

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

**INTERIM APPLICATION NO.2640 OF 2020
IN
WRIT PETITION NO.529 OF 2021**

Institute of Indian Culture And Another	...	Applicants/Petitioners
Versus		
Union of India through Secretary And 3 Others	...	Respondents

.....

Mr. S.C. Naidu a/w Mr. Aniketh Poojari and Mr. Sudeshkumar Naidu
i/b M/s C.R. Naid & Co. for the Applicants/Petitioners.

Mr. Sandesh D. Patil a/w Mr. Ashish Dand i/b Mr. Pranil Sonawane
for Respondent Nos.1 to 3.

Ms. Pooja Yadav for Respondent No.4-MCGM.

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**CORAM : S.C. GUPTE &
M.S. KARNIK, JJ**

DATE : 8 JUNE 2021

P.C. :

. Heard learned Counsel for the Petitioners and learned Counsel
for Respondent Nos.1 and 2. None is present on behalf of Respondent
No.5, despite service. There is an affidavit of service already on
record.

2 The controversy, which we are immediately concerned with in this matter, is about an aeronautical survey concerning heights of buildings in the vicinity of the Petitioners' buildings. This aeronautical study has been proposed by the Petitioners in accordance with the decisions of the Supreme Court in the matters of **Airport Authority of India Vs. M/s DBS Realty** and **Airport Authority of India Vs. KGA Investment**. The Petitioners' grievance in this petition concerns the height of their buildings, which was approved to be of 61 meters in accordance with the original permission granted by the authorities including Airport Authority of India ('AAI'), which has been directed to be reduced by a subsequent order passed by the Respondents. Though there is no controversy as to the present height restrictions under the applicable rules, additional heights have been permitted after an appropriate aeronautical study upon seeking NOC from AAI. The Supreme Court judgments referred to above support granting of such permissions based on aeronautical survey. The Petitioners had also made such application for aeronautical study. The application was considered and allowed by Respondent No.5, who is the authority for issuing such NOC. Despite this permission, no aeronautical survey could be conducted as a result of a stay granted by this court in a PIL (Notice of Motion No.88 of 2017 in Public Interest Litigation No.86 of 2014). That PIL has since been dismissed and the stay stands vacated.

3 In the premises, considering that there has already been an

order passed by the Competent Authority issuing an NOC for aeronautical survey, as demanded by the Petitioners, and there being no restriction as of now on such survey being conducted, the Respondents must now proceed to conduct such survey. No doubt the Petitioners would have file proper documents and pay appropriate fees for such survey now that revised guidelines have been issued in that behalf.

4 Learned Counsel for Respondent Nos.1 and 2 submits that since today Respondent No.5, the competent authority in this behalf, is not present, the matter may be stood over to enable it to file its response. Respondent No.5 has already passed an order accepting the Petitioners' proposal for an aeronautical survey. In the premises, considering that its own order is being now implemented, there is no need for any further response on its part.

5 In the premises, the following order is passed :

- (i) The Petitioners are permitted to file a fresh formal request for an aeronautical survey to be conducted with a view to determine whether the height of 67.09 meters AMSL sought by the Petitioners is admissible or not. The Petitioners may comply with the fresh guidelines issued in that behalf, which are currently on the website of Respondent No.1, including payment of fees in terms

of clause 14.2 and submission of documents in terms of clause 14.5 of those guidelines. The submission shall be made within two weeks from today;

(ii) After such formal request, accompanied by fees and documents, is received, Respondent No.5 may initiate steps for conducting of an aeronautical survey in terms of the Appellate Committee's original decision dated 5 August 2014;

(iii) Subject to the Petitioners' submitting their formal request, as required above, within two weeks, pending an aeronautical study, no action shall be taken to demolish the Petitioners' buildings, which are the subject matter of the present petition, or any part thereof.

6 In view of this order, Interim Application No.2640 of 2020 does not survive and is disposed of.

(M.S. KARNIK, J.)

(S.C. GUPTE, J.)