

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NOS.326 OF 2016**

- 1 MR. RAUL AIRES FERNANDES,  
Aged 83 years, married, Indian  
National, Resident of House  
No.E-236, Corte De Oiteiro,  
Behind Old Income Tax Office,  
Panaji-Goa.403001.
- 2 MR. JOHN AIRES FERNANDS,  
Aged 42 years, married, India  
National, Resident of House  
No.E-236, Corte De Oiteiro,  
Behind Old Income Tax Office, ...  
Panaji-Goa.403001.

**Petitioners.**

Versus

- 1 STATE OF GOA, through its  
Chief Secretary, having office at  
Secretariat, Alto Porvorim,  
Bardez-Goa.
- 2 THE CORPORATION OF THE  
CITY OF PANAJI, through its  
Commissioner, having office at  
Panaji- Goa.
- 3 NORTH GOA PLANNING AND  
DEVELOPMENT AUTHORITY,  
Through its Member Secretary,  
having office at Mala link Road,  
Panaji-Goa.
- 4 OFFICE OF THE CHIEF TOWN  
PLANNER AND MEMBER  
SECRETARY OF  
CONSERVATION COMMITTEE,  
Through its Chief Town Planner  
& Member Secretary, having  
office at Dempo Tower, Panaji-  
Goa.
- 5 MR. BARNABE SAPECO, of  
major age, Indian National,

resident of House No.4/207  
(earlier E-230), Corte De  
Oiteiro, Opp. Tarkar Honda  
Showroom, Behind Old Income  
Tax Office, Panaji-Goa.403001.

- 6 MR. KETAK S. P. NACHINOLKAR  
Architect  
209, Govinda Building,  
M.G. Road,  
Panji, Goa 403 001.

..... **Respondents**

Shri Rohit Bras De Sa, Advocate for the petitioners.

Shri S.D. Lotlikar, Advocate General with Shri P. Dangui,  
Additional Government Advocate for the respondent nos. 1,3  
and 4.

Shri A. R. Kantak, Advocate for the respondent no.5.

**Coram:- F. M. REIS &  
NUTAN D. SARDESSAI, JJ.**

**Reserved on: 20<sup>th</sup> September, 2016**

**Pronounced on: 27<sup>th</sup> October, 2016.**

**JUDGMENT: ( PER NUTAN D. SARDESSAI,J)**

Heard Shri Rohit Bras De Sa, learned Advocate  
appearing for the petitioners, Shri S.D. Lotlikar, learned  
Advocate General appearing for the respondent no.1, Shri P.  
Dangui, learned Additional Government Advocate appearing for  
the respondent nos.2, 3 and 4 and Shri A. R. Kantak, learned  
Advocate appearing for the respondent no.5.

2. Rule. Heard forthwith with the consent of the learned Counsel for the parties. Learned Counsel appearing for the respondents waive service.

3. Shri Rohit Bras De Sa, learned Advocate for the petitioners contended that the respondent no.6 was the member of the Conservation Committee who had sat in decision as apparent from the minutes and without disclosing the fact that he had drawn the plan on behalf of the respondent no.5. The permission thus granted had to be revoked as it was affected by bias on the part of the respondent no.6 and since the doctrine of fairness was equally applicable in administrative action. He relied in **Mineral Development Ltd. V/s. State of Bihar and Another [AIR 1960 SC 468]** and **P.D. Dinakaran(1) v/s. Judges Inquiry Committee and others [(2011) 8 SCC 380]** to buttress his case on the plea of bias. The respondent no.6 had pecuniary interest in the matter having drawn the plan on behalf of the respondent no.5 for a fee apart from taking part in the site inspection and therefore by virtue of the Goa Land Development and Building Construction Regulations, 2010 he was disqualified in the proceedings. Therefore inviting attention to the necessary Rules under the Building Regulations, it was his contention that it was not open to the respondents to canvas

that the function of the Conservation Committee was purely recommendatory. In that context he further relied in Gullapalli Nageswara Rao and others v/s Andhra Pradesh State Road Transport Corporation and another [AIR 1959 SC 308].

4. Shri Rohit Bras De Sa, learned Advocate appearing for the petitioners also assailed the decision on the premise that there were apparent illegalities in the plan and submitted that there was no similarity in the plan drawn by the respondent no.6 as the Architect of the respondent no.5 and the Survey plan. He also adverted to Form- B and submitted that the area of the Survey holding Chalta No.178 and 179 of P.T. Sheet No.45 was admeasuring only 80 sq.mtrs. unlike the approved plan showing the total area of 95.53 sq.mtrs. The Building Regulations were applicable to the conservation area and in that context he invited attention to the Regulation 3.2C1. It was also his contention that the existing F.A.R. was 194. The Building Regulations in respect of repairs provided the modalities of applying for the same and the respondent no.5 had to apply for the repairs. He had cast a second floor slab as apparent from the photographs. He referred to the relevant provisions of the Town and Country Planning Act, 1974 apart from the Building Regulation Act and submitted that the action of the respondents

was open to judicial review. He finally closed his arguments relying in **Salahudeen Babu v/s. P.T. Prabhakar and others [AIR 2005 Mad 243], Mahendra Baburao Mahadik and others v/s. Subhash Krishna Kanitkar and others [(2005) 4 SCC 99] and Corporation of Calcutta v/s. Mulchand Agarwala [AIR 1956 SC 110]**

5. Shri S.D. Lotlikar, learned Advocate General appearing for the respondent no.1 submitted at the outset that the aspect of bias was not all attracted inasmuch as the presence of the respondent no.6 did not vitiate the proceedings which was headed by the then Chief Minister. He too adverted to the Building Regulations and submitted that the presence of the respondent no.6 on the Conservation Committee was not fatal and adverted to the relevant Rules to contend that there was no construction done by the respondent no.5 and what was done was repairs within the existing plinth.

6. Shri A.R. Kantak, learned Advocate appearing for the respondent no.5 submitted at the outset that the survey plan was provisional and had not been finalised and on his part referred to the relevant Building Regulations in the matter of addition or alteration and repairs. The respondent no.5 had

applied for additions and alterations retaining the existing walls and no new construction was undertaken by him. He adverted to the Inspection Report drawn by the Court Commissioner and invited attention to the Agenda of the Conservation Committee to show that no allegation of bias could be made against the respondent no.6. He also referred to the Minutes which showed the presence of several members including the then Chief Minister and contended that it was preposterous that the respondent no.6 could influence the members in taking the decision in favour of the respondent no.5. There was no basis in the allegation of bias and the petition as such was liable for dismissal.

7. Shri Dangui, learned Additional Government Advocate appearing for the respondent nos.2, 3 and 4 submitted that the North Goa Planning and Development Authority had referred to the application of the respondent no.5 which was for addition and alteration to the Conservation Committee. Although he conceded that there was a discrepancy in the area of the suit structure nonetheless referring to the very same Building Regulation he submitted that the respondent no.5 was entitled to the maximum height of 7.5 mtrs in terms of the Regulations.

8. Shri Rohit Bras De Sa, learned Advocate appearing for the petitioner in reply reiterated that the plea of bias squarely applied to the case and finally invited attention to the Regulation 6-B and pressed for a relief in his favour.

9. In **Mineral Development Limited (supra)**, the Hon'ble Apex Court was seized with the petition under Article 32 of the Constitution of India at the instance of the petitioners against the respondent no.1 and another for the writ of certiorari to quash the order of the Government of Bihar, cancelling the petitioner's license and for the issue of a writ of mandamus directing them to forbear from giving effect to the order of cancellation. While dealing with the petition, the Hon'ble Apex Court considered the decision in Gullapalli Nageswara Rao (supra), where it was observed that

"The principles governing the "doctrine of bias" vis-a-vis judicial tribunals are well-settled and they are: (i) no man shall be a judge in his own cause; (ii) justice should not only be done but manifestly and undoubtedly seem to be done. The two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he

ought not take part in the decision or sit on the tribunal"; and that, any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a judge, and any interest, though not pecuniary, will have the same effect, if it is sufficiently substantial to create a reasonable suspicion of bias". The said principles are equally applicable to authorities, though they are not courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others, i.e., authorities who are empowered to discharge quasi judicial functions."

In the facts of that case, Their Lordships found that the allegations of personal bias of the Revenue Minister against the proprietor was not denied and that the proceedings against the petitioner was started during the tenure of the Revenue Minister and that the actual order of cancellation was made by him. In those circumstances, it was held that the Revenue Minister had personal bias within the meaning of the decisions and he should not have taken part in either initiating the enquiry or in cancelling the license.

10. In **P. D. Dinakaran(1) (supra)**, the petitioner Judge had raised the objection to the participation of the respondent no.3 in the inquiry against him on the premise that

he had participated in a seminar organised by the Bar Association of India where he made a speech opposing his elevation and also drafted a resolution to that effect which could lead to an inference that he was biased against the petitioner and he ought not to have been appointed as a member of the Committee in terms of Section 3(2)(c) of the Judges Inquiry Act, 1968. While considering that aspect, Their Lordships referred to the nature and scope of the rule against bias and how the same has been applied by the Courts of common-law jurisdiction in India for invalidating judicial and administrative actions/orders and observed that

“Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens.

Rules of natural justice are “basic values” which a man has cherished throughout the ages. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness. The underlying object of rules of natural justice is to ensure fundamental liberties and rights of subjects. They thus serve public interest. The golden rule which stands firmly

established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice."

11. In **P. D. Dinakaran(1) (supra)**, a reference was also made to the observations in *Union of India v/s. P. K. Roy* [AIR 1968 SC 850] where the Apex Court had observed thus :

"The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

Reference was also made to the judgment in "*A.K. Kraipak V/s. Union of India*"[(2003) 7 SCC 418] where the Apex Court had observed thus :

"an important milestone in the field of administrative law. The question which came up for consideration by the Constitution Bench was whether Naqishbund who was a candidate seeking selection for appointment to the All India Forest Service was disqualified from being a member of the selection board. One of the issues considered by the Court was whether the rules of natural justice were applicable to purely administrative action. After noticing some precedents on the subject, the Court held:

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent

years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power."

12. In **P.D. Dinakaran(1) (supra)**, Their Lordships observed that a pecuniary (bias) interest, however small it may be, disqualifies a person from acting as a Judge. Other types of bias, however, do not stand on the same footing and the Courts have, from time to time, evolved different rules for deciding whether personal or official bias or bias as to the subject matter or judicial obstinacy would vitiate the ultimate action/ order/ decision. Their Lordships culled out the principle which emerges from various Judgments that no man could be a judge in his own cause and justice should not only be done, but manifestly and undoubtedly be seen to be done. Scales should not only be held even but they must not be seen to be inclined. A person having interest in the subject matter of cause is precluded from acting as a Judge. To disqualify a person from adjudicating on the ground of interest in the subject matter of lis, the test of real likelihood of the bias is to be applied. In other words, one has to enquire as to whether there is real danger of bias on the part of the person against whom such apprehension is expressed in the

sense that he might favour or disfavour a party. In each case, the Court has to consider whether a fair minded and informed person, having considered all the facts would reasonably apprehend that the Judge would not act impartially. To put it differently, the test would be whether a reasonably intelligent man fully apprised of all the facts would have a serious apprehension of bias. In cases of non-pecuniary bias, the "real likelihood" test has been preferred over the "reasonable suspicion" test and the Courts have consistently held that in deciding the question of bias one has to take into consideration human probabilities and ordinary course of human conduct. We may add that real likelihood of bias should appear not only from the materials ascertained by the complaining party, but also from such other facts which it could have readily ascertained and easily verified by making reasonable inquiries. In the facts therefore it was found from a consideration of all the material that the petitioners apprehension of likelihood of bias against the respondent no.3 was reasonable and not fanciful, though, in fact, he may not be biased.

13. The petitioner had carved a case that the permission granted by the N.G.P.D.A. was vitiated and illegal as the respondent no.6 whose services were engaged by the

respondent no.5 and who was the author of the plan had participated in the decision making process of the Conservation Committee held on 26/08/2013 and the plans were prepared by him and approved also by him sitting as a Conservation Committee member of the Town and Country Planning Department. It was also the petitioner's case that the respondent no.6 had direct interest and was aware that the permission for approval was for his client i.e. the respondent no.5 and therefore he ought not to have participated in the meeting and abstained from the meeting during the discussion and the plan approved by him. A cursory perusal of the Minutes of the Conservation Committee Meeting reveals that it was chaired by the then Chief Minister with the other members and including the respondent no.6 as one of the members. No doubt the proposed addition/alteration to the existing structure in the property bearing Chalta no.178 and 179 of P.T. Sheet no.45 belonging to the respondent no.5 was approved but by the Committee comprising of 10 members including the respondent no.6. There is no escape from the fact that the respondent no.6 was a party to the proceedings which approved the plan of the respondent no.5. To what extent he had exercised his power to approve the plan as a member of the Conservation Committee and the role played by him in that

regard is however not borne out from the records.

14. The Goa Regulation of Land Development and Building Construction Act, 2008 and the Regulations of 2010 framed thereunder provides for special zones in terms of Section 6B while conservation is contained in 6B.1. It contemplates in terms of Section 6B.1.1 that all cases dealing with any development/redevelopment/repairs/demolition falling within Conservation Zone, designated as such, in any plan in force, shall be referred to the Conservation Committee by the concerned Planning and Development Authorities/Town and Country Planning Department and the decision of the Conservation Committee shall be binding on the Planning and Development Authorities/Town and Country Planning Department. A reference was made to the letter of the Town and Country Planning Department addressed to several persons including the respondent no.6 requiring the necessity to place the report of the site inspection before the Conservation Committee. A reference to this letter was basically to canvas a submission that it was not open to the respondents to allege that the function of the Conservation Committee was merely recommendatory.

15. The Building Regulations in terms of the conduct of the Conservation Committee visualizes the disqualification of the members in terms of clause N and sub-clause (v) takes within its sweep any member who is directly or indirectly concerned or interested in proposal before the Committee, or is professionally interested on behalf of a principal or other person in any manner concerning the Committee, or is engaged at the time in any proceedings against the Committee, shall at the earliest possible opportunity, disclose the nature of his interest to the Committee and which is required to be recorded in the minutes of the Committee. Clause 5 of the conduct of the Conservation Committee also provides for the composition of the Committee and therefore there appears force in the contention of Shri De Sa, learned Counsel for the petitioner that the powers of the Conservation Committee are not purely recommendatory and since there is an inbuilt mechanism to disqualify a member who has any interest direct or indirect in any proposal before the Committee.

16. The respondent no.6 had no doubt drawn the plan of the proposed repairs on behalf of the respondent no.5 but it is nowhere shown either from the Minutes of the Conservation Committee or otherwise that he was in particular biased in the

conduct of the proceedings in favour of the respondent no.5 or against the interest of the petitioner. Therefore although there can be no dispute with the law laid down in the matter of bias as spelt out in Mineral Development and P.D. Dinakaran (1) (supra), it is not borne out from the material at large that the presence of the respondent no.6 on the Conservation Committee was riddled with prejudice or bias and/or that the presence of the respondent no.6 on the Conservation Committee was sufficiently substantial to create a reasonable suspicion of bias. In any event, the proceedings of the Committee shall not be invalid by reason of any defect in the constitution of the Committee in terms of sub clauses (p) of Clause (5) of the Regulation for Conservation contained in Annexure IX.

17. Shri Rohit Bras De Sa, learned Advocate referred to the Building Regulation at 3.2D necessitating the applicant carrying out the intended development to produce the documents in original while seeking the approval. It is apparent that the respondent no.5 had only submitted a copy and not furnished the original documents at the time of proposing his application for addition / alteration which are defined under Section 2(12) and 2(13) of the Building Regulation Act, 2008. Form B shows the area of the property

of the respondent no.5 as 80 sq.mts. in respect of the Chalta No. 178 and 179 of P.T. Sheet 45 unlike the plan drawn by the respondent no.6 showing the total area of the plot as 95.53 sq.mts. However there is due explanation for this discrepancy of the area inasmuch as even the Commissioner appointed by the Court on inspection had certified the area as approximately 92 sq.mts. The other contention of Shri Rohit Bras De Sa, learned Advocate that what was permissible in the conservation area was only ground plus one structure unlike the ground plus two storeys constructed by the respondent no.5 again does not stand the test of scrutiny.

18. A cursory perusal of the table relating to the Regulations applicable to the conservation area shows that in respect of plots below 300 sq.mts., the maximum permissible coverage is 70%, the maximum permissible F.A.R. is 200% and the maximum height is 12 mtrs. (ground plus 3) with an approval for an additional floor in special cases in stepped formulation not exceeding the total height of 15 mts. There is a foot note to this table inasmuch as in the cases of existing 100% coverage, it provides for an additional F.A.R. totalling to maximum 200 mts. which could be considered and granted by the Conservation Committee on a case to case basis in

Commercial Conservation Zone in Panaji.

19. Section 2 (5) of the Goa, Daman and Diu Town and Country Planning Act, 1974 and the Rules, 1976 framed thereunder defines "building operations" which includes (a) erection or re-erection of a building or any part of it; (b) roofing or re-roofing of a building or any part of a building or an open space; (c) any material alteration or enlargement of a building; (d) any such alteration of a building as is likely to affect an alteration of its drainage or sanitary arrangements or materially affecting its security; and (e) the construction of a door opening on any street or land not belonging to the owner of a building. Section 5(20) of The City of Panaji Corporation Act, 2002 defines the expression "erect or re-erect any building" with its grammatical variations and cognate expressions to include: (a) any material alteration or enlargement of any building; (b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation; (c) the conversion by structural alteration of one or more places of human habitation into a greater number of such places; (d) the conversion by structural alteration of two or more places of human habitation into a lesser number of such places; (e) such alteration of the internal arrangement of a

building as effects a change in its drainage or sanitary arrangements or affects its stability; (f) the addition of any rooms, buildings, out-houses or other structure to a building; (g) the reconstruction of the whole or any part of the external walls of a building or the renewal of the posts of wooden buildings; and (h) any change over ground or in land.

20. Section 22.3. of the Building Construction Act, 2008 provides for the relaxation in case of existing Coverage 60% and above. A proper reading and construction of these provisions would show that the respondent no.5 was entitled to carry out the repairs / alterations within the existing area in terms of the Building Regulations and that it was well within the power of the Conservation Committee to grant additional FAR totalling a maximum of 200 sq.ft. in commercial conservation zone in Panaji.

21. In **Salahudeen Babu** (supra), the High Court of Madras lamented on the Building Rules and Regulations being flouted by the persons on account of their high post and possession of money. Time had come that a clear message must be given that the building rules did not exist merely on paper but would be strictly enforced to forthwith demolish any

construction made in violation of the rules. The respondents had filed a Writ Petition for a mandamus directing the Member Secretary, CMDA, Chennai and the Commissioner, Corporation of Chennai to proceed against the appellant and take immediate action by way of demolition of the construction pursuant to the notice dated 04.11.2004 issued by the Member Secretary, CMDA, Chennai under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 and also pursuant to the notice issued by the Commissioner, Corporation of Chennai under Section 256 of the Chennai City Municipal Corporation Act. The respondents as the owners of the premises bearing old door No.14 had purchased the land under a Sale Deed and after purchase had constructed a bungalow on the land after getting permission from the Corporation of Chennai as per the building permission and planning permission and constructed the ground floor and first floor as per the sanctioned plan and used personally by them.

22. In **Salahudeen Babu** (supra), the appellant as the owner of the plot of land on the north of their premises closed all sides with tin sheets giving a small opening for carrying construction materials. The respondent found out that the columns and pillars erected by the third respondent were very

close to the their premises, made enquiries and found that the Commissioner, Corporation of Chennai had granted permission to the appellant for the construction of the ground floor and first floor only wherein he was required to provide on front and rear a setback of 3 mts. He had shown the necessary setback as per the rules and regulations in the plan but during the process of actual construction, it was found that he had violated the sanctioned plan and had not provided a setback not only on the rear and front side but also on all the four sides as per the planning permission and left only about 3'6" instead of 3 mts as setback. It was alleged that the entire construction of the building was in contravention of the planning permission granted by the Commissioner and by reason of this illegal construction, the respondents were put to great hardship. The construction of the building of the third respondent came very close to the petitioners' building leaving only 3'6" instead of 3 metres as setback which was about 11 feet. As soon as the writ petitioners came to know about this illegal construction by the third respondent they contacted the third respondent and the builder pointing out that necessary setback had not been given, which was mandatory and requested them to remove the unauthorised construction. However, this had not been done.

23. In **Salahudeen Babu** (supra), it was further alleged that not only ground floor and first floor had been built but also the basement and second floor had been erected by the third respondent. The Commissioner informed the petitioners that the Corporation of Chennai had issued a stop work notice to the third respondent twice, but inspite of this he had been continuing the construction vigorously. The Writ Petitioners met the Commissioner, Corporation of Chennai Mr. M. P. Vijayakumar, I.A.S. on 9.9.2004 and handed over a representation pointing out the unauthorised construction being made by the third respondent in contravention of the planning permission by not leaving three metres setback on the front and rear side. The Commissioner said that he would instruct his subordinates to take necessary action in this connection. As the third respondent was proceeding with the construction, the petitioners filed a suit in O. S. No.4636 of 2004 in the City Civil Court, Chennai seeking permanent injunction.

24. In **Salahudeen Babu** (supra), the learned Judge ordered status quo during the pendency of the injunction application and the third respondent stopped the construction by reason of that order. The Commissioner filed counter affidavit to the injunction application in the suit stating that the third

respondent while putting up the construction had deviated from the sanctioned plan specified in the plan and a notice under section 236 of the City Municipal Corporation Act was served on the third respondent on 12.7.2004 directing him to stop the illegal construction, but he did not comply with the notice and flouted the same. As no action was taken, the petitioners made a representation to the Member Secretary, CMDA requesting him to take further action. Pursuant to that stop work notice dated 12.07.2004 was issued by the Corporation of Chennai. The petitioners received a communication from the Member Secretary, CMDA that notice under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 had already been sent to the 3rd respondent on 04.11.2004. Even after the said notice no action was taken. Hence, the petitioners approached this Court for a direction to demolish the offending construction pursuant to the notice dated 04.11.2004.

25. In **Salahudeen Babu** (supra), pending the Writ Petition, the petitioners also prayed for an interim injunction restraining the 3rd respondent from proceeding with the illegal construction in the premises in question. By an order dated 03.12.2004 the learned Single Judge had granted an injunction. Challenging the said order of injunction the 3rd respondent had

preferred the above appeal. It was further alleged by the petitioners that there was nothing to show in the sanctioned plan for construction of the basement floor or the second floor, but the third respondent had made construction of the basement and second floor apart from not leaving the necessary setback precipitating a request to appellant to remove the unauthorized construction. The respondents being aggrieved by the action of the appellant had filed a suit before the City Civil Court, Chennai seeking permanent injunction who ordered status quo and the construction was stopped. The appellant however did not comply with the notice and flouted the same leading to a representation to the Member Secretary, CMDA requesting him to take further action and ultimately the respondent approached the High Court for a direction to demolish the offending construction and prayed for an interim injunction to restrain the appellant from carrying on with the illegal construction. The learned Single Judge granted an injunction giving rise to the appeal at the instance of the appellant when the above observations were made. The Division Bench of the Madras High Court thus upheld the interim order of the learned Single Judge and further directed the appellant to forthwith remove any construction made in violation or deviation of the planning permission and directing

the Corporation of Chennai to forthwith demolish the construction with the aid of police in case he failed to do so.

26. In **Mahendra Mahadik** (supra), the First Respondent, an advocate, associated with various social activities had filed a writ petition in the nature of a Public Interest Litigation inter alia for issuance of an appropriate direction upon the Bhiwandi Nizampura Municipal Council to demolish a building consisting of ground and six upper floors constructed by the Appellants. A further prayer was made that the Municipal Council be directed to furnish certified copies of the extracts of the assessment Register/Book and permission dated 5th May, 1995 granted to the Appellants in relation to the aforementioned property. The complaint of illegal constructions was made in the town of Bhiwandi on private as well as Government lands but despite the same neither any action was taken thereupon nor any certified copy supplied to him. It was urged by him that there was collusion between the officials of the Municipal Council with the appellants and such construction had come up solely owing to the negligence and default on their part and such construction being unauthorized was liable to be demolished. The High Court of Bombay held in the impugned judgment that the first respondent was entitled to the inspection

of documents as also the grant of the certified copies on payment of requisite charges, that the recovery of taxes in respect of the unauthorized construction did not amount to regularisation, the Resolution dated 12th October, 1998 passed by the Municipal Council was wholly unsustainable in law, that the offences relating to the unauthorized or illegal constructions cannot be compounded and, thus, structures had to be demolished, for the regularization of such unauthorized structures would defeat the very purpose of introducing the rules of planned development of the city and directing the respondent nos.1 and 2 to issue certified copies of the documents and directed the Civil Judge (J.D.) Bhiwandi to decide the application for interim relief by the respondent nos. 4 to 6 in suit within the defined period.

27. In **Mahendra Mahadik** (supra), the Hon'ble Apex Court observed that the jurisdiction of a local authority was confined only to deal with the application for grant of permission for construction as contained in Section 44 of the MRTP Act whether at the initial stage or when a notice is served under Sub-section (2) of Section 53 of the MRTP Act. The power to grant such permission could be exercised only within the purview of the Building Bye-laws. Therefore, being beyond the

scope of Section 44 of the MRTTP Act, the Municipal Council did not have any jurisdiction to direct regularization of such unauthorized constructions by reason of the said resolution or otherwise. The power of the Municipal Council, it is trite, being confined to the provisions of the said Acts, no action could be taken by them contrary thereto or inconsistent therewith. Their Lordships considered the judgment in Friends Colony Development Committee Vs. State of Orissa and Others [(2004)8 SCC 733], amongst others and in the ultimate, held that the appeals being devoid of any merit, were dismissed and the Municipal Council directed to carry out the order of the High Court, as expeditiously as possible and not later than four weeks.

28. It is apparent from the records that there are several factual aspects which need to be looked into and cannot be considered while dealing with the petition in the nature filed by the petitioner. Moreover the easementary rights, if any, of the petitioners which are purportedly affected on account of the repair works carried out by the respondent no.5 can in any event not be considered in this petition and which would have to be pursued by the petitioner before the appropriate Authority. There are several disputed questions of fact which cannot be

considered in a petition of this nature. The submissions on behalf of the petitioners refer to issues which require determination on a factual basis which this Court will not look into while exercising its extraordinary jurisdiction in terms of Article 226 of the Constitution of India. The Petitioner has therefore failed to make out a case to invoke the jurisdiction of this Court for an appropriate writ or directions to the respondents no.2 to 4 to cancel the permission, approvals and licenses granted in favour of the respondent no.5. We, therefore, do not find any merit in this petition which is hereby dismissed.

29. Rule stands discharged.

**NUTAN D. SARDESSAI, J.**

**F. M. REIS, J.**

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