357*** where it was held that an unauthorized construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Supreme Court accordingly held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved.

97. The Supreme Court accordingly held 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.' The Supreme Court 'in the said judgment held that it was highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularization of illegal constructions by way of compounding and otherwise.'

98. The Supreme Court in the said judgment of ***Supertech Limited*** (supra) accordingly did not interfere with the judgment of the High Court for the demolition of two towers. Recently both the towers which were directed to be demolished have been finally demolished. The principles laid down by the Supreme Court in case of ***Supertech Limited*** (supra) apply to the facts of this case. We are respectfully bound by the principles laid down in the said judgment.

99. The Supreme Court in case of ***Pratibha Co-operative Housing Society Ltd. and another vs. State of Maharashtra & Others, (1991) 3 SCC 341*** in the matter arising out of this Court considered the facts where the housing society had made illegal constructions in violation of FSI to the extent of more than 24,000 sq.ft. where the Administrator, Municipal Council had passed an order for demolition of eight floors. The writ petition filed against the said order was dismissed by this Court. The Supreme Court held that the violation of F.S.I. in that case was not a minor one. Such unlawful construction was made by the Housing Society in clear and flagrant violation and disregard of F.S.I.

and the order for demolition of eight floors had attained finality right upto that Court. The Supreme Court accordingly did not interfere with the order passed by this Court. In the facts of this Court also, there is substantial violation of FSI and other untolerable breaches of mandatory provisions by the petitioners which cannot be regularized.

100. The Division Bench of this Court in case of ***High Court on its own motion In the matter of Jilani Building at Bhiwandi vs. Bhiwandi Nizampur Municipal Corporation and others, (2022) SCC OnLine Bom 386*** has considered several important issues for consideration in the said suo moto PIL action. This Court held that as far as the city of Mumbai is concerned, the Municipal Corporation is the custodian in regard to all affairs in relation to planning of the areas within its municipal jurisdiction, which includes its powers to grant requisite statutory permissions for construction, reconstruction, addition or extension so as to bring about a regime that unauthorized and illegal structures are not put up.

101. It is held that granting of such construction permissions are matters which are required to be dealt with by the planning authority and in the event unauthorized structure is put up, it also becomes not only an obligation of the MCGM (planning authority) but also of the competent authority under the provisions of the Slums Act to take action, including lodging of prosecution against such persons who have put up the illegal construction and even against the competent authority or any officer who has aided or abetted the construction of illegal and unauthorized structures and had failed to demolish such structures as

provided in sub-section (5) of section 3Z-2 without any sufficient reason. This Court in the said judgment held that illegal encroachments and unauthorized structures are a menace and a potential danger not only to the city of Mumbai, which is being ruined by encroachments and illegal constructions, but also to the other bigger cities.

102. It is held that these factors also depict a picture of absolute lawlessness in implementation of the municipal laws. This is for more than one reason. Firstly, as seen from the State policies, it creates two categories of citizens, the first category is of those citizens who are law abiding, who would put up lawful construction and possess buildings/structures which are lawfully constructed thereby enjoying only the legitimate and permissible benefits therefrom. The second category is of those persons who brazenly violate law and put up illegal and unlawful constructions and enjoy with impunity such illegal structures, under the blessings of municipal and government officers.

103. It is held that there is yet another category of persons, who illegally enter and encroach on public lands, construct unauthorized structures, they continue to reside in such structures for long periods with the blessings of all the concerned/responsible authorities, and yet get rewarded under the government policies which offer them a premium on such illegality of encroachment, in entitling them with a free of cost accommodation, under the garb of slum redevelopment as made permissible under the State policies as discussed above. There cannot be a bigger unconstitutionality and breach of the public trust

doctrine in such mechanism, under which valuable public largess is siphoned off from the pool of public assets to reward encroachers as also for private benefits.

104. In our view, in this case, the petitioners fall in the second category of persons who have taken up illegal and unauthorized construction by carrying out construction of three times of the sanctioned area granted by the Municipal Corporation by carrying out construction in open space and spaces far beyond the permitted FSI which could not have been constructed at all, and is totally contrary to the sanctioned plan admittedly.

105. In the said judgment in case of ***High Court on its own motion In the matter of Jilani Building at Bhiwandi vs. Bhiwandi Nizampur Municipal Corporation and others*** (supra) this Court considered the judgment of the Supreme Court in case of ***Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation and Ors.,*** (2013) 3 SCC (Civ) 72. In the said judgment in case of ***Dipak Kumar Mukherjee*** (supra) the Supreme Court upheld the judgment of High Court and held that such an order could not be sustained as the construction undertaken by the private party was in clear violation of the sanctioned plans and for which a notice was issued by the competent authority of the Corporation and more so because an application for regularization was made by such party after completion of the construction.

106. The Supreme Court emphasized that illegal and unauthorized constructions of buildings and other structures not only violate the

municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The Supreme Court held that 'the unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. It is held that it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.'

107. In the said judgment, this Court framed various guidelines about the duties and obligations of the Planning Authority relating to the unauthorized construction. This Court held that the persons who put up illegal or unauthorized constructions cannot claim any immunity by undertaking such illegal acts. The Municipal Commissioner apart from taking action for demolition of such illegal structures, shall also institute criminal proceedings against such persons, who are found to have violated municipal laws and constructed unauthorized or illegal structures apart from taking action for demolition of such structures in a manner known to law. In our view, the principles laid down by this Court in case of ***High Court on its own motion In the matter of Jilani Building at Bhiwandi vs. Bhiwandi Nizampur Municipal Corporation and others*** (supra) apply to the facts of this case.

108. This Court in case of ***Sudhir M.Khandwala vs. Municipal Corporation of Greater Mumbai & Ors., 2010 (2) Mh.L.J. 759*** has framed the guidelines on the power and authority to grant or refuse the permission for regularization of unauthorized construction in great detail after adverting to various judgments of the Supreme Court. This Court held that punishing the wrongdoers who carry out unauthorized construction is not enough. The development also must be removed. This Court in the said judgment dealt with the construction of additional floors in excess of permission granted for development and also whether the said portion/work could be regularized by taking recourse to Section 53(3) of the MRTP Act, 1966 or otherwise.

109. The principles laid down in the said judgment are summarized as under :-

(i) The provision permitting retention or regularization is to be found only within section 53(3) and Section 44 of the MRTP Act, 1966. There is no other statutory power to regularize unauthorized constructions.

(ii) The regularization is not something which should be granted as a matter of course but can be permissible on case to case basis. It cannot be said as a matter of general rule that unauthorized construction must be regularized if FSI is available or can be generated in the form of TDR from other source by the person/builder.

(iii) The limits of FSI are prescribed and the construction at a particular site/plot is allowed considering the FSI generated by the plot. There are specific Regulations for computation of FSI.

(iv) Once the limits of floor space indices are set out so also the requirement for set back and compulsory open spaces being laid down in the DC Regulations themselves, then, in the garb of considering an application for regularization, the Commissioner or the Planning Authority cannot give a go-bye to these Regulations and stipulations. These are matters which affect the health, safety not only of the inhabitants of the buildings but of the neighbourhood.

(v) If the regularization results in increasing pressure on the existing amenities, then, it would be advisable not to permit such a regularization.

(vi) Merely because the builder and developer states that he will be able to generate TDR and load it on to the existing plot/ construction, that by itself is not decisive. By such process, all constructions, which are unauthorized and illegal, can be regularized. The result would be that every such person would openly flout the building bye-laws and Regulations and make construction without any adherence thereto and later on, he would apply for retention or regularization by urging that the FSI of some other plot

belonging to him can be generated and taken into account for regularization of the subject unauthorized construction.

(vii) The developers and builders would make unauthorized and illegal construction on plot `A' and would urge that they are making construction also on the plot `B', which is in the vicinity. They would bring in the FSI/TDR generated on plot `B' and load it on plot `A' and that would enable regularization of the unauthorized and illegal construction of plot `A'. If such a course is permitted, there would be an increased pressure on the infrastructure and basic amenities available in or around plot `A' and particularly its neighbourhood. That is certainly not the intention of the Legislature nor does it further the purpose and object of the DC Regulations or Building Rules/Bye-laws. If such loading of TDR is held to be permissible, that would nullify the Regulations and Rules pertaining to FSI, open spaces, set backs, etc.

(viii) It is not intended that permission for regularization should be granted by loading of TDRs and generating of more FSI on the existing plots straightway. Such a course would have disastrous consequences.

(ix) The Legislature has not intended that provision in the planning laws including building bye-laws and regulations relating to health, safety, fire safety, safety of the

inhabitants of the buildings and the neighbourhood have to be ignored or brushed aside.

(x) The Supreme Court has cautioned against liberal use of the power of regularization and retention of unauthorized works and buildings. The Supreme Court has warned that authorities must take into account considerations of public safety and health, protection of environment and ill-effects of unregulated and uncontrolled construction in cities and towns.

(xi) It cannot be said that every unauthorized construction can be permitted to be regularized by loading of TDRs or by condoning or relaxing the restrictions relating to FSI, open space, set backs, height of the building, etc. In individual cases and by applying the standards and rules strictly and rigourously, the authorities must take an informed decision bearing in mind the building regulations, restrictions and conditions therein. The retention of unauthorized works and constructions should not result in wholesale condonation and relaxation or exemption from the Building Rules and Bye-laws or else there will be chaos and break down of the rule of law.

(xii) When an application for retention is made and it is not possible to hold that the authorities should allow such applications only because the Builder/Developer manages to

generate FSI in the form of TDR or otherwise. It is also difficult to accept that such constructions be regularized by imposing fine and charging high fees as a matter of course.

(xiii) If by imposition of fine and charging of compounding fees, large scale unauthorized constructions are regularized, then, that would encourage the Builders and Developers so also others having interest in the development activities, to violate laws openly. They will always proceed on the basis that the building regulations can be breached with impunity and all that they would be visited with, is high compounding fees. That is not the intention of the Legislature. The penal provisions in Sections 52 and 53 of the MRTP Act, 1966, are enacted with a defined object and purpose. It is to discourage unauthorized and illegal development and also punish the wrong doers.

(xiv) The exercise of this discretionary power must not result in a licence to break planning laws. An individual's interest in a property and his right to enjoy it is subject to larger public good and purpose. That right has to be balanced with the requirements of the society. It is not absolute.

(xv) While dealing with request of retention and regularization, the deviation and deficiencies, the extent of

irregularities, the damage and ill-effects thereof and the conduct of the parties, are all relevant considerations.

(xvi) The Planning Authority cannot as a matter of rule regularize unauthorized constructions by allowing the Builder/Developer/wrong doer to compensate for the violation in terms of money or by permitting him to load TDR/FSI from adjoining plots and areas. If the Court lays down such a general rule, the Court would be going contrary to the judicial pronouncements in the field. That would be violating the law of the land.

(xvii) The jurisdiction under Article 226 of the Constitution of India is extra-ordinary, discretionary and equitable. That jurisdiction cannot be exercised merely because of loss or inconvenience to the flat purchasers or the owners thereof.

110. The principles laid down by this Court in case of ***Sudhir M.Khandwala*** (supra) apply to the facts of this case. We are respectfully bound by the said principles and do not propose to take any different view in the matter. In this backdrop, let us now consider the re-working of the permissible FSI as claimed by the petitioners in the petition seeking retention/regularization in the second application filed by them.

111. Insofar as the additional FSI claimed by the petitioners is concerned, the Municipal Corporation as well as this Court has already rejected the claim for additional FSI on the ground that there was no sub-division of the larger plot and that there would be FSI imbalance. This Court in the said judgment dated 23rd June, 2022 has already considered the aspect of additional FSI claimed by the petitioners in the first application for retention in paragraph (20) of the said judgment dated 23rd June, 2022.

112. The stand taken by the Municipal Corporation in the affidavit in reply that the additional FSI as per regulation 30 for FSI 266.09 can be availed by paying the premium to the State Government and Municipal Corporation is totally illegal and contrary to the judgment already delivered by this Court on 23rd June, 2022 and also contrary to the principles laid down by this Court in case of ***Sudhir M.Khandwala*** (supra). The unauthorized construction carried out by the petitioners is totally illegal in all respect, cannot be allowed to be retained/regularized, the same being not in public interest.

113. Insofar as additional TDR claimed by the petitioners at 532.18 sq.ft. is concerned, it is the stand of the Municipal Corporation that such TDR can be availed by purchasing TDR from market such a stand is untenable and contrary to the principles laid down by this Court in case of ***Sudhir M.Khandwala*** (supra). The stand taken by the Municipal Corporation that 399.13 sq.mts. BUA can be availed by the petitioners for rehabilitation of AH/R & R tenaments and 399.13 sq.mtrs. can be transferred from other plot as per regulation 33(20)(B)

after handing over of the project affected persons to the Corporation free of FSI, is contrary to the principles laid down by this Court in catena of judgments and is contrary to the said provisions itself. These provisions cannot be used for regularizing illegalities or flagrant violations by a wrongdoer who has not made use of these provisions at the time of his application under section 44.

114. The similar stand of the petitioners as well as Municipal Corporation that 399.13 sq.mtrs. + 399.13 sq.mtrs. can be availed on the said plot after handing over of the project affected persons to the Corporation free of FSI and by paying unearned income equal to 40% difference of sale value of shifted BUA of AH/R&R competent as per ASR is also totally untenable and contrary to the principles of law laid down by the Supreme Court and this Court. By collecting unearned income from a wrongdoer committing flagrant violation of law for condoning illegal and unauthorized construction, the Planning Authority would be committing unauthorized act, patent illegality and would be acts without jurisdiction. Power vests in the Planning Authority to permit retention by regularization of an unauthorized structure cannot be exercised to allow a wrongdoer to retain illegal structure by violating the principles laid down by this Court, Supreme Court and the provisions of law. The nature and extent of unauthorized construction carried out by the petitioners in breach of mandatory provisions, cannot be waived or allowed to be retained. The nature and extent of unauthorized construction carried out by the petitioners are already held to be illegal and not retainable.

115. It is clear that the Municipal Corporation has accepted to consider and pass an order of regularization irrespective of the order already passed earlier rejecting the application for retention under section 44 while dealing with the first application by accepting the order passed by the Corporation and upheld by this Court, by ignoring the principles of law laid down by the Supreme Court and this Court and also overlooking the provisions of law. The Corporation cannot be allowed to take such an inconsistent stand and more particularly when the earlier order had been upheld by this Court.

116. If the application made by the petitioners for retention/regularization is allowed to be considered by the Corporation, who is bent upon to consider and allow such application irrespective of the extent of violation of provisions of law committed by the petitioners, any such order passed by this Court would amount to encouragement of the wholesale unauthorized construction carried out in fragrant violation of the Municipal Corporation Act, MRTP Act and Development Control Regulation and would over reach the earlier order of this Court.

117. The petitioners have admittedly constructed about three times of sanctioned plan by utilizing every inch of plot mandatorily required to be kept open for various purposes in accordance with the various provisions of law without obtaining permission from Fire Department for high rise buildings and also without obtaining prior clearance of Maharashtra Coastal Zone Management Authority (MCZMA). The

proposed retention/regularization of unauthorized work, if accepted, will amount to encouragement of the widespread/large scale violation of provisions of law and invite wrongdoer to carry out any extent of unauthorized construction in the City of Mumbai without any fear of penal action. We are not impressed with the arguments of Mr.Singh, learned counsel for the petitioners that unauthorized construction carried out by his client being used for residential purposes, and no prejudice would be caused to the Municipal Corporation or the members of public at large if the application for retention is allowed by the Municipal Corporation by permitting the petitioners to bring additional FSI, TDR or to pay any premium or penalty.

118. We accordingly pass the following order :-

(a) Writ Petition (L) No. 22398 of 2022 is dismissed with cost quantified at Rs.10,00,000/- which shall be paid by the petitioners to Maharashtra Legal Service Authority within two weeks from today.

(b) Application No. P-12001/2022/K/W Ward/FP/ 342/1/New submitted on 11th July, 2022 by the petitioners for retention of unauthorized construction is rejected.

(c) The respondents are directed to execute the orders dated 11th March, 2022, 16th March, 2022 and 23rd June, 2022 within two weeks from today and to

demolish the unauthorized construction carried out by the petitioners and to report compliance before this Court within one week from the date of implementing the order passed by this Court.

[KAMAL KHATA, J.] **[R. D. DHANUKA, J.]**

Learned counsel for the petitioners seeks continuation of *ad-interim* relief granted by this Court for sometime to enable the petitioners to approach the Hon'ble Supreme Court. Application for continuation of *ad-interim* relief is rejected.

[KAMAL KHATA, J.] **[R. D. DHANUKA, J.]**