

PMB/Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.35 OF 2021

Faiyyaz Mullaji .. Petitioner
Vs
The Secretary, Urban Development
Department and ors. .. Respondents

Mr. Ranjit Bhosale a/w Anandkumar Singh a/w Mr. Chetan
Shah a/w Mr. Sauleha Shaikh a/w Mr. Rahul Tiwari a/w Mr.
Darpan Jain i/b. Mr. Rakesh Agrawal for the petitioner.

Mr. P. P. Kakade-Government Pleader a/w Mr. B. V. Samant-
AGP for State.

Mr. Y. S. Jahagirdar, Senior Advocate a/w Mr. Mayuresh S.
Lagu i/b. Mr. N. R. Bubna for respondent nos. 2 and 3.

Dr. Milind Sathe, Senior Advocate a/w Mr. Tarun S. Sharma,
Apurva Gupte, Mr. Jigar Shah, Ms. Asba i/b. Mr. Tarun S.
Sharma for respondent no. 4.

**CORAM : DIPANKAR DATTA, CJ. &
M. S. KARNIK, J.**

**HEARD ON : MARCH 21, 2022.
JUDGMENT ON : SEPTEMBER 29, 2022.**

JUDGMENT (PER M. S. KARNIK, J.) :

1. The present PIL petition filed under Article 226 of the
Constitution of India seeks the following substantive
reliefs:-

“(a) That this Hon’ble Court may please to call for record of respondent no.1 authority and after verifying the legality and propriety of the allegations made by the petitioner, this Hon’ble Court may please to issue writ of certiorari or writ in the nature of certiorari quashing and setting aside the directions under the communication dated 13th April 2018 at **Exhibit I** hereto, same being illegal, contrary to law, granted without authority and jurisdiction to pass wrongful gain to the Company;

(b) That this Hon’ble Court may please to call for record of respondent no.2 and 3 authority and after verifying the legality and propriety of the allegations made by the Petitioner, this Hon’ble Court may please to issue writ of certiorari or writ in the nature of certiorari quashing and setting aside development permission/commencement certificate granted by the Respondent no.2 and 3 in favour of Company dated 19th November 2015 at **Exhibit A-1**, dated 18th February 2017 at **Exhibit E** and dated 30th October 2018 at **Exhibit N** to construct star grade hotel on the said plot falling in no development zone, same being illegal, contrary to mandate of law and against interest of public at large;

(c) This Hon’ble Court be pleased to issue writ of mandamus and/or writ in the nature of mandamus commanding the Respondent no.2 and 3 to demolish the construction made by the Company on the said plot, described herein above and restore the same to its original position;”

2. The petitioner is challenging the permissions granted by respondent no.1-The Secretary, Urban Development Department (hereafter “UDD”, for short) of the State of Maharashtra, respondent no.2-Mira Bhayandar Municipal Corporation (hereafter “Corporation”, for short) and

respondent no.3-The Assistant Director, Town Planning Department (hereafter "ADTP", for short) in favour of respondent no.4-Seven-Eleven Hotels Private Limited (hereafter "the Company", for short) to construct star grade hotel on a plot falling under no development zone (hereafter 'NDZ' for short).

3. The petitioner claims to be an active member of various NGOs and avers that he had participated in various activities to protect and preserve the environment. It is averred that the petitioner is conscious of the mushrooming growth of structures due to violation of planning laws by the bureaucrats or with their deliberate action/inaction, which ultimately make the members of the public suffer. It is the petitioner's case that the subject plot falls in NDZ. It is averred that permissions are granted by respondent nos.1 to 3 to construct a star grade hotel in utter disregard of the Development Control Regulations (hereafter "DCRs' ", for short) for the Corporation.

4. Following are the facts pleaded by the petitioner in support of the reliefs sought in the PIL petition. On February 15, 2008, the authorised person of the Company, claiming to be the power of attorney holder of Smt. Sakhubai Damodar Patil and others applied to the Corporation for NA permission in respect of plot of land bearing old Survey no.265/4, 266/2, 3, 5, 6 and 267/3 of Village Navghar admeasuring 11170 sq.mtrs. On February 16, 2008, the Corporation granted permission to the Company to make an

application to the Collector for NA permission, subject to certain conditions. Accordingly, an application was made by the Company on February 29, 2008 for NA permission. The NA permission was considered and granted by the Collector, Thane by NA order dated April 9, 2008 qua old Survey no.265/4, 266/2, 3, 5, 6 and 267/3 of Village Navghar. By a letter dated October 30, 2015, M/s. B. A. C. Planners and Engineers Private Limited applied to the Corporation for issuance of commencement certificate in respect of the plot of land bearing old Survey no.266/1 to 6, 265/4 and 267/2, 3 of Village Navghar. Commencement certificate dated November 19, 2015 was issued by the Corporation in favour of the Company for construction of gymnasium + club house consisting of basement + ground + 1 (one) upper floor measuring 3659.75 sq. mtrs. The said plot of land bearing the above survey numbers which is the subject matter of the commencement certificate fall in the NDZ as per the development plan of the Corporation. The said plot is neither abutting Mumbai-Ahmedabad National Highway No.8 nor the Ghodbunder State Highway.

The Company applied for additional FSI on the said plot. By a letter dated July 7, 2016 addressed to the UDD, the Corporation recorded that the said plot is falling in no development zone and a part of it is affected by 30.00 mtrs wide DP road and Coastal Regulatory Zone (CRZ). The letter of the Corporation records that FSI of 1.0 is permissible for residential users in the plot falling in the no

development zone. The subject matter of the said letter is about seeking permission for residential users in no development zone.

The Town Planning and Valuation Department (hereafter "TPVD", for short) of the State of Maharashtra vide its letter dated September 23, 2016 noted that, earlier in an identical case, by letter dated May 31, 2008, the State Government had rejected the proposal for hotel with 1.0 FSI; and sought the stand of the Corporation on the issue. The TPVD in response to the UDD's letter dated June 6, 2018, vide its letter dated June 12, 2018 was of the view that Regulation 51(7)(vii) is available for R-2 zone.

On December 1, 2016 a reminder to the earlier letter was addressed by the Corporation to the UDD. While the said letter and the reminder dated December 1, 2016 was pending consideration of the UDD, the Company on January 21, 2017 applied to the office of the Corporation for approval of a revised plan. On February 18, 2017, the Corporation approved the revised plan and issued a fresh commencement certificate for construction of the club house consisting of basement + ground + 1 (one) upper floor totalling 3752.32 sq. mtrs. In the commencement certificate dated February 18, 2017, in Clause 36, it is mentioned that the Company must produce NA permission from the Collector, Thane qua old Survey no.266/1, 4, 265/4 and 267/2 of Village Navghar before commencing construction on it.

In a letter dated March 22, 2018 addressed by the Company to the UDD, the Company sought additional FSI for constructing a star grade hotel on the said plot falling in the NDZ. The said permission was sought on the basis of Government Notification dated August 25, 2000, on the premise that 1.0 FSI could be granted as per the said Notification for the plot abutting 30 metres wide DP road by declaring the same as residential area. The reminder letter was sent on April 5, 2018 by the Company to the UDD. The UDD issued a letter dated April 13, 2018 addressed to the Corporation after referring to the letter dated July 7, 2016 of the Corporation and the letter dated March 22, 2018 of the Company, communicating that proposal of the Company for construction of star grade hotel on the said plot has been approved, as according to the UDD in any event such user is permissible in respect of a project abutting National Highway/State Highway.

Based on the directions issued by the UDD, the Corporation issued letter dated September 5, 2018 addressed to the UDD mentioning that out of the total area of 18660 sq. mtrs., area of 1571 sq. mtrs. is affected by DP road and area of 4880.96 sq. mtrs. is affected by CRZ. After deducting the said area for DP road and CRZ, the net area of the said plot for development of star grade hotel is 12208.04 sq. mtrs. It is also recorded that the Company sought permission for a star grade hotel consisting of basement + ground + 4 (four) upper floors. Further, it is

mentioned that based on G.R. dated March 14, 2016, additional FSI of 1.0 has been granted by charging premium.

By an advocate's notice dated November 23, 2020, the petitioner raised an objection to the illegal manner in which the hotel permission was granted. By letter dated December 2, 2020, the Corporation informed the petitioner that the UDD granted permission for additional FSI by charging premium. The bifurcation of the total FSI of 1.0 is provided as 0.2 basic FSI and FSI of 0.8 by charging premium.

Submissions of learned counsel :-

5. Learned counsel for the petitioner submitted that the hotel is constructed on the plot of land falling in NDZ. The grant of FSI 1.0 to the Company is without any authority of law and there is no provision which permits grant of such FSI by charging additional premium. The permission was sought by the Company on the basis of the Notification dated August 25, 2000 on the premise that 1.0 FSI could be granted. The Notification dated August 25, 2000 is not applicable for the present development. Learned counsel invited our attention to the various provisions of the DCRs for the Corporation, more particularly Regulation 51 (7) (vii), 57 (xiii) (a) to (d), 59(3) and Section 31(1) of the MRTTP Act to contend that the permission to construct the hotel is contrary to the provisions of law. The UDCR was made applicable with effect from December 2, 2020 on

which date, as part OC was already issued for ground + four storied structure, the building permissions have to be tested on the basis of bye laws then existing and not the UDCR. Learned counsel for the petitioner relied upon the decision of this Court in the case of **Mr. Rajendra Thacker vs. Municipal Corporation of Gr. Mumbai and anr.**¹ to contend that when there is nothing on record to indicate that the petitioner approached the High Court with any mischievous intention, the PIL petition is maintainable. Reliance is placed on the decision of the Supreme Court in the case of **T. Vijayalakshmi and ors. vs. Town Planning Member and anr.**² to contend that it is well settled law that an application for grant of permission for construction of a building is required to be decided in accordance with law applicable on the day on which such permission is granted. Reliance is then placed on the decision of the Supreme Court in the case of **R. Satyanarayana vs. Smt. Shantha and others**³ to contend that whether the bye-laws were violated or not has to be adjudged with respect to the time when the building was constructed.

The stand of the Joint Director of Town Planning on behalf of the State Government (UDD) :-

6. Shri Samant, learned AGP appearing on behalf of the State Government invited our attention to the stand of the

¹ 2004 Vol. 106 (4) Bom. L. R. 598

² Civil Appeal No.4555 with 4556 of 2006 decided on 19.10.2006. (2006) 8 SCC 502.

³ Civil Appeal Nos.397-98 of 1987 decided on 15.04.1999. (1999) 5 SCC 704.

UDD in the affidavit-in-reply dated October 29, 2021 filed by Mr. Jitendra Bhopale, working as Joint Director of Town Planning, Konkan Division, Navi Mumbai praying for dismissal of the PIL petition in the light of the stand in such affidavit-in-reply. It is the stand on behalf of the respondent no.1 that the development plan of the Corporation along with its DCR has been sanctioned under Section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereafter "the MRTP Act", for short) by the UDD vide its notification dated May 14, 1997 excluding some portion which had modification of a substantial nature. Subsequently, after following the due procedure laid down, the said excluded part has also been sanctioned under Section 31(1) of the MRTP Act by notification dated August 25, 2000 wherein the subject land is shown in the NDZ. A reference is then made to Regulation 59(3) to submit that the State Government is empowered to interpret the provisions of the Regulations and in such cases the decision taken by the Government shall be final. It is, therefore, averred that the letter dated 13 April, 2018 is valid and correct in law. A reference is then made to Regulation 57 of the DCRs which pertains to various uses and the FSI permissible in NDZ. Specific reference is made to Regulation 57(xiii)(d). It is submitted that the provisions regarding allowing star category hotels in residential zones are provided in DCR 51. Relying on Regulation 51(7)(vii), it is submitted that the strip of 30 metres depth along the 45/30

metres wide roads in NDZ can be used for residential purposes and subsequently be allowed for the use of starred category hotels. Vide letter dated July 7, 2016, addressed to the UDD, the Corporation sought guidance in respect of allowing 1.0 FSI in 30 metres depth along the 30 metres wide road in NDZ with permissible height as in residential zone along with the loading of Transferable Development Right (TDR) in such area and also requested to allow 0.33 FSI in area that falls beyond the depth of 30 metres strip on the remaining subject land situated in NDZ. The Company by letter dated April 5, 2018 addressed to the UDD requested to grant 1.0 FSI as per sanctioned provision of Regulation 57(xiii)(d) vide notification dated August 25, 2000, for construction of five starred hotel in 30 metres wide strip along the 30 metres wide road in NDZ. By a letter dated April 13, 2018 addressed to the Corporation, the UDD informed that the proposal of the Company is being approved, i.e. the use of starred category hotel is permissible upto depth of 30 metres along the 30 metres wide road in NDZ. The decision was taken by the UDD to ease out the difficulties in interpretation of the particular provision in the right spirit considering larger public interest on the proposal of the Company and therefore, it cannot be termed as a case specific decision. The UDD interpreted the use of starred category hotels as the one that is covered under residential uses by virtue of that it is permissible in the lands fronting along the 45, 30 metres wide roads to

the depth of 30 metres in NDZ. It is the stand that the Corporation had their own DCRs to suit the needs of their City before December 2, 2020. The State Government vide notification dated December 2, 2020, sanctioned the Unified Development Control and Promotion Regulations for Maharashtra State (hereafter "UDCR", for short), which is applicable to the rest of the State excluding Greater Mumbai. As per Clause (viii) of Regulation 4.2 of the sanctioned UDCR and Promotion Regulations, NDZ is classified and treated as equivalent to agriculture zone. Regulations 4.11 governs the development in the agriculture zone. As per Clause (xxxxi) of Regulation 4.11, the buildings for three starred and above category hotels are permissible on roads not less than 18 metres in width with basic FSI 0.2 on gross area and upto 1.0 FSI is allowed on payment of premium.

The stand of the respondent-Corporation :-

7. Shri Jahagirdar, learned senior advocate appearing on behalf of the Corporation, invited our attention to the affidavit-in-reply filed on behalf of the Corporation. Learned senior advocate argued in support of the stand taken in the affidavit in reply. Learned senior advocate submitted that the UDD had clearly opined that the construction could be permitted on the said plot of land. The building permissions were granted in consonance with the directions of the State Government and the provisions of DCRs. In any case, the building meets the requirement of the UDCR. He submits

that the permissions were granted from time to time upto the year 2018 and latest permission with 1.0 FSI was granted on October 30, 2018. The construction was completed in the year 2018, and pursuant thereto the part occupation was granted on November 3, 2018. The petitioner firstly issued notice on November 23, 2020, about two years after the construction was carried out. No reasons have been given for this inordinate delay. The PIL petition suffers from unexplained delay and laches, hence deserves to be dismissed on this ground. The concerned land is partly in NDZ, partly in 30 metres DP road and 30 metres in CRZ area in the sanctioned development plan of the year 1997 of the Corporation. As per the CRZ plan of the year 2005 sanctioned by Ministry of Environment and Forest, out of total area admeasuring 23258.55 sq. mtrs., area of 4880.96 sq. mtrs. is affected by CRZ [CRZ I (ii) area is admeasuring 1192 sq. mtrs. and CRZ III area is 3688.96 sq. mtrs.]. The land measuring 1571.00 sq. metres is also affected by a 30 metres development plan road. On February 16, 2008 NOC was granted for NA permission along with sanction of layout plan for land bearing Survey no.265/4, 266/2, 3, 5, 6 and 267/3 of Village Navghar excluding the land affected by CRZ. On April 9, 2008, the Collector granted NA permission for commercial use. Vide order dated November 19, 2015, the Corporation granted development permission alongwith revised plan by amalgamating the land bearing Survey no.266/1, 4, 265/2 and 267/2 of Village Navghar alongwith

the aforesaid survey numbers for construction of gymnasium and club house consisting of basement + ground + 1 (one) floor on 3659.75 sq. mtrs. land out of 23258.55 sq. mtrs. land not affected by CRZ. This permission was later revised on February 18, 2017 whereby construction of the club house was permitted on 3752.32 sq. mtrs. land consisting basement + ground + 1 (one) floor out of 18660 sq. mtrs. land not affected by CRZ.

The Corporation sought guidance from State Government vide its letter dated July 7, 2016 and November 6, 2017 as regards the aforesaid development permission for permitting FSI of 1.0 in NDZ adjoining the 30 mtrs. DP road. The State Government vide its letter dated April 13, 2018 opined that the request for construction of hotel in NDZ could be granted as the same was abutting a 30 metres wide development plan road. The Corporation thereafter directed the Company to get approval of Executive Director, Maharashtra Tourism Development Corporation, Commissioner of Police, Thane Rural and Joint Director of Town Planning, Konkan Division as per provisions of Rule 51(7)(vii) of DCR. The Managing Director of Maharashtra Tourism Development Corporation conveyed his approval vide letter dated June 29, 2018. The Commissioner of Police, Thane Rural conveyed his approval vide letter dated June 27, 2018. The Joint Director of Town Planning, Konkan Division conveyed vide letter dated June 12, 2018 that his NOC was not required.

The Corporation granted revised permission on October 30, 2018 by amalgamating the land bearing old Survey no.265/2, 4 new Survey no.81/2, 4; old Survey no.266/1 to 6, new Survey no.67/1 to 6 and old Survey no.267/1, 2, 3 new Survey no.52/1, 2, 3 of Village Navghar for construction of starred hotel/club house in NDZ consisting of basement + ground + 4 (four) floors having total built up area admeasuring 14262.86 sq. mtrs. The permission was granted on total area of land admeasuring 23258.55 sq. mtrs. after deducting the CRZ area i.e. admeasuring 4880.96 sq. mtrs., 30 metres DP road area i.e. admeasuring 1571 sq. mtrs. and 15% R. G. area i.e. admeasuring 2520 sq. mtrs. having total permissible area admeasuring 14285.60 sq. mtrs. for total sanctioned construction area admeasuring 14262.86 sq. mtrs. The total FSI of 1.0 (original FSI of 0.20 + additional FSI of 0.80 was granted on payment of premium of Rs.4,10,23,672/- out of which Rs.2,05,11,836/- was deposited with State Government and remaining amount was deposited with Corporation) as permitted by DCR of the Corporation. The part occupation certificate has been granted to construction of basement + ground + first floor on November 3, 2018 and further part occupation certificate has been granted to the construction of 2nd + 3rd + 4th floor (excluding "Mejawani Hall" on ground floor) on January 9, 2020. The Corporation has acted strictly in accordance with law. The petitioner's notice dated November 23, 2020 was duly replied.

It is thus the submission of Shri Jahagirdar that the building has been constructed strictly in accordance with the building permissions granted by the Corporation and the Corporation in turn has acted in accordance with the provisions of the DCRs.

The stand of the Company :-

8. Shri Sathe, learned senior advocate on behalf of the Company submitted that the petition suffers from delay and laches. He submitted that the construction of the hotel premises was completed partly in 2018 and part OC was obtained from the Municipal Authorities in the year 2018 itself. The petitioner himself has come out with the case that the construction was completed in 2018 and hence the petition deserves to be dismissed on the ground of delay as the same is filed as late as in the year 2021. The Company has constructed the hotel in accordance with the permissions granted by the statutory authorities. The petitioner has no *locus standi* to maintain the petition and he is nothing but a busy body. Shri Sathe relied upon the following decisions in support of his submissions that the PIL petition deserves to be dismissed on the ground of delay and laches and doubtful *bonafides* of the petitioner.

1. **Dattaraj Nathuji Thaware vs. State of Maharashtra & ors.**⁴
2. **R & M Trust vs. Koramangala Resi. Vigilance & ors.**⁵

⁴ (2005) 1 SCC 590

⁵ (2005) 3 SCC 91

3. The decision of this Court in **Nanasaheb Vasantrao Jadhav vs. State of Maharashtra & ors.**⁶

Shri Sathe further submitted that the hotel constructed by the Company is the only Star Graded Hotel in the vicinity. The construction of the hotel has created substantial employment for the persons in the nearby vicinity. It is an added asset in the infrastructural development in the region. It has benefited the public at large without causing any environmental impact whatsoever. Though the construction of the hotel premises is in the NDZ, there are necessary regulations/Notifications/permission in place which allows construction of a limited nature in the NDZ area. Merely because the construction falls in the NDZ , it cannot be said that the construction is illegal. The construction put up by the Company falls within limited activities allowed in the NDZ and hence, is legal.

According to learned senior advocate, the present PIL petition is motivated, oblique and raised on completely frivolous grounds, with the sole intention of harassing the Company and to usurp additional monetary benefit from it. It is submitted that the PIL petition is not filed by a public-spirited person but an individual backed by *malafide* motives, as the petitioner, a resident of Kurla, files a PIL petition in respect of a project situated at Mira Bhayandar,

⁶ PIL No. 146/2018 Bom. HC decided on Feb. 10, 2021.

which speaks volumes of the lack of *bonafides* of the PIL petitioner. Learned senior advocate submitted that initially, the Company intended to construct a club house/gymnasium on the subject land which falls in NDZ . The Corporation issued a commencement certificate on November 19, 2015 to the Company. A request was made by Company to the Municipal Corporation, in or around 2016 for grant of a revised CC for additional FSI for further construction of gymnasium/club house. On February 18, 2017, the Corporation granted revised CC thereby permitting additional FSI to Company for construction of the gymnasium/club house. In 2018, the respondent decided to construct a Star Graded Hotel on the subject plot in order to create employment in the area. The company requested the Corporation on March 22, 2018 and April 5, 2018 for additional FSI for construction of the Star Graded Hotel on the subject property. The Additional FSI was granted vide a permit letter dated April 13, 2018. The permit letter is in accordance with Regulation 57 of the DCR. As per the rules, Company was granted basic FSI of 0.2. Company had to pay an additional premium for obtaining an additional FSI of 0.8. In 2018, the Company has not completed construction utilising 1.00 FSI entirely. Hence, in 2019, the Company made further application before Municipal Corporation for grant of permission for further construction of additional structures on the subject plot as a part of the Star Graded Hotel. On January 9, 2020, the Municipal authorities had

granted the said permit. On September 21, 2021, the Company made a further application to the Municipal authorities for construction of additional structure as a part of the hotel premises. The project of the Company is still an ongoing project. Shri Sathe relying upon the affidavit in reply filed on behalf of Company and the relevant provisions of the DCR as well as the UDCR contended that the construction of the Star Graded Hotel is one of the permissible activity in the NDZ which forms the part of the agricultural zone as per the UDCR. Learned senior advocate submitted that the company is not at fault in any manner whatsoever. It is submitted that the company has constructed the building strictly in accordance with the permissions granted by the Corporation. According to him, the ground + four structure is already constructed for which part OC has been obtained. Further permissions are applied, by which time the UDCR came into force. The building meets the requirements of the UDCR. The project therefore has to be regarded as the one to which the UDCR is applicable. He submits that in respect of a building constructed which meets the requirement of the law as it stands, the question of examining its authorization from the perspective of the DCRs which are not even in force has to be regarded as an academic challenge. This is without prejudice to his submission that the building permissions are in any case in consonance with the DCRs prevalent at the time of grant of building permissions.

Shri Sathe invited our attention to the affidavit in reply filed on behalf of the Director of the Company on December 12, 2021. The stand of the Company in the affidavit in reply while dealing with the grounds of the PIL petition need to be reproduced, which reads thus:-

"12.1. With respect to Ground (a), (b), (c) and (d), I deny the same. I state that the Subject property falls into the "no development Zone" area. Construction of star-graded hotels is permissible in the no development zone area as per the unified DCR. As the project of Company is an ongoing project and only part OC has been received, the project of Company is covered by the unified DCR. The Company has also opted for revised permissions from the Municipal authorities with respect to its project. Hence, it cannot be said that the construction is governed by the Development Control Regulation for Mira-Bhayender Municipal Corporation. No rules pertaining to the erstwhile DCR of Mira-Bhayender Municipal Corporation are applicable to the present project of Company.

12.2. With respect to Ground (e) and (f), I deny the same for the reasons given hereinabove. These grounds are based on the premise that as the plot falls within the no-development zone, regulation 57 of the DCR would be applicable for construction. That not being the case, it is submitted that the contents of these paragraphs are frivolous and deserve to be set-aside. It is submitted that under the unified DCR, construction of star-graded hotel is permissible on roads which are not less than 18 mtrs. in width. It is not necessary for the plot on which the Star Graded Hotel is constructed to be abutting on national/state highway. Hence the permission obtained by Company are legal. I deny the contents of the paragraphs under response in their entirety.

12.3. With respect to Ground (g), (h) and (i), I deny the contents thereof in their entirety for reasons

mentioned hereinabove. These grounds proceed on the basis that the construction is being done under Regulation 57 pertaining to construction in the No-development Zone. That is however not the case. As the construction of Company is covered under the unified DCR, the provisions of the Development Control Regulation for Mira-Bhayander Corporation are not applicable to the project plot. Hence, the issues raised by the Petitioners are frivolous and deserves to be set aside.

12.4. With respect to Ground (j), I repeat and reiterate that the provisions of unified DCR are applicable to the project plot and hence, the provisions of DCR for Mira-Bhayander Corporation could not be restored to.

12.5. With respect to Ground (k) and (l), I deny the same in its entirety. I state that under the unified DCR, the basic FSI available for constitution is 0.2 and additional FSI can be availed of by payment of additional premium. It is thus clear that the statutory authorities have rightly granted the base FSI of 0.2 and additional FSI of 0.8 to Company. I state that the petitioner has raised frivolous contentions against the Respondent without ascertaining the correct facts of the matter. The permissions granted by various statutory authorities to the Company are legal.

12.6. With respect to Ground (m), I state that I deny the same in its entirety. I repeat and reiterate that the construction of the Hotel is done as per statutory provisions in unified DCR and not under the regulations contemplated by the Petitioner.

12.7. With respect to Ground (n), (o) and (p), I deny the same in its entirety. The Petitioner has merely assumed that the permission have been obtained under GR of 15 and GR of 16. These grounds are based on an erroneous readings of statutory permits obtained by Company. The Petitioner has assumed that Company has obtained permits under the aforesaid government resolution without ascertaining the true purport of the permits obtained.

12.8. With respect to Ground (q), (r), (s), (t), (u) and (v) I deny the same in its entirety. I state that the constitution undertaken by the Company is legal and backed by valid permissions obtained by various statutory authorities. The said Statutory authorities have applied their minds whilst granting these permissions. The Respondent has completed the construction of the hotel on the basis of these permissions and have been operating the same since 2018. The Petitioner has also obtained a part OC with respect to his hotel premises and now has made applications for additional constructions under the unified DCR. The project of the Petitioner is an ongoing project. The hotel operations have begun in 2018 itself after obtaining part OC. The Petitioner has now come at a belated stage and is now raising aspersions on the permissions obtained by the Company for the present premises."

Shri Sathe tendered the written submissions on behalf of the Company which we have taken on record. We have gone through the written submissions. Shri Sathe prayed for dismissal of the PIL petition.

9. We have gone through the pleadings, the documents annexed and the record produced.

CONSIDERATIONS

10. We have heard learned counsel for the parties. The issue pertains to construction of a Star Graded Hotel, which according to the PIL petitioner, is based on permissions granted by the Corporation and the Town Planning Department, in violation of the provisions of law and the DCRs of the Corporation. It is pertinent to note that prior to the coming into force of the UDCR w.e.f. December 2, 2020,

the Corporation had its own DCRs. That the permission for Star Graded Hotel was applied for in a land falling in the NDZ is not disputed. The first question is whether the PIL petition deserves to be dismissed on the ground of delay and laches. The next question is whether the PIL petitioner has *locus standi* to maintain the PIL petition. Then comes the question whether a Star Graded Residential Hotel can be constructed in the NDZ. The last question is, if the respondents can permit construction of a Star Graded Hotel with permissible basic FSI of 0.2 in the NDZ, can the Corporation under the DCRs grant additional FSI of 0.8 by charging premium.

11. The Corporation on November 19, 2015 granted development permission for construction of gymnasium + club house consisting of basement + ground + 1 (one) upper floor admeasuring 3659.75 sq. mtrs., out of 23258.55 sq. mtrs. land not affected by CRZ. This permission was later revised on February 18, 2017 whereby construction of club house was permitted on 3752.32 sq. mtrs. land consisting basement + ground + 1 (one) floor out of 18660 sq. mtrs. land not affected by CRZ. The Corporation sought guidance from the State Government vide its letters dated July 7, 2016 and November 6, 2017 whether to permit FSI of 1.00 in NDZ adjoining the 30 metres DP road. The State Government by the letter dated April 13, 2018 opined that the construction of the hotel in NDZ could be granted as the same was abutting 30 metres

DP road. Revised permission was granted on October 30, 2018 for construction of star hotel/club house in NDZ consisting of basement + ground + 4 (four) floors having total built up area admeasuring 14262.86 sq. mtrs. The total FSI of 1.0 (original FSI of 0.20 + additional FSI of 0.80) was granted on payment of premium of Rs.4,10,23,672/- out of which Rs.2,05,11,836/- was deposited with State Government and remaining amount was deposited with Corporation as permitted by DCR of the Corporation. The part occupation certificate has been granted to the construction of basement + ground + first floor on November 3, 2018 and further part occupation certificate has been granted to the construction of 2nd + 3rd + 4th floor (excluding "Mejawani Hall" on ground floor) on January 9, 2020.

12. The concern expressed in this PIL is that the Star Graded Hotel is constructed on the basis of illegal permissions granted by the Corporation in NDZ in breach of the provisions of the DCRs of the Corporation. Learned senior advocate, Shri Sathe was at pains to point out the delay in filing the PIL petition and his objection to the *locus standi* of the petitioner. In our view, if it is brought to our notice, that permissions are granted in utter breach of the DCRs of the Corporation governing building constructions in the NDZ, it is not possible for us to shut our eyes to the allegations of material breaches only on the ground of *locus standi* of the petitioner. We have to satisfy ourselves

whether the Corporation has the power to permit building construction of a star graded hotel in excess of 0.2 FSI in NDZ and if so to what extent. If such a power exists, we would be very slow in entertaining the PIL petition any further. No doubt, the star graded hotel is constructed in accordance with the building permissions granted by the Corporation. Our endeavour is only to satisfy our conscience that these permissions are in accordance with the DCRs as applicable and that building construction activity upto 1.0 FSI is permissible in the NDZ on the plot of land abutting 30 metre wide DP road. It is the stand of the Company that the hotel has been constructed for generating employment in the vicinity and it is an added asset in the infrastructural development in the region. It is further their stand that the project has benefited the public at large without causing any environmental impact whatsoever. In our opinion, a project which the Company urges to be in public interest, can always be subjected to scrutiny in public interest. There is nothing on record to indicate that the petition is politically motivated or lacking in *bonafides* or the same is mischievous. If we are satisfied that the DCRs applicable to the NDZ permit building construction activity upto 1 FSI, in respect of the plot of land abutting 30 metre wide DP road, we would be loath in entertaining the present PIL petition, considering that the three star and above category hotel of the magnitude of ground + four floors has already been constructed on the date of filing of the present PIL petition.

In such a case we would not be inclined to inquire into the allegations made in the PIL petition any further.

13. We propose to examine the permissions granted threadbare to satisfy ourselves that the same are in consonance with the DCRs of the Corporation. That a star graded hotel of this magnitude is constructed in the NDZ is undisputed. The term 'no development zone' set us thinking, as reading it in a literal sense, a doubt came to our mind as to what could be the restrictions for development in the NDZ. A star graded hotel of such magnitude being constructed in the NDZ is something we felt curious about, and hence, we proceeded to examine the relevant provisions of the DCRs' under which the permissions were granted. Restricted building construction activity is permissible under Regulation 57 of the DCRs. The permissions and authorisation to put up the construction, no doubt, are in place. With the assistance of learned counsel, we were taken through the relevant provisions of the DCRs of the Corporation and the permissible users in the NDZ. Should the respondents satisfy us that in the NDZ such a construction is permissible and to what extent, the further scrutiny of the allegations in the PIL petition may not be necessary. However if we find that the building permissions are in complete breach of the provisions of law, should we allow the illegality to perpetrate and dismiss the PIL petition on the ground of delay and laches or on the ground that the construction has progressed to a large

extent. We think not. In this context, we may refer to the averments in the affidavit in reply of the Company which reads thus :-

“On January 9, 2020, the Corporation has granted the Company the permission for additional construction of an additional hall as a part of the hotel premises. The construction of the hotel premises is not fully complete and full OC still not received by the hotel premises. On September 21, 2021, the Company has requested the Corporation for permission to make additional constructions on the hotel premises. The hotel premises of the Company is an ongoing project and is amenable under the UDCR which comes into effect from December 2, 2020”.

14. It is thus the Company’s case that part occupation certificate has been obtained for the building and the project is ongoing for which further permissions are applied. The stage for obtaining the occupation certificate for the entire building is yet to arise. Even on this ground the objection as to the delay and laches deserves to be overruled. We therefore do not find any merit in the objection of the respondents that the PIL petition suffers from delay and laches or that it should be dismissed on the ground of doubtful *bonafides* of the petitioner.

15. Let us now consider the relevant provisions of the DCRs of the Corporation under which the building

permission has been granted. Clause 12 of Part-I defines 'Building'. Clause (k) defines 'Residential building' means a building in which sleeping accommodation is provided for normal residential purposes, with or without cooking or dining facilities and includes one or more family dwellings, lodging or rooming houses, hostels, dormitories, apartment, houses, flats, and private garages of such buildings. DCR 4(1) provides that no person shall erect or reerect a building or alter any building or carry out any development or redevelopment, on any plot or land or cause the same to be done without first obtaining separate development permission and a commencement certificate from the Chief Officer. DCR 5 provides for the procedure for obtaining development permissions and Commencement Certificates. Part-II deals with General Planning Requirements, Land Uses and Manner of Development. Regulation 31 provides for Floor Space Indices and Tenement Density. Regulation 32 provides for an Additional floor Space Index which may be allowed in certain categories. Regulation 32(4) provides thus :-

"32(4) Buildings of Starred Category Residential Hotels – With the previous approval of Government and subject to payment of such premium as may be fixed by Government (out of which 50 percent shall be payable to the Council) and subject to such other terms and conditions as it may specify, the floor space index of one may be permitted to be exceeded in the case of buildings of all starred category Residential Hotels – With the previous approval of Government and subject to payment of such premium as may be

fixed by Government (out of which 50 percent shall be payable to the Council) and subject to such other terms and conditions as it may specify, the floor space index of one may be permitted to be exceeded in the case of building of all starred category residential hotels in independent plots and under one establishment as approved by the Department of Tourism building and all starred category residential hotels in a maximum of 25 per cent over the normal permissible floor space index. No condonation in the required open spaces, parking and other requirements as in these Regulations shall be allowed in the case of grant of such additional floor space index."

16. Part-IV of the DCR provides for Land Use Classification and uses permitted. Part-IV comprises Regulation 48 to 58.

17. Regulation 52 pertains to Local Commercial Area/Zone (C-1 Zone). Regulation 53 provides for District Commercial Area/Zone (C-2 zone). Regulation 54 provides for Service Industries Zone (I-1 zone). Regulation 55 pertains to the General Industries Zone (I-2 zone). Regulation 56 is relating to Coastal Zone Regulations.

18. We are essentially concerned with Regulation 57, that is, No development Zone (NDZ). Regulation 57 provides for the uses set out thereunder permissible in NDZ. It would be material to reproduce DCR 57 which reads as under: -

"57. No Development Zone (NDZ) -

The following uses are permissible in a No Development Zone (NDZ) provided, however, no services of any kind will be provided by the Council.

i) Agriculture, horticulture and animal husbandry (except for keeping animals on a commercial scale) subject to a limit of 10 head of cattle per acre and

providing necessary buildings, garages, pig sties, stables and storage buildings; The FSI permissible for such structures shall not exceed 0.33;

- ii) Gardens and poultry farms;
- iii) Forestry;
- iv) Golf clubs and links;
- v) Public Parks, private parks, playfield, stadia, gymkhanas, swimming pools, gliding facilities, temporary camps for recreation of all types;
- vi) Amusement park, in a plot of not less than 5 ha. In area, with recreational and amusement devices like a giant wheel, roller coaster, merry-go-round or similar rides, ocean park, swimming pool, magic mountain and lake, ethnic village, shops for souvenirs, toys goods, refreshments and beverages on the following conditions with the special permission of the Chief Officer.
 - a) The entire land for the amusement park shall vest in a single ownership and the land shall not be sub-divided at any time.
 - b) Structures for the amusement park shall not be sold at any time to any other person.
 - c) The required infrastructure, like proper and adequate access to the park, water supply, sanitation, conservancy services, sewage disposal and adequate off-street parking will have to be provided and maintained by the promoters of the project at their cost and to the satisfaction of the Chief Officer.
 - d) The promoters of the project shall provide adequate facilities for collection and disposal of garbage at their cost, and to the satisfaction of the Chief Officer and will keep, at all times, the entire environment clean, neat and hygienic.
 - e) Structures for ancillary activities, such as administrative offices, exhibition hall or auditorium, restaurant, open air theatre, essential staff quarters, store buildings, fast food shops, museum, souvenir and small shops, ancillary structures to swimming pool, may be permitted subject to a maximum floor space index not exceeding 0.04; i.e. FSI to 0.025 for

principal activity and 0.015 for ancillary activities.

f) Structures permitted in the amusement park (except those intended for park apparatus, entertainment such as magic mountain etc, and other equipment) should be ground floor structures, with the constructions blending with the surrounding environment and landscape.

g) Except for minor dressing, hills and natural features, if any, shall be maintained in their natural condition and beautified with planting of trees etc.

h) All trees already growing on the land, shall be preserved to the extent possible, except that if it becomes necessary to cut any tree, the required permission of the Competent Authority should be obtained under the law. At least 5 trees per 100 sq.m. shall be planted and grown within the area of the park.

i) Structures, buildings or monuments of historical, aesthetical, architectural, or heritage importance, if any, shall be preserved and maintained properly.

j) Sufficient parking facilities and ancillary facilities for cars, buses, transport vehicles etc. shall be provided on site as prescribed by and to the satisfaction of the Chief Officer and Commissioner of Police.

k) The promoters of the project will prepare a suitable layout with appropriate landscaping of the recreational and other facilities and obtain approval of the Chief Officer.

l) No objection certificate of the Tourism Department shall be obtained.

m) The development shall be regulated according to other requirements of these and all applicable rules and regulations and subject to all other clearances as may be required.

n) proper arrangements for safety, regulation of traffic approaches to the park etc. shall be made to the satisfaction of the Commissioner of Police from the law and order and traffic aspects.

vii) Race tracks and shooting ranges.

- viii) Fish curing on open land/fish farming.
 - ix) Salt manufacture from sea water.
 - x) Public utility establishments such as electric sub-stations, receiving stations, switch yards, over-head line corridors, radio and television stations, receiving stations, main stations, for public gas distribution, sewage treatment and disposal works, water works along with residential quarters for essential staff for such works, with the special permission of the Chief Officer.
 - xi) Cemeteries and crematoria and structures incidental thereto.
 - xii) Structures for watchmen quarters, each not exceeding 20 sq.m. numbers of such structures in each plot to be decided by the Chief Officer.
 - xiii) A residential building, in an area other than that of an amusement parks in (vi) above, subject to the following -
 - a) Building to be not more than ground and one storey with a height not exceeding 9.75 m. including the height of stilted portion, if any;
 - b) FSI to be not more than 0.2 for independent plots of area upto one hectare each;
 - c) For plots each more than one hectare area FSI to be 0.2 for upto the first hectare and thereafter to be not more than 0.025 for the remaining area of the plot no sub-division of plots being permitted.
 - d) The lands along 45, 30 meter wide roads upto a depth of 30 meter in No Development Zone may be developed for residential purpose on condition that owner should provide infra-structural facilities, such as Septic Tank, Water supply, Drainage etc.
- Notwithstanding anything contained in these regulations, in the lands shown as No Development Zones and washed brown on the Development plan which are indicated as hilly lands, no development of any sort, will be permissible, except tree plantation above a height of 50 m. above mean sea level. The Chief Officer, however, may make relaxation in height as per local conditions, in consultation with the

Divisional Deputy Director of Town Planning for allowing development contemplated in No Development Zone in these lands and development undertaken by Govt. agencies for promotion of Tourism."

(emphasis ours)

19. Regulation 50 deals with Purely Residential Zone (R-1 zone). Regulation 51 deals with 'Residential Zone with shop Line (R-2 zone)'. The UDD has opined that the building permission could be granted under Regulation 51(7)(vii). It is therefore necessary to deal with Regulation 51(7)(vii) of the DCR, to examine if the power under Regulation 51(7)(vii) could be exercised for granting building permission in the NDZ. Clause (7) of Regulation 51 provides for the uses permitted in the Residential Zone with Shop Line (R-2 zone). Clause 7(vii) of Regulation 51 provides thus: -

"7(vii) residential hotels or lodging houses in independent buildings or parts of buildings or on upper floors thereof with special written permission of the Chief Officer in consultation with Divisional Deputy Director of Town Planning who will take into account the suitability of the size and shape of the plot, means of access water and sanitary arrangements etc. before granting the permission. The Chief Officer shall not permit such use unless he is satisfied about the provision of these arrangements.

Provided that residential hotels of 4 & 5 star categories may be allowed only in an independent plot of size not less than 2500 sq.m. and on roads of 18 m. wide or more, a hotel of lower star categories being also allowed on a separate floor of a premises or a building with separate access.

Provided further that development of residential hotels of the star categories shall be permitted by the Chief

Officer only after due approval by a Committee consisting of the divisional Deputy Director of Town Planning, the Region Development Authority, the Commissioner of Police (Law, Order and Traffic) and the Managing Director, Maharashtra Tourism Development Corporation Ltd.”

20. It is material to note that DCR 57 has placed restrictions on the FSI that can be granted in respect of the development activities permissible in NDZ. As an illustration, Clause (i) of DCR 57 provides that the FSI permissible for the structure shall not exceed 0.33; DCR 57(vi)(e) indicates the permissible user therein subject to a maximum floor space index not exceeding 0.04 i.e. FSI 0.025 for principal activity and 0.015 for ancillary activities; DCR 57(xiii), with which the present case is concerned, provides that a residential building, in an area other than that of amusement parks, the FSI is to be not more than 0.2 for independent plots of area upto one hectare each and for plots each more than one hectare in area FSI is to be 0.2 upto the first hector and thereafter to be not more than 0.025 of the remaining area of the plot, no subdivision of plots is permissible.

21. As indicated earlier, Part-IV of the DCR provides for land use classification and uses permitted. DCR 48 therein provides that uses and ancillary uses as indicated in these Regulations will be permitted in each of the predominant use zones as shown in the development plan and that such ancillary uses will be subject to fulfilment of the prescribed

conditions.

22. The hotel is admittedly constructed in the NDZ on the plot of land fronting 30 metres wide DP road. In the NDZ, the uses permissible are provided by DCR 57. DCR 57 specifically provides for the maximum permissible FSI in respect of the uses that are permitted in NDZ. DCR 57(xiii) categorically mentions that for a residential building the FSI cannot be more than 0.2. Moreover, a residential building, as Clause (xiii) ordains is made also subject to Clause (a) thereunder, meaning thereby that the building cannot be more than ground and one storey with a height not exceeding 9.75 metres including the height of stilt portion. Regulation 57 thus restricts the activities in the NDZ. The object of Regulation 57 cannot be stultified by permitting something which goes beyond the restrictions imposed for development activities permissible in NDZ. The language of Regulation 57 read with Clause (xiii) thereunder leaves no manner of doubt that the restrictions are to be strictly construed, for any other interpretation would defeat the object of Regulation 57. Moreover, Clause (xiii) provides for the circumstances under which the Chief Officer may make relaxation in height as per local conditions, in consultation with the Divisional Deputy Director of Town Planning for allowing development contemplated in NDZ. We find that the powers under the non-obstante clause in Regulation 57(xiii) are not invoked in the present case, as in any case the powers thereunder are to be invoked in a different

context.

23. By the impugned communication dated April 13, 2018, the UDD responded to the guidance that was sought by the Corporation vide its communication dated November 6, 2017 and the request made by the Company vide its letter dated March 22, 2018 for grant of additional FSI 0.8 on payment of premium in NDZ in respect of development fronting 30 metres wide DP road. A reference is made to the request made by the Company for permission to construct a star graded hotel fronting 30 metres wide dp road. The communication dated April 13, 2018 records that as in any case, construction activity is permissible in respect of starred hotels abutting National/State Highway, the proposal of the Company is approved.

24. From the communication dated April 13, 2018, what we understand is that because building permission for star category hotels abutting National/State Highway can be granted, the approval for additional FSI can also be granted to a star graded residential hotel fronting a 30/45 metres DP road in the NDZ. We find that the notification dated September 21, 2015 applies to development of buildings for three starred and above category hotels in NDZ along National and State Highways upto FSI limited to 0.10 and additional FSI upto 0.90 can be granted on payment of premium. It is nobody's case that the hotel of the Company is along the National/State Highway. From the affidavits in reply of the respondent-UDD and the Corporation, it is seen

that the permission is sought on the ground that residential use of star category hotel is permissible upto depth of 30 metres fronting the 30 metres wide road dp in the NDZ. The stand of the UDD in paragraph 10 of the affidavit-in-reply is that "the use of star category hotel is the one that is covered under residential uses by virtue of that it is permissible in the lands fronting along 45, 30 metres wide road to the depth of 30 metres in NDZ." In our opinion, when the building of the Company is not adjacent to the National/State Highway and even as the permission is not sought on this ground, the notification dated September 21, 2015 will not apply to the development in the NDZ in respect of lands fronting 45/30 metres DP road.

25. We nonetheless test the permissions granted to the Company on the basis of the stand the UDD and the Corporation have taken in their affidavits in reply. It is the stand that as the star graded hotel was to be constructed on a road fronting 45, 30 metres in view of sub-clause (d) of Regulation 57(xiii), the area becomes a residential zone and therefore permission could be granted for a residential hotel in terms of Regulation 51(7)(vii). In our opinion, such a stand taken is a complete misreading of sub-clause (d) of Regulation 57(xiii). Sub-clause (d) does not do away with the requirement of the conditions stipulated by sub-clauses (a), (b) and (c) of Regulation 57(xiii), for, the residential building in question, even for the purpose of clause (d), continues to be a residential building within the meaning of

main part of Regulation 57(xiii). Only because sub-clause (d) permits development in NDZ for residential purpose on lands along 45, 30 metres wide road upto the depth of 30 metres, it does not make it a residential zone so that Regulation 51 may apply. The development of the residential building in the NDZ in terms of sub-clause (d) will still have to satisfy the conditions mentioned in sub-clauses (a), (b) and (c) of Regulation 57(xiii). Regulation 57(xiii)(d) which was sanctioned vide notification dated August 25, 2000, on the contrary, imposes a condition on the owner that if he wants to develop the lands along 45, 30 metres wide road, then he should provide infrastructural facilities such as septic tank, water supply, drainage etc. Sub-clause (d) imposes additional obligations on the owner of the land if he wants to construct a residential building in terms of Regulation 57 (xiii) on the plot of land fronting 30 metres wide DP road. Sub-clause (d) is not a new activity permitted in NDZ as in any case a residential building was permitted by Regulation 57(xiii) subject to the conditions therein, prior to insertion of sub-clause (d). By incorporating sub-clause (d), certain obligations are cast on the owner, if he wants to develop lands along 45, 30 metres in NDZ. It cannot be read to mean that by incorporating sub-clause (d), the State Government wanted the development of the land along 45, 30 metres wide road in NDZ to be a residential zone for the purpose of Regulation 51. The development of a residential building in

the NDZ will continue to be governed by Regulation 57(xiii) and subject to conditions therein.

26. We find that the State Government in the past had an occasion to consider the purport of Clause (d). The State Government had correctly understood the purport of Regulation 57(xiii)(d) as is spelt out from its own communication dated May 31, 2008 referred to in the Town Planning and Valuation Department's letter dated September 23, 2016 addressed to the Corporation. The letter records that the State Government then had informed the Corporation that in respect of residential buildings fronting 30 metres and 45 metres road in NDZ, the FSI will be in terms of Regulation 57(xiii), even though sub-clause (d) of Regulation 57(xiii) permitted development for residential purposes in NDZ. The State Government further informed that there can be a structure of ground + one storey with a height not exceeding 9.75 metres in terms of sub-clause (a) of Regulation 57(xiii). It is specifically mentioned that though Regulation 57(xiii)(d) permits a residential user but the request for FSI as per the R-2 zone cannot be granted. In our opinion, the State Government had in the year 2008 correctly interpreted Regulation 57(xiii)(d) as seen from their communication addressed to the Corporation as far back as on May 31, 2008. We also find that the communication dated September 23, 2016 of the TPVD, Pune makes a reference to the communication dated July 14, 2015 of the State Government, whereby, the

State Government in response to the Corporation's request for granting permission for development in the NDZ in terms of R-2 zone had refused to grant such permission, as according to the State Government, the residential building could only be constructed in terms of the permissible FSI under Regulation 57(xiii). We find that this stand of the State Government referred to in the communication of TPVD is in consonance with Regulation 57(xiii).

27. By the impugned communication dated April 13, 2018 addressed to the Corporation, the State Government now permitted grant of additional FSI on the ground that as in any case star category hotels can be constructed along the National/State Highway, the proposal of the Company is approved. The State Government appears to have changed its stand from the one it had earlier taken in 2008 and then in 2015 vide the communication dated April 13, 2018. Though not stated in so many words, this change in stand appears to be in view of the notification dated September 21, 2015, permitting construction of a star category hotel adjacent to a National/State Highway with 0.1 FSI and additional 0.9 FSI on payment of premium. Admittedly, the hotel in issue is not along the National/State Highway and even the permission is not applied for by the Company on that count. The notification dated September 21, 2015 cannot be made a basis for permitting residential building fronting 30 metres wide DP road which is in the teeth of Regulation 57(xiii). The approval granted to the proposal of

the Company vide the impugned communication of the State Government dated April 13, 2018 is not in consonance with law.

28. A plain reading of the DCRs reveal that the land use classification and uses permitted by Part-IV are clearly spelt out therein. In our opinion the residential building in the NDZ can be constructed subject to the restrictions prescribed by DCR 57(xiii). In the present case, what the Town Planning Department and the Corporation have done, is to apply DCR 51(7)(vii) to a hotel to be constructed in the NDZ. Regulation 51 deals with a completely different and separate land use i.e. residential with shop line (R-2 zone). While granting permission to the Company in respect of a hotel to be constructed in the NDZ, the rigours of DCR 57(xiii) are overlooked. Undoubtedly, our perspective would have been different if the construction of the hotel were to be in a residential zone with shop line (R-2 zone), for then the same could be said to be in terms of DCR 51. In our opinion, the uses permissible under each of the regulations have to be construed in terms of what is provided under the relevant land use classification and uses permissible. There is nothing in the language of DCR 57 which allows the regulation of some other zone to be applied to a residential building in the NDZ. It is not possible for us to read something into DCR 57 which is not provided thereunder, completely overlooking the object underlying the provision for restricted development in the NDZ. If the provisions of

DCR 57(xiii) are read in the manner which the UDD has read while granting permission to the Company, then any provision of any regulation, in any zone could be resorted to for grant of building permissions in any zone. The restrictions imposed in the relevant provisions pertaining to the zone in which the building is to be constructed would then be meaningless. A definite meaning has to be assigned to the restrictions imposed having regard to the underlying object of the provision. We moreover notice DCR 49 provides that "where it is specified that a particular use is to be allowed only with the Chief Officer's special permission, the power of granting such permission shall be exercised by the Chief Officer only in consultation with the Divisional Deputy Director of Town Planning Department." Present is not the case where DCR 49 is applicable. Though there exists a provision in Regulation 51(7)(vii) for construction of a star graded hotel, it has to be understood to mean that the construction of such star graded hotel is permissible in that zone to which Regulation 51 applies and not generally for constructing star graded hotels in any other zone. It is not as if the development of a residential building is not at all permitted in the NDZ. But the development is restricted in terms of what is provided in Regulation 57 (xiii). The stand of the UDD that because construction of a star category hotel is permitted as per DCR 51 (7) (vii) and therefore can be permitted in the NDZ in view of sub-clause (d) of Regulation 57(xiii), cannot be

countenanced.

29. To support the stand of the State Government in their letter dated April 13, 2018 as valid and correct in law, a reference is made by the learned AGP to DCR 59(3). Part-V of the DCR deals with Supplemental and Miscellaneous Provisions. DCR 59 pertains to 'interpretation' of the regulations. DCR 59(3) reads thus: -

"59 (3) If any question or dispute arises with regard to interpretation of any of these Regulations the matter shall be referred to the State Government which, after considering the matter and, if necessary, after giving hearing to the parties, shall give a decision on the interpretation of the provisions of these Regulations. The decision of the Government on the interpretation of these Regulations shall be final and binding on the concerned party or parties."

30. No doubt, the State Government is conferred with the power to interpret any of the regulations. However, it can never be the contemplation of DCR 59 to confer such power on the State Government which go beyond the statutory prescription of the DCRs' especially provisions imposing restrictions. When DCR 57 so clearly provides for the permissible uses in the NDZ, the issue has to be considered from the perspective of the object behind DCR 57. In our considered opinion, the action on the part of the UDD and consequent grant of permission by the Corporation to construct the building, placing reliance on DCR 51(7)(vii) is on an erroneous interpretation and the application of the DCR 57(xiii)(d). Our attention is invited to Regulation 32(4)

which provides for the development of building of starred category residential hotels. We are afraid Regulation 32(4) will not be applicable in respect of a building which is to be constructed in the NDZ. Regulation 32(4) is a general provision in the context of additional FSI which may be allowed in certain categories, whereas, Regulation 57 is a special provision imposing restrictions in the NDZ. If the provisions of the DCR are read in the manner the learned counsel for the respondents want us to read, then the very purpose of restricting FSI, which is to be not more than 0.2 in the NDZ, is rendered nugatory. In cases where the residential buildings above 0.2 FSI are permitted, the State Government has issued appropriate notification in accordance with law, as in the case of plots of lands along the National/State Highways. Such is not the case in respect of lands fronting 30 metres wide DP road in the NDZ, in which case such residential buildings would continue to be governed by Regulation 57 (xiii).

31. Our attention is invited to the discretionary powers conferred on the Commissioner of the Corporation under Regulation 61(b) of the State Government notification dated August 3, 2004. In our opinion, in the facts of the present case, it is not open for the Commissioner to exercise the discretionary powers under Regulation 61(b) of the State Government notification dated August 3, 2004, as the said Regulation permits the Commissioner to modify the dimensions, except those relating to floor space indices

unless otherwise permitted under these Regulations. Regulation 57 restricts the FSI for the project in question to 0.2, therefore, the question of exercise of the discretionary powers under Regulation 61(b) of the notification dated August 3, 2004 does not arise.

32. We therefore have no hesitation in holding that the building permissions are granted to the Company in excess of 0.2 FSI by the Corporation in breach of the provisions of DCR 57(xiii). The building construction of the hotel above 0.2 FSI by the Company has to be regarded as illegal being contrary to the provisions of DCR 57.

33. The next question is whether the residential building already constructed be covered by UDCR which later came into force. The Corporation has taken a stand that the building permissions are granted in accordance with the DCRs. UDD also says that the DCRs permit such activity. The UDCR was brought into effect from December 2, 2020. Now a stand is sought to be taken, that since the additional permissions are applied, it is the UDCR which is applicable and hence the building permissions are in accordance with the UDCR. Once we find that the structure in question comprising of ground + four floors is constructed for which a part OC is also granted completely in breach of the DCRs' which were then applicable and even the permissions are under such DCRs', then the argument of the Company that the structure stands protected in view of the UDCR which came into effect from December 2, 2020, can only be

regarded as an argument of desperation. We are not at all impressed by this submission. The matter looked at either way, the permissions are not only contrary to the DCR of the Corporation; but having constructed a structure of such a magnitude comprising of ground + four floors, for which even the part OC was obtained on January 9, 2020 prior to the coming into the force of the UDCR w.e.f. December 2, 2020, the contention of the Company that the structure is legal only because it meets the requirements of the UDCR, is an argument which can only be stated to be rejected.

34. The decision of the Supreme Court relied by Mr. Sathe in the case of **Dattaraj Nathuji Thaware** (supra) is distinguishable on facts. The petitioner therein had resorted to black mailing respondent nos. 6 and 7 and was caught red handed accepting "black mailing" money. It was observed that the High Court also noticed that the allegations of unauthorized constructions made in the petition were also untrue. It is in the facts of that case the Supreme Court held that there is material to show that the petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes. The ratio of decision in **Dattaraj Nathuji Thaware** (supra) has no application in the facts of this case.

35. In R & M Trust (supra), Their Lordships held, there is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. However on facts, the Supreme Court

observed that it cannot disturb the third party interest created on account of delay. In paragraph 36, Their Lordships observed that they are satisfied that there is no prohibition under the provisions of the Act and Rules putting the ceiling on construction of the multi-storey building. Their Lordships were satisfied that the delay is also fatal to the case. It is observed that the jurisdiction of the Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends. In the facts of the present case, there is nothing on record to infer that the PIL jurisdiction of this Court is invoked for the sake of publicity or for the purpose of serving some private ends of the petitioner. The decision in **R & M Trust** (supra) is therefore distinguishable on facts.

36. The decision of this Court in **Nanasaheb Vasantrao Jadhav** (supra), we are afraid, can have no application in the facts of the present case. That was a case where, although the cause of action arose from 1996, the petitioner approached the Court for the first time in 2011, thereafter in 2013 and finally in 2018. This Court took into consideration the events between the cause of action and the date of commencement of the PIL petition which led to denial of relief in equity by efflux of time. It was further observed that third party interests have been created and granting relief to the petitioner would most certainly result

in unsettling settled matters on account of events happening in-between. This Court felt that 'judicial hands-off' approach is perhaps best suited in the present case having regard to the intervening delay between the alleged acts of violation of Constitutional guarantees and institution of the PIL. The decision therefore turned on the facts of that case and can have no application to the present case and therefore distinguishable.

37. The Supreme Court in **T. Vijayalakshmi and ors.** (supra) has, in paragraph 18, held that it is now well settled law that an application for grant of permission for construction is required to be decided in accordance with law applicable on the day on which such permission is granted. Once we find that the construction of the Company has proceeded on the basis of permissions which are contrary to law, then it is not possible for us to consider the stand of the respondents that now as the same are in consonance with the UDCR, the residential building stands protected. The UDCR came into effect after the construction was raised. We are not persuaded to examine the contention on behalf of the Company to protect the building on the ground that the construction meets the requirements of the UDCR, as the UDCR was not even in force when the part OC was obtained. We therefore, have no hesitation in allowing the PIL petition.

38. Hence, the following order :-

ORDER

(i) The impugned communication dated April 13, 2018 of the State Government is quashed and set aside.

(ii) The PIL petition is allowed in terms of prayer clause (b).

(iii) The Corporation will proceed with the demolition of the subject construction which is in excess of 0.2 FSI in terms of DCR 57 within two months from today.

39. In the facts and circumstances of the present case, there would be no order as to costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)