

of turn priority to this petition of the year 2014. That is how by order dated 18th January, 2018 this writ petition was fixed for hearing.

2. The challenge in this petition under Article 226 of the Constitution of India is initially to the order dated 14th May, 2015 passed by the Additional Commissioner of the Ulhasnagar Nagar Municipal Corporation. An order was passed by the Town Planning Officer of the same Corporation on 28th September, 2010 by which the development permission granted to the fifth Respondent under Section 45 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”) was revoked. By the impugned order dated 14th May, 2015, the Additional Commissioner of the same Corporation has set aside the order dated 28th September, 2010. By the impugned order, fifth Respondent has been permitted to go ahead with the development work on the basis of the permission granted on 9th July, 2010.

3. The submission of the learned counsel for the Petitioner is that by filing Writ Petition No. 11006 of 2005, the first Respondent had specifically challenged the order dated 28th September, 2010 and at the time of hearing of the said petition, the said challenge was given up and in fact a direction was sought from this Court that subsequent

revised plan submitted by the fifth Respondent on 9th April, 2012 should be directed to be considered. Reliance is placed on order dated 14th July, 2014 passed in the said petition. The other submission is that there is no power vested in the Additional Commissioner to recall the order dated 28th September, 2010. It is further submitted that the impugned order does not record the reasons for recalling the order. It is urged that there is no occasion for the Additional Commissioner to have recalled the order dated 28th September, 2010. The other submission is that in the year 2015, permission could not have been granted to proceed with the development work on the basis of the development permission dated 9th July, 2010, as in view of Section 48 of the MRTP Act, the said permission was valid only for a period of three years.

4. The learned counsel for the Municipal Corporation submitted that under sub-clause (i) of Development Control Regulation (DCR) 6.6.1, the Commissioner had power to correct an error in any order and accordingly the Additional Commissioner has corrected the error in the order dated 28th September, 2010. He would, therefore, submit that the Additional Commissioner had complete

authority to pass the impugned order.

5. The learned counsel for the fifth Respondent firstly submitted that the Petitioner has no *locus*. He submitted that in fact the Petitioner is set up by an elected councilor of the Ulhasnagar Municipal Corporation and that the Town Planner in collusion with the said elected councilor had passed the order dated 28th September, 2010. He submitted that there is nothing on record to show that the Town Planner exercised the delegated powers of the Commissioner. He submitted that the Town Planner passed the said order in breach of of the principles of natural justice, and therefore, the said order is nullity which has to be ignored. He submitted that apart from the fact that the Additional Commissioner could exercise the powers of the Commissioner under clause 1 of DCR 6.6.2.1, he could always correct the errors in the order passed by the subordinate officer. He submitted that even assuming that the reasons have not been recorded in the impugned order to the satisfaction of this Court, the said order cannot be set aside as it will amount to revival of another illegal order.

6. The learned counsel for the fifth Respondent submitted that the Petitioner has no *locus* and at the instance of Petitioner who is

set up by the Municipal councilor, this Court should not entertain the petition. He submitted that clause 26 of the Development Permission could not have been invoked for cancelling the development permission. Referring to the order dated 14th July, 2014 passed in Writ Petition No. 11006 of 2012, he urged that all questions were kept open by this Court and therefore, the issue regarding the legality and validity of the order dated 28th September, 2010 remains open. He submitted that inquiry continuously proceeded from the year 2010 onwards as regards the legality of the order dated 28th September, 2010 which culminated into the impugned order in the year 2015. He submitted that perusal of the impugned order will show that the inquiry was delayed by the Petitioner and therefore, it cannot be said that after a gap of five years, the order dated 28th September, 2010 has been recalled.

7. We have given careful consideration to the submissions. After having perused the petition and affidavits on record, we are constrained to observe that this petition discloses a shocking state of affairs as far as the first Respondent Municipal Corporation is concerned. As stated earlier, the Town Planner passed the order dated

28th September, 2010 revoking the development permission granted to the fifth Respondent on 9th July, 2010. We have carefully perused Writ Petition No. 11006 of 2012 filed by the fifth Respondent in this Court. The Petitioner in this writ petition was the fourth Respondent in the said petition. In the said writ petition, the first substantive prayer was for quashing and setting aside the order dated 28th September, 2010. It will be necessary to make a reference to the order dated 14th July, 2014 passed by this Court in Writ Petition No. 11006 of 2012. Paragraph 1 and 2 of the said order read thus:

“1. Heard the learned Senior Counsel appearing for the petitioner. The learned Senior Counsel appearing for the petitioner, on instructions of the petitioner, states that the petitioner is praying for a very limited relief in this Petition. The relief is of issuing a direction to the first respondent Municipal Corporation to consider the revised plan submitted by the petitioner on 9th April, 2012 and to pass appropriate order thereon in accordance with law. The learned Counsel appearing for the fourth respondent submits that the fourth respondent is entitled to be heard by the first respondent Municipal Corporation before taking any decision on the revised plan.

2. The revised plan has been submitted in accordance with the provisions of Section 45 of the Maharashtra Regional Town Planning Act, 1966. We do not see any right in favour of respondent No.4 of being heard before appropriate decision is taken by the first respondent on the revised plan submitted by the petitioner. The order on

which the learned Counsel appearing for the fourth respondent is relying upon merely directs the first respondent Corporation to consider the representation made by the fourth respondent on merits.”

(underline supplied)

8. Thus, the prayer for setting aside the said order dated 28th September, 2010 was not pressed in the said writ petition. In paragraph 3 of the said order, a finding was recorded that there was nothing placed on record to show that the Municipal Corporation has taken any decision on the basis of revised plan dated 9th April, 2012. The directions issued by this Court in paragraph 4, which read as under:

“4. Hence, we dispose of this Petition by passing the following order :

- i. We direct the first respondent Corporation to consider the revised plan submitted by the petitioner on 9th April, 2012 and to pass order thereon in accordance with law;
- ii. Appropriate order on the said revised plan shall be passed by the first respondent Corporation within a period of eight weeks from today;
- iii. All rival contentions of the petitioner and the fourth respondent are expressly open;

iv. The Petition is disposed of on above terms.”

9. Thus, on plain reading of the said order dated 14th July, 2014, the only conclusion which can be drawn is that though the fifth Respondent herein had filed the said writ petition for essentially challenging the order dated 28th September, 2010, the said challenge was given up and a very limited relief was prayed for before this Court of directing the Municipal Corporation to decide subsequent application dated 9th April, 2012 for grant of revised development permission. If the order dated 28th September, 2010 would have been set aside, the Petitioner could have proceeded with the construction. By giving up the challenge to the order dated 28th September, 2010, a prayer was made for directing the consideration of the revised plan submitted on 9th April, 2012. There is no manner of doubt that the fifth Respondent herein has voluntarily given up the challenge to the order dated 28th September, 2010 and he wanted the Municipal Corporation to consider his subsequent application for the development permission which is dated 9th April, 2012.

10. We have carefully perused the impugned order passed by the Additional Commissioner. Firstly, there is nothing on record to

show that by exercising the power under Section 38A of the Maharashtra Municipal Corporations Act, 1949, the Commissioner had authorised the Additional Commissioner to exercise his power vested under the DCR.

11. It will be interesting to note how the inquiry before the Additional Commissioner commenced. The Superintendent of Police, Anti Corruption Bureau addressed a letter to the Municipal Corporation forwarding an application / complaint made by one Prakash Rochlani. On the basis of the said letter, the Commissioner of the first Respondent Municipal Corporation passed the order dated 8th October, 2014. In the said order, the Municipal Commissioner recorded that the said Rochlani made a complaint to the Superintendent of Police, Anti Corruption Bureau that M/s. Kohinoor Construction has obtained a building permission by producing fabricated documents. Therefore, a direction was issued by the Municipal Commissioner under the said order to the Additional Commissioner by appointing him as an inquiry officer to go into the allegations made by Mr. Rochlani. Accordingly, on 28th October, 2014 an order was made by the Additional Commissioner fixing the date of

hearing on 5th November, 2014. On 3rd November, 2014 a notice was issued by the Assistant Director of Town Planning to the said Mr. Rochlani, Mr. Ajit Bhatia (5th Respondent in this petition) on behalf of M/s. Kohinoor Construction and an Architect Mr. Dipak Sukhvani informing that hearing has been fixed on 5th November, 2014 in the chamber of the Additional Commissioner of the Ulhasnagar Municipal Corporation. There is further notice issued on 12th December, 2014 to said Rochlani and the 5th Respondent again by the Assistant Director of the Town Planning informing that hearing will be conducted on 15th December, 2014 by the Municipal Commissioner himself. Then comes order dated 16th December, 2014 passed by the Municipal Commissioner of the first Respondent by which on the basis of order 14th July, 2014 passed by this Court in Writ Petition No. 11006 of 2012, the Commissioner called upon the Additional Commissioner as well as in-charge Assistant Director of the Town Planning to submit explanation as to why a decision has not been taken on the revised plan dated 9th April, 2012 within time fixed by the Court. Therefore, a direction was issued to take a decision within 2 weeks.

12. On 20th December, 2014 again a notice was issued by the

Additional Commissioner for holding an inquiry into the complaint made by Mr. Rochlani. On 24th April, 2015 again a notice was issued by the Assistant Director of the Town Planning to the 5th Respondent, Mr. Prakash Rochlani and Vijay Rizwani, Dy. Engineer about the hearing fixed on 29th April, 2015 before the Additional Commissioner. It is in this context that the impugned order will have to be viewed. The first two pages of the impugned order reproduces a note dated 30th April, 2015 submitted by the Assistant Director of Town Planning in which he claims that the complaint made by Mr. Rochlani has been disposed of. Thereafter on the third page, there is a reference to hearing conducted on 24th September, 2014. Again that part of the order passed by the Additional Commissioner refers to the hearing held on the basis of the complaint made by the said Rochlani which was forwarded by the Superintendent of Police, Anti Corruption Bureau. On that day, there is an order passed by the Additional Commissioner directing that no further construction shall be carried by the 5th Respondent and that if he carries out further construction, action of demolition should be taken. Further part of the order records what transpired on 24th December, 2014. An order was passed on that

day by the in-charge Additional Commissioner by which the order dated 2nd December, 2014 passed by the Additional Commissioner was set aside and a direction was issued to scrutinise the plan submitted on 9th April, 2012 by the 5th Respondent on the basis of the directions issued by this Court under order dated 14th July, 2014. The further part of the impugned order records what transpired on 10th April, 2015, 23rd April, 2015 and 29th April, 2015. It records that Mr. Rochlani did not remain present on all the three dates. The reasons part is on page 7 (page 104 of the petition). In the reasons part of the impugned order, there is absolutely no reason recorded for cancelling or recalling the order dated 28th September, 2010. Thus, the Additional Commissioner was not at all dealing with the issue of legality and validity of the order dated 28th September, 2010. Under the orders of the Municipal Commissioner, he was dealing with the complaint of Mr. Rochlani that the 5th Respondent had obtained the development permission on the basis of fabricated documents. Thus, there was no occasion for the Additional Commissioner to go into the issue of legality and validity of the order dated 28th September, 2010. He was only concerned with the complaint of the said Rochlani which was referred to the

Municipal Commissioner by the Anti Corruption Bureau.

13. Apart from the fact that the Additional Commissioner had no business or jurisdiction to go into the legality or validity of the order dated 28th September, 2010, assuming that the Municipal Commissioner had jurisdiction to correct the errors in the orders, there is absolutely no reason set out as to how and why the order dated 28th September, 2010 is erroneous. In fact, the impugned order mentions that at the instance of the 5th Respondent, a direction was issued by this Court to consider the subsequent application dated 9th April, 2012.

14. As far as the locus of the Petitioner is concerned, there are averments made in the writ petition from paragraph 3 onwards. The contention is that in breach of order of status-quo passed by this Court in a writ petition filed by the Petitioner, the 5th Respondent is proceeding with the construction. In any case, the Petitioner is a tax payer of the 1st Respondent Corporation.

15. Therefore, the only conclusion which can be recorded is that the impugned order dated 15th May, 2015 is completely erroneous and cannot be sustained.

16. While setting aside the said order, we make it clear this order will not prevent the 5th Respondent from making a fresh application for grant of development permission. If according to the Petitioner, the revised plan submitted on 9th April, 2012 is still pending, the 5th Respondent can always take proceeding for the breach of order dated 14th July, 2012 passed by this Court. Hence, subject to what is observed above, we pass the following:

- (i) The impugned order dated 14th May, 2015 is quashed and set aside;
- (ii) We make it clear that no further construction shall be carried out by the 5th respondent without obtaining a development permission from the Planning Authority;
- (iii) Rule is made absolute on above terms with no order as to costs.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]