

Usman Gani J. Khatri Of Bombay Etc. Etc vs Cantonment Board And Ors. Etc. Etc on 1 May, 1992

Equivalent citations: 1994 AIR 233, 1992 SCR (3) 1, AIR 1994 SUPREME COURT 233, 1992 (3) SCC 455, 1993 AIR SCW 3684, 1992 UJ(SC) 2 441, (1992) 4 JT 538 (SC), (1993) 1 BOM CR 443, 1992 SCFBRC 380

Author: N.M. Kasliwal

Bench: N.M. Kasliwal, K. Ramaswamy

PETITIONER:

USMAN GANI J. KHATRI OF BOMBAY ETC. ETC.

Vs.

RESPONDENT:

CANTONMENT BOARD AND ORS. ETC. ETC.

DATE OF JUDGMENT 01/05/1992

BENCH:

KASLIWAL, N.M. (J)

BENCH:

KASLIWAL, N.M. (J)

RAMASWAMY, K.

CITATION:

1994 AIR 233 1992 SCR (3) 1

1992 SCC (3) 455 JT 1992 (4) 539

1992 SCALE (1)1068

ACT:

Pune Cantonment (Building) Bye-Laws, 1988:

Scheme of building restrictions and bye-laws-Superseding the earlier bye-laws-Brought into force in larger public interest-Applicability of-Condition that building plans could be sanctioned on conversion of land into freehold site-Non-payment of conversion charges in full-Effect of-Refusal to sanction plan-Validity of-Sanction-To be made in accordance with building regulations prevailing at the time of sanction-Whether any legal right accrues before the plan gets final sanction.

HEADNOTE:

Bye-laws for regulating the erection and re-erection of

buildings within the area of the Respondent Board were made in 1947. Since these bye-laws did not contain adequate provisions to prevent overcrowding as a result of haphazard and high-rise constructions, the Respondent Board issued a new scheme of restrictions by its order dated 24.12.1982 laying down the minimum space required to be left open and floor space index to be adhered to in the matter of new constructions. Subsequently, in 1984 the Board modified its earlier order and issued the second scheme of restrictions on 26-3-1984. Thereafter, the Board framed new bye-laws known as Pune Cantonment (Building) Bye-laws, 1988 which superseded the 1947 Bye-laws. The new bye-laws, approved the second scheme of building restrictions which restricted the height of buildings to 18 metres and maximum number of storeys to ground plus two.

The petitioners submitted their building plans before the First Scheme of building restrictions was brought into force. The Respondent-Board intimated the petitioners that their plans could be sanctioned only after conversion of the old grants into freehold tenure and subject to payment of conversion charges by them. The Respondent took notice of the fact that some of the petitioners started constructing buildings ignoring the First Scheme of restrictions and without making full payment of conversion charges. The petitioners were required to re-submit the plans

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in accordance with the new scheme. The Board also made it clear that any sanction made was valid only for procuring cement and not for execution of work and so no construction should be started till final sanction for conversion was received from Government.

Being aggrieved by the said decision of the Respondent-Board, the petitioners filed Writ Petitions before the High Court, and the same were dismissed. The High Court held that the condition of conversion was not severable from the sanction to the plan and was in fact a condition precedent and foundation of the sanction. It also held that the new scheme of regulations was legislative in nature and was not in conflict with the bye-laws. The High Court further held that the Respondent-Board would have to sanction a plan afresh after conversion and such plan would be governed by the building regulations prevailing at the time of the fresh sanction by the Board.

Against the said judgment of the High Court, the petitioners have preferred the present Special Leave Petitions.

The petitioners contended that the Second Scheme of restrictions and the 1988 bye-laws were not applicable to them and that they were willing to abide by the First Scheme of restrictions, and that the construction already made during the period of stay granted by the High Court or otherwise, may be allowed to stand.

Dismissing the petitions, this Court,

HELD: 1. The schemes of building restrictions made on 24.12.1982 and 26.3.1984 and amended bye-laws in 1988 putting restrictions and reducing the height and floor space index in respect of multi-storeyed buildings, have been made in larger public interest and for the benefit of the entire population of the city of Pune. The validity of such schemes or bye-laws have not been challenged before this Court. The slogan of the builders and land owners of utilising the maximum area for construction of high-rise buildings for fulfilling the need of houses in big urban cities should always be subservient to the building restrictions and regulations made in the larger interest of the whole inhabitants and keeping in view the influx of population, environment hazards, sanitation, provision for supply of water, electricity and other amenities. [21 B-D]

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2. This Court cannot be oblivious to the fact of thrust of population in all the Urban cities in our country and the problem of basic amenities to be made available to the residents of the cities. All planning is to be done on a long-term basis taking note of the growth of industries and overcrowding of population causing environmental and pollution problems in the cities. Growing awareness of these problems has activated the Government as well as the various social activists in taking notice of this menacing problem which is posing a danger to the very survival and existence of human race. [17 E,E]

3. The petitioners did not acquire any legal right in respect of building plans until the same were sanctioned in their favour after having paid the total amount of conversion charges in lump sum or in terms of sanctioned installments and getting conversion of their land in free hold tenure. The first scheme of restrictions was brought into force long back on 24th December, 1982 and the second on 26th March, 1984. The petitioners did not submit any fresh building plans in accordance with the first or the second scheme of restrictions. Many of the petitioners have not paid a single pie towards the conversion charges, some of them have paid only few installments and the others though have paid the installments have not made it according to the schedule. In any case the High Court was right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30th April, 1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not be any bye-laws or schemes which are no longer in force now. [17 H; 18 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 647 of 1992 etc. etc. From the Judgment and Order dated 18.10.1991 of the Bombay High Court in W.P. No. 908 of 1984.

Soli J. Sorabjee, S. Ganesh, R.F. Nariman and R.N. Keshwani for the Petitioners.

T.R. Andhiyarjuna, K.J. Presswala, D.J. Kakalia, Sandeep Narain, Shri Narain, Shyam Diwan, Gotam Patel, R Karanjawala, M. Karanjawala and Ms. Aditi Gore for the Respondents.

The Judgement of the Court was delivered by KASLIWAL, J. All the above Special Leave Petitions by builders in the city of Pune are directed against the judgement of the Division Bench of the Bombay High Court dated 18.10.1991 dismissing the writ petitions filed by the petitioners. The Learned Judges in their order dated 18.10.1991 stated that the controversy raised in the petition before them stood concluded by an earlier decision of the Division Bench dated 15.4.1987. Thus, no reasons have been recorded in the impugned order and in order to decide the controversy before us Learned Counsel referred to the decision of the High Court dated 15.4.1987.

The factual matrix of the above cases may be slightly different, but the legal controversies are common to all the cases and as such we are disposing of all the matters by one common order. It was pointed out during the course of arguments that many more cases are pending in the various courts at different stages and the fate of those cases also hinges on the decision of these cases. In order to appreciate the controversies raised in these cases, we would narrate the facts of SLP No. 647 of 1992 and 985 of 1992 which in our view would cover the entire spectrum of the questions raised before us.

The original owners submitted an application for conversion of the old grant site into freehold sites vide letter dated 19.11.1980. The Cantonment Board Pune - the respondent No. 1 (hereinafter referred to as 'the Cantonment Board') on 2.12.1980 passed a resolution suggesting the set backs and recommended that the area admeasuring about 10633 sq. feet be allowed to be converted on the terms and conditions of payment fixed by the higher authorities. The petitioner through his architect's letter dated 16.12.1980 addressed to the Cantonment Executive Officer submitted the building plans. The Cantonment Board vide resolution No. 30 dated nil month April, 1981 resolved that the plans be sanctioned under Section 181 of the Cantonments Act, 1924 (hereinafter referred to as 'the Act') subject to AHO's No Objection. It was clearly mentioned in the aforesaid resolution as under:-

"The following formalities to be observed to be communicated when the plans to be returned to the applicant. The sanction be made effective only when the present rights over the land is converted into freehold by the competent authority and conversion cost be decided by the Government is deposited by the applicant and subject to clearance from competent authority ULC Pune.

Government be requested to allow the party to proceed with construction after taking likely amount of freehold to avoid delay. Copy of the plan be given to the applicant for procuring the cement."

The Military Estate Officer by his letter dated 2.3.1983 conveyed sanction of the Government of India for conversion to freehold on payment of conversion charges of Rs. 5,78,109 on account of transfer value of the land. A condition was also put that the area of 2,167.44 sq. feet of land shall be surrendered, that was because of the set back suggested to which the petitioner agreed. The petitioner by telegram dated 21.3.1983 addressed to the Ministry of Law, Justice and Company Affairs referred to his personal discussion and requested for payment of conversion cost in instalments. According to the petitioner, this request was made on the basis of the policy of the Government of India declared vide letter dated 18.6.1982. The petitioner tendered two demand drafts of Rs. 75,000 and Rs.40,641.80 ps. on 22.4.1983 being 1/5th of the amount of conversion charges. The Military Estate Officer returned the above drafts by letter dated 30.4.1983 on the ground that the aforesaid payments were only part payments of the conversion cost and refused to accept the drafts. The petitioner by letter dated 2nd May, 1983 addressed to the Director General DL&C, Government of India, Ministry of Defence, New Delhi submitted that the action of the Military Estate Officer was not proper and there was no reason as to why the case of the petitioner alone was singled out and why he refused to accept the part payment, inspite of the policy of the Government to accept the conversion charges in installments. The petitioner further submitted in the aforesaid letter that in any event, and without prejudice to the rights and contentions as aforesaid and inspite of paying the said conversion cost in installments he is, however, ready and willing to pay the entire amount of Rs.5,78,109 in lump sum. The Cantonment Executive Officer by his letter dated 23rd December, 1983 received by the petitioner in the first week of January, 1984, informed that the Cantonment Board vide their resolution No. 50 dated 21.10.1983 had resolved to reject the building plans which were not in conformity with the new scheme of the building restrictions. Since the building plans submitted by the petitioner were not in conformity with the new scheme of building restrictions, the same were rejected and returned. It was also mentioned in the letter that the petitioner is advised to resubmit the building applications in accordance with existing building restrictions which would be considered duly on merit. The petitioner through his Advocate's letter dated 25.1.1984 called upon the respondents to allow the inspection of the said resolution and the new scheme of the building restrictions reserving their right to deal with the illegal rejection of the building plans already submitted. The Cantonment Executive Officer by letter dated 7.2.1984 addressed to the petitioner's advocate offered to supply the copies of the resolution No. 50 and the new scheme of the building restrictions on payment of Rs.40. The resolution No.50 dated 21.10.1983 clearly stated that in view of the new scheme of building restrictions imposed by the GOC-in-Chief, Southern Command w.e.f.24.12.1982 the same will be made applicable to all the building applications which have not been sanctioned. The resolution further stated that where the sanctions were given for conversion into freehold rights and where such conversions had not taken effect before 24.12.1982 such conditional sanctions were invalid and all such building applications not in conformity with the new scheme of the building restrictions be rejected. Aggrieved by the action of the respondents rejecting the building plans on the basis of the aforesaid resolution passed by the Cantonment Board, the petitioner preferred a Writ Petition No. 908 of 1984 in the High Court.

The petitioner in the Writ Petition inter alia prayed that the petitioner was entitled to construct the building as per plans duly sanctioned by the Board and the said plans were valid and subsisting. It was further prayed that it may be declared that the plans of the building submitted by the petitioner

and duly sanctioned by the Board in April, 1981 were operative and the condition imposed viz., of obtaining the conversion was irrelevant and of no consequence and not binding on the petitioner. It was also prayed that the resolution No.50 dated 21.10.1983 be declared invalid and inoperative in law and that the new scheme of building restriction imposed by the GOC-in Chief, Souther Command were inoperative in law and invalid and in any case the said conditions do not affect the petitioner's building plans sanctioned by the respondent in April, 1981. It was also prayed that an appropriate writ, direction or order be issued directing the respondents to accept the amount of conversion charges of Rs. 5,78,109 in equal installments of five years or in any other installments as directed and laid down by the policy of the Government in their letter dated 18.6.1982 or in such other manner as Hon'ble Court may be pleased to direct.

The petitioners applied on 1.4.1980 for conversion of the land from old grant terms into freehold. The Cantonment Board vide resolution No.7(5) dated 28.6.1980 recommended the conversion of land to freehold. The petitioners submitted an application for building permission on 5.7.1980. The Cantonment Board on 4.8.1980 passed a resolution which inter alia stated as under:-

"The following formalities required to be observed and to be communicated when the plans are to be returned to the applicant. The sanction be made effective only when the present rights over the land is converted into freehold by the competent authority and conversion cost as decided by the Government is deposited by the applicant and subject to clearance from competent authority ULC, Pune."

According to the petitioners, the above resolution was not communicated to them. The petitioners' architect on 18.8.1980 forwarded two sets of plans to get them certified by the Cantonment Board for cement purposes only and assured the Board that if the Government did not sanction conversion plans, the petitioners would not demand any compensation. The Cantonment Board by letter dated 15.9.1980 forwarded the copy of the plans as desired for procuring cement and not for any execution of work and expressly stated that it cannot be deemed as sanction under Section 179 of the Act. On 2.2.1983 a notice was given by the petitioners to the Cantonment Board alleged to be under Section 181 (6) of the Act. The said notice stated that the Board had failed to communicate the sanctioned plans to the petitioners and that if such negligence/omission continued for 15 days after the receipt of the notice by the Board the plans shall be deemed to have been sanctioned. The Cantonment Executive Officer sent a reply on 4.2.1983 stating that the property was held on old grant terms; that there was no neglect or omission by the Board and the building plans would be released only after receipt of sanction for conversion into freehold rights. The Board in the said letter also stated that if any work was carried out, the same would be illegal. The Cantonment Board vide its resolution dated 5.2.1983 approved the reply sent by Cantonment Executive Officer dated 4.2.1983. Again the Board vide letter dated 16.2.1983 warned the petitioners that any threatened work would be illegal. The petitioners filed an appeal on 5.3.1983 under Section 274 of the Act against the Board's letters dated 5.2.1983 and 16.2.1983. The Military Estate Officer by letter dated 2.8.1983 informed the petitioners that the Government had granted sanction to the conversion of the land into freehold and the payment was to be made on or before 15.8.1983. On 2.11.1982 the petitioners were granted permission by the defence Estates Officer to pay the conversion charges in five equal installments of Rs.1,03,338 each. On 30.1.1984 the petitioners gave notice to the Board that they were starting

building constructions. On 7.2.1984 notice given by the Cantonment Board to the petitioners that as no sanction had been communicated by the Board to the petitioners that as no sanction had been communicated by the Board to them, any construction raised by the petitioners would be illegal. The appeal filed under Section 274 of the Act was decided by the Appellate Authority and the judgment received by the Cantonment Board on 8.2.1984. The Board in the meantime vide resolution No.50 dated 21.10.1983 rejected the plans and conveyed the same vide letter dated 10.2.1984. The letter dated 22.2.1984 by which the plans were sought to be returned was not accepted by the petitioners. The petitioners filed Writ Petition No. 868/84 in the High Court and obtained an ex parte interim order on 28.2.1984. In February, 1986, it was noticed by Junior Engineer of the Cantonment Board that the existing building was demolished and excavation work had commenced by the petitioners. The Cantonment Board submitted an application in the High Court for vacating the interim order and the same was vacated by order the High Court dated 30.4.1986. The petitioners raised considerable constructions between 28.2.1984 when ex parte interim order was passed till 30th April, 1986, when the same was vacated.

Facts regarding sanction to freehold, deposit of construction charges, and constructions made on the land.

In this case though intimation of sanction for conversion into freehold was given on 2.3.1983 but not a single pie has been paid till date towards conversion charges and no constructions have been made by the petitioners.

S.L.P. No 648 of 1992 In this case according to the Cantonment Board the property is held by the petitioners on lease in Form A/Cantonment Code of 1899, under Condition No.2 of the lease. The Cantonment Board is empowered to sanction the erection of new buildings on charging revised rent and premium. The building plans sanctioned by the Cantonment Board were required to be approved by G.O.C.-in-Chief (Director Defence Lands and Cantonments). The Plans were sanctioned by the Cantonment Board and concurrence of GOC- in- Chief was obtained. The G.O.C.-in-Chief while giving his concurrence directed the Cantonment Board to charge full market rent and premium for commercial purpose vide letter dated 19th October, 1982 called upon the petitioners to pay the revised rent and premium. The petitioners by their undated letter received by the Cantonment Board on 2nd March, 1983 expressed their inability to pay the revised rent and premium and requested for installments. The petitioner as such has not paid any amount towards rent and premium and the plans which were sanctioned ceased to be valid as the sanction has not been communicated nor the same can be said to be into force on 24th December, 1982 when the first scheme of building restriction came into force. Even otherwise the sanctioned plans were valid only for a period of one year as per Section 183 of the Act. Thus in this case not a single pie has been paid towards the revised rent and premium nor any construction has been made.

In this case vide letter dated 21.1.1984 intimation of sanction for conversion was given to the petitioner. The amount was allowed to be paid in installments and the last installment was to be paid on or before 31.8.1985 but the final installment was paid on 30th March, 1990. The petitioners have made constructions consisting of basement, mezzanine and four upper storeys with RCC work.

In this case the intimation of sanction for conversion was conveyed on 15.12.1982 and full price of conversion has been paid and no construction has been made.

S.L.P. No 976 of 1992 In this case the intimation of sanction for conversion was given on 12.11.1982. The petitioners paid the first installment on 1.3.1983, second installment on 9.3.1984 but have not paid the remaining three installments. Final installment ought to have been paid by 1.3.1987. No constructions have been made on this plot of land.

In this case the sanction for conversion was intimated on 2.8.83. The first installment was paid on 2.11.1983 and the 5th and final installment was paid on 3.12.1991. Though final installment ought to have been paid on or before 1.11.1984.

Before dealing with the contentions raised before us we deem it proper to set out the legislative history of the relevant orders and bye-laws made from time to time during the period in question.

The Pune Cantonment is governed by the Cantonments Act, 1924. Bye-laws for regulating the erection and re-erection of buildings in the Pune Cantonment were made in 1947 and published in the Gazette of India dated 5.4.1947.

The GOC-in-Chief, Southern Command issued an order dated 24.12.1982 in exercise of power under sub-section (2) of Section 181 of the Act. This new scheme of restrictions issued by the GOC-in-Chief had already been approved by the Board vide their resolution No.30 dated 9th December, 1982 laying down the minimum space required to be left open and floor space index to be adhered to in the matter of new constructions. The scheme of restrictions was made to come into force with immediate effect. This order dated 24.12.1982 laid down the floor area ratio as under:-

(a) FLOOR AREA RATIO The permissible FAR shall be 1.5 for purely residential building and 2.00 for building with a mixed residential and commercial user subject maximum tenement density of 250 T/Ha. provided in a building with mixed residential and commercial user the commercial user will be permitted only on the ground floor and the residential user and commercial user shall not exceed FAR 1.5 and 0.5 respectively.

(b) FRONT OPEN SPACES The minimum set back from existing or proposed road shall be as under:-

(i) For Streets 4 m and above.....width 1.5 m.

(ii) and areas where shops/commercial user exist/proposed 2.25 m."

Second scheme of restrictions dated 26.3.1984 modifying the earlier order dated 24.12.1982 reads as under:-

"PUBLIC NOTICE WHEREAS it is necessary for the prevention of overcrowding in Pune Cantonment to impose restrictions under Section 181 A of the Cantonments Act.

AND WHEREAS public notice inviting objections has been issued in this behalf.

AND WHEREAS I have carefully considered all the objections received in reply to the public notice. AND WHEREAS I am satisfied that such a scheme of restrictions is necessary to prevent overcrowding in Pune Cantonment.

NOW THEREFORE in exercise of the powers vested in me under Section 181 A of the Cantonments Act 1924, I hereby sanction the following scheme of restrictions:-

(a) The permissible Floor Space Index shall be 1 in the civil area notified under Section 43 A of the Cantonments Act and bazar areas notified under Rule 2(b) of the Cantonment Land Administration Rules, 1937 and 0.5 in the remaining areas of Pune Cantonment.

(b) Marginal open space along the periphery of land or plot shall be 4.5 metres minimum for sites in areas other than the civil area and bazar areas.

(c) The height of all buildings including public/Government buildings will be restricted to a maximum of 18 metres.

(d) The Maximum number of storeys permissible shall be ground plus two floors in all areas of the Cantonment.

This order will come into force with immediate effect. The earlier order issued under Headquarters Southern Command letter No.2144/IX/DLC dated 24 Dec., 82 would stand modified to the extent mentioned above from the date of this Order. PUNE Sd/-TS OBEROI Dated 26th March, 1984 Lieutenant General GENERAL OFFICER COMMANDING-IN-CHIEF NOTE:- It is clarified for information of the general public that the above orders will be effective from the date the GOC-in C, HQSC, has signed the above order i.e. 26th March, 1984. These restrictions will apply only to the buildings whose plans will be considered/passed on or after 26.3.84. Building plans passed prior to 26.3.84 will be governed by the FSI existing during that period.

Dt. 4th April, 1984 Sd/-SP NIJHAWAN CANTONMENT EXECUTIVE OFFICER PUNE"

Pune Cantonment (Building) Bye-Laws 1988 published in the Gazette dated April 30, 1988. These bye-laws have been framed in exercise of the powers conferred by Section 186 and 283 of the Act after inviting objections and suggestions. Open space and height limitations in notified civil area, bazar area and remaining areas in accordance with byelaw No. 21, 23, 24 and 25 now reads as under:-

"APPENDIX 'H' (See Byelaw Nos. 21, 23, 24 and 25) OPEN SPACE AND HEIGHT LIMITATIONS IN NOTIFIED CIVIL AREA BAZAR, BAZAR AREA AND REMAINING AREAS. The permissible floor area ratio shall be as per details given below:-

1. The permissible F.A.R shall be 100 in the civil area notified under Section 43-A of the Cantonments Act, 1924 and bazar area notified under Rule 2-B of Cantonment Land Administration Rules, 1937 and in Ghorpuri Village and Bhairoba Nallan area, the land of which area is under the management of the Collector, Pune District within the limits of the Cantonment, but owned by private individuals. The F.A.R in area other than mentioned above shall be

50.

2. Marginal open space along the periphery of land or plot shall be 4.5 metres minimum for sites in area other than the civil area. Ghorpuri Village, Bazar areas and Bhairoba Nalla area.

3. No erection or re-erection of a building shall be permissible beyond the set-back line, which shall be determined by adding one metre to the existing width of the street or in accordance with the road widening scheme of the Board, whichever is more, in notified civil area or notified Bazar Area, Ghorpuri Village and Bhairoba Nalla area.

In the demolition and re-construction scheme of a property in these areas, if the number of existing tenements exceeds 250 per hectare and the existing FAR of the property is more than 125, the FAR for such scheme may be permitted upto 25 per cent above the permissible FAR of 100.

4. The height of all buildings will be restricted to a maximum of 18 metres.

5. The maximum number of storeys permissible shall be ground plus two floors in all areas of the Cantonment.

[File No. 12/15//C/L&C/73] G.S. SOHAI, Cantonment Executive Officer"

A common feature of all the above cases is that the petitioners were relying on the building plans submitted before the first scheme of building restrictions was brought into force on 24.12.1982. The petitioners were intimated that their plans could be sanctioned only after conversion of the old grants into freehold tenure and subject to the payment of conversion charges by them. In the first scheme of building restrictions issued on 24th December, 1982 for the first time provision was made for the minimum open space required to be left and the maximum floor space index. According to this scheme the permissible F.A.R was kept as 1.5 for purely residential buildings and 2.00 for buildings with a mixed residential and commercial user

subject to maximum tenement density of 250 T/Hs provided in a building with mixed residential and commercial user. The commercial user will be permitted only on the ground floor and the residential user and commercial user shall not exceed F.A.R 1.5 and 0.5 respectively. None of the petitioners were willing to accept the aforesaid scheme and did not submit fresh building plans in accordance with the first scheme of restriction of 24th December, 1982. In view of the fact that there was no such restriction in the Pune Cantonment Building Bye Laws, 1947, the petitioners were taking the stand that the building plans already submitted by them before 24-12-1982 should be approved. It is no longer in dispute on behalf of the petitioners that the respondents had right to put a condition of old grants to be converted into freehold but their stand was that the scheme of restrictions issued by the G.O.C.-in-Chief dated 24.12.1982 should not be made applicable in their cases.

On the other hand, the Cantonment Board had taken a clear stand that in or about the late 1970's and early 1980,s a large number of builders in order to take advantage of the lenient building regulations in the Cantonment of Pune had come forward and had started building activities. However, the G.O.C-in-Chief took notice of the fact that the existing bye-laws did not contain adequate provisions to prevent over crowding as a result of haphazard and high-rise constructions. The Cantonment Board, Pune had also prepared a scheme laying down the minimum open space required to be left open when new constructions were undertaken and also laying down the maximum floor space under resolution dated 9th December, 1982. The Government also decided as a policy matter that the building plans be sanctioned after converting the land from old grant to freehold tenure. According to the Cantonment Board, some of the builders had started constructing building in blatant disregard of the first scheme of restriction dated 24th December, 1982 and also without making the full payment of conversion charges. The Board had also passed a resolution No. 50 dated 21st October, 1983 to reject the building plans which were not in conformity with the new scheme of the building restrictions and the same were rejected and returned. It was also intimated to the petitioners to re- submit the building applications in accordance with the new scheme of building restrictions and the same would be considered and disposed of on merit. It may be further noted that the Cantonment Board by its resolution of October 30, 1981 had resolved that the sanction was valid only for procuring cement and not for execution of work and no construction should be started till final sanction for conversion was received from the Government. On November 17, 1981 the Cantonment Board forwarded a copy of the Plan to the petitioners for procuring cement only and in clear terms stating that it should not be deemed to have been sanctioned under Section 179 of the Act. In spite of this, some of the petitioners demolished the structure with a view to construct a new building.

Being aggrieved by the aforesaid action taken by the Cantonment Board, the petitioners filed writ petitions in the High Court. A Division Bench of the High Court comprising of Justice Sawant (as he then was) and Justice Kantharia gave a detailed

Judgment in W.P. Nos.2236 and 2237 of 1983 vide order dated 15.4.1987. As already mentioned above the impugned orders dated 18.10.1991 in the case of the present petitioners, have followed the earlier decision dated 15.4.1987. The High Court in its Judgment dated 15.4.1987 held that till the conversion was granted, the application for construction was to be refused under Section 181 (4)(b) of the Act on the ground that there was dispute within the meaning of the said provisions. It was also held that till all the formalities required by the grantee of the conversion including the payment in full of the cost of the conversion was completed by him the conversion was not to be deemed to have been made and, therefore, the plans could not be sanctioned by the Board till that time. No plan for construction could have been sanctioned till the conversion was accepted by the petitioners themselves on the terms it was granted and payment of the cost of conversion was made. It was also held that in fact no sanction has been given to the building plans for construction. The Board in its resolution had made it clear the the plans would not be effective till the conversion was granted and the amount was deposited as directed by the Government. The condition of conversion was not severable from the sanction to the plan. It was on the other hand a condition precedent and foundation of the sanction. It was not in conflict with the bye-laws. And even if that be so, the scheme being later in point of time will prevail over the bye-laws when there will be a conflict between the two. It was further held by the High Court that the Board will have to sanction a plan afresh after conversion of a grant. Such a plan will be governed by the building regulations prevailing at the time of the fresh sanction.

It is further important to note that the petitioners in the writ petitions were seeking a relief to give a direction to the respondents to allow the petitioners to make constructions on the basis of the building plans submitted by them prior to 24.12.1982 and not be apply the restrictions imposed in the scheme of restrictions brought into force on 24th December, 1982. Thereafter the G.O.C-in- Chief issued the second scheme of restrictions on 26th March, 1984 in exercise of the powers vested in him under Section 181A of the Act whereby further restrictions were put in the matter of floor space index as well as in the height of the buildings. According to this second scheme of restrictions, the height of the building was restricted to a maximum of 18 metres. The maximum number of storeys permissible shall be ground plus two floors in all areas of the Cantonment and the permissible F.A.R was reduced to 1.0 in the civil/bazar areas. It may be further noted that the earlier bye-laws of 1947 have been superseded by the Pune Cantonment (building) bye-laws 1988 made in exercise of the powers conferred under Section 186 and 283 of the Act and the new bye-laws of 1988 have been published in the Gazette of April 30, 1988. These bye-laws of 1988 have approved the second scheme of building restrictions dated 26.3.1984 in the matter to open spaces, area and height.

limitations of the buildings in the Cantonment of Pune.

It was now contended before us on behalf of the petitioners that they are willing to abide by the first scheme of restrictions of 24th December, 1982 and the petitioners may be permitted to furnish building plans in accordance with the said scheme and it may be held that the second scheme of restrictions dated 26.3.1984 and the bye-laws of 1988 are not applicable in their case. In case of the petitioners in S.L.P. Nos.908/92 and 985/92 it has been further contended that they have already raised constructions and as such so far as these two cases are concerned the constructions already raised may be allowed to be kept intact. It has been submitted that so far as the petitioner in S.L.P. No.985 of 1992 is concerned no constructions were made in illegal manner but the same were made between 28.2.1984 and 30.4.1986 during which period the stay order passed by the High Court remained in force.

We have considered the arguments advanced before us and we are clearly of the view that there is no force in any of these special leave petitions. The builders are playing the game of hide and seek and did not come in a straight forward manner accepting the first scheme of restrictions on buildings brought into force as back as on 24th December, 1982 and went on insisting that the said scheme of restrictions was not binding on them. We cannot be oblivious to the fact of thrust of population in all the Urban cities in our country and the problem of basic amenities to be made available to the residents of the cities including Pune. We are already in the last decade of the 20th century and all planning is to be done on a long term basis taking note of the growth of industries and over crowding of population causing environmental and pollution problems in the cities. Growing awareness of these problems has activated the Government as well as the various social activists in taking notice of this menacing problem which is posing a danger to the very survival and existence of human race.

It appears from the record that the Union Ministry of Environment, State of Maharashtra, National Commission on Urbanization and expert working group on Cantonment areas took notice of this problem in the city of Pune and suggested schemes which took the shape of orders issued by the G.O.C.-in-Chief, Southern Command and amendments in the bye-laws by the Cantonment Board. The petitioners did not acquire any legal right in respect of building plans until the same were sanctioned in their favour after having paid the total amount of conversion charges in lump sum or in terms of sanctioned installments and getting conversion of their land in free-hold tenure. The first scheme of restrictions was brought into force long back on 24th December, 1982 and the second on 26th March, 1984. The petitioners did not submit any fresh building plans in accordance with the first or the second scheme of restrictions. Many of the petitioners have not paid a single pie towards the conversion charges, some of them have paid only few installments and the others though have paid the installments but not according to the schedule. In any case, the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30th April,

1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now. If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit.

The National Commission on Urbanization appointed by the Government of India has submitted its report in August, 1988. In its report at points 12.6.18 and 12.6.19 it has recommended for the Cantonment Board Pune as under:-

"12.6.18 Pune is a recent example of how an unbridled Cantonment Board promoted development on a vastly larger scale than prevailed in the adjoining municipal areas, effectively abolished ceilings on FAR for commercial constructions and even permitted the sale of land to private parties on a free-hold basis for residential and commercial development. The impact on the rest of the city in terms of congestion and civic services was disastrous, especially since the cantonment land involved happened to be in the heart of Pune.

12.6.19 Realising the destructive effect of such developments on the character of cantonment towns, (a character which, the Defence Authorities are unanimously agreed, is imperative to preserve from the point of view of morale of the armed forces and congeniality of surroundings) the Ministry of Environment has accepted in 1986 the recommendations of the Report of the Working Group on Cantonment Areas set up jointly by the Department of Environment and the Ministry of Defence proposing uniform norms for urban development and conservation in all Cantonment areas in the Southern Command. Among the recommendations was the urgent suggestion that FAR in cantonments must be reduced to a maximum of ONE (1:1) in civil and bazar areas and to 0.5 in the bungalow areas, with a maximum height to 18m and a maximum of ground plus two storeys. This was based on the experience of Pune and is the norm for all the 15 cantonments in the Southern Command. It should be tailored downwards for smaller cantonments such as Wellington.

The working group appointed by the Government of India, Department of Environment by order dated July 12, 1984 to formulate environmental guidelines for the planning of military station has also made the following recommendations. The relevant recommendations for the Cantonment Board, Pune are reproduced as under: "In this connection, the working Group would like to stress the importance and necessity for effective building controls and regulations without which any plan for urban renewal of Cantonments cannot be effectively pursued. The group had occasion to visit Poona Cantonment and study the building restrictions in vogue in the light of a number of representations received from a Bombay- based environmental group. In Poona Cantonment Area the spurt in building activities began in 1976 when Government liberalised the land policy to allow the conversion of

old grant sites in civil areas of the Cantonment into free-hold. The intention was basically to help those families who live in the Cantonment where housing was inadequate. Prior to December, 1982, the building bye-laws of Poona Cantonment Board did not provide for any restrictions on floor space index (FSI) or height of buildings. Owing to non-existence of FSI restrictions, high-rise building came up in the densely populated civil area of the Cantonment. In order to prevent over-crowding and congestions and ensure sanitation, it became necessary for the GOC-in-C, the command to intervene in exercise of the powers vested in him under Section 181-A of the Cantonments Act, 1924 and impose a scheme of restriction in March, 1984.

(a) The FSI was restricted to 1 in the 'civil' and 'bazar' areas and 0.5 in the 'bungalow' areas.

(b) maximum height of buildings was stipulated as 18 mtrs.

(c) maximum number of storeys is to be ground plus 2.

The Cantonment Board has initiated amendments to the building bye-laws incorporating the above restrictions which are stated to be under the consideration of Government. The possibility of land speculators and builders taking advantage of they policy to permit conversion of old grant sites into free hold, as pointed out above, lies at one end of the spectrum. At the other end is the inability of the urban-dwellers to build new houses in place of the dilapidated house or tenement or bungalow. Even where the Government has resumed the bungalows it is not in a position to reconstruct them for want of resources. The working Group is of the view that the land policy of the Government in regard to the civil areas of the Cantonment should be more liberal so as to contribute to urban renewal. However it would be required to tighten building controls and regulations, if environmental degradation, as it has taken place in Poona Cantonment on account of the laxity of such controls and regulations, is not to occur in other Cantonments."

One of the suggestions and recommendations reads as under:-

"The group has observed that building bye-laws particularly the FSI restrictions are now being enforced in 15 cantonments falling under the Southern Command. Building regulations are essential to control the quality of built environment. It is recommended that similar steps should be taken in all cantonments through out the country and rigidly enforced to stop commercial building activities within the limits of military establishments, as had occurred in Pune Cantonment".

None of the petitioners have submitted fresh building plans according to the scheme of building restrictions in force at the relevant time and no sanction was accorded in favour of any of the petitioners to the building plans submitted originally. In case, petitioners shall submit fresh building plans now the same would be governed by the new bye-laws which have already come into force on 30.4.1988.

The schemes of building restrictions made by GOC-in- Chief dated 24.12.1982 and 26.3.1984 and amended bye-laws in 1988 putting restrictions and reducing the height and floor space index in respect of multi-storeyed buildings have been made in larger public interest and for the benefit of the entire population of the city of Pune. No argument challenging the validity of such schemes or bye-laws have been addressed before us. The slogan of the builders and land owners of utilising the maximum area for construction of high-rise buildings for fulfilling the need of houses in big urban cities should always be subservient to the building restrictions and regulations made in the larger interest of the whole inhabitants of Pune and keeping in view the influx of population, environment hazards, sanitation, provision for supply of water, electricity and other amenities.

A couplet in Telugu translated in English is quoted:-

"I will not stop cutting down trees, Though there is life in them.

I will not stop plucking out leaves, Though they make nature beautiful.

I will not stop hacking off branches, Though they are the arms of a tree.

Because -

I need a hut."

It was also contended on behalf of the petitioners that this Court by an order dated 23rd February, 1990 in Shoriar Baharam Irani & Ors. v. Pune Cantonment Board & Ors. in civil Appeal No. 2184 of 1987 filed against the judgment of the High Court dated 15.4.1987, have allowed the appellants of that case to make constructions in accordance with the building plan as sanctioned by the Cantonment Board subject to the restrictions imposed by the order of the GOC-in-Chief dated 24.12.1982. It is submitted that the cases of the petitioners are identical and as such they are also entitled to a similar order as passed in the above mentioned case. We find no force in this contention. In the order dated 23.2.1990 referred to above, it was clearly observed as under:-

"It is stated before us that a number of petitions are pending before the Bombay High Court challenging the validity of various building plans sanctioned by the Cantonment Board, Pune, in respect of other parties. We accordingly make it clear that this order will not effect the questions raised in those petitions, as we express no opinion on the merit of the contentions raised by the parties. However, we direct that the Writ Petition No. 156/87 and Writ Petition No. 1547/87 pending before the Bombay High Court against the appellants will stand disposed of in terms of this order. The appeals are accordingly disposed of without expressing any opinion on the contentions raised by the parties or on the questions decided by the High Court, under appeal."

A perusal of the observations made in the above order leave no manner of doubt that this Court had clearly mentioned that it was not expressing any opinion on the contentions raised by the parties

nor on the questions decided by the High Court. Thus, the above decision cannot be considered as a precedent for the cases in hand before us and no help can be sought by the petitioners on the questions now raised before us and decided by giving detailed reasons as mentioned above.

In the result, we find no force in these petitions and the same are dismissed with no order as to costs.

G.N.

Petitions dismissed.