

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.7946 OF 2014**

|                                       |   |                 |
|---------------------------------------|---|-----------------|
| Mrs. Vandana Singh,                   | ] |                 |
| Age- Adult Occ-Service                | ] |                 |
| Through Power of Attorney holder      | ] |                 |
| Mr. Mitesh Ved,                       | ] |                 |
| Age-Adult, Occ-Service                | ] |                 |
| R/at-714, A wing, Swapnlok Apartment, | ] |                 |
| Mogra Lane, Andheri (E), Mumbai – 64. | ] | ...Petitioner   |
| versus                                |   |                 |
| 1. The State of Maharashtra,          | ] |                 |
| Through Principal Secretary,          | ] |                 |
| Urban Development Department;         | ] |                 |
| Having its office at -                | ] |                 |
| Mantralaya, Mumbai.                   | ] |                 |
| 2. The Commissioner,                  | ] |                 |
| Pune Municipal Corporation,           | ] |                 |
| Having its office at                  | ] |                 |
| PMC Building, Shivajinagar,           | ] |                 |
| Pune 411 005.                         | ] | ....Respondents |

**along with****WRIT PETITION NO. 1335 OF 2016**

|                                          |   |                |
|------------------------------------------|---|----------------|
| Mrs. Vandana Singh,                      | ] |                |
| Age- Adult Occ-Service                   | ] |                |
| Through Power of Attorney holder         | ] |                |
| Mr. Narendra Pratap Singh,               | ] |                |
| Age-Adult, Occ-Service                   | ] |                |
| R/at-B/4, Radhika Empress, Jagtap Nagar, | ] |                |
| Wanowrie, PUNE – 411 040.                | ] | ....Petitioner |

versus

|                               |   |  |
|-------------------------------|---|--|
| 1. The State of Maharashtra,  | ] |  |
| Through Principal Secretary,  | ] |  |
| Urban Development Department; | ] |  |
| Having its office at -        | ] |  |
| Mantralaya, Mumbai.           | ] |  |

2. Pune Municipal Corporation, ]  
 Having its office at ]  
 PMC Building, Shivajinagar, ]  
 Pune 411 005. ]....Respondents

along with  
**WRIT PETITION NO.8717 OF 2016**

- 1) Mrs. Prabha Jain, Age – Adult, Occ: Business ]  
 Building/Unit No.A11/303, Anusaya Enclave, ]  
 Opp. Shinde Chhatri, Wanawari, Pune 411002 ]
- 2) Khemraj Maniraj Thakulla, Age-Adult, ]  
 Occ – Service, Building/Unit No.A/204, 2<sup>nd</sup> ]  
 Floor, Golden Dreams, Gondhak Nagar, ]  
 Hadapsar, Pune 411028. ]
- 3) Bhupinder Singh Arora, Age-Adult, ]  
 Occ – Asst. Engineer Building/Unit No.A/1101 ]  
 R/at 1-B, Dr. Coyaji Road, Camp, Pune 411001 ]
- 4) Rahul Shankar Zope, Age-Adult, Occ: Adult, ]  
 Occ: Lead Engineer, Building/Unit No.B/1102 ]  
 R/at 56/57, Hadapsar Industrial Estate, ]  
 Pune 411013 ]
- 5) Aateka Khan, Age-Adult, Occ-Lecturer ]  
 Building/Unit No.C/311, R./at 783/48, ]  
 Bhagwandas Chawl, Bhawani Peth, ]  
 Pune – 42. ]
- 6) Shaikh Muhammed Raffique, Age-Adult, ]  
 Occ-Retired, Building/Unit No.C/107, R/at ]  
 589, Nana Peth, Kas Chambers, 2<sup>nd</sup> floor, ]  
 Pune 411042. ]
- 7) Abdul Kadir Ali Alvi, Age- Adult, Occ-Logistic ]  
 Supervisor, Building/Unit No.D/706 ]  
 Rat-C/o. Wahida Parkar, Silver Estate ]  
 Housing Society, B2/102, Nibm Road, ]  
 Kondhwa, Pune. ]

- 8) Mohmad Arif Nasir Shaikh, Age-Adult, ]  
Occ-Business, Building/Unit No.A/1103, ]  
R/at-922, Kagdipura, Kasbapeth, Pune 11. ]
- 9) Abhijit Dayaneshwar Tambade, Age-Adult, ]  
Occ-Finance Exe. Building/Unit No.C/4-09, ]  
R/at-G-9, Kumar Park, Bibewadi, Kondhwa ]  
Road, Pune 411037. ]
- 10) Sachin Nimbalkar, Age-Adult, Occ-Project ]  
Manager, Building/Unit No.B/203, R/at. B1/ ]  
301, Anita Residency, Kondhwa Road, ]  
Katraj, Pune. ]
- 11) Rohit Raosaheb Ghatge, Age-Adult, ]  
Occ-Service, Plot 13, Radha Krishna Colony ]  
Panchgaon Back to Martoshri Vrudha ]  
Ashram, Kolhapur ]
- 12) Pramod Suresh Yewale, Age-Adult, ]  
Occ-Service, Building 1/Unit No.16, Ganesh ]  
Aradhana, S No-29, Chaitnya Nagar, ]  
Dhankawadi, Pune 411043 ]
- 13) Sandip R. Joshi, Age-Adult, Occ-Service, ]  
Building / Unit No.B/802, R/at-B-1-4, Sahil ]  
Sarvadha, Sr.No.38/5B, Near Nedw Kondhwa ]  
Police Station, Pune 411048. ]
- 14) Ratnakar Shridhar Kaveeshwar, Age-Adult, ]  
Occ-Service, Building/Unit No.10, Madhav ]  
Prasad Apartment, Postal and Telephone ]  
Colony, Trimak Road, Nasik. ]
- 15) Anjum Jabbar Momin, Age-Adult, ]  
Occ-Service, Building/Unit No.10, 2<sup>nd</sup> Floor, ]  
852, Bhawani Peth, Pratham Chamber, ]  
Pune – 411042 ]
- 16) Irfan Ayyub Momin, Age-Adult, Occ-Business ]  
Building/Unit No.C/502, R/at – 852, Bhawani ]  
Peth, Ratan Chamber, Pune ]

- 17) Zarin Javed Shaikh, Age-Adult, Occ-Service ]  
 Building 4/Unit No.504, R-Euphoria, Opp. ]  
 Talab Colony, Kondhwa, Budruk, Pune-48. ]
- 18) Rajnish Harwani, Age-Adult, Occ-Advocate ]  
 Building/Unit No.B/503, R./at-A-3/203, ]  
 Kumar Palmgrove, Opp. Sai Service Station, ]  
 Kondhwa, Pune 411048 ]
- 19) Ashok Sadashiv Mokashi, Age-Adult, ]  
 Occ-Clerk, Building/Unit No.D/106, R/at - ]  
 Navrang Society, Shivshambhu Apartment, ]  
 S.No.3718, Dhanakawadi, Pune – 43. ]
- 20) Vitthal Sadashiv Mokashi, Age-Adult, ]  
 Occ-Business, At Post Bhivandi Taluka ]  
 Purandar, Dist. Pune. ]
- 21) Nivrutti Suresh Godase, Age-Adult, ]  
 Occ-Asst. Manager, 45/7, Shivkrupa Building ]  
 Shila Vihar Colony, Paud ]
- 22) Prerana Ravi Bhalla, Age-Adult, Occ-Business ]  
 Building/Unit No.A.702 R/at - Flat No.402, ]  
 Prakash Uday, Behind Katraj Dairy, Bharti ]  
 Vidya Peeth, Katraj, Pune 411048 ]
- 23) Himanshu Satishkumar Patel, Age-Adult, ]  
 Occ- Service, Building 9/Unit No.902, ]  
 R-Euphoria, Opp-Talab Colony, Kondhwa, ]  
 Budruk, Pune – 411048 ]
- 24) Ramakant Govindrao Salvi, Age-Adult, ]  
 Occ-Service, 10-Memory Garden, Nibm Road ]  
 Kondhwa, Pune – 411 048. ]
- 25) Nagendra Pratap Badri Singh, Age-Adult, ]  
 Occ-Business, Ganga Dham Society Building ]  
 D, Flat No.103, Phase-I, Market Yard, Pune ]
- 26) Sikandar Allaudin Shaikh, Age-Adult, ]  
 Occ-Business, Flat No.C-8, Kumar Park ]  
 Kondhwa Road, Bibwewadi, Pune 411037 ]

- 27) Indresh R. Tiwari, Age-Adult, Occ-Business ]  
D2/404, Cita Del Enclave, C.H.S., B.T. Kawade ]  
Road, Ghorpadigaon, Pune – 411001 ]
- 28) Rizwana Asad Killedar, Age-Adult, ]  
Occ-Housewife, Building/Unit No.C/209, ]  
R/at-F/202, Ganga Savera, Off Shivarkar ]  
Road, Wanwadi, Pune 411040. ]
- 29) Rizwana Asad Killedar, Age-Adult, ]  
Occ-Housewife, Building/Unit No.C/209, ]  
R/at-F/202, Ganga Savera, Off Shivarkar ]  
Road, Wanwadi, Pune 411040. ]
- 30) Moses B. Lobo, Age-Adult, Occ-Service, ]  
Building B/5, F/15, Kubera Garden, ]  
NIMB Road, Kondhwa, Pune – 48. ]
- 31) Moses B. Lobo, Age-Adult, Occ-Service, ]  
Building B/5, F/15, Kubera Garden, ]  
NIMB Road, Kondhwa, Pune – 48. ]
- 32) Alpana Pandey, Age-Adult, Occ-Service,] ]  
Building No.G/702, P.O. Box 9570, ]  
Doha Qatar ]
- 33) Bahar Kiran Dhairyawan, Age-Adult, ]  
Occ-Service, Building No-S/Unit No.19, ]  
Kubera Colony, NIMB Road, Pune. ]
- 34) Vijay Madhukar Aiwale, Age-Adult, ]  
Occ-S/W Engineer R/at – Flat No.303, B-1 ]  
Wing, Welcome City Society, Lane No.6, ]  
Sukhsagar Nagar, Part-II, Katraj Pune 46 ]
- 35) Neelam Ranvijay Singh, Age-Adult, ]  
Occ-Service, Plot No.507, 1<sup>st</sup> Floor, Ponama ]  
Gate, Old Town Bhuneswar, Dist Khurda ]  
759010. ]
- 36) Vanaram Manaji Choudhary, Age-Adult, ]  
Occ-Service, C/P Prabhat Sweets, ]  
Bhagyodha Nagar, Galli No.3, Kondhwa, ]  
Khurd, Pune 411048. ]

37) Ravi Harish Bhalla, Age-Adult, Occ-BUILDER ]  
 Building/Unit No.G/702, R/at=Flat No.402, ]  
 Prakash Uday, Behind Katraj Dairy, ]  
 Bharti Vidya Peeth, Katraj, Pune 411048. ] ... Petitioners

versus

The Commissioner, ]  
 Pune Municipal Corporation, ]  
 Having its office at ]  
 PMC Building, Shivaji Nagar, ]  
 Pune 411 005. ]...Respondents

Mr. G. S. Godbole, advocate i/b. Mr. Drupad Sopan Patil, advocate for the petitioner in writ petition No.7946 of 2014 and writ petition No. 1335 of 2016.

Mr. G. S. Godbole, advocate i/b. Mr. Sumit S. Kothari, advocate for the petitioners in writ petition No.8717 of 2016.

Mr. A. M. Kulkarni along with Mr. Akshay Shinde, advocate for the applicant in civil application No.2957 of 2015.

Mrs. M. P. Thakur, AGP for the State.

Mr. A. A. Kumbhakoni, senior counsel along with Mr. Abhijit Purushottam Kulkarni along with Mr. Manoj Badgugar, advocate for respondent No.2.

**CORAM : RANJIT MORE &  
 ANUJA PRABHUDESSAI, JJ.**

**DATE OF RESERVING : 5<sup>th</sup> OCTOBER, 2016.**

**DATE OF PRONOUNCEMENT : 5<sup>th</sup> DECEMBER, 2016.**

**Oral Judgment : (Per Ranjit More, J.)**

Rule. Rule is made returnable forthwith and the petitions are heard finally by consent.

2. Heard Mr. Godbole, learned counsel for the petitioners, Mr. Kumbhakoni, learned senior counsel for the Corporation and Mrs. M. P. Thakur, learned AGP for the State.

3. The petitioners in writ petition Nos.7946 of 2014 and 8717 of 2016 seeks to challenge the order/minutes of the meeting dated 14<sup>th</sup> July, 2014, to the extent of allotting land of amenity space admeasuring about 4000 square meters out of the land bearing survey No.30 situated at village- Kondhwa, Budruk, Pune, for the purpose of crematorium. The challenge is mainly on the ground that since the said decision is taken without hearing the petitioners, the amenity space cannot be allotted for the purpose of crematorium and there is no sanction of the Municipal Corporation for the said decision. The respondent – Corporation by filing affidavits in writ petition No.7946 of 2014 justified the impugned decision. During the pendency of writ petition No. 7946 of 2014, the Corporation passed resolution No.45 dated 20<sup>th</sup> April, 2015, granting permission for development of crematorium on the said plot under Section 321 of the Maharashtra Municipal Corporations Act. The petitioner in writ petition No.7946 of 2014, thereafter, filed a fresh writ petition No.1335 of 2016 challenging the said resolution of the Corporation dated 20<sup>th</sup> April, 2015.

4. The land bearing survey Nos. 31/3, 30/7, 30/2B/2 situate at village – Kondhwa, Budruk, Pune, is owned by M/s. Kumar Builders. The said Kumar Builders submitted proposal for amalgamation of the said lands to Pune Municipal Corporation. Pune Municipal Corporation sanctioned the said layout for amalgamation on 19<sup>th</sup> April, 2010 and thereafter, building plans were sanctioned on 27<sup>th</sup> May, 2011. As per regulation No.M-6.8(b)(iii) of the Development Control Rules for Pune Municipal Corporation, the developer is required to provide for 20% of the land for public utility and amenities in case of areas under industrial zones for which residential user is permitted.

5. It is the case of the petitioners that the developer accordingly has made provision in the said sanctioned plan dated 27<sup>th</sup> May, 2011, as well as revised plan dated 22<sup>nd</sup> February, 2013, for amenity plot admeasuring 6265.314 square meters. The case of the Corporation is that the developer was supposed to handover an area of 10964.304 square meters towards amenity space as per the sanctioned layout plan for the said land. However, the developer has handed over only an area of 6265.314 square meters and the balance area is yet to be handed over to Pune Municipal Corporation. The petitioners in the above petitions claim to have purchased flats in the buildings constructed on the said land by M/s. Kumar Builders. It is the case of

the petitioners that the property under development is situated in residential zone and, therefore, they opted to purchase the flats in the said buildings. The petitioners, thereafter, got knowledge about the meeting dated 14<sup>th</sup> July, 2014 convened by the Municipal Commissioner for designating the said amenity plot for crematorium and for vehicle depot of encroachment department. As stated above, the petitioners being aggrieved by the said decision, initially filed writ petition Nos. 7946 of 2014 and 8717 of 2016, and after the resolution was passed by the Corporation, the petitioner in writ petition No.7946 of 2014 filed writ petition No.1335 of 2016.

6. Mr. Godbole, learned counsel for the petitioners, submitted that the plot of land designated for crematorium is situated in residential zone and the buildings constructed on the adjoining land are used for residential purpose and this fact has not been taken into consideration by the Corporation while taking the impugned decision. He also submitted that the Corporation neither invited any objections nor gave notice to the residents in the vicinity before taking the said decision. Mr. Godbole further submitted that the amenity plot cannot be allotted for the purpose of crematorium. In this regard, he relied upon provisions of sub-section (2) of Section 2 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act") as well

as regulations **M-6.8(b)(iii) and 13.8(M)(II)** of the Development Control Rules. Mr. Godbole also relied upon the decision of the Apex Court in **Godrej and Boyce Manufacturing Company Limited versus State of Maharashtra and ors. 2009(5)SCC 24** to contend that crematorium is not amenity within the meaning of sub-section (2) of Section 2 of the MRTP Act.

7. Mr. Kumbhakoni, learned senior counsel for the Corporation, opposed the petitions vehemently. He submitted that the developer has executed a registered document on 18<sup>th</sup>/26<sup>th</sup> June, 2013. Thereby the property in question is transferred in favour of Pune Municipal Corporation. Subsequently, possession of this area was also given to the Corporation by executing possession receipt dated 18<sup>th</sup> June, 2013. Mr. Kumbhakoni asserted that the amenity space can be very well utilized for the purpose of crematorium. Mr. Kumbhakoni relied upon the provisions of Section 63 and 321 of the Maharashtra Municipal Corporations Act (for short “the Corporations Act”) to contend that the impugned decision cannot be faulted with.

8. In order to appreciate the controversy raised in the petitions, reference is required to be made to the relevant provisions of the Maharashtra Municipal Corporations Act, the Maharashtra Regional

and Town Planning Act, 1966 and the Development Control Rules.

Section 63 of the Corporations Act reads as under :

***“63. Matters to be provided for by the Corporation :***

*It shall be incumbent on the Corporation to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely ;-*

*(1).....*

*(11) the maintenance, change and regulation of places for the disposal of the dead and the provision of new places for the said purpose and disposing of unclaimed dead bodies;”*

Section 321 of the Corporations Act reads as under :

***“321. Provision of new places for disposal of the dead.***

*(1) If the existing places for the disposal of the dead shall at any time appear to be insufficient, or if any place is closed under the provisions of Section 323, the Commissioner shall, with the sanction of the Corporation, provide other fit and convenient places for the said purpose, either within or without the City, and shall cause the same to be registered in the register kept under Section 320, and shall deposit in the municipal office, at the time of registration of each place so provided, a plan thereof showing the locality, extent and boundaries of the same and bearing the*

*signature of the City Engineer.*

*(2) All the provisions of this act and the rules and bye-laws shall apply to any place provided under sub-section (1) without the City and vesting in the Corporation as if such place were situate within the City."*

Section 2 of the MRTP Act reads as under :

***"2. Definitions:-*** *In this Act, unless the context requires, -*

*(1).....*

*(2) "amenity" means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences;]"*

The relevant port of Regulation No.M6.8(b)(i)reads as under :

*"(i) The conversion of Industrial Zone to Residential/Commercial Zone in respect closed industries shall not be permitted unless NOC from Labour Commissioner, Maharashtra State, Mumbai stating that all legal dues have been paid to the*

*workers or satisfactory arrangement between management and workers have been made, is obtained.*

*However, in respect of any open land in the industrial zone, where industry never existed, NOC from Labour Commissioner is not required."*

The relevant port of Regulation No.M6.8(b)(ii)reads as under:

*"(ii) The layout or sub division of such land admeasuring about 2.00 Ha., shall be approved by the Commissioner, who will ensure that 5% land for public utilities and amenities like electric sub-station, bus-station, sub-post office, police out post and such other amenities, as may be considered necessary, will be provided therein."*

The relevant port of Regulation No.M6.8(b)(iii)reads as under:

*"(iii) In such layouts or sub-divisions having area more than 2 ha. but less than 5 ha.,20% land for public utilities and amenities like electric sub-station, bus station, sub-post office, police out post, garden, playground, school, dispensary and such other amenities shall be provided. Provided that at least 50% of this land shall be reserved for unbuildable reservations such as Garden, Recreational ground etc."*

Admittedly, the developer has executed registered document and transferred the property in question (amenity area admeasuring about 6265.314 square meters) in favour of Pune Municipal Corporation on 18<sup>th</sup> June, 2013, and thereafter, possession is also handed over to the Corporation by executing possession receipt dated 18<sup>th</sup> June, 2013. This property is vested solely in Pune Municipal Corporation as an exclusive owner in possession and entitling it to use the same in terms of the Corporations Act. Chapter VI of the Corporations Act deals with duties and powers of the municipal authorities and officers. Section 63 which falls in Chapter VI deals with matters to be provided for by the Corporation. Under this Section, it is obligatory on the part of the Corporation to make reasonable and adequate provision for the matters enumerated in the said Section. In the present petition, we are concerned with matter referred at serial No.11 in Section 63, under which, it is incumbent for the Corporation to maintain, change and regulate the places for the disposal of the dead and to make provision of new places for the said purpose and for disposal of unclaimed dead bodies.

Section 321 of the Corporations Act makes provision for new places for disposal of the dead. Under this Section, in the event of existing places for the disposal of the dead are insufficient, the

Commissioner shall with the sanction of the Corporation, provide other fit and convenient places for the said purpose, either within or without the City.

The provisions of the above Sections makes it abundantly clear that it is not at all necessary in law for the Commissioner to consult anybody while deciding to provide any place for the purpose of disposal of the dead. However, a committee was constituted under the chairmanship of the Commissioner and this committee has taken decision to approve the use of land in question for the purpose of crematorium. It is apparent that to bring in transparency and to rule out arbitrariness in taking such decision, the commissioner has taken approval/recommendation of the said committee. The Corporation subsequently has also passed resolution No. 45 on 20<sup>th</sup> April, 2015, sanctioning the use of the said space as fit and convenient place for the purpose of disposal of the dead. In these circumstances, we find that the Corporation was within its jurisdiction in allotting the land in question for the purpose of crematorium.

9. The submission of Mr. Godbole, learned counsel for the petitioners that the crematorium is not an amenity within the meaning of sub-section 2 of Section 2 of the MRTP Act as well as under

DCR M.6.8.b(iii) is also without any merit. The words “includes other utilities, services and conveniences” in sub-section 2 of Section 2 of the MRTD Act and the words “such other amenities” in Regulation No.M.6.8(b)(iii) makes it abundantly clear that the amenities space can be very well utilised for the purpose of crematorium.

10. Mr. Godbole, learned counsel for the petitioner relying upon the last approved DCR No.M-6.8(b)(iii) submitted that it is incumbent upon the Corporation to reserve at least 50% of the amenity area for unbuildable reservations such as garden, recreational ground etc. In the impugned decision, the Corporation resolved to allot an area of 4000 square meters of amenity space for crematorium and balance area was reserved for vehicle depot for encroachment department. The City Engineer of respondent-Corporation, however, filed an affidavit dated 9<sup>th</sup> September, 2016. In paragraph (6), following averments are made:

“6. I say that the Respondent PMC is ready, willing and in fact will be keeping 50% of the said amenity space presently vesting with it (i.e. total 3132.657 square meters out of 6265.314 square meters) as unbuildable reservation and as an open space. I therefore say and submit that after following the required procedure, PMC will construct a crematorium only on the 50% area out of the 6265.314 i.e. 3132.657 square meters approximately and

create/construct a garden on the remaining 50% i.e. 3132.657 square meters approximately, of presently available amenity space area Plot.”

Mr. Kumbhakoni submitted that in terms of this averments, the Corporation will construct the crematorium only on 50% of area out of 6265.314 square meters i.e. on 3132.657 square meters and construct a garden on the balance 50% area i.e. on 3132.657 square meters. In the light of the above averments and submissions of Mr. Kumbhakoni, we are not inclined to entertain the petitioners' challenge on the basis of Regulation No.6.8(b)(iii).

11. Let us consider the petitioners' challenge to the impugned decision in the light of provisions of DCR 13.8 M(II). Mr. Godbole, in this regard, submitted that the amenity space can be utilised only for schools, hospitals and public garden etc and not for any other purpose. Regulation No.13.8 (M)(II) starts with words “in case, the above alternative is not feasible”. These words make it clear that Regulation No.13.8 (M)(II) is applicable only in case of alternative referred therein is not feasible. Mr. Godbole, however, did not place on record the alternative referred in the said Regulation No.13.8.M(II). In the absence of the same, we are handicapped to deal with this submission.

12. This takes us to consider the next submission of Mr. Godbole that crematorium is not an amenity within the meaning of sub-section (2) of Section 2 of the MRTP Act and DCR No. M-6.8(b)(iii). Mr. Godbole, in this regard, heavily relied upon the decision of the Apex Court in **Godrej and Boyce Manufacturing Company Ltd. (supra)** and especially the observations made in paragraph 59. Mr. Kumbhakoni, however, submitted that the observations made in paragraph 59 neither constitute a precedent nor *obiter dictum*.

13. The question as to what would constitute a precedent came to be considered by the Apex Court in **Union of India and ors. versus Dhanwanti Devi and ors. (1996) 6 SCC 44.** In paragraph 9 and 10, the Apex Court has observed thus :

*9.....It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. .... What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not*

*intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a Court as been decided is alone binding as a precedent.....A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis.*

*10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and, therefore, Judges are to employ an intelligent technique in the use of precedents. "*

*A Division Bench of this Court in **M/s. Mohandas Issardas versus A. N. Sattanathan 1955 Indian Law Reports 318** had an occasion to deal with the distinction between ratio decidendi and obiter dictum.*

*The Division Bench held that the opinion of the Court on the question which was necessary for the determination of the case is ratio decidendi; the opinion of the Court on a question which arose before it for its determination but which was not necessary for the decision of the case is obiter dictum. The Division Bench further observed that the Supreme Court being the highest judicial tribunal in India, it is necessary in the interest of judicial uniformity and discipline that all the High Courts should accept as binding the Obiter dicta of the Supreme Court in the same spirit as they accepted those of the Privy Council. But it would be incorrect to say that every opinion of the Supreme Court or every casual observation made in the course of its judgment would be binding on the High Courts in India. The only opinion which would be binding is an opinion expressed by the Supreme Court on a question which arose for its determination even though it might ultimately be found that, that question was not necessary for the decision of the case."*

In the light of the above decision, let us see whether the observations of the Apex Court in **Godrej and Boyce Manufacturing Company Limited (supra)** constitute "ratio decidendi" or "obiter dictum". The relevant observations in paragraph 59, which were heavily relied upon by Mr. Godbole reads thus:

*"59. In regard to the circular there is something else too that we find quite curious. This aspect of the*

*matter was not argued before us and it is not relevant for the present, nevertheless we would like to point it out as it may help the authorities concerned in future. It is to be noted that both Section 126(1)(b) of the Act and Para 6 of Appendix VII to the Regulations provide for additional FSI or TDR for construction or development of amenity, which term is defined both in the Act and the Regulations. But in the Circular dated 9.4.1996 100% FSI (built-up area) is reserved for public utilities none of which is expressly mentioned in the definition of amenity in Regulation 3(7) of the Regulations. Furthermore "municipal transport garage", "fire station", "auditorium", "electric crematorium", "municipal workshop", "town duty office" and "office building" are not even covered by the definition of "amenity" under Section 2(2) of the Act. It is highly debatable if those public utilities can be introduced through the circular as "amenities" within the meaning of the Act or the Regulations."*

We have gone through this decision of the Apex Court. In this case, the issue which fell for consideration before the Apex Court was about the entitlement of the appellants and petitioners for amenity TDR for roads construction on the surrendered lands at the owner's cost. Whether crematorium would fall in the list of amenities was not the issue before the Apex Court. In the opening words of paragraph 59, the Apex Court itself made it clear that, that point was neither argued

nor it was relevant to decide the issue in question. This decision, therefore, in our considered opinion, cannot come to the rescue of the petitioners.

14. As regards the contention of Mr. Godbole that hearing was not given to the petitioners before passing the impugned order/minutes of order is concerned, none of the sections of the Acts mentioned hereinabove contemplate that hearing to the public at large or inviting objections for the use of amenity space is required.

15. Before concluding this judgment, we must mention that taking into consideration that the crematorium in question is proposed in residential zone, it will be necessary for the Corporation to take extra caution while developing the crematorium area so that the people residing in vicinity are not subjected to any kind of inconvenience. Likewise, it is also necessary that people visiting the crematorium should not be inconvenienced. We, accordingly, direct the Corporation to develop the crematorium area in such a way that it is made cleaner, presentable and convenient for those visiting the crematorium/cremation ground. The Corporation will also take steps to reduce carbon emission by using modern technology so as to control the pollution.

16. In view of the discussion made hereinabove, the petitions are dismissed. Rule is discharged.

17. In view of disposal of the petitions, civil application No. 2957 of 2014 will not survive for consideration and the same is also disposed of.

**[ANUJA PRABHUDESSAI, J.]**

**[RANJIT MORE, J.]**

At this stage, Mr. Godbole, learned counsel for the petitioners, seeks continuation of the interim relief for a period of three weeks from today. The request is opposed by Mr. Kulkarni, learned counsel for the Corporation. However, in the interests of justice and in order to enable the petitioners to approach the Supreme Court, the status-quo granted earlier shall remain in force till 23<sup>rd</sup> December, 2016. It is made clear that the petitioners will not seek further extension of the status-quo.

**[ANUJA PRABHUDESSAI, J.]**

**[RANJIT MORE, J.]**