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

WRIT PETITION (L) NO.5347 OF 2022

D. N. Nagar Sai Krupa Co-operative
Housing Society Limited .. Petitioner

Versus

Union of India and ors. .. Respondents

Mr. Pravin Samdani, Senior Counsel with Mr. Nivit Srivastava and Ms. Sneha Patil i/by M/s Maniar Srivastava Associates, Advocates for the Petitioner.

Mr. Y. R. Mishra with Mr. N. R. Bubna, Mr. Upendra Lokegaonkar Advocates for Respondent No.1.

Mr. Ajay Khaire, Advocate for Respondents No.2 to 4.

Mr. Girish Utangale with Mr. Sarthak Utangale i/by M/s Utangale & Co., Advocates for Respondent No.5.

**CORAM :B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE : AUGUST 26, 2024

P. C.

1. The above Writ Petition is filed *inter-alia* to declare the provisions of the Ministry of Civil Aviation (Height

Restrictions for safeguarding of Aircraft Operations) Rules, 2015 and the amendment thereto vide Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Amendment Rules, 2020, in so far as they seek to restrict the development or construction activities or restrict the height of any buildings to be constructed based on any criteria other than the Aerodrome Reference Point (as defined under the Aircraft Act, 1934) and proximity to an Aerodrome (as defined under the Aircraft Act, 1934) including *inter-alia* Rule 3(ii) thereof, as null and void, arbitrary, illegal and ultra-vires the Aircraft Act, 1934. Additionally, the Petitioner has also prayed for quashing the Revised NOC issued by Respondents No.2 to 4 dated 10th January, 2022, which reduces the height allowed to be constructed by the Petitioner society from 57.13 meters to 36.72 meters. The consequential relief sought is to restore back the original NOC issued by Respondents No.2 to 4 dated 5th March, 2021 under which the Petitioner was allowed to construct their building upto the height of 57.13 meters.

2. Mr. Samdani, learned Senior Counsel appearing on behalf of the Petitioner submitted that identical issues are raised in several Writ Petitions in which Rule has been issued and interim reliefs has also been granted. Firstly, Mr. Samdani brought to our attention an order passed by this Court on 27th January, 2022 in the case of ***Armaan Real Estate Private Limited vs. Union of India and others (Writ Petition (L) No.1752 of 2022 now numbered as Writ Petition No.2459 of 2022)*** as well as in the case of ***Juhu Geetanjali Vastushilp Co-operative Housing Society Limited and another Vs. Union of India and others (Writ Petition (L) No.1901 of 2022 now numbered as Writ Petition No.1386 of 2022)***. Mr. Samdani submitted that in identical facts, this Court has issued interim relief *inter-alia* staying the operation and implementation of the revised NOC issued by Respondents No.2 to 4. He submitted that in the facts of the present case, therefore, Rule be issued and interim relief be granted in terms of prayer clauses (d) and (e) of the present Petition.

3. The learned counsel appearing on behalf of Respondents No.2 to 4 submitted that there is an alternate remedy of an appeal that is provided under the 2015 Rules, namely Rule 11 of the said Rules. Once there is an alternate remedy, there is no question of entertaining the above Writ Petition. If there is no question of entertaining the above Writ Petition, there is no question of granting any interim relief, was the argument.

4. We have heard Mr. Samdani, the learned Senior Counsel appearing on behalf of the Petitioner, as well as Mr. Ajay Khaire, the learned Advocate appearing on behalf of Respondents No.2 to 4. In our opinion, the objection taken by the learned Advocate appearing on behalf of Respondents No.2 to 4 is not well founded for multiple reasons. Firstly, in the above Writ Petition, the vires of certain Rules of the 2015 Rules as amended by the 2020 Rules has been challenged. This is something that can never be agitated in an appeal under Rule 11 of the 2015 Rules. Secondly, it is the case of the Petitioner that the revised NOC has been issued in

complete breach of the principles of natural justice as no hearing was at all afforded to the Petitioner before revising the earlier NOC that was granted on 5th March, 2021. Lastly, there are already Writ Petitions that are pending in this Court on the identical issue in which Rule has already been issued and interim relief has been granted subject to certain conditions. Once this is the case, we find that the preliminary objection raised by Respondents No.2 to 4 on the entertainability of the above Writ Petition is of no substance and is hereby rejected.

5. In these circumstances, we issue Rule in the above Writ Petition and direct that the same shall be tagged alongwith Writ Petition No.2459 of 2022 (*Armaan Real Estate Private Limited vs. Union of India and others (supra)*) and which will be taken up as the lead Petition since it contains a vires challenge to the 2015 Rules as amended by the 2020 Rules.

6. Since the vires of these Rules, and which are enacted under a central legislation is challenged, notice be issued to

the Attorney General of India returnable on 30th September, 2024.

7. Since all the Respondents are otherwise appearing before this Court, the service of the Rule Nisi is waived by the respective Respondents.

8. The affidavit-in-replies on behalf of all the Respondents, shall be filed on or before 30th September, 2024 and the copy of the same shall be served on the Advocates for the Petitioner.

9. We place the above Writ Petition on board for directions alongwith Writ Petition No.2459 of 2022, and other connected Writ Petitions, on 30th September, 2024.

10. In the meanwhile, and pending the hearing and trial disposal of of the above Writ Petition, there will be interim relief in terms of prayer clauses (d) and (e) thereof, which read thus :-

“(d) pending the hearing and final disposal of this Petition, this Hon’ble Court be pleased to

stay the effect, operation and implementation of the purported Impugned Revised Height NOC dated 10th January, 2022 (Exhibit "J");

(e) pending the hearing the final disposal of this Petition, this Hon'ble Court be pleased to direct Respondent No.5 to process and issue further building permissions, sanctions, clearances etc. in accordance with AAI's original NOC dated 5th March, 2021 (Exhibit "F")."

11. It is however clarified that if the Petitioner, either by themselves or through any developer, carries out any construction from the date of this order, the same will be subject to further orders that will be passed by this Court.

12. Further, the Petitioner/its developer shall inform the flat purchasers, if any, of the pendency of this Writ Petition and make it clear to the flat purchasers that they shall not be entitled to claim any equities in the event the Writ Petition fails.

13. Stand over to 30th September, 2024 for directions.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] [B. P. COLABAWALLA, J.]