IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7706 OF 2012

Divgi Metal Wares Private Limited,
A company incorporated and
registered under the provisions
of Companies Act, 1956
through Power of Attorney Holder
P.S. Infrastructure,
A partnership firm, through its
partner Shrikant Purushottam
Paranjape, Age 55 years
Occ: Business, PSC House,
111/1+111/2, Dr. Ketkar Marg,
Erandawane, Pune-411 004. .... Petitioner

- Versus -

1. Municipal Corporation of the City
of Pune, having office at PMC
Building, Shivaji Nagar,
Pune – 411 005, through its
Municipal Commissioner.

2. City Engineer of Municipal
Corporation of the City of Pune,
having office at: PMC Building,
Shivaji Nagar, Pune-411 005.

3. The State of Maharashtra,
through its Secretary to the
Ministry of Urban Development
Department, Mantralaya,
Mumbai – 400 032. .... Respondents

WITH

WRIT PETITION NO.4332 OF 2013

Marathi Bandhkam Vyavasayik
Association, a Registered Organisation
having its office at: 2 Saraswati
Apartment, Laxmanbaug Colony,
Erandwane, Pune-4, through its
Managing Committee Member
Pravin Sadashiv Shinde
Age: 55 years, Occ: Business,
Office at same as above. .... Petitioner

- Versus -

1. The State of Maharashtra,
through the Secretary,
the Ministry of Urban Development,
Mantralaya, Mumbai.

2. Pune Municipal Corporation,
Corporation Building,
Shivajinagar, Pune 411 005.

3. The Municipal Commissioner
Pune Municipal Corporation,
Corporation Building,
Shivajinagar, Pune 411 005. .... Respondents

WITH

CIVIL APPLICATION NO.700 OF 2019
IN
WRIT PETITION NO.4332 OF 2013

Arvind Kaushal,
R/o Flat No.403, Building No.B-6,
Ganga Constella, Survey No.61/1/2,

60/1/2, 60/4, Khardi,
Pune – 411 014. .... Applicant

In the matter between

Marathi Bandhkam Vyavasayik Association .... Petitioner

Vs.

The State of Maharashtra & Others .... Respondents

WITH

WRIT PETITION NO.9890 OF 2011

1. Promoters and Builders Association of Pune (PBAP), through its Secretary Nitin Dawarkadas Nyati, having its office at No.T-1, T-2, T-3, 3rd Floor, Nucleus Jeejeebhoy Towers, Church Road, Pune 411 001.

2. Architects, Engineers and Surveyors Association (AESA) through its Executive Committee Member, Hemant Sathye, having its office at 1199/B, Yadav Business Centre, 2nd Floor, above Manmeet Hotel, F.C. Road, Shivajinagar, Pune – 411 004. .... Petitioners

- Versus -

1. The State of Maharashtra, through the Secretary, Urban Development Department, having its office at Mantralaya, Mumbai – 400 032.

2. The Pune Municipal Corporation, A statutory body constituted under the Provisions of the BPMC Act,

1949, having its office at
Shivajinagar, Pune.

3. The Commissioner,
Pune Municipal Corporation,
having its office at Pune Municipal
Corporation, Shivajinagar, Pune. .... Respondents

WP-7706/2012:
Mr. G.S. Godbole with Mr. Drupad S. Patil for the Petitioner.
Mr. R.M. Pethe for Respondent Nos.1 & 2.

WP-4332/2013 with CAW-700/2019:
Mr. G.S. Godbole with Shivani S. Samel &
Mr. Akshay Petkar for the Petitioner.
Mr. A.A. Kumbhakoni, Advocate General, with
Mr. Abhijeet P. Kulkarni for Respondent Nos.2 & 3.

WP-9890/2011:
Mr. S.U. Kamdar, Senior Advocate, with Mr. S.R. Waghmare for the Petitioners.
Mr. A.A. Kumbhakoni, Advocate General, with
Mr. Abhijeet P. Kulkarni for Respondent Nos.2 & 3.

Ms A.A. Purav, Assistant Government Pleader,
for the Respondent-State in all matters.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : APRIL 03, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.**):**

1. **Rule**. The respondents in each of these petitions

waive service. By consent, Rule is made returnable forthwith and the petitions are taken up for hearing and final disposal. Heard.

2. By these petitions under Article 226 of the Constitution of India, the petitioners are challenging a Resolution of the Pune Municipal Corporation dated 24-5-2011 and a Circular issued thereafter on 16-6-2011. These petitions are being disposed of by this common Judgment.

3. We take the facts from Civil Writ Petition No.9890 of 2011.

4. The petitioners in this writ petition are an Association of Promoters and Builders of Pune, and the Architects, Engineers and Surveyors. They have impleaded as respondents the State of Maharashtra and the Pune Municipal Corporation and its Commissioner.

5. It is the case of these petitioners that the 2nd respondent, as a Planning Authority, has a power to compound

offences committed under The Maharashtra Regional and Town Planning Act, 1966 ("the Act" for short). The petitioners state that the Act was enacted to make provisions for planning and development. The power conferred by the Act is to make regulations and there are several Rules and Regulations under the Act which are in force. The grievance is that, contrary to the provisions of the Act, the Rules and the Regulations in force, the General Body of the Pune Municipal Corporation ("PMC" for short) passed a Resolution and by that Resolution compounding fees were directed to be charged. The rate of such compounding fees are set out in this Resolution and thereafter the Circular was issued which enumerates the compounding fees to be charged in respect of certain constructions and particularly to regularise any irregularities therein and thereafter to issue the necessary certificates.

6. The petitioners complain that, the Corporation officials are taking months together to process the applications seeking compounding of the irregularities and to make necessary orders, every time the Members of the petitioners have to

follow-up the cases and matters. In spite of regular follow-up the processing and clearance is delayed at the end of the Municipal Corporation itself. The petitioners and their Members cannot be blamed if initially certain certificates are not issued and inadvertently a breach or violation of the Act and the Rules is committed. As far as compounding of offences is concerned, that is a matter dealt with by Section 143 of the Act. However, as far as the application seeking issuance of certificate on the plea that before the construction was undertaken and completed, inadvertently, there was no application made for seeking development permission and Commencement or Completion Certificate. Now that the construction is completed and carried out, the same be allowed to be retained in terms of the power conferred by Section 53(3) of the Act. If the Members of the petitioners or their clients receive such notices, as are traceable to Section 52, sub-section (1), Section 53, sub-section (1), Clause (c), then under sub-section (3) of Section 53 application can be made to retain the construction or the development. That application has to be dealt with and in terms of the very law. For

that application to be made, there may be fees prescribed or otherwise but surely there cannot be any compounding charges as far as these matters are concerned. The rates which have been determined for compounding the alleged violations and breaches are therefore beyond the purview of the law itself. Therefore, a challenge is laid to this Circular and it is submitted that the writ petitions be allowed by quashing the same.

7. In answer to this petition, an affidavit in reply has been filed and the Additional City Engineer of the 2nd respondent-Corporation has justified this Circular by pointing out that, for years it is observed that in many cases the developers indulge in a practice of going ahead with construction above the plinth, without obtaining the Plinth Checking Certificate from the authority or proceed with the construction beyond the permissible Floor Space Index (FSI) without purchasing the TDR from the market in anticipation that he will be able to obtain the TDR and/or the Plinth Checking Certificate and thereafter get the construction or development regularised. Sometime the Flat is ready for use and the Flat

purchaser pressurises the developer for handing over the possession. There are other issues as between the Flat purchaser and the developer. It is in these circumstances, almost in 95-98% cases the possession has been handed over without obtaining the Occupancy Certificate, much less Building Completion Certificate. It is to take care of such situations that the Municipal Corporation stepped in and therefore prescribed a condition of monetary contribution for regularising such acts. The Municipal Corporation placed before the General Body the proposal for deciding the compounding fees for regularisation of unauthorised construction, unauthorised use/occupation and work, carried out without obtaining the Plinth Checking Certificate and for delegation of such power to the Commissioner or any other officer designated by him. On such a proposal of the Municipal Commissioner, the General Body met and discussed the subject on several occasions. After a detailed discussion, the subject was finalised and the Resolution came to be passed. The affidavit proceeds to state as under:-

> *"12. I categorically say that on payment of scheduled fine/compounding fees, only those*

structures/constructions will be regularized which have been constructed/put up strictly in accordance with law, relevant rules and regulations i.e. are regularisable. I hereby clarify in no uncertain terms that such constructions which are not capable of being otherwise regularized will not at all be regularized even if the erring person offers to comply with the impugned resolutions/circular.

13. I categorically say that the decision of PMC in issue is taken only with the view to stop/prevent illegal construction activities and to enable the Municipal Officers of the PMC to strictly enforce the law. Thus I say and submit that PMC has full authority to pass such resolution and the same is legal and valid. It is also pertinent to note that PMC is and has never been demanding any compounding fees on its own but the same is charged/demanded only when any person is willing to go for regularization. Otherwise, the PMC will take legal action against such illegal constructions/occupancies, which includes demolition, discontinuation of use, prosecution etc.

14. I say that bare perusal of the subject resolution and office order will show that whenever there is delay in processing the applications by the officers of PMC, the PMC does not impose any charge much less fine/compounding fee. The duration of each stage wise work to be carried out by the PMC officer(s) is also specified and made known to all. In order to simplify the procedure for issuance of occupation certificate the issue of obtaining NOC's from various Departments of PMC has been omitted by providing "one window system" except the mandatory ones i.e. Lift NOC and Fire Dept. NOC vide the office Circular.

15. I say that, along with the said provisions of section 159 of MRTP Act, the above provisions mentioned also empower the Local Planning authority to act against unauthorized construction/occupation. I say that accordingly different departments have been established

by the local planning authority viz Development and Planning Cell, Building Development.

16. I say that mala fide intention of Petitioner behind this Petition cannot be overlooked. The Petitioner by this Petition are trying to get relieved from their responsibilities for the unauthorized construction that they carry out without proper approval and Unauthorized Occupancy as well as the construction work done above plinth without obtaining the Plinth Certificate.

17. …. …. ….

18. I therefore say that the subject resolution is valid and the PMC has full authority to take such decision(s) that are impugned by the present petition. In order to curb the unauthorized constructions and as per the assurance given to the Legislative Assembly and as per the above mentioned various provisions of MRTP and BPMC Act the local planning authority with the due approval of general body PMC has issued appropriate circular that is impugned by the present petition."

8. In the other writ petitions, namely, Civil Writ Petition No.7706 of 2012 and Civil Writ Petition No.4332 of 2013, there is a similar challenge laid but in somewhat distinct facts and circumstances. There, the petitioners have approached this Court not only to challenge this Resolution and the Circular but a Demand Notice/Order of 23-4-2012 served on the petitioners {Civil WP-7706/2012}. That was issued to the petitioner-company and the petitioner in that petition (Civil WP-

7706/2012) has averred that, the immovable property and more particularly described in para 2A of the petition belongs to it. The petitioner has pointed out as to how the property came in the hands of the petitioner and it is stated that a Memorandum of Understanding was executed on 23-1-2004 with one Padales and their father Murlidhar and thereupon there was a Power of Attorney which was executed. Thus, there was a venture undertaken with the Padales and Yeolekar. A further transaction was then undertaken with a developer M/s. P.S. Infrastructure and it prepared the layout plans and building plans showing proposed buildings “A” and “B” on a land admeasuring 12818.68 square metres as per the Property Register Extract. The building “A” was shown on the land owned by the said petitioner. A joint request was made for corrections in the area and for sanction of the plans. The PMC sanctioned the layout as per the area statement prepared and thereafter a request was made to correct it but without taking any cognisance of the request for correction in the sanctioned layout, the building plans were sanctioned and a Commencement Certificate, on 20-10-2004,

came to be issued. The petitioner then points out as to how the Plinth Checking Certificate was also issued. The construction was completed of building “A” and a proposal was submitted for Part-Completion/Occupation Certificate with respect to West Side Wing/building “A”. That certificate was also issued. That covered a building of ground + seven upper floors. It is then stated that the Corporation raised an issue as to how the certificates could have been issued without the area correction being obtained. It is stated that the issue was taken up by the developer with the State Government and eventually the State Government purported to deal with and dispose of the issue. Be that as it may, the petitioner then sets out the history of how the other construction was taken up and pursuant to similar exercise as in the case of building “A”. It is claimed that after everything was issued (approvals and permissions), the petitioner received a Demand Notice dated 23-4-2012, calling upon it to pay an amount of Rs.3,61,11,656/- towards compounding fees under three heads, namely, unauthorised occupation of unauthorised construction, unauthorised usage of authorised construction and

unauthorised usage beyond the sanctioned construction. The Demand Notice has been issued on the basis of the Resolution No.74, dated 24-5-2011, passed by the General Body and the office Circular dated 16-6-2011. Thus, in addition to the Resolution and the Circular, this Demand Notice is challenged in this petition on identical grounds. Here as well we have noted that the Municipal Corporation has sought to justify its Resolution and the Circular.

9. There are more or less identical grounds of challenge and defence.

10. The position with regard to the third petition is also common.

11. We have heard, in support of the above petitions, Mr. Kamdar, learned Senior Counsel and Mr. Godbole. Both of them have argued that there is no authority in law to issue the Circular inasmuch as the concept of compounding of offence and charging of compounding fee for the purpose of considering an application under Section 53(3) of the Act are distinct matters.

In the matters that are covered by Section 143, it is evident that the Municipal Corporation seeks to issue a general or speaking order and that is before or after the institution of criminal prosecution, seeking to penalise wrongdoers, while compounding the said offence which is made punishable under this Act or the Rules framed thereunder. However, when a notice is issued under clauses (a) & (b) of sub-section (1) of Section 53, then, the law allows the aggrieved person to make an application, under sub-section (3) thereof, seeking permission under Section 44 for retention on the land of any building or works or for continuance of any use of the land, to which the notice relates, and that application has to be considered in the same way as an application seeking development permission is dealt with. The consequences of grant of permission are set out in sub-section (5) of Section 53 and by sub-section (6), the Planning Authority is empowered to prosecute the owner for not complying with the notice and where the notice requires the discontinuance of any use of land, any other person also who uses the land or causes or permits the

land to be used in contravention of the notice, and where the notice requires the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified by taking such steps as the Planning Authority may consider necessary, including demolition or alteration of any building or works or carrying out of any building or other operations, and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

12. Thus the argument is that, when the substantive provisions of the law dealing with unauthorised development do not empower the Planning Authority to recover any sum, but penalising or prosecuting the wrongdoer by taking recourse to Section 143, then, the prescription of such compounding fees is not sustainable at all.

13. Section 52A is not the provision which was on the

statute book when the impugned Resolution and the Circular were passed. Hence, Mr. Kamdar and Mr. Godbole would contend that in law there is no authorisation for such collection and recovery. The Planning Authority is seeking to do something which it is prohibited by law and is doing indirectly something which it cannot do directly. In the circumstances, they would contend that this Court should quash both the Resolution and the Circular as also the Demand Notice.

14. Mr. Kumbhakoni, learned Advocate General and Mr. Pethe, both appearing for the Municipal Corporation, however, justify this by submitting that the Planning Authority, in its wisdom, has, while dealing with the application under Section 53(3) of the Act, decided to impose certain charges and to enable recovery of the same that the Resolution has been passed. According to them, we must peruse this Resolution and the Circular carefully and only then take a call. We should not hastily strike down these measures, for what will happen is that the developers and builders will then be emboldened to violate the law. In other words, they concede that in several cases they

have, for commercial reasons or otherwise, recovered the charges. The builders have not obtained the Plinth Checking Certificate or the Part Completion Certificate or the Full Completion Certificate and the Occupation Certificate. Thus, their act is unauthorised and illegal. They could not have made any construction and development absent compliance with the law. The compliance with the law means going through the rigmarole of Sections 44, 45 and 47. If that procedure has not been complied with and the construction is still carried out, then, it is an unauthorised and illegal construction. It may be that there is some scope to urge and in specific cases that there was no intentional or deliberate violation of the law and the construction is otherwise carried out in accordance therewith. There are minor deviations or trivial infractions of the law. Those are, therefore, compoundable or permissible departures or deviations. While regularising them the Planning Authority called for payment of the subject charges or fees. So long as no individuals have come forward to challenge such imposition and recovery, as a general rule, we should not interfere with the

impugned actions. Our attention has been invited to the legal provisions to submit that the subject acts of the Corporation should be sustained and the petitions be dismissed.

15. A reading of the Circular of 16-6-2011 denotes that the Municipal Corporation had before it about 11 documents, certain proposals and requests as also a Standing Committee Resolution No.2594 dated 8-2-2011. In addition to this, there was a proposal and recommendation from the Municipal Commissioner. It is stated that there is an increasing tendency of making construction without permission or occupy the constructed building, without the Occupation Certificate. There is a power to compound the offence and that power is conferred by Section 143. The Municipal Commissioner has recommended that if there are rates prescribed insofar as the related issues are concerned, then, even for compounding the violations and breaches and to consider the applications for regularisation or retention, the rates of payment, as determined, should be prescribed. The House gave its approval to such charges being imposed and recovered.

16. The Circular refers to page 2 of the Resolution dated 24-5-2011. While it is true that the compounding fee has now been revised but according to Mr. Kumbhakoni, if there is a separate fee prescribed for every breach, then, we must bear in mind that the object and purpose of the imposition is not to en bloc regularize everything. It is only when it is possible to regularise the irregularity, if any, then alone the prescription is made. In other words, if there is an occupation and possession of the property and its use is commenced but without obtaining the Occupation Certificate, then separate rates are prescribed for compounding such an act insofar as residential user and commercial user. Similarly, if there is a development without permission and it is capable of being regularised, then, distinct rates are prescribed for residential and commercial construction. It is then said that identical is the position when the construction is carried out without any Plinth Checking Certificate. The Circular of the PMC is only bringing to the notice of the petitioners as to how the fees or the charges would be levied and recovered. Thus, the imposition is by the Resolution and the

recovery or the machinery for the recovery is set out in this Circular.

17. However, the core issue is even for such imposition and recovery, there has to be an authority in law. We have found that there is a chapter with the title "Control of Development and Use of Land Included in Development Plans", namely, Chapter IV. Section 43 sets out the restrictions on development of land and then comes Sections 44, 45, 46 and 47. They read as under:-

> *"**44. Application for permission for development:-** (1) Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed:*
>
> *[Provided that, save as otherwise provided in any law, or any rules, regulations or bye-laws made under any law, for the time being in force, no such permission shall be necessary for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board or the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976.]*

[(2) Without prejudice to the provisions of sub-section (1) or any other provisions of this Act, any person intending to execute [an Integrated Township Project] on any land, may make an application to the State Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be [an Integrated Township Project] by notification in the Official Gazette or, reject the application.]

45. Grant or refusal of permission:- *(1) On receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing -*

(i) grant the permission, unconditionally;

(ii) grant the permission, subject to such general or special conditions as it may impose with the previous approval of the State Government; or

(iii) refuse the permission.

(2) Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form.

(3) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(4) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the receipt of his

application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days:

[Provided that, the development proposals, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act:

Provided further that, any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorized development for the purposes of sections 52 to 57.]

[(6) The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or development plans to the Collector concerned.]

46. Provisions of Development plan to be considered before granting permission:- *The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan [or proposals] [published by means of notice] [submitted] or sanctioned under this Act:*

[Provided that, if the Development Control Regulations for an area over which a Planning Authority has been appointed or constituted, are yet to be sanctioned, then in considering application for permission

referred to in sub-section (1), such Planning Authority shall have due regard to the provisions of the draft or sanctioned Regional Plan, till the Development Control Regulations for such area are sanctioned:

Provided further that, if such area does not have draft or sanctioned Regional plan, then Development Control Regulations applicable to the area under any Planning Authority, as specified by the Government by a notification in the Official Gazette, shall apply till the Development Control Regulations for such area are sanctioned.]

47. Appeal:- *(1) Any applicant aggrieved by an order granting permission on conditions or refusing permission under section 45 may, within forty days of the date of communication of the order to him, prefer an appeal to the State Government or to an officer appointed by the State Government in this behalf, being an officer not below the rank of a Deputy Secretary to Government; and such appeal shall be made in such manner and accompanied by such fees (if any) as may be prescribed.*

(2) The State Government or the officer so appointed may, after giving a reasonable opportunity to the appellant and the Planning Authority to be heard, by order dismiss the appeal, or allow the appeal by granting permission unconditionally or subject to the conditions as modified."

18. Thus, there has to be an application for permission for development and that is contemplated by sub-section (1) of Section 44. It could be that the Rules are in place enabling the making of an application in a particular form and setting out the details as also the accompanying documents, but it is evident

from sub-section (1) that each of these aspects have to be prescribed and the word "prescribed" means prescribed by the Rules. It is evident that the grant of permission or refusal is dealt with by Section 45. In the event, a person is seeking permission, then while granting it the Planning Authority must consider and shall have due regard to the provisions of any draft or final plan or proposal published by means of notice submitted or sanctioned under the Act. Any person aggrieved by an order granting permission on conditions or refusing permission under Section 45 can prefer an Appeal and the appellate power is conferred by Section 47 in the State Government. Section 48 provides for lapse of permission whereas Section 49 deals with a distinct matter, namely, an obligation to acquire land on refusal of permission or on grant of permission in certain cases. Section 50 deals with deletion of reservation whereas Section 51 confers power to revoke and modify a permission to a development granted under Section 44.

19. The sub-heading "Unauthorised Development" includes Sections 52 and 53. They are reproduced for ready

reference:

> *"**52. Penalty for unauthorised development or for use otherwise than in conformity with Development plan.-** (1) Any person who, whether at his own instance or at the instance of any other person commences, undertakes or carries out development or institutes, or changes the use of any land—*
>
> *(a) without permission required under this Act; or*
>
> *(b) which is not in accordance with any permission granted or in contravention of any condition subject to which such permission has been granted;*
>
> *(c) after the permission for development has been revoked; or*
>
> *(d) in contravention of any permission which has been duly modified, shall, on conviction, [be punished with imprisonment for a term [which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees]] for every day during which the offence continues after conviction for the first commission of the offence.*
>
> *(2) Any person who continues to use or allows the use of any land or building in contravention of the provisions of a Development plan without being allowed to do so under section 45 or 47, or where the continuance of such use has been allowed under that section continues such use after the period for which the use has been allowed or without complying with the terms and conditions under which the continuance of such use is allowed, shall on conviction be punished [with fine which may extend to five thousand rupees]; and in case of a continuing offence, with a further fine which may extend to one hundred*

rupees for every day during which such offence continues after conviction for the first commission of the offence.

52A. …. …. ….

53. Power to require removal of unauthorised development.- *(1)(a) Where any development of land has been carried out as indicated in clause (a) or (c) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place;*

(b) if the owner, developer or occupier fails to restore the land accordingly, the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor.

(1A) Where any development of land has been carried out as indicated in clause (b) or (d) of sub-section (1) of section 52, the Planning Authority may, subject to the provision of this section, serve one month's notice on the owner, developer or occupier requiring him to take necessary steps as specified in the notice.]

(2) In particular, such notice may, for purposes of sub-section (1), require—

(a) the demolition or alteration of any building or works;

(b) the carrying out on land of any building or other operations; or

(c) the discontinuance of any use of land.

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for

retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

(4) The foregoing provisions of this chapter shall, so far as may be applicable, apply to an application made under sub-section (3).

(5) If the permission applied for is granted, the notice shall stand withdrawn; but if the permission applied for is not granted, the notice shall stand; or if such permission is granted for the retention only of some buildings, or works, or for the continuance of use of only a part of the land, the notice shall stand withdrawn as respects such buildings or works or such part of the land, but shall stand as respects other buildings or works or other part of the land, as the case may be; and thereupon, the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land,

(6) If within the period specified in the notice or within the same period after the disposal of the application under sub-section (4), the notice or so much of it as stands is not complied with, the Planning Authority may -

(a) prosecute the owner for not complying with the notice; and where the notice requires the discontinuance of any use of land any other person also who uses the land or causes or permits the land to be used in contravention of the notice; and

(b) where the notice requires the demolition or alteration of any building or works carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the

> *permission or with the permission as modified by taking such steps as the Planning Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations; and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.*
>
> *(7) Any person prosecuted under clause (a) of sub-section (6) shall, on conviction, [be punished with imprisonment for a term [which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees] for every day during which such offence continues after conviction for the first commission of the offence.]*
>
> *[(8) The Planning Authority shall, by notification in the Official Gazette, designate an officer of the Planning Authority to be the Designated Officer for the purposes of exercise of the powers of the Planning Authority under this section and sections 54, 55 and 56. The Designated Officer shall have jurisdiction over such local area as may be specified in the notification and different officers may be designated for different local areas.]"*

20. A bare perusal of these two provisions coupled with Section 54 leaves us in no manner of doubt that while Section 52 makes the acts specified therein to be an offence and for which penalty can be imposed, and for a continuing breach Section 53 confers power to require removal of unauthorised development. In that, we find that there are two distinct

provisions – one by which the Planning Authority can serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the development took place when it finds that such development is without the permission required under the Act or in contravention of any permission which has been duly modified. If the owner, developer or occupier fails to restore the land though required to do so, then the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor. Where the development has been carried but that is not in accordance with any permission granted, or is in contravention of any condition subject to which the permission has been granted, or is in contravention of any permission which has been duly modified, then, a distinct notice can be served under Section 53 (1A) requiring the person/noticee to carry out the acts enlisted in the sub-section and if the person aggrieved by such notice seeks to retain the activity carried out, then he can approach the Authority under sub-section (3) of Section 53 for retention, and

how that matter has to be dealt with is then set out in sub-sections (4), (5) and (6). It is thus apparent that none of these provisions, save and except sub-section (7), authorise recovery of any money. Thus, while allowing retention nothing other than what is prescribed or permitted by law can be done by the Planning Authority. The imposition of fine or penalty and conviction along with fine are distinct matters and we are not concerned therewith. We are only concerned with the issue as to whether the compounding fees, as demanded from the petitioner in Civil Writ Petition No.7706 of 2012, can be recovered at the stage of consideration of an application traceable to sub-section (3) of Section 53. We have not been shown any provision either under this section or any other sections of the law which would enable the Planning Authority to recover such fees. It is evident from a perusal of the further chapters and particularly the chapter which enables levy, assessment and recovery of development charge that those are different aspects and dealt with separately. By Chapter IX, which enables the Planning Authority, *inter alia*, to make regulations

unless there is a specific matter on which regulations can be made, in the absence thereof, by a mere Circular, a demand of the present nature could not have been raised. Thus, the demand has to be backed by an authority of law. Power, authority and jurisdiction in law being lacking, a mere General Body Resolution cannot sustain any such demand. We have clearly found the absence of a legal backing to the demand. We have found that no rules have been made authorising the imposition of compounding charges and their recovery. In the absence of a legal frame-work, we cannot sustain the Resolution as also the Circular on some general grounds pleaded by the Municipal Corporation in their affidavit.

21. These general grounds may take care of problems and issues faced by the Corporation in dealing with huge applications of the nature traceable to sub-section (3) of Section 53 and the administrative charges and expenses incurred and involved in consideration thereof but that by itself cannot be authorising the Municipal Corporation, acting as a Planning Authority, to recover compounding charges. This is not

compounding of an offence but it is a consideration of an application by which the applicant urges that he has committed violation or breach of the law but that is capable of being condoned or regularised and by making an application and seeking *post facto* or subsequent permission from the Municipal Corporation/Planning Authority. It is while considering that application or that request that we have found that the compounding charge is imposed. Once we have, on a scanning of the entire law, found absence of any provision authorising or backing that imposition and recovery, we have no alternative but to quash it. Both the Resolution and the Circular, therefore, are unsustainable in law.

22. We allow these petitions by quashing and setting aside the Resolution and the accompanying Circular as also the Demand Notice, demanding the amount styled as compounding charges. Rule is made absolute in these terms but there will be no order as to costs.

23. However, we clarify that in the event the application

seeking retention carries with it certain fees and the rates of such fees are backed up by a prescription under the Rules/Regulations, the recovery of such fees shall not be affected by our Judgment. Similarly, in individual facts and circumstances if it is found that by belated application for retention of the development or of the change of user the Municipal Corporation has been deprived of the fees which are prescribed, once again by law, for issuance of the Plinth Checking Certificate, Part Occupation Certificate or Full Occupation Certificate, then, these amounts can be recovered while passing the order in individual facts and circumstances. If the applicant on his own and voluntarily says that the breaches and violations be regularised, by a *post facto* permission or approval, and he is ready and willing to pay such charges or amounts as are determined for the retention of the development or for the change of user, then, the payment and recovery of such charges voluntarily offered will not be affected by our Judgment. Our Judgment also does not mean that as far as compounding of offence is concerned, the Competent Criminal

Court cannot be requested to impose monetary fines prescribed by law but enable the Planning Authority to recover such charges as may be determined by it, by the order of the Competent Criminal Court. This imposition being distinct in nature, that will not be affected by this Judgment at all.

24. In addition to making the Rule absolute in the above terms, we also direct that without insisting on payment of the amount under the Circular and the Notice of Demand, the application for retention shall be considered by the Planning Authority and it will take its decision and accordingly communicate it to the petitioner(s) as expeditiously as possible and in any event within a period of three (3) months.

25. In view of Rule in the above petitions being made absolute, the Civil Application No.700 of 2019 does not survive and it accordingly stands disposed of.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)