PRAJAKTA SAGAR VARTAK
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1022 OF 2025

M/s. Atria Constructions, represented through its partners Mr. Dhananjay Nivrutti Thite & Mr. Anil Ramalinga Reddy … Petitioner

Vs.

(1) The Municipal Commis, Pune
(2) The City Engineer, PMC Building, Pune
(3) The Junior Engineer, Bldg. Development Dept., Pune
(4) The Deputy Engineer, Bldg, Development Dept., Pune
(5) Wellbuild Merchants Pvt. Ltd. through its Director
(6) The State of Maharashtra … Respondents

WITH
WRIT PETITION NO. 10414 OF 2025

(1) Pooja B. Jain
(2) Rahul A. Jain
(3) Indermal V. Jain
(4) Dilip K. Bathiya
(5) Bhawarlal P. Jain
(6) Jagruti V. Doshi
(7) Sahit S. Oswal
(8) Piyush D. Lodha
(9) Champat Kumar Jain
(10) Sachin M. Palresha
(11) Akshay P. Jain
(12) Hitesh M. Jain
(13) Roshan J. Jain
(14) Pooja S. Swami
(15) Shaileshkumar K. Golesha
(16) Mahendra M. Jain
(17) Raj P. Kothari
(18) Anil B. Gundecha
(19) Surekha A. Semlani
(20) Kantilal B.Jain
(21) Kishor M. Oswal
(22) Sachin R. Jain
(23) Riteshkumar S. Jain
(24) Praful Mehta
(25) Vivek H. Gada
(26) Vaibhav P. Gandhi

(27) Pravin M. Bora
(28) Vikram Kumar Jain
(29) Nilesh N. Shah
(30) Dilip N. Oswal
(31) Jayendra P. Shah
(32) Bharat M. Jain
(33) Ankita v. Kasat
(34) Shobha H. Bhattad
(35) Manish A. Masalia
(36) Shankarlal Kasaram Parihar
(37) Mukesh G. Oswal
(38) Sanjay K. Parmar
(39) Ritesh Singhvi
(40) Jugalkishor Toshniwal
(41) Jyoti D. Bothara
(42) Sudin S. Mehta
(43) Ritesha A. Rathor
(44) Vimla Jain
(45) Karishma Sarnot
(46) Nitesh Singhvi
(47) Nayana H. Valand
(48) Vishal J. Shah
(49) Rajgruhi Residency D Wing Co-op. Hsg. Society Ltd. … Petitioners

Vs.

(1) Pune Municipal Commissioner
(2) The Executive Engineer, Bldg. Development Dept., Pune
(3) The City Engineer, PMC Building, Pune
(4) The Deputy Engineer, Bldg, Development Dept., Pune
(5) Wellbuild Merchants Pvt. Ltd. through its Director
(6) M/s. Atria Constructions
(7) The State of Maharashtra … Respondents

Mr. Girish S. Godbole, Senior Advocate a/w. Mr. Vijay Upadhyay and Mr. Sitesh Sharma for the petitioner in WP/1022/2025.
Mr. Pritesh Burad a/w. Ms. Samita Vaviya, Ms. Kiran Yadav i/b. Pritesh Burad Associates for the petitioner in WP/10414/2025.
Mr. Vishwanath Patil for respondent nos. 1 to 4/PMC.
Mr. Ashish Kamat, Senior Advocate a/w. Mr. Shrey Fatterpekar, Ms. Nidhi, Mr. Vishal Tiwari, Mr. Himanshu Singh i/b. White and Brief Advocates and Solicitors for respondent nos. 5.
Mr. Mayur Khandeparkar a/w. Mr. Akshay Deshmukh, Mr. Sumit Chaudhary, Mr. Sanket Kadam for the Intervenor/Applicant in IA/1309/2025.
Ms. Savita A. Prabhune, AGP for the State.

CORAM : G. S. KULKARNI &
ARIF S. DOCTOR, JJ.
RESERVED ON : 4 AUGUST, 2025
PRONOUNCED ON : 21 NOVEMBER, 2025

Judgment (Per G.S. Kulkarni. J.) :-

1. Rule returnable forthwith. By consent of the parties heard finally.

2. These are two proceedings filed under Article 226 of the Constitution of India.

3. Writ Petition No. 1022 of 2025 is filed by M/s. Atria Constructions assailing a Stop Work Notice dated 10 December 2024 issued to such petitioner by respondent nos.3 and 4, namely the Junior Engineer and the Deputy Engineer of Building Development Department of the Pune Municipal Corporation-respondent no.1 (for short, "the **Municipal Corporation**").

4. Writ Petition No.10414 of 2025 is filed by 49 petitioners who have purchased flats in the building in question constructed by M/s. Atria Constructions, who contend that they are being deprived of the flats purchased by them in view of the municipal corporation halting grant of Occupation Certificate by issuance of the impugned stop work notice.

5. For convenience, we refer to the facts on record of the first writ petition filed by M/s. Atria Constructions, who is referred as "**the petitioner**", and the petitioners in the companion petition would be referred as "**the flat purchasers**".

Facts:-

6. This is a peculiar case as the facts would unfold. The dispute pertains to a building project described as 'Rajgruhi Residency' comprising construction of four wings which include four podiums plus amenities plus 20 floors, being the construction of each of the wings.

7. At the outset, we may observe that as the facts unfold, the entire controversy underlies a dispute between respondent no.5-Wellbuild Merchants Pvt. Ltd./the owner of the land (for short, "Wellbuild") who was also the developer of the 'A' and 'B' wings, which work was in fact contracted to the petitioner. Further the petitioner under an agreement dated 18 August 2021 entered into with Wellbuild, is undertaking construction of wings 'C' and 'D'. It is also not in dispute that the construction of Wings 'A' and 'B' was completed long back. Also, an Occupancy Certificate was granted, consequent to which the flat purchasers are in occupation of their respective tenements, who have also formed a cooperative society.

8. Insofar as Wings 'C' and 'D' are concerned, the construction of which is undertaken by the petitioner, the construction of Wing 'D' stands fully completed and is awaiting an Occupancy Certificate, which has already been applied by the petitioner. Also large number of flats in Wing-D are already sold by the petitioner, and such flat purchasers are awaiting occupancy of their respective flats. The construction of Wing-C has reached upto 4 floors.

9. It is at this stage, a very peculiar dispute has arisen, which appears to be wholly between Wellbuild and the petitioner. The flat purchasers of Wing-D are sandwiched between these disputing parties. It also appears that the municipal machinery is being used to settle these private disputes.

10. The following discussion on the facts would shed light on such factual conspectus:-

11. On 25 October 2019, a Memorandum of Understanding was executed between the petitioner and Wellbuild, whereby the petitioner invested a sum of Rs. 40 Crores to ensure completion of the project.

12. On 18 August 2021 and 26 August 2021, Articles of Agreement/ Development Agreement along with a Power of Attorney were executed and registered between the petitioner and Wellbuild, whereunder the petitioner was appointed as the "developer" by Wellbuild to complete the project which is primarily the Wings 'C' and 'D' of the said project.

13. About 19 months back i.e. in December 2023, the petitioner fully completed the construction of Wing/Tower-D. The plans in this regard are dated 13 October 2021 and were duly sanctioned by the Municipal Corporation. For the D-Wing, the total FSI for construction was approved at 15,870.02 sq. meters with 80 approved flats/tenements.

14. The land on which the project of these buildings (Wings A, B, C & D) is being undertaken, has also a DP work of a storm water drain, which was to be

realigned. On 02 February 2024, in regard to the realignment of Nala/storm water line, a work order was issued by the Drainage Department of the Municipal Corporation. The petitioner has contended that 70% of the realignment of the storm water drain (nala) already stands completed, hence the purported grievances of the residents of Towers A and B would not survive.

15. It is on such backdrop, as on date, the petitioner's position is that the petitioner has completed the work of Tower/Wing 'D'. It is the petitioner's case that at this crucial juncture, Wellbuild terminated the Articles of Agreement dated 18 August 2021. Thus, the disputes and differences had arisen between Wellbuild and the petitioner on such count.

16. It needs to be stated that Wellbuild, even prior to the receipt of the petitioner's reply to the termination notice dated 16 April 2022, filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "ACA") being Civil Miscellaneous Application No. 544 of 2024 before the Court of learned District & Sessions Judge (Commercial Division) at Pune. On 29 April 2024, the petitioner also filed a cross application under Section 9 of the ACA being Civil Miscellaneous Application No. 582 of 2024.

17. The disputes were also taken by WellBuild before different authorities, the same need not be detailed, suffice it to observe that Wellbuild approached the Maharashtra Pollution Control Board (for short, "MPCB") applying to the said authority not to process the petitioner's application for "revalidation of consent to establish and consent to operate", which was pending consideration before the

MPCB. On 29 August 2024, Wellbuild in fact instructed its Director to withdraw the pending application for grant of revised Environmental Clearance.

18. The applications filed by Wellbuild, as also by the petitioner under Section 9 of the ACA were adjudicated by the Competent Court by an order dated 20 September 2024, whereby the Section 9 ACA application filed by Wellbuild was rejected, and the Section 9 application filed by the petitioner was partly allowed. An appeal was preferred against the said order by both the parties under Section 37 of the ACA. A Division Bench of this Court, by a common judgment and order dated 22 November 2024 disposed of both the appeals, wherein the orders passed on Section 9 proceedings filed by the petitioner were sustained. Thereafter inter se between the parties it was agreed that the disputes and differences be referred for adjudication by appointing an arbitral tribunal. Accordingly, a former Judge of this Court was appointed as the sole arbitrator to adjudicate the disputes between the parties. The request for continuation of interim relief also came to be rejected by the Appellate Court. The relevant part of the said order reads thus:

> "61. M/s. AC has furnished an undertaking to this Court, which reads as follows :-
>
> > "AFFIDAVIT/UNDERTAKING ON BEHALF OF THE RESPONDENTS ABOVENAMED:
> >
> > I Shri. Anil Reddy age: 56 years, Occ: Business, having office at 440/441, Nanapeth, PGI Building, Pune 411002, the partner of the the Respondent No.1 abovenamed, hereby undertake as follows:
> >
> > a. M/s. Atria Constructions undertakes not to sell balance 5 flats in Tower D and balance 63 flats in Tower C in the scheme "Rajgruhi Residency" further at less than Rs.9,500/- (Rupees Nine Thousand Five Hundred Only) per Sq.ft on saleable area on rera carpet basis viz rera carpet area + 35% as defined in Articles of Agreement dated 19/08/2021.

b. The Respondent No.1 undertakes to continue to sale the units not be below the rate of Rs. 9500/- (Rupees Nine Thousand Five Hundred Only) per Sq.ft on saleable area on rera carpet basis viz rera carpet area + 35% as defined in Articles of Agreement dated 19/08/2021 and inform the Appellant about the rate of selling of units and give him 30 days' notice to make any further offer and is obligated to conclude the transaction at such higher rate and in favour of the purchaser nominated by the Respondent or bring any fresh Purchaser for more than the rate provided by the Respondent No.1. The parties hereby agree that such offer and/or counteroffer shall not be below the rate of Rs. 9500/- per sq. ft. (Rupees Nine Thousand Five Hundred Only) on saleable area on rera carpet basis viz rera carpet Page 21 of 25 area + 35% as defined in Articles of Agreement dated 19/08/2021.

c. Both the Appellant and the Respondent No. I agree and undertake that they shall not in any manner communicate with and/or approach the prospective purchaser nominated by the other side. All communication in relation to the proposed transaction(s) shall be only between the Appellant and Respondent No. 1."

62. Despite the undertaking, even if we accept Mr Kamat's contention that M/s. AC will accept cash amounts; it is always open to WMPL to lead cogent evidence and recover damages or proper market value. However, at this stage, it will not be appropriate to stop the construction or restrain the sale of apartments for a rate not below Rs.9500/- per sq. ft. even though the agreement between the parties refers to average minimum rate of Rs.8000/- per sq. ft. WMPL, had pleaded that the rate in the area would be Rs.9500/- per sq. ft. Mr. Kamat clarified that this would be the minimum rate.

63. M/s. AC, consistent with the undertaking quoted above, shall not agree to sell any apartments at a rate of less than Rs.9500/- per sq. ft. The undertaking given on behalf of M/s AC is now accepted as an undertaking to this Court.

64. However, no case is made to restrain the execution of agreements regarding 17 apartments. These were transactions entered into much earlier, but no formal agreements were executed. Such execution had to be deferred on account of status quo orders and statements. Therefore, at this stage, there is no point in imposing any restrictions regarding these 17 allotments or agreements. The position of the remaining purchasers is not much different from that of these 17 allottees.

65. M/s AC will, however, not claim any equities regarding sale of apartments. This position must be made clear to the 17 allottees by informing them about the pendency of disputes and legal/arbitration proceedings.

66. Regarding the challenges to the order by which the learned District Judge has granted interim relief to M/s. AC, at least prima facie, the reliefs are broad-based to some extent. **While WMPL cannot be allowed to take the law into its hands and physically obstruct the construction of the project, no blanket injunction can be granted restraining WMPL**

> from filing complaints to statutory and Environmental protection authorities about the alleged deficiencies. This cannot be called some unlawful obstruction. With such modification and clarification, the order granted favouring M/s AC is sustained.
>
> 67. The learned counsel for the parties proposed that the interim arrangement could operate until the arbitrator enters on reference and decides the issue of interim relief. Mr. Kamat submitted that the arrangement that this Court's orders could be treated as ad-interim relief and the applications under Section 9 could then be treated as applications under Section 17 before the Arbitral Tribunal. The Arbitral Tribunal could then dispose of these applications and decide on the interim relief that could operate pending the disposal of the arbitration proceedings.
>
> 68. Mr. Godbole submitted that there could be no objection to this Court's order operating as an ad-interim arrangement. He, however, submitted that there are subsequent developments and therefore, the parties could be given liberty to file applications under Section 17 before the Arbitral Tribunal. The Arbitral Tribunal could then decide such applications without being influenced by the ad-interim arrangement that could be made by this Court.
>
> 69. Any direction to treat the applications under Section 9 as Section 17 applications would involve complications, though it might save paper. Subsequent developments might be difficult to record. Therefore, it would be appropriate to grant the parties leave to file applications under Section 17, which could then be decided without being influenced by this interim arrangement.
>
> 70. The above arrangement will operate as an ad-interim arrangement. The parties may file their applications under Section 17 within four weeks from today. The above ad-interim arrangement shall operate until the Arbitral Tribunal disposes of Section 17 applications, if filed or until the Arbitral Tribunal may direct. The Arbitral Tribunal must decide the applications under Section 17 without being influenced by any observations in the impugned judgments and orders dated 20 September 2024 or this judgment and order."

19. It is thus clearly seen from the aforesaid orders passed by the Division Bench that the disputes *inter se* between Wellbuild and the petitioner were to be the subject matter of the arbitral proceedings.

20. Thereafter on 02 December 2024, the petitioner preferred a Civil Suit being Special Civil Suit No. 2012 of 2024 before the Court of learned Civil Judge

Senior Division, Pune against the Co-operative Society formed by the flat purchasers of 'A' and 'B' Wings of the said project. In the said civil suit, the learned trial Judge passed an ad-interim order restraining the society and its residents from creating obstruction in the work of realignment of the Nala and also restrained illegal use of ramp of Tower 'C', which was yet to receive the completion certificate.

21. The petitioner contends that, thus there were two sets of orders, namely, orders passed by the Court(s) under the ACA, as also orders passed by the Civil Court against the society, hence there was no impediment for the petitioner to carry forward the project by obtaining the O.C. in regard to 'D' Wing, which was complete.

22. The petitioner contends that on 06 December 2024 at about 04.57 p.m. (being a Friday), the petitioner received a WhatsApp notice from the Deputy Engineer, Building Development Department of the Municipal Corporation (respondent no.4) informing the petitioner of a hearing scheduled before respondent no.2-City Engineer of the Municipal Corporation on 9 December 2024, however, no details as to the reason/ context of such hearing were informed to the petitioner.

23. The petitioner has contended that most surprisingly, the hearing, which was held in pursuance of the said WhatsApp notice dated 06 December 2024, was attended by several persons, namely, an RTI Activist, representatives of Wellbuild and their advocates, all this was without any intimation of this nature of hearing to the petitioner.

24. The petitioner tendered its written response, post conclusion of the hearing held by respondent no.2-City Engineer, *inter alia* highlighting the recommendation in regard to Revalidation of the Consent to Establish and Renewal of the Consent to Operate being duly recommended as per the minutes of the consent committee meeting dated 14 November 2024 held between the petitioner and Wellbuild.

25. It is the petitioner's case that immediately on the next day i.e. on 10 December 2024, the "impugned stop work notice" came to be issued by respondent no.3-Deputy Engineer of the Municipal Corporation, which is stated to be issued on an approval being granted by respondent no.2-City Engineer. The impugned stop work is issued *inter alia* on the grounds of :- (i) Refusal of Consent to Establish under Section 27 of the Water (Prevention & Control of Pollution) Act, 1974 and Section 21(4) of the Air (Prevention & Control of Pollution) Act, 1981, (ii) Non-receipt of Consent to Operate in respect of each project, (iii) Failure to furnish revised Clearance as per sanctioned IOD dated 22/02/2023, (iv) Alleged deviations in actual construction from Environmental Clearance Certificate and (v) Failure to complete shifting work of Nala as per order dated 22 May, 2023 passed by Respondent No.1.

26. The petitioner has contended that on 19 December 2024, in pursuance of the minutes of the Consent Committee Meeting dated 14 November 2024, the petitioner is stated to have received Revalidation of Consent to Establish, for a further period of 5 years. Also renewal of Consent to Operate [Part II] valid till 12 January 2026 was granted.

27. It is the case of the petitioner that one Mr. Dilip Kale, Architect of Wellbuild, at the behest of Wellbuild and without there being any requirement from the Municipal Corporation, issued a certificate dated 21 August 2024. This certificate was contrary to the sanctioned plans, which had formed the basis of issuance of a Commencement Certificate dated 13 October 2021 as issued to the petitioner. According to the petitioner, in such certificate, Mr. Dilip Kale falsely stated that FSI of Tower 'D' is about 14599.71 sq. meters and the construction of Tower 'D' as undertaken was of 15870 sq. meters. Being aggrieved by such incorrect/false recording of the area in the certificate issued by Mr. Dilip Kale, the petitioner issued an email dated 31 January 2025 to him to furnish certified copies of official plans, building wise, which were submitted before the environment Committee in 2017 and details of disclosure of information in that regard.

28. On 26 February 2025, the petitioner also obtained renewal of 'Consent to Operate' part III valid till 30 June 2026.

29. Thereafter on 24 April 2025, the petitioner applied for an architect's certificate along with the papers which were made available by Architect Mr. Dilip Kale. Architect Mr. Vilas Tarvade issued a certificate stating that the architect's certificate issued by Mr. Dilip Kale (Wellbuild's Architect) disclosed incorrect and inaccurate figures and that even the reference contained therein to the IOD submitted for environment clearance (for short, "EC") on 19 August 2023 was grossly inaccurate and erroneous. He also recorded that on a detailed scrutiny of

the record, the IOD which was submitted for E.C. on 19 August 2023 came to be duly withdrawn and a fresh IOD dated 26 November 2023 was submitted for EC (Environment Clearance) along with a proposal no. SIA/MH/INFRA2/ 450922/2023.

30. It is on such backdrop, the petitioner has contended that the impugned stop work notice dated 10 December 2024 is illegal on each of the grounds on which the same has been issued. The petitioner's case on each of the points as contained in the stop work notice submitted to the municipal corporation in a tabular form is required to be noted which read thus:-

"

No.	Alleged Deficiency highlighted in Show Cause Notice	Petitioner's response
1.	Refusal of Consent to Establish under Section 27 of the Water (Prevention & Control of Pollution) Act, 1974 and Section 21(4) of the Air (Prevention & Control of Pollution) Act, 1981	(i) The Consent to Establish for the Project "Rajgruhi Residency" vide UAN CE1505000801 had expired on 12/01/2021. (ii) The revised sanction plan CC/2042/2021 was sanctioned from Pune Municipal Corporation by Wellbuild Merchants Pvt Ltd on 13/10/2021. A valid Consent to Establish is a precursor for sanction of Building Plan alongwith a valid Environment Clearance Certificate (iii) The Revalidation of Consent to Establish was applied by Wellbuild Merchants Pvt Ltd on 28/4/2023 vide UAN 000161756 which was rejected on 14/01/2024 due to negligence in responding to the show cause notice (iv) The Revalidation of Consent to Establish was applied by Atria Constructions on 02/02/2024 vide UAN 0000197009 which was finally recommended in the Consent Committee meeting on 14/11/2024.

		(v) We have now received the Revalidation for Consent to Establish on 19/12/2024 valid till 12/01/2026 (Annexure - I D) (vi) The Consent to Operate obtained by Wellbuild Merchants Pvt Ltd. vide UAN 000094164 dated 03/07/2021 had expired on 03/06/2021 (vii) The Part Completion Certificate for A & B Building completed by Wellbuild Merchants Pvt Lid were issued before Consent to Operate dated 03/07/21 was obtained (viii) The Renewal of Consent to Operate obtained by Wellbuild Merchants Pvt Ltd. vide UAN 0000116949 dated 30/07/2021 expired on 03/06/2023 (ix) The Consent to Renewal! was applied by Atria Construction on 16/04/2024 (x) The Renewal of Consent to Operate was recommended in the Consent Committee meeting on 14/11/2024. This was highlighted in the meeting, in the CE Office on 9/12/2024 and was also attached in our submission on 10/12/2024. (xi) We have now received the Renewal for Consent to Operate on 19/12/2024 valid till 30/06/2025 (Annexure -E)
2	Non-receipt of Consent to Operate in receipt of each project	Explained above
3	Failure to furnish revised Environment Clearance as per sanctioned IOD dated 22/02/2023	<u>Sanctioned Environment Clearance Details</u> (i) The Environment Clearance order IEC/Samitee/-5, dated October 13, 2017, sanctioned a total built-up of 72,032.18 sq. mtrs. for a plot area of 18,000 sq. mtrs. <u>Revised Environment Clearance Application</u> (ii) An Approved Intimation of

		Disapproval (IOD) dated December 20, 2023, vide IOD Zone/2/7472, was submitted for a Revised Environment Clearance for an increased built-up area of 84,131.86 sq. mtrs. Before the-State Environment Assessment Committee (SEAC) vide Application No. S[A/MH/INFRA2/450922/2023. The SEAC cleared the proposal in its 187th meeting dated December 27, 2023, and forwarded it to the State Environment Impact Assessment Authority (SEIAA). Construction Status as on 20.12.2024 (i) As of date, we have constructed 68,132.86 sq. Mtrs, as mentioned in your Work Stop Notice order. Voluntary Construction Halt (i) Construction for Building C has been halted voluntarily, as we have reached the threshold built area permitted under the sanctioned limit in the Environment Clearance dated October 13, 2017. Undertaking (i) We undertake not to carry out any additional construction until the SEIAA clears the project as per the IOD dated December 20, 2023, vide 10D Zone/2/747, and revised sanction is obtained from the Pune Municipal Corporation
4	Alleged deviations in actual construction from Environment Clearance Certificate	Environment Clearance Compliance (i) As mentioned above, there are no deviations from the Certificate Environment Clearance Certificate dated October 13, 2017. Inspection Report (i) The Inspection Report bearing No. F. No. EC- 2334/RON/2023-NGP, dated December 19, 2023. This Certified Compliance Report highlights that no deficiencies or deviations in construction were found. Environment Clearance History (i) The Certified Compliance Report

		references the grant of Environment Clearance vide: SEAC-III-2014/C.R.194/TC-3, dated December 10, 2015, for a plot area of 18,000 sq. mtrs. with a total built-up area of 56,950.70 sq. mtrs. (ii) IEC/Samitee/-5, dated October 13, 2017, for a plot area of 18,000 sq. mtrs. with a total built-up area of 72,032.18 sq. mtrs. Architect's Certification (i) The licensed Architect has certified on 21/08/2024 that the total built-up area constructed till date is 68,132.86 sq. mtrs., which is within the EC sanctioned limit of 72,032.18 sq.mtrs (Annexure - F) (ii) There are no deviations in construction beyond the granted Environment Clearance. The State Environment Assessment Committee (SEAC) has recommended the grant of a further Revised Environment Clearance Certificate and forwarded the proposal to the State Environment Impact Assessment Authority (SEIAA).
5	Shifting / Re-alignment work of Nala as per Order bearing Outward No. MC/UDCPR-20/SEC/3. 1.1(ii)/443, dated 22/05/2023	Background of Work Order (i) A Work Order, Ja Kra 3457 dated 2/2/2024 was issued to Atria Constructions by the Executive, Drainage Department referencing an Order dated May 22, 2023. This Order granted permission to Atria Constructions to shift/realign the Nala/Storm Water Line as outlined in the proposed plan. The Order specified that Atria Constructions would bear all expenses for the realignment. Please refer to Clause 11 and Clause 19 of the order Ja Kra 3457 dated 2/2/2024 1. That the entire work needs to be completed before 1/2/2025, and 2. That a final Completion Certificate would not be granted until obtaining a completion certificate from the

		Department of Drainage Maintenance and Repair of the Municipal Corporation of Pune. Obstructions by CHS Building A & Building B (i) Despite the Work Order, Respondent Societies (Rajgruhi Residency Building A CHS Ltd. and Rajgruhi Residency Building B CHS Ltd.) colluded to obstruct the development work. Atria Constructions had requested the Societies to temporarily shift vehicles to facilitate excavation and pipe-laying work. Despite Court Orders, the instructions have been willfully defied. Letter to Chief Engineer, PMC (i) On April 22, 2024, Atria Constructions wrote to the Executive Engineer, Drainage and Repairs Department, Pune Municipal Corporation, highlighting the obstructions and non-cooperation from the Societies. PMC's Warning to Societies (i) On May 05, 2024 (Annexure-G)and on October 17, 2024 (Annexure-H), the Superintendent Engineer, PMC, warned the Societies that obstructing the Nala development work could cause damage to life and property, especially during monsoons. (ii) However, the Society members have not relented from their position and continue obstructing laying the 900 mm Storm Water Line Special Civil Suit No. 2012/2024 (i) Due to persistent obstructions, Atria Constructions filed Special Civil Suit No. 2012/2024 on November 27, 2024, against the Societies. The Civil Judge, Senior Division, Pune, granted an Ad-Interim Ex-Parte Order on December 2, 2024, restraining the defendants from obstructing the development and construction activities. (ii) Despite the Court Orders, the obstructions continue unabatedly.

31. It is thus the petitioner's case that, the petitioner having completed the entire construction/development of Wing 'D'/Tower 'D', by December 2023 comprising of 80 tenements, out of which 58 tenements were sold under registered deeds and 17 tenements were booked, at such crucial stage Wellbuild started creating hurdles only to shift the burden of completion of amenities of Wings 'A' & 'B onto the petitioner. It is submitted that all attempts initiated by Wellbuild had failed, hence the motive to oust the petitioner from the project (Rajgruhi Residency) when it failed to secure any interim injunction against the petitioner in the legal proceedings. It is submitted that Wellbuild to overcome such failures, started making multiple complaints through other methods, namely through RTI activists, social activists, politicians and residents of Tower 'A' and 'B' from whom such complaints against the petitioner were generated during the period April 2024 to 24 December 2024 which were filed with the Municipal Corporation and with the authorities granting Environmental Clearance (EC).

32. The petitioner contends that such persons, who are wholly unconnected with the project and were connected and/or associated with Mr. Yuvraj Dhamale, Director of Wellbuild. It is the petitioner's case that all such complaints were intended to withhold issuance of the occupation certificate to be issued in favour of the petitioner in respect of Tower 'D' to be granted on the petitioner's application, knowing well that third party rights are created and this would cause a serious prejudice and losses to the petitioner thereby harming the innocent flats purchasers of Tower 'D' as also the petitioner's reputation. It is hence the

petitioner's case that the reliefs as prayed for in the writ petition be granted to the petitioner.

33. In supporting the petitioner's case for reliefs as prayed for in the writ petition, Mr. Godbole, learned senior counsel for the petitioner has made the following submissions:-

i. The impugned stop work notice is wholly illegal, being contrary to the record of the completed work. It is in breach of principles of natural justice, high-handed and issued for extraneous reasons.

ii. The impugned action on the part of the Assistant Engineer and the Deputy Engineer of the municipal corporation to issue the impugned stop work notice dated 10 December 2024, on the grounds *inter alia* that (i) there is no consent to establish and operate from MPCB; (ii) that there is a failure to shift the Nala despite permission dated 25 February 2025 and in respect of which IOD was issued on 22 February, 2023; and (iii) a revised EC not being obtained on an alleged variation from the original EC dated 04 October 2017 when compared to the actual construction at site, were wholly arbitrary reasons, contrary to the clear factual situation as explained in the chart (supra).

iii. Respondent no.2-City Engineer exercised undue haste in passing the impugned order/stop work notice inasmuch as, a notice scheduling a hearing was issued to the petitioner by the Executive Engineer on 06 December 2024, calling upon the petitioner to appear before the City Engineer on 09 December 2024 at

11.30 a.m. and the impugned order was passed on 10 December 2024. It is thus submitted that considering such haste and the lack of adequate opportunity being granted to the petitioner, malafides are necessarily required to be presumed on the part of such officials of the Municipal Corporation. Further no reasons being set out in the notice as to the purpose for which meeting was scheduled speaks volumes of the high-handed and arbitrary approach of the Municipal officials. In support of such contentions, reliance is placed on the decisions of the Supreme Court in **Dr. S. P. Kapoor vs. State of Himachal Pradesh & Ors.**[1], **Zenit Mataplast Private Limited v/s. State of Maharashtra & Ors.**[2], **Fuljit Kaur vs. State of Punjab & Ors.**[3], **Rajiv Kumar vs. State of Uttar Pradesh & Anr.**[4] and **Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra & Ors.**[5]

iv. No show cause notice was issued to the petitioner, as the basic principles of law would require, before a hearing being fixed before the City Engineer on 09 December 2024. Also the impugned order/stop work notice was passed not by the authority, namely, the City Engineer who presided over the hearing, but by the Assistant Engineer and the Deputy Engineer. This was a novel method, i.e., merely on a purported approval by the City Engineer. It is submitted that apart from the impugned stop work notice, no reasoned order is passed by the City Engineer, also such order is neither pleaded nor placed on record on behalf of the

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1 (1981) 4 SCC 716

2 (2009) 10 SCC 388

3 (2010) 11 SCC 455

4 (2017) 8 SCC 791

5 (2013) 4 SCC 791

respondents. For such reason, the impugned stop work notice dated 10 December 2024 is in breach of the principles of natural justice, high-handed and void *ab initio*.

v. The purported exercise of the statutory power is purely to assist Wellbuild in the private dispute which the petitioner has against Wellbuild, for the reason, that only after the order dated 22 November 2024 was passed by the Division Bench of this Court, dismissing Wellbuild's appeal filed under Section 37 of the ACA, the said notice dated 06 December 2024 was issued to the petitioner scheduling a hearing on 9 December 2024 on which the impugned order was immediately passed on 10 December 2024. Hence, such hasty exercise of powers is clearly high-handed, arbitrary and malafide.

vi. The IOD dated 22 February 2023 which was withdrawn by issuing new IOD dated 26 November 2023 providing for an extra area, had not culminated into a Commencement Certificate since a revised EC proposal was pending.

vii. During the hearing which had taken place before the City Engineer, on 9 December 2024, the MPCB resolution dated 14 November 2024 was relied upon by the petitioner, granting revalidation of Consent to Establish as also Consent to Operate. Such material was not considered in passing the impugned order and on the ground of absence of such consent, the stop work notice has been issued. The impugned stop work notice dated 10 December 2024, only on this count, is required to be held to be perverse, arbitrary and illegal.

viii. Passing of the impugned order has amounted to nullifying the injunction which was granted by the Civil Court against the society formed by the residents of 'A' and 'B' Wings, who were creating obstruction in the realignment of the Nala. By any indirect methods of this kind, court orders cannot be defeated. This amounts to misuse of the machinery of the municipal corporation.

ix. One of the vital aspects of the matter is to the effect that the construction being undertaken was under a valid Environmental Clearance and the same was undertaken as per the sanctioned plan dated 13 October 2021 obtained by Wellbuild, which provided for construction of an area of more than 81,000 sq. mtrs. Hence there was no violation of any FSI norms sanctioned for the project.

x. That such high-handed action on the part of the City Engineer/Assistant Engineer is apparent as even the Environmental Clearance dated 13 October 2017 provided for total construction area of 72,032.18 sq. mtrs. For 'D' Wing the Environmental Clearance provided for 4P (4 podiums) + Amenity + 20 Floors and the construction as presently undertaken by the petitioner, was within the area as provided under the Environmental Clearance limits and was halted at 68,132 sq. mtrs. It is submitted that the construction of 'D' wing was completed only till 20 floors and in fact, there is a reduction in height. It is submitted that the sanctioned plan dated 13 October 2021 provides for 80 flats, hence, the construction is only of 80 flats, thus, there is no excess construction whatsoever as alleged.

xi. It is next submitted that the malafide and high-handedness in the actions of the municipal officers is writ large, also considering Intervention Application No. 1309 of 2025. The submission is that the modus operandi of Wellbuild in connivance with the official machinery of the municipal corporation and private land parties stands completely exposed, also considering the attempt of the intervenor coming before this Court supporting Wellbuild's case as the intervenor is unable to even disclose the source of his knowledge and information or explain how he had learnt about the project and more particularly about the litigation *inter se* between the petitioner and Wellbuild and by the petitioner against the society more particularly, the ad-interim orders dated 28 May 2024 and 25 June 2024 passed on the Section 9 proceedings, which was purely a matter between the petitioner and Wellbuild.

xii. It is submitted that, also the intervenor has miserably failed to disclose the reasons for not apprising the concerned authorities on the judgment and order dated 20 September 2024 passed in Civil M.A. No. 544 of 2024 and Civil M.A. No. 582 of 2024, whereby Section 9 application filed by Wellbuild came to be rejected and Section 9 application filed by the petitioner was partly allowed. It is submitted that this shows apparent dishonesty and the intention of Wellbuild to mislead the authorities.

xiii. The intervenor has also miserably failed to disclose alleged source of information i.e., the date of his alleged RTI applications. In such context, it is submitted that the impugned order has blindly accepted such facts presented by

Wellbuild and the intervenor when these parties failed to establish the correctness of their case. It is submitted that even the alleged Certificates annexed as Exhibit-G to the Intervention Application dated 13 January 2025 and 10 January 2025 are documents generated much after the passing of the impugned stop work notice dated 10 December 2024, which clearly demonstrates the role being played by the intervenor, purely at the behest of Wellbuild. In such context, it is further submitted that the intervenor has also failed to disclose the source/ details of receipt of notice for hearing dated 09 December 2024, which came to be attended by him, as seen from the Attendance Sheet, annexed at page 92 of the petition. It is, hence, submitted that all these issues completely expose the complicity and the collusion between Wellbuild and the intervenor. In such context, reliance is placed on **Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra & Ors**. (supra).

34. It is next submitted that there is no excess construction undertaken by the petitioner much less contrary to the sanctioned building plans and the petitioner had already stalled its construction when the construction reached the prescribed limits under the Environmental Clearance dated 13 October 2017 at 68,132 sq. mtrs. which is almost 4,000 sq. mtrs. within the approved Environmental Clearance as granted. It is for such reason that there is no impediment whatsoever for grant of Occupancy Certificate in regard to the already completed construction work of Tower 'D' and part of Tower 'C'.

35. It is submitted that irreparable prejudice is being caused not only to the petitioner but also to several flat purchasers with whom registered agreements are already executed and who are waiting to occupy their respective flats having parted with valuable money. It is thus submitted that the petition is required to be allowed.

Respondent/Wellbuild's reply affidavit:-

36. A brief reference to the reply affidavit filed on behalf of Wellbuild can be made, which *inter alia* contends that the petitioner had applied for revised Environmental Clearance which is yet to be issued. It is contended that in a meeting held on 27 February 2025, the State Environment Impact Assessment Authority ("SEIAA") had rejected the petitioner's application for obtaining revised Environmental Clearance, which was referred back to the SEAC-III for investigation and reconsideration. It is stated that thereafter, in a meeting held on 14 May 2025, the SEAC *inter alia* noted that the petitioner had submitted a proposal for revision of the EC without first amending the previously granted ECs to reflect the change in the name from respondent no.5 to the petitioner as the Project Proponent. In such context, it is contended that the Committee observed that the Project Proponent was required to submit a separate application in the prescribed form through the PARIVESH portal for such an amendment. The petitioner cannot be considered to be the Project Proponent. The Committee has opined that the proposal could only be considered once the necessary change in the proprietorship was duly processed and approved by the SEIAA. It is hence

contended that the petitioner is yet to obtain revised Environmental Clearance and hence, the reliefs as prayed for in the petition cannot be granted.

37. The reply affidavit has further set out the nature of the private dispute between respondent no.5 and the petitioner and in such context, refers to the various clauses of the Articles of Agreement dated 19 August 2021 and Development Agreement dated 26 August 2021 entered between respondent no.5 and the petitioner for construction of Tower 'C', (7 to 28 floors both inclusive) and for Tower 'D'. Respondent no.5 has also contended that the amounts had become due and payable to respondent no.5 from the petitioner under the said agreements. On these contentions, it is prayed that the petition be dismissed.

38. Mr. Kamat, learned senior counsel for the respondent-Well Build has made the following submissions:

i. The Environmental Clearance in respect of the project was issued by the Pune Municipal Corporation on 13 October 2017 (for short **"2017 EC"**) incorporating condition no. 5, providing that in case of any deviation or alteration in the project from the one already submitted to Pune Municipal Corporation (PMC), a fresh application for amendment was required to be submitted to the PMC, and the PMC, after assessing the adequacy of the conditions imposed, would decide whether any additional environmental protection measures were required to be incorporated. It is

his submission that the 2017 EC was issued based on the plan then sanctioned by the PMC. It is submitted that when there was an alteration in the plans approved by the PMC, the petitioner was required to make a fresh application for Environmental Clearance. It is submitted that on such backdrop, the earlier sanctioned plans were revised on 13 October 2021, which further revised on 22 February 2023. It is hence submitted that once the plans stood amended, it was imperative that the petitioner applies for a fresh Environmental Clearance prior to construction of any structure beyond the scope of the 2017 EC and failure to do so, would amount to breach of 2017 EC.

ii. It is submitted that as the petitioner has failed to obtain fresh/revised Environmental Clearance, which the petitioner had applied on 3 November 2023 and when such application was pending and/or is yet to be decided, the petitioner cannot claim legitimacy of the construction as undertaken in respect of Tower/Wing D.

iii. In the context of Environmental Clearance being applied for by the petitioner, a meeting was held on 27 February 2025 of the State Environment Impact Assessment Authority (SEIAA), which is stated to have remanded the petitioner's proposal/application for obtaining revised Environmental Clearance back to SEAC-III for investigation and reconsideration. Thereafter, a meeting of the SEAC-III was held on 14 May 2025, in which SEAC-III *inter alia* noted that the petitioner had

submitted a proposal for revision of the Environmental Clearance, without first amending the previously granted Environmental Clearances, to reflect the change in the name from respondent no. 5/Well Build to that of the petitioner as the project proponent. It was hence observed that the project proponent is required to submit a separate application in the prescribed format through the portal for such amendment. It is submitted that the petitioner, hence, was not considered as the project proponent, as the Committee noted that the proposal could only be considered once the necessary change in proprietorship was duly processed and approved by SEIAA. It is hence submitted that the petitioner had not obtained the necessary Environmental Clearance for carrying out the work beyond the sanctioned construction limits under the 2017 EC.

iv. The petitioner has constructed Wing-D/Tower D in contravention of the 2017 EC and without obtaining fresh/revised Environmental Clearance. It is submitted that this is clear from the perusal of the sanctioned plan of 2017 which would show that the construction as sanctioned was of an area of 14599.71 sq. mtrs. for Wing D, which was confirmed by the Project Architect Mr. Dilip Kale by his letter dated 10 January 2025. It is hence submitted that for any construction beyond the sanctioned limit, the petitioner was required to obtain fresh Environmental Clearance. This contention is also supported by referring to the Minutes of meeting of SEIAA held on 27 February 2025, which according to

respondent no. 5/Wellbuild, shows that the petitioner has constructed a total area of 16095.80 sq. mtrs. for Wing D, which according to Wellbuild is beyond the construction area sanctioned under 2017 EC. It is thus contended that the petitioner has knowingly and deliberately undertaken construction beyond the sanctioned limits and in breach of 2017 EC. Thus, the petitioner's contention that there is no construction beyond the overall sanctioned limit cannot be accepted. Reliance is placed on the decision of the Supreme Court in **Vanashakti vs. Union of India**[6] and in **Keystone Realtors Pvt. Ltd. vs. Anil V. Tharthare**[7], to contend that the Supreme Court has held that an application for fresh Environmental Clearance would be required if the project is expanded beyond the construction limits for which the prior Environmental Clearance was obtained even if the expansion is within the upper limit prescribed. It is hence submitted that the petitioner was required to apply for and obtain fresh Environmental Clearance before constructing Wing 'D' beyond the sanctioned limits. The petitioner was aware of such requirements and accordingly had applied for a fresh Environmental Clearance. Hence, Wing 'D' could not have been constructed without first obtaining fresh Environmental Clearance. It is also submitted that the law would not permit grant of Environmental Clearance ex-post facto. It is submitted that for such reason, there is no scope for the petitioner to contend that

6 2025 SCC OnLine SC 1139

7 (2020) 2 SCC 66

Wing 'D' is constructed as per the 2017 EC. In such circumstances, there was no question of an Occupation Certificate or Part Occupation Certificate being granted to Tower/Wing 'D', which according to Wellbuild is illegal.

vi. It is next submitted that this is a clear case where the petitioner is a wrongdoer, who ought not to be granted any reliefs having knowingly constructed Wing 'D' without a fresh Environmental Clearance. The petitioner, therefore, cannot take advantage of its own wrong. In supporting this submission, reliance is placed on the decision of the Supreme Court in the case of **Municipal Committee Katra & Ors. vs. Ashwani Kumar**[8].

vii. It is next submitted that there cannot be any misplaced sympathy towards the flat purchasers of a construction which is illegal. In supporting such contention, reliance is placed on the order passed by the Supreme Court in **Willingdon View Cooperative Housing Society vs. The Municipal Commissioner, Brihanmumbai Municipal Corporation & Ors.**[9].

viii. Thus, no relief under Article 226 of the Constitution of India, which is an equitable relief, ought to be granted to the petitioner and the petition needs to be dismissed.

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8 Unreported judgment dated 9 May 2024 in Civil Appeal Nos. 14970-71 of 2017

9 Unreported order dated 1 August 2025 in Special Leave Petition (C) No. 20175 of 2025.

39. Mr. Vishwanath Patil, learned counsel appearing for the Municipal Corporation has supported the impugned order. He has placed reliance on a reply affidavit of Shri Prashant Waghmare, City Engineer of the Municipal Corporation, filed on behalf of the Municipal Corporation. It is submitted that on 12 January 2016, MPCB issued Consent to Establish under Section 25 of Water (Prevention and Control of Pollution) Act, 1971, under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and Municipal Solid Waste (Management and Handling) Rules 2000 and E-waste (Management and Handling) Rules 2011 in favour of Wellbuild for a total built up area of 56950.70 sq. mtrs. which was valid for a period upto commissioning of the unit or five years i.e. upto 12/01/2021 whichever was earlier. It is submitted that the EC was granted in favour of Wellbuild dated 13 October 2017, under which the total project area (FSI + Non-FSI) was 72,032.18 sq. mtrs. Further, on 02 February 2022, MPCB renewal for Consent to Operate under Section 26 of Water (Prevention and Control of Pollution) Act, 1971, under Section 21 of Air (Prevention and Control of Pollution) Act and an authorization/renewal of Authorization under Rule 6 of the Hazardous & Other Waste (Management & Transboundry Movement) Rules 2016 was granted in favour of Wellbuild. It is submitted that thereafter on 22 May 2023, the Municipal Commissioner passed an order granting permission to the petitioner to shift the Drains/Nala. On such backdrop, it is submitted that on 02 February 2024, a work order was also issued in favour of the petitioner to carry out shifting of the Drain/Nala, which was not fully complied with. It is thus submitted that under clause 11 of the work order

dated 02 February 2024, it was provided that the petitioner needs to complete the work of the shifting of the storm water drain (nala) within a period of one year and that an Occupation Certificate would be issued by the Building Department only if the certificate of completion of such drain/nala work was issued by the Drainage Department. It is hence submitted that the Municipal Corporation had accordingly approved the IOD on 26 December 2023, pursuant to which the petitioner had made an application to the State Environment Assessment Committee (for short, "SEAC") for grant of revised environment clearance certificate, which is pending consideration of the SEAC and on such application, a revised environment clearance certificate is so far not issued to the petitioner by the SEAC.

40. Mr. Patil has also submitted that the Municipal Corporation received multiple complaints from social workers and NGOs, which were *inter alia* to the effect that the petitioner had failed to provide amenities as promised to the residents of Rajgruhi Residency. It is submitted that in pursuance thereto on 06 December 2024 a notice was issued by the Executive Engineer of Municipal Corporation to the licensed Architect of the Project, to the developer and to the members of the cooperative society formed by the flat purchasers of Wings 'A' & 'B', informing them about the scheduled hearing to be held on 09 December 2024 before respondent no.2-City Engineer. Such hearing was held and according to the City Engineer, it was revealed that the petitioner had failed to complete the work of shifting of the drain/nala as per the Work Order dated 02

February 2024, as also the petitioner had failed to produce Consent to Establish, Consent to Operate and the Revised EC as per the sanctioned IOD dated 22 February 2023. Also, there was a deviation in the actual construction amounting to a breach of the Environmental Certificate issued in the year 2017. It is submitted that in pursuance of such hearing granted to all the stakeholders, an order dated 10 December 2024 was passed ordering the petitioner to stop work. Some of the relevant averments as made in the reply affidavit filed on behalf of the Municipal Corporation are required to be noted which read thus:-

> 11) I say that pursuant the above mentioned complaints received by the Respondent Corporation, on 06.12.2024 a notice was issued by the Respondent Corporation to licensed Architect of the Project though hand delivery and to the Developer, members of the society of Rajgruhi Residency at S. No. 63/1/1+1/2+2, near Shantinagar Society, Kondhwa, Tal. Haveli, Dist. Pune 411048, informing the them about scheduling of hearing regarding the construction being carried out on land being Survey no. 63/1/1+1/2+2A in village Kondhwa Budruk, Pune at 11:30 hrs. on 09.12.2024 before the Respondent No. 2.
>
> 12) I say that on 09.12.2024 hearing was duly conducted and it was revealed that the Petitioner had failed to (1) complete the work of shifting the nala pursuant the Work Order dated 02.02.2024, that the Petitioner failed (2) to produce Consent to Establish, (3) Consent to Operate and the (4) revised EC as per sanctioned IOD dated 22.02.2023 and that there was deviation in actual construction from the Environmental Certificate issued in 2017.
>
> 13) I say that pursuant hearing on 09.12.2014 before the Respondent NO. 2, by order dated 09.12.2024, a stop work notice as issued by the Respondent No. 2 to the Petitioner on the grounds mentioned therein."

41. Mr. Patil would next submit that after the impugned stop work notice dated 10 December 2024 was issued, the petitioner addressed a letter dated 20 December 2024 informing the municipal corporation that on 19 November 2024, the MPCB issued a revalidation of 'Consent to Establish', for a total built-

up area of 72,032.18 sq. meters and revalidated 'the Consent to Operate' for the completed construction area, with built up area of 35,794.6 sq. metrs. Such revalidated consent to establish with expansion was granted for a period from the commissioning of the project on 12 January 2016, which was to be valid upto 30 June 2025. It is hence submitted that on such backdrop, it was clear that the respondent/municipal corporation had granted EC in favour of Wellbuild dated 13 October 2017 and that as per the EC, the total project area (FSI + Non-FSI) was 72,032.18 sq. mtrs. and thereafter the respondent/Municipal Corporation had approved a revised Intimation of Disapproval (IOD) dated 26 December 2023 according to which the total project area was 84,131.86 sq. meters. The relevant averments as made in the reply affidavit are also required to be noted which read thus:-

> "15) I state that the Respondent Corporation granted Environmental Clearance (EC) in favor of Respondent No. 5 vide IEC/Samiti/5 dated 13.10.2017. As per the said EC, the total project area (FSI + Non-FSI) was 72,032.18 sq. mt. Subsequently, the Respondent Corporation approved a revised Intimation of Disapproval (IOD) dated 26.12.2023 sq. mt., according to which the total project area (FSI + Non-FSI) is 84,131.86 sq. mts The Petitioner has applied for a revised EC, which is still pending consideration."

42. Mr. Patil has further submitted that the Architect of the project Mr. Dilip Kale and Associates had issued a letter dated 13 January 2025 addressed to the Municipal Commissioner thereby granting a "certification of area". The said certificate recorded that according to the EC dated 13 October 2017 granted by the Municipal Corporation, the total built up area (FSI + Non-FSI) of Wing 'D' was 14,599.71 sq. meters, while the total built up area (FSI + Non-FSI) of the

completed construction on the date of issuance of the said certificate of Wing 'D' was 16,117.96 sq. meters. It is submitted that as per the said certificate, the petitioner proceeded with the construction based on the revised IOD without obtaining the requisite revised EC, making a reference to the EC Notification of 2006 dated 14 September 2006.

43. On the aforesaid submissions, it is prayed that the impugned stop work notice does not deserve interference and the writ petition be dismissed.

Analysis and conclusion :-

44. We have heard learned counsel for the parties. With their assistance, we have also perused the record. In the facts and circumstances of the case and more particularly considering the submissions as advanced at the bar, the following issues, which in our opinion, would go to the root of the matter arise for consideration in the present proceedings:-

> i. Considering the fact that the show cause notice dated 06 December 2024 was issued by the Executive Engineer whether the Designated Officer / City Engineer had jurisdiction to pass the impugned order dated 10 December 2024 under Section 267(1) of the Maharashtra Municipal Corporation Act, 1949.
>
> ii. Whether construction undertaken by the petitioner under the Environmental Clearance (EC) dated 13 October, 2017 under which construction plans were sanctioned could be considered to be illegal merely for the reason that the petitioner had applied for a revised Environmental Clearance (EC).

45. To answer the aforesaid questions, we do not intend to replicate the facts, suffice it to observe that WellBuild/respondent no.5, on the backdrop of the previous contractual relations with the petitioner, had admittedly entered into

Articles of Agreements dated 19 August 2021 and 26 August 2021 with the petitioner, under which the petitioner was authorized to execute the construction work of Tower 'C' and Tower 'D'. It is also not in dispute that plans in regard to Tower 'C' and 'D' were sanctioned by the Municipal Corporation on 13 October 2017 in respect of an area to be constructed as referred hereinabove namely 16516.14 and 14,599.71 sq. meters. It is also not in dispute that the parties acted upon such Articles of Agreements in regard to the construction of Tower 'C' and Tower 'D' to be constructed by the petitioner. Accordingly, it appears to be not in dispute that construction of Tower 'D' is complete in all respects, which is a building of 20 floors. It is also not in dispute that Tower 'D' is now at the stage whereby the occupancy proposal as submitted by the petitioner to the Municipal Corporation (Planning authority) is to be processed and occupancy certificate would be required to be granted, so that the "flat purchasers" can be put in possession of their respective tenements. It is quite clear that at such stage, disputes and differences have arisen between Wellbuild and the petitioner, which in our opinion, appear to be purely a monetary dispute i.e. relating to the revenue being generated from the sale of tenements (Tower 'C' and 'D') by the petitioner, on which the petitioner is claiming benefit under the terms and conditions of the Articles of Agreement. It is in such context, both the parties resorted to proceedings under Section 9 of the ACA, and as stated hereinabove, the petitioner succeeded in its application filed under Section 9 of the ACA as also is the beneficiary of the orders passed by the Civil Court against the Society formed by the flat purchasers of Wing A and B. Further the orders passed against Wellbuild

in the proceedings filed by the petitioner under Section 9 of the ACA were confirmed in an appeal under Section 37 of the ACA. At the same time, Wellbuild could not succeed in its Section 9 ACA proceedings.

46. Be that as it may, the questions which have fallen for determination of the Court need to be addressed on such backdrop. The following discussion would aid our conclusion on such issues.

47. The residential project 'Rajgruhi Residency' "as a whole", comprises of construction of 4 towers – A, B, C and D. In regard to Towers 'A' and 'B', there is no dispute whatsoever as the construction of these towers/wings stands completed in respect of which an Occupancy Certificate has already been granted. It is also not in dispute that the construction of Towers 'A' and 'B' was undertaken by the petitioner in the capacity of being a "contractor" appointed by Wellbuild. The dispute however has arisen between Wellbuild and the petitioner on the works being undertaken for Towers 'C' and 'D' and more particularly under the Articles of Agreement and the documents executed by Wellbuild in favour of the petitioner. The dispute as seen is more focused in the context of Tower 'D' the construction of which, according to the petitioner, stands completed.

48. Having noted the aforesaid factual position, it is seen from the record that the petitioner had proceeded to execute the work in relation to Towers 'D' and 'C'. Admittedly, the construction work of Tower 'D' was taken up as the first leg of such construction and as on date has attained completion. It is also not in dispute that as per terms and conditions of the agreement *inter se* between the

petitioner and Wellbuild , the petitioner has entered into agreements with third party/flat purchasers, who are awaiting possession of their respective flats to be handed over to them by the petitioner, after Occupation Certificate (O.C.) is granted to Wing 'D'. It also appears to be not in dispute that the work of Wing 'C' which is taken as second leg has progressed only upto four floors i.e. construction of 16 habitable floors is yet to be undertaken.

49. As noted hereinabove, it is at such juncture, disputes and differences have arisen between the petitioner and Wellbuild, whereunder the parties are asserting their respective rights on allegations which are certainly matters to be tested on evidence to be led by the parties in appropriate proceedings. Such conclusions based on the *prima facie* findings between the parties were subject matter of the proceedings filed by both the sides invoking Section 9 of the ACA before a forum no less than the learned District Judge, who passed orders on the Section 9 proceedings which were assailed in the appeals filed under Section 37 of the ACA before this Court. The orders passed in the Section 9 proceedings as also in the appeals clearly go to show that no substantive reliefs could be obtained by Wellbuild against the petitioner insofar as the execution of the said project under the Articles of Agreement in question was concerned.

50. It clearly appears to us, it is on such backdrop, Wellbuild having failed in the proceedings initiated under the ACA, took a recourse to approach the municipal machinery, that too in a very peculiar manner, gathering support from persons who are totally alien to the project and/or the Articles of Agreement

entered into between the petitioners and Wellbuild. On such action of the Wellbuild taken up with the officials of the municipal corporation, a cryptic notice dated 06 December 2024 was issued to the petitioner, which in our opinion, possibly breaches all norms of legitimacy, as to on what issues the petitioners needed to appear at the hearing, much less show cause or for what purpose such urgent hearing is scheduled on 9 December 2024. No details whatsoever were set out in such notice issued to the petitioner by the Executive Engineer of the Building Development Division, Zone-II of the Municipal Corporation. It is imperative to note the contents of this notice which is the genesis of the impugned orders, which read thus:-

> "[Official Translation of a xerox copy of a Letter typewritten in Marathi.]
>
> [LOGO]
>
> Office of the Executive Engineer.
> Construction Development Department,
> Savarkar Bhavan, Pune Municipal Corporation.
> O. No. – Zone-2/7240.
>
> To,
> Shri. Anil Reddy on behalf of M/s. Atria Construction.
> 440/441, Nana Peth, PGI Building,
> Pune – 411002.
>
> **Subject - Regarding construction work on the land bearing S. No.63/1/1+1/2+2, situated at – Peth Kondhwa Budruk, Pune.**
>
> In connection with the construction work of Rajgruhi Residency Project on the land bearing S. No. 63/1/1+1/2+2 located at – Peth Kondhwa Budruk, Pune, hearing is **scheduled in the Office of the City Engineer (Office of the City Engineer, 1st floor, Pune Municipal Corporation, Shivaji Nagar, Pune-05) on Monday, the date 09.12.2024 at 11:30 a.m.**
>
> **Therefore, you should remain present during the course of said hearing together with the necessary documents.**

May this be known.

(Signature Illegible)
06/12
Executive Engineer
Construction Development
Department (Zone No. 2)
Pune Municipal Corporation"

(emphasis supplied)

51. Thus, the vagueness of the aforesaid notice itself raises a serious doubt about the intention of the Executive Engineer, on the backdrop of what has been referred hereinabove concerning the disputes between the parties. The said notice does not in any manner set out as to on what aspects, in relation to the said project, a hearing was summoned on 09 December 2024 at 11.30 a.m.

52. What has happened thereafter is quite appalling and in fact it would shock our conscience. At such hearing, to the surprise of the petitioner, several persons who are totally unconnected with the project and not even remotely connected with the contract as entered between Wellbuild and the petitioner, attended the hearing, which is clear from the roznama dated 09 December 2024 annexed to the petition. On a query as to how such persons, including the intervenor - Mr. Vikas Kuchekar, came to be involved, there is no justification whatsoever from the Executive Engineer or the Municipal Corporation regarding the involvement of such persons qua the project or even from Mr. Vikas Kuchekar who has intervened in the present petition, we have passed a separate order rejecting his intervention.

53. Be that as it may, the hearing held on 9 December 2024 (for whatever worth) was held not by the Executive Engineer who issued the notice dated 06 December 2024, but by the City Engineer and the Deputy Engineer, who immediately on the next day i.e. on 10 December 2024 issued the impugned stop work notice under Section 267(1) of the Maharashtra Municipal Corporation Act, 1949 (for short, "**MMC Act**") read with Section 54 of the Maharashtra Regional & Town Planning Act, 1966. In the peculiar facts, it is vital to extract the impugned stop work notice, which reads thus:-

"**(Translation of the Impugned Stop Work Notice, typewritten in Marathi)**

Building Development Department,
Zone No. 2,
Pune Municipal Corporation,
Outward No. Zone-2/7327,
Date: 10.12.2024.

NOTICE

(Under Section 267(1) of the Maharashtra Municipal Corporation Act and under Section 54 of the Maharashtra Regional and Town Planning Act, 1966).

To,
1) M/s. Atria Construction, through Shri Anil Reddy,
440/441, Nana Peth, P.G.I. Building, Pune 411 002.

2) Shri Dilip Kale, Licensed Architect
1226, Subhash Nagar, Lane No.4,
Shukrawar Peth, Pune 411 030.

Whereas, a Building, a description whereof is given hereinbelow, is being constructed on the plot of land bearing Survey No. 63/1/1+1/2+2 at Peth Kondhva Budruk, Pune, by you or under your supervision. As per the provisions made in the said Act, the Commissioner of Municipal Corporation has conferred upon me the powers under Section 267 of the Maharashtra Municipal Corporation Act and under Section 54 of the Maharashtra Regional and Town Planning Act, 1966. **By this Notice, you are informed to immediately stop the said construction work upon receipt of this Notice. If you continue carrying out the said construction work or if**

the said construction work is continued further under your supervision, then, in exercise of the powers conferred upon me as per the provisions of the aforesaid Act and as mentioned hereinabove, the person carrying out the said work will be removed therefrom with the help of Police Officers and the expenditure to be incurred therefor will be recovered from you.

You may please note that, as per the provisions of Section 433 (c) of the Maharashtra Municipal Corporation Act, "Save as otherwise provided in this Act, any notice issued, order passed or direction issued by the Designated Officer, shall not be questioned in any suit or other legal proceedings.

The Original lay-out in respect of the 'Rajgrushi Residency' on the plot of land bearing Survey No. 63/1/1+1/2+2 at Peth - Kondhva Bu-druk, Pune, had earlier been sanctioned vide San. Pa. No. D.P.O./ 4323/ F/KB/ 62, dated 16.08.2002. Thereafter, the revised lay-outs had been sanctioned from time to time and the Building Plans had been approved accordingly. The upto date revised lay-outs and the Buildings Plans have been approved by the San. Pa. No. CC/2042/21, dated 13.10.2021. Similarly, Part Occupancy Certificates have been issued to the buildings under the said project from time to time.

The First Environment No Objection Certificate (EC) to the said project had been received from SEIAA on the date 10.12.2015 and as regards the second (Environment No Objection Certificate), in view of the Government Resolution No. TPS-1816/M. No.443/16/D.S./Pune and Konkan Divisions/U.D.-13, dated 28.06.2017, the Environment Cell, Pune Municipal Corporation examined the proposed project of 'Rajgruhi Residency, on the plot of land bearing Survey No. 63/1/1+1/2+2 at Peth -Kondhva Budruk, Pune and made recommendation to the Environment Committee under Category-III and in the meeting of the Environment Committee, held on the date 04.10.2017, recommendations for the said project were made subject to following the conditions of environment.

By the Office Order bearing Outward No. MC/ UDCPR- 20/ SEC/ 3.1.1(ii)/443, dated 22.05.2023, passed by the Municipal Commissioner, approval has been granted for shifting of the Nullah. Similarly, the Sewage Maintenance and Repairs Department has granted permission for carrying out development of Nullah subject to the terms and conditions. However, till today, no development in respect of the nullah has been carried out at the site. Moreover, frequent complaints are being received from the citizens in this regard.

On the date 14.01.2024, the Maharashtra Pollution Control Board has granted 'Refusal of Consent to Establish' under section 27 of the Water (Prevention & Control of Pollution) Act, 1974 and Section 21(4) of the Air (Prevention & Control of Pollution) Act, 1981. Moreover, the 'Consent to Operate' mandatory for each project has not been obtained. This issue is serious and the

conditions of Environment No-Objection Certificate have been violated. Similarly, the Environment No-Objection Certificate (EC) as per the Proposed Intimation of Disapproval (IOD) has not yet been submitted. Moreover, discrepancy is found between the Environment No-Objection Certificate (EC) received on the date 04.10.2017 for your Project and actual construction work going on at the site.

You had been asked to submit within the period of 8 days, your explanation in writing as to why action should not be taken against you for violating the conditions of Environment No-Objection Certificate and in pursuance thereof, you have submitted explanation.

However, as the said explanation does not contain satisfactory reply and as the aforesaid issues are serious, the City Engineer, Pune M.N.C. has granted approval on the date 10.12.2024 to issue Stop-Work Notice under section 267(1) of the Maharashtra Municipal Corporation Act, 1949 and under section 54 of the Maharashtra Regional and Town Planning Act, 1966 to stop the work that is being carried out by you on the property bearing S.No.63/1/1+1/2+2 situated at Peth Kondhva Bu., Pune.

Therefore, you are directed to immediately stop the work that is being carried out by you on the property bearing S.No.63/1/1+1/2+2 situated at Kondhva Bu., Pune.

Current status of the construction work at site:

Wing 'C' - R.C.C. work of Stilt floor + Upper Park floor + Lower Park floor 01 + Lower Park floor 02 + Lower Park floor 03+ upto 4th floor, has been completed.

Wing 'D'- Construction work of Stilt floor + Upper Park floor + Lower Park floor 01 + Lower Park floor 02 + Lower Park floor 03 + upto 20th floor, has been completed.

May this be known,

(Signature)
Designated Officer and
Junior/Branch Engineer
Building Development Department
Zone No.2,
Pune Municipal Corporation.

(Signature)
Designated Officer and **Deputy Engineer Building Development Department Zone No.2,**
Pune Municipal Corporation."

(emphasis supplied)

54. It is thus clearly seen that the construction work of the 'D' Wing as set out in the notice, is clearly accepted to have been completed. Insofar as Wing 'C' is concerned, the construction upto 4 floors is stated to have been completed, which

includes R.C.C. work of stilt floor + upper park floor + lower park floor 01 + lower park floor 02 + lower park floor 03 + upto 4th floor, the construction of which is supposed to be upto 20 floors.

55. As urged on behalf of the petitioner, the challenge to the impugned stop work notice needs to be considered on two basic legal issues. Firstly, that the petitioner in the show cause notice was never informed that the petitioner would be called upon to give explanation on any issues, the consequence of which is set out in the impugned stop work notice for the first time. As there was no prior show cause notice issued to the petitioner as the law would mandate, hence, as rightly urged by the petitioner, without the petitioner being granted an opportunity of being called upon to show cause and defending any such issues, which forms the subject matter of the reasons as set out in the impugned stop work notice, the impugned stop work notice cannot stand the test of law. We find much substance in this contention as urged by the petitioner. This for the reason that it is clear from the purported notice dated 06 December 2024 that it does not set out any details as to on what specific issues a hearing was scheduled on 09 December 2024. The petitioner is, therefore, taken by surprise when the impugned order records all such issues which were never put for any specific explanation by the petitioner. It is the settled principle of law that any order to be passed by a statutory authority which would entail civil consequence whereby civil rights of a party are likely to be breached by any order passed by such authority, such order cannot be passed, unless the procedure known to law i.e. of

issuance of an appropriate show cause notice with adequate grounds being made out, granting an opportunity to reply to such show cause notice and a hearing being granted to the affected party, on such show cause notice and thereafter a reasoned order to be passed, is a *sine qua non* / the necessary mandate of law. This on the ground that the soul of natural justice is "fair play in action" which is held to be important in both the quasi judicial or administrative proceedings. The rule of natural justice is calculated to secure justice or in other words, to prevent miscarriage of justice. Hence, it is applicable in any quasi judicial inquiry, this more particularly when civil rights of the parties are likely to be breached. In **Maneka Gandhi vs. Union of India**[10] the Supreme Court held that the law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable. Thus, any order/action taken by a quasi judicial authority is required to satisfy the test of fairness, transparency and non-discrimination. When orders to be passed by such authorities who enjoy enormous statutory powers, the authorities are required to be more circumspect in discharging these official obligations in exercising such powers, so that the orders, which are passed, are not in any manner in breach of the principles of natural justice, arbitrary, biased and/or vitiated by non application of mind or are tainted by extraneous considerations.

56. This apart, there is much substance in the petitioner's contention that the impugned order has been passed on extraneous considerations, which is clear

10 1978 AIR SC 597

from the fact that it is not the officer of the municipal corporation namely the 'Executive Engineer', who issued the show cause notice to the petitioner, but the City Engineer who heard the petitioner and the other parties. Further quite surprisingly several persons who were unconnected with the project and who appear to be supporting the cause of Wellbuild, attended the hearing, as if it was a public hearing. The impugned order appears to have been thus passed on such extra legal considerations and with the interference caused by third parties, which is clearly seen from the appearance of these several unconnected persons as recorded in the roznama. This more significantly considering the presence of the intervenor Mr. Vikas Kuchekar.

57. Thus, in our clear opinion, such illegality in passing the impugned stop work notice, which is quite gross, appears to have been committed in the absence of the petitioner being put to a clear notice of the issues, with which, the petitioner would be required to be confronted or called upon to answer. Notably, no copies of any complaints received by the Executive Engineer from any person on the basis of which such show cause notice dated 06 December 2024 (supra) were supplied to the petitioner, on the basis of which such drastic order was passed to stop work of the entire project. Such hearing being attended by totally unconnected persons, itself raises a serious doubt on the fairness of the officials of the municipal corporation in the proceedings, who passed the impugned order/ notice. In our clear opinion, this fact would demonstrate a gross breach of the principles of natural justice at the hands of the Executive Engineer, City and

Deputy Engineer in issuing the impugned stop work notice and on these basic non-compliances of the mandatory requirement of law, the impugned show cause notice would be required to be quashed and set aside.

58. We also cannot overlook the timing at which, the impugned stop work notice is issued, that is at the time when the proceedings filed by Wellbuild against the petitioner under the Arbitration and Conciliation Act could not succeed. This most importantly, when on the municipal corporation's own showing the construction of Tower/Wing 'D' is complete and is now required to be proceeded for grant of an Occupation Certificate. It is thus clear that what could not be achieved directly by Wellbuild in a manner known to law i.e. in the legal proceedings, Wellbuild has sought to achieve the same, by utilising the municipal machinery, and that too by garnering extra legal interference, the municipal machinery being exploited to its advantage, in getting the impugned stop work notice issued. Admittedly, Wellbuild could not succeed in its attempts to secure benefits which otherwise Wellbuild could not secure in the legal proceedings, having failed in the Section 9 proceedings as also in the Section 37 proceedings under the ACA. This is quite apparent from the facts as set out hereinabove, which are our considered observations on these issues which touch the impugned stop work notice.

59. On such backdrop, we examine the first question (supra), which has fallen for consideration, which, in our opinion, touches the basic tenets on the settled principles of administrative law, namely, that a person who hears is required to

pass an order. It is clear that the show cause notice was issued by the Executive Engineer, however, a hearing on the same was held by the City Engineer and the impugned order/ notice to stop work has been issued by the Deputy Engineer and the Junior Engineer. Such procedure is wholly unknown to law and can never be recognized to have any legal sanctity. It is well settled that a person who has not heard the aggrieved party, has no jurisdiction to pass an order. In the present case, the impugned stop work notice is a reasoned order, there could not have been any delegation by the Executive Engineer for such order to be passed by his subordinates, namely, Deputy Engineer and Junior Engineer. In this context, we may refer to the decision of the Supreme Court of India in **Union of India & Ors. vs. Shiv Raj & Ors.**[11] wherein the context of the obligation of a person who hears a party, would be the only person who can decide, which has been held to be a vital requirement of the principles of natural justice. Following observations as made by the Supreme Court are required to be noted, which read thus:

> "17. This Court in *Gullapalli Nageswara Rao*(supra), held:
>
> > "Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."
>
> 18. This Court in *Rashid Javed vs. State of UP*, AIR 2010 SC 2275 following the judgment in Gullapalli(supra), supra held:
>
> > "51. …. a person who hears must decide and that divided responsibility is destructive of the concept of hearing is too fundamental a proposition to be doubted."

11 (2014) 6 Supreme Court Cases 564

> 19. A similar view has been reiterated by this Court in *Automotive Tyre Manufacturers Association vs. Designated Authority & Ors.*, (2011) 2 SCC 258, wherein this Court dealt with a case wherein the Designated Authority (DA) under the relevant Statute passed the final order on the material collected by his predecessor in office who had also accorded the hearing to the parties concerned. This court held that the order stood vitiated as it offended the basic principles of natural justice.
>
> 20. In view of the above, the law on the issue can be summarised to the effect that the very person/officer, who accords the hearing to the objector must also submit the report/ take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice."

60. We may also usefully refer to the decision of the learned Single Judge of this Court in **Golden Chariot Airport, Mumbai vs. Airports Authority of India International Airports Division Chhatrapati Shivaji International Airport, Mumbai & Another**[12] wherein in similar context the following observations were made by the Court:-

> "17. It is well settled that when a statute calls upon the Authority or officer to form an opinion and take a decision he must apply his own mind to the situation, consider its various aspects himself and give a decision himself. The law does not tolerate an officer who is entrusted with the responsibility of taking- a decision referring the case to another officer and then verbatim adopting the latter's reasonings and views without any effort on his own part. A consideration of the case by officer is the live link between the facts and the decision. Such an officer is not entitled to refer the matter to any one else for receiving "brief" complete analysis and findings and then merely deliver what he receives as his own order.
>
> 18. At this juncture, it may be noted that many arguments were made by the learned counsels appearing for the parties on the basis of the roznama and the pleadings before the Estate Officer Kaushal. The issue agitated by the parties was whether Kaushal had properly closed the matter for orders on 23-12-2005 after hearing it on earlier dates, and whether the said Estate Officer has wrongly rejected the permission sought by the petitioners for examining the Officer of the respondent No. 1. Having held that the order is vitiated and void for the reasons stated earlier, it is not necessary to deal with this aspect of the matter.

12 2009(3) Mh.L.J. 684

> 19. …… Having regard to the observations above, it is clear that the Supreme Court was of the view that the authority must himself reach a conclusion which he regards as just and must record the ultimate mental process leading from the dispute to its solution. The judgment must be supported by reasons that suggest themselves to the Judge. It is clearly observed that a mere order deciding the matter in dispute not supported by reasons is no judgment at all. It is obvious from these observations that what is contemplated is that the Judge or the authority empowered to decide, must record the ultimate mental process leading from the dispute to its solution. The reference is obviously to the mental process of the Judge himself and not the mental process of another. It must follow that whether the Judge or the authority has not applied his own mind, but has adopted the reasoning applied by another and merely acted as rubber stamp, as here, the order passed by the Judge must be construed to be an order not supported by any reasons at all. The application of the ratio to the facts of the present case clearly lead to the conclusion that the impugned order is not a valid order and is void and unsustainable.
>
> (emphasis supplied)

61. Although even on the aforesaid basic legal consideration the impugned order deserves to be set aside, we now proceed to consider the second issue, which is on merits to consider whether the reasoning as set out in the impugned order in any manner is sustainable. The following are the primary three considerations on which the stop work notice is issued:-

> i. The municipal corporation had issued an order dated 22 May 2023 permitting the shifting of the existing drain/nala on such terms and conditions, however, the said nala has not been so far developed and in this regard, complaints are received from the citizens from time to time.
>
> ii. Secondly, on 14 January 2024, the Maharashtra Pollution Control Board has granted 'Refusal of consent to establish' under Section 27 of the Water (Prevention & Control of Pollution) Act, 1974 and under Section 21(4) of the Air (Prevention & Control of Pollution) Act, 1981, however, in respect of each and every construction, consent to operate have not been obtained. This would amount to breach of Environmental Clearance.
>
> iii. Thirdly, as per the Intimation of Disapproval (IOD), a revised Environmental Clearance (EC) so far has not been

> submitted and the work which is actually undertaken is not in consonance with the Environmental Clearance granted to the project dated 4 October 2017.

62. The impugned stop work notice records that petitioner was called upon to provide explanation within 8 days and the petitioner has submitted explanation, but such explanation is not satisfactory and therefore, it is necessary that the construction being undertaken on the said land needs to be stopped. For ordering the stoppage of the construction, approval has been granted by the Junior Engineer and the Deputy Engineer on 10 December, 2024, as per the provisions of Section 267(1) of the Maharashtra Municipal Corporation Act, 1949 and under Section 54 of the Maharashtra Regional and Town Planning Act, 1966.

63. Considering the reasons which are set out in the impugned stop work notice, we are in complete agreement with the contentions as urged on behalf of the petitioner on two basic counts – firstly, although show cause notice dated 6 December, 2024 was issued to the petitioner, it did not point out any of the deficiencies. Further the construction of the drain/nala was already underway and the same is being completed as pointed out by the petitioner to which there appears to be no dispute.

64. The reasons in regard to Water and Air Act permissions being not available with the petitioner, also does not appear to be a correct observation in the impugned stop work notice, for the reason that the petitioner had submitted a resolution of the Maharashtra Pollution Control Board dated 14 November 2024 granting revalidation of 'consent to establish' and also 'consent to operate'. Thus,

such reason as set out in the impugned stop work notice is patently without application of mind and oblivious of the correct position on record.

65. As regards the Environmental Clearance dated 13 October 2017, granted to the project is concerned, it clearly provides for total construction area of 72032.18 sq. meters. It is the petitioner's case, to which we do not find any effective counter or opposition, that for construction of the 'D' wing Environmental Clearance was received / granted which provides for 4P + Amenity +20 floors under which the construction is undertaken and in regard to which the completion certificate and occupation certificate is being applied for by the petitioner, is of an area of 68132 sq.meters. The construction of 'D' wing is completed upto 20 floors, and in fact there is a reduction in height. There is no explanation from the municipal corporation or Respondent No.5 on such vital contentions as urged on behalf of the petitioner. This more particularly when such issue was sought to be raised only after the entire construction upto 20 floors, as undertaken by the petitioner, is completed. It also appears that the sanctioned plan dated 13 October 2017 provides for 80 flats and accordingly, 80 flats are constructed and hence, the case of any excess construction of flats as alleged by Wellbuild and denied by the petitioner, finds no support.

66. We may also observe that this is not the case that the entire project which includes wings/towers A, B, C, D has no Environmental Clearance, inasmuch as Environmental Clearance was granted to the entire project on 13 October 2017. It is not the case of the respondents that after such clearance was granted, a separate and/or independent environment clearance was required to be granted to each

and every wing / tower even in respect of a minor modification in the area of each of the towers, it was to be undertaken within the permissible limits under such Environmental Clearance granted to the entire project. Thus, merely for the reason that on account of some minor modifications, the petitioner had applied for revised clearance cannot bring about a situation that the project of which Wing 'D' is a part, has no Environmental Clearance. For such reason also, the impugned stop work order, when it observes that there is no Environmental Clearance, for the petitioner to undertake construction for Wing "D" and "C", appears to be wholly untenable. Considering the very recent position in law in the majority decision of the Supreme Court in **Confederation of Real Estate Developers of India (CREDAI) V/s. Vanashkti and Anr.**[13], the petitioners application for modification of the Environment Clearance *post facto* cannot be said to be not maintainable.

67. For the aforesaid reasons, we are not inclined to accept the contentions as urged on behalf of the Municipal Corporation or Wellbuild, as noted hereinabove. In our opinion, if in the course of execution of the project, some incidental changes/ modifications are required to be made which would not be contrary to the construction as permissible under the Environmental Clearance, the same would not render the construction to be contrary to the Environmental Clearance already granted. Thus, considering such changes, if a revised Environmental Clearance is applied for in a revised application, the same needs to be considered as per rules.

13 2025 SCC Online SC 2474

68. In such context, insofar as Wing 'D' is concerned, it is clearly seen that the proposed height of the building as granted under the provisions of the Environmental Clearance was 68.45 meters, the configuration 4P +Amenity + 20FL and the same height and configuration is maintained in the revised application. So far as the revised construction of the Wing C is concerned, there is no variation whatsoever in the basic parameters of the area of construction or the height of the construction. In any event, in the 187th meeting of the SEAC held on 29 December 2023, the petitioner's application for revised Environmental Clearance was to the effect that the petitioner would provide electric charging facility by providing charging points at suitable places as per Maharashtra Electric Vehicle Policy, 2021 and the petitioner was to ensure that the water proposed to be used for construction phase should not be drinking water, and that recycled water or tanker water be used for proposed construction. These are not the conditions incapable of being performed so that the City Officer can come to a conclusion that a stop work notice is required to be issued to the project.

69. On the requirement of the Environmental Clearance, in our opinion, Mr. Kamath's reliance on the decision of the Supreme Court in **Vanashakti vs. Union of India** (supra) is not well founded for two fold reasons. Firstly, the present case is not a case wherein it can be said that there was no Environmental Clearance. In fact Environmental Clearance was granted on 13 October 2017 and construction was accordingly undertaken. Hence, it is not the case that the petitioner had

sought any wholesale *ex post facto* clearance and/or that the petitioner has undertaken the construction without obtaining Environmental Clearance. In **Vanashakti vs. Union of India** (supra), the Supreme Court was considering the challenge to the judgment of the Madras High Court which quashed the 2021 Office Memorandum which pertained to Standard Operating Procedure (SOP) for identification and handling of violation cases under the 2006 EIA Notification and another Office Memorandum dated 19 February 2021. It is in such context the Supreme Court held that it was not permissible for the project proponents to seek *ex post facto* clearance retrospectively being alien to the environmental jurisprudence and the EIA notification. However, considering the recent decision of the Supreme Court in **Confederation of Real Estate Developers of India (CREDAI) V/s. Vanashakti and Anr.** (supra), the said decision of the Supreme Court in **Vanashakti** (supra) has been recalled. This being the legal position, the judgment in Vanashakti (supra) would not assist Wellbuild.

70. This apart, one of the most glaring aspects of the present matter is the conduct, not only of the officials who have issued the impugned stop work notice, but also of respondent No.5 to garner extra legal interference of several persons who have attended the hearing fixed by the Executive Engineer on 9 December 2024. Such persons had no official concern whatsoever in regard to anything to do between the petitioner and/or Wellbuild/respondent No.5-the owners who handed over the project to be executed by the petitioner. The official machinery of the respondents was totally misused by Wellbuild along with such persons,

more particularly one Mr. Vikas Shravan Kuchekar, who had attended the hearing and who also filed an Intervention Application. Rejecting such Intervention Application, we have passed a detailed order, considering the statements of the intervenor as made before the Court. From the perusal of our order on the Intervention Application, things get abundantly clear that the intervenor is no less than a busybody who could not justify his presence in the proceedings before the City Engineer. He also could not justify from where he obtained the intricate information which is completely internal to the project and more particularly in regard to the relation between the petitioner and respondent No.5. It appears that the intervenor's role is purely on extraneous considerations, who could not have been involved except to help those who had an axe to grind against the petitioner. He appears to have been introduced to obtain an unfair advantage by adopting such pressurizing tactics before the municipal officers, by utilizing the resourceful nature of intervenor. Similar comments can be made against others, however, they are not before the Court. The orders passed by this Court in the intervenor's application, in fact, would speak volumes about the high-handed and arbitrary manner of the Municipal officials in issuing the impugned stop work notice, thereby bringing the petitioner's project which is at a stage of grant of occupation certificate of Wing "D" as also the construction of Tower "C" to a grinding halt.

71. Such conduct of the municipal officers has also deprived the legitimate flat purchasers of early occupation of their flats, having purchased the flats in "D" wing. This more particularly when the construction of "D" Wing' is completed long back and awaits an occupation certificate. It has also delayed the construction

of "C" wing in respect of which the plans are also sanctioned. In these circumstances, in our opinion, this is a clear case where, Wellbuild/ respondent No.5 by misuse of the official machinery of the Municipal Corporation has caused or obtained the impugned order of stopping of work, in respect of the project. Such order otherwise would not have even been passed.

72. We may observe that this is also a case, where the impugned decision has been taken in extreme haste, inasmuch as a totally cryptic and unreasoned show cause notice dated 6 December 2024 was issued to the petitioner calling upon the petitioner to remain present, without a whisper of details as to why such hearing was called for, what were the deficiencies, if any, as also no material whatsoever of any complaints received by the Municipal Corporation was provided to the petitioner alongwith the notice dated 6 December 2024. The hearing on the said notice was held on 9 December 2024, and immediately on the next date i.e. on 10 December 2024 the impugned stop work order has been passed. This apart, as noted above, several persons unconnected with the project who are social workers attended the hearing. Their presence in the said hearing was totally unjustified and unwarranted. Also the impugned stop work order clearly appears to have been passed at their behest. In such context, the settled principle of law is that if a decision is taken by a statutory authority at the behest or suggestion of a person who has no statutory role to play, the same is required to be held to be ultra vires. This is clear from the decision of the Supreme Court in **Bahadursinh Lakhubhai**

Gohil vs Jagdishbhai M. Kamalia And Ors.[14] wherein the Supreme Court has observed thus:

> "25. In **S. P. Kapoor (Dr) V. State of H.P.**[15] this Court held that when a thing is done in a post-haste manner, mala fide would be presumed, stating:(SCC p.739, para 33)
>
> "33. …..The post-haste manner in which these things have been done on 3-11-1979 suggests that some higher-up was interested in pushing through the matter hastily when the Regular Secretary, Health and Family Welfare was on leave."
>
> 26. It is also well settled that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires. (See **Commr. Of Police V. Gordhandas Bhanji**[16] and **Mohinder Singh Gill V. Chief Election Commr.**[17])".

73. Now coming to the decisions which are cited by Mr. Godbole, learned Senior counsel for the petitioner supporting the proposition that the impugned decision of the Deputy Engineer and City Engineer, to order stop work of the project, is arbitrary and high-handed by relying on the decisions in **Dr. S. P. Kapoor Vs. State of Himachal Pradesh & Ors.**[18]; **Zenit Mataplast Pvt. Ltd. Vs. State of Maharashtra & Ors.**[19]; **Fuljit Kaur Vs. State of Punjab**[20]; **Rajiv Kumar vs. State of Uttar Pradesh & Anr.**[21]. There cannot be any dispute on the principle of law as laid down in these decisions. We do not intend to burden the judgment by discussing these decisions, suffice it to observe that in the present case, the action

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14 2004 (2) SCC 65

15 (1981)4 SCC 716

16 AIR 1952 SC 16

17 (1978)1 SCC 405

18 (1981)4 SCC 716

19 (2009)10 SCC 388

20 (2010)11 SCC 455

21 (2017)8 SCC 791

on the part of the concerned officials who have issued the impugned stop work notice, certainly in no manner satisfies the test of law and accordingly, we had held the impugned stop work notice to be grossly arbitrary, high-handed and illegal.

74. We may observe that this is a clear case where Wellbuild appears to have clearly exceeded its contractual position with the petitioner, as discussed in detail hereinabove. However, what surprises us is the conduct of the municipal officials as to how without verifying the records, without any site inspection to identify any breaches of any building permissions or any other permissions and above all without issuance of an appropriate show cause notice merely on purported complaints of busybodies and / or certain unknown persons could have resorted to exercise powers affecting and prejudicing the civil rights of the petitioner. This more particularly knowing well that the construction of Wing 'D' was complete and would be required to be granted an occupation certificate. The municipal officials could not have acted so casually. They have acted so as their intentions appear to have been completely taken over by extraneous considerations, by virtue of which they have decided to discard all norms of legitimacy, legality, fairness, transparency and non discrimination in their actions as public officials. The Municipal Commissioner in the facts of the present case needs to investigate the role of these officials and the object and motive of these officials in taking the impugned action, and place an action taken report on the record of this Court within a period of six weeks. After such report is received, the Registrar Judicial

shall list the matter after six weeks for recording compliance. This more importantly keeping in mind the basic principle of legitimate expectations of the citizens from public officials. A stitch in time save nine.

75. In the aforesaid circumstances, we have no manner of doubt that the petition needs to succeed. It is accordingly allowed in terms of prayer clause (b) which reads thus:

> "(B) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other writ, order or direction in the nature of mandamus to the Respondent Nos.01 to 04 and declare that the issuance of the Impugned Stop Work Notice dated 10th December 2024 issued by the Respondent Nos.03 & 04 and recommended/approved by Respondent No.02 under section 267(1) of the Maharashtra Municipal Corporation Act, 1949 r/w. Section 54 of the Maharashtra Regional & Town Planning Act,1966 is perverse, illegal, improper, invalid, arbitrary, malafide and the same deserves to be set aside."

76. Before parting, as a Constitutional Court we would be failing in our duty, if we do not deprecate the arbitrary and high handed action on the part of the concerned officials of the Pune Municipal Corporation who were instrumental/involved in taking the impugned decision. In our clear opinion, despite judicial orders, including the orders passed by the Division Bench of this Court (supra) in the Section 37 ACA proceedings, the petitioner was made to suffer not only on account of delay in completion of the project but also suffer the pain and agony of the present litigation. Thus, the petition cannot be simplicitor allowed, it would be required to be allowed by ordering payment of exemplary costs. If we do not pass an order as to costs, the message would be that despite such arbitrary and high-handed conduct of the municipal officials which is purely

at the behest of private parties, these officials can comfortably get away, so as to indulge in similar high-handed practices in future, in regard to other parties. When under the law, public officials are conferred such drastic powers, there is an onerous duty and responsibility cast on them to exercise such powers only in accordance with law and not on extraneous considerations. The actions of the public authorities can never be arbitrary, malafide and high-handed. In this view of the matter, we direct that the concerned officials including the City Engineer who are directly involved in passing the impugned order/stop work notice shall, jointly and severally, pay cost of Rs.5,00,000/- (Rupees Five Lakhs only) to the petitioner. Such cost be paid to the petitioner within two weeks from today. If the same is not paid, the Municipal Commissioner shall recover the same in accordance with law.

77. Further, all the concerned illegalities have taken place at the behest of respondent No.5-Wellbuild who itself is a developer. Considering our observations, respondent No.5-Wellbuild has misused the official machinery of the municipal corporation in the manner which has shocked our conscience although it had pure contractual relations with the petitioner. It has nullified the orders passed by the Courts as noted by us hereinabove. Accordingly, respondent No.5/Wellbuild also has become liable to be ordered to pay exemplary cost to the petitioner. It is accordingly directed that respondent No.5-Wellbuild shall pay cost of Rs.25,00,000/- (Rupees Twenty Five lakhs only) to the petitioner within two weeks from today.

78. Rule is accordingly made absolute in the aforesaid terms.

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79. Insofar as the companion petition is concerned, as this Court has allowed the first petition, we are in complete agreement with the contention as urged on behalf of the petitioners that these petitioners are unwarrantedly suffering private disputes between the petitioner and respondent No.5/Wellbuild in the earlier petition.

80. For the reasons which we have set out in our judgment on the first petition (Writ Petition No.1022 of 2025), we are inclined to allow this petition in the following terms:

ORDER

i. Respondent Nos.01 to 04 are directed to issue Completion/Occupancy Certificate in respect of said Tower viz. Rajgruhi Residency Tower 'D' on the application/proposal in that regard made by M/s. Atria Constructions in accordance with law.

ii. Rule is made absolute accordingly. No costs.

81. At this stage, Mr. Kamat, learned senior counsel appearing for respondent no. 5-Wellbuild seeks stay of both these orders. In the facts and circumstances of the case, request for stay is rejected.

(ARIF S. DOCTOR, J.) (G. S. KULKARNI , J.)