

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.954 OF 2019

Builders' Association of India (BAI)	..Petitioner
Versus	
Union of India	..Respondent

Mr. Anshuman Srivastava I/by Mr. Rushabh M. Sheth, Advocate for the Petitioner.

Mr. R. S. Apte, Senior Advocate a/w Mr. Girish Paryani, Advocate for the Respondent.

**CORAM : B. R. GAVAI &
DAMA SESHADRI NAIDU, JJ.
DATE : 29th MARCH, 2019**

P.C.

1] It is the contention of the Petitioner that in the Notification dated 14th September 2006, issued by the sole Respondent, the term 'Building and Construction projects area' was not defined and it was vague.

2] It is submitted that the said notification came up for consideration before the Hon'ble Supreme Court in the case of Anand Arya and another Vs. Union of India and others reported in 2011 (1) SCC 744. A reliance is placed on the following observations of the Hon'ble Apex Court in para 84, which are as under :-

“84. Before putting down the records of the case a few observations may not be out of place. The EIA Notification dated 14-9-2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness.”

3] It is submitted that after the aforesaid observations were made by the Hon'ble Apex Court, sole Respondent issued a further notification dated 4th April 2011, vide which for the first time, the term 'build up area' is defined.

4] It is the contention of the learned counsel for the Petitioner that between 2006-2011, the local authorities as well as the sole Respondent granted clearances to the projects on the basis of the local Development Control Rules, since the definition of built up area was not there.

5] It is submitted that however, the Hon'ble Supreme Court in the case of M/s. Goel Ganga Developers India Pvt. Ltd. Vs. Union of India and others with connected matters decided on 10th August 2018 has observed thus :-

“13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.”

6] It is the contention of the Petitioner that due to the aforesaid observations of the Hon'ble Apex Court all the projects which were executed by the members of the Petitioner's Association during 2006-2011, which were otherwise legal, are now capable of being termed as illegal with retrospective effect.

7] It is the contention of the Petitioner that the Petition under Article 32 was also filed by the Petitioner before the Hon'ble Apex Court, which Petition came to be withdrawn vide order dated 12th February 2019, with liberty to approach this Court.

8] In effect, in our considered view, what the Petitioner seeks from this Court is a clarification that the observations made by the Hon'ble Apex Court in the case of *M/s. Goel Ganga Developers India Pvt. Ltd. (supra)* by a Bench consisting of two Hon'ble Judges

of the Hon'ble Supreme Court are *per-incuriam* the observations of the Hon'ble Apex Court in the case of *Anand Arya and another (supra)*.

9] With great respect, the judicial propriety would not permit us to venture into such an exercise. The Writ Petition is therefore rejected.

[DAMA SESHADRI NAIDU, J.]

[B. R. GAVAI, J.]