



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5386/2023

1. Hagwood Commercial Developers
Private Limited, having its registered
Office at 105/106, Ground Floor,
Dreams Square Dalia Industrial Estate,
Off New Link Road, Andheri West,
Mumbai-400053, through its
Director Mr. Sudhanshu S/o. Subodhchandra
Chaturvedi.

...PETITIONER

VERSUS

1. The Union of India, through
Secretary, Ministry of Civil Aviation,
Rajiv Gandhi Bhawan, Block-B, Safdarjang
Airport Area, New Delhi-110003.
2. The Airport Authority of India,
through its Chairman Rajiv Gandhi
Bhawan, Block-B, Safdarjang Airport
Area, New Delhi-110003.
3. The Appellate Committee, through its
Chairperson, Joint Secretary, Room No.354,
Rajiv Gandhi Bhawan, Block-B, Safdarjang
Airport Area, New Delhi-110 003.
4. Airport Authority of India, Nagpur
Airport, Nagpur through General Manager
(ATM)/CIC, Dr. Babasaheb Ambedkar
International Airport, Nagpur-440005.

5. MIHAN India Ltd., (A Govt. of Maharashtra Undertaking) through its Director, 1st Floor, Old Terminal Building Dr. Babasaheb Ambedkar International Airport, Nagpur-440005.
6. Ravi s/o Sadanand Zade, aged about 36 yrs., Occ. CEO (Samruddhi Global Infra), R/o. Flat No. 703/704 E, Pyramid City—3, Besa Road, Nagpur-440015.
7. Samir S/o. Shriram Urganlawar, aged about 39 yrs., Occ. Construction, R/o. Opp. ITI, Civil Lines, Chandrapur.
8. Kripanand S/o. Ishwar Nagdeote, aged about 46 yrs., Occ. Doctor, R/o. Plot No.34, Manewada Besa Road, near Chintamani Nagari No.1, Vyankatesh Nagar, Diamond Housing Society, Parvati Nagar, Nagpur, Maharashtra-440027.
9. Anshul s/o Naval Kishor Agrawal, aged about 33 yrs., Occ. Business, R/o. Fulwanti Palace, Plot No. 926-A, Deshpande Layout, C.A. Nagar, Nagpur – 440008.
10. Navalkishor S/o Ganpatlal Agrawal, aged about 60 yrs., Occ. Business, R/o. Fulwanti Palace, Plot No. 926-A, Deshpande Layout, C.A. Nagar, Nagpur – 440008.
11. M/s. Karamtara Engineering Pvt. Ltd., a Company duly registered under the Companies Act, 2013, through its Authorized Signatory, Shri Shreyas Shah, R/o. Plot

No. B-212, M.I.D.C. Industrial Area,
Butibori, Nagpur-441108.

12. Utpal S/o. Anil Krishnalal Shah,
aged about 50 yrs., Occ. Business,
R/o. 26, Tejpal Building, Hughes Road,
Kemps Corner, Mumbai-400007.

RESPONDENTS

Mr. Devendra.V. Chauhan, Sr. Advocate i/b Mr. S.P. Bodalkar and Aditya Chaudhari, Advocates for petitioner.
Mr. S.A. Chaudhari, Advocate for respondent No.1.
Mr. Deoul Pathak, Advocate for respondent Nos. 2 and 4.
Mr. R.S. Kalangiwale, Advocate for respondent Nos. 6 to 12.

CORAM : NITIN W. SAMBRE AND
M. M. NERLIKAR, JJ.

DATE : 08.07.2025

ORAL JUDGMENT : (PER: M. M. NERLIKAR, J.)

Heard.

2. The prayer "A" in the writ petition reads as under:-

"A" Allow the present petition and direct the Appellate Committee for Height Clearance, New Delhi, Respondent No.3 herein and the Airport Authority of India, Nagpur Airport, Respondent No. 4 herein to conduct Aeronautical Study and CNS Simulation Study to reassess the permissible top elevation of the constructed four towers of the petitioner situated in its project

“Prozone Palm” on land bearing City Survey No. 78 at Mouza Chinchbhavan and also to ascertain whether these buildings are causing any obstruction in the movements of aircrafts at the Nagpur Airport.”

3. The petitioner acquired the piece of land admeasuring 42 acres bearing City Survey Nos. 78, 79 and 88 at Mouza Chichbhavan bearing Khasara Nos. 25, 29 and 30 at Nagpur, where it is proposed to construct a residential complex consisting of five towers on 3.5 acres portion of area.

4. It appears that respondent No.1 vide notification dated 14.01.2010 prohibited construction of building within the limits and heights specified in the Annexures to the said Notification without obtaining No Objection Certificate (“NOC”) from the Airport Authority of India (“AAI”).

5. Accordingly, the petitioner applied for grant of NOC and respondent No.4 vide communication dated 02.03.2012 granted NOC to the petitioner for construction of the structure to a maximum permissible height mentioned therein which was valid for a period of five years in the light of notification of 2010 referred above.

6. It is the case of the petitioner that subsequent to grant of NOC, the Local Planning Authority Corporation took certain time for processing the application for issuance of building permission and thereafter, the petitioner proceeded to carry out development as per the Building Development Regulation.

7. Alleging misuse of the NOC, as the petitioner allegedly shifted the site of the building from one which is mentioned in the NOC issued by respondent No.4, the respondent No.4 cancelled the original NOC dated 02.03.2012 granted in favour of the petitioner vide communication dated 09.08.2017. Being aggrieved, the petitioner has approached before this Court seeking relief of issuance of direction to the respondent No.4 Airport Authority of India to conduct Aeronautical Study and Communication Navigation Surveillance (“CNS”) Simulation Study to reassess the permissible top elevation of the constructed four towers and the proposed construction.

8. At the outset, we are not going into the claim of the parties about legality or illegality of the construction by the petitioner. Action to be taken, if any is left to the Planning Authority.

9. We are called upon to deal with the prayer of the petitioner for issuance of direction to carry out the Aeronautical Study and CNS Simulation Study.

10. It appears that the Appellate Committee vide order dated 22.11.2024 has rejected such request of the petitioner, and therefore, being aggrieved by the same, the petitioner is before this Court.

11. Mr. Chauhan, learned senior counsel and the Government Pleader appearing for the petitioner has invited our attention to the Air Traffic Management Circular No. 9/2016, so also the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Air Operations) Rules, 2015, ("Rules of 2015"), According to Mr. Chauhan, the respondent has relied on Clause 5.2 of GSR 751 (E) so as to reject the prayer of the petitioner for carrying out Surveillance Simulation Study. He claims that Clause 5.2 has no application in regard to the case of the petitioner as he would claim that it does not

restrain carrying out of CNS Simulation Study outside the Aerodrome Area. There is no embargo in carrying out the study regarding the construction outside the vicinity of aerodrome. He would claim that such view is already expressed by the Delhi High Court and High Court at Kerala.

12. In addition to the above, he would claim that the reliance placed by the respondents on Clause 5 of Schedule II of GSR 751 (E) is wholly misplaced. He would claim that the Aeronautical Study and CNS Simulation Study can be carried out so as to determine the existing object or proposed new object would not adversely affect the safety or significantly affect the regulation of operations of aeroplanes in pursuance of the ICAO provisions. That being so, he would claim that the respondent be directed to carry out Aeronautical Study and CNS Simulation Study. Mr. Chauhan, in addition to above has invited our attention to the instances where the respondent authority has carried out the said study in other similarly placed cases. According to him, Ministry of Civil Aviation in the meeting held on 24.03.2021 permitted one Advait Builders and Developers from Mumbai, who intended to have elevation of 72.84 mtr. to carry out Aeronautical

Study. Similarly, our attention is also invited to the Simulation Study Order in regard to the demand made by one Bamboo Hotel and Global Central (Delhi) Private Ltd., whose initial request was rejected by the respondent Airport Authority. As such, according to him, the respondent applied different yardstick to different parties who are similarly placed, which conduct is not expected of the respondent being a public body.

13. As against above, Mr. Chaudhary, learned counsel appearing for respondent No.1 has strenuously opposed the prayer of the petitioner by placing reliance on Clause 5.2, to urge that the prayer for CNS Simulation Study or the Aeronautical Study cannot be granted. He would further claim that admittedly the premises of the petitioner is not a part of Aerodrome area and as such the CNS Simulation Study cannot be ordered in view of Clause 5.2 referred above.

14. Apart from above, he has invited our attention to the location of existing project. Mr. Chaudhary would urge that since there is no valid NOC, the Aeronautical Study cannot be granted in such an eventuality. He would claim that once NOC granted in favour of the

petitioner was withdrawn, the petitioner has no right to claim carrying out of the aeronautical study. That being so, he has sought rejection of the prayer.

15. Mr. Pathak, learned counsel appearing for respondent Nos. 2 and 4 has tried to demonstrate from the record the distance of the existing structure till the runway. According to him, the distance is of 1.6 km. between the structure of the petitioner and that of the beginning of the runway, as such this Court should be sensitive to the said aspect of the matter.

16. We have considered the rival claims.

17. It is not in dispute that the Rules referred above and the Policy of the respondent provides for Aeronautical Study and CNS Simulation Study to be carried out in the given circumstances.

18. We must make it clear that we are not on the legality or the illegality of the structure constructed by the petitioner, even if the prayer to that effect is made in the petition, such prayer is not pressed at this stage of the proceedings.

19. We are only concerned at this stage, whether prayer “A” referred above in regard to ordering CNS Simulation Study or Aeronautical Study can be granted or not.

20. As regard the prayer for carrying out of Aeronautical Study or CNS Simulation Study is concerned, once the petitioner approaches this Court for carrying out such study by the competent authority viz by the Airport Authority of India or such other authorities as being stipulated in the GSR, in our opinion and rightly so pointed out from the GSR, the entire expenses are to be borne by the parties like the petitioner. The Airport Authority of India or Ministry of Civil Aviation is the competent authority who can subsequently process the request if so allowed to carry out aeronautical study and the CNS Simulation Study.

21. As such, we take it that the structure constructed by the petitioner in such eventuality can be termed to be a structure which was constructed without no objection certificate. Hence, for the purpose of deciding the issue sought to be canvased, it is not relevant in our opinion to consider the status of the structure of the petitioner.

22. As such, in case, if existence of certain structures for which even if NOC is cancelled or even if the structures are illegal or irregular that by itself will not lead to drawing a conclusion from GSR 751 (E) that the Aeronautical Study or CNS Simulation Study cannot be ordered to be conducted. We hardly see any statutory embargo to that effect.

23. We again make it clear that we are not commenting as to whether the respondents should protect the structure of the petitioner. We are of the view that once the issue is governed by the provisions of the GSR as referred above, which is now part of Rules of 2015 the order to carry out aeronautical study can be granted.

24. As regards the issue about carrying out the Communication Navigation Surveillance Simulation Study is concerned, admittedly the structure of the petitioner is not located within the aerodrome or Airport area.

25. Though Clause 5.2 speaks about carrying out such study in regard to the structures required to be made within Aerodrome premises by the Aerodrome Operator, the fact remains that clause 5.2

is not restricting the study to be carried out only to the extent of the Aerodrome area. We hardly notice any statutory embargo to that extent, to the area which in our opinion is located outside the Aerodrome area as Clause 5.2 does not put an embargo to that effect.

26. Apart from above, just because the Aeronautical Study or the CNS Simulation Study is carried out, that by itself will not give leverage to the petitioner to claim that its building is legalized or that of it being ipso facto entitled for validating its cancelled NOC, as such study has to be approved by the respondent Civil Aviation Ministry and also that of Airport Authority of India.

27. On similar touchstone, rightly so our attention is invited by the learned senior counsel for the petitioner to the judgment of Kerala High Court in the matter of *B. Reghuram Shetty s/o. Late Shambu Shetty Vs. The Chairman, Appellate Committee, Airport Authority of India in Writ Petition (C) No. 1104/2019 (K) decided on 22.09.2020*, particularly paragraph 26. So also, the Division Bench Order of the Delhi High Court in the matter of *Manav Infrastructure Private Limited Vs. Union of India and another, decided on 08.12.2021 in*

Writ Petition (C) No. 13963/2021. Similarly, certain instances are also brought to our notice that the Ministry of Civil Aviation permitted the infrastructural projects at Mumbai and Delhi to conduct aeronautical and CNS Simulation Study. That being so, we intent to allow the prayer of the petitioner to the said extent.

28. Accordingly, the petition is allowed. We hereby quash and set aside the order dated 22.11.2024 issued by the Appellate Committee for Height Clearance rejecting the Appeal preferred by the petitioner.

29. We direct the respondent herein to carry out the Aeronautical Study and CNS Simulation Study in accordance with the Rules, 2015 and the Annexures appended thereto within a reasonable period after following due process. For the said purpose, we permit the petitioner to appear before the respondent No.4 who in turn, shall process the request by issuing appropriate demand towards the costs and expenses to be incurred for the purpose of carrying out the above referred studies within a reasonable period.

30. The demand in our opinion can be issued to the petitioner within a period of two months from today and study be completed expeditiously and in any case within six months thereafter.

31. The petition stands disposed of in above terms. Rest of the issues are kept open.

(M. M. NERLIKAR, J.)

(NITIN W. SAMBRE, J.)

Gohane