

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4342 OF 2024

1. **FORTUNE DEVELOPERS AND
INFRASTRUCTURE,**
Through Its Constituent
Shri Pramod Radheshyam Agarwal
Age : 49 years, Occ-Business,
Having Its Office At:
Survey No.39, D Building, 2nd Floor,
Sidheshwarnagar Society,
Vishrantwadi, Dhanori,
Pune – 411015.

...PETITIONER

~ versus ~

1. **PUNE MUNICIPAL CORPORATION,**
Through Its Commissioner
Having Its Office At :
PMC Main Building,
Shivaji Nagar, Pune 411005.
2. **THE DEPUTY ENGINEER,**
Zone No.4,
Building Permission Department,
Pune Municipal Corporation.
Having Its Office At:
PMC Main Building,
Shivaji Nagar, Pune 411005.
3. **THE JUNIOR ENGINEER,**
Zone No.4,
Building Permission Department,
Pune Municipal Corporation.

Having Its Office At:
PMC Main Building,
Shivaji Nagar,
Pune 411005.

4. **THE SUPERINTENDENT,**
Yerawada Central Prison,
Having Office At:
Yerawada Central Prison,
Yerawada, Pune 411006.
5. **THE STATE OF MAHARASHTRA,**
Through Its Home Department
Having Its Office At:
2nd Floor, Main Building,
Mantralaya,
Madame Cama Road,
Nariman Point,
Mumbai 400032.
[Summons To Be Served Upon
The Ld. Government Pleader
Appearing For The State Of
Maharashtra Under O.XXVII R.4
Of The Code Of Civil Procedure,
1908].

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr Abhay A. Anturkar , a/w <i>Mr Ajinkya Udane (through VC) i/b. Mr Tanaji Mhatugade.</i>
FOR RESPONDENT NOS.1 TO 3	Mr Rajdeep Khadapkar.
FOR RESPONDENT-STATE	Ms S. S. Bhende, AGP.

CORAM : M. S. Sonak &
Kamal Khata, JJ.

RESERVED ON : 21st August 2024
PRONOUNCED ON : 27 August 2024

JUDGMENT (Per M S Sonak J):-

- 1.** Heard learned counsel for the parties.
- 2.** Rule. The rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
- 3.** Even otherwise, by order dated 08 July 2024, after directing the parties to complete the pleadings, we had indicated that this matter would be taken up for final disposal on 20 August 2024 at 2.30 pm. The pleadings were completed.
- 4.** Accordingly, the learned counsel for the parties were heard finally on 20 and 21 August 2024. On the conclusion of the final arguments, this matter was reserved for orders on 21 August 2024.
- 5.** The Petitioner challenges the following communications:-
 - (i) Stop Work Notice dated 28 March 2022 issued by the Pune Municipal Corporation ("PMC"), almost entirely relying upon letter dated 31 December 2021

addressed by the Superintendent, Yerawada Central Prison (“YCP”) stopping midway the construction of Petitioner’s residential-cum-commercial project in the name and style of “Uttam Townscape Life Hub” on Survey No.154, Yerawada, Pune; and

(ii) The YCP Superintendent’s letter dated 31 December 2021 requesting the PMC to stop further construction on the Petitioner’s above project on the ground that there was a proposal for constructing a modernised prison having a capacity of housing 3000 jail inmates adjacent to the existing YCP and the Petitioner’s project would be within 150 meters from such proposed prison project.

6. The Petitioner owns a portion of the property surveyed under No.154 City Survey No.2760 situated at Yerawada Taluka, Pune City, District Pune. The Petitioner has already constructed four buildings on this property, i.e. E1, E2, E3 or four wings consisting of parking plus eleven storeys. On 26 November 2018, the PMC issued the Petitioner a Commencement Certificate for constructing a ground-plus five-storeyed building adjacent to these four buildings. The PMC issued a revised Commencement Certificate on 21 September 2021. Based upon these, The Petitioner commenced constructing the ground-plus five-storeyed building adjacent to these four buildings.

7. While the construction was midway, the Superintendent of YCP addressed a letter dated 31 December 2021 requesting the PMC to stop further construction on the Petitioner's above project on the ground that there was a proposal for constructing a modernised prison having a capacity of housing 3000 jail inmates adjacent to the existing YCP and the Petitioner's project would be within 150 meters from such proposed prison project. Based upon this letter, the PMC issued Stop Work Notice dated 28 March 2022, stopping midway the construction of Petitioner's residential-cum-commercial project. Hence, the challenge to the above communications.

8. Mr. Anturkar, the learned counsel for the Petitioner, has assailed the above two impugned communications because they are arbitrary, unfair, discriminatory, and not based on any applicable rules or regulations. He has contended that the laws, rules, regulations and GRs relied upon by the Respondents are inapplicable and cannot support the impugned communications.

9. Mr. Anturkar submitted that the Petitioner's project is at a distance of around 620 meters from the perimeter wall of YCP. He submitted that the Respondents have not even denied the detailed pleadings in this regard. In any event, the evidence produced along with the Petition establishes this position beyond any doubt. He submitted that the Special

Inspector General of Police (Prisons), Western Division, Yerawada, by his communication dated 17 February 2011, had expressly stated that the Petitioner's project is beyond 182.88 meters and, thus, no NOC of the Prison Department was required to construct the subject project. Accordingly, Mr. Anturkar submitted that the premise of the Petitioner's project falling within 150 meters from the perimeter walls of YCP was misconceived, and the impugned communications warranted interference.

10. Mr Anturkar submitted that the two Affidavits filed by Mr Sunil Dhamal, the Superintendent of YCP, seem to suggest that there is an Open District Prison outside the perimeter walls of YCP and the Petitioner's project would fall within 150 meters from the boundaries of such Open District Prison, and constitute a danger to the safety of the inmates of the Open District Prison/YCP No.2 (Proposed). Mr. Anturkar submitted that though this was not the reason in the impugned communication dated 31 December 2021, even such reasoning is patently fallacious for several reasons.

11. Mr. Anturkar submitted that no notification was produced to notify any Open District Prison outside the perimeter wall of YCP. In any event, the rules or the GRs referred to by the Respondents only speak about some restrictions within 150 meters from the perimeter walls of Central Prison. Mr. Anturkar submitted that a proper

construction of the rule relied upon would show that the same applies only to the internal configuration and construction within 150 meters from the perimeter walls of a Central Prison and not to any construction or development beyond the perimeter walls of a Central Prison.

12. Mr. Anturkar submitted that Section 59 of the Prisons Act empowers the Government to make rules for the construction of the internal buildings in any prison. He submitted that the rules so framed, on their plain construction, do not admit any regulation of construction or development beyond the perimeter walls of such prison. In any event, he submitted that on a proper construction of the rules relied upon, no such restriction has been placed as suggested by the Superintendent of Prisons.

13. Mr. Anturkar submitted that the PMC issued a Commencement Certificate to the Petitioner's project on 15 September 2020. After that, a revised Commencement Certificate was issued on 21 September 2021. There were no allegations about the development being contrary to either the layout plan sanctioned by the PMC or the terms and conditions for the issue of the two Commencement Certificates. He submitted that the impugned communications could not have been issued after the constructions were midway because there was no infirmity in the sanctioned layout plan or the two Commencement Certificates.

14. Mr. Anturkar submitted that the PMC could not have stopped the Petitioner's project based on some proposed prison facility on the land surveyed under No.160. He submitted that property rights are valuable constitutional rights and cannot be interfered with, based upon some future proposals and without the backing of any legal provisions, rules, or regulations. He submitted that the impugned communications violate Article 300 A of the Constitution.

15. Mr. Anturkar submitted that only the Petitioner's present project is being singled out for hostile discrimination. He submitted that the Petitioner has already constructed four buildings comprising parking plus 11 floors on other sub-plots of Survey No.154, which are adjacent to the present project. He also referred to Google Maps and gave instances of several residential and commercial buildings permitted by PMC and not objected to by the YCP, which were not differently placed than the Petitioner's present project. He submitted that YCP permitted a DP Road, which now separates the Petitioner's plot and so-called Open Prison, about which no notification was produced. He submitted that even the GRs or the Rules, as interpreted by the Respondents, imposed no restrictions on the construction of development outside the perimeter of an Open Jail. Accordingly, he submitted that the Petitioner was being discriminated against, thereby infringing Article 14 of the Constitution of India.

16. Mr Anturkar referred not only to the buildings put up by the Petitioner on sub-plots of Survey No.154 but referred to several commercial and residential projects like Commerzone IT Park, Tea Post, Akash Nagar, Maharashtra Co-operative Housing Society, Sky Jumper Trampoline Park to submit that since the PMC had permitted all such projects and all such projects were never objected to by the YCP authorities, no discrimination could be practised against the Petitioner's partly completed project by issuing the impugned communications.

17. Based on the above contentions, Mr. Anturkar submitted that the impugned communications should be quashed and set aside.

18. Mr. Rajdeep Khadapkar, learned counsel for the PMC (Respondents 1 to 3), submitted that the PMC issued the impugned stop work notice dated 28 March 2022 based upon the YCP Superintendent's letter dated 31 December 2021. He submitted that the stop work was to operate until the advisory committee constituted under The Maharashtra Prisons (Prison Buildings and Sanitary Arrangements) Rules, 1964, advises the PMC on the future course of action. He submitted that the committee members visited the site, but due to differences in opinion amongst the members, this advisory committee could not reach a decision.

19. Mr Khadapkar submitted that the YCP Superintendent's letter dated 31 December 2021 refers to a modernised prison with a capacity of 3000 jail inmates YCP-2. He submitted that this communication refers to such a layout being approved on 11 November 2021. He submitted that the PMC was unaware of such a layout and that consequential measures to be taken under it. He submitted that the building permissions were issued for the Petitioner's project based on the premise that the distance between the project site and the prison was more than 150 meters.

20. Mr. Khadapkar referred to the affidavit of Mr. Prashant Madhukar Waghmare, the City Engineer PMC and the annexures to such affidavit. One such annexure is the communication dated 17 February 2011 issued by the Special Police, IGP, Yerawada, confirming that the project was beyond 182.88 meters from the perimeter of YCP's high-security wall and, therefore, no NOC or permission was necessary from the YCP officials.

21. Mr. Khadapkar also relied upon Clause 3.1.7 of the Unified Development Control and Promotion Regulations for Maharashtra ("UDCPR") to submit that the Petitioner's project might conflict with this clause because it was within 150 meters from the Open Prison or the proposed modernised prison at YCP-2.

22. Ms Bhende learned AGP for the Respondent—State vehemently defended the YCP Superintendent's impugned communication dated 31 December 2021. She submitted that the project's construction conflicted with Rule 3 of the Maharashtra Prisons (Prison Buildings and Sanitary Arrangements) Rules, 1964, which came into force on 9 August 2018.

23. Ms Bhende relied on the Maharashtra Classification of Prisons (Amendment) Rules, 1975, to submit that the land surveyed under No.160 outside the high-security wall of the Yerawada Central Prison belonging to the State Government was classified as an Open Prison and Correctional Centre. She submitted that this Open Prison occupied an area of almost 190 acres. She submitted that the Petitioner's project was hardly 24 meters from the perimeter wall of the Open Prison and would be at a similar distance from the proposed YCP-2 facility. Accordingly, she submitted that such a project should not have been permitted and that, in any event, such a project cannot continue.

24. Ms. Bhende referred to the order dated 09 July 2015 made by this Court in Writ Petition (L) No.486 of 2015 (Dosti Realty Ltd. & Anr. Vs. State of Maharashtra & Ors.). She submitted that based upon this order, the State Government issued a GR dated 06 August 2015 containing guidelines for the development of properties in the vicinity of prisons. She

submitted that the Petitioner's project conflicts with such guidelines, and therefore, the impugned communication dated 31 December 2021 was correctly issued.

25. Ms. Bhende submitted that the Petitioner's project conflicted with the statutory Rules and Government Resolutions regulating the development of construction activities near prisons. Accordingly, she submitted that there was no legal infirmity in the jail authorities issuing the impugned communication dated 31 December 2021 and the PMC issuing the impugned stop work notice dated 28 March 2022 based on the same.

26. Ms. Bhende referred to the two affidavits filed by Mr. Sunil Dhamal, the Superintendent of YCP, and the annexures and photographs. She submitted that if the Petitioner's project is allowed to proceed, it would pose a danger to the safety and security of the jail inmates. She referred to the photographs of inmates carrying out agricultural activities in the Open Prison and submitted that the privacy of such inmates would be directly affected. She submitted that the YCP-2 (proposed) would be within the vision shadow of the Petitioner's project if such a project is allowed to come up

27. Regarding the several constructions and high-rise buildings in and around the YCP and in the immediate neighbourhood of the Petitioner's project, Ms Bhende submitted that the prison authorities have been writing to

PMC and following up on the issues. She submitted that the Petitioner demolished the portion of the original compound wall, thereby claiming access to the DP Road, which separates the Petitioner's property and the Open Prison. Finally, she submitted that the Petitioner's project conflicts with the provisions of the Prisons Act 1894 and the Government Regulations dated 06 August 2014 and 09 December 2020.

28. Ms. Bhende submitted that this Petition may be dismissed for all the above reasons.

29. Rival contentions now fall for our determination.

30. The Petitioner is admittedly the owner of a portion of the property surveyed under No.154 City Survey No.2760 situated at Yerawada Taluka, Pune City, District Pune. On this property, the Petitioner has already constructed four buildings or four wings consisting of parking plus eleven floors, i.e. E1, E2, E3 and F1, immediately adjacent to the partly completed project comprising Ground plus five storeys, the construction of which is now stopped by the impugned stop work notice dated 28 March 2022 issued by the PMC.

31. Amongst other contentions, Ms Bhende, AGP, laid maximum stress on the Maharashtra Prisons (Prison Buildings and Sanitary Arrangements) Rules, 1964 ("1964 Rules") to defend the impugned communications. She submitted that the Petitioner's project conflicted with Rule 3 of the 1964 Rules,

and, therefore, must be stopped midway. This was the main thrust of the State's defence of the impugned communications. Ms Bhende's emphasis was on Rule 3 of the 1964 Rules as it presently stands. Therefore, some references to the genesis of this rule are relevant.

32. In exercise of the powers conferred by clauses 8 and 28 of Section 59 of the Prisons Act, 1894 and all other powers enabling it in that behalf and in supersession of any Rules relating to the prison buildings and sanitary arrangements in force in part of the State, the Government of Maharashtra has made the Maharashtra Prisons (Prison Buildings and Sanitary Arrangements) Rules, 1964 ("1964 Rules").

33. Rule 3 of the 1964 Rules, as was amended/substituted by Notification dated 02 September 1970 issued by the Home Department of the State Government, is quoted in the Affidavit in Reply on behalf of PMC filed on 05 July 2024 in this Petition. This Rule reads as follows:-

***"Rule 3.** Use of land in vicinity of prisons (Unless the State Government for reasons to be recorded in writing directs otherwise) within +(182.88) meters on the main wall of a prison shall be leased for non agricultural purposes. Provided that the Collector may lease such land for agricultural purposes for short periods."*

34. Possibly on account of the above Rule, the Petitioner had applied for and obtained communication dated 17 February 2011 from the Special Inspector General of Police (Prisons),

Yerawada, Pune (Exhibit-I paged 107 to the PMC's Affidavit) in which it is stated that the Petitioner's proposed project in Survey No.154 of commercial parking plus 12 storeyed building was outside the Yerawada Open Prison and at a distance of more than 182.88 meters from the high-security wall of the Yerawada Central Prison. Accordingly, this communication clarified that there was no requirement for any "No Objection Certificate" from the Prison Authorities or the Prison Department of the Government of Maharashtra.

35. The Petitioner has pleaded and backed such pleadings with Google images, etc., showing that the Petitioner's present project is about 620.49 meters from the outer perimeter of the Yerawada Central Prison. This position has not been disputed either by the PMC or the Superintendent of YCP. In the Affidavit filed by the Superintendent of YCP, the contention is that outside the perimeter wall or high-security wall of the YCP, there is the Open Prison and the Correctional Centre, which now extends up to the DP Road. From the boundary of such an Open Prison, the Petitioner's project would be at a distance of about 24 meters. The other contention is that a modernised jail is proposed as YCP-2, and once this jail is established, the Petitioner's project will be within 150 metres.

36. The PMC first approved the Petitioner's project on 26 November 2018, when a Commencement Certificate was issued. Due to some revisions, the Petitioner applied for and

was issued a revised Commencement Certificate on 21 September 2021. The actual Commencement Certificates back this position, which is not even disputed.

37. Rule 3 of 1964 Rules introduced by the Notification of 02 September 1970 was substituted/amended by Notification dated 28 May 2015. In terms of the 2015 amendment, Rule 3 of the 1964 Rules read as follows:-

*“3. Use of land in vicinity of prisons.- *No buildings, except those of the prison itself, shall be constructed within 150 meters of the perimeter wall of a Central Prison, 100 meters of the perimeter wall of a District Prison and 50 meters of the perimeter wall of a Sub-Prison.”*

38. The above Rule 3 was not in the Rule book and was already substituted when the PMC issued the Commencement Certificate dated 26 November 2018. This is because Rule 3 of the 1964 Rules was further amended and substituted by the Notification dated 09 August 2018, and the same reads as follows:-

“3(a) The Prison shall be internally so configured and construction within 500 meters from the perimeter wall of Mumbai Central Prison, Mumbai, 150 meters from the perimeter wall of any other Central Prison, 100 meters from the perimeter wall of any District Prison and 50 meters from the perimeter wall of any Sub-Prison shall be so regulated that the creation of buffer zone of 20 meters is facilitated and there is no threat due to direct visibility of sensitive areas of the prison, or of areas having movement of prisoners with high security risk.

(b) The Committee comprising of officers of Prison Department and the Planning Authority shall be

constituted and the advice of this committee should be obtained as to the compliance of clause (a) before any building permission is given in that area.”

39. Thus, when the Petitioner’s proposal for the issue of permission/commencement certificates was considered by the PMC, the appropriate planning authority, Rule 3 of the 1964 Rules, was substituted by the above-referred Notification dated 09 August 2018. Therefore, neither the PMC nor the State relied upon Rule 3 as substituted/amended by Notification dated 28 May 2015 and transcribed in paragraph 38 above.

40. Rule 3, as substituted by the Notifications dated 02 September 1970 or 28 May 2015, at least referred to “Use of land in the vicinity of prisons” and to some restrictions on land use in the vicinity of the prisons. In this case, we do not propose to go into the issue of such restrictions being ultra vires or otherwise unconstitutional, even though Mr Anturkar raised the issue of ultra vires in his written submissions in this Petition. This is more so because the Rules substituted by the Notifications of 02 September 1970 and 28 May 2015 were not in force when the Petitioner applied for and was granted the permission and the Commencement Certificates for the project.

41. Rule 3 (a), as substituted by the Notification dated 09 August 2018, does not refer to the use of land in the vicinity of prisons. Instead, this Rule provides that the prison “*shall be*

internally so configured” and construction within 150 meters from the perimeter wall of any Central Prison (other than Mumbai Central Prison) “shall be so regulated that the creation of buffer zone of 20 meters is facilitated and there is no threat due to direct visibility of sensitive areas of the prison, or of areas having movement of prisoners with high security risk”.

42. On a plain reading of Rule 3, as amended and substituted by Notification dated 09 August 2018, it is difficult to hold that this Rule regulates the use of land or construction and development activities outside the perimeter wall of a Central Prison or other prisons referred to in the Rule. The expression “*internally so configured*” or the expression “*construction within 500 meters from the perimeter wall of Mumbai Central Prison, Mumbai, 150 meters from the perimeter wall of any other Central Prison.....*” suggests that the Rule regulates the construction of buildings within the perimeter walls of the prisons and the creation of buffer zone of 20 meters so that there is no threat due to direct visibility of sensitive areas of the prison, or of areas having movement of prisoners with high-security risk.

43. Rule 3, as amended and substituted by the Notification dated 09 August 2018, when contrasted with Rule 3 amended and substituted by the previous Notifications of 02 September 1970 and 28 May 2015, supports the above construction and

interpretation. There is a marked departure from the previous Rule, which must be respected. The previous Rule 3, as amended and substituted by the Notifications dated 02 September 1970 and 28 May 2015, made explicit reference to the “*use of land in the vicinity of prisons.*” The wording of at least the 2015 Rule was quite clear. This Rule was substituted by a completely different rule employing entirely different phraseology. Therefore, this altogether different rule cannot be interpreted or construed as the same as the substituted 2015 rule.

44. Rule 3, as amended and substituted by the Notification dated 02 September 1970, provided that unless the State Government, for reasons to be recorded in writing, directs otherwise, within 182.88 meters from the main wall of a prison, no lease shall be granted for any non-agricultural purposes. The proviso permitted the Collector to lease such land for agricultural purposes for short periods. Rule 3, as amended and substituted by the Notification dated 02 September 1970 and quoted by the PMC in its Affidavit filed on 05 July 2024, is not very happily drafted, but this is its import. There is no reference to any restrictions on constructions and developments, but there is some regulation of the land within 182.88 meters from the “*main wall of a prison*”.

45. Rule 3, as amended and substituted by the Notification dated 28 May 2015, again refers to the use of land in the vicinity of prisons. This Rule is relatively straightforward since it provides that no buildings, except those of the prison itself, shall be constructed within 150 meters of the perimeter wall of a Central Prison, 100 meters of the perimeter wall of a District Prison and 50 meters of the perimeter wall of a Sub-Prison. This Rule suggests a distinction between the “prison buildings” and those other than the prison buildings. This Rule also purports to restrict the construction of buildings, except prison buildings, inter alia, within 150 meters of the perimeter wall of a Central Prison.

46. Rule 3, as amended and substituted by the Notification dated 09 August 2018, which was the Rule in force when the Petitioner applied for and was granted the Commencement Certificates and which is also incidentally the Rule strongly relied upon by Ms Bhende, the learned AGP, does not refer to use of the land in the vicinity of prisons or provides for any restriction on the construction of any non-prison buildings within 150 meters from the perimeter wall of any Central Prison in the State of Maharashtra (other than Mumbai Central Prison). Even the restriction is for the prison to be “*internally so configured*” to create a buffer zone of 20 meters. This buffer zone is also to ward off threats due to “*direct visibility of sensitive areas of the prison, or of areas having movement of prisoners with high-security risk*”.

47. Therefore, based upon Rule 3(a) of the 1964 Rules as amended and substituted by the Notification dated 09 August 2018, there was no question of the YCP authorities objecting to the Petitioner's project or writing to the PMC to stop the Petitioner's project. On proper construction, it does not appear that Rule 3(a) regulates the construction of buildings outside the perimeter wall of YCP. The italicised phrases in the previous paragraph must be given some meaning and, in any event, cannot be entirely ignored while construing Rule 3(a). The departure from the substituted and replaced 2015 Rule also cannot be ignored. No interpretation which renders any words, much less crucial words from a statute or a statutory rule, redundant or otiose is generally to be favoured unless the context is compelling and evident absurdity is the only result.

48. In any event, even if the construction assumed or proposed by the YCP authorities and to some extent by the PMC (which was entirely non-committal) is to be accepted, and Rule 3(a) of the 1964 Rules is to be construed as restricting any construction or development within 150 meters from the perimeter wall of YCP; still, there is unimpeachable material on record to show that the Petitioner's project is at a distance of about 620.49 meters from the perimeter wall of YCP. As such, even if the strained interpretation is accepted, the Rule would not conflict with the Petitioner's project.

49. As noted earlier, there is on record a communication dated 17 February 2011 issued by the IGP (Prisons) Yerawada, clearly and unambiguously stating that the property surveyed under 154 is beyond 182.88 meters from the high-security wall of the YCP. Positive material shows the project site, and the building is about 620 metres from the perimeter walls of YCP. Accordingly, even going by Ms. Bhende's interpretation of Rule 3(a), there is still nothing on record to suggest that the Petitioner's project is within 150 meters of the perimeter wall of YCP for the alleged prohibition in the rule to be attracted.

50. The impugned communication dated 31 December 2021 or the Affidavits filed by the Superintendent of YCP suggest that the Government has proposed a modernised prison (YCP-2) outside the perimeter wall of the existing Yerawada Central Prison (YCP-1). Based upon such a proposed project, there is no question of extending restrictions allegedly imposed by Rule 3(a) of the 1964 Rules as are sought to be interpreted by Ms. Bhende, the learned AGP.

51. Rule 3(a), even as interpreted by Ms. Bhende, does not refer to any "proposed Central Prison". Therefore, even based upon the most strenuous interpretation of Rule 3(a), the YCP authorities could not have required the PMC to stop the Petitioner's project backed by the two Commencement Certificates. There is not the slightest allegation from either the PMC or the YCP authorities about the Petitioner's project

breaching any of the terms and conditions of the original or the revised Commencement Certificates.

52. Ms. Bhende then argued that the area outside the perimeter wall of Yerawada Central Prison (YCP-1) was designated as an “Open Prison and Correctional Centre.” Despite our request, she could not produce any Notification supporting this submission. However, she did produce the Maharashtra Classification of Prisons (Amendment) Rules 2015, in which the Prisons and Correctional Centres in the State of Maharashtra were classified.

53. Rule 2 of these Rules classify types of Prisons and Correctional Centres in the State of Maharashtra as follows:-

2. Classification of Prisons and Correctional Centers-

(1) There shall be the following types of prisons and correctional centers in the State, which shall be classified as:-

(a) Central Prisons and Correctional Centers.

(b) District Prisons and Correctional Centers.

(c) Special Prisons and Correctional Centers.

(d) Open Prisons and Correctional Centers,

(e) Civil Prisons and Correctional Centers,

(1) Open Colonies.

(g) Borstal School,

(h) Hospital Prisons and Correctional Centers,

54. Rule 4 (III) of the Classification Rules refers to a Central Prison and Correctional Centre at Yerawada with more than 800 prisoners. There is also a reference to Yerawada (Open Prison and Correction Centre) for prisoners between 300 and 799. Ms. Bhende also stated that the Yerawada Open Prison was spread over 190 acres, including agricultural land, a teak plantation, and a natural lake.

55. If based upon the above documents, Ms Bhende's contention about the Open Prison and Correctional Centre being located outside the perimeter wall of the Yerawada Central Prison (YCP-1) is accepted, still, Rule 3(a), even as interpreted by Ms Bhende, would not apply. This is because Rule 3(a) refers to only Mumbai Central Prison, Central Prisons other than Mumbai, District Prison and Sub-Prisons. There is no reference, however, to Open Prisons and Correctional Centres, Civil Prisons and Correctional Centres, Open Colonies, Borstal School, Hospital Prisons and Correctional Centres, referred to in Rule 3(a) relied upon by Ms. Bhende.

56. Therefore, rule 3(a) cannot be stretched to apply or regulate the construction beyond the perimeter walls (if any) of an Open Prison or some "proposed prison", even going by the strained interpretation proposed by Ms Bhende. Besides, as was pointed out by Mr Anturkar, there would be no question of classifying an "Open Prison" as a "*sensitive area of*

the prison” or an “*area having movement of prisoners with high-security risk*”. These are the words and phrases used in Rule 3(a); again, these cannot simply be ignored or rendered otiose.

57. Accordingly, based upon some proposed modernised prison facilities or open prisons and correctional centres, Rule 3(a), even as construed and interpreted by Ms Bhende, would not justify the issue of the impugned communication dated 31 December 2021 by the YCP authorities or the stop-work order dated 28 March 2022 by the PMC based upon the communication of the YCP authorities.

58. Rule 3(b) of the 1964 Rules, as amended and substituted by the Notification dated 09 August 2018, requires a reference to the committee comprising of officers of the Prison Department and the Planning Authority to advise before any building permission is given *in the area described in Rule 3(a)*. Since the Petitioner’s project does not fall in the area described under Rule 3(a), there was no question of a reference to the committee referred to in Rule 3(b). No stop-work order could have been issued by the PMC either based upon the YCP authorities’ communication dated 31 December 2021 or because the matter was pending before the committee, and the committee was divided and had failed to reach any decision on the matter.

59. Ms. Bhende then placed reliance upon the Government Resolution dated 09 August 2018. This GR is nothing but a Notification dated 09 August 2018 to amend and substitute Rule 3 of the 1964 Rules referred to above. On a proper interpretation of amended and substituted Rule 3(a) of the 1964 Rules, the Petitioner's project could not have been blocked or stopped after the construction had already commenced based upon the valid permissions issued by the PMC. Even based upon Ms Bhende's strained construction of Rule 3(a), the Petitioner's project did not fall in the area covered by Rule 3(a). Therefore, the Respondents could not have blocked or stopped the Petitioner's project by issuing the impugned communications.

60. Ms Bhende also relied upon this Court's order dated 09 July 2015 in *Dosti Realty Ltd & Anr*. This order refers to Rule 3 as substituted and amended by the Gazette Notification dated 28 May 2015. This provision imposed restrictions on the construction of any buildings other than those of the prisons within 150 meters of the perimeter wall of a Central Prison. However, there were no guidelines for the buffer zone, and therefore, this Court directed the Government to finalise the guidelines for the buffer zone around the Arthur Road Jail. Under this order by GR/Order dated 06 August 2015, the Government finalised the guidelines.

61. The above guidelines dated 06 August 2015 were in the context of Rule 3 as substituted and amended by the Gazette Notification dated 28 May 2015. After that, by Gazette Notification dated 09 August 2018, Rule 3 was again amended and substituted. In any event, the guidelines referred to a regulation within 150 meters from the perimeter wall of a Central Prison. Since the Petitioner's project is beyond 150 meters and is, in fact, about 620.49 meters away, such guidelines have no application.

62. Significantly, the PMC has not applied such guidelines to any projects near the Petitioner's project. The Petitioner has himself constructed four buildings of ground plus 11 storeys adjacent to the present project. Mr Anturkar has also produced Google Maps, which shows several residential and commercial projects around the YCP. In such circumstances, the apprehension expressed by Ms Bhende and also by Mr Sunil Dhamal, the Superintendent of YCP, about the Petitioner's project constituting any threat to safety and security of the jail inmates or that the proposed YCP-2 project would be within the vision shadow of the Petitioner's project building "*thereby affecting peace and security of YCP-2 (proposed Jail building and Open District Prison)*" cannot be accepted.

63. Based upon the rule relied upon or the government resolutions or guidelines, the Petitioner's project could not

have been stalled midway. The Petitioner is admittedly the property owner constructing the project comprising ground plus a five-storeyed building. The PMC has not alleged any breach of the terms and conditions subject to which the Commencement Certificates have been issued for this project. No statute or statutory rule is shown to have been breached either in granting permissions or in continuing construction under such permissions.

64. Property rights may no longer be fundamental rights, but they are constitutional rights protected by Article 300A. Accordingly, without any clear law or some rules and regulations that have the force of law, no restrictions can be imposed on the Petitioner's right to use its property. Here, no explicit executive clear instructions are also pointed out based upon which the virtual ban on further construction could be justified. Therefore, the issue of whether mere executive instructions could impose such a drastic prohibition, mainly when the field is by and large covered by a statutory regime, does not arise in this Petition. *In State of W.B. and others Vs. Vishnu Narayan & Associates (P) Ltd. And another*¹ the Hon'ble Supreme Court has held that it is the settled position of law that the State or its executive officers cannot interfere with the rights of others unless they can point to some specific provision of law, which authorises their acts.

¹ (2002) 4 SCC 134

65. In *Kolkata Municipal Corporation and Another Vs. Bimal Kumar Shah and others*² the Hon'ble Supreme Court held that while it is true that after the 44th Constitutional Amendment, the right to property drifted from Part II to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300A, which declares that "*no person shall be deprived of his property save by authority law*" has been characterised as a constitutional and human right.

66. In *T. Vijayalakshmi and others Vs. Town Planning Member and Another*³, the Appellants' application for development and construction was rejected by the Karnataka Planning Authority on the ground that the Appellants' property fell within the "*valley zone in the proposed comprehensive plan*". A single Judge of the Karnataka High Court ruled in favour of the Appellants. Still, the Division Bench held that though every executive action, if it was to operate to the prejudice of any person, must be supported by some legislative authority, it was equally true that *private interest would always yield place to the public interest and the Court could not compel the authorities to violate the environmental law*. The Hon'ble Supreme Court, however,

² 2024 SCC OnLine SC 968

³ (2006) 8 SCC 502

reversed the Division Bench and approved the view of the Single Judge.

67. The observations of the Hon'ble Supreme Court in paragraphs 13 and 15 are relevant and the same read as follows:-

“13. Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.

15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are

required to be dealt with in terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of legitimate expectation in a case of this nature would have a role to play.”

(Emphasis supplied)

68. In *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd. And others*⁴, the Hon’ble Supreme Court has held that the property right is not only a constitutional right but also a human right. Therefore, in Town and country planning involving land development through the process of land use, zoning plan and regulating building activities, there are two competing interests, viz., one, the interest of the State vis-a-vis the general public and two, to have better living conditions and the right of property of an individual which although is not a fundamental right but is a constitutional and human right.

69. The Hon’ble Supreme Court held that *The planning acts being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or a statutory rule. The regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right of property of the owner of such land.*

⁴ (2007) 8 SCC 705

70. The Hon'ble Supreme Court held that a development plan does not include a draft development plan. Even in ordinary parlance, a development plan can be implemented only when it is final and not at the draft stage, i.e., susceptible to changes. It is possible to enforce a draft development plan in a given case, but the statute must specifically provide for the same. *Without the statutory sanction, a draft development plan which has not attained finality cannot be held to be determinative of the rights and obligations of the parties and, thus, it can never be implemented. When a draft development plan is prepared, the same is subject to grant of approval and/or modification thereof. The end use of the land is not frozen until a final sanction plan comes into being. Until the draft development plan is finalized it would have no statutory or legal force and the land use as existing prior thereto with the rights of usage of the land arising therefrom would continue.*

71. The above decisions and the observations therein support the Petitioner's contentions. Without statutory backing or, for that matter, even some clear executive instructions, the respondents could not have issued the impugned communications and stopped the Petitioner's project midway. Rule 3(a) of the 1964 rules must be strictly construed given the above observations in *Indore Vikas Pradhikaran (Supra)*. Besides, no reliance could be placed on

the proposed jail modernisation project to stall the Petitioner's project, which was validly sanctioned and commenced.

72. The Petitioner has also alleged hostile discrimination. Though we do not need to go into such allegations, we find that the Petitioner was permitted and has already constructed four buildings of ground plus eleven storeys immediately adjacent to the present project. Ms Bhende's contention that YCP authorities are pursuing the matter with PMC is not very relevant because the YCP authorities have failed to establish anything illegal in such construction.

73. Similarly, the Google Maps produced on record by Mr Anturkar show several residential and commercial buildings in the vicinity, which are possibly permitted by PMC and not objected to by the YCP authorities. In any event, there is unimpeachable material that the Petitioner's project is almost 620 meters away from the perimeter walls of Yerawada Central Prison. By attempting to include a proposed or open jail in the classification of a central prison, the boundaries and, consequently, the restrictions cannot be selectively extended to the Petitioner's project. The vague contentions of security threats or the prisoners' privacy could not be valid grounds given the statutory provisions, the location of the petitioner's project site and the nature of extensive constructions already permitted and come up in the very area.

74. The PMC, in this case, does not appear to have independently applied its mind to the matter. The PMC has virtually acted under dictation from the YCP authorities and, based upon the YCP's impugned communication dated 31 December 2021, almost mechanically issued the impugned stop work notice dated 28 March 2022. The stop work notice issued without minimum compliance with the principles of natural justice does not even allege a breach of any of the terms and conditions of the Commencement Certificates issued by the PMC. The stop work notice does not even allege a violation of any Rules and Regulations based upon which the PMC issued the Commencement Certificates. This is also an additional ground for interfering with the impugned stop work notice dated 28 March 2022.

75. Mr Khadapkar made a faint reference to UDCPR, which entered force on 03 December 2020. The original Commencement Certificate issued for the Petitioner's project was issued on 15 September 2020, i.e., before the UDCPR entered force. The revised Commencement Certificate dated 21 September 2021 was, however, issued after the UDCPR entered force on 03 December 2020

76. Clause 3.1.7 of UDCPR reads as follows:-

“3.1.7 Development within certain distance from the Prison Premises

The development within 150 m., 100 m., 50 m., from the perimeter wall of Central Prison,

District Prison and any Sub Prison respectively shall be regulated and may be permitted with prior consent of the committee constituted in this regard by the Home Department. This provision shall be subject to the orders issued by the Government from time to time.”

77. Again, assuming that clause 3.1.7 could apply to the Commencement Certificate issued on 26 November 2018 or its revision, this clause refers to development within 150 meters from the perimeter wall of a Central Prison. The Petitioner’s project, as noted above, does not fall within 150 meters from the perimeter wall of Yerawada Central Prison.

78. The above position was clarified by the YCP authorities by communication dated 17 February 2011 issued by the IGP (Prisons) Yerawada, clearly and unambiguously stating that the property surveyed under 154 is beyond 182.88 meters from the high-security wall of the YCP. Based on this even the Petitioner was permitted and has already constructed four ground plus 11 storeyed buildings immediately adjacent to its present project site. Positive material shows the project site, and the building is about 620 metres from the perimeter walls of YCP. Clause 3.1.7 does not refer to any “proposed prison” or “open prison”. Therefore, even based upon clause 3.1.7, the impugned stop work notice could never have been issued.

79. For all the above reasons, we quash and set aside the impugned stop work notice dated 28 March 2022 and the impugned communication dated 31 December 2021.

80. The Rule is made absolute in the above terms. There shall be no orders for costs.

(Kamal Khata, J)

(M. S. Sonak, J)