

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

WRIT PETITION NO. 8803 OF 2021

Nitin Dwarkadas Nyati]
Being the Sole Proprietor of Nyati Housing]
having office at Nyati Unitree, Survey No.]
103/129, Plot No.B+C of CTS Nos. 1995 &]
1996B, Yerwada, Pune Nagar Road,]
Pune 411 006.]
Through its constituted attorney]
Srinivas Iyer] .. Petitioner.
v/s.
1 Union of India]
through the Secretary, Ministry of]
Civil Aviation Corporate Head]
Quarters, Rajiv Gandhi Bhavan,]
Safdarjung Airport, Block-A,]
New Delhi 110 003.]
Also at
Aayakar Bhavan, 2nd Floor, Maharshi]
Karve Road, New Marine Lines,]
Mumbai 400 020.]
2 Ministry of Defence, Government of]
India, Raksha Mantralaya, New Delhi]
through its under Secretary]
Also at:]
Sir Phirozshah Mehta Road, Kala]
Goda, Fort, Mumbai 400 001.]
3 Office In-charge, D ops (ATS)]
Room No.314, Air Head Quarters]
(Vayu Bhavan), Rafi Marg, New]
Delhi 110 011.]
4 Group Captain, Operation ATS,]
Air Head Quarters (Vayu Bhavan)]
Rafi Marg, New Delhi 110 011.]
5 Command ATC Officer,]
HQ SWAC, IAF, Vayu Shakti Nagar,]
Chiloda, Gandhi Nagar,]

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6 Gujarat 382 042.]
6 Pune Metropolitan Region]
Development Authority]
Maharaj Sayaji Gaikwad Road,]
Udyog Bhavan, Aundh, Pune 411 067.]
7 Pune Municipal Corporation]
PMC Main Building, Near Mangala]
Theatre, Shivajinagar, Pune 411 005.] .. Respondents.

Dr. Milind Sathe, Sr. Advocate with Mr. Saket Mone with Mr. Subit Chakrabarti and Mr. Abhishek Salian i/b. Vidhi Partners, for the Petitioner. Ms. Savita Ganoo with Mr. D. P. Singh, Mr. Chaitnya Chavan & Mr. Gaurav Baluni, for Respondent Nos. 1 to 5- UOI.
Mr. Rohit Sakhadeo, for Respondent No.6- PMRDA.

**CORAM: SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA,JJ.**

**RESERVED ON: 16th OCTOBER, 2023.
PRONOUNCED ON: 23rd OCTOBER, 2023.**

JUDGMENT (Per FIRDOSH P. POONIWALLA,J.):-

Heard.

2 **RULE.** Rule made returnable forthwith and heard finally by consent of the parties.

3 By the present Petition, the Petitioner, Nitin Dwarkadas Nyati, being the Sole Proprietor of Nyati Housing, challenges the letters dated 12th May, 2021 and 20th September, 2021 issued by Respondent No.4, refusing revalidation of a No Objection Certificate dated 22nd May, 2015 (“the said NOC”) issued by Respondent No.2 and seeks a Writ of Mandamus directing Respondent Nos. 3 to 5 to issue revalidated NOC to the Petitioner in accordance with law.

4 M/s. D. S. Kulkarni Developers Limited, M/s. D. S. Kulkarni & Company and M/s. D. S. Kulkarni & Associates were entitled in their capacity either as the owners and/or holders of development rights to the contiguous block of land admeasuring 4,13,345 sq. mtrs. situated in villages Kirkitwadi and Dhayari, Taluka Haveli, District Pune (“the larger land”).

5 Pursuant to an application made by them, the said NOC was issued by Respondent No.2, under Notification No. S.O. 84(E), dated 14th January, 2010, (“the 2010 Notification”), from Aviation Angle, with respect to the IAF Airfield, Pune, for construction of a 99.128 mtrs height building at Survey Nos. 124/4 (part), 124/6 (part), 124/7(part), 124/12 (part) and 124/13 (part) at village Dhayari, Taluka Haveli, District Pune (“the said property”) by M/s. D. S. Kulkarni Developers Limited, subject to the following conditions:-

“(a)The NOC is from ‘Aviation Angle’ with respect to IAF airfield Pune and cannot be treated as a document for claim of title of land on which building is proposed.

(b) No Objection to such construction shall also be obtained separately from any other defence establishment in the vicinity of such construction and any other relevant government authorities.

(c) The vertical extent (highest point) of the buildings at Latitude 18o 26’ 33”N Longitude 73o 48’ 02” E shall not exceed 742.128 Meters above mean sea level or 99.128 Meters above ground level whichever is lower. No extension or structure permanent or temporary (eg. Antennas, munties, lift machine room, overhead water tank, cooling towers, sign boards etc.) shall be permitted above the cleared height.

(d) Standard obstruction lightings as per IS 5613 notification and International Civil Aviation Organization (ICAO) standards as stipulated in ICAO-Annex-14 is to be provided by the company. The lights shall be kept 'ON' at all times. Provision shall be made for standby power supply to keep the lights 'ON' during power failure. Company shall carry out periodic maintenance of the lights to keep them in serviceable and visible condition.

(e) Closed garbage containers shall be used in the building complex in order to avoid bird activity.

(f) No light or a combination of lights which by reason of its intensity, configuration or colour may cause confusion with the aeronautical ground lights of the airport shall be installed at the site at any time during or after the construction of the building.

(g) The commencement and completion of works including installation of obstruction lights shall be intimated to AOC, Air Force Station Pune and CATCO, SWAC, IAF, Sector-9, Gandhinagar, Gujarat -09. Failure to render these certificates within the stipulated time shall lead to cancellation of NOC.

(h) The validity of this NOC is five years from the date of issue. If the construction is not completed within five years of issue or found to be in deviation from original proposal, the NOC shall be deemed null and void. It will be the responsibility of the applicant to obtain fresh NOC for the proposal.

(i) Required security clearance should be obtained through MHA/IB of the foreign Nationals/ Indian representative employed/ to be employed by the company in India.

2. You are also requested to obtain 'No Objection' from other concerned Government Organization/ Agencies as required."

6 By Development Permission and Commencement Certificate dated 16th October, 2015, Respondent No.6 issued revised sanctioned lay-out and building plan for construction to be carried out on the larger land, which included the said property. Under this revised sanctioned lay-out and building plan, a Phase – VIII was also identified comprising of four towers A, B, C and D, which were to consist of a common Basement Plus Three Podium/ Parking Floors Plus One Stilt/ Ground Floor and thereafter 31 upper floors.

7 The DSK entities mentioned above had developed projects in the name and style of ‘DSK Vishwa’ on the larger land. Phase VIII of DSK Vishwa project was to be carried out on the said property.

8 By an Agreement for Sale dated 15th March, 2017 and a Deed of Conveyance dated 30th June, 2017, the Petitioner purchased the said property from the above mentioned DSK entities. In addition to the monetary consideration to be paid by the Petitioner to the said DSK entities, the Petitioner was obligated to construct and hand over to the said DSK entities 46 flats in Towers/ Wings ‘A’ and ‘B’ out of the buildings to be constructed on the said property in terms of the said Agreement for Sale and Deed of Conveyance.

9 In or around October, 2017, village Dhayari, and more particularly the said property, came to be included within the limits of the Pune Municipal Corporation (Respondent No.7).

10 In the meantime, the State of Maharashtra registered an offence under the Maharashtra Protection of Interest of Depositors (In

Financial Establishments) Act, 1999 (“MPID Act”) and the Prize Chits & Money Circulation Schemes (Banking) Act, 1978 (“Prize Chits Act”) on the basis of the complaints received from a number of depositors against the said DSK entities.

11 The Deputy Secretary (Home Department) of the State of Maharashtra issued a Notification dated 5th May, 2018, under the provisions of the MPID Act, attaching the properties specified in the schedule appended thereto, and also appointed the Sub-divisional Officer, Maval- Mulshi, Pune, as Competent Authority to exercise control over the attached properties. The said property was also attached and listed at Serial No.312 of the said Notification. In view of the same, the Petitioner filed an Application before the Sessions Court at Pune, being Miscellaneous Application No. 30/2018, under Section 7(3) of the MPID Act, seeking removal/ release of the said property from the list of attached lands. By an Order dated 31st July, 2019, the Sessions Court, Pune, rejected the said Miscellaneous Application.

12 The Petitioner, thereafter, preferred Criminal Appeal No.1164 of 2019 before this Court to quash and set aside the said Order dated 31st July, 2019. By an Order dated 18th October, 2019, this Court allowed the said Criminal Appeal and quashed and set aside the said Order dated 31st July, 2019. During the course of hearing of the said Criminal Appeal, the Petitioner filed an undertaking before this Court to hand over 46 flats to be constructed (which were to be handed over to the DSK entities), within three years from the commencement of construction, to the State of Maharashtra.

13 It is the case of the Petitioner that, after becoming entitled to the said property, the Petitioner had obtained requisite approvals and commenced mobilisation work and allied development work on the said property, and, thereafter, immediately after the said Order dated 18th October, 2019 was passed, started full scale construction on the said property. It is also the case of the Petitioner that, till date of the filing of this Petition, construction of basement, podium/ parking floors and plinth had been duly carried out.

14 The building plans sanctioned by Respondent No.6 on 16th December, 2015 were revalidated by Respondent No.7 vide Commencement Certificate dated 31st December, 2020.

15 In the meanwhile, by a letter dated 7th March, 2019, addressed to Respondent No.5, DSK Developers Limited and the Petitioner referred to the said NOC and forwarded to Respondent No.5 the said Development Permission and Commencement Certificate dated 16th October, 2015. It is the case of the Petitioner that the same was done as required under paragraph 1 (g) of the said NOC.

16 By a letter dated 1st November, 2019, addressed to Respondent No.5, the Petitioner applied for revalidation of the said NOC as per paragraph 1(h) of the said NOC. By the said letter, the Petitioner pointed out that the project had already commenced and the construction work was under way and that the Commencement Certificate issued by PMRDA, Pune (Respondent No.6) had been submitted by its letter dated 7th March, 2019. Further, in view of the 2010 Notification, and the Notification No. GSR751 (E) dated 30th September, 2015, by which the

Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 (“the 2015 Rules”) had been brought into force, and in view of the fact that the construction had already commenced within a period of five years from the date of the said NOC, the Petitioner, in light of Rule 16 of the 2015 Rules, sought revalidation of the said NOC without reassessment of the height of the building.

17 Since Respondent No.5 did not revalidate the said NOC, the Petitioner filed a representation dated 30th January, 2021 with Respondent Nos. 3 & 4, seeking issuance of the revalidated NOC.

18 By a letter dated 12th May, 2021, addressed to the Petitioner, Respondent No.4 stated that, as per the existing policy guidelines on the subject, no provision existed for revalidation/ extension of NOC for construction of buildings around Indian Air Force aerodromes. Respondent No.4 further intimated that the proposed construction infringed the Obstacle Limitation Surface with respect to the NDA airfield, and, hence, NOC for the subject construction cannot be granted in the present form. Respondent No.1 stated that the Petitioner could apply afresh for examination of his proposal under shielding criteria (if applicable), along with the requisite documents.

19 By a letter dated 19th June, 2021, addressed to Respondent No.3, the Petitioner responded to the said letter dated 12th May, 2021. By the said letter, the Petitioner stated his case and submitted that the refusal by the said letter dated 12th May, 2021 was illegal and liable to be reconsidered.

20 Thereafter, by a letter dated 15th September, 2021, addressed to Respondent No.3, the Petitioner stated that it had received legal advice to withdraw the Appeal made by him by the said letter dated 19th June, 2021 and to pursue appropriate remedy in accordance with law. Further, the Petitioner stated that, in any case, an enormous amount of time had been taken to decide the said Appeal. The Petitioner further stated that he was therefore seeking to withdraw the Appeal made by the said letter dated 19th June, 2021, with liberty to approach the appropriate Court.

21 By a letter dated 20th September, 2021, addressed to the Petitioner, Respondent No.4 referred to the said letter dated 19th June, 2021 of the Petitioner, and, for the reasons stated in the said letter dated 20th September, 2021, stated that the shelter sought by the Petitioner under Rule 16 of the 2015 Rules would not be applicable to the case of the Petitioner and NOC for the subject construction could not be granted.

22 In the light of this factual situation, the Petitioner filed the present Petition, seeking the following final reliefs:-

“(a) That this Hon’ble Court be pleased to issue a Writ of Certiorari or a Writ/ Order in the nature of Certiorari under Article 226 of the Constitution of India, calling for the records and proceedings in relation to the Impugned First Refusal letter dated 12th May, 2021 (at Exhibit -J) and after examining the legality, validity and propriety thereof, be pleased to quash and set aside the same;

(b) That this Hon’ble Court be pleased to issue a Writ of Certiorari or a Writ / Order in the nature of Certiorari under Article 226 of the Constitution of India, calling for the records and proceedings in relation to the Impugned Second Refusal letter dated 20th September, 2021 (at

Exhibit M), and after examining the legality, validity and propriety thereof, be pleased to quash and set aside the same;

(c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ/ Order in the nature of Mandamus under Article 226 of the Constitution of India, thereby directing the Respondent Nos. 3 to 5 to issue revalidated NOC to the Petitioner in accordance with law."

23 Dr. Milind Sathe, the learned Senior Counsel appearing on behalf of the Petitioner, made submissions in support of the Petition. Dr. Sathe referred to Rule 16 of the 2015 Rules, which reads as under:-

"16. Savings:- Nothing in these rules shall affect the height clearances assessed and duly issued under the notifications issued by the Government of India in the Ministry of Civil Aviation vide notification numbers S.O. 84(E) dated the 14th January, 2010 and S.O. 1589 (E) dated the 30th June, 2008 during their assessment validity period of eight years for the buildings and twelve years for the structures such as masts, chimney and towers etc., within which the applicants have to complete the structures and obtain the completion certificate from the concerned authorities.

Provided that in cases where the construction work has not started during the initial validity period of five years for the buildings or within seven years for the structures such as mast, chimney etc. revalidation shall not be considered and the height of such buildings or structures shall be reassessed in accordance with the provisions of these rules."

24 Dr. Sathe, submitted that, in view of Rule 16 of the 2015 Rules, the Petitioner's project did not need a fresh NOC and the Respondents were bound to revalidate the existing NOC dated 22nd May, 2015 since the work had commenced within five years from the date of

the said NOC. Dr. Sathe submitted that Rule 16, read with the proviso thereto, categorically provides that the 2015 Rules would not apply in respect of height clearance issued under the 2010 Notification. The existing NOC would be outside the purview of the other provisions of 2015 Rules. He submitted that the proviso to Rule 16 provides for a general bar on revalidation in cases where the construction work had not started within five years. Thus, by necessary implication, if construction work had commenced during the five years contemplated, as in the present case, the same would be saved by the operation of the Savings Clause contained in Rule 16 and would not be hit by the bar against revalidation. He submitted that, therefore, the Petitioner had a right to seek revalidation of the existing NOC.

25 Dr. Sathe further submitted that a contention had been raised by the Respondents that the building permission dated 16th October, 2015, had lapsed, and that revalidation of the same had been granted only on 31st December, 2020, which is after the expiry of the period granted in the said NOC, and thus purportedly revalidation of the said NOC would not be possible. He submitted that this contention was totally misconceived and contrary to law.

26 In this context, Dr. Sathe referred to Section 48 of the Maharashtra Regional & Town Planning Act, 1966 (“ the MRTTP Act”) and submitted that every permission for development, granted or deemed to be granted, under Sections 45 or 47, shall remain in force for a period of one year from the date of such grant, and shall thereafter lapse, provided that if development is completed up to the plinth level, or if there is no plinth, then up to the upper level of the basement/ stilt, within a period of one year or such extended period, it shall not be necessary to make an

application for fresh permission. He submitted that, in such statutory back-drop, it is the Petitioner's contention that the permission of 16th October, 2015, was, in fact, a revision in respect of the entire D S K Vishwa project, which was being constructed on the larger land. The aforesaid project was an on-going project, which was going on even before the sanction of 16th October, 2015. Different phases continued to be constructed post the revised sanction of 16th October, 2015, and plinth checking certificates were granted both pre and post permission dated 16th October, 2015. The Petitioner was developing Phase VIII of the sanctioned lay-out, which is the said property admeasuring 16,363.25 sq.mtrs, which was identified as a group housing project. He submitted that, in accordance with the provisions of Section 48 of the MRTP Act, and, more particularly, the second proviso thereto, since the plinth checking certificates were issued for Phases VI and VII, construction was ongoing, and the said property being part of the same lay-out, the question of lapsing of the permission dated 16th October, 2015, did not arise.

27 Dr. Sathe further submitted that the said property was subsequently included within the limits of the Pune Municipal Corporation (Respondent No.7) on 14th October, 2017, and it was only somewhere in the year 2019-2020 that the process of sanctioning the projects in the merged limits got streamlined. Accordingly, the Petitioner had to revalidate the plans, which were granted approval on 31st December, 2020. Dr. Sathe submitted that the aforesaid clearly demonstrates that there was no lapsing of permission as per the applicable law, i.e. Section 48 of the MRTP Act, and that the Petitioner had commenced construction within a period of five years from the date of the said NOC.

28 Dr. Sathe submitted that, for this reason, the case of the Petitioner for revalidation of the said NOC is clearly permissible as per Rules 16 of the 2015 Rules.

29 Dr. Sathe further submitted that Condition No. 1 (g) of the said NOC required the Petitioner to, *inter alia*, communicate the receipt of the Commencement Certificate to Respondent No.5. He submitted that this condition had been duly complied with as the permission dated 16th October, 2015, was duly submitted by the Petitioner by the aforesaid letter dated 7th March, 2019.

30 In conclusion, Dr. Sathe submitted that the Petitioner was entitled to revalidation of the said NOC.

31 Ms. Savita Ganoo, the learned Counsel appearing on behalf of Respondent Nos. 1 to 5, opposed the granting of any reliefs in the present Petition.

32 In the context of the applicability of the 2015 Rules and the obtaining of NOC with regard to the NDA Airfield, Ms. Ganoo submitted that the said NOC was issued under the 2010 Notification keeping in mind the Aviation Angle in respect of the IAF Airfield, Pune. The said NOC clearly stipulated an obligation on the NOC holder to obtain the necessary NOC from any other defence installations in the vicinity. Upon coming into force of the 2015 Rules, a separate aerodrome was included in the list of Defence Aerodromes, from which a height NOC was necessarily to be obtained for raising construction in the prohibited areas, and, hence, a separate NOC with regards to the Aviation Angle pertaining to the NDA

Airfield, Pune was necessary.

33 Ms. Ganoo further submitted that the Petitioner had not challenged the validity of the said NOC or its terms and conditions. Therefore, the conditions contained therein were acceptable to the Petitioner. In view of the conditions contained in paragraph 1(b) of the said NOC, it was obligatory on the part of the Petitioner to obtain a NOC with regards the NDA Airfield, which was only 3.5 kms from the proposed construction site.

34 Ms. Ganoo further submitted that, as per Rule 4 of the 2015 Rules, there existed a blanket prohibition on constructions on any land within a radius of 20 kms from the Aerodrome Reference Point. She submitted that the Petitioner's construction site was only 3.5 kms from the NDA Airfield, and from a reading of the said Rule 4 of the 2015 Rules, it is evident that the same would clearly apply to all constructions, and certainly to the Petitioner's construction which is at a distance of 3.5 kms from the NDA Aerodrome.

35 Ms. Ganoo further submitted that, under Section 9A (1)(ii) of the Aircraft Act, 1934 ("Aircraft Act"), where the height of any building or structure or tree on land within a radius of 20 kms from the Aerodrome Reference Point is higher than the specified height, the Authorities are empowered to direct the owner or the person having control on such building or structure to reduce the height thereof so as not to exceed the specified height. Ms. Ganoo submitted that, upon a combined reading of the said NOC dated 22nd May, 2015, Rule 4 of the 2015 Rules and Section 9A of the Aircraft Act, it is clear that the 2015 Rules would clearly be

applicable to the said property of the Petitioner and, consequently, the Petitioner was required to obtain a NOC having regard to the NDA Aerodrome, Pune, separately.

36 Next, Ms. Ganoo submitted that Rule 16 of the 2015 Rules did not absolve the Petitioner from obtaining a NOC with respect to the NDA, Aerodrome, Pune. In this context, Ms. Ganoo submitted that, from the said Rule 16, it is evident that it only saves the height clearances procured under the 2010 Notification qua the aerodromes already assessed in terms of the height restrictions. However, it did not provide an absolute exemption from obtaining a NOC with respect to the aerodromes included afresh in the 2015 Rules. She submitted that, in other words, Rule 16 of the 2015 Rules provides that the Height NOC procured under the 2010 Notification, in respect of the aerodromes covered thereunder, may not be subjected to any reassessment. However, the 2015 Rules nowhere stipulate an exemption from them being applicable to aerodromes included in the 2015 Rules for the first time. She submitted that the interpretation sought to be given by the Petitioner to Rule 16 of the 2015 Rules would render the 2015 Rules otiose.

37 Ms. Ganoo further submitted that, if Rule 16 of the 2015 Rules is interpreted in the manner suggested by the Petitioner, then such an interpretation would be in clear violation of Section 9A of the Aircraft Act.

38 Ms. Ganoo submitted that, after coming into force of the 2015 Rules, the requirement of obtaining a NOC from the angle of NDA Aerodrome was an independent obligation of the Petitioner. On a

harmonious construction of Section 9A of the Aircraft Act with Rule 16 of the 2015 Rules, it is clear that Rule 16 did not absolve the Petitioner from procuring a NOC with regard to the NDA Aerodrome, Pune, merely because the Petitioner had a NOC with regard to the Lohegaon Airport at Pune.

39 Ms. Ganoo also submitted that the Petitioner had never obtained a NOC in respect of the NDA Aerodrome, and, hence, there was no question of applying Rule 16 of the 2015 Rules to the facts of the present case.

40 Ms. Ganoo further submitted that the proviso to Rule 16 did not apply to the case of the Petitioner. In this context, Ms. Ganoo submitted that, even assuming that the Petitioner was correct in submitting that it was entitled to revalidate the said NOC on account of the provisions of the proviso to Rule 16 of the 2015 Rules, it was still necessary for the Petitioner to demonstrate that it had commenced construction within the validity period of five years. In this context, Ms. Ganoo submitted that a perusal of the approval dated 31st December, 2020 showed that the same was issued based on the proposal submitted on 18th November, 2020 and it nowhere referred to the earlier Commencement Certificate dated 16th October, 2015. She submitted that the Plinth Checking Certificate dated 12th April, 2021 issued by Respondent No. 7 did not refer to the Commencement Certificate of 2015 and did not mention the date of the construction. She further submitted that, for the purpose of considering whether the case of the Petitioner fell within the proviso of Rule 16 of the 2015 Rules, it is the said property which is in consideration and not the larger land, and the constructions undertaken

on the larger land are irrelevant. Ms. Ganoo submitted that the onus was upon the Petitioner to establish that the construction had commenced within the period of five years from the date of the issuance of the said NOC. However, the Petitioner had miserably failed to produce a single document to demonstrate that the construction had commenced on the said property within the initial validity period of five years.

41 Ms. Ganoo also submitted that, in the present case, because the construction had not commenced within the validity period of the Commencement Certificate dated 16th October, 2015, the Petitioner had to submit a proposal on 18th November, 2020, and, pursuant to the same, plans were sanctioned under the Commencement Certificate dated 31st December, 2020. Thus, the Commencement Certificate was granted only on 31st December, 2020, which is post the validity period of five years of the said NOC. Ms. Ganoo submitted that no construction has taken place in the initial period of five years from the date of issuance of the said NOC, and, therefore, the said NOC had lapsed, and the Petitioner would have to seek a fresh NOC under the 2015 Rules. Ms. Ganoo also submitted that, for these reasons, the proviso to Rule 16 would not apply to the fact situation of the present case.

42 Ms. Ganoo further submitted that safety and security concerns augment the necessity of a NOC in respect of the NDA Aerodrome. In this context, she submitted that this Court, while exercising its writ jurisdiction, cannot adjudicate upon the issue of security interest. The written submissions filed on behalf of Respondent Nos. 1 to 5 referred to several judgments in support of the aforesaid propositions.

43 In our view, this matter turns mainly on the interpretation of Rule 16 of 2015 Rules, which reads as under:-

“16. Savings:- Nothing in these rules shall affect the height clearances assessed and duly issued under the notifications issued by the Government of India in the Ministry of Civil Aviation vide notification numbers S.O. 84(E) dated the 14th January, 2010 and S.O. 1589 (E) dated the 30th June, 2008 during their assessment validity period of eight years for the buildings and twelve years for the structures such as masts, chimney and towers etc., within which the applicants have to complete the structures and obtain the completion certificate from the concerned authorities.

Provided that in cases where the construction work has not started during the initial validity period of five years for the buildings or within seven years for the structures such as mast, chimney etc. revalidation shall not be considered and the height of such buildings or structures shall be reassessed in accordance with the provisions of these rules.”

44 The first part of Rule 16 provides that nothing in the 2015 Rules shall affect the height clearances assessed and duly issued under the 2010 Notification and a Notification No. S.O. 1589 (E) dated 30th June, 2008 during their assessment validity period of eight years for buildings and twelve years for structures such as mast, chimney, etc., within which the applicant would have to complete the structures and obtain the completion certificate from the concerned authorities. Therefore, as per the provisions of the first part of Rule 16, if height clearances have been assessed and issued under the 2010 Notification, and the construction of the building has been completed within the assessment validity period of eight years, and of the other structures within twelve years, and Completion Certificate has been obtained from the concerned authorities,

then, nothing in the 2015 Rules would be applicable to the height clearances assessed and issued in respect of the said construction, and there would be no question of the applicant seeking revalidation.

45 As far as the proviso to Rule 16 is concerned, it provides that, in a case, where the construction work has not started during the initial validity period of five years for the building, or within seven years for the other structures as mentioned therein, revalidation shall not be considered and the height of the said building or structure shall be reassessed in accordance with the provisions of the 2015 Rules. Therefore, the proviso clearly provides that, if the construction work has not started during the initial validity period of five years for the building, or seven years for other structures, then the person obtaining the NOC under the 2010 Notification would not be entitled to apply for revalidation of the said NOC, and, in such an event, the height of the building or the structures would have to be reassessed in accordance with the provisions of the 2015 Rules. In other words, as per the proviso, such a person would have to apply for a fresh NOC and the construction would be governed by the 2015 Rules.

46 In our view, a conjoint reading of the first part of the Rule 16, and the proviso thereto, necessarily means that, if construction has commenced during the initial validity period of five years for the building and seven years for the other structures, and is not completed within eight years for the building, and twelve years for the other structures, then, in such an event, a party would have to apply for revalidation of the NOC issued under the 2010 Notification, in which case, the height of the said building or structures shall not be reassessed in accordance with the

provisions of the 2015 Rules but would have to be considered as per the provisions of the 2010 Notification.

47 Further, in our view, since, in such a case of revalidation, the height of the building or structures has not to be reassessed in accordance with the provisions of 2015 Rules, the restrictions imposed by the 2015 Rules will not apply to the said building and structures, including the restrictions imposed on constructions, erection, trees etc, by Rule 4 of the 2015 Rules, read with the Schedules referred to therein. Therefore, in such a case, the restrictions regarding the NDA Aerodrome, which have been brought in for the first time in the 2015 Rules, by referring to the NDA Aerodrome at Serial No.58 of Schedule V, and which were not covered by the 2010 Notification, would not be applicable.

48 In the present case, in our view, the constructions on the Petitioner's said property had commenced within a period of five years from the date of the said NOC i.e. within a period of five years from 22nd May, 2015.

49 Respondent No.6 had issued Development Permission and Commencement Certificate dated 16th October, 2015 in respect of the larger land. This position is not disputed. It is also not disputed that the said Development Permission and Commencement Certificate covered the said property which is the subject matter of the said NOC. In October, 2017, the said property came to be included within the limits of the Pune Municipal Corporation (Respondent No.7). The said Development Permission and Commencement Certificate dated 16th October, 2015 issued by Respondent No.6 was revalidated by Respondent No.7 vide a

Commencement Certificate dated 31st December, 2020. The said Commencement Certificate dated 31st December, 2020 issued by Respondent No.7 shows that it is in respect of the said property which is the subject matter of the said NOC and it is for revalidation of the Commencement Certificate.

50 In our view, Dr. Sathe is right in submitting that the permission of 16th October, 2015 had not lapsed. As rightly contended by Dr. Sathe, the D S K Vishwa project, which was being constructed on the larger land, was an ongoing project which was going on even before the sanction of 16th October, 2015. Different phases continued to be constructed post the sanction of 16th October, 2015 and plinth checking certificates were granted both pre and post the permission dated 16th October, 2015. The Petitioner was developing Phase VIII of the sanctioned lay-out, which is on the said property. In accordance with the provisions of Section 48 of the MRTP Act, and more particularly the second proviso thereto, since the plinth checking certificates were issued for Phases VI and VII, the construction was on going, and the said property being part of the same lay-out, the question of lapsing of permission granted on 16th October, 2015, did not arise. Further, the said property was subsequently included within the limits of Pune Municipal Corporation (Respondent No.7) on 14th October, 2017. The Petitioner was required to revalidate the plans, which were granted approval on 31st December, 2020.

51 Further, these submissions of Dr. Sathe are substantiated by the Additional Affidavit dated 19th February, 2022 of Shrinivas K. Iyer, filed on behalf of the Petitioner, which gives details in respect of the above mentioned submissions of Dr. Sathe.

52 Further, in paragraph 13.12 of the Petition, the Petitioner has stated that, immediately after the order dated 18th October, 2019 was passed by this Court releasing the said property from attachment, the Petitioner has started full scale construction on the said property, and till the date of the Petition, the construction of basements podium/parking floors and plinth had been carried out. This position is not disputed in the Affidavit in Reply dated 17th May, 2022 filed by Group Captain K. Praveen Kumar on behalf of Respondent Nos. 1 to 5. In fact, in paragraph 17 of the said Affidavit, it is stated that construction had not been completed within the validity period of five years mentioned in the said NOC and it has not been stated that construction had not yet commenced on the said property.

53 Further, although, Respondent Nos. 1 to 5 have sought to argue that the building permission granted on 16th October, 2015 had lapsed, and that construction work had not commenced on the said property within a period of five years, a perusal of the impugned letters dated 12th May, 2021 and 20th September, 2021 shows that the said ground has not been mentioned in either of the said letters as a ground for refusing revalidation of the said NOC sought by the Petitioner.

54 Further, when the Commencement Certificate dated 16th October, 2015 was forwarded by the Petitioner by a letter dated 7th March, 2019, to intimate the commencement of works as required by paragraph 1(g) of the said NOC, Respondent No.5 did not raise any contention stating that construction had not commenced on the said property.

55 For all the aforesaid reasons, we are not able to accept the

submission of Respondent Nos. 1 to 5 that the Commencement Certificate dated 16th October, 2015, had lapsed and that construction had not commenced on the said property within a period of five years from the date of the said NOC.

56 However, admittedly, the construction on the said property has not been completed by the Petitioner within a period of eight years from the date of the said NOC, i.e., 22nd May, 2015, as provided in the first paragraph of Rule 16 of the 2015 Rules.

57 In these circumstances, i.e., since the Petitioner has commenced construction on the said property within a period of five years from the date of the said NOC, but has not completed the same within a period of eight years, as per the provisions of Rule 16 of the 2015 Rules the Petitioner would be entitled to apply for revalidation of the said NOC, and the Petitioner's application for revalidation would have to be considered in accordance with the 2010 Notification, and not as per the 2015 Rules.

58 Since, as per the provisions of Rule 16 of the 2015 Rules, on the Petitioner making an application for revalidation, the height of the building or structures on the said property shall not be reassessed in accordance with the provisions of the 2015 Rules, the restrictions imposed by Rule 4 of the 2015 Rules would not be applicable to the construction of the Petitioner on the said property. Since it is an admitted position that no restrictions have been imposed in respect of the NDA Aerodrome in the 2010 Notification, and it is only for the first time that, in the 2015 Rules, restrictions have been imposed in respect of the NDA Aerodrome, in our

view, while considering the application of the Petitioner for the revalidation of the said NOC, the height restrictions imposed by the 2015 Rules in respect of the NDA Aerodrome cannot be considered and are not applicable.

59 It is the submission of Respondent Nos. 1 to 5 that Rule 16 of the 2015 Rules only saves the height clearances procured under the 2010 Notification qua the aerodromes already assessed in terms of height restrictions, and that it does not provide an absolute exemption from obtaining a NOC with respect to the aerodromes included afresh in the 2015 Rules. In our view, the said submission of Respondent Nos. 1 to 5 cannot be accepted. As already held by us above, in a case where construction has started during the initial validity period of five years but has not been completed during the period of eight years, the concerned person is entitled to apply for revalidation of the NOC granted to him, and, while considering revalidation, the height of the building or constructions shall not be reassessed in accordance with the provisions of 2015 Rules. This necessarily means that the restrictions imposed by the 2015 Rules, for the first time, in respect of the NDA Aerodrome, would not be applicable and cannot be considered while considering the granting of revalidation.

60 We are also unable to accept the submission of Respondent Nos. 1 to 5 that, if Rule 16 of the 2015 Rules is interpreted in the manner suggested by the Petitioner, then the said interpretation would be in clear violation of Section 9A of the Aircraft Act. Section 9A of the Aircraft Act gives the Central Government the power to prohibit or regulate the construction of buildings, planting of trees etc. by issuing notifications. In

exercise of the said powers, the 2010 Notification and the 2015 Rules have been issued . Once the 2010 Notification and the 2015 Rules have been issued in exercise of the power vested in the Central Government under Section 9A of the Aircraft Act, then it is the said 2010 Notification and 2015 Rules which would have to be interpreted as per the provisions contained therein. Therefore, Rule 16 of the 2015 Rules would have to be interpreted in terms of the language of the said Rule as has been done by us. In any case, in our view, there is nothing in Rule 16, or in the interpretation sought to be placed thereupon by the Petitioner, which is contrary to the provisions of Section 9A of the Aircraft Act. Rule 16 seeks to save certain situations which, in no manner whatsoever, is contrary to the provisions of Section 9A of the Aircraft Act. Further, it is always open to the Central Government, to exercise its powers under Section 9A of the Aircraft Act, to issue a Notification directing the demolition of any building or structure or tree or for reducing the height thereof by following the procedure prescribed under Section 9A of the Aircraft Act and by paying compensation under Section 9B of the Aircraft Act.

61 Further, we are also unable to accept the submission of Respondent Nos. 1 to 5 that safety concerns augment the necessity of the Petitioner obtaining a NOC in respect of the NDA Aerodrome. If, as per the provisions of the 2015 Rules, and, in particular, Rule 16 thereof, a NOC in respect of the NDA Aerodrome is not required to be obtained by the Petitioner, then it cannot be said that it should be obtained keeping in mind certain safety concerns. It is obvious that the 2010 Notification as well as the 2015 Rules have been issued by the Central Government keeping in mind these safety concerns and, therefore, there is no question of considering any so-called additional safety concern *de hors* the said

2010 Notification and the 2015 Rules.

62 Ms. Ganoo has also submitted that the Petitioner must obtain a NOC in respect of the NDA Aerodrome on account of security concerns and that this Court, whilst exercising its writ jurisdiction, cannot adjudicate on the issue of security interest.

63 In the written submissions filed on behalf of Respondent Nos. 1 to 5, certain judgments have been cited in support of these two propositions.

64 From a perusal of the impugned letters dated 12th May, 2021 and 20th September, 2021, we find that, whilst refusing the revalidation of the said NOC as sought by the Petitioner, they do not contain even a whisper about any security concern regarding the NDA Aerodrome. For these reasons, “*security concern*” cannot be taken as a ground by Respondent Nos. 1 to 5 for defending the refusal of revalidation of the NOC or for submitting that a NOC is required in respect of the NDA Aerodrome. It is well settled in law that, when a statutory functionary makes an order based on certain grounds, it has to be judged by the reasons mentioned therein and cannot be supplemented by fresh reasons in the shape of Affidavits or otherwise. Keeping in mind this well settled position in law, the validity or otherwise of the impugned letters dated 12th May, 2021 and 20th September, 2021 will have to be judged on the reasons mentioned therein and not on the basis of the arguments of “*security concerns*” which are not found therein, but have been sought to be supplemented in their Affidavit and arguments by Respondent Nos. 1 to 5. For these reasons, we are unable to accept the argument of Respondent Nos. 1 to 5 regarding security concerns and, therefore, we do

not feel the need either to refer to, or to deal with, the judgments cited in that regard in the written submissions of Respondent Nos. 1 to 5. Further, as already stated by us hereinabove, it is always open to the Central Government to exercise its powers under Section 9A of the Aircraft Act, to issue a Notification directing the demolition of any building or structure or tree or for reducing the height thereof by following the procedure prescribed under Section 9A of the Aircraft Act and by paying compensation under Section 9B of the Aircraft Act.

65 As far as the impugned letter dated 12th May, 2021 is concerned, it gives two reasons for not accepting the application of the Petitioner for revalidation of the said NOC. The first reason is that no provision exists for revalidation of a NOC for construction of buildings around Indian Air Force Aerodromes and the second reason is that the proposed construction infringes the Obstacle Limitation Surface with respect to the NDA Airfield, and, hence, NOC for the subject construction cannot be granted in the present form.

66 For all the reasons given by us hereinabove, neither of the aforesaid two reasons can be sustained.

67 As far as the impugned letter dated 20th September, 2021 is concerned, apart from the reason regarding obtaining of NOC in respect of the NDA Aerodrome (which we have already rejected), it seeks to give one additional reason i.e. that the said NOC was issued to M/s. D S Kulkarni Developers Limited, and, therefore, the said NOC cannot be transferred in the name of the Petitioner as no such terms and conditions were stipulated in the said NOC. In this context the said letter states that the Petitioner should have legally applied afresh for grant of NOC as per

the latest policy. In our view, the said additional reason also cannot be accepted. The said NOC has been issued in respect of construction on the said property. Therefore, the said NOC is granted in respect of the said property. Since the Petitioner is now the owner of the said property and entitled to carry on construction thereon, it would be only the Petitioner, and not M/s. D S Kulkarni Developers Limited, who have already sold the said property to the Petitioner, who can make an application for revalidation of the said NOC. For these reasons, the said ground in the said letter dated 20th September, 2021 also cannot be sustained.

68 In the aforesaid circumstances, and for all reasons stated by us hereinabove, the impugned letters dated 12th May, 2021 and 20th September, 2021 are liable to be quashed and set aside. In our view, the Petitioner's application dated 1st November, 2019 for revalidation of the said NOC will have to be considered by Respondent Nos. 1 to 5 as per the 2010 Notification, and not as per the 2015 Rules, and decided accordingly.

69 Accordingly, we hereby quash and set aside the impugned letters dated 12th May, 2021 and 20th September, 2021. We direct Respondent Nos. 1 to 5 to consider the Petitioner's application dated 1st November, 2019 for revalidation of the said NOC dated 22nd May, 2015 as per the 2010 Notification, and not as per the 2015 Rules, and to decide the same within a period of eight weeks from the date of this Judgement.

70 Rule is made absolute in the aforesaid terms.

71 In the facts and circumstance of the case, there will be no order as to costs.

(FIRDOSH P. POONIWALLA,J.)

(SUNIL B. SHUKRE,J.)

Mr. Abhishek Salian i/b. Vidhi Partners, for the Petitioner.

Mr. Devang Vyas, ASG with Ms. Savita Ganoo, Mr. D. P. Singh, Mr. Chaitanya Chavan, Ms. Anusha Amin and Ms. Vaibahvi Chavan, for Respondent Nos. 1 to 3.

Mr. Rohit Sakhadeo, for Respondent No.6-PMRDA.

At this stage, learned Shri Devang Vyas, learned Addl. Solicitor General of India, makes a request for staying the effect and operation of the judgement for a further period of four weeks from today. However, considering the fact that time of eight weeks has been given to the Respondents to decide the application of the Petitioner dated 1st November, 2019, we, find that it is not necessary to grant the said request and, therefore, it is rejected.

(FIRDOSH P POONTWALLA,J.)

(SUNIL B. SHUKRE,J.)