

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.7872 OF 2021
WITH
INTERIM APPLICATION NO. 6770 OF 2022
WITH
INTERIM APPLICATION (ST) NO. 4430 OF 2022
WITH
INTERIM APPLICATION NO. 297 OF 2022
WITH
INTERIM APPLICATION NO. 171 OF 2022
WITH
INTERIM APPLICATION NO. 325 OF 2022
WITH
INTERIM APPLICATION NO. 4274 OF 2021
WITH
INTERIM APPLICATION NO. 296 OF 2022
WITH
INTERIM APPLICATION NO. 4273 OF 2021
IN
WRIT PETITION NO.7872 OF 2021
WITH
WRIT PETITION NO. 9446 OF 2021
WITH
INTERIM APPLICATION (ST) 5335 OF 2022**

Digitally
signed by
NIKITA
YOGESH
GADGIL
Date:
2022.06.15
20:18:28
+0530

Shree Siddeshwar Sahakari Sakhar Karkhana
Maryadit, Kumathe
Vs.

.... Petitioner

State of Maharashtra, Urban Development
Department, Mantralaya & Ors.

.... Respondents

Mr. Anil Sakhare, Senior Counsel a/w Mr. Rupesh Bobade for the
Petitioner in WP 7872/2021 & 9446/2021.

Mr. Shriram Kulkarni a/w Mr. Rupesh Bobade for the Petitioner in
WP 1873/2022.

Mr. A. I. Patel, Addl. GP a/w.Kavita Solunke, for the Respondent-State.
Mr. Dilip Bodake for the Respondents.
Mr. D. P. Singh, for Respondents No.1, 2 and 3-UI in WP/9446/2021.
Mr. Shrishail Sakhare for the Applicant in IA/296/2022.
Mr. Prasad Kulkarni for the Applicant in IA/297/2022.
Mr. Bhushan Walimbe for the Applicant in IA/325/2022.
Dr. Ramdas Sabban for the Applicant in IA/171/2022 and WP 1873/2022 with IA (St) 9454/2022 and IA(St.) 5335/2022.

**CORAM : A. A. SAYED &
ABHAY AHUJA, JJ**
DATE : 31ST MAY, 2022

JUDGMENT : (PER COURT)

1. Petitioner is a Co-operative sugar factory registered under the Multi-state Co-operative Societies Act, 2002.
2. Solapur Airport was built in the year 1987 near village Hotgi. In the year 1992, due to the extension of the territorial limits of the Solapur Municipal Corporation, Petitioner's factory as well as the airport came within the Respondent-Corporation's city limits. On 21st August, 2013 there was a Government Resolution which proposed to construct the new airport at Boramani/Tandulwadi.
3. Between 2012 and 2013, Petitioner took a decision for the expansion of the sugar factory for increasing the crushing capacity from 5000 to 7500 TCP, expansion of the distillery from 20 kl per day

to 50 Kl per day, as well as for setting up of 38 Mega Watt Co-generation Power Project. It is the case of Petitioner that for the said expansion of sugar factory and to operate the cogeneration plant and the sugar factory, Petitioner was required to install a boiler of 200 TPH, which is interconnected with 90 meter height RCC Chimney. Therefore, on 25th December, 2012, Petitioner applied to the Solapur Municipal Corporation for NOC for the necessary expansions and cogeneration project and to undertake chimney construction.

4. Vide communication dated 29th January 2013, Respondent No. 2 issued “in-principle” NOC to Petitioner for the said expansions as well as and the Co-generation power project, subject to scrupulous compliance of all rules and Acts in relation to the installation of the project and obtention of all necessary permissions and sanctions from various Government authorities and the Solapur Municipal Corporation.

5. Pending such permissions, Petitioner went ahead and installed Chimney of the height of 553 meters above mean sea level/ 90 meters above PFL located at a distance of 1900 meters in approach RWY 33 of Solapur Airport.

6. It is submitted on behalf of the Airport Authority that since the Petitioner was erecting a steel structure at the approach path zone of runway 33 end of the airport, the Airport Authority of India vide communication dated 18th February, 2014 intimated to the Collector of Solapur that Petitioner's sugar factory was erecting a steel structure which would be a severe obstacle to the aircrafts during landing/taking off on the runway which violates the airport norms. It was also informed that Petitioner was erecting the said structure without taking any NOC from the Airport Authority and requested the Collector to take appropriate steps to demolish the said structure immediately.

7. It is however submitted that Petitioner also obtained permissions from other relevant authorities such as Maharashtra State Pollution Control Board (MPCB) dated 28th January, 2014, from Sugar Commissioner, Pune dated 7th May, 2013.

8. The Respondent- Solapur Municipal Corporation issued notice dated 24th February, 2014 under Section 478 of the MMC Act and Petitioner replied and sought time to obtain the relevant permissions.

9. Thereafter, the Airport Authority of India issued a letter dated 1st May, 2014 to Petitioner objecting to the increase in the permissible height for construction in respect of which the Airport Authority suggested the Petitioner to give an undertaking/sanction plan within 90 days. It is submitted on behalf of the Airport Authority that the said letter was not an NOC.

10. The Airport Authority of India issued a letter dated 12th September, 2014 to the Prant Tehsildar, Collector Office, Solapur, with a copy to the Petitioner stating that NOC was not granted to the Petitioner for erection of chimney. It is stated in the said letter that the Airport Authority had issued a letter to the Petitioner for reconstructing the height only upto 41 meters AGL requesting stoppage of construction of chimney and for which Petitioner was required to submit an undertaking within 90 days. The Tehsildar was requested by the Airport Authority to take necessary action for stoppage of work as no NOC was granted for the said construction.

11. The Airport Authority of India issued a letter dated 12th September, 2014 to the Prant Tehsildar, Collector Office, Solapur, with a copy to the Petitioner stating that NOC was not granted to the

Petitioner for erection of chimney. It is stated in the said letter that the Airport Authority had issued a letter to the Petitioner for reconstructing the height only upto 41 meters AGL requesting stoppage of construction of chimney and for which Petitioner was required to submit an undertaking within 90 days. The Tehsildar was requested by the Airport Authority to take necessary action for stoppage of work as no NOC was granted for the said construction.

12. Later, in the year 2014, Petitioner applied to the Airport Authority of India, Mumbai, (Western Region) seeking no objection as the proposed chimney was 90 meters above the ground level and 553 meters above mean sea level. During the pendency of the said application, Petitioner was advised that the said Airport Authority had power to grant NOC only upto the height of 504 meters above mean sea level. Therefore, Petitioner applied to the Airport Authority at Delhi, seeking NOC for construction of the desired Chimney height.

13. It appears that the proceedings pursuant to the notice dated 24th February, 2014, were dropped and vide communication dated 10th August, 2016, Respondent No.2 issued fresh “in-principle” NOC to Petitioner similar to the one dated 29th January, 2013.

14. It is submitted on behalf of Airport Authority that the Airport Authority of India issued NOC for height clearance dated 17th February, 2017 and NOC for height clearance dated 17th May, 2017 only upto the height of 30 meters AGL, whereas Petitioner had already constructed the chimney with a height of 90 meters AGL in the year 2014 itself. Vide NOC dated 17th February 2017, Airport Authority, Delhi issued NOC for construction of Chimney upto 493.96 meters above mean sea level, valid until 16th February 2024. That, the permissible top elevation as per NOC for height clearance is 493.96 meters AMSL and the site elevation in meters AMSL as submitted by the Petitioner was 463 meters. It is submitted that Petitioner could not have commence construction without obtaining NOC from the Airport Authority of India, Ministry of Civil Aviation, Government of India and other appropriate authorities.

15. Vide letter dated 7th March 2017, Petitioner appealed to the Airport Authority for NOC for construction of RCC chimney of 90 meters height from PFL stating that the same was required as per condition of MPCB consent / NOC to establish dated 28th January, 2014.

16. Somewhere in 2016-17, the Government of India issued a notification for Regional Connectivity of Airports known as “Regional Connectivity Scheme”. It appears that pursuant to this scheme, vide communication dated 15th March 2017, Respondent No. 1- State directed the Collector, Solapur to take necessary steps within three months for removal of the Chimney as the same was causing obstruction in take off at Solapur Airport and to transfer the possession of the said land to the Airport Authority after removing the encroachment on the said land for the purpose of development of Hotgi Airport.

17. Vide communication dated 6th April 2017, Petitioner was granted one month period by the Collector, Solapur to remove the Chimney as there was obstruction for take-off, failing which further necessary action would be taken.

18. It appears that around 12th April, 2017 Petitioner made applications under Sections 44, 45, 55 and 58 of the MRTP Act, 1966 and under Sections 253 and 254 of the MMC Act.

19. However, it is submitted that the said applications were rejected on the ground that the (1) Airport Authority of India had given permission only of 30.96 meters AMSL to the chimney and (2) the Government of India has identified “Solapur Hotgi Airport” in the first list for the Regional Connectivity Scheme and since the sakhar karkhana chimney’s height was causing hindrance in the operation of the flight and the State of Maharashtra has taken a decision to remove/demolish the sakhar karkhana chimney (by letter Under Secretary Administrative Department Government of Maharashtra, Mantralay, Mumbai, letter No. MADC 2012 PK/449/28A dated 15th March, 2017 issued notice to collector by State Government, State of Maharashtra to collector Solapur).

20. Aggrieved by the aforesaid, Petitioner filed Writ Petition No. 5253 of 2017 on 28th April, 2017 before this Court challenging the aforementioned communication dated 15th March 2017 and the Notice dated 6th April 2017.

21. On 4th May 2017, this Court did not grant any stay to the said orders, but permitted Petitioner to approach the Airport Authority of India, New Delhi.

22. On 28th July 2017, Petitioner filed an Appeal before the Appellate Committee of the Airport Authority of India against the aforesaid orders. By e-mail dated 25th September, 2017, the Appellate Committee of the Airport Authority of India, Delhi informed Petitioner that it had directed the Airport Authority of India to hear the appeal.

23. One Siddheshwar Rashtriya Sakhar Kamgar Union filed Writ Petition No.12131 of 2017 before this Court on 3rd November, 2017 seeking stay of the communications by the Collector and the State government to pull down the chimney on the ground that the crushing season was round the corner in November and in the event the chimney was pulled down, the union employees would be rendered jobless without any source of income.

24. On 10th November, 2017, this Court in Writ Petition No.5253 of 2017 directed no-coercive steps against Petitioner.

25. On 18th December 2017, Airport Authority of India, heard Petitioner's Appeal for height clearance and NOC upto 553 meters AMSL and rejected the said Appeal as Solapur Airport was statedly an operational airport and Regional Connectivity operations were

planned thereat observing that Top Elevation of 493.36 meters AMSL (30 m AGL)as authorised by letter dated 10th April, 2017 could not be further increased.

26. Being dissatisfied and aggrieved with the above order date 18th December, 2017, Petitioner filed Writ Petition (Stamp) no. 11873 of 2018 before this Court. By order dated 23rd July, 2018, this Court directed that all the connected Petitions viz. Writ Petition No. 5253 of 2017, Writ Petition (Stamp) No. 11873 of 2018 and Writ Petition No. 12131 of 2017 filed by the Kamgar Union be listed on 3rd August, 2018. The Writ Petition No.5253 of 2017 and connected Petitions were finally dismissed by a detailed decision dated 6th August 2018. The said decision was challenged in the Supreme Court on 12th November, 2018.

27. Thereafter, a notice dated 12th November, 2018 was issued by the Airport Authority of India, Airport in Charge, Solapur Airport under Section 9A of the Aircraft Act, 1934.

28. An order dated 10th October, 2018 was passed under Rule 4 of Aircraft (Demolition of Obstruction caused by Buildings and Trees etc.) Rules, 1994 (the “said Rules”), which is quoted as under:-

“4. Owner to furnish details – (1) The service of the copy of the notification under rule 3 shall be accompanied by an order of the Director General of Civil Aviation or any other officer of the Civil Aviation Department authorized by him in this behalf directing the owner to furnish to the officer-in-charge of the aerodrome, within a specified period, a plan showing the location of the building or tree, as the case may be, and also its dimensions or any other details specified in the order. (2) The owner shall be bound to furnish the details asked for in the order passed under sub-rule (1).”

29. Vide communication dated 4th December, 2018, Petitioner pointed out that the NTPC chimney was also obstructing the approach path. Also details about the new airport at village Boramani were also submitted. It was also pointed out that the alternate runway no. 15 was available for take off and landing instead of runway no. 13.

30. The Hon'ble Supreme Court vide interim order dated 7th December 2018 allowed the Airport Authority to proceed in the matter uninfluenced by the pendency of the Petitions and to take appropriate action as per law but directed that till the next date of hearing no effect be given to notice/communication dated 15th March 2017 issued by the State Government and the letter dated 6th April 2017 issued by the Collector.

31. Petitioner filed reply dated 28th January, 2019 on 31st January 2019 denying the contents and informing that NTPC, Solapur chimney

was in the funnel way of the landing and take-off of flights had a height three times more than Petitioner and that the permission for the said height was granted by the Airport Authority of India, Mumbai whereas the same was not considered in the case of Petitioner. It was informed that Petitioner's factory chimney height is 90 meters i.e. 55. meters above mean sea level while NTPC chimney height is 278 meters i.e. 736 meters above mean sea level and that the notice under Rule 4 of the 1994 Rules issued to the Petitioner was therefore highhanded. That Petitioner's NOC was turned down by letter dated 1st May, 2014 stating that it had no authority to grant height certificate above 504 meters above mean sea level while NTPC had been granted NOC of 736 meters above mean sea level.

32. Pursuant to personal hearing notice dated 15th May, 2019 the Petitioner was heard on 31st May 2019 and the matter was closed for orders after which the Deputy Director General of Civil Aviation passed Final Order dated 24th August 2019, holding that Petitioner's Chimney was penetrating approach surface of RWY-33 by 52.2 meters and its height needed to be reduced to the permissible height of 498.4 meters at the earliest. Said order refers to obstacle survey conducted in the year 2017 by Airport Authority of India and a physical

verification about the penetration of the chimney.

33. Later by order dated 29th August 2019, when the two SLPs viz. one by Petitioner and the other by the Kamgar Union were listed, the Hon'ble Supreme Court, in view of the order dated 24th August 2019, passed by the Deputy Director General of Civil Aviation observed that the orders which were subject matter of challenge in the SLPs had in that sense become redundant and relegated Petitioner to the option of remedy by way of appeal under the Rule 6A of the said Rules thereby disposing the SLPs leaving all contentions open, including the question of jurisdiction of the Collector to pass an order in that regard.

34. It is submitted on behalf of Petitioner that the above mentioned letter/notice dated 15th March, 2017 and the notice date 6th April, 2017 have become redundant in view of the Supreme Court order dated 29th August, 2019 and therefore even the grounds of rejection of the regularisation application dated 12th April, 2017 have become redundant and void.

35. In pursuance of the Hon'ble Supreme Court's order dated 29th August, 2019, Petitioner filed Appeal under Rule 6A of the said Rules before DGCA, Delhi against order dated 24th August 2019 on 23rd October 2019, *inter alia* on the following grounds:-

(i) That the obstacle survey conducted in the year 2017 by Airport Authority of India has not been supplied to the Petitioner nor the said survey report is brought on record and therefore, in the absence of the survey report on 2017, the impugned order ought to be set aside and declared as null and void.

(ii) That no physical verification of the chimney was carried out by the Airport Authority of India nor any physical verification report was provided by the Petitioner and therefore in the absence of physical verification report, the impugned order deserves to be set aside.

(iii) The Airport Authority failed to appreciate that in the year 2016-2017 there were 450 flights, in the year 2017-2018 and 2018-2019 there were flights that had safely landed and departed at Solapur Airport without causing obstacles infringing the obstacle limitation surfaces (OLS) at Solapur. Therefore, the apprehensions of the Airport Authority of

India were unfounded without the survey report and physical verification report.

(iv) The Authority has failed to appreciate that Petitioner has obtained necessary permissions from the concerned authorities for construction of cogeneration and expansion of existing sugar factory from Solapur Municipal Corporation, Sugar Commissioner, State of Maharashtra and MPCB.

(v) That the Authority has failed to appreciate that the NTPC chimneys height is more than 278 meters and 3 times height of the Petitioner's chimney and on the ground of parity alone the impugned order deserves to be set aside.

(vi) The Authority has failed to appreciate that the suggestion of shifting the existing chimney is impracticable and technically not viable. It is submitted that boiler has to be at the closest distance for effective power and energy generation and the sites suggested by Airport Authority of India are at a distance of 800 meters and beyond and therefore not viable.

(vii) That the Authority has failed to appreciate that the Government Resolution dated 21st August, 2013 whereby it has been recorded that the Government of Maharashtra has

acquired 550 hectares of land in village Boramani and Tandulwadi for construction of the new Airport closure of the Airport at Hotgi.

(viii) That the Authority has failed to appreciate the social contribution of Petitioner in uplifting the farmers being the pioneer sugar factory in the State of Maharashtra that has funds reserved for the farmers (shareholders), medical treatment, etc, which claim has been implemented in getting claims by the legal heirs of deceased farmers amounting of Rs. 1.20 crores.

(ix) That the Authority has failed to appreciate that Petitioner had taken huge loans running in crores from Bank of Baroda, National C-operative Development Corporation and Solapur Janata Sahakari Bank for construction of cogeneration plant and expansion of the existing plant and that if the impugned order was to be implemented and the chimney height reduced to 52.2 meters, the entire set of cogeneration, sugar factory and distillery would become non-functional rendering the closure of co-generation plant, sugar factory and distillery.

36. On 3rd December 2019 DGCA, Delhi rejected the Appeal of Petitioner and confirmed order dated 24th August 2019 passed by the Deputy DGCA directing the Petitioner to reduce the height of the said chimney to 498.4 meters above mean sea level within 60 days. The said order is quoted as under:-

“Whereas, an obstacle survey conducted in the year 2017 by Airports Authority of India (AAI) reveals the obstacles infringing the Obstacle Limitation Surfaces (OLS) of Solapur airport, Solapur.

2. Whereas, AAI indentified a Chimney owned by M/s Shri Siddeshwar Sahakari Sakhar Karkhana Ltd. (SSSSKL), Solapur as the critical obstacle infringing Obstacle Limitation Surfaces (OLS) of Solapur airport based on the Obstacle survey-2017. The Chimney is penetrating the APPROACH SURFACE of RWY by 52.2 meters against the permissible top elevation of 498.4 metes AMSI.

3. Whereas, an order for physical verification was issued to the owner of said Chimney under rule 3 and 4 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc) Rules, 1994, with direction to furnish to The Officer-in-Charge, Solapur Airport, Solapur, a plan showing the said Chimney and also its dimensions and other details mentioned in the said order. A physical verification was carried out by AAI at the site and after verification AAI confirmed about the penetration of said Chimney by 52.2 meters and forwarded these details to DGCA.

*4. Whereas, as per Rule 6 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994, a personal hearing was granted to the owner of Chimney forming an obstacle by Deputy Director General (DDG) of Civil Aviation, on 31.05.2019. After the said hearing it was established that the Chimney is pertaining the APPROACH SURFACE of RWY 33 by 52.2 meters. Consequently in exercise of the power conferred under Rule 6 of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994, the **DDG of Civil Aviation directed the***

owner of M/s SSSSK Ltd, Solapur, to reduce the height of said Chimney to 498.4 meters AMSL within 60 days from the date of issue of Final order dated 24.08.19.

5. Whereas, under the provisions of Rule 6A of the Aircraft (Demolition of obstruction caused by Buildings, and Trees etc) Rules, 1994, an appeal was filed against the Final Order dated 24.08.19 by Managing Director, M/s SSSSKL, Solapur on 22.10.19 to the appellate authority i.e. Director General.

6. Whereas, I heard the appeal on 03.12.19 wherein Mr. Dharmraj A Kadadi, President of M/s SSSSK Ltd and Mr. Sameer Bhagwat Salgar, Managing Director of M/s SSSSK Ltd attended the hearing on at DGCA(HQ) and made submission that Final Order is contrary to the principles of justice & equity. The appeal has been dismissed.

7. In view of above and under provisions of Rule 6A of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994, I hereby confirm the final order dated 24.08.19 passed by DDG of Civil Aviation and hereby direct, the appellant herein to reduce the height of said Chimney to 498.4 meters AMSL within 60 days of issue of this order.”

37. Aggrieved by the above order, Petitioner has filed Writ Petition (L) No. 21583 of 2021 (WP 9446 of 2021) on 30th October, 2021 before this Court challenging the order dated 3rd December 2019 passed by the Respondent No.2-DGCA in Appeal under Section 6A of the said Rules 1994, as well as against order dated 10th October, 2018 passed by the Respondent No.4-Airport Incharge Airport Authority of India and order dated 24th August, 2019 passed by the Respondent No.3-Deputy Director General of Civil Aviation taking up largely the same grounds as in the Memo of Appeal filed before the DGCA such

as:-

(i) That the obstacle survey conducted in the year 2017 by the Airport Authority of India is not supplied to Petitioner nor the said survey report is brought on record.

(ii) That no physical verification of chimney was carried out by the Airport Authority of India nor any physical verification report was provided to Petitioner.

(iii) That the Airport Authority failed to appreciate that in the year 2016-2017 there were 450 flights, in the year 2017-2018 and 2018-2019 there were flights that had safely landed and departed from Solapur Airport without causing obstacles infringing the obstacle limitation surfaces (OLS) at Solapur. Therefore, the apprehensions of the Airport Authority of India were unfounded without the survey report and physical verification report.

(iv) That the Authority has failed to appreciate that the Government Resolution dated 21st August, 2013 whereby it has been recorded that the Government of Maharashtra has acquired 550 hectares of land in village Boramani and Tandulwadi for construction of the new Airport closure of the Airport at Hotgi.

(v) That by Government Resolution dated 29th October, 2020, the Government of Maharashtra has granted revised administrative approval and revised financial approval for the acquisition of additional land for the Solapur (Boramani) Airport. It is recorded therein that the land admeasuring 549.31 hectares is already acquired and the approval for acquisition of additional land admeasuring 29.94 hectares is granted. That therefore, the Government of Maharashtra is going to use the old airport at Hotgi exclusively for the commercial use and no flight will take off from there after the construction of the new chimney at Boramani and therefore, there is no necessity of reducing the height of the chimney of Petitioners sugar factory.

38. More or less the same grounds that were taken in the Appeal before the DGCA have been reiterated in the said Writ Petition.

39. In the meanwhile, on 11th November, 2019, the Respondent No.3-The City engineer, Solapur Municipal Corporation, vide notice under Section 478 of the Maharashtra Municipal Corporation Act, 1949 (the “MMC Act”), directed Petitioner to demolish/pull down the

chimney, to which Petitioner gave a reply on 15th November, 2019. On (same day), Writ Petition (ST). No. 29268 of 2019 was filed by the Petitioner before this Court challenging the said notice under Section 478 of the MMC Act.

40. On 2nd December, 2019, Petitioner made an application to the Secretary of the Urban Development Department, State of Maharashtra seeking to stay the notice/order dated 11th November, 2019.

41. On 29th October 2020, Government of Maharashtra issued a Resolution No. MAD-1619/Case No. 55/28-A, granting improved administrative approval to the acquisition of approximately 580 hectares of land for Boramani Airport at Solapur with additional 29.94 hectares private land acquisition. By the said Government Resolution, a total of Rs. 122.79 crores expenses has been approved in addition to expense of Rs. 46.29 crores for the additional 29.94 hectares for private land acquisition.

42. On 21st December, 2020, the aforementioned Writ Petition (ST.) No. 29268 of 2019, was withdrawn in view of the aforesaid GR dated

29th October, 2020 with liberty to take out appropriate proceedings as advised. It was stated in the said order that Respondents shall not demolish the chimney for a period of four weeks from the date of the order, in view of the request made on behalf of Petitioner. However, it was also directed that Petitioner shall not move this Court seeking any extension. It was recorded therein that in the event of any fresh proceeding being taken out by the Petitioner pursuant to the GR dated 29th October, 2020, the same shall be decided strictly on merits and all contentions of the parties were kept open.

43. On 18th December, 2020 Respondent No.2 asked Petitioner to attend the hearing on 28th December, 2020 and explain the points raised by Petitioner in his reply dated 15th November, 2019. It is submitted on behalf of Petitioner that no explanation was sought from Petitioner as to why NOC issued on 1st February, 2013 and 18th August, 2016 cannot be cancelled.

44. It is submitted that even at the hearing before the Commissioner on 28th December, 2020 no query with respect to the cancellation of the NOCs was raised.

45. By order dated 15th January, 2021, Respondent-Solapur Municipal Corporation cancelled the NOCs dated 29th January, 2013 and 10th August, 2016 issued by Respondent No.2. Notice under Section 478 was also held to be proper. The said order is quoted as under:-

“

File No.SMC-24011(21)/43/2021-SMC-CITY ENGINEER

Gm - X

186

सोलापूर महानगरपालिका, सोलापूर.
सहा. संचालक, नगररचना यांचे कार्यालय, सोलापूर.
सिध्देश्वर कारखाना चिमणी Speaking Order/ दि. 10/01/2021

विषय :- श्री. सिध्देश्वर सहकारी साखर कारखाना होंटगी रोड, मर्जे
नं.21/4 व 21/5 कुमटे, सोलापूर येथील को-जनरेशन चिमणी
पाडकामाबाबत.

संदर्भ :- 1) श्री. सिध्देश्वर सहकारी साखर कारखाना यांचे
दि.25/12/2012 रोजीचे आयुक्त सोलापूर महानगरपालिका यांना
उद्देशीत कारखान्याचे विस्तारी करण्याकरीता ना-हरकत दाखला
मिळणेबाबतचा विनंती अर्ज.

2) नगर अभियंता, विभागाकडून कार्यकारी संचालक, सिध्देश्वर
सहकारी कारखाना जा.क्र.न.अ. वा.प.419,
दि.01/02/2013 अन्वये श्री. सिध्देश्वर सहकारी साखर कारखान्याम
शर्ती व अटीस आधीन राहून दिलेले ना-हरकत पत्र.

3) स्टेशन इनचार्ज एअरपोर्ट एंथॉरिटी ऑफ इंडिया एअरपोर्ट,
सोलापूर यांनी
क्र.ए.ए.आय./एम.ओ.एल/ए.पी.सी./ऑव्स्टेकल/2013-14/12-
13/18/02/2014 दि.18/2/2014 अन्वये जिल्हाधिकारी,
सोलापूर यांना विमान उडानामध्ये चिमणीचे अडथळा होत
असल्याने व एअरपोर्ट एंथॉरिटीचे मान्यता न घेता चिमणीचे काम
केल्याने ते थांबविण्याबाबत दिलेले पत्र.

4) कार्यकारी संचालक श्री. सिध्देश्वर साखर कारखाना लि., कुमटे
यांना नोटीस क्र.6496
दि.24/2/2014 अन्वये बी.पी.एम.सी.एक्ट 1949 चे कलम
478 नुसार देण्यात आलेली नोटीस.

5) प्रभारी कार्यकारी संचालक, श्री. सिध्देश्वर सहकारी साखर
कारखाना लि., कुमटे यांचे दि.8/8/2016 रोजीचे आयुक्त, सोलापूर
यांना उद्देशून, उद्देशीत कारखान्यास वीज निर्मिती प्रकल्पासाठी व
गालप क्षमता विस्तारीत करण्यासाठी ना-हरकत दाखला
मिळण्याबाबत प्रमाणपत्र.

6) नगर अभियंता, विभागाकडून कार्यकारी संचालक, सिध्देश्वर

187

- महकारी कारखाना जा.क्र.न.अ.वा.प.398,
दि.10/08/2016 अन्वये श्री. मिथेश्वर सहकारी साखर कारखान्यास
शर्ती व अटीस आधीन राहून दिलेले ना-हसकत पत्र,
7) भारतीय विमान पतन प्राधिकरण याचेकडील No
Objection Certificate for Height Clearance
दि.17/2/2017,
8) मा.अवर सचिव, महाराष्ट्र शासन, सामान्य प्रशासन विभाग
यांचे जिल्हाधिकारी यात उद्देशित दि.15/03/2017 व
दि.19/07/2017 चे पत्र,
9) श्री. मिथेश्वर सहकारी साखर कारखाना यांच्याकडून
दि.12/4/2017 नुसार बांधकाम परवानगी मागणी अर्ज व
नकाशा.
10) कार्यकारी संचालक, श्री. मिथेश्वर सहकारी साखर कारखाना
यांना जा.क्र.न.अ.वा.प.54, दि.6/5/2017 व
नुसार दिलेले उत्तर,
दि.25/7/2017
11) श्री. मिथेश्वर सहकारी साखर कारखाना चेअग्रमन व कार्यकारी
संचालक यांनी दि.11/8/2017 नुसार दिलेले हमीपत्र,
12) महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये
नोटीस क्र. 347 दि.11/11/2019 अन्वये चेअग्रमन व
संचालक श्री.मिथेश्वर सहकारी साखर कारखाना,
दिलेली नोटीस,
13) महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये
नोटीस क्र. 347 दि.11/11/2019 अन्वये कारखान्यास
नोटीसीबाबत कारखान्याला त्यांचे म्हणणे
कार्यकारी
कुमठे यांना
दिलेल्या
मांडण्याकरीता
सुनवणीकामी हजर राहणेकरीता पत्र क्र.137,
दि.18/12/2020 अन्वये कळविले.
14) दि.28/12/2020 रोजी आयुक्त यांच्या समोर चेअग्रमन व
कार्यकारी संचालक श्री. मिथेश्वर सहकारी साखर कारखाना
यांच्या उपस्थित झालेली सुनवणी.
15) मा.उच्च न्यायालयात म.न.पा.विरुद्ध रिट पिटीशन (ST)
क्र.29268/2019 दाखल केले होते. यात मा. उच्च न्यायालयाचे

188

दि.21/12/2020 चे आदेश.

वाचा क्र.1 व 2 :- ज्या अर्शी वेअरमन व कार्यकारी संचालक मिश्रेश्वर साखर कारखाना यांनी आयुक्त, सोलापूर महानगरपालिका यांना उद्देशून कारखान्यास वीज निर्मिती प्रकल्पासाठी व गालप क्षमता विस्तारीत करण्यासाठी ना-हरकत दाखला मिळण्याबाबत दि.25/12/2012 व दि.8/8/2016 रोजी विनंती अर्ज सादर केला होता सदर अर्जास अनुसरून नगर अभियंता, विभागाकडून जा.क्र.न.अ.वा.प.419, दि.01/02/2013, क्र.398 व दि.18/8/2016 अन्वये शर्ती व अटीत आधीन राहून ना-हरकत प्रमाणपत्र देण्यात आले. सदर शर्ती व अटी खालीलप्रमाणे आहेत.

1. या प्रकल्पाच्या उभारणीसाठी त्यास अनुषंगीक सर्व कापडे व नियम यांचे कसोटीने पालन केले जाईल.
2. विविध सरकारी सोलापूर महानगरपालिकेकडून प्रकल्प संबंधात आवश्यक असणाऱ्या सर्व परवानगी व मंजूरी घेतल्या जातील.

वाचा क्र.3 :- ज्या अर्शी नेशन इन्चार्ज एअरपोर्ट एंथॉरिटी ऑफ इंडिया एअरपोर्ट, सोलापूर यांनी क्र.ए.ए.आय./एम.ओ.एल/ए.पी.सी./ऑबस्टेकल/2013-14/12-13/18/02/2014, दि.18/2/2014 अन्वये जिल्हाधिकारी, सोलापूर यांना विमान उडायामध्ये चिमणीचे अडथळा होत असल्याने व एअरपोर्ट एंथॉरिटीचे मान्यता न देता चिमणीचे काम चालू असल्याने सदरचे काम तात्काळ थांबविण्यात यावे व चिमणी निष्काशीत करावी असे कळविले.

वाचा क्र.4 :- नगर अभियंता विभागाकडून स्वळ पाहणी करून सदर जागेतील विनापरवाना केलेल्या बांधकामास कार्यकारी संचालक श्री. मिश्रेश्वर साखर कारखाना लि., कुमटे यांना क्र.6496 दि.24/2/2014 अन्वये वी.पी.एम.सी.एक्ट 1949 चे कलम 478 अन्वये नोटीस देण्यात आली.

उपरोक्त नोटीसीबाबत म्हणणे मांडण्याकरीता कार्यकारी संचालक श्री. मिश्रेश्वर साखर कारखाना यांनी दि.3/3/2014 रोजी अर्ज देवून महानगरपालिकेने दि.24/2/2014 रोजीच्या नोटीसीमध्ये नमूद केलेली 7 दिवसाची मुदती ऐवजी म्हणणे मांडण्याकरीता 90 दिवसांची मुदत वाढवून द्यावे अशी विनंती केली. त्यानुसार कारखान्यास 30 दिवसांची मुदत देण्यात आली.

File NO.SMC-24011(27/43/2021-SMC-CITY ENGINEER

181

आणि ज्या अर्थी जिल्हाधिकारी, सोलापूर यांनी कारखान्यास सोलापूर महानगरपालिकेकडून देण्यात आलेले मुं. प्रा.महाअधिनियम 1949 चे कलम 478 अन्वये दिलेली नोटीसीनुसार कोणतीच कारवाई झाल्याचे दिसून येत नाही व मा. विभागीय आयुक्त, पुणे विभाग पुणे यांनी दि.30/7/2016 रोजीच्या दोऱ्याच्यावेळी प्रस्तुत विमणी तात्काळ कारवाई करण्यास सूचना दिलेली आहेत. तरी मुं.प्रा.अधिनियम 1949 चे कलम 478(2) अन्वये कारवाई पूर्ण करून त्याचा अहवाल सादर करणेबाबत कळविले.

आणि ज्या अर्थी अवर सचिव सामान्य प्रशासन, महाराष्ट्र यांनी त्यांचेकडे पत्र क्र.एम.ए.डी.सी-2012/प्र.क्र.449/28 अ, दि.15/3/2017 अन्वये जिल्हाधिकारी, सोलापूर यांना उद्देशून केंद्र शासनाच्या रिजीनल कनेक्टिव्हिटीमध्ये पहिल्या टप्प्यात राज्यातील 10 विमानतळांचा समीक्ष करण्यात आले आहे. त्यामध्ये सोलापूर (होठगी) या विमानतळाचा समावेश सदर विमानतळ भारतीय विमान पतन प्राधिकरणाकडे हस्तांतरीत कराव्याची आहे. तयारी विमानतळ नजीक असलेल्या साखर कारखान्याचा चिमणीचा (धुरादे) विमान उड्डाणामध्ये अडथळा येत असल्याने सदर कारखान्याची चिमणी (धुरादे) हटविण्याबाबत राज्यशासनाने धोरणात्मक निर्णय घेतलेला आहे. सद्य मंदरची चिमणी हटविण्याबाबत तीन महिन्यांच्या आत कार्यवाही करावे व याबाबतचा अहवाल सादर करावा असे कळविले होते.

उपरोक्त प्रमाणे कार्यवाही करण्याबाबत मा. जिल्हाधिकारी, सोलापूर यांनी पत्र क्र.1629 दि.6/4/2017 अन्वये आयुक्त महानगरपालिका यांना कळविलेले आहे.

आणि ज्या अर्थी कार्यकारी संचालक श्री. सिध्देश्वर साखर कारखाना यांना दि.12/4/2017 अन्वये महाराष्ट्र प्रादेशिक व नगर रचना अधिनियम 1966 चे कलम 44,45,58 व 59 आणि मुं.प्रा. अधिनियम 1949 चे कलम 253 व 254 अन्वये बांधकाम परवानगी करीता प्रस्ताव सादर केलेला होता.

सदर प्रस्तावास अनुसरून खालील कारणांस्तव चिमणी अनुज्ञेय होत नसल्याबाबतचे पत्र क्र.54, दि.6/5/2017 अन्वये श्री. सिध्देश्वर महाकरी साखर कारखान्यास कळविले आहे.

1. अवर सचिव सामान्य प्रशासन विभाग यांचे दि.15/3/2017 चे पत्रानुसार

File No.SMC-24011(27/043/2021-SMC-LIFT ENGINEER

190

1

Regional Connectivity मध्ये सोलापूर हौटली विमानतळाचा समाविष्ट करण्यात आलेले आहे व विमानतळ नजीक असल्याने मिधेश्वर सहकारी साखर कारखाना विमणी हटविण्याबाबत राज्यशासनाने धोरणात्मक निर्णय घेतलेला आहे.

2. एअरपोर्ट ऑथोरिटी इने इंडिया यांच्याकडून दि.17/2/2017 नुसार दिलेल्या वा-हुरकत दाखल्यामध्ये विमणीची उंची 493.96 वजा 463 (Permissible top Elevation - site Elevation) - 30.96 मीटर इतकी अनुज्ञेय होत आहे. श्री. मिधेश्वर सहकारी परंतु प्रस्तावात विद्यमान विमणीची बांधकामात आहे त्यामुळे विमणीची बांधकाम अनुज्ञेय होवू शकत नाही.
3. सुधारित संजूर विकास आरव्हयप्रमाणे औद्योगिक विभागात समाविष्ट आहे व ते पूर्वेस 60 मीटर रुंदीच्या रस्त्याने व भुखंडातून दक्षिणेकडून 9.00 मीटर रेषा रस्त्याने व त्यास लागून सर्वत्र 30 मीटर रुंदीच्या रस्त्याने बांधित होत आहे. सदर भुखंडामध्ये श्री. मिधेश्वर शुगर फॅक्टरी असे नमूद आहे.
4. उक्त भुखंड हा गेट हायवे सन्मुख असल्याने संबंधीत तसेच जरूर त्या खात्याची प्लान ओ.सी., त्याप्रमाणे प्रस्तावित कामासाठी नियमाप्रमाणे आवश्यक असलेली ता-हुरकत असलेले दाखले आवश्यक आहे.
5. उपरोक्त ठिकाणी प्रस्तावित प्रमाणे विकास परवानगी द्यायची झाल्यास मा. शासनाचे तसेच संबंधीत खाते यांचे निर्णयानुसार परवानगी देणे आवश्यक ठरते.
6. वर नमूद जमीनीच्या नियमानुसार विकसन परवाना अभिन्यास घेणे आवश्यक आहे.

वरीलप्रमाणे जुटी असल्याने बांधकाम परवानगी देता येत नाही असे कळविण्यात आले.

तदनंतर मिधेश्वर कारखान्याकडून दि.13/7/2017 नुसार पत्र देवून बांधकाम परवानगी मिळणेबाबत विनंती अर्ज मादर केला होता. तथापी वर नमूद कारणांस्तव परवानगी देत नमल्याबाबत कळविले आहे. तथापी कारखान्यास पत्र क्र.1306, दि.25/7/2017 अन्वये परवानगी देता येत नमल्याबाबत पुनः कळविण्यात आले.

तसेच मिधेश्वर सहकारी साखर कारखाना यांनी कारखान्याची विमणी पाडण्यात येवू तसे चाकरीता वेगवेगळ्या न्यायालयात खालील नमूद केल्याप्रमाणे दावे दाखल केले होते सदरने दावे व मा. न्यायालयाने फेटाळलेले आहेत.

File No.SMC-24011(27/143/2021-SMC-CITY ENGINEER

191

तसेच सदरचे विमणीबाबत मा. डेप्युटी डायरेक्टर जनरल ऑफ मिन्हील एन्व्हीएशन ऍंथोरिटी यांनी दि.24/8/2019 अन्वये आदेश पारित करून विमणीची उंची 498.4 AMSL पर्यंत म्हणजेच 30 मीटर पर्यंत कमी करणेबाबत अंतिम आदेश पारित केलेले होते व तसेच आपण सदर आदेशाविरुद्धात मा. डायरेक्टर मिन्हील एन्व्हीएशन ऍंथोरिटी यांचेकडे अपील केलेला होता सदर अपीलावर मा. डायरेक्टर ऑफ मिन्हील एन्व्हीएशन यांनी दि.3/12/2019 अन्वये आदेश पारित करून मा. डायरेक्टर ऑफ मिन्हील एन्व्हीएशन ऍंथोरिटी यांनी दि.24/8/2019 अन्वये दिलेले आदेश अंतिम केलेले आहेत त्याअर्धी आपण विमणीची उंची कमी करणेबाबत कार्यवाही करणे आवश्यक होते परंतु आपण याप्रमाणे कार्यवाही केलेले नाही.

उपरोक्त न्यायालयीन निर्णय व मा. शामन व जिल्हाधिकारी, सोलापूर यांनी वेळोवेळी कळविल्यानुसार सदरची विमणी पाडकामाकरीता सोलापूर महानगरपालिकेकडून निविदा मागवून व निविदा तिथितीनंतर विमणी पाडकामाचे नियोजन करून दि.11/8/2017 रोजी मतेदारी "विहान कन्स्ट्रक्शन्स" यांचे मजूर व मशिनरी तसेच म.न.पा. शासकीय नियंत्रणेसह पाडकामाकरीता गेले अगता सदर ठिकाणी कामगारांची विरोध व डनर बाबी यामुळे पाडकाम होवू शकला नाही. परंतु सदर पाडकामास विरोध करणाऱ्यांबाबत एन.आर.डी,पोलीस ठाणे व्हेटे एफ.आय,आर नोंदविण्यात आले.

गवेलेम कारखान्याचे चेअरमन व कार्यकारी संचालक यांनी दि.11/11/2017 पूर्वी सर्व नियमांचे पालन करून व विमान उठाणाम अडथळा होणार नाही अशा रितीने कारखान्याने बांधण्यात आलेले विमणीचे पर्दाची व्यवस्था करित आहे असे हमीपत्र लिहून दिले. तथापी आजतागायत कारखान्याने हमीपत्राप्रमाणे कार्यवाही केलेली नाही.

तदंतर महानगरपालिकेकडून महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये क्र 347 दि.11/11/2019 अन्वये अनाधिकृत विनापरवाना बांधकाम निष्कासनाबाबत नोटीस देण्यात आली. सदर नोटीसीच्या विरोधात माध्य कारखान्याने मा.उच्च न्यायालयात म.न.पा.विरुद्ध रिट पिटीशन (ST) क्र.29268/2019 दाखल केले होते.

दरम्यान उपरोक्त नोटीसी अनुषंगाने चेअरमन व कार्यकारी संचालक सिध्देश्वर महाकरी माध्य कारखाना यांना त्यांचे म्हणणे मांडण्याकरीता क्र.137

FILE NO.SMC-24033(27/04/2021-SMC-CITY ENGINEER

192

दि.18/12/2020 रोजी पत्र देवून दि.28/12/2020 रोजी मुनावणी करिता उपस्थित राहणेबाबत कळविण्यात आले होते.

दि.28/12/2020 रोजी दुपारी 12.00 वाजता मा. आयुक्त यांच्या दालनात मुनावणी झाली. सदर मुनावणी करिता श्री. धर्मराज काडगी नेअरमन मिधेश्वर सहकारी माखर कारखाना व कार्यकारी मंचालकश्री. समीर मलगर हे उपस्थित होते.

सदर मुनावणीत आयुक्त यांनी, श्री. सिधेश्वर सहकारी माखर कारखान्यास एअरपोर्ट ऑयॅरिटी ऑफ इंडिया यांनी दि.3/12/2019 रोजी आदेश देवून सदर चिमणीची उंची कमी करण्याचे आदेश देवूनही आपण अद्याप कोणतीच कार्यवाही का केली नाही ? याबाबत विचारणा केली त्यावर नेअरमन व कार्यकारी मंचालक मिधेश्वर सहकारी माखर कारखाना यांनी खालील प्रमाणे समक्षतेत मुद्दे उपस्थित केले.

1. मिधेश्वर सहकारी माखर कारखाना गळीत हंगाम चालू आहे त्यावर को-जनेरेशन वर्क प्लॉट व कारखाना प्लॅट वेगवेगळे नाहीत सदर चिमणी पाडल्यास माखर कारखाना बंद होऊ शकतो.
2. होटगी विमानतळासाठी रनवे क्र.15 व रनवे क्र.33 असे 2 रनवे आहेत. किंगफिशर विमानाने रनवे 15 चे वापर केला होता. रनवे क्र.15 वरून उड्डाण केल्यास चिमणीचा अडथळा होत नाही. याप्रमाणे आम्ही एअरपोर्ट ऑयॅरिटी ऑफ इंडिया यांच्याकडे म्हणणे मांडणार असून चिमणी करिता ना-हुरकल प्रमाणपत्र मिळणेबाबत पुनश्च विनंती करणार आहोत. तसेच मध्या कारखान्याचे गळप चालू असून ते माहे एप्रिल अखेर चालणार असल्याने तो पर्यंत चिमणीचे पाडकाम करण्यात येवू नये.
3. आमच्या कारखान्याची चिमणी वाहतुकीस अडथळा आहे ? परंतु हेतुःपुरसर आमच्या चिमणी बाबतचा कार्यवाही चालू आहे.
4. आमचा कारखाना 1971 मध्ये सुरू केले असून होटगी विमानतळ 1986 मानी सुरुवात झालेली आहे.
5. होटगी विमानतळासाठी 550 हेक्टर जमीन खरेदी केली असून शासनाने 2019 मध्ये 42 कोटी रुपये अनुदान दिलेले आहे. तसेच 2013 चा जी.आर. पहावा सदरचा जी.आर. Self Explainnatory आहे. असे मांगून आपण याबाबत मोचन आणलेले लेखी म्हणणेही मादर केले होते.

FILE NO.SMC-24011(21)/43/2021-SMC-CITY ENGINEER

193

दरम्यान कारखान्याम मोलापूर महानगरपालिकेकडून महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये क्र 347 दि.11/11/2019 अन्वये अनाधिकृत विनापरवाना बांधकाम निष्कासनाबाबत नोटीस देण्यात आलेल्या नोटीसीवर कारखान्याने मा.उच्च न्यायालयात म.न.पा.विरुद्ध रिट पिटीशन (ST) क्र.29268/2019 दाखल केले होते. त्यामध्ये मा. उच्च न्यायालयाने महाराष्ट्र महानगरपालिका अधिनियम 1949 चे कलम 478 नुसार देण्यात आलेले नोटीस, त्यावर आपणांस आपल्याला म्हणणे मांडण्याकरीता मंथी देण्यात आलेली होती त्यानुसार दि.28/12/2020 रोजी आपण मुनावणीत उपस्थित राहून सादर केलेले आपले म्हणणे ग्राह्य धरता येत नसल्याने फेटाळण्यात येत आहे.

ज्याअर्थी मा. सर्वोच्च न्यायालयातील एम.एल.पी. 30/415/2018 यामध्ये दिलेले निर्णय व त्याआधारे मा. डेप्युटी डायरेक्टर ऑफ सिव्हील एन्जीनियरिंग, एअरपोर्ट एंथॉरिटी ऑफ इंडीया (ए.ए.आय.) यांनी क्र.ए.व्ही.20025/05/17-ए.एल.दि.24/8/2019 अन्वये दिलेल्या अंतिम आदेश मा. डायरेक्टर एअरपोर्ट एंथॉरिटी ऑफ इंडीया यांनी दि.3/12/2019 अन्वये डेप्युटी डायरेक्टर यांना निर्णय अंतिम केला आहे.

ज्याअर्थी मोलापूर महानगरपालिकेकडून आपणांस महानगरपालिकेकडून महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये क्र 347 दि.11/11/2019 अन्वये अनाधिकृत विनापरवाना बांधकाम निष्कासनाबाबत नोटीस आणि त्यावर आपणांस आपल्याला म्हणणे मांडण्याकरीता मंथी देण्यात आलेली होती त्यानुसार दि.28/12/2020 रोजी आपण मुनावणीत उपस्थित राहून सादर केलेले आपले म्हणणे फेटाळण्यात येत आहे.

तसेच ज्याअर्थी आपणांस देण्यात महानगरपालिकेकडून महाराष्ट्र महानगरपालिका अधिनियमातील कलम 478 अन्वये क्र 347 दि.11/11/2019 रोजी विनापरवाना अनाधिकृत चिमणी पाडकामाबाबत दिलेल्या नोटीसीवर आपण मा.उच्च न्यायालयात म.न.पा.विरुद्ध रिट पिटीशन (ST) क्र.29268/2019 दाखल केले होते. त्यामध्ये मा. उच्च न्यायालयाने दि.21/12/2020 रोजी चिमणी पाडकामाकरीता 4 आठवड्याची स्थगिती आदेश दिलेले आहे. मा. उच्च न्यायालयाने दिलेले स्थगिती आदेश दि.18/01/2021 रोजी संपत आहे त्याअर्थी खालीलप्रमाणे आदेश पारित करण्यात येत आहे.

194

आदेश

1. नगर अभियंता, विभागाकडून जा.क्र.न.अ.बा.प.419, दि.01/02/2013, क्र.398 व दि.18/8/2016 अन्वये महानगरपालिकेकडून देण्यात आलेले तत्त्वतः हरकत नसलेबाबत दिलेले ना-हरकत प्रमाणपत्र हे अस्पष्ट असून प्रमाणपत्रातील शर्ती व अटीची आपण आजतागायत पूर्तता केलेली नाही त्यामुळे सदरचे ना-हरकत प्रमाणपत्र रद्द करण्यात येत आहे.
2. तसेच उपरोक्त सर्व बाबी विचारात घेता, सदर ठिकाणी केलेले विनापरवाना चिमणीचे बांधकाम हे अनाधिकृत ठरत आहेत. तरी आपण सदरचे विनापरवाना अनाधिकृत चिमणीचे बांधकाम दि.22/01/2021 अखेरपर्यंत स्वतःहून निष्काशीत करावे अन्यथा दि.23/01/2021 नंतर महाराष्ट्र महानगरपालिका अधिनियम 1949 चे कलम 478(2) नुसार विनापरवाना करण्यात आलेले चिमणीचे बांधकाम निष्काशीत करणेची कार्यवाही सोलापूर महानगरपालिकेकडून करण्यात येईल व सदर कामी यापूर्वी आलेला, आता येणारा खर्च व याकरीता 3% सुपरव्हीजन चार्जेस आपल्याकडून वसूल करण्यात येईल.

Digitally signed by P.SIVASANKAR
 Date: Fri Jan 15 17:17:23 IS
 Reason: Approved

सोलापूर

प्रति,
 चेअरमन व कार्यकारी संचालक,
 श्री. सिद्धेश्वर सहकारी साखर कारखाना लि., कुमठे,
 सोलापूर, पोस्ट टिकेकरवाडी, ता. उत्तर सोलापूर, जि. सोलापूर
 दुरध्वनी क्र.0217-2601543.
 ई-मेल-siddheshwarsugar@yahoo.com.

TRUE COPY
 ADVOCATE

46. On 27th January, 2021, Petitioner once again made an application to the Secretary, Urban Development Department of the State seeking stay of notice dated 11th November, 2019.

47. Vide communication dated 11th February, 2021, the Under Secretary, Urban Development Department, State of Maharashtra directed the Respondent – Corporation not to demolish the chimney and to wait until the receipt of opinion from the Law and Justice Department.

48. On 16th November, 2021 the Respondent No.2 Under Secretary, Urban Development Department, State of Maharashtra directed the Respondent – Corporation to take immediate action of demolition of the chimney as per law.

49. Thereafter, on 17th November, 2021 the Assistant Director, Town Planning, Solapur Municipal Corporation being Respondent No.4, directed Petitioner to demolish the said chimney within a period of 7 days, failing which the demolition would be carried out by the Respondent-Corporation and the expenses would be recovered from Petitioner. The said notice is quoted as under:-

“

Exh C.C
244

सोलापूर महानगरपालिका, सोलापूर.
सहायक संचालक, नगररचना यांचे कार्यालय, सोलापूर.

ज.क्र. - ससंनर/नर/ 9994

प्रातः,
चेअरमन व कार्यकारी संचालक
श्री. सिधेश्वर सहकारी साखर कारखाना लिमिटेड
कुमठे, ता. उत्तर सोलापूर,
जिल्हा सोलापूर
भो.क्र. ०२१७ २६०१५४३
ई-मेल आयडी- sidheshwarsugar@yahoo.com

दि. १५-०९-२०२१

विषय:- सिधेश्वर सहकारी साखर कारखाना होटंगी रोड स.नं. २१/४ व २१/५, कुमठे
सोलापूर येथील को जनरेशन वॉक चिमणी पाडकामाबाबत.

संदर्भ :- अवर सचिव महाराष्ट्र शासन यांचेकडील क्र. टी.पी.एस -
१७१९/२२३७/प्रक्र.२१६/१९/नवि.३ दि. १६/११/२०२१ चे पत्र.

सोलापूर महानगरपालिकेकडून सिधेश्वर सहकारी साखर कारखाना को जनरेशन वॉक चिमणी
पाडकामाबाबतची टेंडर प्रक्रिया पूर्ण केलेली असून मन्तेदार यांना सदर पाडकामाची वॉक आर्डर दि.
०८/०९/२०२१ नुसार देण्यात आलेली आहे.

प्रकरणी सदरमोन्वये अवर सचिव महाराष्ट्र शासन यांचे पत्र प्राप्त झाले असून प्रस्तुत प्रकरणी विहीत
नाग्रालयाचे आदेश ऐकर फॉर्ट अंधोरीटी यांनी वेळोवेळी पारित केलेले आदेश विचारले घेऊन सोलापूर
महानगरपालिकेन सदर कारखान्याची बेकायदेशीर चिमणी पाडकामाबाबत नियमानुसार आवश्यक कारवाई त्वरित
करावी असे कळविले आहे. ना आयुक्त, महोदय सो.म.पा यांची सर्व कामकाजावर देखरेख असल्याने त्यांनी
दिलेल्या आदेशानुसार कार्यवाही करण्यात येत आहे.

सर्वी आपणास कळविण्यात येते की, सदर नोंदीस निव्वाल्यापासून ०७ दिवसांच्या आत सदर चिमणी
आपण स्वतःहून निष्काषित करावी व आपण सदर चिमणी विहित मुदतीत पाडकाम नाही केल्यास सदर
चिमणी निष्कासन/पाडकाम कारवाई सोलापूर महानगरपालिकेमार्फत करण्यात येईल व त्यासाठी मन्तेदार यांना
दयावा लागणारा खर्च आपणाकडून व त्यावरील सुपरव्हजन चार्जेस आपणाकडून वसूल करण्यात येतील. याची
नोंद घ्यावी.

M. J. Gadgil
7.11.21

सहा. संचालक नगर रचना
सोलापूर महानगरपालिका, सोलापूर

- स्त. 1) मा. जिल्हाधिकारी सोलापूर यांना माहितीस्वरुप सादर
2) विमानतळ व्यवस्थापक भारतीय विमानपत्तन होटंगी रोड, सोलापूर यांना माहितीस्वरुप सादर
3) विभाग प्रमुख, अतिक्रमण विभाग, सो.म.पा यांना माहितीस्वरुप सादर व पुढील कार्यवाहीस्वरुप सादर
4) मन्तेदार विनियार्थ कॉन्टेक्ट पालि बेगलोर यांना माहितीस्वरुप व पुढील कार्यवाहीस्वरुप सादर

50. It is submitted that the order dated 16th November, 2021 passed by Respondent No.1 directing demolition and vacating the stay was without any hearing to Petitioner.

51. Aggrieved by the aforesaid, Petitioner filed Writ Petition No. 7872 of 2021 on 22nd November, 2021 challenging (i) the order dated

15th January, 2021 issued by the Respondent No. 1 cancelling the NOC dated 29th January, 2013 and 10th August, 2016 issued by the Respondent No. 2- City Engineer, Solapur Municipal Corporation, and (ii) Notice dated 17th November, 2021 issued by the Respondent No. 3- City Engineer, Solapur Municipal Corporation directing Petitioner to demolish the said chimney within a period of 7 days.

52. In Writ Petition No. 9446 of 2021, the order 3rd December, 2019 passed by the DGCA, order dated 10th August, 2018 passed by the Airport Incharge and order dated 24th August, 2019 passed by Dy. DGCA have been challenged seeking the following reliefs:-

“(a) Call for the relevant records and proceedings and after going into the legality of the same quash and set aside the impugned Order dated 3rd December, 2019 passed by the Respondent No.2 -the Director General of Civil Aviation, Government of India in Appeal under section 6A of the Aircraft (Demolition of Obstructions caused by Buildings and Trees etc.) Rules, 1994 arising out of the Orders dated 10th October 2018 passed by the Respondent No.4 - Airport In-Charge, Airport Authority of India, Solapur Airport, Order dated 24th August, 2019 passed by the Respondent No.3- Deputy Director General of Civil Aviation, Government of India and declare the entire process as illegal, null and void;

(b) Pending the hearing and final disposal of this Petition, the operation and/or execution and/or implementation of the impugned Orders dated 10th October, 2018 passed by the Respondent No.4 - Airport In-charge, Airport Authority of India, Solapur Airport, Order dated 24th August, 2019 passed by the Respondent No.3-Deputy

Director General of Civil Aviation, Government of India and Order dated 3rd December, 2019 passed by the Respondent No. 2 – the Director General of Civil Aviation, Government of India in Appeal under section 6A of the Aircraft (Demolition of Obstructions caused by Buildings and Trees etc.) Rules, 1994 by stayed”

53. In Writ Petition No. 7872 of 2021 the order dated 15th January, 2021 of the Solapur Municipal Corporation and order dated 16th November, 2021 of the State Government and order / letter dated 17th November, 2021 of the Solapur Municipal Commissioner are challenged for the following reliefs:-

“(a) Rule be issued;

(b) issue a writ of certiorari or writ in the nature of certiorari or any other writ, order or direction quashing and setting aside said impugned Order dated 15th January, 2021 issued by the Respondent No.1, thereby cancelling the No Objection Certificates dated 29th January 2013 and 10th August 2016 issued by the Respondent No. 2 – City Engineer, Solapur Municipal Corporation in favour of the Petitioner;

(c) issue a writ of certiorari or writ in the nature of certiorari or any other writ, order or direction quashing and setting aside said impugned Notice dated 17th November 2021 issued by the Respondent No. 3, thereby directing the Petitioner to demolish the said Chimney within the period of 7 days from receiving the said notice;”

54. The abovesaid orders dated 15th January, 2021 are collectively referred to as the “impugned orders”.

55. Mr. Sakhre, learned Senior Counsel on behalf of Petitioner in both the Petitions submits that the impugned orders are bad in law. He would submit that his arguments in support of the Petitions would revolve around the following areas:-

- (i) Breach Of The Principles Of Natural Justice
- (ii) Permissions Already Obtained
- (iii) Earlier Decisions Of This Court Not Binding
- (iv) No Obstacle By Petitioner's Third Chimney
- (v) Discrimination By Grant Of Noc To Ntpc Chimney
- (vi) New Airport At Boramani
- (vii) Adverse Financial Implications On Petitioner
- (viii) Hardship

BREACH OF THE PRINCIPLES OF NATURAL JUSTICE

55.1. Assailing the impugned order dated 3 December 2019 passed by Respondent No. 2- Director General of Civil Aviation, arising out of orders dated 10 October 2018 passed by Respondent No. 4-Airport In-Charge and order dated 24 August 2019 passed by Respondent No.3- Deputy Director General of Civil Aviation, as well as notice dated 17 November 2021 issued by the Respondent No.3-The City Engineer, directing Petitioner to demolish the said chimney within a period of 7 days from its receipt and with respect to the order dated 15th January 2021 issued by the Respondent Corporation cancelling the NOCs, dated 29th January 2013 and 10th August 2016 issued by the Respondent No.2 in favour of Petitioner, Mr Sakhare, learned Senior

Counsel for Petitioner would submit that the impugned order dated 3rd December, 2019, is a complete non application of mind, does not disclose any reasons while being completely discriminatory against Petitioner. He would submit that the concerned Respondents have failed to appreciate that the obstacle survey conducted in the year 2017 by the Airports Authority of India has not been supplied to Petitioner nor has the said survey report been brought on record. He would further submit that no physical verification of the chimney was carried out by the Airport Authority as no physical verification report was provided to Petitioner. He also submits that none of the arguments made on behalf of Petitioners have been considered by the Respondent -Authority nor the same have been dealt with in the said order. He would therefore submit that there has been a clear breach of the principles of natural justice and on this ground alone, the impugned notices/orders be quashed and the petitions be allowed. He relies upon the decisions in the case of (i) **Assistant Commissioner, Commercial Tax Department Works Contract and Licensing Kota v. Shukla and Brothers [(2010) 4 SCC 785]** and (ii) **Kranti Associates Private Ltd. And Anr v. Masood Ahmed Khan and Ors. [(2010) 9 SCC 498]**

PERMISSIONS ALREADY OBTAINED

55.2. Learned Senior Counsel submits that Petitioner has obtained permission in respect of the subject chimney vide NOC dated 17th February, 2017, which is valid until 16th February, 2024. He submits that apart from that Petitioner already has the NOC dated 10th August, 2016 from Respondent-Corporation as well as permission from the MPCB dated 28th January, 2014, from the sugar Commissioner, Pune dated 7th May, 2013 and as such the construction of the subject chimney is lawful. He submits that earlier the NOC from the Municipal Corporation was dated 29th January, 2013, the construction had commenced in the year 2013 and completed in the year 2017-18 and in 2014 itself Petitioner had applied for NOC from the Airport Authority which, as mentioned above was granted on 17th February, 2017. On 7th March, 2017, Petitioner had requested for reconsideration the height clearance but despite persistent efforts and correspondence the same did not come through and an Appeal was filed on 28th July, 2017 to the DDGCA which after the order of the Hon'ble Supreme Court came to be decided by final order dated 24th August, 2019. He submits that in view of the said final order, the Hon'ble Supreme Court vide order dated 29th August, 2019 had

observed that the High Court decision dated 6th August, 2018 had become redundant. He submits that aggrieved by the final order dated 24th August, 2019, Appeal was filed before the DGCA which has summarily dismissed the Appeal of Petitioner without giving any reasons and confirmed the order of demolition dated 24th August, 2019. He submits that despite approvals granted by the authorities, the Respondents are seeking to unlawfully demolish Petitioner's third chimney.

EARLIER DECISIONS OF THIS COURT NOT BINDING

55.3. With respect to the decision of this Court dated 6th August, 2018 in Writ Petition No. 5253 of 2017 dismissing Petitioner's Petition, learned Senior Counsel would submit that, in view of the decision of the Hon'ble Supreme Court dated 29th August, 2019, the same cannot be looked into as the same has become redundant and in that sense the decision of the Bombay High Court cannot be said to be binding for the purposes of the challenge in these Petitions. Coming to the decision dated 21st December, 2020 of this Court in Writ Petition Stamp No. 29268 of 2019, learned Senior Counsel would submit that the same was withdrawn in view of the Government Resolution dated 29th October, 2020 to take out appropriate proceedings and therefore,

the same cannot be treated as a binding precedent.

NO OBSTACLE BY PETITIONER'S THIRD CHIMNEY

55.4. Learned Senior Counsel also submits that the Respondent-Airport Authority failed to appreciate that in the last few years i.e. in the year 2016 - 2017 and 2018 - 2019, flights safely landed and departed at Solapur report without causing obstacles interfering the obstacle limitation surfaces (OLS). He would submit that the apprehension of the Airport Authority is unfounded and without any basis.

DISCRIMINATION BY GRANT OF NOC TO NTPC CHIMNEY

55.5. Learned Senior Counsel refers to the approval granted by the Airport Authority, Western Region dated 13th November, 2012 to submit that the Respondent-Authorities have granted permission/NOC to the chimney constructed by the NTPC Ltd for height of 278.50 meters AGL, which is also close to the airport and 740 m above mean sea level. He submits that Respondent-Authorities have rejected a similar application made by the Petitioner. Learned Senior Counsel refers to a survey report with respect to runway-33 involving the NTPC chimney and submits that even the NTPC chimney and top elevation 736 meters AMSL is in the path near to the centre line of the runway whereas what is needed is 553 meters

AMSL for the chimney which is away from the centre line. It is also mentioned in the notes that the aircraft will not be able to land on runway-33 because of the NTPC chimney. They have failed to appreciate that the NTPC chimney height is more than 278 m and as a matter of record NTPC chimney height is 3 times more than Petitioner's chimney and on the ground of parity the impugned orders deserve to be set-aside as null and void. Learned Senior Counsel submits that this argument raised by Petitioner in its appeal has not been dealt with by the DGCA and that the appeal has been passed without considering all the material on record.

NEW AIRPORT AT BORAMANI

55.6. It is submitted that notice dated 12th November 2018 and order dated 10th October, 2018 are in contravention of the Government of Maharashtra's order bearing No. 271/PK 123/28 dated 21 August 2013 which clearly suggests that the existing Hotgi Airport would be closed down after construction of the new airport at Boramani, Tandulwadi. Referring to the said GR, learned Senior Counsel submits that after construction of the new airport at Boramani, the airport at Hotgi will be used for commercial purposes and when the said airport is going to be used for commercial purpose, there is no need to reduce

the height of chimney of Petitioner's Sugar factory. Learned Senior Counsel further refers to the GR No. MAD-1619/case No. 55-A dated 29th October, 2020 to submit that vide the said GR revised administrative and financial approval for the acquisition of additional land for Solapur airport at Boramani has been granted. He submits that land admeasuring 549.31 hectares is already acquired for the airport at Boramani. That vide the said GR, the approval for acquisition of additional land ad-measuring 29.94 hectares is granted by the Government of Maharashtra. He would submit that in view of this, it is clear that the Government of Maharashtra is going to use the old airport at Hotgi exclusively for commercial purpose and no flights will be taking off from there after the construction of the new airport at Boramani. It is submitted therefore that there is no need to reduce the height of the chimney of the Petitioner's sugar factory and the the proposed demolition is uncalled for.

ADVERSE FINANCIAL IMPLICATIONS ON PETITIONER

55.7. Learned Senior Counsel submits that Petitioner has taken huge loans for expansion and operations of the sugar factory which is to the tune of 620 crores from Bank of Baroda, National Co-operative Development Corporation and Solapur Janta Sahakari Bank for

construction of cogeneration plant and expansions of the existing plant. He also submits that Petitioner has given advances to transporters, harvesters etc. to the tune of around 22 crores for the crushing season 2020 – 2021. He submits that if the impugned orders are implemented and the chimney height is reduced to 52.2 m, the entire set of cogeneration plant, sugar factory and distillery will become non-functional leading to a closure of the said plant.

HARDSHIP

55.8. Learned Senior Counsel would submit that there are 28655 shareholders/farmers who are subscribers to Petitioner's sugar factory, who supply sugarcane to the factory, these are farmers from the districts of Maharashtra and Karnataka. He submits that around 33,300 hectares of sugarcane was registered with the factory by the said farmers for this crushing year. He submits that the crushing season is in progress and if the chimney is pulled down it will result in a closure of the sugar factory and shutting down the sugar factory which will create survival questions for farmers and workers of the factory as well as the livelihood of 15,000 cane cutters, 1200 workmen, 500 contractors and 1000 transport employees whose survival and livelihood is entirely dependent on the sugar factory.

56. In this view of the matter, learned Senior Counsel submits that the impugned notices/orders ought to be set aside and the concerned Respondent-Authorities be directed to regularise the construction of the third chimney.

57. Shri.Anil Singh, learned Additional Solicitor General has made submissions on behalf of Respondents No.1 to 3 in Writ Petition No.9446 of 2021.

58. Learned Additional Solicitor General refers to the decision of this Court dated 6th August, 2018 in Writ Petition No. 5253 of 2017 along with connected Writ Petitions and submits that the said decision squarely covers the issues raised in these Petitions. He submits that the earlier, communication dated 17th May, 2017 was challenged by Petitioner and the Kamgar Union wherein identical issues were raised and this Court after considering NOC dated 17th February, 2017 from the Airport Authority as well as communication dated 7th March, 2017 from Petitioner to the Airport Authority, the Airport Authority's decision dated 10th April, 2017, 17th May, 2017, where Petitioner's request was reexamined and after referring to the notification dated 30th September, 2015 issued by the Ministry of Civil Aviation and after

considering the Aircraft Rules, the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 and after examining the various provisions therein observed that Petitioner could not have claimed that its Chimney of 90 meter height does not in any manner violate or breach the Rules. This Court in paragraph 12 observed that from a bare perusal of the NOC from the Airport Authority, it was evident that the permissible top elevation was restricted to 493.96 meters AMSL and the same was conditional NOC. This Court questioned as to how Petitioners still asserted before the State Government that it had an NOC to construct a Chimney of 90 meters. It was held that far from such a permission, Airport Authority of India by the said communication, styled as NOC, restricted the height.

59. This Court also considered the issue of discrimination raised by the Petitioners therein including Petitioner herein with respect to NTPC Chimney and accepted the explanation that the existing NTPC Chimney was at a far place and not would impact the RCS operation at Solapur or obstruct or pose threat to the safety of Aircraft operations there and therefore, no parity could be claimed by Petitioner. This Court in paragraph 31 has held that in the face of the conditional NOC

restricting the height of Petitioner's Chimney to 493.96 meters, it is apparent that Petitioner has erected the structure contrary to law which is unauthorized beyond the limits specified. This Court upheld and reiterated the terms of the conditional NOC dated 17th May, 2017 holding that once everything that Petitioner attempted to do and has been unsuccessful and the Airport Authority of India reiterated the terms of its conditional NoC dated 17th May, 2017, then as to how Petitioner can request for making any order contrary to the Rules.

60. With respect to the contention of the Petitioner regarding new Airport at Boramani, in the judgment of this Court dated 6th August, 2018 in Writ Petition No. 5253 of 2017 it was observed that this was a matter of policy decision and the Court should never be seen as interfering with policy matters.

61. Learned Additional Solicitor General also relied upon the two orders of the Hon'ble Supreme Court dated 7th December, 2018 and 29th August, 2019 to submit that it is pursuant to the orders of the Hon'ble Supreme Court that the Airport Authority of India proceeded in the matter in accordance with law uninfluenced by any observations and the DDGCA passed order dated 24th August, 2019

and thereafter in Appeal, the DGCA passed its order on 3rd December, 2019 in accordance with the Aircraft Act and the Aircraft Rules after conducting a physical verification at the site based on Obstacle Survey – 2017 after confirming the penetration of the offending Chimney and after granting personal hearing to the Petitioner and considering the submissions made on their behalf. Learned Additional Solicitor General submits that it is in view of the order dated 24th August, 2019, passed by the DDGCA which was also based on the Obstacle Survey – 2017 as well as physical confirmation of the offending penetration of the said Chimney by 52.2 meters and after granting personal hearing to the Petitioner / Authorized Representative passed a reasoned order directing reduction of the Chimney height which was confirmed in Appeal by order dated 3/12/2019. He would submit that it is in this background, that the Hon'ble Supreme Court observed that the subject matter of challenge in the said Special Leave Petitions had become redundant and the same cannot be said to have made the decision of this Court dated 6th August, 2018 dealing with all the issues raised herein redundant.

62. Without prejudice to the above, learned Additional Solicitor General refers to the impugned order dated 3rd December, 2019

passed by the DGCA and submits that the Petition is hopelessly barred by delay and laches as having been filed on 29th October, 2021 which is almost 16 months after the passing of the said order. He submits that there has been no explanation offered for this delay and on this ground alone, the Writ Petition ought to be dismissed.

63. Learned Additional Solicitor General submits that the impugned order dated 3rd December, 2019 has been passed by the Respondent No.2 in Appeal under Section 6A of the said Rules which has confirmed the demolition / reduction in height in order dated 24th August, 2019. He relies on the said orders and submits that the said orders have been passed after following the principles of natural justice and after affording an opportunity of hearing to Petitioner. The said orders are well speaking orders and well reasoned orders, which have been passed after following the principles of natural justice as can be seen from a plain reading of the said orders.

64. He submits that the Solapur Airport at Hotgi commenced operations from the year 1987. That the offending Chimney was constructed by Petitioner beyond the permissible height in the year 2014 without the permission / NOC of the Airport Authority in

complete breach of the Rules. He submits that though time was granted to Petitioner to obtain permission / rectify by demolishing the said structure upto the permissible height, despite the same, Petitioner failed and neglected to do so and has invited the impugned orders.

65. He would submit that the said Chimney owned by Petitioner was identified by the Airport Authority as the critical obstacle infringing O.L.S. of the Solapur Airport based on Obstacle Survey – 2017 which is penetrating the approach surface of RWY-33 by 52.2 meters against the permissible top elevation of 493.96 meters AMSL. Learned Additional Solicitor General would also submit that pursuant to an order of physical verification issued to Petitioner under Rules 3 and 4 of the Air Craft Rules, 1994 pursuant to a physical verification carried out by the Airport Authority at the site and after verification, the Airport Authority confirmed penetration of the said Chimney by 52.2 meters and forwarded the details to Deputy DGCA.

66. He would submit that in accordance with Rule 6 of the Aircraft Rules, 1994, a personal hearing was granted to the owner of the Chimney by DDGCA on 31st May, 2019. After the said hearing, it was

established that the Chimeny was penetrating approach surface of RWY-33 by 52.2 meters. Thereafter, in exercise of the powers conferred under the said Rule 6, Petitioner was directed by the DDGCA by the order dated 24th August, 2019 to reduce the height of the Chimeny to 493.96 meters AMSL within 60 days from the date of the issuance of the said order.

67. Learned Additional Solicitor General submits that being aggrieved by the said order dated 24th August, 2019, Petitioner filed an Appeal under Rule 6A of the Air Craft Rules, 1994 on 22nd October, 2019 before the Appellate Authority i.e. the DGCA.

68. It is submitted that the DGCA heard the Appeal on 3rd of December, 2019 when Mr.Dharmraj A Kadadi - President and Mr.Sameer Bhagwat Salgar - Managing Director of Petitioner attended the hearing at the Headquarters of DGCA and made submissions that final order dated 24th of August, 2019 passed by the DDGCA was contrary to the principles of justice and equity and that the Appeal be dismissed.

69. Pursuant to the aforesaid hearing, the impugned order dated 3rd of December, 2019 came to be passed by the DGCA under the

provisions of Rule 6A of the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994 confirming the final order dated 24th August, 2019 passed by the DDGCA. By the said order dated 3rd December, 2019, Petitioner was directed to reduce the height of the offending Chimney to 498.4 meters AMSL within 60 days of issue of the said order. He submits that therefore, the order passed by DGCA is proper and lawful and does not call for any interference by this Court.

70. Learned Additional Solicitor General submits that the first set of Rules deal with obtention of NOC and the second set deals with the power to demolish. He submits that the enquiry under the Aircraft Rules, 1994 is limited.

71. He draws our attention to Section 9A of the Aircraft Act, 1934 and submits that the Central Government has power to prohibit or regulate construction of buildings, planting of trees etc., if it is of the opinion that it is necessary or expedient to do so for the safety of Aircraft operations. He would submit that it is under these powers that the building or structure within a radius not exceeding 20 k.m. from the aerodrome reference point is permitted to be constructed or

erected and that the Airport Authority has power to direct the owner or the person having control over such building or structure to demolish the offending building or structure. He submits that not only that even the power to regulate the height of the building or structure has been invested in the Authority pursuant to Section 9A with power to prohibit the construction or erection of a building or structure higher than a specific height and also to direct the owner or a person having control over such an offending building or structure to reduce the height upto the specified height. He would submit that all these Rules and Regulations are on the basis of the nature of the Aircraft operating as well as the international standards and practices. He would submit that it is mandatory as per the said Section for every person to comply with any direction contained in the notifications issued pursuant to the said Section. He submits that as can be seen the powers contained in Section 9A are wide enough.

72. Learned Additional Solicitor General submits that pursuant to the Aircraft Act, 1934, the Aircraft (Demolition of obstructions caused by Buildings and Trees etc.) Rules, 1994 for implementation of the said Section 9A of the Aircraft Act, 1934, refers to the procedure to be followed with respect to buildings and structures. He submits

that the Rules clearly provide for the procedure for service of the notification, details to be furnished by the owner, the procedure for physical verification, passing of the final order pursuant to the details of the offending structure i.e. the structure which violates the provisions of the notification after giving an opportunity of hearing to the owner, the procedure for Appeal against the final order, obligation of the owner to comply with the orders and as to how the non compliance thereof is to be reported to the District Collector.

73. Learned Additional Solicitor General submits that the owner is also entitled to claim compensation under Section 9B of the Aircraft Act. He submits that Section 11B also provides for penalty for failure to comply with the directions issued under Section 9A of the Aircraft Act which include not only mandatory penalty but also punishment with imprisonment for a term of upto two years. He submits that pursuant to Section 11B(2), in the event of failure of the owner to comply with the direction contained in the orders, the authorized officer would be competent to demolish such building or structure or reduce the height to the specified height.

74. Learned Additional Solicitor General submits that the impugned order dated 3rd December, 2019 has been passed after following the provisions of the Aircraft Act as well as Rules and the same is therefore proper.

75. Learned Additional Solicitor General submits that the conduct of Petitioner is not clean. He submits that it is an admitted position that Petitioner constructed the offending Chimney without the permission of the Airport Authority as required under the Aircraft Act and the Rules. He submits that the said construction beyond 498.4 meters was prohibited and Petitioner was aware of the same and despite that, he erected the said Chimney beyond the specified height. He would submit that Petitioner applied for the said permission but was not granted, therefore, the construction of the Chimney is not only illegal as it violates the statutory provisions but also an offence under the Aircraft Act. He submits that the subsequent permission granted was upto a particular height and therefore, Petitioner was directed to reduce the height which it has failed and neglected to do inviting the impugned orders and directions upon itself.

76. The Airport Authority of India has filed an intervention Application No. 4274 of 2021 to be impleaded as a party in Writ Petition No. 7872 of 2021. It is submitted by Ms Shilpa Kapil, learned Counsel for Airport Authority of India that without obtaining the permission from other Government Authorities as required under the Corporation's in principle NOC, the Petitioner-sugar factory started and completed the construction of the offending structure viz. the third chimney, during the year 2014.

77. Learned Counsel for the Airport Authority would submit that the Solapur Airport is operational and there is training and non-scheduled operational flights on daily basis. However, due to the presence of major obstacle of Petitioner's third chimney there are no current scheduled operations.

78. She would submit that two old chimneys of Petitioner were obstacles in the year 2009-10 and the runway threshold was shifted to 600 meters. One end of runway is called 15 and the other end is 33. At that time Kingfisher Airlines operated with ATR-723 aircraft having passenger capacity of 90-100 passengers. However, in the year 2014, when the new chimney was constructed Kingfisher had stopped

operations. She would submit that landing of aircraft is as per wind direction. If while landing the aircraft there is disbalance, the aircraft takes off again and has to again land. This take off again is not possible due to the presence of Petitioner's third chimney at the end of runway 33. The aircraft cannot go around for taking off while landing due to the presence of two chimneys on the right side making the said runway inoperational.

79. Learned Counsel would submit that the total runway length is 2009 meters, however, due to the location of the third chimney, landing distance available is only 842 meters. No aircraft can land in this distance. The Petitioner's chimney is at a distance of 900 meters i.e., less than 1 km away from runway 33 end and falls exactly in the approach path.

80. It is submitted on behalf of the Airport Authority that since the Petitioner was erecting a steel structure at the approach path zone of runway 33 end of the airport, the Airport Authority of India vide communication dated 18th February, 2014 intimated to the Collector of Solapur that the Petitioner sugar factory was erecting a steel structure which would be a severe obstacle to the aircrafts during

landing/taking off on the runway which violates the airport norms. It was also informed that Petitioner was erecting the said structure without taking any NOC from the Airport Authority and requested the Collector to take appropriate steps to demolish the said structure immediately.

81. Thereafter, the Airport Authority of India issued a letter dated 1st May, 2014 to the Petitioner objecting to the permissible height for construction in respect of which the Airport Authority suggested the Petitioner to give an undertaking/sanction plan within 90 days. It is submitted that the said letter was not an NOC.

82. The Airport Authority of India issued a letter dated 12th September, 2014 to the Prant Tehsildar, Collector Office, Solapur, with a copy to the Petitioner stating that NOC was not granted to the Petitioner for erection of chimney. It is stated in the said letter that the Airport Authority had issued a letter to the Petitioner for reconstructing the height only upto 41 meters AGL requesting stoppage of construction of chimney and for which Petitioner was required to submit an undertaking within 90 days. The Tehsildar was requested by the Airport Authority to take necessary action for stoppage of work as no NOC was granted for the said construction.

83. The Airport Authority of India issued NOC for height clearance dated 17th February, 2017 and NOC for height clearance dated 17th May, 2017 only upto the height of 30 meters AGL, whereas Petitioner had already constructed the chimney with a height of 90 meters AGL in the year 2014 itself. The permissible top elevation as per NOC for height clearance is 493.96 meters AMSL and the site elevation in meters AMSL as submitted by the Petitioner was 463 meters. It is submitted on behalf of the Airport Authority that Petitioner cannot commence construction without obtaining the NOC from the Airport Authority of India, Ministry of Civil Aviation, Government of India and other appropriate authorities.

84. Learned Counsel for the Airport Authority submits that the NOC given by the Respondent No.2-Solapur Municipal Corporation was subject to Petitioner obtaining NOC from all appropriate Government Authorities, whereas Petitioner had constructed the offending chimney of 90 meters AGL during the year 2014 itself without Noc/permission from Airport Authority and the NOCs issued by the Airport Authority were dated 17th February, 2017 and 17th May, 2017 and that too only for a height of 30 meters AGL. She submits that this itself shows that Petitioner is in gross violation of the terms and

conditions of the NOC granted by the Respondent No.2-Corporation.

85. With respect to Petitioner's objection regarding discriminatory treatment, learned Counsel submits that the location of NTPC chimney is at a distance of 8981 meters i.e., approximately 9 km away from the runway strip and in no way poses an obstacle for flight operations at the Solapur Airport at Hotgi.

86. In this view of the matter, she submits that the unauthorised construction by Petitioner affects air safety and therefore, same cannot be permitted to retain and ought to be demolished in compliance with the DGCA order, orders dated 24th August, 2019 confirmed by order dated 3rd December, 2019 as well as decision of this Court in various Writ Petitions and the orders of the Hon'ble Supreme Court of India.

87. Learned Counsel submits that the Airport Authority of India is a necessary party and deserves to be impleaded as a party to the Petition(s).

88. She submits that in view of the clear violation and breach of the NOC granted by the Airport Authority and the Respondent-Corporation, the offending structure ought to be demolished. She, submits that the Petitions deserve to be dismissed and the impugned notices/orders ought to be sustained.

89. Mr Bodake for Respondents Nos. 2, 3, 4 in Writ Petition No. 7872 of 2021 filed by Petitioner essentially against the impugned orders passed by the Respondent Solapur Municipal Corporation, would submit that the Petition is barred by *res judicata*, in view of the order dated 21st December, 2020 in Writ Petition (ST) No. 29268 of 2019 whereby the very same Petitioner on the very same challenge has withdrawn the said Writ Petition in view of GR dated 29th October 2020. The said order also records that the Appeal against the order dated 24th August, 2019 of the Deputy DGCA has been dismissed by the DGCA by its order dated 3rd December, 2019 and Petitioners have been directed to reduce the height of the chimney to 498.4 m AMSL, within 60 days from the date of the order. He would submit that once Writ Petition challenging the earlier notice dated 11th November 2021 is withdrawn that the 2nd notice dated 17th November, 2021 is consequential and Writ Petition filed challenging the 2nd notice is not

maintainable. Therefore, in view of the order of this court the present Writ Petition No. 7872 of 2021 is completely barred pursuant to the principle of *res judicata*.

90. He submits that these notices have been issued by the Corporation as the planning authority. He submits that the boiler has to be stopped to demolish the chimney.

91. He refers to the undertaking dated 11th August 2017 given by Petitioner (at pg 469 of the said Writ Petition) pursuant to which the petitioner would before 11th November, 2017 in compliance with the aircraft rules and without breaching the same would make an alternate arrangement with respect to the newly constructed chimney. He submits that petitioner has not abided by the said undertaking to the Corporation.

92. Learned counsel submits that thereafter 3 reminder letters were sent to petitioner to comply. Ld. counsel refers to the reminders on pages 471, 472 ending with the notice dated 11th October, 2020 on page 473. However, Petitioner has failed and neglected comply with the same.

93. The learned Counsel then takes us to pages 498 and in particular to page 500 referring to directions by the Maharashtra Pollution Control Board dated 29th November, 2021 to close down the Petitioner's Sugar factory.

94. Learned Counsel informs this Court that the bids have been floated inviting tenders for demolition of the subject chimney and work order also has been issued. He urges that the notice of demolition is legal. The Writ Petition ought to be dismissed as petitioner is not entitled to any relief. He, therefore, submits that upon this court dismissing the Writ Petition Respondent-Corporation will be able to go ahead and demolish the offending structure.

95. In this view of the matter learned Counsel submits that the Petitions ought to be dismissed.

96. Mr. Ramdas Sabban, appearing for the intervenor in Interim Application No. 171 of 2022 in Writ Petition No. 7872 of 2021 would submit that that there are 3 chimneys in the Petitioner's sugar factory and we are concerned with the last one. He would submit that apart from the airport at Hotgi, there is no other airport facility in Solapur as argued or submitted on behalf of Petitioner.

97. Learned Counsel draws the attention of this Court to the decision of this Court dated 21st December, 2020 in Writ Petition(ST) No. 29268 of 2019 to submit that the said decision challenging the notice issued by the Respondent - Corporation dated 11th November, 2019 under section 478 of the MMC Act to demolish/pull down the chimney was withdrawn in view of Government Resolution dated 29th October, 2020, wherein Petitioner was given a period of 4 weeks until which time the Respondents would not demolish the chimney. It was further recorded in the said order that Petitioner would not move this court for any extension. He submits that this decision has not been challenged anywhere and has therefore attained finality.

98. Learned Counsel also refers to the decision of this Court dated 6th August, 2018 in Writ Petition No. 5253 of 2017 along with connected Writ Petitions and submits that the said Petition was dismissed by this Court with strictures and refers to page 91 to submit that Petitioner was held to be arrogant, adamant wrongdoer. He, therefore, submits that in public interest no further time should be granted to Petitioner to bring down the chimney.

99. In this view of the matter learned Counsel submits that the Petitions ought to be dismissed.

100. Mr. Shrishail Sakhare, learned Counsel representing the intervenors in Interim Application No. 296 of 2022 and in Interim Application (ST) 512 of 2022 would submit that this is the 3rd round of litigation by Petitioner. He would submit that in the 1st round all issues have been considered. It is submitted that the decision dated 6th August, 2018 in Writ Petition No. 5253 of 2017 along with connected Writ Petitions has not been set aside by the Hon'ble Supreme Court nor has it been rendered redundant as claimed on behalf of Petitioner. Learned Counsel refers to paragraph 29 of the said order which is quoted as under:

“29. Our attention was also invited to the fact that on 28-7-2007 the petitioners sought to rely upon an order of the National Green Tribunal or its requirements to increase the height above the ground level to 90 metres. Pertinently, on such an application made as on 28-7-2017, the AAI has not altered its stand. It has been also urged by the petitioners that there is construction of a Chimney by National Thermal Power Corporation Limited (“NTPC” for short) and of the same height. That is also an industry. That construction is made pursuant to the NOC of 13-9-2012. However, the Chimney has been constructed, according to the Additional Solicitor General, by this Corporation at a far off place and that does not obstruct or pose any threat to the safety of aircraft operations at the concerned Airport. Hence no parity can be established insofar as this Corporation is concerned.”

101. Learned Counsel then refers to the order dated 21st December 2020 in Writ Petition(ST) No. 29268 of 2019 to submit that the said Writ Petition challenging the notice of demolition and dated 11th November, 2019 issued by the Respondent- Corporation under section 478 of the MMC Act was withdrawn in view of Government Resolution dated 29th October, 2020 and therefore there is no question of Petitioner once again challenging the consequent demolition orders. Learned Counsel submits that Petitioner was allowed the erection of the chimney only up to 498.4 mts but it has gone ahead and breached the said condition. He refers to pages 19 to 24 of the Interim Application in support of his case. He submits that the site inspection report with respect to the said chimney at the Petitioner's Sugar Factory conducted on 23rd February, 2014 clearly indicates the breach pursuant to which, notice dated 24th February, 2014 by the Respondent-Corporation under Section 478 of the MMC Act, 1949 came to be issued to Petitioner calling upon the Petitioner to bring down unauthorized construction within a period of 8 days failing which, prosecution / proceedings would be initiated against the Petitioner and the Respondent-Corporation would also take steps to demolish the said unauthorized construction. Learned Counsel further submits that thereafter, notices dated 6th April, 2017 came to

be issued from the Collector of Solapur as well as by Solapur Municipal Corporation informing Petitioner of the permissible height and requesting Petitioner to remove the Chimney or bring its height within a permissible limits within a period of one month, failing which, coercive steps would be taken. Further, learned Counsel also refers to communication (on page 24 of the said Interim Application) by Additional Secretary, General Administration Department - Government of Maharashtra to Petitioner of the permissible height and the aforementioned communications with a request to bring down the same. He submits that by the said communication Petitioner was also informed that pursuant to the regional connectivity scheme of the Centre, as a first step, the Airport at Hotgi has been made operational and the aim would be to increase the air traffic and as the Airport at Boramani will take a long time therefore, during such period, it would not be possible to reduce the air traffic at Hotgi. Petitioner was therefore, requested to remove the said Chimney.

102. In this view of the matter learned Counsel submits that the Petitions ought to be dismissed.

103. With respect to the allegation of delay and laches, it is stated that in paragraph-10 of the Petition No. 9446 of 2021, it is stated that after the impugned order was passed on 3rd December, 2019, the matter was placed before the Board of Directors for taking decision to take further course of action under the aforesaid order. The Board of Directors had decided to challenge the said order before this Court. However, in the meanwhile, the Government of India declared lockdown from 25th March, 2020 due to Covid-19 pandemic and thereafter time and again the State Government has imposed lockdown like restrictions in the State of Maharashtra till August-2021. Therefore, Petitioner could not approach this court and there was delay/ laches in approaching this Court.

104. It is further submitted that the said delay/laches caused in filing the Petition is neither intentional nor deliberate and the same has been caused due to unavoidable circumstances, therefore, it is necessary in the interest of justice to condone the delay caused in filing the Petition. It is submitted that if the delay / laches is not condoned, Petitioner will suffer irreparable loss and prejudice. And there will not any loss or prejudice to the Respondents.

105. We have heard learned Counsel for the parties and with their able assistance we have perused the papers and proceedings in the matter. We have considered the said contentions and given our thoughtful consideration to the matter.

106. Let us first deal with the issue of delay and laches in filing Writ Petition No. 9446 of 2021, raised by Respondents. We note that that after the impugned order was passed on 3rd December, 2019, the matter was placed before the Board of Directors for taking decision to take further course of action pursuant to the aforesaid order. It is stated that the Board of Directors then decided to challenge the said order before this Court. The Government of India declared lockdown from 25th March, 2020 due to Covid-19 pandemic and thereafter from time to time the State Government has imposed lockdown like restrictions in the State of Maharashtra till August 2021. The W.P. No. 9446 of 2021 has been filed on 30.10.2021.

107. In our view, the delay caused in filing the Petition can be said to be neither inordinate nor intentional nor deliberate having been caused due to unavoidable circumstances. In fact the suo moto order dated 10th January, 2020 of the Hon'ble Supreme Court in MA No. 21

of 2022 in Ma No. 665 of 2021 in Suo Moto Writ Petition (C) No. 3 of 2020 have excluded the period between 15th March, 2020 till 28th February, 2022 due to Covid-19 for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicials. Considering the overwhelming factual background of the matter thus far involving the COVID-19 pandemic and its impact on all the stakeholders including farmers, public financial institutions, in the interest of justice we condone the delay caused in filing the Petition.

108. Mr. Sakhare, learned Senior Counsel for the Petitioners has vehemently canvassed that the impugned order dated 3rd December, 2019 in Writ Petition No. 9446 of 2021 has been passed in gross violation of the principles of natural justice, which has of course been denied by Respondents. It would therefore, necessary first to examine the issue whether the impugned order dated 3rd December, 2021 has been passed by DGCA in violation of the principles of natural justice and are therefore liable to be quashed and set aside.

109. A perusal of the impugned order dated 3rd December 2019, indicates that in paragraph No. 2 it is recorded that the

Appellate Authority has identified the Chimney owned by Petitioner as a critical obstacle infringing obstacle limitation surface of Solapur Air Port based on Obstacle Survey of 2017. It is stated that the Chimney is penetrating the approach surface of Runway -33 by 52.2 mtrs against the permissible top elevation of 498.4 mtrs above mean sea level.

110. However, there does not appear to be any discussion on the contents of obstacle survey of 2017 nor as to how and based on what parameters the said survey has identified the Chimney as a critical obstacle infringing obstacle limitation surface and Runway-33.

111. One of the grounds of Appeal raised are that the physical survey Report has also not been furnished to Petitioner nor is there any discussion with respect to the same to reach the conclusion on how the said Chimney infringes/penetrates approach Runway-33. This, in our view would be a concern with respect to the principles of natural justice that authorities in appeal ought to scrupulously be conscious of.

112. In paragraph No. 3 of the said order, it is recorded that the order of physical verification was issued to the owner of the said Chimney under Rules 3 and 4 of the Aircraft Obstruction Demolition Rules, 1994 with a direction to furnish a plan showing the said Chimney and its dimensions, etc. Statedly, a physical verification was carried out at the Chimney site and after the verification about the penetration of the said Chimney by 52.2 mtrs was confirmed by the Airport Authority, the same was forwarded to the DGCA.

113. Again we do not find any physical verification report or document nor any discussion on these findings as to how and on what basis the said penetration of Chimney by 52.2. mtrs was arrived at. There are no details mentioned nor any reasoning. In our view, considering that this is an order in Appeal, the least that the Appellate Authority could have done is to furnish the details of the process and procedure as to how the said verification was carried out, what, how and when was the said verification forwarded to DGCA.

114. Although, the presence of Mr. Dharmraj A. Kadadi, President of Petitioner and Mr. Sameer Salgar, Managing Director of Petitioner, who had attended the hearing and the submissions that the final

order dated 24th August 2019 (which had been the subject matter of the challenge in the said Appeal) was against the principles of justice and equity, is recorded, there are no details or record of the submissions made by them nor has the Appellate Authority dealt with any of them nor has it dealt with the grounds in the Memo of Appeal, including the non furnishing of the Obstacle Survey Report of 2017, the Physical Verification Report, that several successful landings had taken place between 2016 and 2019 or with the ground that other necessary permissions from State of Maharashtra, Solapur Municipal Corporation, Sugar Commissioner, MPCP had been obtained by the Petitioner, the impracticality and non viability of shifting of the Chimney at a distance of 800 meters and beyond, the GRs indicating the State Government's decision to shift Solapur Airport to Boramani and Tandulwadi, and the conversion of the Hotgi complex to a commercial project.

115. All that we see recorded in paragraphs No. 4 and 5 of the said order is that personal hearing was granted to Petitioner by the Deputy Director General of Civil Aviation while passing the order dated 24th August, 2019 and after hearing it was established that the Chimney was penetrating the approach surface of Runway-33 by 52.2

meters and in exercise of the powers under Rule 6 of the Aircraft Demolition Rules 1994, the Deputy Director General of Civil Aviation had directed Petitioner to reduce height of the chimney to 498. 4 mtr. AMSL within 60 days from the date of the said order dated 24th August 2019 and that under Rule 6-A of the Aircraft Demolition Rules, 1994, the Appeal had been filed by Petitioner on 22nd October 2019 against the order dated 24th August, 2019.

116. The concluding paragraph No. 7 of the said order simply records that in view of Rule 6A of the Aircraft Rules 1994, the Director General of Civil Aviation confirmed the final order dated 24th August 2019 passed by the Deputy Director General and directed Petitioner-Appellant therein to reduce height of the Chimney to 498.4 mtrs AMSL within 60 days of the issue of the order.

117. We observe that an order in Appeal considering the order of Deputy Director General merely confirms the said order of the lower authority directing reduction of the height of the Chimney, without even dealing with any of the contentions of Petitioners made in the memorandum of Appeal and passes an order without any reasons. Passing of such cryptic orders by the Appellate Authorities, in our

view cannot be permitted. There is a duty of judicial, quasi judicial authorities, administrative authorities to record reasons before passing orders. Reason is the soul of an order. Principles of natural justice involve notice and opportunity of hearing to a person who is likely to be adversely affected and also the giving of reasons for arriving at any conclusion. Reasoning shows proper application of mind and violation of the same vitiates such an order.

118. In the facts of the case at hand we observe that though the hearing was given to Petitioner but no reasons have been given by the DGCA for arriving at the conclusion confirming the order of Deputy Director General. No reasons have been recorded to justify the contents of the order in paragraph No. 7.

119. In this case, there has been no discussion or reasoning whatsoever in the said order dated 3rd December, 2019.

120. In this context, the decision of the Supreme Court in the case of *Assistant Commissioner, Commerical Tax Department Works Contract and Licencesing ,Kota Vs. Shukla and Brothers* (supra) is relevant. Paragraphs No. 8, 14, 17 and 19 of the said decision are

quoted as under:-

“8. As is evident from the facts narrated in the Revision Petition and the grounds raised besides raising the question of law, a factual controversy was also raised going to the very root of the case, that the rolling shutters & doors fixed by the respondent on the shops were not manufactured of tax- paid material. Thus, question of law, mixed questions of law and facts were not examined by the High Court in some detail, but as already noticed, by one line order the Revision Petition was dismissed. During the course of hearing, we were informed that arguments were also addressed with reference to judgments of this Court which were also cited before the Board. However we find no mention thereof in the impugned Order. It was also contended that similar questions do arise in number of other cases, thus it was expected of the High Court to deal with the contentions rather than pass a cryptic order.

14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.

17. *In Gurdial Singh Fijji v. State of Punjab* while dealing with the matter of selection of candidates who could be under review, if not found suitable otherwise, the Court explained the reasons being a link between the materials on which certain conclusions are based and the actual conclusions and held, that where providing reasons for proposed supersession were essential, then it could not be held to be a valid reason that the concerned officer's record was not such as to justify his selection was not contemplated and thus was not legal. In this context, the Court held -

"18. ... "Reasons" 'are the links between the materials on which certain conclusions are based and the actual conclusions.' The Court accordingly held that the mandatory provisions of Regulation 5(5) were not complied with by the Selection Committee. That an officer was "not found suitable" is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List."

This principle has been extended to administrative actions on the premise that it applies with greater rigor to the judgments of the Courts.

19. *In the cases where the courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the court of competent jurisdiction are challenged in absence of proper discussion. The requirement of recording reasons is applicable with greater rigor to the judicial proceedings. The orders of the court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court."*

121. Also decision of the Hon'ble Supreme Court in the case of ***Kranti Associates Private Ltd and Anr. Vs. Masood Ahmed Khan and Ors.*** (supra) is relevant. It has been observed in this case that there is a duty to record reasons and a cryptic, non reasoned order is unsustainable as reasons have virtually become an indispensable component of decision making process by not only judicial and quasi judicial bodies but even by the administrative bodies. Paragraphs No. 14, 15, 16, 17 and 18 are relevant and are quoted as under:

"14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

16. In Harinagar Sugar Mills Ltd.v. Shyam Sunder Jhunjhunwala[AIR 1961 SC 1669], the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111(3) of the Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the

Company and directed the Company to register the transfer. However, in passing the said order, the Government did not give any reason. The Company challenged the said decision before this Court.

17. The other question which arose in Harinagar [AIR 1961 SC 1669] was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

18. Even though in Harinagar [AIR 1961 SC 1669] the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (AIR pp. 1678-79, para 23). "

122. In our view, the reasons must be recorded to support conclusion.

123. Further, it has been submitted by Petitioner that neither the Obstacle Survey Report of 2017 nor the Physical Verification Report has been furnished to Petitioner, which has not been disputed by the Respondents.

124. In this view of the matter, we have no hesitation in holding that impugned order dated 3rd December 2019 in Writ Petition No. 9446 of 2021 is in violation of principles of natural justice and deserves to be set aside.

125. The impugned order dated 3rd December, 2021 in Writ Petition No. 9446 of 2021 is therefore quashed and set aside. However, in the interests of justice, we remand the matter back to the DGCA for a fresh hearing and after giving Petitioner an opportunity of being heard.

126. Petitioner shall appear before the DGCA on 27th June, 2022 at 11.00 a.m. and the DGCA shall pass a speaking order with reasons within 8 weeks thereof. In the event the decision is adverse to Petitioner's interest, the said order shall not be implemented for a period of four weeks thereafter for Petitioner to take out appropriate proceedings.

127. In Writ Petition No. 7872 of 2021, the order dated 15th January, 2021 by the Solapur Municipal Corporation and the notice dated 17th November, 2021 issued by the Town Planning of Solapur Municipal Corporation is under challenge. The order dated 15th January, 2021 refers to the subject of demolition of the subject Chimney. We observe from the order dated 15th January, 2021 that the said order has been passed after considering the impugned order dated 3rd December, 2019 by the DGCA which has been impugned in Writ Petition No. 9446

of 2021 which order we have set aside today and remanded the matter for fresh consideration by the DGCA. We note that there are references to the notice dated 11th November, 2019 under Section 478 of the MMC Act. After considering the reply of Petitioner who was represented at the said hearing, the Commissioner of Solapur Municipal Corporation has passed the order cancelling the “in principle no objection certificate” and holding that the said Chimney has been constructed without permission and the construction is illegal / unauthorized, thereby calling upon the Petitioner to demolish the same by 22nd January, 2021 failing which, after 23rd January, 2021, action of demolition of the said Chimney having been constructed without permission under Clause 478(2) of the MMC Act would be undertaken by the Respondent-Corporation at the expense of Petitioner.

128. The impugned notice dated 17th November, 2011 refers to *inter alia* the order of the Airport Authority as well as the Court orders and it is stated therein that the Respondent-Corporation has been directed by the State Government of Maharashtra to take a quick essential action regarding demolition of the illegal Chimney of the Factory. It is stated that the demolition is being supervised by the Commissioner

and the action of demolition is being taken as per order given by him. It is further stated therein that if the said Chimney is not demolished within a period of seven days from the date of receipt of the notice, the action of demolition will be undertaken by the Respondent-Corporation and the expense paid to the contractor and the supervision charges would be collected from Petitioner.

129. As can be seen from the factual matrix narrated above, the Impugned Order and Notice, in Writ Petition No. 7872 of 2021 have their genesis in the Impugned Orders and proceedings and orders preceding the same in the above remanded appeal and would have a bearing on any proceeding in respect of the challenge in Writ Petition No. 7872 of 2021. We therefore deem it proper to set aside the said order dated 15th January, 2021 and notice dated 17th November, 2021 with a direction to the concerned Respondents therein including the Solapur Municipal Corporation to hear Petitioner afresh and to pass a speaking and reasoned order expeditiously. In the event the decision is adverse to Petitioner, the said order shall not be implemented for a further period of four weeks from the date of communication of the said order for Petitioner to take out appropriate proceedings, if so advised.

130. In view of the above, we do not deem it necessary to deal with the other issues/ rival contentions of the parties. All contentions are kept open.

131. Petitions are disposed of in the above terms with no order as to costs.

132. All concerned to act on an authenticated copy of the order.

(ABHAY AHUJA, J.)

(A. A. SAYED, J.)