

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

**CHAMBER SUMMONS NO.246 OF 2017
IN
PUBLIC INTEREST LITIGATION NO.86 OF 2014**

Mallayya R. Chhanam .. Applicant/
Intervener

IN THE MATTER BETWEEN :

Yeshwanth Shenoy .. Petitioner
V/s.
The Union of India & Ors. .. Respondents

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Mr.D.A. Athavale, Advocate for the Applicant.

Mr.Yashwanth Shenoy, Petitioner in person in PIL 86 of 2014.

Mr.Rajeev Chavhan, Senior Counsel a/w. Mr.Dushyant Kumar,
Advocate for Respondent No.1-UOI and 3-DCGA.

Mr.Anil Singh, A.S.G. a/s. Ms.Shilpa Kapil, Advocate for
Respondent No.2-AAI.

Mr.Farid Karachiwala and Ms.Sneh Mehta and Mr.Mahek Chheda
i/b. M/s.Wadia Ghandy & Co., Advocate for Respondent No.4-
MIAL.

Mrs.S.Mangala, DGM, Aviation Safety, Airports Authority of India,
present.

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**CORAM : S.C. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATED : MARCH 6, 2018.

P.C. :

This is an intervention application seeking to intervene in the PIL.

2 Though leave to intervene has been granted and we have extensively heard Mr.Athavale appearing for this applicant, it appears that, his grievances are that he had filed an independent PIL No.46 of 2016, raising issues in the public interest. The issues pertain to method of calculating the permissible height by the Airport Authority of India and/or the Director General of Civil Aviation. Since that petition was tagged with the PIL No.86 of 2014, the petitioner was informed by this Court that instead of hearing two separate petitions on the issue of air safety, the applicant should intervene in the present PIL No.86 of 2014.

3 Mr.Athavale places heavy reliance on the order dated 6th July, 2017, passed in the PIL No.86 of 2014. Mr.Athavale, submits that the applicant-petitioner has contended that the authority must sanction the height of the premises, as required by the statutory regulations and not as required by the builders, of each building, as erroneously recorded in order dated 6th July, 2017.

4 The concerned committee has to approve or sanction the scheme wherever it is placed if it falls within the parameters of the rules.

5 However, when this Court was apprised of the issues raised in the PIL No.86 of 2014, this PIL was not allowed to be pursued and according to Shri Athavale, the applicant was permitted to intervene in the present proceedings.

6 Mr.Athavale also relies upon the statements made in the affidavit-in-support of this Chamber Summons to urge that the permissible height is calculated by applying a wrong method. The method adopted by respondent nos.2 and 3 is patently illegal and wrong. The distance determined by them between the concerned plots and the reference point itself is wrong because the reference point which they have taken is 60 meters from the runway extremity, whereas, and actually it ought to have been 60 meters from the displaced threshold. By deliberately adopting such erroneous method, the 2nd and 3rd respondents have jeopardized the residential occupation of thousands of residents. The obstacles list, therefore, is wholly erroneous and illegal. The

neighborhood of Andheri, Vile Parle, Santacruz, Ghatkopar and Kurla will be destroyed if this erroneous calculation is allowed to be relied upon and to hold the field.

7 From a reading of this Chamber Summons and the affidavit-in-support, we are clear that the applicant - intervener is individually not aggrieved for neither he has received any notice nor the construction which is stated to be occupied or the building where he is residing is affected and, presently, by the calculations. As and when any owner of the building receives the notices based on the calculations of the height, it will be open for him or the occupants to raise all contentions including the grounds and the pleas taken in the affidavit-in-support.

8 It is well settled that there is a dual ownership and there could be one. In the sense, the land may belong to A and the building may be constructed thereon by B and, thereafter, conveyed to C, it is that building and construction on the plot which "C" can claim as belonging to it. It which could be a legal entity in the form of a co-operative Housing Society or otherwise, which may receive such notices in the event the structures are stated to be offending and affecting air safety. Similarly, any

projects and building under construction may be visited with such notices or consequences. In assailing such notices or communications, it would be open for these legal entitles to raise specific issues concerning the calculation of the permissible height and in terms of the procedure and method adopted by respondent nos.2 and 3. Presently, this Court is not expressing any opinion on the methodology of calculations or the stipulations, insofar as, the permissible height is concerned. Keeping open that controversy and to be decided at the instance of aforementioned legal entities, we dispose of this Chamber Summons.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)

