



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 27019 OF 2024

1. M/s. Paradigm Dotom Buildheights LLP,
a limited liability partnership registered
under the Limited Liability Partnership Act,2008.
 2. Jai Bhagwati Developers & Builders
Through its sole proprietor
Mr. Ratansingh Gumansingh Barthwal
 3. M/s.R. K. Madhani & Co.
A partnership firm registered under the
provisions of Indian Partnership Act,1932
through its authorised Partner
Mr. Adit Narendra Madhani
- ...Petitioners

Vs.

1. The Airports Authority of India,
Through its Chairman.
 2. General Manager (Aero) WR
(ATM-DoAS)
 3. The Appellate Committee
Ministry of Civil Aviation.
 4. Regional Executive Director (WR)
Airports Authority of India
- ...Respondents

Dr. Virendra Tulzapurkar, Sr. Adv. a/w Mr. Gauraj Shah, Mr. V. A. Joshi,
Maaz Qureshi i/b Chitnis Vaithy & Co., for Petitioner.
Mr. Mayur Shetty a/w Ms. Amrita Dubey, Yash Pitroda for Kochhar & Co.,
for Respondent Nos. 1 & 4.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATED: 17 FEBRUARY 2025

JUDGMENT : (G. S. Kulkarni, J.)

1. Rule returnable forthwith. Respondent waives service. By consent of the parties, heard finally.
2. This Writ Petition under Article 226 of the Constitution of India raises an issue in regard to the height of the buildings which were proposed to be constructed and for which a NOC of respondent No.1-Airport Authority of India (for short **AAI**) was required to be obtained by the petitioners. In particular, the challenge in the petition is to the communication dated 6 June 2023 whereby the petitioners are informed by respondent No.2 – General Manager (Aero) Western Region of the AAI, of the decision of the Appellate Committee-respondent No.3, that as the requirements specified in the letter dated 11 June 2016, issued to the petitioner were not fulfilled by the petitioners, hence, a revised NOC for height clearance would not be issued to the petitioners, as considerable time had lapsed. It is stated that the petitioners' case needs to be reassessed as per the extant rules, and for such reason, the NOC cannot be issued as per the decision of the Appellate Committee dated 28 July 2022. Also that the NOC dated 11 October 2013 issued to the petitioners is no longer valid, for any further processing of the case.
3. It is on such backdrop, the petitioner is before the Court praying for the following substantive reliefs:

a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ, Order or Direction in the nature of Certiorari, thereby calling for all the records, proceedings and papers of File No. ATM-16/15/2023-ATM-DOAS and to quash and set aside the Impugned Communication dated 6th June 2023, annexed as Exhibit 11 and the Minutes of Meeting dated 28th July, 2022, annexed as Exhibit -12 hereto, to the extent of Item No. 18 recorded in the Minutes of Meeting dated 28th July, 2022;

b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Mandamus, thereby calling for all the records, proceedings and papers of File No. ATM-16/15/2023-ATM-DOAS and restraining the Respondents from withdrawing /revoking the permissions already granted to the Petitioners with respect of the said Buildings, including but not limited to the NOC dated 11th October, 2013 issued vide letter dated 1/NOC/MUM/13/NOCAS/217/2423/

c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Mandamus thereby calling for all the records, proceedings and papers of File No. ATM-16/15/2023-ATM-DOAS and directing the Respondents to issue the Final No Objection Certificate (NOC) sanctioning the top elevation of 84.92 Meters AMSL in respect of the said Buildings in terms of the Authorization letter dated 11th July, 2016 annexed as Exhibit-E hereto;

d) Without prejudice to prayer (c) and strictly, in the alternative, this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Mandamus thereby calling for all the records, proceedings and papers of File No. ATM-16/15/2023-ATM-DOAS and directing the Respondents to treat the Authorization letter dated 11th July, 2016 annexed as Exhibit-E as the Final NOC in respect of the said Buildings and strike off the last line therein viz:- "THIS IS NOT AN NOC".

4. The relevant facts are required to be noted: The petitioners are developers, jointly implementing a slum rehabilitation scheme on the land bearing CTS No.343 (Part) admeasuring 13494.83 square meters situated at Village Chembur at Laldonger, Chembur, Mumbai, (for short '**the said land**'). The project involves construction of buildings for rehabilitation of slum dwellers and free sale buildings.

5. It is the petitioners case that in pursuance of the development agreement and the ancillary agreements executed between three co-operative housing societies namely 'Ekta SRA CHS', 'Panchsheel SRA CHS' and 'the Vishwa Gautam SRA CHS', the petitioners had become entitled to and is implementing the slum rehabilitation scheme, on the land in question.

6. On 3 May 2010, a joint venture agreement was executed between one Jai Bhagwati Developers and Builders – petitioner No.2 and M/s. R. K. Madhani & Co. - petitioner No.3 to implement the slum rehabilitation scheme.

7. The petitioners applied and obtained various permissions from SRA. On 10 October 2013, petitioner No.2 made an application for an NOC to be granted by the Airport Authority of India (AAI) for sanction of the permissible top elevation (height) of the proposed buildings of 79.12 meters AMSL.

8. On 11 October 2013, the General Manager (Aero) WR – respondent No.2 issued a NOC for permissible top elevation of only 56.90 meters AMSL. On 1 February 2014, the SRA issued a letter to respondent No.3-the Appellate Committee of the AAI to sanction the height of 71.70 meters to enable the petitioners to consume the entire FSI. In pursuance thereto, on 7 February 2014, petitioner Nos.2 and 3 made an application to the AAI for NOC to sanction the permissible top elevation of the said

buildings of 71.70 meters AMSL alongwith payment of Rs.2,24,720/- towards fees for Appeal.

9. On 21 November 2014, the SRA issued a letter to respondent No.3-Appellate Committee to sanction the height of 84.92 meters AMSL as requested by the petitioners, however the same is not approved.

10. Petitioner Nos.2 and 3 being aggrieved by such non-approval, filed an appeal on 9 July 2015 against the NOC dated 11 October 2013 whereby the top elevation of 56.90 meters AMSL was granted, and for seeking further height clearance upto 84.92 meters AMSL. On 27 August 2015 respondent No.3 – Appellate Committee held a meeting in which the Appellate Committee authorized and approved the height of 84.92 meters AMSL as recommended by SRA. Further, pursuant thereto on 11 July 2016, the Appellate Committee granted authorization for revised height of 84.92 meters AMSL for the buildings proposed to be constructed. In pursuance thereto, the petitioners were required to furnish an undertaking for which a form namely “Undertaking 1 E” was prescribed.

11. Accordingly, on 29 August 2016, petitioner Nos.2 and 3 submitted an undertaking in form “Undertaking 1 E” and an authorization letter for issuance of revised height clearance to respondent No.4-Regional Executive Director, Western Region, AAI (for short ‘**Regional Executive Director**’).

12. On 31 August 2016, the Deputy General Manager (Air Traffic Management/NOC) intimated to petitioner Nos. 2 and 3 to resubmit 'Undertaking 1E' in the prescribed form, for the reason that although signed by the authorized signatory, the name of the signatory had remained to be stated. As also, although signed by the witnesses and their names stated, their addresses were not stated. These were not substantive lapses reflecting on any dis-entitlement, as the petitioners would contend. The contents of the said letter read thus:-

"Sir,

This has reference to your letter no. Nil dated 29 August 2016 vide which Undertaking 1E and Authorization letter for issuance of received height clearance from AAI-Chq, New Delhi was submitted.

It is observed that in the Undertaking 1E, name of signing authority and address of witnesses are not given. Please visit AAI website www.aai.aero for format of Undertaking 1E."

(emphasis supplied)

13. It appears that the compliance of furnishing the addresses and the name of the signatory of the form remained pending. The petitioners project also underwent some operational changes namely on 16 April 2019, a Joint Venture Agreement was executed *inter se* between the petitioners wherein petitioner No.1 was required to undertake and implement the SRA scheme and obtain further permissions from the SRA, on the basis of the existing authorization. In pursuance of such authority available with petitioner No.2, under the second Joint Venture Agreement dated 16 April

2019, petitioner No.1 availed finance from Tata Capital Ltd. of Rs.110 crores by mortgaging the entire development rights in respect of the said land.

14. On 17 December 2020, the Ministry of Civil Aviation notified GSR 770E being titled as “the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Amendment Rules, 2020” which was to be brought into force from the date of publication of the same, in the official gazette which was 18 December 2020.

15. On 27 April 2023, the petitioners issued a letter addressed to respondent No.2-AAI informing that although they had submitted the Authorization for height clearance, they had not received revised NOC from Respondent No.4.

16. It is the case of the petitioners that between the years 2020 to 2023 various permissions and sanctions were granted by the SRA and other authorities for construction of the buildings to the petitioners, which are about 15 permissions as set out in paragraph 4.22 of the petition. The details thereof need to be noted, which read thus:

4.22 Pursuant to the JV Agreement and POA, Petitioners applied and obtained the following further permissions from the SRA, other statutory authorities and SEIAA with respect to the SR Scheme.

Sr. No.	Granted On	Permission	Name of Society
1	27.10.2020	Revised LOI	Ekta SRA CHS (Ltd. Panchsheel SRA CHS (Ltd.) & Vishwagautam SRA

			CHS (Ltd.)
2	27.10.2020	Amended IOA cum Part OC for Rehab Bldg No. 1 upto 16 upper floors	
3	27.10.2020	Amended IOA for Rehab Bldg No.2 upto 23 upper floors	
4	27.10.2020	Amended IOA for Rehab Bldg No.3 upto 23 upper floors	
5	27.10.2020	Amended IOA for Rehab Bldg No.4 upto 23 upper floors	
6	27.10.2020	Amended IOA for Sale Bldg No.1 for 6 towers each upto 23 upper floors	Ekta SRA CHS (Ltd. Panchsheel SRA CHS (Ltd.) & Vishwagautam SRA CHS (Ltd.)
7	27.10.2020	CC for Rehab Building no. 3	
8	27.10.2020	CC for Rehab Building no. 4	
9	27.10.2020	CC for Rehab Building no. 1	
10	27.11.2020	Revised Layour Approval	
11	15.03.2021	CFO NOC for Rehab Building nos. 2, 3 & 4	Ekta SRA CHS (Ltd. Panchsheel SRA CHS (Ltd.) & Vishwagautam SRA CHS (Ltd.)
12	15.03.2021	CFO NOC for Sale Bldg No. 1 (Comprising 6 Sale Towers) each of 23 upper floors	Ekta SRA CHS (Ltd. Panchsheel SRA CHS (Ltd.) & Vishwagautam SRA CHS (Ltd.)
13	15.08.2021	Amended IOA for sale Bldg No.1 for 6 towers each upto 23 upper floors	Ekta SRA CHS (Ltd. Panchsheel SRA CHS (Ltd.) & Vishwagautam SRA CHS (Ltd.)
14	03.03.2023	Further CC of Sale Bldg No.1	
15	21.07.2023	Environment Clearance Report by SEIAA for Rehab Bldg Nos. 1(upto 16th floor), 2, 3 and 4 and for Sale Bldg No. 1 0Comprising 6 Sale Towers) each of 23 upper floors	Ekta SRA CHS (Ltd. Panchsheel SRA CHS (Ltd.) & Vishwagautam SRA CHS (Ltd.)

17. The construction status insofar as the petitioners' project is concerned, is set out in paragraph 4.24 of the petition which reads thus:

4.24 Pursuant to the aforesaid permissions, Petitioners have carried out construction on portion of said Land in phase wise manner. In Phase I the Petitioners have constructed as under:

Rehab Building No.	Granted On	Permission	Name of Society
Rehab Building No.1	Constructed upto 16 th floors and OC obtained	Tower No.1	Completed Construction of RCC upto 15 th floor
Rehab Building No.2	Completed Construction of RCC upto 20 th floor	Tower No.2	Completed Construction of RCC upto 15 th floor
		Tower No.3	Excavation in progress

18. It is the petitioners' contention that if the height NOC for 84.92 meters AMSL which was initially approved is not utilized, three floors of rehabilitation and sale buildings would be required to be reduced which will consequently affect rehabilitation of approximately 142 slum dwellers in the Slum Rehabilitation Scheme. In this context, particulars of the buildings are set out in a chart which read thus:-

PARTICULARS OF BUILDINGS AT SITE

BUILDING	CURRENT STATUS	NO. OF SLUM DWELLERS REHABILITATED/ NO. OF UNITS SOLD
Rehab No.1	Part OC obtained on 27/10/2020 upto 16 floors	179 slum Dwellers are already rehabilitated and provision for 15 PAP's is made
Rehab No.2	Construction work in progress	Approx 311 Slum Dwellers proposed to be rehabilitated
Rehab No.3	No work started.	Approx 158 Slum Dwellers proposed to be rehabilitated
Rehab No.4	No work started.	Approx 52 Slum Dwellers proposed to be rehabilitated
Sale Tower No.1	RCC structure completed upto 14 floors.	146 Unites
Sale Tower No.2	RCC structure upto 14 floors	118 Units

Sale Tower No.3	Plinth work in progress	19 Units
Sale Tower No.4, 5 & 6	No work started	Nil

Note: If height NOC of 84.92 Meters AMSL is not approved, 3 floors each in Rehab & Sale Buildings will be reduced which will consequently affect rehabilitation of approximately 142 slum dwellers in the S R Scheme.”

19. On 28 July 2022, respondent No.3 passed a general order in cases where after conduct of an aeronautical study and due approval of the Appellate Committee, authorization letters for revised height clearance were issued for issuance of NOC recording that on account of non-submission of the requisite documents, NOC could not be issued. It was stated that in such cases considering lapse of time, the cases would be required to be re-assessed with respect to extant rules in vogue for issuance of NOC. The relevant contents in this regard as set out in the minutes of the meeting of the Appellate Committee read thus:

“18. Other cases I.R.O. Aeronautical Study:

The Appellate Committee was apprised about Appeal cases wherein after conduct of Aeronautical Study and due approval of Appellate Committee, authorization letters for revised height clearance were issued to the respective Designated Officers for issuance of NOC. Due to non-submission of requisite documents by the appellants (as mentioned in Authorization letter). NOC could not be issued to the appellants.

Since a considerable time has already lapsed after conduct of Aeronautical study, and the NOC have not yet been issued, the cases need to be re-assessed with respect to the extant Rules in Vogue for the issuance of NOC.”

20. It is on the aforesaid backdrop, on 27 April 2023, the petitioners addressed a letter to the AAI, informing that although the

petitioners had submitted the Authorization for height clearance, the petitioners had not received the revised NOC from respondent No.4-Regional Director. On 6 June 2023, the Appellate Committee addressed a letter to petitioner No.2 informing that it is not possible to issue a revised NOC for height clearance in accordance with the minutes of the meeting dated 28 July 2022, as considerable time has lapsed, and that the case was required to be reassessed with the Rules in vogue, and hence, the NOC dated 11 October 2013 was no longer valid.

21. Also, on 5 December 2023 GSR 877E was notified by the Ministry of Civil Aviation titled as “the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Second Amendment Rules,2023”, thereby prescribing that a NOC issued under S.O.84(E) dated 14 January 2010 upon an application made to the AAI or the relevant authority within a period of 90 days from the date of publication of the said amendment notification, the period of such NOC shall be extended for a period not exceeding twelve years.

22. On the aforesaid backdrop on 2 March 2024, petitioner Nos.2 and 3 submitted a revised undertaking in form “Undertaking 1E” as per prescribed format of the AAI. However, despite the same being submitted, as the petitioners not being granted an NOC, the present petition is filed praying for the reliefs as noted by us hereinabove.

23. A reply affidavit is filed on behalf of respondent No.1-AAI and respondent No.4-Regional Director opposing the petition. The contention as urged on behalf of the petitioners on the authorization for issuance of a revised height clearance for 84.92 meters AMSL dated 11 July 2016, issued in favour of the petitioners, is not in dispute. However, it is contended that the petitioners in providing such undertaking in Form 1E dated 26 August 2016, there were defects in the undertaking of the addresses of the witnesses not being furnished and name of the signatory not being set out, which were duly informed by respondent No.4 – Regional Director to petitioner Nos.2 and 3 vide a letter dated 31 August 2016. However, the petitioners failed to submit the correct “Undertaking 1E”. The relevant contents of the affidavit reads thus:

“9. On July 11, 2016, the authorization for issuance of revised height clearance of 84.92 mts. (“Authorization Letter”) was granted in favour of Petitioner Nos. 2 and 3 in the Appeal filed by them before the Appellate Committee i.e. Respondent No.3. The Authorization Letter was issued to the concerned officer of Respondent No.1 ie. (Respondent No.4) for further necessary action and copy of the same was forwarded to the Petitioner No. 2 and 3 (only for their reference) with instruction that “this is not an N O C” and to provide the Undertaking 1E for issuance of N O C (“Revised NOC”). The Petitioner No.2 and 3 had to merely provide an undertaking under form 1E to obtain the Revised NOC. Petitioner Nos. 2 and 3 did provide the Undertaking under Form 1E (“U/T 1E”) on August 26, 2016 (Exhibit F to the Petition). However, there were certain defects in the undertaking which was duly informed by Respondent No.4 to Petitioner No. 2 and 3, vide its letter dated August 31, 2016 (Exhibit G to the Petition). The said letter also requested them to apply as per the format available on Respondent No.1’s website. However, the Petitioners failed to submit the correct U/T IE to the Respondent No. 1 within the validity period of the 2013 N O C, for the reasons best known to them.”

(emphasis supplied)

24. The reply affidavit thereafter contends that the subsequent norms were notified under GSR 770(E) and GSR 877(E). It is contended that the petitioners were informed vide letter dated 1 October 2024 that the petitioners having not submitted the undertaking being a mandatory document as per the Aerodrome Safeguarding Circular (ADSAC) No.02/2023, the NOC granted to the petitioners in the year 2013 could not be re-validated.

25. In pursuance of our order dated 3 February 2025, there is an additional affidavit filed on behalf of the AAI of Mr. Pramod Kumar Sinha, Deputy General Manager (ATM). By such order we directed the AAI to place on record the number of cases similar to the petitioners which could be considered to be cases of a lapsed NOC. As also to place on record as to what could be the approximate height, which would be broadly approved under the revised norms in the recent times. However, in such additional affidavit the first aspect as posed by the Court is not addressed. In regard to the second aspect, it is stated that there has been considerable change in aerodrome data of CSMI Airport in the last couple of years and based on these amendments, the approximate height that can be expected is 68-69 meters, which could be ascertained only after conducting Aeronautical Study as per the extant rules. It is stated that the actual calculation of the permissible height for any particular location and structure can only be

determined after conducting an aeronautical study as per the current rules and regulations.

Submissions

26. It is on the aforesaid backdrop, we have heard learned Counsel for the parties. Dr. Virendra Tulzapurkar, learned Senior Counsel has made extensive submissions. He would urge that this is a clear case wherein, merely for the reason that the petitioners have not removed minor deficiencies in the undertaking submitted to the AAI. According to him, this in no manner was a substantive lapse on the part of the petitioners to be entitled to an NOC when the petitioners fulfilled the basic terms and conditions on the basis of which an approval of the height of 84.92 meters AMSL was granted in favour of the petitioners. Hence, the benefits of the NOC approved by the Appellate Committee in its decision dated 27 August 2015 cannot be denied. It is submitted that now as the petitioners have complied with the requirements, the AAI or its Appellate Committee cannot categorize the petitioners' applications as if the application was a fresh application, and of a category which would be required to be treated as per the changed norms, notified subsequent to the proposal of the petitioners. Dr. Tulzapurkar relying on the GSR 877(E) would submit that even under the amended policies of AAI, NOC which is issued is validated for a period of 12 years. It is thus submitted that the impugned decision as informed to the petitioners vide letter dated 6 June 2023 is required to be quashed and

set aside and a direction ought to be issued that the petitioners be granted a revised NOC for height clearance on the proposal as made by the petitioner and in pursuance of which the NOC issued to the petitioners dated 11 October 2013, as per the Appellate Committee's authorization dated 11 July 2016 for a revised height of 84.92 meters AMSL (Exhibit E, page 54 to the petition).

27. Mr. Shetty, learned Counsel for AAI would reiterate the contentions as urged in the reply affidavit of Mr. Pramod Kumar Sinha, Deputy General Manager (ATM) filed on behalf of the AAI. He would submit that the petitioners have clearly neglected to remove the defects in the undertaking. He however does not dispute that the requisite undertaking was duly submitted on behalf of the petitioners as also signature was made by the person signing the undertaking on behalf of the petitioners, as also by the witnesses whose names were set out had signed the undertaking, except their addresses had remained to be stated. However, Mr. Shetty's contention is two fold; firstly, that now the permissible height for the petitioners' buildings would be required to be re-decided as per the current norms and being a technical matter, this Court ought not to interfere in the present proceedings. He further submits that for this the petitioners would be subjected to the new norms for height clearance for which a fresh exercise of aeronautical studies for the permissible height would be required to be undertaken. In making these submissions, Mr. Shetty would not dispute that

all the adjoining buildings or buildings in the vicinity have a height clearance which was approved as per the erstwhile norms under which it was decided by the Appellate Committee to grant NOC to the petitioners, for the height of 84.92 meters AMSL. It is his submission that as the decision to grant NOC to the petitioners would be required to be considered as lapsed, the same cannot be revalidated much less in the petitioners invoking the powers of judicial review of this Court. It is his submission that if intervention as prayed by the petitioners is made, it will lead to a number of parties approaching the Court whose NOCs have lapsed and the AAI would be required to grant approval in respect of such lapsed cases. It is therefore his submission that the petition ought not to be entertained. In supporting these contentions, he has placed reliance on the decisions in **Siddheshwar Sahakari Sakhar Karkhana Ltd. Vs. Collector and District Magistrate, District Solapur & Ors.**¹, **Maharashtra Housing and Area Development Authority Vs. Airport Authority of India & Anr.**², **Chetak Co-operative Housing Society Ltd. vs. The Union of India & Ors.**³ and **Kalpataru Ltd. Vs. Union of India & Ors.**⁴

Analysis

28. Having heard the learned Counsel for the parties and having perused the record, at the outset, we may observe that it is not in dispute

1 2018 SCC OnLine Bom 2239

2 Writ Petition (I) No.161 of 2023, decision dt.10/01/2024

3 Writ Petition No.396 of 2019, dt.07/01/2025

4 2020 SCC OnLine Bom 737

that the petitioners had made a proposal as approved by the SRA for appropriate height clearance to be granted by the AAI. We have noted the facts extensively. It is not in dispute that in pursuance of such approval of the SRA, on 27 August 2015, a meeting of the Appellate Committee was held, in which the height to be granted to the petitioner was authorized and approved to be of 84.92 meters AMSL, as recommended by the SRA. In pursuance thereto on 11 July 2016, the Assistant General Manager (ATM-NOC) of the Airport Authority of India, communicated issuance of a NOC to the Regional Executive Director (W.R.) / respondent No.4 and the authorization for issuance of revised height clearance, under which the petitioners (at the relevant time petitioner No.2-M/s. Jai Bhagvati Developers & builders) were granted an approval of the height of 84.92 meters AMSL, insofar as its four buildings were concerned. The relevant extract of such NOC is required to be noted which read thus:-

“Sub:- Authorization for issuance of revised height clearance.

Reference:

1. The NOC issued vide letter No.BT-1/NOC/MUM/13?NOC AS/217/2423 dated 11.10.2013.
2. Applicant's letters No. JBD/APD/AAI/06 & JBD/APD/AAI/05 dated 09/07/2015 and letter No. NIL dated 22.12.2015.

Sir/Madam.

You are authorized to issue revised height clearance as per following details.

Applicant Name	M/s. Jai Bhagvati Developers & Builders and R. K. Madhani & Co. (J.V.)
Type of Structure	Building

Plot Address	CTS No.343 (Pt) of Village Chembur, Mumbai
Plot Coordinates	19 03 9.475 N 72 53 13.06E 19 03 8.965 N 72 53 16.34 E 19 03 4.692 N 72 53 16.09E 19 02 57.67 N 72 53 12.39 E
Bldg. Coordinates	<u>Building – 1</u> 19 03 2.74715 N 72 53 13.99922 E 19 03 02.40032 N 72 53 14.74933 E 19 03 01.15747 N 72 53 14.09185 E 19 03 01.50867 N 72 53 13:38535 E <u>Building – 2</u> 19 03 06.57549 N 72 53 15.61235 E 19 03 06.10658 N 72 53 16.17121 E 19 03 04.57342 N 72 53 15.90125 E 19 03 02.93975 N 72 53 14.95842 E 19 03 03.03393 N 72 53 14.17515 E <u>Building – 3</u> 19 03 07.88083 N 72 53 14.74631E 19 03 07.02923 N 72 53 14.61682 E 19 03 06.82944 N 72 53 15.44567 E 19 03 07.44352 N 72 53 16.34982 E 19 03 08.34431 N 72 53 16.42828 E 19 03 08.61094 N 72 53 16.19025 E 19 03 08.69684 N 72 53 15.29205 E <u>Building – 3</u> 19 03 08.75434 N 72 53 13.53197 E 19 03 08.55263 N 72 53 14.88943 E 19 03 06.63910 N 72 53 14.44510 E 19 03 06.90342 N 72 53 13.28523 E
Permissible Top Elevation	84.92 M AMSL (Eighty Flour Decimal Nine Two M AMSI)

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(emphasis supplied)

29. However, the aforesaid NOC was subject to additional terms and conditions relevant of which read thus:

“Undertaking 1E as applicable, may be printed from website www.aai.aero NOC AS Apply/Track Undeertakings and Authorization (On right side of screen) Undertaking 1E.

Please intimate the revised hight clearance to the concerned Aerodrome Operator and Local Bodies/Authority for information and necessary compliance as per GSR – 751 (E).

While issuing the NOC reference of this CHQ authorization letter may also be included.

This issues with the approval of the competent Authority.

“THIS IS NOT AN NOC”

30. Petitioner no.2, in pursuance thereof, addressed a letter dated 26 August 2016 to the General Manager (ATM-NOC) making the relevant compliances namely submitting a letter of AAI dated 11 July 2016 and the undertaking in the prescribed form “Undertaking 1E”, with a request that a formal NOC be issued to the proposed structures of the petitioners. A copy of such undertaking which was on the stamp paper of Rs.100/- dated 26 August 2016, is placed on record at page 57 of the petition which is signed by the witnesses Mr. Girish Shah and Mr. Rashid Ali Khan as also duly signed on behalf of petitioner No.2. The said document duly submitted by the petitioners was considered by the AAI. However, petitioner No.2 received a letter dated 31 August 2016 issued from the AAI *inter alia* stating that although “Undertaking 1E” was submitted, the name of the signing authority and the addresses of the witnesses are not given. The relevant contents of the said letter read thus:

“Sir,

This has reference to your letter no. Nil dated 29 August 2016 vide which Undertaking 1E and Authorization letter for issuance of received height clearance from AAI-Chq, New Delhi was submitted.

It is observed that in the Undertaking 1E, name of signing authority and address of witnesses are not given. Please visit AAI website www.aai.aero for format of Undertaking 1E.”

(emphasis supplied)

31. It appears that the petitioners' project being a scheme for rehabilitation of slums, involving slum dwellers, some issues *inter se* between the petitioners had arisen, which required the parties to bring petitioner no.1 into the project. In such circumstances minor compliances namely that of furnishing addresses of the two witnesses and simplicitor informing of the name of the signing authority for petitioner No.2 remained to be complied.

32. It is however not the case that the petitioners in any manner had stopped or abandoned the project and/or the SRA did not recognize the petitioners to be not duly executing the project. In fact the buildings of the petitioners upto a particular height were already constructed, also occupation certificate was granted to the accepted height of the building considering the interest of the slum dwellers, however, with balance work remaining unfinished qua the height as approved by AAI. It is on such premise when the petitioners insisted for a formal NOC to be issued of the height of 84.92 meters AMSL as already approved by the Appellate Committee, the impugned communication dated 6 June 2023 was issued to the petitioners, which needs to be noted. It reads thus:-

"To
M/s Jai Bhagwati Developers & Builders
127-136. Madhani'Ind. Estate
Senapati Bapat Marg
Dadar (West)
Mumbai-400028

Sub: Issuance of Revised NOC for Height Clearance - Reg.

Sir.

Reference is made to letter no. NIL dated 27.04.2023 regarding the subject mentioned above. The decision of the Appellate Committee was communicated by this office vide letter dated 11.07.2016. However, the documents specified in the letter have not been submitted for more than 6 years. Further, it is not possible to issue revised NOC for height clearance as a considerable time period has lapsed and the case needs to be re-assessed with respect to the extant rules in vogue for the issuance of NOC as per directions issued by the Appellate Committee in its meeting dated 28.07.2022. (Minutes of the meeting may be accessed at <https://nocas2.aai.aero/nocas/AppealProceeding/MOMAeronautical/2022/Minutes%20of%20Meeting%20of%20Appellate%20Committee%2028th%20July%202022.pdf>)

It may also be noted that the NOC issued vide letter no BT1/NOC/MUM/13/NOCAS/217/2423/1488-91 dated 11.10.2013 is no longer valid and for any further processing of the case, a duly issued valid NOC is required.

This issues with the approval of the competent authority.

Yours Sincerely,

(M Zhimo)

Jt. General Manager (ATM DoAS)
for General Manager (ATM-DoAS)

Copy to

1. Regional Executive Director (WR), Airports Authority of India, Regional Headquarter, Western Region, Opp. Parsiwada, Sahar Road, Vile Parle (E) Mumbai 400 099."

33. In our opinion, in the facts and circumstances of the case, the impugned decision of the AAI is too pedantic, more particularly, when already a decision was taken in favour of the petitioners that the NOC for 84.92 meters AMSL was approved by the Appellate Committee being decision dated 11 July 2016. In our opinion merely because the petitioners failed to provide the name of the signatory on the undertaking and the addresses of the witnesses who had only signed the undertaking furnished by the petitioners to the AAI, such ministerial lapse cannot be held against the

petitioners, so as to dis-entitle them from the benefits of the revised NOC of 84.92 meters AMSL granted by the Appellate Committee. This was merely a procedural requirement for the purpose of record, so as to identify the persons on behalf of the petitioners who had signed the undertaking and/or although the witnesses were named, and who had signed, however, their addresses having remained to be mentioned. This cannot be said to be any incurable much less a fatal or substantial lapse on the part of the petitioners, on their otherwise entitlement to avail of the NOC. This more particularly when the Appellate Committee had taken a decision and informed the petitioners by the Assistant General Manager (ATM-NOC) vide a communication dated 11 July 2016, of the approval to a top elevation of 84.92 meters AMSL being granted to the petitioners. The impugned communication does not reflect on the ineligibility of the petitioners to the substantive entitlement of the NOC of 84.92 meters AMSL, as reflected in the communication dated 11 July 2016, once the petitioners were held to be eligible for the said height, on substantive compliances being made by the petitioners and after examining of such compliances, requisite approvals being granted by the SRA, on the basis of which a decision was taken by the Appellate Committee of the AAI to grant such height clearance of 84.92 meters AMSL.

34. In our opinion, it is not appropriate that merely for the reason that the address of the witnesses remained to be furnished or the name of the

signatory on the undertaking submitted in Form “Undertaking 1E” was not furnished, this error which can never be deliberate or intentional negligence should deprive the petitioners of the entitlement to the decision as taken by the AAI granting clearance of height of 84.92 meters AMSL. It would hence be not proper and lawful that the petitioners are categorized as a fresh applicant, so as to apply new norms in regard to the height on a fresh aeronautical study. We say so, for the reason that assuming that the petitioners were to submit addresses of the witnesses on the undertaking as also state the name of the person who signed the undertaking, which were procedural compliances (not reflecting on the lawful entitlement to the height as already conferred on the petitioners by the Appellate Committee) the petitioners would have certainly proceeded and completed the requisite construction of the building with the height of 84.92 meters AMSL. We may also observe that now a fresh undertaking removing the defect is already furnished by the petitioner on 2 March 2023 (Sic. 2 March 2024) in the format “Undertaking 1E” which is duly signed on behalf of petitioner No.2 by Harish R. Barthwal and also the names of the witnesses are clearly set out alongwith their addresses and their signatories. A copy of the same is annexed at Exhibit J to the petition. In this view of the matter, in our opinion, there ought not be any impediment for the AAI to issue a NOC to the petitioners as per its decision as communicated to the petitioners vide

communication dated 11 July 2016 (Exhibit E) (supra), considering the compliances made by the petitioners.

35. In regard to Mr. Shetty's contention that the grant of NOC is a technical matter which is required to be governed by fresh aeronautical studies as per the new rules in that regard, cannot be accepted. No doubt these are technical issues, however, all such technical compliances were examined and achieved by the petitioners as reflected in the decision of the Appellate Committee dated 11 July 2016. As observed hereinabove, what had remained to be complied were formal / ministerial acts of furnishing the name of the signatory on the undertaking and the addresses of the witnesses. Admittedly, the undertaking was duly signed and the witnesses were also named who too had duly signed. Thus, merely for such minor lapses, in our opinion, the petitioners ought not to be relegated to the applicability of the new norms of height, when the height was already determined as also there are several adjoining buildings with similar heights. Thus, in these circumstances, subjecting the petitioners to the new norms would be arbitrary. For all such reasons, the petitioners' case cannot be considered to be a case of any lapse of the application when the application itself was granted by the substantive decision of the Appellate Committee dated 11 July 2016. It also cannot be said that the decision of the Appellate Committee was subject to any condition that it would lapse as stated in the impugned communication dated 6 June 2023, merely as new rules are

notified, what had taken place and concluded under the erstwhile rules cannot be nullified for want of removal of the deficiency in the undertaking as in the present case. We therefore, reject the contention of lapsing of either the petitioner's application or the decision of the Appellate Committee in approving the height of 84.92 meters ASML granted to the petitioners, so as to accept the contention that the petitioners are required to re-submit themselves to the current norms.

36. Mr.Shetty has placed reliance on the decisions of this Court in **Siddheshwar Sahakari Sakhar Karkhana Ltd.** (supra) and **Maharashtra Housing and Area Development Authority** (supra) to contend that the Court would not be an expert body to determine as to what should be the height which ought to be approved. In our opinion, such argument is not well founded as the Court is not deciding the height, as the same was already determined by the Appellate Committee in its decision dated 11 July 2016 which is recognized to be legal and valid in the circumstances and facts of the case.

37. We are also not accepting the respondents' contention relying on the decision rendered by this Bench in **Chetak Co-operative Housing Society Ltd.** (supra) in which the prayers of the petitioners were to direct the developer and the society to demolish the building on the ground that the height which was granted by the Airport Authority was illegal. The Court held that the height which was granted by the Airport Authority of India

and according to which the building was completed, was a valid and legal exercise. This decision in whatsoever manner would not assist the respondents.

38. The decision in **Kalpataru Ltd. Vs. Union of India & Ors.**⁵ would also not assist the respondents inasmuch as it is not a case where the Appellate Committee has take a decision on draft rules and / or deviated itself from the rules in taking a decision dated 11 July 2016. It is also not the case of the respondent that the safety requirements which are suggested by the Appellate Committee in the said decision, were in any manner not in accordance with the norms.

39. Further, in regard to the respondents relying on the decision in **Tata Cellular Vs. Union of India**⁶ to contend that the powers of judicial review are limited to the extent of examining the decision making process cannot be dismissed. We have precisely examined the decision making process leading to the impugned decision communicated to the petitioners dated 6 June 2023 which we have opined, is not a decision which would stand the test of law, considering the determination of height as granted to the petitioners in accordance with the decision dated 11 July 2016. Thus, the decision in Tata Cellular (supra) would in fact support the case of the petitioners than that of the respondents.

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6 (1994)6 SCC 654

40. In the light of the aforesaid discussion, we are inclined to allow the petition by the following order:-

ORDER

- (i) Respondent Nos.1 to 4 are directed to issue to the petitioners NOC with the height of 84.92 meters AMSL, as per the decision dated 27 August 2015 read with the Communication dated 11 July 2016 by accepting the undertaking submitted by the petitioner dated 2 March 2023 (Sic. 2 March 2024) (Exhibit J) to the petition.
- (ii) Let such NOC be issued within a period of four weeks from today.
- (iii) Rule is made absolute in the aforesaid terms.
- (iv) No costs.

40. At this stage, learned counsel for the respondents prays for stay to the operation of this order. Considering the facts and circumstances of the case and that the project is a slum project which is already delayed, we reject the request for a stay.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)