

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO. 86 OF 2014**

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

**WITH
NOTICE OF MOTION (L) NO. 88 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

Yeshwanth Shenoy .. Petitioner
V/s
The Union Of India & Ors. .. Respondents
And
Sanguinity Realty Pvt. Ltd. .. Applicant

**WITH
NOTICE OF MOTION (L) NO. 143 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

Yeshwanth Shenoy .. Petitioner
V/s
The Union Of India & Ors. .. Respondents
And
Aparna Burjwal .. Applicant

**WITH
NOTICE OF MOTION (L) NO. 189 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

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

**WITH
NOTICE OF MOTION (L) NO. 223 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

Yeshwanth Shenoy .. Petitioner
V/s
The Union Of India & Ors. .. Respondents
And
S. Mangala .. Applicant

**WITH
NOTICE OF MOTION NO. 240 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

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

**WITH
NOTICE OF MOTION NO. 440 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

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

**WITH
NOTICE OF MOTION NO. 481 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

Yeshwanth Shenoy .. Petitioner
V/s
The Union Of India & Ors. .. Respondents
And
Accanoor Associates .. Applicant

**WITH
NOTICE OF MOTION (L) NO. 511 OF 2016
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

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

**WITH
NOTICE OF MOTION (L) NO. 556 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

Yeshwanth Shenoy .. Petitioner
V/s
The Union Of India & Ors. .. Respondents
And
Prathamesh Dream Properties Pvt. Ltd. .. Applicant

**WITH
NOTICE OF MOTION NO. 8 OF 2018
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

Yeshwanth Shenoy .. Petitioner
V/s
The Union Of India & Ors. .. Respondents
And
Mahindra Lifespaces Developers Ltd. .. Applicant

**WITH
REVIEW PETITION (L) NO. 1 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

Neuzen Realtors LLP & Anr. .. Petitioners
V/s
The Union Of India & Ors. .. Respondents

**WITH
REVIEW PETITION(L) NO. 2 OF 2017
In
PUBLIC INTEREST LITIGATION 86 OF 2014**

HGP Community Private Limited .. Petitioner
V/s
The Union Of India & Ors. .. Respondents

**WITH
WRIT PETITION NO. 3078 OF 2017**

HGP Community Private Limited .. Petitioner
V/s
The Union Of India & Ors. .. Respondents

PIL No. 86 of 2014

Mr. Yeshwanth Shenoy, Petitioner in person, absent.
Mr. Dushyant Kumar for respondent Nos.1 and 3.
Mr. Anil Singh, A.S.G a/w Ms. Shilpa Kapil and Mr. Chidanand Kapil,
Mr. Raghava M for respondent No.2.
Mr. Farid Karachiwala a/w Ms. Sneh Mehta and Mr. Mahek Chheda
i/by Wadia Ghandy and Co. for Respondent No.4- MIAL.
Mr. Sagar Patil for respondent- MCGM.
Mr. Rahul Sinha I/by DSK Legal for respondent – SRA.
Mr. S.K. Jinde, Deputy General Manager (Legal), Airport Authority of
India, present.

NM/88/2017 IN PIL/86/2014

Mr. Virag Tulzapurkar, Sr. Cl a/w Ms. Somya Shrikrishna, Mr. Ayush
Khandelwal, Ms. Rati Lodha and Ms. Ursula Misquitta i/by Lodha
Legal for the applicant.
Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda
i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

NML/143/2017 IN PIL/86/2014

Mr. Ram Mani Upadhyay for the Applicant.

Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

NMWL/189/2017 IN PIL/86/2014

Ms. Shilpa Kapil a/w Mr. Chidanand Kapil for the applicant.

Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

NMW/223/2017 IN PIL/86/2014

Mrs. S. Mangala- applicant in person.

Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

NMW/240/2017 IN PIL/86/2014

Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

NMW/440/2017 IN PIL/86/2014

Petitioner in person, absent.

Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

NMW/481/2017 IN PIL/86/2014

Petitioner in person, absent.

Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

NMWL/511/2016 IN PIL/86/2014

Petitioner in person, absent.

Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

NMW/556/2017 IN PIL/86/2014

Ms. Tanvi Kulkarni i/by Ganesh and Co for the applicant.

Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

NM/8/2018 IN PIL/86/2014

Dr. Milind Sathe, Senior Advocate a/w Mr. Ayush Khandelwal, Ms. Rati Lodha and Ms. Ursula Misquitta i/by Lodha Legal for the Applicant.

Mr. Farid Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.4-MIAL.

RPPL/1/2017 IN PIL/86/2014

Mr. Amol Mhatre a/w Ms. Asha Nair i/by Diamondwala and Co. for the Petitioners.

Ms. Shilpa Kapil a/w Mr. Chidanand Kapil for Respondent No.3.

Mr. Farid Karachiwala a/w Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co for respondent No.4-MIAL.

RPPL/2/2017 IN PIL/86/2014

Dr. Milind Sathe, Senior Advocate a/w Ms. Asha Nair i/by Diamondwala and Co. for the Petitioners.

Ms. Shilpa Kapil a/w Mr. Chidanand Kapil for Respondent No.3.

Mr. Faria Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.5-MIAL.

WP/3078/2017

Dr. Milind Sathe, Senior Advocate a/w Ms. Asha Nair i/by Diamondwala and Co. for the Petitioners.

Ms. Shilpa Kapil a/w Mr. Chidanand Kapil for Respondent No.3.

Mr. Faria Karachiwala and Ms. Sneh Mehta and Mr. Mahek Chheda i/by Wadia Ghandy and Co. for Respondent No.5-MIAL.

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

DATE : 5TH & 6TH APRIL 2018

ORAL JUDGMENT: (Per S.C. Dharmadhikari, J.)

This PIL and the connected matters were heard together extensively. We did reserve the order, but we indicated to the parties in open Court that we would determine the date and time so that the orders are dictated in the presence of the parties in open Court.

2. Some time was taken only to enable the Registry to compile the entire record in the PIL for number of applications and proceedings were filed in the PIL and independently. All were taken together. They were also heard together. In the circumstances, the Registry took some time to compile the papers and after which the matters are placed for dictation in open Court today.

3. We had intimated to the petitioner-applicant Mr. Yeshwanth Shenoy by way of an email and the Registry official informs that Mr. Yeshwanth Shenoy is unable to remain present today. However, during the course of arguments, we had indicated to him that no prejudice would be caused for we are not forming any final opinion on the challenge to, particularly now in place, the Rules. If there is a provision made in the Rules or the Rules themselves deal with the situation where the buildings in the vicinity, and particularly within the prohibited zone, are purported to be regulated, then it will be entirely for the petitioner or such other public spirited citizens to take up the larger issue and that is kept open by us.

4. Since we indicated that the PIL contain an essential prayer of a direction directing respondent no.3 – Director General of Civil Aviation to ensure demolition, as per the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994, of all the buildings / hoardings / trees which have heights more than what is permissible under the Airport Authority of India Standing Order 84(E) and DGCA CAR Series 'B', Section 4, but there is an affidavit which now indicates that there are Rules.

5. We would advert to this aspect a little later. There are other prayers also and particularly prayer clauses (b) and (c) regarding which it is not necessary to express any opinion.

6. We are of the view that the eventual order that we pass would not prejudice the interest of the petitioner or any other public spirited citizen.

7. At the outset, we must also indicate that the petitioner-applicant filed applications seeking recusal of one of us (S.C. Dharmadhikari, J.) from the proceedings. On the earlier occasion, after one such application was rejected, he participated in the hearing and canvassed his submissions and concluded them. Equally, the contesting parties were also heard by us.

8. The PIL is filed by the petitioner enrolled as an advocate on the rolls of the Bar Council of Kerala. He has been enrolled as an

advocate in 2001. He possesses a Masters Degree in Law from Mumbai University and Turin University (Italy). He is also a Ph.D. Student at the National Law School of India University, Bangalore. He has highlighted his achievements being instrumental in filing several PILs.

9. The 1st respondent is Union of India through the Ministry of Civil Aviation. The 2nd respondent is the Airport Authority of India. The 3rd respondent is the Directorate General of Civil Aviation. The 4th respondent is the Mumbai International Airport Limited and presently managing the Mumbai International Airport. The 5th respondent, who was later on deleted, is an employee of the Airport Authority of India. The 6th respondent is the Municipal Corporation of Greater Mumbai.

10. The petitioner-applicant says that this PIL became necessary because the petitioner, although an ordinary traveler, was also concerned with safety of passengers at two airports, viz. Chhatrapati Shivaji International Airport and Juhu Airport at Mumbai. He says that in order to protect the flight paths of aircraft landing / taking off at all civil airports in the country, the heights of buildings / structures within a radius of 20 km. around the airport is regulated. The 2nd respondent is entrusted with the important function of issuing No Objection Certificates detailing the maximum permissible height of all buildings / chimneys etc. within a radius of 20 km. around each airport. The calculations for issue of

such NOCs are based on the heights prescribed by DGCA CAR (Civil Aviation Requirements) Series 'B' Part I Section 4 dated 31st July 2006 and Airport Authority of India Standing Order 84(E) dated 14th January 2010. They have been primarily adopted from ICAO Annexure 14 and Doc 9137 Part 6. The dimensions / heights provided for by these regulations are standards followed worldwide. Apart from the approach / take off surfaces that protect the respective flight paths of those phases of flights, there is another important limiting surface called the Inner Horizontal Surface, which is at a specific height of 45 mtrs. above each airport.

11. In paragraph 3 (a) to (o) of the petition running pages 4 to 9, the petitioner-applicant has pointed out as to how the issue of aviation safety of passengers and those residing within the vicinity of airports, particularly International Airports, is crucial and important. That has assumed importance because of the blatant violations of the concerned regulations. There is thus denial of right to life guaranteed under Article 21 of the Constitution of India. Though the petitioner says that the source of information is primarily through newspaper reports, later on he spoke and interviewed many pilots, crews and aviation safety officials. After the meetings with the concerned officials and who shared certain public documents, the petitioner was of the opinion that it is his duty as a vigilant public spirited citizen to raise this issue in the form of the present PIL. He has highlighted several aspects of the matter through his oral arguments.

12. The petitioner gave graphic details of how the flight path is obstructed and on several occasions accidents have been averted not because of any special efforts but only because there was an alert given by the instruments and the technology employed in modern aircrafts. However, according to the petitioner, this would not mean that all the mishaps can be averted in future. According to the petitioner, one of the causes for such accidents is obstruction caused in the path of the aircraft and particularly by unregulated and unrestricted construction activities around the airports. The petitioner, therefore, during the course of arguments highlighted these aspects and submitted that this petition should not be viewed by the respondents as an adversarial litigation. Merely because some of the public officials concerned with the Civil Aviation Safety have come out in open and have joined the cause along with the petitioner does not mean that the petitioner has been put up by somebody for any extraneous reasons. The petitioner himself has studied this aspect in great detail. During the course of his arguments, the petitioner has highlighted the issue and elaborated it by pointing out certain details including inviting our attention to some charts.

13. It is evident that the petitioner has tendered written arguments. He has stated that he had filed written submissions twice and he relies on them so also his additional submissions. We have carefully perused the written arguments of the petitioner

tendered on earlier occasions and particularly on 6th March 2018. It is true that the petitioner has reserved his right to challenge the orders passed by a Bench presided over by one of us refusing to recuse from the proceedings. He has submitted that his submissions be considered while passing the final order.

14. The submissions cover a very wide canvass including the height of buildings around restricted zone, deviations from ICAO standards not declared and how the aeronautical study carried out till date does not meet the international standards. Thus, collision hazard and degraded aircraft performance, engine failures and other violations are occurring because of these structures around the Airports.

15. As clarified above, we are not presently expressing any opinion on these aspects highlighted and by relying on the written arguments. What we have before us and tendered on behalf of the Airport Authority of India is G.S.R. 751(E). After this PIL was filed, the Ministry of Civil Aviation has issued a Notification dated 30th September 2015 and it is duly published in the Gazette of India - Extraordinary [Part II – Section 3(i)]. This Notification notifies the Rules to be called as “Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 (“2015 Rules” for short). These Rules are made in exercise of the powers conferred by sub-section (1) and clause (o) and clause (r) of sub-section (2) of section 5 read with section 9A of the Aircraft Act,

1934. Pertinently, these Rules supersede the Ministry of Civil Aviation Notification No. S.O. 84(E) dated 14th January 2010 published in the Gazette of India, Part II Section 3 sub-section (ii), except as respect things done or omitted to be done before such supersession. The objections or suggestions on the draft Standing Order were called from the stakeholders and it is claimed that they are duly considered by the Government to the extent admissible. In the public interest, the Rules are notified by seeking exemption from putting the Rules again in the public domain.

16. Before we make a reference to the Rules, we must also note the provisions of the Aircraft Act, 1934, that is an Act to make better provision for the control of manufacture, possession, use, operation, sale, import and export of aircraft. The said Act contains definitions in section 2 and thereafter empowers the Central Government to examine certain aircrafts by issuing a notification in the official gazette. That is a power conferred by section 3. By section 4, the Central Government is conferred with the power to make rules to implement the Convention of 1944. It is evident from section 4 itself that the Convention relating to International Civil Aviation was signed at Chicago on 7th December 1944 and that relates to international standards and recommended practices. That is amended from time to time. By section 4-A, which is substituted by Act No.44 of 2007, the Director General of Civil Aviation or any other officer especially empowered in this behalf by the Central Government shall perform the safety oversight functions in respect of

matters specified in this Act or the Rules made thereunder. There is a power to make rules conferred in the Central Government and to be found in section 5. Sub-section (1) of Section 5 provides that subject to the provisions of section 14, the Central Government may, by notification in the Official Gazette, make rules regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft. Thereafter certain expressions have been inserted by Act No.12 of 1972 which are “*and for securing the safety of aircraft operation*”. It is without prejudice to the generality of the Rule making power that the rules may provide for the matters set out in sub-section (2) of section 5. Pertinently, the 2015 Rules, as noted above, are traceable to this provision and particularly clause (o) and clause (r) of sub-section (2). Clause (o) and clause (r) read as under:

“(o) the manner and conditions of the issue or renewal of any licence or certificate under the Act or the rules, the examinations and tests to be undergone in connection therewith, the form, custody, production, endorsement, cancellation, suspension or surrender of such licence or certificate, or of any log-book.

“(r) any matter subsidiary or incidental to the matters referred to in this sub-section.”

A perusal thereof would indicate as to how the issue or renewal of licences or certificates under the 2015 Rules are regulated. There are further provisions in the Act and which enable the Central Government to carry forward its object and purpose.

Section 14 provides for the rules to be made after publication. The Notification which is published refers to above provisions.

17. The Aircraft Rules, 1937 are also in place. There are also Aircraft (Demolition of obstruction caused by buildings and trees etc.) Rules, 1994. These Rules are made in exercise of powers conferred by sub-section (2) of Section 11 of the Aircraft Act, 1934. The said Rules of 1994 now have been highlighted by the Government as also on behalf of Airport Authority of India by the learned Additional Solicitor General. It is the Notification of Ministry of Civil Aviation dated 30th September 2015 and the Rules notified thereunder which would guide the Authorities. What we have noted is that after these Rules were brought to the notice of the parties and some of them were highlighted, it is clear that the petitioner is not entirely happy with the same. In the affidavit dated 23rd August 2016 filed by Mr. Sudhir Raheja, Chairman, Airport Authority of India, it is stated that the NOC for height clearance is given by AAI in accordance with Government of India, Ministry of Civil Aviation Gazette Notification No.GSR-751(E) dated 30th September 2015. Thus, these Rules are now governing the field. The petitioner has raised number of issues other than legality and validity of the Rules themselves. It is in these circumstances that we are of the opinion that the present petition can be disposed of by clarifying that all contentions in relation to legality and validity of these Rules and particularly the matters concerning civil aviation

safety, as raised in the PIL, are kept open and it will be for the petitioner to take further steps as was orally indicated by him. The petitioner has made several allegations and the denials are on record, but presently we express no opinion thereon. In the event the petitioner desires to challenge the new Rules, then he can raise appropriate pleas and include in them what is highlighted in this petition and in the affidavits filed by him in answer to the stand of the Central Government, particularly the Department of Civil Aviation, Directorate General of Civil Aviation and Airport Authority of India so also Mumbai International Airport Limited. We clarify that we have not expressed any opinion on the rival contentions.

18. Since at the time of filing of this PIL, the petitioner did not have the benefit of the 2015 Rules which have been notified subsequently, we deem it fit and proper not to express any opinion on the larger issues posed for our consideration.

19. The PIL petition was affirmed on 23rd June 2014. There are several orders passed and from time to time by several Benches. We clarify that despite such orders, it will be open for the parties to raise appropriate contentions and merely because on some occasion or the other, one or two aspects were highlighted in the orders, none of them be taken as concluded.

20. On 3rd August 2015, this Court had passed an order observing that the PIL raises certain very important issues regarding

aircraft safety and safety of the residents staying near the Airport. This Court noted that according to the petitioner, the Airport Regulatory Authority appears to have violated some of the regulations and has permitted increase of illegal height of the buildings around the Airport which has resulted in obstruction when aircrafts take off/land at Chhatrapati Shivaji International Airport as also Domestic Airport. This Court also observed that certain other issues regarding safety norms to be followed have been raised. At that time, this Court observed that the pleadings are complete. When that order was passed, there was no notification notifying the Rules.

21. It is in these circumstances that we expressed an opinion during the course of arguments on the PIL that larger public interest will be served if those who desire to challenge the legality and validity of the 2015 Rules or raise other issues concerning therein, are permitted to do so and by filing fresh petitions/ proceedings. The present PIL was concerning the very same issue, but when it was filed, this Court did not have the benefit of the 2015 Rules. Now that these Rules are in place, it is in the fitness of things that the PIL petitioner gets an opportunity to question them, if so advised. It is in these circumstances that by keeping open the challenge, we dispose of this PIL. Accordingly, it stands disposed of.

22. The question or issue of continuation of any interim arrangement in the PIL consistent with the request of the petitioners

in some of the writ petitions to allow the new regime to operate, would be considered by us when we take up the writ petitions which are argued by Dr. Sathe and Mr. Virag Tulzapurkar, Senior Advocates. While we pass separate orders on those writ petitions, we would also note the request of Mr. Shenoy and the intervenors supporting him that the members of public should not be visited with such consequences as would make it impossible for them to challenge the legality and validity of the 2015 Rules or the orders made in pursuance thereof. Therefore, for further orders and directions, we post this matter tomorrow at 3.00 p.m.

6th April 2018

23. When the Court rose for the day yesterday, it was indicated that there are several interim orders made in this PIL. If these interim orders are allowed to work, operate and function without any clarification, then possibly the 2015 Rules would not be implemented. In other words, for the G.S.R. 751(E) to operate, and particularly the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, we must issue appropriate clarifications.

24. We have heard Mrs. S. Mangala, who has intervened in this PIL and who was heard earlier at length as well and some of those parties who have moved applications / notices of motion aggrieved and dissatisfied with the holding up of their projects or non-consideration of their schemes in terms of the 2015 Rules.

25. We were informed that there are interim orders made in the PIL petition and which are operating with modifications. In that regard, our attention is invited to an order passed in this PIL which firstly directs that it should be disposed of finally, and secondly on 30th October 2015 there is an order passed. That order notes the grievances of the petitioner and thereafter constitutes a Committee headed by a retired Judge of this Court.

26. Learned counsel for the parties submit that the Committee is no longer functional more so after the 2015 Rules have been brought into effect. In the circumstances, we need not express any opinion on that aspect.

27. There are further orders in this PIL and it is claimed that one of the orders passed in this PIL operates to the detriment of all the persons whose Housing projects are in the pipeline. Our attention has been invited to the order dated 20th September 2016 in that regard. The said order reads as under:

“1. Heard Mr. Samdhani, learned senior counsel appearing on behalf of MIAPL (Mumbai International Airport Pvt. Ltd.). He submits that pursuant to the directions given by this court, the MIAPL and DGCA (Director General of Civil Aviation) have started process of issuing show cause notices. Shri Samdhani has invited our attention to the show cause notices which have been issued by the MIAPL dated 19.09.2016. These notices have been given according to the format which is forwarded by the Government of India to MIAPL by letter dated 16.09.2016. He also submitted that by letter dated 24.08.2016, the MIAPL has forwarded a letter to the DGCA,

informing the number of height violations which have been committed in respect of 112 buildings. The chart given by him shows the name of the buildings/structures, top elevations of the buildings, height violation and the steps which have taken by MIAPL.

2. Shri Rajiv Chavan, learned senior counsel appearing on behalf of the DGCA has also invited our attention to the e-mail sent to the Director of various Operations in which the summary of obstacles recorded in 2010-11 has been mentioned. The total number of obstacles submitted by MIAPL in 2010-11 were 137 and 25 obstacles with NOC of AAI. Two obstacles were already demolished. The orders passed by the DGCA have been issued to the owners of obstacles through MIAL in 110 cases. It is further mentioned that rest of the cases are under process.

3. As we have pointed out earlier, all the Authorities have to ensure that the violations of height restrictions fixed by the Authorities have to be dealt with in accordance with the law as expeditiously as possible and height violations should be removed as quickly as possible.

4. As we have decided earlier that we ourselves would like to monitor the process of demolition of all these illegal violations of the height restrictions, we propose to keep all these matters periodically every four weeks so as to see the progress made by the DGCA, AAI and MIAPL.

5. We hope that each and every directions given by this court by our order dated 10th August, 2016, which are not yet complied with, be complied with by the next date. Mr. Samdhani, learned senior counsel appearing on behalf of the MAIPL submits that the directions have been given for taking steps and for giving show cause notices and for holding enquiry. So far as the second step is concerned, namely, to ensure that the NOCs are not granted by the AAI, by the next date all the concerned Authorities will collect information in that regard and inform this court accordingly.

6. Since we find that the NOCs have been casually granted by the concerned Authorities, we issue notice to SRA, MMRDA and MHADA. Office to serve copy of this notice to these three authorities and it is made returnable within three weeks.”

28. After the above order was passed, the matter was placed again before a Division Bench and presided over by the same Hon'ble Judge (V.M. Kanade, J. - as he then was) on 23rd March 2017. That Bench made the following order on Notice of Motion (L) No. 88 of 2017 filed in this PIL:

“1. By this notice of motion, the Applicants are seeking following reliefs from this Court :

(a) *That this Hon'ble Court be pleased to direct the Respondent No. 2 to grant a personal hearing to the Applicant and to consider on merits the application / appeal dated 26th September, 2016 of the Applicant expeditiously and decide the same on merits in accordance with all relevant rules, guidelines, circulars and material as soon as possible and in any event within 4 weeks;*

(b) (i) *without prejudice and in the alternative to (a) above, this Hon'ble Court be pleased to direct the Respondent No. 2 to refer to the matter of the Applicant to the International Civil Aviation Organisation for conducting an aeronautical study to determine the maximum possible height for construction at its building site located at land bearing CTS No. C/509 (Plot B) of Village Bandra (West) at St. Cyril Road, Bandra (West), Mumbai.*

(ii) *in this event International Civil Aviation Organisation be directed to grant a personal hearing to the Applicant in the course of the study to be conducted by it;*

(c) *For ad-interim reliefs in terms of prayers (a) and (b);*

(d) *For costs of the present Notice of Motion to the Applicant; and*

(e) *For such further and other reliefs as this Hon'ble Court may deem fit and appropriate in the present case.*

2. While hearing PIL No. 86 of 2014, this Court was pleased to give certain directions by way of an interim arrangement, and had given general directions. In para 4 of an order dated 1st September, 2016, passed in the said PIL this Court has observed as under:

“4. If any appeal is filed to the appellate authority against this order, the authorities should not exercise its discretion, firstly, in respect of those structures which are within the funnel area, and also those structures which fall within four kilometers of the runway and approaches.”

3. Mr. Virag Tulzapurkar, learned senior counsel appearing for the Applicants in the notice of motion submitted that as a result of the said embargo which was imposed in para 4 of the said order in respect of the structure which falls outside the funnel area but within 4 Kms. of runway and approaches, the appellate authority has not processed the application filed by the Applicants.

4. In our view, the said order was passed since at the relevant time, it was not clear as to what are the exact height restrictions which were imposed. The height restrictions have been imposed by the various authorities and the several directions have been given by the Ministry of Aviation and by the appellate authority, and as such therefore, at that stage, for a limited period the said restriction was imposed by this Court.

5. It is an admitted position that so far as the appellate authority is concerned, it has powers to consider an appeal against the rejection of application for consideration of height restrictions i.e. increase in height imposed by the Airport Authority. The statutory regulations are framed under section 9A of the Aircraft Act. The said regulations empowers the appellate authority to examine the appeal filed by any person being aggrieved by the rejection of the application for increase in height outside the funnel area.

6. In our view, at this stage, no prejudice would be caused to any party if the appellate authority is directed to process such applications which are received by it against the rejection of height increase by the Airport authority and the said

appellate authority shall process the said application in accordance with Clause 5 of Schedule II of the GSR. However, the final decision may not be taken by the appellate authority.

7. *We are of the view that there are some ambiguities, firstly, regarding the actual height restriction which is imposed outside the funnel area and in the inner horizontal surface. We are also of the view that this issue can be considered expeditiously on the next date. The Airport Authority of India has also filed a notice of motions. Few other notice of motions and review petitions have also been filed. All these motions and review petitions shall be placed for further hearing on 12th April, 2017 at 12.30 p. m. so that once for all the legal provisions will be taken into consideration, and secondly, the manner and method in which the calculation of the height restriction is to be done, will also be taken into consideration.*

8. *We make it clear that the appellate authority may first decide whether the application can be referred to ICAO or any other authority mentioned in the GSR.*

9. *Airport Authority of India shall also submit AAI study report mentioned in Ministry of Civil Aviation guidelines dated 26th March, 2015 before the next date, and if possible supply its copies to all the parties.*

10. *We clarify that that even if the applications are rejected by virtue of embargo in paras 4 and 6 of the order, their review may be considered in accordance with the directions given hereinabove.*

11. *It is clarified that the if the appellate authority has processed the application, its report may be tendered to this Court.*

12. *We hope and trust that all the developers and builders will file an application for increase of height if they are satisfied that such an increase is within permissible limits.”*

29. Perusal of these orders leaves us in no manner of doubt that though on 1st September 2016 the Bench presided over by His

Lordship in para 4 had directed that if any appeal is filed to the Appellate Committee / Authority, the Authority should not exercise its discretion, firstly in respect of those structures which are within the funnel area and also those structures which fall within 4 km. of the runway approaches, now the order passed on 23rd March 2017, to our mind, does not hold that the Authority cannot exercise its powers. Para 6 of the order says that it may so exercise it, but it should not take any final decision.

30. It is stated before us by both Mr. Tulzapurkar, learned Senior Advocate appearing in one of the notices of motion as also Dr. Sathe, learned Senior Advocate appearing in the review petition that the aeronautical study / survey has been carried out but since the report of the survey is placed before the Court and in view of the above directions, the Appellate Authority cannot proceed further. Their request is that let the Appellate Authority consider the appeal on the basis of the report and other materials placed before it and, after providing to the appellant before the Authority an opportunity of being heard in terms of the 2015 Rules or otherwise, pass its final orders.

31. It is conceded before us by the Airport Authority of India that as far as the applicant – Sanguinity Realty Pvt. Ltd. in Notice of Motion (L) No. 88 of 2017 is concerned, the aeronautical study has been carried out. The report of that survey is placed before this Court and a copy thereof has been provided to the applicant as well.

Let the copy of the report be also provided to Mr. Yeshwanth Shenoy and Mrs. S. Mangala.

32. As far as the applicant – Accanoor Associates in Notice of Motion No. 240 of 2017 is concerned, the aeronautical study is yet to be carried out. It is stated that the communication dated 28th November 2016 presents a difficulty in carrying out the aeronautical study since that was based on earlier orders of the Court. Once that order has been clarified, the AAI now to proceed to conduct the aeronautical study and in accordance with law.

33. As far as the applicant – Mahindra Lifespaces Developers Ltd. in Notice of Motion No. 8 of 2018 is concerned, it is stated that the aeronautical study has been carried out, but the copy of the report has not been provided to the applicant. Ms. Shilpa Kapil states that the AAI has carried out such survey / study and a copy of the report is provided to the applicant's counsel in Court. Equally, additional copies would be made and provided to Mr. Yeshwanth Shenoy and Mrs. S. Mangala.

34. As far as the applicant – M/s Prathamesh Dream Properties Pvt. Ltd. in Notice of Motion No. 556 of 2017 is concerned, it is stated that the aeronautical study has been carried out and a copy is filed in the proceedings of this Court. We see no reason to keep the report of this survey / study on the file any longer. Let the report as filed be taken back by AAI and copies of

the same be provided to the applicant, Mr. Yeshwanth Shenoy and Mrs. S. Mangala.

35. As far as Review Petition (L) No. 1 of 2017, Mr. Amol Mhatre on instructions, states that the aeronautical study has been carried out and a copy of such study / survey has been provided to the applicant. Let a copy also be provided to the PIL petitioner Mr. Yeshwanth Shenoy and Mrs. S. Mangala, if not already provided, within a period of one week from today.

36. As far as Writ Petition No. 3078 of 2017 and Review Petition (L) No. 2 of 2017 filed by HPG Community Pvt. Ltd. are concerned, it is stated that the aeronautical study has been carried out and the matter is kept pending only because of the orders passed in this PIL. We inquired from Ms. Shilpa Kapil as to which order or communication presents any obstacle or difficulty in carrying out the survey and on instructions she states that with those orders being clarified and the PIL being disposed of by this Court, AAI will proceed to carry out the aeronautical study / survey as expeditiously as possible. We accept the statement made as an undertaking to this Court. With this direction, the writ petition and the notice of motion are disposed of.

37. Mr. Tulzapurkar, learned Senior Advocate and Dr. Sathe, learned Senior Advocate would urge that if the aeronautical study is carried out, the matter is pending before the Appellate Authority.

Since that Authority is duly constituted and is functional, it may be allowed to conduct and carry out its function in terms of the Rules and pass final orders. Any delay in passing the final orders would inconvenience not only the applicants before the Court, but all those parties who have invested hard earned monies in the projects. Monies of those financing the projects are also at stake. In such circumstances, after the disposal of PIL, any delay in dealing with the appeals will seriously prejudice those parties.

38. Mr. Yeshwanth Shenoy is not present today. Mrs. Mangala states that once Mr. Shenoy has evinced his desire to challenge the legality and validity of G.S.R. 751 (E) and the Rules of 2015, then if the Appellate Authority is allowed to pass the final orders, the challenge itself would be frustrated. Therefore, all the interim orders in the PIL and as modified till date be continued. Let the Appellate Authority not pass the final orders for that would complicate the issue. This request of Mrs. Mangala is opposed by the contesting parties / developers.

39. We inquired from the parties and particularly Mrs. S. Mangala as to whether the Appellate Committee / Authority constituted in terms of Rule 11 of the Rules is functional, she invites our attention to Rule 11. That Rule reads as under:

“11. Appellate Committee.— (1) There shall be an Appellate Committee consisting of the following, namely:-

- (a) *Joint Secretary (Airports), Ministry of Civil Aviation, Government of India – Chairperson;*
- (b) *Joint Director General of Civil Aviation (Aerodrome), Directorate General of Civil Aviation – Member;*
- (c) *Member (Air Navigation Services), Airports Authority of India-Member; and*
- (d) *One technical expert having knowledge in the field of communication or air traffic management – Member.*

(2) *If any person or Local, Municipal or Town Planning and Development authorities or any airport operator is aggrieved with the decision of the Designated officer, such person or entity may appeal to the Appellate Committee for redressal of his/their grievances with respect to the height permissible under these rules.*

(3) *The cases for reference to the Appellate Committee specified in sub-rule (2) shall be received and processed by the corporate office at the headquarters of the Airports Authority in New Delhi.”*

Perusal of this Rule would indicate that the Appellate Committee consists of the Joint Secretary (Airport), Ministry of Civil Aviation, Government of India, who is a chairperson and other senior functionaries. There is also a technical expert having knowledge in the field of communication or air traffic management as a member of this Committee. The Committee receives and processes the cases forwarded for its reference at the headquarters of AAI at New Delhi. It is stated that this Committee ordinarily and normally meets on last Thursday of every month and as far as this month is concerned, it is likely to meet on 26th April 2018.

40. In our view, therefore, the PIL petitioner or the intervenor Mrs. S. Mangala or such other public spirited citizens, who are intending to challenge the legality and validity of the 2015 Rules, have enough time at their disposal to move a competent Court and in appropriate proceedings. We do not intend to continue the embargo or the prohibition placed by this Court on the Appellate Committee, particularly restraint on passing the final orders indefinitely. Let the Appellate Committee, if at all it is to meet on 26th April 2018, so meet and take up the cases, if at all they are placed before it, consider them strictly in accordance with the 2015 Rules and pass the final orders. We do not think all this can happen in a single day as apprehended and before the scheduled hearing, the aggrieved parties like Mr. Shenoy can move the competent Court. We do not think it appropriate and proper to place a restraint on the Committee's functioning and its power any further. The interim order passed in the PIL stands vacated with the above modifications / observations.

41. We direct that the following proceedings, which were either placed along with the PIL or individually or independently, also stand disposed of with similar orders and directions with regard to aeronautical study / survey, provision of copies of aeronautical study / survey and the conduct of proceedings before the Appellate Committee.

- (1) Notice of Motion (L) No. 88 of 2017 in PIL No. 86 of 2014
- (2) Notice of Motion (L) No. 143 of 2017 in PIL No. 86 of 2014
- (3) Notice of Motion (L) No. 189 of 2017 in PIL No. 86 of 2014
- (4) Notice of Motion (L) No. 223 of 2017 in PIL No. 86 of 2014
- (5) Notice of Motion No. 240 of 2017 in PIL No. 86 of 2014
- (6) Notice of Motion No. 440 of 2017 in PIL No. 86 of 2014
- (7) Notice of Motion No. 481 of 2017 in PIL No. 86 of 2014
- (8) Notice of Motion No. 511 of 2017 in PIL No. 86 of 2014
- (9) Notice of Motion No. 556 of 2017 in PIL No. 86 of 2014
- (10) Notice of Motion No. 8 of 2018 in PIL No. 86 of 2014
- (11) Review Petition (L) No. 1 of 2017 in PIL No. 86 of 2014
- (12) Review Petition (L) No. 2 of 2017 in PIL No. 86 of 2014
- (13) Writ Petition No. 3078 of 2017

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)