



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

WRIT PETITION NO.367 OF 2021

Sameer Baijanath Joshi,
aged 50 years, having office at
Chandan Cinema,
Irish park, Juhu, Mumbai
Maharashtra-400049.

...Petitioner

VERSUS

1. The Union of India
through the Secretary,
Ministry of Defence,
South Block, Room No.234,
New Delhi.
2. Administrative Commandant
for Station Commander,
Headquarters Maharashtra Gujarat
and Goa Area (HQ MG & G Area),
27, Assaye Building, First Floor,
Colaba, Mumbai -400 005.
3. The Municipal Corporation of Greater Mumbai,
Building Proposal (WS-I).
K/West Ward, 6th to 9th Floor,
Hindu Hrudyasamrat
Shri. Balasaheb Thackarey Market
Poonam Nagar, Jogeshwari (East)
Mumbai-400093.

...Respondents

Dr. Milind Sathe, Senior Advocate with Mr. Saket Mone, Mr. Bhushan Deshmukh, Mrs. Jasmine Kachalia, Ms. Tejasvi Sarvaiya, Mr. Viren Mandhle & Mr. Sahil Singh i/b M/s. Wadia Ghandy & co. for the Petitioner. Mr. Devang Vyas Sr. Advocate & Additional Solicitor General a/w. Anusha P. Amin a/w. Mr. Nirnajan Shimpi a/w. Vaibhavi Choudhary for the Respondent Nos. 1 and 2.
Mr. Sagar Patil for MCGM/Respondent No.3.

CORAM : SUNIL B. SHUKRE, J. &
FIRDOSH P. POONIWALLA, JJ.
RESERVED ON : 15th SEPTEMBER 2023
PRONOUNCED ON : 11th OCTOBER 2023

JUDGMENT (Per Firdosh P. Pooniwalla, J.) :

1 By earlier Orders passed by this Court, this Writ Petition was directed to be heard finally at the admission stage. Rule. Rule made returnable forthwith and the Petition is heard finally by consent of the parties.

2 The Petitioner is the owner of land admeasuring 3,627.90 sq. metres bearing Plot No.9-A, CTS No. 37 and 38A at Village Juhu, Taluka Andheri, in Juhu Vile Parle Development Scheme, Mumbai (“the said land”).

3 In 1973, a structure having a built-up area of 18,982.06 sq.ft. was constructed on the said land (“the said structure”). The same was used as a Cinema Hall named Chandan Cinema. The said structure had a height of 16.913 metres. The Completion Certificate in respect of the said structure was granted on 1st December 1973.

4 In 2017, the Municipal Corporation of Greater Mumbai (Respondent No. 3) issued a Notice dated 23rd March 2017, under Section 354 of the Mumbai Municipal Corporation Act 1888, to the Petitioner, stating that the said structure was in a ruinous condition, was likely to fall and was dangerous to any person occupying the same or passing by the same, and calling upon the Petitioner to repair/pull down the said structure within a period of thirty days from the date of receipt of the said Notice.

5 The Petitioner stopped operating a Cinema Theatre in the said structure. Being desirous of demolishing the said structure and reconstructing the same, the Petitioner prepared plans for proposed building of basement, ground plus 11 upper floors, with a height of 50.70 metres above ground level, by consuming FSI of 12,722.22 sq. mtrs.

6 The Petitioner made an Application dated 30th March 2018 to the Airport Authority of India seeking its No Objection Certificate (“NOC”) for construction of such a building on the said land. By a letter dated 20th May 2018, the Airport Authority of India issued its NOC subject to the terms and conditions stated therein.

7 The Petitioner also applied and obtained Development Plan Remarks (“DP Remarks”) from Respondent No.3 for the said land, as per Development Plan 2034, on 28th February 2019. The said DP Remarks stated that the said land is situated in a residential zone, is affected by the existing amenity of a Cinema Theatre and that it falls within the Coastal Regulation Zone (CRZ) II. The DP remarks did not contain any condition to the effect that any NOC would be required from either Respondent No.1 or Respondent No.2 for redevelopment of the said structure.

8 It is the case of the Petitioner that, in 2019, when the Petitioner proceeded to apply to Respondent No.3 for approvals for redevelopment of the said structure on the said land, the Petitioner was advised by its Licensed Surveyor that NOC of Respondent No.2 would be required in view of the Notification dated 19th June, 1976 (the “said Notification”) as there was a Signal Transmitting Station of Respondent No.1 in the vicinity of the said land. It is also the case of the Petitioner that the said Notification was clarified by a Clarification dated 14th November, 2012 (the “said Clarification”). By the said Clarification, it was clarified that the outer parapet, in relation to any military installation where the Works of Defence Act, 1903 (the “WoD Act”) has been

imposed, referred to the boundary/ railing built along the entire plot and that the restrictions would apply from the outer boundary wall of the Juhu Military Station and not from the area where the tower was located per se.

9 It is further the case of the Petitioner that the said land is situated at a distance of 144.39 mtrs from the closest boundary of the Signal Transmitting Station of Respondent No.1 at Juhu. It is also the case of the Petitioner that, since he was advised by his architect that permission for development of the said land would not be processed by Respondent No.3, without the NOC of Respondent No.2, and to avoid further delay and loss to him, as a matter of abundant caution, on 23rd May, 2019, the Petitioner, through its Licensed Surveyor, M/s. Spaceage Consultants, submitted an Application to Respondent No.3 proposing development on the said land and requested Respondent No.3 to forward the same to the concerned Defence Department in order to obtain its NOC.

10 Respondent No.3, vide its letter dated 28th May, 2019, forwarded the proposal of the Petitioner for redevelopment of the said structure to Lt. Col. OC, Maharashtra, Goa and Gujarat for grant of NOC. In response to the said letter dated 28th May, 2019, Lt. Col. OC,

Maharashtra, Goa and Gujarat addressed a letter dated 4th July, 2019 to Respondent No.3 stating that Respondent No.3 had approached the incorrect addressee for the issuance of the NOC and requested it to approach the correct addressee. Thus, on 18th July, 2019, Respondent No.3 addressed a letter to Respondent No.2 requesting him to consider the proposal for redevelopment as submitted by the Petitioner.

11 In response to Respondent Nos.3's letter dated 18th July, 2019, Respondent No.2, by a letter dated 16th August, 2019, rejected the Petitioner's proposal of redevelopment on the ground that the proposal violated the provisions of the said Notification.

12 It is the case of the Petitioner that, since the business of the Petitioner had come to a complete standstill due to the ruinous condition of the said structure on the said land, to avoid further loss and damage, the Petitioner, without prejudice, and without admitting that the rejection under the said letter dated 16th August, 2019, was correct, submitted an Application, through M/s. Spaceage Consultants, to Respondent No.3, by a letter dated 7th November, 2019, proposing construction of a proposed building with a total height of 15.00 metres, which was the height

permissible under the said Notification. By the said letter, the Petitioner requested Respondent No.3 to forward the said proposal to the concerned Defence Department in order to obtain its NOC for redevelopment of the said structure.

13 Respondent No.3 addressed a letter dated 26th November, 2019 to Respondent No.2, requesting him to consider the proposal for redevelopment as submitted by the Petitioner by his letter dated 7th November, 2019.

14 Since there was no response from Respondent No.2, the Petitioner, by his letter dated 26th February, 2020 addressed to Respondent No.3, once again requested Respondent No.3 to intimate the Defence establishment to grant its NOC at the earliest.

15 Further, in the Petition, it is the case of the Petitioner that, although he sought the said NOC from Respondent No.2, the same was not required as the said Notification was not applicable at all.

16 In the Petition, it is further the case of the Petitioner that one

Juhu Chhaya Co-operative Housing Society Limited, who is the owner of a property in the vicinity of the said Signal Transmitting Station, had filed a Writ Petition in this Court, being Writ Petition No.2668 of 2012. In the said Petition, substantial information has been placed on record which showed that Respondent No.2 had granted NOC to several projects in the vicinity of the said Signal Transmitting Station which were taller and in closer proximity to the said Station than the said land of the Petitioner.

17 In these circumstances, the Petitioner filed the present Petition, which was lodged on 9th October, 2020 and numbered on 11th January, 2021.

18 In the present Petition, the Petitioner has sought various reliefs, including a declaration that Sections 3, 6, 7, 11 and 12 of the WoD Act are unconstitutional, arbitrary and violative of Articles 14, 19(1)(f), 19(1)(g) and 300 A of the Constitution of India. The Petitioner has sought various reliefs with respect to the said Notification and the said Clarification, including the quashing and setting aside of the same. The Petitioner has also sought reliefs seeking consideration of its proposal for redevelopment of the said structure on the said land without insisting on

compliance of the said Notification. However, during the course of arguments, the Petitioner has expressly given up prayer (i) of the Petition, which seeks a declaration in respect of the constitutionality of certain provisions of the WoD Act, as mentioned above.

19 Respondent No.1 and/or Respondent No.2 have filed Affidavits dated 3rd November, 2020, 9th December, 2020, 29th September, 2021, 11th February, 2022 and 15th December, 2022 in response to the Petition. Further, Respondent No.3 has also filed an Affidavit dated 5th April, 2021 in response to the Petition. The Petitioner has filed Affidavits-in-Rejoinder dated 4th January, 2021 and 5th October, 2021.

20 Dr. Milind Sathe, the learned Senior Advocate appearing on behalf of the Petitioner, and Mr. Devang Vyas, the learned Additional Solicitor General (ASG) appearing on behalf of Respondent Nos. 1 & 2, made submissions in respect of the challenge to the said Notification and the said Clarification, applicability of the said Notification to the said structure and the said land of the Petitioner and regarding the actions of the Respondents being discriminatory and violative of Article 14 of the Constitution of India.

21 We are of the view that, for the reasons given by us hereinafter, the present Petition can be disposed of by considering the issue of applicability of the said Notification to the said land and the said structure of the Petition and, therefore, in this judgment, we have neither recorded nor considered the submissions made by the learned Counsel for the parties on the other issues.

22 On the issue as to whether the said Notification and the said Clarification are applicable to the structure of the Petitioner, Dr. Sathe submitted that the same are not applicable to the said land and the said structure. Dr. Sathe submitted that the said Notification imposes restrictions on use and enjoyment, under Section 7 (c) of the WoD Act, in respect of the lands within 457.20 metres from the crest of the outer parapet of the Signal Transmitting Station. Dr. Sathe submitted that the said Notification does not apply to structures of the height of 15.24 metres or less. He submitted that, despite the said Notification, a new structure of the height of 15.24 metres or less can be constructed in the area lying within a distance of 457.20 metres (500 yards) from the crest of the outer parapet of the Signal Transmitting Station, Juhu, Mumbai.

23 Dr. Sathe further submitted that, in any case, by virtue of the provisions of the first proviso to the said Notification, the restrictions imposed under the said Notification would not be applicable to permanent constructions beyond the height of 15.24 metres which were already completed on the date of the said Notification. He submitted that, hence, it was evident that the said Notification specifically exempted permanent constructions beyond the permissible height of 15.24 metres completed prior to the commencement of the said Notification i.e. prior to 19th June, 1976. He submitted that the said structure on the said land had been in existence since 1973, i.e. prior to the date of the said Notification. He submitted that the said Notification was not applicable to the said land and the said structure and that the Petitioner was entitled to redevelop the said structure without the Notification being applicable. He also submitted that, although the existing structure is of a height of 16.913 metres, the Petitioner now intended to redevelop on the said land a structure of the height of only 15 metres.

24 Dr. Sathe further submitted that, although the said Notification uses the expression '*crest of the outer parapet of the said Station*', the said Clarification states that the distance is to be calculated

from the outer boundary of the plot of the said Station. He submitted that, therefore, the said Clarification was contrary to the said Notification.

25 Further, Dr. Sathe submitted that the said structure was lawfully constructed in 1973 and was in use and enjoyment of the Petitioner until 2017, when Respondent No.3 issued a Notice dated 23rd March, 2017, under Section 354 of the Bombay Municipal Corporation Act, 1888. He submitted that the Petitioner had been duly carrying on business in the said structure for a period of over 35 years and no objection, whasotever, was taken by either Respondent No.1 or Respondent No.2 against the use and enjoyment thereof. It was only when the Petitioner submitted an Application dated 23rd May, 2019 for redevelopment of the said structure, Respondent No.2, by the said letter dated 16th August, 2019, stated that the said structure was in violation of the said Notification and in view thereof rejected Petitioner's proposal for redevelopment without assigning any proper reason. He submitted that no objection was raised by either Respondent No.1 or Respondent No.2 against the use and enjoyment of the said structure till 2019. In conclusion, Dr. Sathe submitted that the restrictions imposed under the said Notification are not applicable to the said land and the said structure

and that the Petitioner was entitled to redevelop the said structure and intended to do so only till the height of 15 metres.

26 Mr. Vyas, the learned ASG, submitted that the submissions of the Petitioner that the said Notification was not applicable to the said land and the said structure of the Petitioner were misplaced and not borne out on a plain reading of the said Notification and the provisions of the WoD Act. In this context, the learned ASG has taken us through the provisions of the WoD Act, including the provisions of Sections 2,3,6 and 7 thereof. Further, the learned ASG invited our attention to the provisions of the said Notification. The learned ASG submitted that a perusal of the provisions of the WoD Act, and the said Notification clearly show that the said Notification imposes restrictions on the use and enjoyment of land in terms of Section 7 (c) of the WoD Act. Thus, upon the said Notification being issued, no building or other construction on the surface, and no excavation, building or other construction below the surface, could be maintained or erected. He submitted that the same would be liable to demolition under Section 6 of the WoD Act.

27 The learned ASG further submitted that a proviso or

exception was however made in the said Notification to the effect that the restrictions would not apply to such permanent constructions which had already been completed at the commencement of the said Notification. He submitted that it is trite law that the proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception, and taking out as it were, from the main enactment, a portion which, but for the proviso, would fall within the said enactment. In the light of the aforesaid, he submitted that, whilst restrictions were imposed on the use and enjoyment of the land by the said Notification, a limited exception by way of the proviso was provided for saving such permanent constructions as had already been completed at the commencement of the said Notification. He submitted that the said proviso applied only to the permanent construction and not the land per se. The imposition of restrictions on the land took place forthwith in 1976 itself.

28 The learned ASG further submitted that the proviso to the said Notification applied, on the face of it, only to the construction then completed and not to the land.

29 Further, the learned ASG submitted that the proviso to the

said Notification was inserted to enable the structure being maintained, as defined in the WoD Act, since, but for the proviso, even maintaining the structure would be impermissible, except with the written approval of the Commending Officer. He submitted that the proviso does not envisage nor permit the demolition and reconstruction or redevelopment or construction of a new structure. He submitted that such a new construction would necessarily require excavation below the surface and erection on the surface, both are of which activities are absolutely prohibited.

30 The learned ASG further submitted that the proviso to the said Notification cannot be read as diluting or being contrary to the WoD Act. He submitted that the contention of the Petitioner, if accepted, would result in rendering nugatory the prohibition of Section 7(c) of the WoD Act.

31 In support of his submissions, the learned ASG relied on a judgment of this Court in the case of **Provincial Housing & Property Limited v/s. Union of India**¹.

1 (2016) SCC OnLine Bom 6756

32 In conclusion, the learned ASG submitted that the said Notification was applicable to the said land and the said structure of the Petitioner, and, that, by virtue of the provisions of the said Notification, the Petitioner was not entitled to carry out redevelopment of the said structure on the said land.

33 We have given due consideration to the rival submissions of the parties on the issue of applicability of the said Notification. The said Notification has been issued under the provisions of Section 3, read with Section 7(c), of the WoD Act. Therefore, it would be appropriate to set out the provisions of Section 3 and Section 7(c).

34 Section 3 of the WoD Act reads as under:-

“3 Declaration and notice that restrictions will be imposed.-

(1) Whenever it appears to the [Central Government] that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders.

(2) The said declaration shall be published in the [Official Gazette] and shall state the district or other territorial division in which the land is situate and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in section 7, may be inspected; and the Collector shall cause public notice of the substance of the said declaration to be given at

convenient places in the locality.

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions.”

35 Section 7(c) of the WoD Act reads as under:-

*“7. **Restriction:-** From and after the publication of the notice mentioned in section 3, sub-section (2), such of the following restrictions as the “[Central Government] may in its discretion declare therein shall attach with reference to such land, namely :*

(a)

(b)

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely :-

no building or other construction on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected :

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, [a building or other construction on the surface may be maintained and] open railings and dry brush-wood fences may be exempted from this prohibition.”

36. The said Notification reads as under:-

“A copy of SRO 150 dt. 19 Jun 1976

GOVERNMENT OF INDIA PART II SECTION 4
MINISTRY OF DEFENCE
NOTIFICATION

S.R.O. 150 in exercise of the powers conferred by section 3 of the Works of Defence Act, 1903 (VII of 1903), the Central Government hereby declares that it is necessary to impose the restrictions specified in clause (c) of section 7 of the said Act upon the use and enjoyment of the land situated in District of Bombay (in the Maharashtra State) described in the Schedule hereto annexed, being land in the vicinity of the Signal Transmitting Station at Juhu, Bombay, in order that such land may be kept free from buildings and other obstructions :

Provided that the said restrictions shall not apply to such permanent constructions beyond, the permissible height of 15.24 mtrs which have already been completed at the commencement of this notification.

Provided further that the Jhuggis around the said Transmitting Station within the said land shall be demolished.

2. A sketch plan of the said land may be inspected in the office of the Sub-Divisional Officer, Buildings and Roads, Santa Cruz, Bombay District.

THE SCHEDULE

All the land comprised in the area lying within a distance of 457.20 metres (500 yds) from the crest of the outer parapet of the Signal Transmitting Station, Juhu, Bombay, in the State of Maharashtra.

*Sd/- ~~xx-x-x-x-x-x~~
(Har Mander Singh)
Joint Secretary (G)”*

37 The said Clarification to the said Notification seeks to clarify that the outer parapet referred to in the Schedule to the said Notification means the outer boundary wall of the Military Installation. In the present case, we are not required to deal with the said Clarification, or the validity thereof, as it is not relevant for the purpose of deciding the applicability of the said Notification to the said land and the said structure of the Petitioner.

38 As far as the submission of the Petitioner, that the said

Notification does not prohibit construction of a structure of 15.24 metres or less, and, that, despite the said Notification, a new structure up to 15.24 metres can be constructed in the area covered by the said Notification, is concerned, in our view, the same cannot be accepted as it has already been rejected by a Co-ordinate Bench of this Court in the case of **Provincial Housings & Property Ltd** (supra). Paragraph 23 of the said Judgment, which rejects the said contention, reads as under:-

“23. Faced with this situation, Mr. Balsara submitted that the proviso to the said Notification stipulates that the said restrictions shall not apply to such permanent constructions beyond the permissible height of 15.24 mtrs.: which have already been completed at the commencement of the said Notification. He laid great emphasis on the words “beyond the permissible height of 15.24 mtr.” to contend that the Notification itself contemplated that upto a height of 15.24 mtrs. (which according to the Petitioner is now increased to 19.20 mtrs.) was not barred under the said Notification and hence there was no question of obtaining any NOC from Respondent Nos. 1 and/or 2. We are afraid we are unable to accept this submission. Firstly, the proviso clearly applies to construction which has already been completed at the commencement of the said Notification. We do not read this proviso to mean that the same would also apply to constructions that are now going to commence after this Notification. Secondly, section 7(c) clearly stipulates that when any property is within a distance of 500 yards from the Wireless Station, then no building or other construction on the surface and no excavation above or below the surface can be erected. This is a complete prohibition, and unlike section 7(a) and 7 (b), this restriction cannot be relaxed with the approval of the General Officer commanding the Division. If we were to read the Notification as sought to be contended by Mr. Balsara, the same would clearly be in violation of the clear language of section 7(c) of the said Act. We therefore, have no hesitation in rejecting this argument.”

39 The next submission of the Petitioner is that, since the said Notification specifically exempts permanent constructions beyond the

permissible height of 15.24 metres completed prior to the said Notification i.e. prior to 19th June, 1976, and since the said structure on the said land has been in existence since 1973, the said Notification is not applicable to the said land and the said structure, and the Petitioner is entitled to redevelop the said structure without requiring any NOC from Respondent Nos. 1 & 2.

40 In order to consider this submission of the Petitioner, we would first have to consider the provisions of Section 7 of the WoD Act. A reading of the opening part of Section 7 shows that it gives the Central Government discretion to decide as to which of the restrictions contained in sub-sections (a), (b) and (c) of Section 7 would apply to the lands mentioned in the said sub-sections. In exercise of this discretion, in the said Notification, the Central Government could have imposed all the restrictions mentioned in sub-section (c) of Section 7 as the Notification is issued in respect of lands within 457.20 metres (500 yards) from the crest of the outer parapet of a Work of Defence i.e. the said Signal Transmitting Station. In other words, the said Notification could have been issued without the first proviso thereto. However, in exercise of its discretion, the Central Government has, by including the first proviso, exempted

permanent constructions which have already been completed at the commencement of the said Notification.

41 The question that arises for our consideration is whether such a permanent construction, which has already been completed at the commencement of the said Notification, can be redeveloped. In our view, since the purpose of the said Notification is to protect already existing permanent constructions, in keeping with this purpose, if such an already existing permanent construction has to be redeveloped, then the said Notification does not bar any such redevelopment. In our view, any other interpretation would be contrary to the objective and purpose of the said Notification of protecting already existing permanent constructions. The same would prevent the owners of such an already existing permanent construction from redeveloping it, and relegate such an owner to claim compensation, which is not the objective of the said Notification.

42 The learned ASG has submitted that the first proviso to the said Notification applies only to permanent constructions and not to the land per se and that the imposition of restrictions on the land took place forthwith in 1976 itself. He further submitted that the first proviso did not

envisage nor permit demolition and reconstruction or redevelopment or construction of a new structure. He submitted that such a new structure would necessarily require excavation below the surface and excavation activities are absolutely prohibited. We are unable to accept this submission of the learned ASG. It is clear from the first proviso to the said Notification that it is carving out an exception to “the said restrictions”, which clearly means restrictions specified in Section 7 (c) of the WoD Act upon the use and enjoyment of the land, as specifically stated in the first paragraph of the said Notification. Hence, the said first proviso carves out an exception to the restrictions on the use and enjoyment of land as well and does not apply only to permanent constructions, as submitted by the learned ASG. The purpose of inserting the first proviso in the said Notification was to protect existing permanent constructions. In our view, keeping this purpose in mind, the first proviso does not bar redevelopment of such existing permanent constructions.

43 Further, we are also unable to accept the submission of the learned ASG that the contention of the Petitioner, if accepted, would result in rendering nugatory the prohibitions contained in Section 7 of the WoD Act. As stated above, the opening part of Section 7 of the WoD Act shows

that it gives the Central Government the discretion to decide as to which of the restrictions contained in sub-sections (a), (b) and (c) would apply to the lands mentioned in the said sub-sections. In exercise of that discretion given to the Central Government, under Section 7 of the WoD Act, in the first proviso to the said Notification, it has carved out an exception in respect of already existing permanent constructions. Therefore, the question, of the provisions contained in Section 7(c) of the WoD Act being rendered nugatory by the contention of the Petitioner, does not arise at all, as the contention of the Petitioner, that redevelopment of the permanent constructions already completed at the commencement of the said Notification is permissible, is based on that very first proviso to the said Notification.

44 Further, as far as the issue, as to whether, under the said Notification, redevelopment of permanent constructions which have already been completed at the commencement of the said Notification is permissible or not, is concerned, the Judgment in **Provincial Housings & Property Limited** (supra) does not help the case of the Respondents. In **Provincial Housings & Property Limited** (supra), this argument, i.e., whether such redevelopment is permissible, was neither advanced nor

considered by this Court. In fact, **Provincial Housings & Property Limited** (supra) dealt with the case of slums and not a permanent construction. Further, there is nothing stated in the said Judgment which shows that it was even contended that the said slums were in existence prior to the said Notification being issued. For all these reasons, in our view, the Judgment of this Court in **Provincial Housings & Property Limited** (supra) does not aid the Respondents as far as the aforesaid issue is concerned.

45 In the aforesaid circumstances, and for all the aforesaid reasons, we hold that, if there is a permanent construction already completed at the commencement of the said Notification, then redevelopment of the said permanent construction is not barred by the said Notification. However, we are of the view that, keeping in mind the purpose of the said Notification, the said redeveloped structure will have to be of the permissible height of 15.24 metres or less and will have to be of the same dimensions as the already existing permanent construction.

46 Both the learned ASG and the learned Counsel appearing on behalf of Respondent No.3 have referred to page 97, which is an annexure to the Affidavit of Amit Patil, dated 5th April, 2021, filed on behalf of

Respondent No.3. The said annexure at page 97 is a letter from Respondent No.3 to M/s. Spaceage Consultants, the Licensed Surveyor of the Petitioner, whereby the proposal of the Petitioner for redevelopment is rejected as on 17th December, 2020. The learned ASG submitted that the said document shows that the proposal of the Petitioner for redevelopment of the said structure on the said land has been rejected by Respondent No.3 for reasons other than obtaining an NOC from Respondent Nos. 1 & 2 under the said Notification. The learned ASG further submitted that the question, of obtaining an NOC from Respondent Nos. 1 & 2 under the said Notification, would arise only if the proposal for redevelopment of the Petitioner is otherwise accepted by Respondent No.3. Since we are dealing with the limited issue as to the applicability of the said Notification to the said land and the said structure of the Petitioner, in our view, we are not required to decide this point.

47 In the aforesaid circumstances, and for all the aforesaid reasons, we hold that the said Notification does not prohibit the Petitioner from redeveloping the said structure on the said land up to a height of 15 metres subject to the condition that the dimensions of the redeveloped structure (except the height which would be 15 metres or less) would be

the same as the said structure already existing on the said land. Further, we also hold that this would also be subject to the redevelopment of the said structure being otherwise permissible in law, on which this Court has not made any comments in the present Judgment.

48 The Rule is made absolute in the aforesaid terms.

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

(FIRDOSH P. POONIWALLA, J.)

(SUNIL B. SHUKRE, J.)

At this stage, learned Counsel holding for Mr. Devang Vyas, learned Additional Solicitor General for Respondent No.1 seeks stay of the Judgment and Order. Learned Counsel for the Petitioner submits that staying the effect and operation of the impugned Judgment and Order will not be necessary for the reason that now the Petitioner would be required to submit a fresh plan for redevelopment of the property and its sanction would take some time.

Considering the submissions of learned Counsel for the Petitioner, we are of the view that it is not necessary for this Court to stay the effect and operation of this Judgment and Order inasmuch as by refusing stay, no prejudice, for the present, would be caused to Respondent Nos.1 and 2. Hence, the request for stay is rejected.

(FIRDOSH P. POONIWALLA, J.)

(SUNIL B. SHUKRE, J.)