

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****PUBLIC INTEREST LITIGATION (L) No. 119 OF 2017**

Farzana Khan,]Petitioner.
 age 37 Years,
 R/o "A" Wing, Shop No. 2, Gr. Floor,
 Indira Gandhi Nagar, Near Prakash
 Gad. A.K.Marg, Bandra (East),
 Mumbai 400 051.

Vs.

- 1 Municipal Corporation of Greater Respondents.
 Mumbai, Through its Commissioner
 MCGM Head Office, Near
 Mahanagar Palika Marg, Near
 C.S.T., Mumbai -1.
- 2 Airports Authority of India,
 Through its Chairman / Secretary
 Rajiv Gandhi Bhavan, Safdrjung
 Airport, New Delhi – 110 003.
- 3 Maharashtra Coastal Zone
 Management Authority, Through its
 Chairman / Member Secretary
 Environment Department, 15th
 Floor New Administrative Building
 Mantralaya, Mumbai.
4. Guju Ads Private Limited
 Through its CEO, 5th Floor,

Kalpavruksha Buildings,
R.H.B. Road, Mulund (West),
Mumbai 400 080

**WITH
WRIT PETITION (L) No. 3360 of 2017.**

- 1 Palm Grove Beach Hotels Pvt. Ltd.].. Petitioner
A company incorporated under the provisions of the Companies Act, 1956 through its General Manager Randhir Tanwar, aged 50 years, having its registered office at Ramada Hotel Palm Grove, Juhu Beach, Mumbai 400 049.

Vs.

- 1 Airports Authority of India
A Body Corporation, constituted under the provisions of Airports Authority of India Act, 1994 (Act No. 55 of 1994), having its address at Rajiv Gandhi Bhavan, Safdarjung Airport, New Delhi – 110 003 and also having office at Juhu Airport, near Pawan Hans, S.V. Road, Vile Parle (West), Mumbai 400 056.
- 2 Guju Ads Pvt. Ltd.,
a company incorporated under the provisions of the Companies Act, 1956 having address at 5th floor, Kalpavruksha Building, R.H.B. Road, Mulund (West), Mumbai 400 080.

- 3 Municipal Corporation of Greater Mumbai, a municipal corporation established under the Mumbai Municipal Corporation Act, 1988, having its head office at Mahapalika Marg, Mumbai 400 001.
- 4 State of Maharashtra, through the concerned Police Department viz Senior Inspector of Police, Santacruz Police Station, Linking Road, Santacruz (West), Mumbai.
- 5 Maharashtra Coastal Zone ... Respondents Authority, an Authority constituted to regulate & Monitor Coastal Zone, Mumbai.

**WITH
WRIT PETITION (L) NO. 3433 OF 2017**

Selvel Publicity & Consultants Pvt.]Petitioner.
Ltd., Company registered under Companies Act, 1956 having its office at Ravindra Annexe, 194, Dinshaw Vatcha Road, Churchgate, Mumbai 400 020. Through its authorized representative Mr. Nitin Kshirsagar.

-Vs-

1. Airport Authority of India, a body Respondents.
constituted under The A.A of India

Act, 1994 having its Office at Juhu Airport, near Pawan Hans, S.V.Road, Vile Parle (West), Mumbai 400 056.

2. M/s Guju Ads,
having its office at 501, 502, 5th Floor, Kalpvruksh, RHB Road, Mulund (West), Mumbai 400 080
- 3 Municipal Corporation of Greater Mumbai, a body incorporated under provisions of Mumbai Municipal Corporation Act, having its office at Mahapalika Marg, Opp. CST Section, Mumbai 400 001
4. The Municipal Commissioner, Municipal Corporation of Greater Bombay, Mahapalika Marg, Bombay 400 001
5. Deputy Municipal Commissioner (Special) of Mumbai Corporation of Greater Bombay Mumbai Municipal Corporation Building, 6th floor, Mahapalika Marg, Bombay – 400 001.
- 6 Assistant Municipal Commissioner, K/West Ward of Mumbai Municipal Corporation, having its office at K/West Ward Building, Off. S.V. Road, Opp. Andheri Station, Paliram Road, Andheri (West), Mumbai 400 058.

- 7 The Superintendent of Licences,
Dadar Pumping Station, 6th Floor,
Sewerage Operation Administrative
Offices, Building, 249, Senapati
Bapat Marg, Dadar (West),
Mumbai 400 028.
- 8 The Assessor & Collector,
Mumbai Municipal Corporation,
3rd Floor, N.M.Joshi Marg (Bakri
Adda), Byculla (West),
Mumbai 400 011.
- 9 The Bombay Electric Supply &
Transport Undertaking, a
department of MCGB Resp.no.1
above having its office at BEST
Bhavan, BEST Marg,
Mumbai 400 039.
- 10 The Joint Commissioner of Police
(Traffic), Traffic Police
Headquarters 3rd Floor, 87, Sir
Pochkanwala Road, Worli,
Mumbai 400 018.
- 11 The Maharashtra Coastal Zone
Management Authority, having its
office at Environment Department,
Room No. 217 (Annex),
Mantralaya, Mumbai 400 032.
- 12 The State of Maharashtra,
through the Senior Inspector of
Police Santacruz Police Station,
Linking Road, Santacruz (West), ... Respondents
Mumbai

In P.I.L. (L) No. 119/2017.

Mr. Mihir Desai, Senior Counsel a/w Mr. Chetan Mali for the Petitioner.

Mr. Sagar Patil for M.C.G.M for Respondent No.1.

Mr. Karl Shroff I/b Mr. Rony Pallath Joseph for Airport Authority for Respondent No.2.

Ms. S.U.Deshmukh for MCZMA for Respondent No.3.

In W.P.(L) No. 3360/2017:-

Mr. Mukesh Vashi, Senior Counsel a/w Ms. Aparna Devkar, Ms. Manisha Desai, Mr. Sanjay Kotak I/b Ms. Hansa Advani and Ms. Loshika Bulchandani for Petitioner.

Mr. Karl Shroff I/b Mr. Rohny Pallath Joseph for Airport Authority for Respondent No.1.

Mr. Milind Sathe, Senior Counsel, Mr. Vivek Shetty and Ms. Ashwini Vaidialingam I/b AZB Partners for Respondent No.2.

Mr. Sagar Patil for MCGM – Respondent No.3.

Mr. Himanshu Takke, AGP for State for Respondent No.4.

Ms. S.U.Deshmukh for MCZMA - Respondent No.5.

In W.P. (L) No. 3433/2017.

Mr Shyam Mehta, Senior Counsel a/with Mr.Ashish Kamat a/with Ms Nita Solanki, Mr. Kiran Jain i/by

Kiran Jain & Co. for the petitioner.

Mr. Karl Shroff I/b Mr. Rohny Pallath Joseph for Airports Authority for Respondent No.1-Airports Authority.

Mr. Milind Sathe, Senior Counsel, Mr. Vivek Shetty and Ms. Ashwini Vaidialingam I/b AZB Partners for Respondent No.2.

Mr Sagar Patil for Respondent No.3 to 6.

Mr. A.L. Patki, Addl. Govt. Pleader for State-Respondent No. 10 and 12.

Ms. Sharmila Deshmukh for Respondent No.11.

CORAM:- S.C. DHARMADHIKARI & SMT. BHARATI H. DANGRE, JJ.

RESERVED ON :- 10th JANUARY, 2018

PRONOUNCED ON :- 01st MARCH, 2018.

JUDGMENT (PER: SMT. BHARATI, H. DANGRE,J)

1 Public Interest Litigation (L) No. 119/2017 and other two writ petitions are being disposed of by this common judgment as the issue involved in these petitions is common. The controversy revolves around erection of hoardings by one M/s Guju Ads Private Limited, registered under the Companies Act on the land CTS No.940 and 958

owned by the Airports Authority of India, touching the public road. The issue for consideration is whether such hoardings warrant a permission from the Municipal Corporation of Greater Mumbai (hereinafter referred to as the “MCGM”) as a Planning Authority and of the Maharashtra Coastal Zone Management Authority (hereinafter referred to as “MCZMA”).

2 PIL (L) No.119 of 2017 is instituted by a practicing Advocate, residing in Santacruz area seeking a writ in the nature of mandamus / directions to the Municipal Corporation, Greater Mumbai to remove the hoardings/sky signs erected by the Respondent No.4, an advertising Company on the land of Airports Authority of India (hereinafter referred to as the “AAI”), opposite to Hotel Palm Grove, Opp. Juhu Beach, Juhu Tara Road, Mumbai. The petition raises a grievance that the Airports Authority of India (AAI) is an owner of plot of land situated opposite to Hotel Palm Grove, Opp. Juhu Beach, Juhu Tara Road, Mumbai, which is boundary of CTS No.940 and next to Public Road namely, Juhu Tara Road. According to the petitioner, part

of the land of Airport Authority, opposite to Hotel Palm Grove, is leased out to MCGM which uses the said land for public parking. The petitioner is aggrieved by the action of Respondent No.2-Airport Authority of India who had invited applications for Advertising Rights Concession for erecting advertisement on the said land and allotted the tender in favour of an advertisement company. According to the petitioner, Respondent No.4 without seeking appropriate permissions from Respondent No.1 i.e MCGM and Respondent No.3-MCZMA has proceeded with construction of foundations / structures for 14 hoardings and erected 12 hoardings/sky-signs in the last week of November, 2017. The petitioner has placed on record the photographs of the hoardings.

3 The Petitioner–Company, Palm Grove Beach Hotels Pvt. Ltd. in W.P (L) No.3360/2017 is running a Five Star Hotel at Ramada Hotel Palm Grove, Juhu Beach, Mumbai – 400 049, has approached this Hon'ble Court being aggrieved by erection of the hoardings by Respondent No.2 on the land owned by the Airport Authority of India, Mumbai, i.e Respondent No.1, outside the Juhu Airport, land being

used for parking area. The petitioner alleges that he is aggrieved by the erection of the hoarding since the six alleged hoardings are blocking the air and ventilation of the hotel and according to the petitioner the said hoarding attempted to be erected in violation of the local laws and CRZ norms.

It is the claim of the petitioner that it is running the said Five Star Hotel since more than 35 years and the said hotel is located at the Juhu Beach, Mumbai and some of these rooms are facing the Juhu Beach, which is uniqueness of the hotel and the visitors enjoy the stay there since they get complete view of the sea and the beach and allows free light and ventilation with fresh air coming from the Sea. Along with the petition, the petitioner has annexed the sketch map which is annexed at Annexure “A” reflecting the location of the petitioner hotel and other landmarks nearby including Chhatrapati Shivaji Maharaj statue, garden, public parking lot as well as footpath. On the said map, the petitioner has indicated the location of six hoardings attempted to be erected by the Respondent No.2. According to the petitioner, the hoarding No. “A” is situated near the compound

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wall of the petitioner and obstructing the view of petitioner's hotel, whereas hoarding No. "B" and "C" are situated on the footpath of the Public Road / Municipal Road touching CTS No.940 (West side) parking lot and located near the statue of Chhatrapati Shivaji Maharaj as far as hoarding Nos. "D", "E" and "F" are concerned, the petitioner alleges that the said hoardings are situated on the boundary of CTS No.940 (East Side) parking lot and touching the public road.

4 It is the case of the petitioner that on noticing the action of the Advertising Company in erecting hoardings, it had approached the MCGM and the the petitioner was informed that a notice under section 354A of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as the "MMC Act", 1888) was already issued and the advertising agency was directed to stop erection of hoardings within 24 hours from service of notice. Further, the petitioner has also placed on record a communication addressed by the MCGM dated 24/11/2017 to the General Manager of the AAI, inter alia, pointing out that on receipt of the complaint from the petitioner, the site

inspection was carried out and the facts were verified. By the said notice, the AAI was asked to restrain its contractor from carrying out any unauthorized development work. Attention of the AAI was also invited to the unauthorized work being carried out in CRZ area without permission of the Competent Authority. The said work was thus declared as unauthorized work and request was made to the AAI to restrain the contractor M/s Guju Ads Pvt Ltd. from continuing such activity, failing which action would be initiated.

The Petitioner is aggrieved by the fact that in spite of issuance of notice, Respondent Nos. 1 and 2 did not discontinue the activity of erection of alleged hoarding. The Petitioner alleges that there is clear cut violation of the hoarding policy framed by the MCGM in exercise of power under Sections 328 and 328(A) of the MMC Act, 1888. It is also alleged by the petitioner that respondent Nos. 1 and 2 did not seek any prior permission from the MCZMA and no permission is obtained from the police department/traffic department in the light of Sections 328 and 328(A) of the MMC Act, 1888 and as per Hoarding Policy. The petitioner has filed the present petition praying

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for removal of the alleged hoardings erected by respondent Nos. 1 and 2 and by way of interim order he sought directions to restrain respondent No.2 from erecting such hoardings without prior permission from the MCZMA and without obtaining mandatory permission under Section 328 and 328(A) of the MMC Act, 1888 and as per Hoarding Policy framed by MCGM.

5 Writ Petition (L) No. 3433/2017 is filed by one Selvel Publicity & Consultants Private Limited, registered under the provisions of the Companies Act, 1956 and engaged in the business of out-door advertisements and erection of sky-signs under contracts and assignment. The petitioner is aggrieved by the erection of hoardings by M/s Guju Ads which is impleaded as Respondent No.2 in the petition and the petitioner contends that he has erected hoardings after obtaining permission from the MCGM and his hoardings are standing since the year 1962 and are used for displaying advertisements. According to the petitioner, hoardings are standing on the Plot No. CTS No. 958 which is the same piece of land on which

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Respondent No.2 has erected hoardings. According to the petitioner, he had applied for license and permit in terms of the new Hoarding Policy formulated by MCGM and after ensuring all compliances, the license of the petitioner has been renewed till 31.12.2018. According to the petitioner, permission is also obtained from the Maharashtra Coastal Zone Management Authority (MCZMA) for erection of hoardings from CRZ point of view. The petitioner is aggrieved by the process initiated by Respondent No.1 inviting e-tender for allotment of contract and ultimately allotting the said contract in favour of Respondent No.2 on 30.06.2017. It is the case of the petitioner that he lodged complaint with Respondent No.1 and Respondent No.3 and Respondent No.9 and also forwarded complaint to Respondent No.2 calling upon him to stop illegal work erecting structure of hoarding board. However, the Respondent No.2 did not deter and continued with the said activity of erecting the hoardings.

In the form of this petition, it is the petitioner who himself has erected and displayed the hoardings on the plot of land CTS No.940 and 958 at Juhu Beach, Mumbai, but he is aggrieved by the

erection of hoardings at the instance of Respondent No.2 on the land belonging to Respondent No.1 without permission from the MCGM and CRZ. This petitioner has also placed on record the permits/licenses granted in his favour. Heavy reliance is placed on the directions issued by this Court in the case of Dr. Anahita Pandole vs State of Maharashtra (WP No.1132/2002 decided on 11/4/2008) and it would argue that the said hoardings are required to be demolished.

6 In PIL (L) No. 119/2017 and WP (L)No. 3360/2017 an affidavit-in-reply is filed by the Maharashtra Coastal Zone Management Authority (MCZMA). In W.P (L) No.3360/2017 an affidavit is filed by Senior Licensing Inspector of the MCGM on 1/1/2018. A statement is made in the said affidavit that Guju Ads Pvt. Ltd. have secured NOC only from the AAI and have erected eight hoardings' structures on the land without obtaining permission from MCGM and therefore MCGM had addressed a letter dated 30/11/2017 to the advertisers for removal of the hoardings along with the structures as per Policy Guidelines, 2007 and section 328 and 328A of

the MMC Act, 1888.

7 In response to the said petition, a detailed affidavit is filed by M/s Guju Ads Pvt. Ltd, a sole proprietary firm who is awarded a contract for putting up the hoardings which are subject matter of the petitions. It is the stand of the Respondent No.2 that the hoardings are sought to be erected at a site situated on piece of land bearing CTS No. 940 and 958 of Taluka C.S.O. Ville Parle, Mumbai Suburban District, is owned by Civil Aviation Department, Government of India. The copy of property register cards for the site are placed on record alongwith affidavit. The answering respondent has disputed that any permission is required to be sought from MCGM for erection and display of hoardings on the land owned by Airport Authority and according to him on inquiry from the AAI, he was informed that such a permission is not required. The Respondent No. 2 categorically responds to the petition by asserting that they are not required to obtain any permission/approval from the local body / authority neither under any law / rules or guidelines framed. It is the stand taken in affidavit that

the Airports Authority of India is a body Corporate, with power to acquire, hold and dispose of property, both movable and immovable. The affidavit further sets out that the Airports Authority of India which is a statutory body owing its existence to the Airports Authority of India Act can permit the Airports Authority of India to undertake any other activity at the airports and the civil enclaves in the best commercial interests of the Authority including cargo handling, setting up of joint ventures for the discharge of any function assigned to it. According to the Respondent No.2, for erection or display of any immovable structure / fixture on or against or in front of the airport premises only the permission of the AAI is required to be taken and it was accordingly taken. The affidavit therefore disputes the contention of the petitioner, as raised in the petition, about following the guidelines prescribed under the 2008 Policy Guidelines framed under Section 328 and 328A of the Mumbai Municipal Corporation Act for display of sky-signs and advertisements. According to the said affidavit, in case of Dr. Anahita Pandole vs State of Maharashtra & Ors, these guidelines have been held to be not having any force of law but

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are the guiding principles in exercise of administrative power by the authorities concerned.

8 Surprisingly, the AAI/Respondent No.1 did not file any affidavit on record and in spite of we granting time to place such an affidavit in response to the petition. Learned counsel Mr. Shroff appearing on behalf of the Respondent/AAI, would argue that it would be bound by the directions issued by this Court and are ready and willing to abide by the position of law as would be laid down by this Court. Mr. Shroff made it clear to us that it did not want to take any defence or a particular stand and it being a statutory corporation is bound to follow the law and would abide by the same.

9 We have heard learned counsel Mr Mihir Desai appearing on behalf of the petitioner in Public Interest Litigation (PIL), learned Senior Counsel Shri Mukesh Vashi appearing for Palm Grove Beach Hotels Pvt Ltd. (Palm Hotels)-petitioner in W.P. (L) No. 3360/2017 and Mr. Shyam Mehta Senior Counsel, in W.P. (L) No.3433/2017.

10 The learned counsel for the petitioner Shri Mihir Desai, in support of petition, would argue that the “Airport” has a definite connotation within the meaning of Airports Authority of India Act, 1994 and according to the learned counsel, the present land where hoardings are sought to be erected, is nowhere concerned with the Airport and in no manner within the airport area. The learned counsel would argue that the said land is located outside the airport, and therefore, is amenable to the Municipal / State law and even if for the sake of argument the property was situated within the Airport itself, the advertisements were displayed on the boundary walls of the Airport, which are visible to the public at large within the jurisdiction of Municipal Corporation and therefore it is imperative on the part of the agency to seek permission from the Municipal Corporation. According to the petitioner, the erection of hoardings / sky-signs is hazardous to the passer-by and therefore it ought to have been properly regulated and erected only after seeking permission from MCGM which already has a policy in existence, governing the erection of hoardings, displaying advertisements/sky-signs. The petitioner

apart from relying on Section 328 and 328A of the MMC Act, 1888, places reliance on the judgment delivered by this Court in relation to erection of sky-signs and hoardings. The learned Senior Counsel would, then, argue that the guidelines on the grant of permission for display by sky-signs and advertisements issued under Sections 328 and 328A of the MMC Act, 1888 makes the hoardings in issue, vulnerable and display of advertisements without such permission attracts penal provisions. The learned counsel for petitioner also places reliance on the provisions of the Prevention of Defacement of Property Act, 1995 and would urge that the said sky-signs / hoardings erected by Respondent No.4 obstructed the view of statue of Mahatma Gandhi and statue of Chhatrapati Shivaji Maharaj which are constructed by the MCGM by incurring huge cost. According to the petitioner, the said hoardings also obstruct the view of Arabian Sea and Juhu Beach for public view. Thus, the petitioner would urge that the said hoardings are obstructing the smooth flow of traffic and would rather attract the definition of “Defacement” under Section 2(b) of the Act of 1995 and would then argue that erection of such hoardings in violation of the

provision of the said Act be therefore treated with great seriousness and said hoardings are liable to be immediately pulled down.

11 The learned Senior Counsel Shri Vashi would also argue on the similar lines and place much emphasis on the policy framed by the MCGM in relation to erection of hoardings by invoking the powers under Section 328 and 328A of the MMC Act, 1888. Advocate Shri Vashi would argue that the MCGM being a Planning Authority is duty bound to ensure that the residential or commercial area within its jurisdiction is not defaced by unauthorized construction and he would pray that the High Court would be perfectly justified in issuing writ of mandamus to the Corporation to enforce its obligation to remove the structures erected in contravention to the statutory provisions. He would specifically invite our attention to Clause (15) and (16) of the Policy framed by the MCGM prescribing the standards to be followed for display of outdoor advertisements and he would argue that the said policy is also applicable to the AAI, being a Public Authority. He would also invite our attention to the restrictions imposed under the

said policy and would argue that the hoardings erected fall within the restrictions specified in clause (a), (e), (f) and (h) of Clause (16) of the Policy. According to the learned counsel, the Corporation, through its letters, has made its stand clear that though the land where the hoardings are erected, is under the control of the AAI for the purposes of erecting the hoardings necessary permission under Section 328/328A of the MMC Act, 1888 is imperative. He would also argue that permission of the CRZ is also mandatory. The learned Senior Counsel Mr. Mehta appearing for the petitioner who himself has erected hoardings on the site with due permission of the MCGM and after being granted a licence to do so, would follow the argument of the learned Senior Counsels Mr. Vashi and Mr. Mihir Desai in support of his petition.

12 We have heard learned Senior Counsel Dr. Milind Sathe representing the Advertiser, M/s Guju Ads Pvt.Ltd. and he would argue that the street in question where the hoardings are erected did not belong to the MCGM and according to him, it did not even belong to

the AAI, but he placed reliance on the property cards which he had annexed to the affidavit to support his contention that the said piece and parcel of lands bearing CTS No. 939, 940, 945, 946 etc. of Juhu, the name of owner is recorded as Aviation Department, Government of India. In view of this position, according to the learned Senior Counsel, the hoardings cannot be regulated by invoking Section 328 and 328A of the MMC Act and 2008 Policy would not govern the property of Union. He also invited our attention to the provisions of Section 43 and 44 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as MRTP Act, 1966) to contend that no permission is required to be obtained by the Central Government or State Government for any development on such land and, therefore the MCGM will have no power to regulate the hoardings erected on the land belonging to Union of India. He would heavily rely on the judgment of the Hon'ble Apex Court in the case of **Supri Advertising and Entertainment Private Ltd vs. Dr. Anahita Pandole & Ors** reported in (2008) 10 SCC 246.

13 On hearing the respective counsel, on perusal of the aforesaid petitions, including the PIL and on consideration of the arguments advanced by the appearing parties, we are called upon to answer the issue as to whether the hoardings erected on the land belonging to the AAI, a Statutory Corporation, for which it had invited e-tender for conferring the advertising rights, concession to develop, operate and marking the advertisement board at Juhu Airport, require permission from the MCGM and the CRZ and the consequences of not obtaining such permission.

14 The AAI has invited e-tender by publishing request for proposal (RFP) setting out the terms and conditions for the advertising rights concession to operate and marking the advertising board at Juhu Airport. In the Request for Proposal (RFP) contains the following statement.

1. General information :-

1.1.1: “The Airports Authority of India (the “Authority”) is engaged in the development, operation and maintenance of airport in India and as part of this endeavour, the Authority has undertaken the construction of new Terminals for domestic and international passenger traffic at Juhu Airport, which is located in the State of Maharashtra. In order to maintain and upgrade the passenger facilities for the Airport Users, Authority intends to grant Advertisement Rights at the Juhu Airport Estate including the passenger terminals and city side traffic circulation areas and approach roads by resorting to a competitive bidding process for selection of a Bidder to whom the Advertising Rights Concession may be awarded Brief particulars of the Concession are as follows.”

15 For effective adjudication of the contentions of the rival parties, it would be useful to refer to the Statutory Scheme under which the respective parties either claim an obligation or claim a privilege.

16 The AAI owes its existence to the Airports Authority of India Act, 1994. The preamble of the Act makes it clear that it is an Act to provide for the constitution of the Airports Authority of India and

for the transfer and vesting of the undertakings of the International Airports Authority of India and the National Airports Authority in the Airport Authority of India so constituted for its better administration and cohesive management. Thus, the said Act aims to constitute a single unified Airports Authority of India to control and manage both the National and International Airports in the country. The said Act defines “Airport” in section 2 (b). Airport means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934. (22 of 1934).

17 By virtue of Section 3 of the Act, 1994, the Airports Authority of India is a body corporate by the name “Airports Authority of India”, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property both movable and immovable, and to contract and which can sue and be sued in its name.

Section 12 of the Act of 1994 enumerates the Functions of the Authority and its primary duty is to provide air traffic service and air transport service at any airport and civil enclaves. Amongst its functions clause 3(r) provides that Airport Authority may carry out an activity at the Airports and the civil enclaves in the best commercial interests of the Authority including cargo handling, setting up of joint ventures for the discharge of any function assigned to the Authority. Sub-Section (4) of Section (12) emanates that the Authority shall, in the discharge of its functions, have due regard to the development of air transport service and to the efficiency, economy and safety of such service. By virtue of Section 12-A of the Act, the Authority may, in the public interest or in the interest of better management of airports, make a lease of the premises of an airport to carry out some of its functions under Section 12 of the Act. This does not absolve the Airport Authority of its statutory duty to ensure smooth air traffic service and watch and ward of Airports and civil enclaves.

18 From the statutory scheme of the aforesaid enactment, it is

clear that the AAI is a Statutory Corporation and juristic entity which is distinct from the Central Government and the properties vested in it are its own properties and are not the properties of the Union within the meaning of Article 285 of the Constitution of India. The properties vested in the AAI no longer remain the properties of the Union. We are not impressed by the stand of the advertisers as canvassed by Dr. Milind Sathe that since the property on which the hoardings are erected being property of Union of India, it must enjoy an exemption by virtue of Article 285 of the Constitution of India. It is also exempted from applicability of Provisions of Section 43 and 44 of the MRTP Act. As far as the first contention of the advertiser, the issue is put to rest by the judgment of the Hon'ble Apex Court in the case of Municipal Commissioner of Dum Dum Municipality and others -Vs- Indian Tourism Development Corporation and Ors reported in (1995) 5 SCC 251.

19 The issue, in batch of appeals before the Hon'ble Apex Court, was whether the properties vested in the International Airports Authority of India under the provisions of International Airports

Authority Act, 1971 can be called “the properties of Union” within the meaning under Article 285 of the Constitution of India, and therefore, exempt from all taxes imposed by the State or any other Authority within a State. To be more precise State Taxation. The Hon'ble Apex Court after considering the scheme of the enactment i.e. International Airports Authority Act, 1971, qua Article 285 of the Constitution of India, held that the Corporations being created under the Statute, distinct, juristic entity owing its own property can enter into a contract like any other Corporation and the Apex Court held that the properties held by the Authority can be categorized in the two categories, namely, those which were transferred to it under Section 12 of the Act, and those which are acquired by it subsequent to its creation under statute. The Court held that as far as second category of properties is concerned, they are undisputedly the properties of the Airport Authority and as far as properties of first category, the Hon'ble Apex Court held as follows :-

“35. For all the above reasons, we are of the opinion that the International Airports Authority of India is a

statutory corporation distinct from the Central Government and that the properties vested in it by Section 12 of the Act cannot be said to have been vested in it only for proper management. After the date of vesting, the properties so vested are no longer the properties of the Union of India for the purpose of and within the meaning of Article 285. The vesting of the said properties in the Authority is with the object of ensuring better management and more efficient operation of the airports covered by the Act. Indeed that is the object behind the very creation of the Authority. But that does not mean that it is a case of limited vesting for the purpose of better management. The Authority cannot, therefore, invoke the immunity created by Article 285(1) of the Constitution. The levy of property taxes by the relevant municipal bodies is unexceptionable.”

20 In any case, we are not concerned with the issue of taxing the property of the Union. However, the said judgment lays down the principle that being a Statutory Authority established under a Parliamentary enactment, the properties held by such an Authority are distinct from that of the Union of India, in view of its independent existence being a creature of Statute. We are, therefore, unable to accept the submission of Dr. Sathe that the road on which the hoardings are erected, is the property of the Union of India and,

therefore, it cannot be subjected to regime of local laws. We are unable to follow the line of argument advanced by the learned Senior Counsel Dr.Sathe for more than one reason which we would be citing in the next paragraph.

21 Dealing with the second contention of the learned Senior Counsel Dr. Sathe with reference to Section 43 and 44 of the M.R.T.P Act and the argument that no permission of the Planning Authority is required for carrying out the work by the Central Government, it would be necessary for us to deal with two enactments, the provisions of which have been sought to be invoked and applied by the parties before us. The contention of the petitioners is that the permission of MCGM is mandatory before erection of such hoardings, since it is the planning authority which is cast with the duty of systematic and planned growth of the city and it is duty bound to regulate any obstruction in its development. The submission of the advertisers is that for erection of hoardings permission of the AAI is sufficient and there is no requirement of seeking permission/approval of the local

body under consideration.

In order to appreciate the rival submissions advanced before us and to effectively deal with them two enactments in the form of State legislations need to be referred to and their scheme needs to be examined.

22 The Maharashtra Regional Planning Act, 1966 is an enactment for planning and development and use of land in the Regions established for that purpose and to make better provisions for the preparation of development plans with a view to ensure that town planning schemes are made and executed in a proper manner and for creation of new towns by means of development and to make provisions for compulsory acquisition of land required for public purposes in respect of plans.

The enactment, which received assent of the President of India on the 13th December, 1966, came into force from 20th December, 1966. The said enactment provides for establishment of 'Regions' by the State Government by notification in the Official Gazette with the power to include and exclude, alter the limits of the

'Regions'. The enactment contemplates preparation of the regional plans with a view to securing planned development and use of any land in a region, by carrying out a survey of the land and preparation of an existing-land-use map. The regional plan so prepared would indicate the manner in which the land in the region is to be used, whether by carrying out thereon development or otherwise, including conservation and development of natural resources in the said region. A regional plan so prepared may provide for reservation of areas for open space, gardens, recreation sanctuaries, terrace etc. It may also provide for a location of land for different uses, general distribution and locations of the land and the extent to which land may be used as residential, industrial, agriculture or as forest or mineral exploitation. The regional plan so prepared mandates an approval from the State Government and the said enactment provides the procedure to be followed in preparing and approving such regional plans. The said enactment by virtue of section 18 imposes restrictions on change of use of any land or development, after publication of the notice of the draft regional plan, without prior

permission of the Municipal Corporation or Municipal Council, within whose area, the land is situated and elsewhere without permission of the collector. No permission for alteration or change of the use is to be granted by the concerned authority until and unless it is in the conformity with the provisions of draft or the final regional plan. After the regional plan comes into force, it is permissible for the State Government, but not earlier than 10 years to revise the said regional plan through the Regional Planning Board or Regional Board.

23 Chapter-III of the “MRTP Act, 1966” contains provisions for development plan. The “development plan” has been defined under the enactment, to mean a plan for development or re-development of area within the jurisdiction of the Planning Authority and includes revision of development plan and preparation by Special Planning Authority for development of the plan within its jurisdiction. It is imperative on the part of every planning authority to carry out survey, prepare an existing-land-use map and prepare draft

development plan and submit the plans for its sanction to the State Government. The duty is cast on the planning authority and for the purpose of the enactment the term “Planning Authority”, is defined in section 2 (19), means a local authority and includes :-

- (a) a Special Planning Authority constituted or appointed or deemed to have been appointed under section 40;
- (b) in respect of the slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act.

The Planning Authority, means a local authority and “Local Authority” is defined in section 2(15) of the said Act, which reads as follows :-

- 2(15) “local authority” means –
- (a) the Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act or the Nagpur Municipal Corporation constituted under the City of Nagpur Corporation Act, 1948, or any Municipal corporation constituted under the Bombay Provincial Municipal

Corporation Act, 1949.

- (b) a Council and a Nagar Panchayat constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965]
- (c) (i) a Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961,
- (ii) the Authority constituted under the Maharashtra Housing and Area Development Act, 1976]
- (iii) the Nagpur Improvement Trust constituted under the Nagpur Improvement Trust Act, 1936] which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act;

The word “development” is defined as follows :-

“2(7) “development” with its grammatical variations means the carrying out of buildings, engineering, mining of other operations in or over or under, land or the making of any material change, in any building or land or in the use of any building or land [or nay material or structural change in any heritage; building or its precinct] [and

includes [demolition of any existing building, structure or erection or part of such building, structure of erection; and] [reclamation,] redevelopment and lay-out and subdivision of any land; and “to develop” shall be construed accordingly”

24 The Planning Authority plays a pivotal role in preparation of development plan. The Planning Authority means a local authority and by section 2(15), “local authority” includes the Mumbai Municipal Corporation constituted under the Bombay Municipal Corporation Act, 1888. The Mumbai Municipal Corporation is one of the authorities which owes its recognition to part IX-A of the Constitution of India, inserted by 74th amendment to the Constitution w.e.f. 01.06.1993. Part IX-A captioned as “Municipalities” provides for constitution of Municipalities under Article 243-Q which includes constitution of a Municipal Corporation for a larger urban area. Part/Chapter IX-A provides for composition of the Municipalities and Article 243W provides for powers, authority and responsibilities of the Municipalities. It is necessary to refer to Article 243W which

provides that the Legislature of the State may make law endowing the municipalities with such powers and authority and responsibilities, as prescribed and it reads as under:-

243W. Powers, authority and responsibilities of Municipalities etc. – Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow -

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to –

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

Article 243W has to be read conjointly with 12th Schedule of the Constitution and the Legislature enacted by a State, constituting such municipalities would be endowed with the duties of urban planning including the town planning of such municipalities. It would also provide for regulation of land use, roads, and bridges etc. The M.R.T.P. Act, 1966 contains provisions for planning through the Planning Authority and the Mumbai Municipal Corporation Act, is a “Planning Authority” for the purposes of Brihan Mumbai. Since the “Planning Authority” includes the “Local Authority”, the Mumbai Municipal Corporation constituted under the Mumbai Municipal Corporation Act, 1888 which is a “local authority”, is endowed with certain duties and functions under the Mumbai Municipal Corporation Act and it also acts as a Planning Authority for the purposes of the MRTP Act. As a Planning Authority it is the duty of the MCGM to

ensure planned development within its jurisdiction and the development plan prepared by this authority would include a detailed planning about the allocation of the use of land for different purposes, designation of land for public purposes like open space, play ground etc. Once such development plan prepared by the Planning Authority comes into force and it receives sanction from the State Government, then such development plan binds every person and every Authority, operating in the jurisdiction of such planning authority and any development, which is to be carried out within the jurisdiction of the Planning Authority, has to be strictly in consonance with the development plan. This is the reason why any draft modification in the development plan after it has become final, is a cumbersome procedure required to be followed and any modification is permissible only with the approval of the State Government and such a development plan under the scheme of the MRTTP indicates a revision once in 20 years from the date on which it comes into operation. The whole scheme of the MRTTP Act places the Planning Authority at the helm of affairs for undertaking planning and

regulating any development. It should be strictly in consonance with the Development Plan so as to ensure a planned development.

25 The Mumbai Municipal Corporation Act, 1888 contains provisions which would include the functions and duties to be discharged by the Corporation in the nature of its obligatory and discretionary duties. One of the important Chapter in the Enactment is Chapter XI “Regulation of Streets”.

As per section 289 of the said enactment, all public streets vest in the corporation of Brihan Mumbai. They are either public streets or become public streets, shall vest in the corporation and are under the control of the Commissioner. It is the duty of the Commissioner to ensure that such streets are maintained and he is empowered to permanently close the whole or any part of the streets.

This Chapter contains provisions pertaining to sky-signs and advertisements.

Section "328. Regulations as to sky-signs.

(1) No person shall, without the written permission of the Commissioner erect, fix or retain any sky-

sign, whether now existing or not, [where a sky-sign is a poster depicting any scene from a cinematographic film, stage play or other stage performance, such permission shall not be granted, unless prior scrutiny of such poster is made by the Commissioner and he is satisfied that the erection or fixing of such poster is not likely to offend against decency or morality. No permission under this section] shall be granted, or renewed, for any period exceeding two years from the date of each such permission or renewal:-

[* * * * *] [Provided that] in any of the following cases a written permission or renewal by the Commissioner under this section shall become void, namely:--

- (a) if any addition to the sky-sign be made except for the purpose of making it secure under the direction of the municipal [city engineer];
- (b) if any change be made in the sky-sign, or any part thereof;
- (c) if the sky-sign or any part thereof fall either through accident, decay or any other cause ;
- (d) if any addition or alteration be made to, or in, the building or structure upon or over which the sky-sign is erected, fixed or retained, if such addition or alteration involves the distribution of the sky-sign or any part thereof;
- (e) if the building or structure upon or over which the sky-sign is erected, fixed or retained become unoccupied or be demolished or

destroyed.

The expression "sky-sign" shall in this section mean any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole, standard frame-work or other support wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole, standard frame-work or other support. The expression "sky-sign" shall also include any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street, but shall not include-

(a) any flagstaff, pole, vane or weathercock, unless adapted or used wholly or in part for the purpose of any advertisement, announcement or direction ;

(b) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof:

Provided that such board, frame or other contrivance be of one continuous face and not

open work, and do not extend in height more than three feet above any part of the wall, or parapet or ridge to, against, or on which it is fixed or supported ;

(c) any word, letter, model, sign, device or representation as aforesaid, relating exclusively to the business of a railway company, and place wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway company and so placed that it cannot fall into any street or public place ;

(d) any notice of land or building to be sold, or let, placed upon such land or buildings."

Another provision which needs a mention is Section 479

which reads thus which deals with licences :-

479. Licences and written permission to specify condition etc.

on which they are granted.

(1) Whenever it is provided in this Act that a licence or a written permission may be given for any purpose, such licence or written permission shall specify the period for which, and the restrictions and conditions subject to which, the same is granted, and shall be given under the signature of the Commissioner or of a municipal officer empowered

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under section 68 to grant the same.

26 After consideration of the scheme of the aforesaid enactments, discussed above, and in the backdrop of admitted facts that hoardings are erected on the land CTS No. 939, 940, 945, 946 situated at Juhu Airport. However, indisputably the said land is not a part of the Airport but is situated outside the Airport. The said land has been put to use for the purposes of parking. It is the AAI which has invited RFP and initiated the tender process for availing concessionaire rights for erection of hoardings. The said land, therefore, belongs to AAI and we are not able to accede to the contention of Dr. Sathe that the said land is owned by the Union of India. The AAI is statutory Corporation and is an independent entity capable of holding property in its own name and in the Scheme of the enactment, the Central Government only exercises control over the AAI but the said Authority is distinct from the Union of India (UoI).

27 The question, then, arises is whether the local laws could

be invoked to regulate the procedure for erection of hoardings and whether permission of the Local Authority i.e. MCGM is imperative. Looking to the Scheme of MMC Act, which is a local body and responsible for systematic and planned growth of City, is expected to discharge several statutory functions and duties. The provision for public streets and maintenance of those streets, in a manner which are free of obstruction, is also one of the function which is required to be discharged by the MCGM. The Scheme of the enactment mandates the Corporation to prohibit projections on the streets which are hanging over or which in any way encroach upon or obstruct the safe and convenient passage of public along the street. By virtue of Section 308 of the MMC Act, the Commissioner is authorized to issue notice to the owner or occupier of such premises to remove any such structures or fixtures which has been erected in contravention of provisions of the Act. By virtue of Section 310, the Commissioner is the authority who is competent to grant any such permission to erect projection over the street subject to certain terms and conditions. In tune with the said provisions in the Scheme of enactment, the Corporation is authorized

to regulate the erection/fixing of sky-signs in view of provisions contained in Section 328 and 328-A of the MMC Act, 1888. The said provision is not restrictive but is regulatory in nature and there is no wholesome ban on advertisement but what is prohibited is obstructive and hazardous structures displaying advertisements. There is no indefeasible right in an individual to erect such hoardings or nor a right vested in an authority to commercially exploit the use of land by erecting such hoardings since such hoardings at times not only create physical obstruction, but it would also impede the free and safe movement of traffic of pedestrians and vehicles. Such illuminated and colourful hoardings are likely to attract the attention of the drivers of vehicles and in turn it impedes the safe and free movement of traffic by causing obstruction. It is therefore necessary to regulate such structures by prescribing its proper location, size and height so as to minimize its ill effect. Such a restriction would regulate the right to erect such hoardings and since no one can claim that it is fundamental right to carry on the business and earn money by commercially exploiting a piece of land belonging to himself and the said right can

be curtailed by imposing reasonable restrictions in the larger public interest. The Local Authority, therefore, can assume to itself further right to regulate such structures since the land on which it stands though belonging to a Airport Authority, vests in the Local Authority and it is competent for such an Authority to impose limitations in the larger interest of the public and specially when it happens to be a public street.

28 It is not in dispute that the land where the hoardings are erected, belongs to the AAI. However, it has no right to develop it as per its own pleasure under the guise of its commercial exploitation and if they are permitted to do so, it would result into haphazard development of the city. As such since it would be permissible for every Statutory Authority or public body within the City to claim such a right and carry out the development which is not in consonance with the development plan of the city. If it is attempted to be argued that the AAI can deal with its land in the way it wants, since it exercises complete control over the land dehors the provisions of local laws, it

would result into disturbing the systematic planned development stipulated by the planning law and allowing an Authority to carry out development which is not in consonance with the Planning legislation. The works which are then carried out within the jurisdiction of the Statutory Authority like the AAI would completely defeat the planning legislation like MRTP which is intended to achieve systematic planning for larger public good.

29 The Division Bench of this Court in the case of **Goroba Pandurang Gadekar v. State of Maharashtra** reported in **2018 (1) Bom.C.R. 117**, to which one of us (Hon'ble Mr Justice S.C.Dharmadhikari) is a party, had an occasion to deal with some what similar issue where a construction was raised by the Agricultural Produce Marketing Committee (for short “the APMC”) being a Local Authority within the meaning of Section 2 (15) of the Maharashtra Regional Town Planning Act, 1966 and whether such a construction would be regulated by the provisions of Maharashtra Municipal Corporation Act, the Public Interest Litigation which was filed before

Aurangabad Bench of this Court raised a grievance that the construction at the behest of the APMC by a Builder and Developer is completely within the domain of the APMC since it was on the lands belonging to it and the argument advanced was that the provisions of MRTD and building by-laws cannot be made applicable to the market area by the State Government. It was canvassed on behalf of the builder and developer that the market areas specified by the State Government under the control and supervision of the APMC stands exempted from such law. While dealing with the issue in the case of **Goroba Pandurang Gadekar** (cited supra) the Division Bench observed as under :-

48. “A perusal of the Rules and particularly, Section 60(2)(p) would indicate that for preparing plans and estimates for works proposed to be constructed partly or wholly at the expenses of the Market Committee, and the grant of sanction to such plans and estimates may be provided by the Rules. However, merely because such plans and estimates for works proposed to be constructed partly or wholly at the expenses of the Market Committee and the grant of sanction to the same will not make the Market Committee a Planning

Authority for all purposes. It is only for the works proposed to be constructed partly or wholly at the expenses of the Market Committee, that a limited authority is granted to the Agricultural Produce Market Committee to allow any construction to be made. Even if it is made within its area but by a private agency for it, it cannot go ahead and sanction and approve the plans itself. It cannot permit a developer and builder to develop a land within the area or jurisdiction of a Planning Authority by ignoring the Planning Statute itself. It would mean dispensing with the requirements stipulated by the planning law and allowing a private party to put up construction beyond permissible limits and set out in the planning legislation. It would mean the entire regime then is taken over by the Agricultural Produce Market Committee and merely because the construction is in the Market Area, or a Market Yard, but by a private agency, all the powers of a Planning Authority vest in the Agricultural Produce Market Committee necessarily. The Statute has not intended this to be the position and, therefore, has not provided the necessary back up or conferred the Agricultural Produce Market Committee with wide powers. Therefore, any other construction and not contemplated by Section 60(2)(p), would come within the purview of the Planning law and even if any construction or works proposed to be constructed at the expenses of the Market Committee, the grant of sanction of such plans and estimates may be by the Agricultural Produce Market Committee but the Agricultural Produce Market Committee will still have to abide by the planning legislation.”

30 The AAI is also not entitled to take recourse to the provisions contained in Section 43 and 44 of the MRTTP Act, 1966 and particularly the proviso which does not require a permission for requiring the works by any Authority in exercise of its powers under any law for the time being in force. Section 43 of the MRTTP Act reads thus :-

43. Restrictions on development of land:-

After the date on which the declaration of intention to prepare a Development Plan for any area is published in the Official Gazette [or after the date on which a notification specifying any undeveloped area as a notified area, or any area designated as a site for a new town, is published in the Official Gazette,] no person shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning Authority:

Provided that, no such permission shall be necessary -

(i) for carrying out works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance thereof; [except in case of heritage building or heritage precinct];

(ii) the carrying out of works in compliance with any order or direction made by any authority under any law for the time being in force;

(iii) the carrying out of works by any authority in exercise of its powers under any law for the time being in force;

(iv) for the carrying out by the Central or the State Government or any local authority of any works-

(a) required for the maintenance or improvement of a highway, road or public street, being works carried out on land within the boundaries of such highway, road or public street;

(b) for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes, cable, telephone or other apparatus including the breaking open of any street or other land for that purpose;

(v) for the excavation (including wells) made in the ordinary course of agricultural operation;

(vi) for the construction of a road intended to give access to land solely for agricultural purposes;

(vii) for normal use of land which has been used temporarily for other purposes;

(viii) in case of land, normally used for one purpose and occasionally used for any other purpose, for the use of land for that other purpose on occasions;

(ix) for use, for any purpose incidental to the use of

a building for human habitation of any other building or land attached to such building.

31 The said section is of no assistance to the advertiser of the AAI and the privilege conferred on any Authority cannot be extended so as to demolish or render the planning of the city itself in doldrums. We are also not ready to accept the request of learned Advocate Dr. Sathe who have invited our attention to clause (iv) of proviso to Section 43 since carrying out of work by the Central or Local Authority, for which no permission is required is in regard to maintenance or improvement of Highway, road or public street, being works carried out beyond the boundaries of such highway, road or public street or for the purposes of highlighted in sub-clause (b). However, none of these circumstances exist in the present case and as we have noted above, the AAI, as a commercial venture, has undertaken the work of allotment of concessionaire right in favour of the advertisers and in order to achieve the best commercial interest and not for indulging into any activity at the Airport and its civil enclaves. However, such

right will not absolve the Authority from falling in line with the local laws enacted and governing the field. The Airports Authority of India Act, 1994 has been enacted by the Parliament by invoking the Entry 29 and 30 of List I of Seventh Schedule to the Constitution of India which reads thus :

Entry 29 :- Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

Entry 30 :- Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.

The Maharashtra Town Planning Act, 1966 and the Mumbai Municipal Corporation Act, 1888 have been enacted by the State Legislation by invoking Entry 5 and Entry 18 of List II of the Seventh Schedule of the Constitution of India read as below :-

Entry 5 : Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district

boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

Entry 18 : Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

We are not able to fathom the argument of the learned Senior Counsel Dr. Sathe that the AAI has been enacted by invoking the **entry 32 of list I of the Seventh Schedule** of the Constitution of India. Entry 32 reads as follows :-

32. Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides.

The said argument is misconceived since the issue involved

in the petition is not in relation to property of the Union and its revenue. However, on the said count, we have already noted that Article 285 has no application in the present case since it deals with the exemption of property of Union and we have already noted that the land on which the hoardings are sought to be erected is the property of AAI. The Entry 32, List I rather clarifies that as regards the property of Union situated in the State, subject to legislation by the State, save in so far as by otherwise provides parliament law. Thus, the law made by the Parliament in relation to property of the Union is made subject to legislation by the State except when the Parliament by law may otherwise provides. Thus, the property belonging to AAI will be subject to the local laws, since there is no indication to the contrary enacted in the Airports Authority of India Act, 1994.

32 Our attention was invited to a judgment delivered by this Court in relation to the property of railway and erection of hoardings on its property in a bunch of writ petitions decided by a Division Bench of this Court (Coram: Hon'ble Justice B.R.Gavai and Sandeep

K.Shinde,JJ) on 21st December, 2017. Perusal of the facts of the cited case would reflect that the arguments advanced in the case on behalf of Union of India was that the power to make construction on Railways, including the erection of structures for displaying hoarding is exclusively with the Railways in view of Section 11 of the Railways Act and developing any railways land for commercial use is also exclusively within the domain of Railway Authorities. The submission was in view of Section 184 of the Railways Act, railway administration is not liable to pay any tax in aid of the funds of any local authority unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification. It was also argued that in view of the provisions of Article 285 of the Constitution, it will have to be held that the respondent MCGM has no jurisdiction to regulate the hoardings erected on the property of railways and recover any tax on the same.

33 Paradoxically, Dr. Sathe who appears before us and represents the advertisers appeared for one of the petitioners who

advanced his submission in view of Section 44 of the MRTTP Act, 1966, that since no permission is required to be obtained by the Central Government or the State Government for any development, the Municipal Corporation will have no power to regulate the hoardings erected on the land of railways. This Court heavily rely upon the provisions contained in Section 185 of the Indian Railways Act, observing thus :-

“We find that in view of interpretation placed by the Division Bench of this Court on Section 7 of 1890 Act, which is analogous to Section 11 of the 1989 Act, that too while construing the conflict between the provisions of the said Act and city of Bombay Municipal Act, which is a predecessor of the said Act and City of Bombay Municipal Act, which is a predecessor of the MMC Act, it will have to be held that the provisions of Section 328 and 328A and 479, would not be applicable to any of the activities that railway administration may execute in pursuance of the powers vested in it under Section 11. Undisputedly, since under clause (da) of Section 11, the railway administration is also empowered to develop any railway land for commercial use and since under clause (d), it is also empowered to erect and construct such houses, warehouses, offices and other buildings,

and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper; the hoardings which are erected by the railways on its land would not require the permission of the Corporation either under Section 328 or 328A of the MMC Act and consequently no license would be required under section 479.”

34 The said judgment relied upon by the learned counsel for the advertisers is clearly distinguishable in view of the factum of existence of various provisions contained in the Railways Act, that the Corporation has no power to insist upon its permission for erection of such hoardings in respect of advertisements facing the street. This Court after analysing the entire scheme of the Railways Act, 1989 succeeding the Indian Railways Act, 1890 and by referring to the erstwhile Section 7 and the present Section 11 of the existing enactment, arrived at a conclusion that in view of the provisions contained in Section 11 which begins with *non obstante* clause and while constructing conflict between the Railways Act and City of Bombay Municipal Act, which is a predecessor of the MMC Act, the

Division Bench of this Court in the case of **The Great Indian Peninsula Railway vs. The Municipal Corporation of Bombay**, reported in BLR Vol XVI, 104 has held that the provisions of Section 328, 328A and 479 would not be applicable to any of the activities that the Railway Administration may execute in absence of powers vested in it under Section 11 and in this backdrop the Court recorded a finding that the hoardings which are erected by the Railways on its land would not require permission of Corporation either under Section 328A and no licence would be required under Section 479 of MMC Act. The said dictum is clearly distinguishable in view of the civic provision in the Railways Act and identical provision on similar lands is not found in Airport Authority of India Act, 1994 and hence the said judgment cannot come to the rescue of the respondents.

35 We are also not able to comprehend any conflict between the legislations which we have dealt with namely, the Airports Authority of India Act enacted by Parliament on one hand and Mumbai Municipal Corporation Act, 1888, on the other hand. Though an attempt is made to assert supremacy of legislation enacted by the

Parliament in the form of the Airports Authority of India Act, 1994 and to make State legislation subservient to it, we do not find that the said argument holds any water. Nonetheless the issue of repugnancy as sought to be invoked, is not to be perceived, not required to be searched for but must exist in fact.

36 We have also perused the judgment of the Bombay High Court in the case of **Dr. Anahita Pandole Vs. State of Maharashtra & Ors** decided by this Court (Coram : **Swatanter Kumar C.J. and Kanade V.M. J**) on April 11, 2008, where the Hon'ble Bench dealt with the issue of mobile hoarding vehicles which were alleged to be plied in contravention of the provisions of the Motor Vehicles Act and it was alleged that they were violating the provisions of MMC Act, 1888 and directions were sought to remove all such hoardings. The MCGM justified the presence of such vehicles and had stated before the Court that the public tenders were invited and contract were entered into for display of such hoardings after following the procedure under Sec.328 and 328A of MMC Act. It was argued before

the Court that the Corporation had power to issue licences or permissions for display of hoarding which is equally applicable to mobile hoarding vehicles. The Hon'ble High Court dealing with the power u/s 328A of the Act made observation that the policy framed in exercise of powers conferred on the Corporation are guidelines framed by the Commissioner for exercising the discretion vested in it u/s 328A of the Act. The Division Bench made an observation, on which the learned Counsel Dr. Milind Sathe placed heavy reliance to the effect that these guidelines cannot have any force of law per se and they are nothing but guidelines prepared for exercise of administrative power by the authorities concerned. The Division Bench issued the directions to regulate the parking of such mobile hoarding vehicles so that it would not obstruct free flow of traffic in any manner whatsoever. Direction was also issued to the State Government and the Corporation to frame appropriate regulations in exercise of their respective statutory powers and in consultation with appropriate bodies in relation to advertisement hoardings.

The said judgment of this Hon'ble Court was tested by the Hon'ble Apex Court in case of Supri Advertising and Entertainment Pvt Ltd. vs. Dr. Anahita Pandole, (2008) 10 SCC 246. The Hon'ble Apex Court made the following observations:-

54. “Similarly, Mumbai Municipal Corporation has also exercised its jurisdiction under Sections 328 and 328-A of the Mumbai Municipal Corporation Act in granting licences for the parking of mobile boarding vans for the display of advertisements. Since the authorities which have been empowered to grant such licences and to specify spots for parking, have exercised their authority, it would not be safe for the Court to question the decision taken by the said authorities on the basis of allegations made by an individual, without having anything more to rely upon, especially, in the face of the affidavits affirmed both on behalf of Mumbai Municipal Corporation and Mumbai Traffic Police.”

The appeal filed before the Hon'ble Apex Court was allowed and the judgment of the Hon'ble Apex Court made the following observations :-

56. “The High Court, in our view, in its anxiety to

ensure the free movement of traffic and the safety of both motorists and pedestrians and to avert any untoward incident, has proceeded to question the decision taken by the competent authorities without having proper material before it to do so. Contrary to the authority vested in the State Government and the local authority under the provisions of Section 117 of the Motor Vehicles Act, 1988 and Sections 328 and 328-A of the 1888 Act, the High Court has given directions which, in our view, are beyond the scope of the writ petition.”

37 The MCGM has a policy in place laying down guidelines for the display of advertisements. The existing guidelines were framed in the year 2000 in furtherance of power u/s 328 and 328A of MMC Act, 1888 was modified by the new guidelines framed in the year 2008. The guidelines aimed to improve the quality of out-door advertisements at par with the International Standards and also aim to change the look of the city for the better. The modified guidelines necessitates permission for display of advertisements by means of hoardings/neon signs, letter on balloons and advertisements on business premises, such as shops, offices, showrooms, petrol pumps etc. The policy is known as “Policy Guidelines on grant for permission

of display of advertisements and similar devices, 2007”.

The said policy highlights the growing tendency to scramble for hoardings and advertisement boards in every nook and corner of the city and arterial roads leading to undesirable consequences of the residents complaining of deprivation of light and ventilation, clandestine cutting of trees for better visibility of advertisements leading to environmental degradation, even touching the archaeological buildings and structures. The policy is also intended to prevent the haphazard erection of hoardings without consideration of the aesthetic aspect or the safety needs of the flowing traffic and pedestrians.

Part II of the said policy prescribes the general norms for advertisement permission. It reads thus :

No Agency, without the permission in writing from the Competent Authority, shall display any advertisement by means of hoarding, neon signs, wall paintings, balloons or display advertisements on business premises such as shops, show rooms, offices, petrol pumps, cinema theaters, malls etc. The norms guiding the grant of permission will be as

detailed in this section. An agency displaying sky sign or advertisement unauthorizedly, without seeking permission of the Competent Authority and in contravention of these guidelines, will be committing offence punishable under section 471 of the MMC Act, 1888. However, permission will not be required for certain types of advertisements, which have also been detailed in these guidelines.

Two other provisions from the policy needs reproduction :

15. Hoardings on the premises of other public authorities:

Agencies desirous of erecting hoardings on the land or premises of other public authorities, whether government, semi-government, viz. International Air-Port Authority of India, Defence Ministry, Public Sector Undertakings etc. have to obtain a valid permit under section 328-328A of the MMC Act after obtaining NOC from the concerned Public Authority before they can erect the hoarding or display advertisements.

The demand notices for advertisement fees should be sent to the concerned advertising agencies as per schedule of the Corporation. The concerned authorities are requested to provide the names of the agencies, locations, size, period and all other details of the hoardings on their premises. However, provision of D.C.R. 48 (3) may be taken into account.

16. Restrictions :-

(a) No illuminated hoarding shall be permitted within the cone of the vision of the driver without the NOC from the Traffic Police Department.

(b) No hoarding shall be permitted at intersection within a distance of 25 meters from the stop-line of each approach road facing the hoarding erected on the ground level. No mobile hoardings will be permitted in carriageways of any road.

(c) No hoarding shall be permitted in the compulsory open space required to be maintained under the Development Control Regulations of Greater Mumbai (DCR) including public recreation grounds, playgrounds, parks and Gardens.

(d) No hoardings shall be permitted around Traffic Islands and signal junctions within a 25 meters distance from the road line.

(e) No hoarding shall be permitted which will cover vision of the sea, greenery, landscaping or large size trees in the adjoining areas. No hoarding shall be permitted near beaches, parking lots or on any land adjacent to seacoast on seaward side of the road.

(f) No hoarding shall be permitted which would obstruct the light or ventilation of any premises.

(g) No hoarding shall be permitted on buildings of archaeological, architectural, aesthetical, historical or heritage importance as per DCR, Rule 48 (3).

(h) No hoarding shall be permitted inside mangroves, creek or sea or within a distance of 200 meters of High Tide (HTL) as per DCR, Rule 59 (2). However, this restriction will not apply to hoardings on terraces of existing authorized structures on the landward side of existing road.

(i) In case of illuminated / Neon-sign hoardings, following restrictions should be observed.

(i) The level of luminance should not be exceed a source limit of 1 cd/cm square. Illumination shall not be continued after 11.00 p.m.

(ii) The neon-signs in residential premises should not be flickering. No neon sign hoardings shall be permitted in Residential Zone/Localities.

(iii) Neon-signs should be put off before 10.00 p.m.

(iv) No video or moving digital advertisements will be allowed. LED displays etc. should be still only. Changing of images after minimum 10 seconds will only be permissible.

(j) So far as the issue of more than one hoarding on a single plot is concerned, not more than one hoarding per 400 sq.mtrs. of plot area will be permitted on private properties or layouts. For

having another hoarding, the plot owner must have at least another 400 sq.mtrs. of area.

(k) No hoardings shall be permitted on the walls other than dead walls of any building except wrap up neon/digital advertisements, subject to other provisions of these Guidelines.

(l) No more than one hoarding per 400 sq.mtrs of terrace area shall be permitted on any building terrace. However, the consent of the flat occupier of the top most floor will be a must, in addition to resolution of the CHS.

(m) No diesel generator sets will be allowed to illuminate hoardings as these create noise and air pollutions.

The guidelines provide detail mechanism for disposal of the applications preferred, seeking such permission. The object of the Policy of the MCGM is to ensure smooth flow of traffic in discharge of its duties conferred as Local Authority and to regulate the obstructing/hazardous hoardings which would not cause any hindrance or disturbance to the smooth traffic movement. The said policy framed by the MCGM for display of hoardings has received approval of this Hon'ble Court and hence, it has binding effect. We expect the Airports Authority of India to regulate its displaying policy

in consonance with the policy of the MCGM, framing its own policy, regulating the advertisement hoardings in a manner which do not cause any disruption of traffic and ensure public safety.

38 Once we have arrived at a conclusion that the land on which the hoardings are erected, has to abide by the local laws, then, all the parameters laid down in the policy of the MCGM flowing from Section 328 and 328A of the MMC Act, 1888 must fall in line. Any erection of hoardings without prior permission of the MCGM is, thus, violative of the provisions of MMC Act and needs no protection and rather such structures used for the erection of hoardings needs to be removed.

39 We have before us affidavits filed by the Director of Environment and Member Secretary of the Respondent No.5 Maharashtra Coastal Zone Authority. The said Authority has referred to the Notification issued by the Ministry of Environment and Forests. The said Notification is superseded by CRZ Notification published on 6th January, 2011 by the Ministry of Environment and Forests (MoEF),

New Delhi. It is clear from the said affidavit that as per the CRZ Notification, 1991 the Coastal States and Union Territories were required to prepare Coastal Zone Management Plan (hereinafter referred to as "CZMP") identifying and classifying the CRZ areas in accordance with the guidelines given in the CRZ Notification and as per paragraph 3 (ii) of the CRZ Notification, 1991 all development activities within the CRZ area have to be regulated within the framework of such approved plan which includes development or construction activities in different categories. The hoarding sites on the land bearing CTS No. 940 and 958/1 and 958/2, according to the CRZ are situated in CRZ II as per Coastal Zone Management Plan of Greater Mumbai. The erection of hoardings is development activity on land which involves the construction by means of M.S. Angles and girders, excavation and constructing the foundation work for laying foundation for the hoardings. In such circumstances, since the said piece and parcel of land falls in CRZ area any activity or process of development/construction attracts the provision of CRZ Notification 2011 and any development taking place without seeking permission

from the Competent Authority must face the consequences.

40 The Public Interest Litigation has highlighted before us the issue of safety of those persons using the road, may be pedestrians or the vehicles. It is not true that the city is developing and expanding and increase in the vehicular traffic is the consequent result of the development of the city. It is the duty of the local authority to ensure safe conveyance to the public at large which includes accessibility which is speedy and free of traffic hazards. The number of vehicles are on the rise day by day and regulation of such vehicular traffic is a primary concern for any local authority. The distraction in the form of hoardings which may pose danger to such free flow of traffic therefore, needs to be regulated so that their placement, their sizes, the illumination and the material displayed thereon is put to check by the local authorities since the safety of public at large should be the primary goal. It is no doubt true that, hoardings also earn revenue and in the present case the revenue for the AAI and though it is commercial venture, it would not superimpose the larger public

interest. The claim of a particular public Authority in attempt of its commercial venture cannot over ride and it must be subservient to the larger public interest. Erection of hoardings can be permitted subject to regulation as long as the said hoardings do not endanger the public safety.

41 The hoardings which are attempted to be erected by AAI are exposed to the public view and pose a disturbance to the safe traffic movement, as per the learned petitioner who has filed the PIL. We are not aware as to whether they really pose a danger and obstruct the free flow of traffic as attempted to be canvassed before us however, it is not our function to examine whether they are hazardous and we would relegate the agencies erecting such hoardings to the competent authority, named in the policy framed by the Corporation as a competent authority set up by the said policy who would determine whether such hoardings are permissible being not obstructive or hazardous. It is for the authority to also consider whether the alleged hoardings attract the provisions of the Prevention of Defacement of Property Act, 1995 since it is alleged that they are obstructing the view

of the statues of Shri Chhatrapati Shivaji Maharaj and Mahatma Gandhi. We say nothing more. It is for the authorities to examine the said aspect. However, we do not find justification for not approaching the said authorities on the ground that the hoardings are erected on the land belonging to AAI, and we have already discussed in detail as to why we say so.

42 We have dealt with the issue by considering rival contentions of the parties though the AAI did not take definite stand before us in writing by filing affidavit and orally argued and indicated that they would be bound by the provisions of law. Since we have now arrived at conclusion by interpreting the provisions of the AAI Act and the local laws that the hoardings to be erected by the AAI on concessionaire agreement with M/s Guju Ads ought to have obtained the permission of MCZMA and the MCGM. The duty to obtain necessary permission, in the light of the conferment of advertising rights concession of developing and operating the advertisement board in the estate at Juhu Airport has been placed on the advertiser and the

advertiser has failed to obtain such necessary permissions. Resultantly, the said hoardings erected by M/s Guju Ads are unauthorized and are liable to be removed forthwith.

The AAI is directed to ensure that the hoardings including structures which have been erected on CTS No. 940 and 958 by M/s. Guju Ads, should be removed forthwith. If there is any failure on the part of AAI and the advertiser Guju Ads to remove the said hoardings within a period of seven days, the MCGM would proceed to remove the said hoardings forthwith.

Rule is made absolute in PIL (L.) No. 119 of 2017 and WP (L) No. 3360 of 2017. Writ Petition (L) No. 3433 of 2017 is partly allowed and the Corporation is directed to ensure that the hoardings erected by the Petitioners therein, would continue to stand, strictly in accordance with the conditions of License & the Advertisement Policy.

At this stage, it is requested that more time be granted and no removal should be directed as above within a period of one week. This request is opposed by the learned counsel appearing for

the Petitioners, particularly in the PIL.

Having heard both sides on this limited point, we find that the request is not to grant time to the advertising company M/s. Guju Ads. Pvt. Ltd., to remove the hoarding structures on their own. We could have considered such a request had time being sought to remove the structure by this agency on its own, but that is not the request. The request is to grant stay of operation and implementation of the judgment and order, which clearly holds that even under the auspices of the Airports Authority of India such hoarding structure could not have been erected and the permission of the planning authority (Mumbai Municipal Corporation) was necessary. That being admittedly not on record, the structure is unauthorized and illegal. Hence, the request made is refused.

(SMT. BHARATI H.DANGRE,J)

(S.C.DHARMADHIKARI,J)

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