

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

WRIT PETITION NO. 1404 of 2022 with IA NO.18422 OF 2022
with
WRIT PETITION (St)NO.5050 of 2021
with
WRIT PETITION NO.4373 of 2021

WRIT PETITION NO.1404 OF 2022

M/s. Bhima Mahabharat Builders and Developers
The Registered Partnership Firm
Having the registered office at-
2nd floor, Millenia, above Woodland Shoe Showroom,
Near Hotel Vrushali, Tarabai Park,
Kolhapur-416 003.
Through its Partner-
Shri Jayesh Dinesh Kadam,
Age 59 years, Occ. Business,
R/at Flat No.502, Tarangan,
E Ward, New Palace Area,
Kolhapur-416003 Dist. Kolhapur.

..PETITIONER

versus

1. State of Maharashtra,
through its Honourable State Minister for Urban
Development Department,
Government of Maharashtra.
2. The Urban Development Department,
through its the Principal Secretary,
State of Maharashtra,
Mantralaya, Mumbai-32.
3. The Kolhapur Municipal Corporation,
through its Municipal Commissioner,
Post Box No.33, Pin Code 416 002.
4. The Municipal Commissioner,
The Kolhapur Municipal Corporation,
Post Box No.33, Pin Code 416 002.

5. Assistant Director of Town Planning,
The Kolhapur Municipal Corporation,
Post Box No.33, Pin Code 416 002.

..RESPONDENTS

with

INTERIM APPLICATION NO.18422 OF 2022 in WRIT PETITION NO.1404/2022

Zakir Nasirruddin Peerzade,
Age 53 years. Occu.: Agriculture,
R/o. 2358, D Ward Bramhapuri,
Toraskar Chowk, Kolhapur.

Applicant.

IN THE MATTER BETWEEN

M/s. Bhima Mahabharat Builders and Developers
The Registered Partnership Firm
Having the registered office at-
2nd floor, Millenia, above Woodland Showroom,
Near Hotel Vrushali, Tarabai Park,
Kolhapur
Through its Partner-
Shri Jayesh Dinesh Kadam,
Age 58 years, Occ. Business,
R/at Flat No.502, Tarangan,
E Ward, New Palace Area,
Kolhapur-416003 Dist. Kolhapur.

..PETITIONER

VERSUS

1. State of Maharashtra,
through its Honourable State Minister for Urban
Development Department,
Government of Maharashtra.
2. The Urban Development Department,
through its the Principal Secretary,
State of Maharashtra,
Mantralaya, Mumbai.
3. The Kolhapur Municipal Corporation,
Kolhapur.

4. The Municipal Commissioner,
The Kolhapur Municipal Corporation,
Kolhapur.

5. Assistant Director of Town Planning,
The Kolhapur Municipal Corporation,
Kolhapur.

RESPONDENTS

with

WRIT PETITION(STAMP) No.5050 of 2021

Zakir Nasirruddin Peerzade,
Age 54 years. Occu.: Agriculture,
R/o. 2358, D Ward Bramhapuri,
Toraskar Chowk, Kolhapur.

PETITIONER

Versus

1. State of Maharashtra,
through Urban Development Department,
Government of Maharashtra.
Mantralaya, Mumbai.

2. The Kolhapur Municipal Corporation,
Kolhapur.

..RESPONDENTS

WRIT PETITION NO.4373 OF 2021

Anandrao Mahadeo Mane
Age 73 years. Occu.: Retired,
27KH/2D, Krishnai, Vidyut Abhiyanta CHS
Circuit House, Tarabai Park,
Kolhapur.

...PETITIONER

Versus

1. State of Maharashtra,
Through Urban Development Department,
Room No.423(Main), Mantralaya,
Mumbai-400 001.

2. The Commissioner,
Kolhapur Municipal Corporation,
Main Building, Shivaji Chowk,
C-Ward, Kolhapur-416 002.

3. Assistant Director of Town Planning,
Kolhapur Municipal Corporation,
Main Building, Shivaji Chowk,
C-Ward, Kolhapur-416 002.
4. Maharashtra Pollution Control Board.
Assembly Road, New Shahupuri,
Kolhapur, Maharashtra-416 003.
5. The Chief Scientist and Head,
National Environmental Engineering
Research Institute,
89B, Dr. Annie Besant Road, New Flyover,
Bhim Nagar, Worli, Mumbai, Maharashtra- 400018.
6. Mr. Pratap Arvind Diwan,
through Krishnrao Balwantrao Padawale,
Shree Bunglow, 25/Kh/2,
E, Circuit House Road, Tarabai Park,
Kolhapur.

...RESPONDENTS

Shri A.V. Anturkar, Senior Advocate with Shri Tanaji Mhatugade, Advocate
for the petitioner in Writ Petition No. 1404/2022

Shri S.R.Ganbavale with Shri Kush M. Lahankar with Shri Shubham Kanade,
Advocates for petitioner in Writ Petition (St) No.5050/2021 and for the
intervener in IA No.18422/2022.

Shri Y. P. Narvankar, Advocate for petitioner in Writ Petition No.4373/2021.

Shri R.M.Shinde, Assistant Government Pleader for the respondent-State.

Shri S.C.Naidu, with Shri A.M.Adagule, Ms Divya Yajurvedi, Shri Sudeshku-
mar Naidu and Shri Pradeep Kumar, Advocates for respondents -Kolhapur
Municipal Corporation.

CORAM :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.

ARGUMENTS WERE HEARD ON : 23.02.2023

JUDGMENT IS PRONOUNCED ON : 03.05.2023

JUDGMENT (Per A.S.CHANDURKAR, J.)

All these writ petitions were heard together and they can be conveniently decided by this common judgment.

2. **Rule.** Rule made returnable forthwith and heard the learned counsel for the parties.

3. The order dated 01.12.2016 passed by the Hon'ble Minister of State, Urban Development Department, Mumbai in proceedings under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 (for short, the Act of 1966) by which the Kolhapur Municipal Corporation (for short, the Municipal Corporation) has been directed to consider the buffer zone at a distance of 162 to 182 meters for location of the Solid Waste Management Project has given rise to the present litigation. One Shri Pratap Arvind Diwan had submitted an application for grant of building permission on 01.04.2007 at his property located at Survey No.846/1A, bearing Revision Survey No.846/1A, 1C, 2A, 2B, 1B,1D, 3 and 4 admeasuring 4 H 1 R, E-Ward Kasba-Bawada, Kolhapur for residential use as well for construction of approach road. The Municipal Corporation on 11.02.2008 rejected the said application on the ground that the said land was located at a distance within 500 meters of the Solid Waste Management Project. Being aggrieved, the said applicant filed an appeal under Section 47 of the Act of 1966. While

considering that appeal the Hon'ble Minister noted that as per the sanctioned development plan the land in question was in a residential portion thereof. The Solid Waste Management Project of the Municipal Corporation at Kasba-Bawada was not at a land fill site. The applicant's land was at a distance of 460 meters from the Solid Waste Management Project. In view of the recommendations of the National Environmental Engineering Research Institution (NEERI) that the Solid Waste Management Project should have buffer zone of 162 to 182 meters coupled with the fact that at the Pimpri-Chinchwad Municipal Corporation, the Solid Waste Management Project was at a buffer zone of 100 meters which was approved by the State Government as well as the Maharashtra Pollution Control Board, the rejection of the applicant's development plan was illegal. The said appeal came to be allowed and the Municipal Corporation was directed to consider the report of the NEERI as well as its suggestions and thereafter take steps to grant development permission at the distance as suggested.

4. Insofar as Writ Petition No.1404 of 2022 is concerned, the petitioner having purchased the subject property referred to hereinabove seeks issuance of writ of mandamus to the Municipal Corporation to sanction the layout proposal dated 01.04.2007 by complying with the order passed under Section 47 of the Act of 1966 on 01.12.2016.

In this writ petition, Interim Application (IA) No.18422 of 2022 has been filed seeking permission to intervene in the writ petition. According to the applicant, he had filed an application for sanction of layout plan on 14.11.2005. The same came to be sanctioned on 23.12.2005. The applicant therefore on 14.03.2014 sought building permission to construct/develop his property located at land bearing Survey No.830/1 situated at E-Ward, Kasba Bawada. The application preferred by the applicant was kept pending and no decision thereon came to be taken. According to the applicant, the order dated 01.12.2016 passed under Section 47 of the Act of 1966 adversely affects the interest of the applicant in so far as the buffer zone is determined and he therefore seeks to intervene in the said writ petition.

5. The applicant who has filed IA No.18422 of 2022 in Writ Petition No. 1404 of 2022 has also filed Writ Petition(Stamp) No.5050 of 2021. In the said writ petition a direction is sought to be issued to the Municipal Corporation to decide the petitioner's application seeking building permission dated 14.03.2014. In addition, challenge is raised to the order dated 01.12.2016 passed by the Hon'ble Minister of State in proceedings under Section 47 of the Act of 1966.

6. Writ Petition No.4373/2021 has been filed by the owner of plot bearing Survey No.830/1 situated at E-Ward, Kasba-Bawada. The said

petitioner is aggrieved by the exercise undertaken in proceedings under Section 47 of the Act of 1966 of determination of the buffer zone. The grievance raised is that various material aspects including the provisions of Solid Waste Management Rules, 2016 (for short, the Rules of 2016) have not been taken into consideration while directing that the buffer zone should be maintained at a distance of 162 to 182 meters from the Solid Waste Management Project.

7. Shri A.V. Anturkar, learned Senior Advocate for the petitioner in Writ Petition No.1404 of 2022 submitted that the Municipal Corporation was duty bound to have complied with the directions issued in the proceedings under Section 47 of the Act of 1966 decided on 01.12.2016. In the light of said adjudication, the layout proposal submitted by the petitioner on 01.04.2007 was liable to be approved and sanctioned. Inviting attention to the finding recorded in the proceedings under Section 47 of the Act of 1966 that the land of the petitioner was located at a distance more than 460 meters from the Solid Waste Management Project, it was submitted that there was no impediment in sanctioning the proposal dated 01.04.2007. The aforesaid adjudication to which the Municipal Corporation was a party was binding on it and unless the said order was set aside, the Municipal Corporation had no option but to implement the said order and sanction the proposal for approval in accordance therewith. Even assuming without

accepting the position that the order dated 01.12.2016 could be termed as illegal, it did not suffer from any jurisdictional defect so as to avoid its compliance. It was also found that there was no proposal to demarcate the lands at Kasba-Bawada as land fill site and therefore there was no impediment in granting the application dated 01.04.2007. It was undisputed that the petitioner's land fell in the residential zone as per the development plan and in the light of the clear observations in the order dated 01.12.2016, the Municipal Corporation was not justified in refusing to consider the petitioner's application dated 01.04.2007. On the basis of the recommendations made by the NEERI and after considering the fact that the Solid Waste Management Project at the Pimpri-Chinchwad Municipal Corporation had a buffer zone of 100 meters, the direction to have the buffer zone at Kasba-Bawada at a distance of 162 to 182 meters from the Solid Waste Management Project was justified. Attention was also invited to communication dated 16.10.2015 issued by the NEERI to the Commissioner of the Municipal Corporation. In support of his submissions, the learned Senior Advocate placed reliance on the decisions in *State of Kerala vs. M.K.Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and others [(1996) 1 SCC 435]*, *Ismail Shaikh Gulam Abbas Kothari and others vs. The State of Maharashtra and others [(1997) 99 BLR 508]* as well as the order passed by the National Green Tribunal, New Delhi in Original Application

No. 199 of 2014 (*Mrs. Almitra H. Patel anr vs. Union of India and others*).

It was thus submitted that the prayers made in the writ petition ought to be granted.

8. Shri S.C.Naidu, learned Advocate appearing for the Municipal Corporation opposed the aforesaid submissions. At the outset, he submitted that the direction issued in the order passed under Section 47 of the Act of 1966 dated 01.12.2016 relating to maintenance of distance as regards the buffer zone was concerned, the same was a nullity in the eyes of law. In proceedings under Section 47 of the Act of 1966, no such direction prescribing the buffer zone could have been issued. The scope of such proceedings was limited to examining the correctness of the decision of the Planning Authority of either granting permission with conditions or rejecting the permission for development. A decision with regard to fixation of buffer zone could not have been undertaken in exercise of limited jurisdiction under Section 47 of the Act of 1966. Attention was then invited to the Solid Waste Management Rules, 2000 as well as the Rules of 2016 in that regard. It was submitted that the Gazette Notification dated 08.04.2016 issued by the Ministry of Environment, Forest and Climate Change by virtue of which the Rules of 2016 came into force ought to have been considered when the order under Section 47 came to be passed. Without considering the provisions that were applicable, the said order had been passed. Moreover

in the proceedings under Section 47 of the Act of 1966 conditions were imposed on the Municipal Corporation and not on the applicant who was aggrieved by the rejection of the building permission. This was beyond the scope of Section 47 of the Act of 1966. Reference was also made to the opinion expressed by the Maharashtra Pollution Control Board on 24.09.2014 in which it was opined that the area at a distance of 500 meters from the Solid Waste Management Project ought to be declared as a no development zone. Ignoring this opinion given by the Maharashtra Pollution Control Board, the impugned directions came to be issued. Reliance was placed on the order passed in Public Interest Litigation (PIL) No.67 of 2007 (*Dilip Ashok Desai & anr. vs. Kolhapur Municipal Corporation and ors.*) dated 21.09.2005 as well as the affidavit filed in the said proceedings on behalf of the Maharashtra Pollution Control Board. It was thus submitted that by exceeding the scope of proceedings filed under Section 47 of the Act of 1966 and by ignoring the relevant statutory provisions in the form of the Rules of 2016, the impugned order dated 01.12.2016 was liable to be ignored as being a nullity. Hence no writ of mandamus could be issued requiring the Municipal Corporation to comply with such an order which was a nullity in the eyes of law.

The learned Advocate invited attention to the affidavit dated 12.02.2023 filed by the Junior Engineer in the Town Planning Department of

the Municipal Corporation wherein reference was made to the communication dated 07.02.2023 issued by the Urban Development Department to the Commissioner of the Municipal Corporation. It was pointed out that the opinion of the Maharashtra Pollution Control Board dated 24.09.2014 clearly stated that the Solid Waste Management Project ought to have been located at a distance of 500 meters by treating that distance as the buffer zone. The Urban Development Department had directed the Municipal Corporation to determine the buffer zone after considering the Rules of 2016 and in consultation with the Maharashtra Pollution Control Board. It was thus submitted that from the aforesaid communication, it was clear that even the State Government was now of the opinion that the directions issued in the impugned order prescribing the buffer zone at a distance of 162 meters to 182 meters was without considering the Rules of 2016 and the opinion of the Maharashtra Pollution Control Board. It was thus submitted that the impugned order dated 01.12.2016 being void could not be directed to be complied with especially in view of the law laid down in *Swaroop Singh and another vs. Union of India and others* [**AIR 2011 SC 514**].

9. Shri S.R.Ganbavale and Shri Y. P. Narvankar, learned Advocates for the petitioners in Writ Petition Stamp No. 5050 of 2021 and Writ Petition No. 4373 of 2021 respectively supported the stand taken by the Municipal

Corporation that the order dated 01.12.2016 could not be directed to be implemented. It was submitted that far reaching directions issued in the impugned order in the matter of prescribing the buffer zone adversely affected the respective petitioners and they had not been heard prior to issuance of such direction which caused prejudice to their legal rights. The application seeking building permission though moved by the said petitioners had been kept pending and without deciding the same the buffer zone came to be prescribed by the impugned order which if implemented would adversely affect the said petitioners. In fact, the building plan as submitted ought to have been approved in view of the fact that the final layout plan had been sanctioned on 18.01.2008 by which the buffer zone had already been implemented. In any event, it was submitted that in proceedings under Section 47 of the Act of 1966 it was not permissible to reduce the buffer zone from 500 meters to the range of 162 meters to 182 meters. The impugned order dated 01.12.2016 was thus liable to be set aside.

The learned Advocate for the Municipal Corporation referred to the affidavit in reply filed in Writ Petition No. 4373 of 2021 and submitted that the said writ petition was liable to be allowed and the order passed in proceedings under Section 47 of the Act of 1966 be set aside. Insofar as Writ Petition Stamp No.5050 of 2021 is concerned, it was submitted that the said

writ petition suffered from unexplained delay and laches. The application dated 14.03.2014 that was moved by the said petitioner came to be rejected on 02.05.2014 and hence the petitioner was not entitled for any relief whatsoever.

10. We have heard the learned Advocates for the parties and with their assistance we have perused the documents on record. We have also given thoughtful consideration to the statutory provisions of the Act of 1966 as well as the Rules of 2016. The principal issue that requires adjudication is the legality of determination of the buffer zone at a distance of 162 meters to 182 meters as has been done in proceedings under Section 47 of the Act of 1966 by the impugned order dated 01.12.2016. While the petitioner in Writ Petition No. 1404 of 2022 seeks implementation of the order dated 01.12.2016 which determines the buffer zone, the petitioners in Writ Petition Stamp No.5050 of 2021 and Writ Petition No. 4373 of 2021 have challenged the determination of the buffer zone by urging that such exercise was beyond the scope of Section 47 of the Act of 1966. Since we find that the applicant in Interim Application No.18422 of 2022 is aggrieved by the order dated 01.12.2016 passed under Section 47 of the Act of 1966 and which order has been specifically challenged by the same applicant by filing Writ Petition Stamp No.5050 of 2021, the intervention application is allowed.

11. To consider the issues as arising, a brief reference to relevant facts may be made. With the enactment of the Constitution (74th) Amendment Act, 1992 Article 243 W came to be inserted in the Constitution of India. Schedule-XII Entry 6 empowers the Urban Local Bodies to ensure that steps are taken for Solid Waste Management. The Hon'ble Supreme Court by its order dated 16.01.1998 passed in *Almitra H. Patel vs. Union of India and others [(1998) 2 SCC 416]* constituted the Asim Burman Committee to look into the aspect of Urban Solid Waste Management. One of the recommendations accepted was that the land should be made available to Urban Local Bodies to set up processing units for disposal of wastes. In accordance therewith on 25.09.2000 the Maharashtra Solid Waste (Management and Handling) Rules 2000 came to be introduced. The Municipal Corporation set up Solid Waste Processing and Disposal facilities at R.S.No.206, Kasba-Bawada. The State Government by issuing notification recommended a 'No Development Zone" at 500 meters from the boundaries of the waste disposal units. The Administration of the Municipal Corporation sought consideration of its proposal to notify area of 500 meters from the Solid Waste Management Project as buffer zone as well as modification of the development plan under Section 37 of the Act of 1966. The General Body of the Municipal Corporation however on 20.10.2003 passed Resolution No.183 and rejected the said proposal. A similar such proposal

dated 31.08.2005 was also rejected by the General Body vide Resolution Nos. 711 and 712. The Municipal Corporation therefore on 23.04.2007 moved the State Government under Section 451 of the Maharashtra Municipal Corporations Act, 1949 seeking suspension of the aforesaid Resolutions. In Public Interest Litigation No.67 of 2007 the Division Bench on 21.09.2007 recorded satisfaction that the Municipal Corporation was taking necessary steps in complying with the Rules of 2000 in the matter of solid waste management and that the Maharashtra Pollution Control Board had been monitoring the said matter. Thereafter on 18.01.2008 the State Government rescinded Resolution No.186 dated 20.10.2003 and Resolution Nos. 711 and 712 dated 31.08.2005 under Section 451 of the Maharashtra Municipal Corporations Act, 1949.

12. In the aforesaid factual backdrop, the petitioner in Writ Petition No. 1404 of 2022 moved an application seeking permission to approve the layout with regard to land falling within the area that was earmarked as the buffer zone. The Municipal Corporation refused to grant such permission on 11.02.2008. The aforesaid order came to be challenged by the said petitioner by filing an appeal under Section 47 of the Act of 1966. After the said appeal was filed the Municipal Corporation on 29.12.2009 passed Resolution No.39 resolving to provide and maintain the buffer zone of 500 meters around the Solid Waste Management Project at Kasba-Bawada and

also to initiate steps under Section 37 of the Act of 1966 for seeking modification of the development plan. During pendency of the appeal the Urban Development Department which was seized of the said appeal called for a report from the Maharashtra Pollution Control Board in this regard. The said Board opined that the buffer zone must be maintained at a distance of 500 meters around the processing site when solid waste exceeding 100 tonnes is processed. While said appeal still pending, the Rules of 2016 came to be notified on 08.04.2016. In the meanwhile, the appeal that was heard on 27.04.2016 came to be ultimately decided on 01.12.2016 wherein the impugned directions came to be issued. These material facts would have to be borne in mind while deciding these writ petitions.

13. Under Section 44 of the Act of 1966 any person intending to carry out any development of any land is required to make an application in writing to the Planning Authority for grant of permission. The Planning Authority on receiving such application can under Section 45 either grant the permission unconditionally or subject to such general and special conditions as imposed with the previous approval of the State Government or it could also refuse the permission. Section 46 requires the provisions of the development plan to be considered before granting any permission. Any applicant who is aggrieved by an order granting permission on conditions or refusing permission under Section 45 of the Act, 1966 can challenge such

order within a period of forty days of its communication by filing an appeal under Section 47 of the Act of 1966. It is thus clear that in an appeal under Section 47 of the Act of 1966, the appellate Authority would be required to examine whether the Planning Authority was justified in granting permission on conditions or in refusing permission. The scope of such appeal is thus circumscribed by what can be done under Section 45 of the Act of 1966. The permission granted by imposing general or special conditions by the Planning Authority could be modified while maintaining such permission or the permission refused by the Planning Authority could be granted by the State Government either unconditionally or subject to general or special conditions. It is thus clear that the scope of proceedings under Section 47 of the Act of 1966 is limited to examining the aspect of conditional grant of permission or refusal to grant such permission. Section 154 of the Act of 1966 empowers the State Government to issue such directions or instructions as may be necessary to the Planning Authority to implement or bring into effect the Central or State Governments programmes, policies or projects for the purposes of efficient administration of the Act of 1966 or in larger public interest.

14. In the matter of fixing of the buffer zone it would be necessary to refer to the Rules of 2016 since these Rules were brought into effect on 08.04.2016 when the appeal was pending. The Municipal Corporation is

included in the definition of the term “local body” under Rule 3(30). Under Rule 11 it is the duty of the Urban Development Department of the State to ensure implementation of the Rules of 2016 by all local authorities. Under Rule 11(l) it has to notify the buffer zone for solid waste processing and disposal facilities of more than five tonne per day in consultation with the State Pollution Control Board. The Central Pollution Control Board under Rule 14(h) has to publish guidelines for maintaining buffer zone restricting any residential, commercial or other construction activities from the outer boundary of the wastes processing and disposal facility. Under Rule 15, a Local Authority has to prepare a Solid Waste Management Plan as per the State policy. Under Rule 16 it is the duty of the State Pollution Control Board to monitor environmental standards and adherence to conditions specified in Schedule I and Schedule II to the Rules. The specifications for sanitary land fills are laid down in Schedule I to the Rules of 2016.

The aforesaid provisions would thus indicate that in the matter of Solid Waste Management the field is governed by the Rules of 2016 and the declaration of any buffer zone has to be undertaken in the manner prescribed therein.

15. Perusal of the impugned order dated 01.12.2016 indicates that the Hon’ble Minister of State has proceeded to determine buffer zone to be 162 meters to 182 meters by referring to the recommendations made by the

NEERI. He has also found that since the buffer zone at a distance of 100 meters was approved for Pimpri-Chinchwad Municipal Corporation, the distance of 162 meters to 182 meters could be fixed for Kolhapur Municipal Corporation. Since the land of the petitioner in Writ Petition No.1404 of 2022 was at a distance of 460 meters from the Solid Waste Management Project, it was held that the rejection of approval to the layout by the Municipal Corporation was incorrect. We find that this adjudication undertaken by the Hon'ble Minister of State on 01.12.2016 suffers from various legal infirmities and is liable to be set aside. The reasons for the same can be enumerated as under:

(a) The scope of an appeal under Section 47 of the Act of 1966 is limited to the consideration of the aspect as to whether the Planning Authority was justified in granting permission by imposing conditions or in refusing permission under Section 45 of the Act of 1966. The appellate Authority is thus concerned only with these aspects. While considering an appeal under Section 47 of the Act of 1966, it would be impermissible for the appellate Authority to determine any issue that falls beyond the scope of Section 47 read with Sections 44 and 45 of the Act of 1966. The determination of limits of a buffer zone would be a matter which would not fall within the parameters of either Sections 44, 45 or Section 47 of the Act of 1966. The manner in which the buffer zone has to be determined has

been laid down in the Rules of 2016 and same can be done only in the manner prescribed therein. It was not permissible for the appellate Authority to have overstepped its jurisdiction while examining the reasons for refusal by the Planning Authority to approve the layout plan. The impugned order clearly exceeds jurisdiction conferred on the appellate Authority under Section 47 of the Act of 1966 when it seeks to determine the buffer zone.

(b) With the coming into force of the Rules of 2016 on 08.04.2016, it was mandatory that the buffer zone be determined in accordance with the procedure prescribed therein. Under the Rules of 2016, the involvement of the State Pollution Control Board is of vital importance. Its opinion in that regard was not obtained nor was it involved in the process of determination of the buffer zone after 08.04.2016. It is to be noted that even prior to the Rules of 2016 coming into force, the Maharashtra Pollution Control Board had on 24.09.2014 in clear terms expressed its opinion that a distance of 500 meters be fixed and declared as no development zone in the light of the Solid Waste Management Project. The said communication has been issued to the Urban Development Department in the context of this very appeal under Section 47 of the Act of 1966. Ignoring this recommendation the appellate Authority has proceeded to go by the recommendations of the NEERI. We however find that the Rules of 2016 do not contemplate involvement of the NEERI in the matter of determination of the buffer zone.

The provisions of Rule 11(l) of the Rules of 2016 require the Urban Development Department to notify the buffer zone in consultation with the State Pollution Control Board. It is thus clear that a relevant material aspect in the form of the Rules of 2016 that required consideration have been ignored while passing the impugned order. This mandatory procedure has not been followed.

(c) Determination of buffer zone is a larger issue affecting public at large as well as residents of the Local Authority. While determining the buffer zone, the opinion of the State Pollution Control Board is required to be taken into consideration. Without undertaking such exercise, it was not permissible for the appellate Authority to determine the buffer zone in an appeal that was filed under Section 47 of the Act of 1966 for challenging refusal to grant requisite permission under Section 45 of the Act of 1966. Determination of the buffer zone vitally affects residents in the vicinity of the Solid Waste Management Project and without any notice to them, it was not permissible for the appellate Authority to have determined the buffer zone.

(d) Hearing of the proceedings in appeal took place on 27.04.2016 as is clear from the impugned order. The appeal however has been decided after a period of more than seven months on 01.12.2016 which would be an unduly long period to decide the proceedings after the parties were heard on 27.04.2016. In the light of the decision of this Court in *Gulmohar Area*

Societies Welfare Group, Juhu, Mumbai and others vs. Municipal Corporation of Greater Bombay and others [2017(5) ABR 157] by which expeditious consideration of the statutory appeals has been indicated, this would be another reason to hold that the impugned order dated 01.12.2016 is liable to be set aside.

(e) The recent communication dated 07.02.2023 issued by the Urban Development Department and addressed to the Municipal Corporation clearly states that while determining the buffer zone the opinion of the State Pollution Control Board ought to have been taken into consideration. It also refers to such opinion being given on 24.09.2014 and prescribing a distance of 500 meters for the buffer zone. By directing the Municipal Corporation to determine the buffer zone by complying with the procedure prescribed by the Rules of 2016 and in consultation with the Maharashtra State Control Board, the Urban Development Department is itself appears to be of the view that the impugned order dated 01.12.2016 does not appear to be workable since the aspects stated in its communication dated 07.02.2023 are absent in the impugned order dated 01.12.2016.

16. Having found that the order dated 01.12.2016 suffers from various legal infirmities and especially the non-consideration of the mandatory provisions of the Rules of 2016, we are of the view that a writ of mandamus could not be issued directing the Municipal Corporation to implement such

order. It is well settled that a writ Court would not compel an Authority to comply with an order which is found to be not in accordance with law. For this reason, we find that the ratio of the decisions in *State of Kerala* and *Ismail Shekh Gulam Abbas and others* (supra) relied upon by the learned Senior Advocate for the petitioner in Writ Petition No. 1404 of 2022 would not assist the said petitioner.

17. In the light of aforesaid discussion, the following order is passed:

- (i) The order dated 01.12.2016 passed under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 by the Hon'ble Minister of State, Urban Development Department, Mantralaya, Mumbai is set aside.
- (ii) The Municipal Corporation shall take all necessary steps in the matter of determination of the buffer zone by following the procedure prescribed by the Rules of 2016 in view of the communication dated 07.02.2023 issued by the Urban Development Department.
- (iii) If the applications seeking necessary permission as filed by the petitioners in Writ Petition Stamp No.5050 of 2021 and Writ Petition No. 4373 of 2021 are pending, the same shall be decided in accordance with law expeditiously. The petitioner in Writ Petition No.1404 of 2022 is at liberty to apply afresh for seeking

approval to its layout in accordance with law.

- (iv) Writ Petition No.1404 of 2022 stands dismissed. Writ Petition Stamp No. 5050 of 2021 and Writ Petition No.4373 of 2021 are partly allowed in aforesaid terms.
- (v) Rule is disposed of in all the aforesaid writ petitions leaving the parties to bear their own costs.

(M. W. CHANDWANI, J.)

(A.S.CHANDURKAR, J.)

Andurkar..