

Niraj Vikas Pabale and ors. Vs. the Tahsildar and ors.

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Court : Mumbai Nagpur

Decided On : Sep-21-2011

Judge : B.P. Dharmadhikari; P.D. Kode, Jj.

Acts : Bombay Village Panchayat Act,1958 - Section 52, 142, 137, 180(2), 45; Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act ; Regulation of Buildings Rules,1967 ; [Bombay High Court Appellate Side Rules, 1960](#) - Rule 2A; [Delhi Rent Control Act, 1958](#) - Section 21; States Reorganization Act, 1956 - Section 51 (3), 323; Constitution Of India - Articles 226, 227, 21

Appeal No. : WRIT PETITION No. 5680/2007

Appellant : Niraj Vikas Pabale and ors.

Respondent : The Tahsildar and ors.

Advocate for Pet/Ap. : Shri Anil Kilor, Adv.

Judgement :

1. This writ petition is entertained as Public Interest Litigation (PIL) as per the orders of Hon'ble the Chief Justice dated 30/10/2007. Briefly stated, the grievance is about an activity in the shape of an educational institute and a students hostel in residential area. It is alleged that the construction is raised without legal sanction from the competent authority. Respondent No. 5 before this Court is that institute while Respondent No. 4 is the Gram Panchayat which claims to have sanctioned the same under Section 52 of the Bombay Village Panchayat Act,1958,

(hereinafter referred to as "the 1958 Act" for short). Respondent no. 6 is the Zilla Parishad which can control/suspend actions/resolutions passed by Gram Panchayat in this respect. At one time it was the stand of authorities that Standardized building bye laws for B and C class municipal councils prescribed under Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act (40 of 1965) needed to be followed (hereinafter referred to as "the 1965 Act" for short). The cognizance of grievance as PIL is also questioned on various grounds and one of the contentions is subsequent amendment to letter treated as PIL by the petitioners, can not be looked into as its part and parcel.

2. With this background, we proceed to narrate the facts. (A). 15 petitioners wrote a letter dated 8/10/2007 to the Hon'ble The Chief Justice of this Court by designation as also by name (then the Hon'ble Chief Justice Shri Swatantra Kumar) as also to the then Administrative Judge at Bombay Shri J.N. Patel (using name also) and to the Administrative Judge at Nagpur. It was received by the office of Hon'ble The Chief Justice on 15/10/2007. Registrar(Judicial-I) at Mumbai on 29-10-2007 placed it with a note before the Hon'ble Chief Justice and sought orders as to (A) whether said communication be treated as PIL and sent to Nagpur Bench or then (B) whether it be filed after informing the writers that they may take recourse to remedy available in law, if so advised. Hon'ble The Chief Justice approved part "A" of the note. We are making reference to this letter in more details in paragraph 8 below. (B). Deputy Registrar of High Court at Nagpur had in the meanwhile on 24/10/2007 placed the very same letter received by Senior or Administrative Judge at Nagpur with similar note and sought directions whether (A) it be treated as PIL, (B) whether report of Collector. Wardha be called within one month or then (C) whether to file it after informing the applicants to take recourse to appropriate legal remedy, if they so desired. The Hon'ble Administrative or Senior Judge at Nagpur approved option "B". This therefore shows that appropriate cognizance was taken at Nagpur as also at Mumbai independently by the competent Hon'ble Judges. (C). Matter was listed on 17/12/2007 before the Division Bench presided over by same Senior Judge only and was adjourned to 19/12/2007. The report was already called from the office of Collector Wardha by Joint Registrar (Criminal-1) of this Court vide communication dated 29/11/2007 as per the directions of Hon'ble Senior/Administrative Judge at

Nagpur. Said report dated 6/14-12-2007 was received and on 17/12/2007 itself orders of Hon'ble Senior Judge before whom the matter was listed earlier on same day on judicial side were procured to tag that report with writ petition. Accordingly, report was made available to the same Division Bench on next date i.e., on 19/12/2007. On that day after hearing, this Court issued notice before admission returnable on 9/1/2008. Matter was also directed to be placed before High Court Legal Services Sub-committee. On 10/1/2008 the matter appeared on daily board and Petitioners then were given assistance of an advocate as amicus curiae. On 29/1/2008, Respondent no. 5 filed its submissions mostly raising challenge to the cognizance and maintainability. Respondent no. 4 Gram Panchayat also filed its reply on that day. Reply affidavit dated 1/2/2008 of Respondent no.1 came to be filed on 7/2/2008 and by respondent no.3 on 8/2/2008. On 15/2/2008, petitioners engaged their present Advocate. On 25/4/2008, petitioners sought adjournment to file amendment application. Civil Application No. 3739/2008 filed by them for amendment was granted on 9/6/2008 after noting that petition was still to be admitted and respondents would not suffer any prejudice. On 15/9/2008, notice came to be issued to added respondent no.6 Zilla Parishad. On that day, C.A. 5380/2008 seeking consequential amendment to its written submissions was also allowed. Office endorsement dated 1/10/2002 reveals that respondent no.6 was served and its advocate filed appearance on 2/2/2009. It filed its written submission on 20/4/2009. On 10/8/2009 petitioners filed rejoinder as allowed by this Court. Zilla Parishad filed additional affidavit on 12/11/2009. On 3/2/2010, time was given to petitioners to produce development plan of the concerned area. On 9/3/2010, petitioners filed additional affidavit and another additional affidavit on 1/9/2010. Respondent no.5 filed its reply to that additional affidavit on 5/10/2010. (D). On 1/12/2010, this Court directed respondent no.5 to disclose document by which it acquired title to plot on which subject building is standing, when and under whose orders plots were consolidated and under whose signature proposed plan was submitted for approval to Gram Panchayat. On 13/12/2010, respondent no.5 filed a pursis vide stamp 13070/2010. Typed word "submission" in its title clause was scored off and replaced by handwritten word "pursis". On 21/12/2010, respondent no.5 filed Civil Application (W) No. 3251/2010 seeking leave to amend submissions which came to be allowed on 12/1/2011. What has been amended as

per this order is this pursis which was/is without any affidavit. Consequentially, word "pursis" on it appears to be scored and word "submission" is again added by hand on this stamp 13070/2010. This position can be seen from office note dated 25/1/2011 which also initially used word "pursis" and later corrects it to read "submission". By very same order dated 12/1/2011, this Court directed respondent no.4 Gram Panchayat to file separate affidavit in relation to each structure erected within its jurisdiction giving details of permission, provision of law under which permission was granted and whether such permissions are in conformity with law. On 2/2/2011, respondent no.4 filed the affidavit of its secretary. On 4/3/2011, it filed additional affidavit. Petitioners thereafter did not file any additional rejoinder and on 23/4/2011, matter was adjourned to 14/6/2011 and then to 27/6/2011. respondent no.5 then filed additional submissions (already sworn on 18/2/2011) on 14/6/2011. Petitioners then filed additional affidavit on 22/6/2011. On 27th June 2011, this Court refused to first decide preliminary objection of respondent no. 5 about tenability as PIL and respondent no.5 then sought time to file reply on merits. That reply in the shape of additional affidavit came to be filed on 8/7/2011. respondent no.5's reply filed on 21/7/2010 to additional affidavit of Petitioners dated 9/3/2010 came on record as wrong case number in its presentation form was corrected on 19/7/2011. (E). The letter sent by petitioners and affidavits, replies/submissions filed by respective parties need reference in detail and to avoid prolixity, we find it appropriate to mention it little later. (F). In this background, We have heard respective Counsel for parties from 18/7/2011.

3. Arguments of Shri Kilor, learned Counsel for Petitioners. (A). Shri Kilor, learned counsel appearing on behalf of petitioners pointed out the history in brief already noted above to assert that as Hon'ble The Chief Justice has already directed the registration as PIL and facts disclose public interest involved as it is case of illegal construction being permitted on large scale by authorities responsible for curbing it without any objection and in defiance of building bye- laws, the objection to its tenability is misconceived. He further states that by amendment details of very same grievance are furnished and hence, contention that such amended part can not constitute PIL is without any merit. He reads out the letter accepted as PIL to point out nuisance being caused to all residents due to violations of building bye-laws. He further states that initially there was only one building but during

pendency of writ petition, 5 more buildings have come up. Plans of all these 6 buildings i.e., 5 Hostels and 1 College are all claimed to have been sanctioned by Gram Panchayat under Section 52 of the 1958 Act. Under Section 52(2), remedy of appeal is available to owner of construction, if he is aggrieved by any condition subject to which such sanction is granted or then by rejection of permission. He also invites attention to confusion later on attempted to be introduced about the building bye-laws or regulations relevant in this respect. He has produced before the Court charts showing area of plots consolidated together by respondent no.5 to support each building and how, even if either of the Rules are applied, the construction is much in excess and illegal. He states that if the Maharashtra Village Panchayat Extension of Village Sites and Regulation of Buildings Rules, 1967 i.e., Extension Rules are held to apply, the plots can not be clubbed and permissible Floor Space Index (FSI) or Floor Area Ratio (FAR) is only 40% with requirement to leave marginal spaces as stipulated therein open. If Standardized Building Bye-laws for B and C class Municipal Councils framed under 1965 Act i.e., Municipal Rules are to be looked into, said FSI or FAR is 60% with similar riders. Hence, in either case the structures as raised are in excess and illegal. He also points out that as per Extension Rules building can be only single storied while under Municipal Rules, it may have only 3 stories i.e., ground plus two floors. He argues that no order passed by any authority permitting consolidation or clubbing of different plots are/is pointed out by any of the Respondents and directions issued by this Court on 12/1/2011 have not been complied with. Gram Panchayat had granted permission only for a residential house but respondent no.5 raised a huge multistory College. When building permission was applied, respondent no.5 was not the owner and after cognizance by this Court, a gift deed has been executed by owners in favour of respondent no.5 in 2010. (B). Attention is invited to written submission filed by respondent no.5 through its President where it is stated that provisions of Municipal Rules or Bye-laws for "C" class municipal council will be applicable in Gram Panchayat area and both "R-1" and "R-2" uses will be legal in residential zone. Reply of respondent no.1 Tahsildar holds Gram Panchayat guilty and permission to construct hostel as illegal. Reply of respondent no.3 Sub-Divisional Officer (SDO) also records similar findings. Both these Government Authorities have requested Chief Executive Officer i.e.,

respondent no.6 to initiate appropriate action against Gram Panchayat in the matter. Reports submitted by SDO on 14/12/2007 to respondent no.6, by Block Development Officer, Panchayat Samiti, Wardha on 20/11/2007, spot inspection report of Naib-Tahsildar, Wardha dated 17/11/2007 and report of the Chief Executive Officer of respondent no.6 Zilla Parishad dated 5/12/2007 are all on same lines. Learned Counsel asserts that subsequent change in stand of Zilla Parishad is mala fide. Apparent difference as per sanctioned map and photograph of actual structure is highlighted to contend that it is undue influence and abuse of position which has facilitated this change. Modification as sought on 21/7/2010 by respondent no.5 is also pointed out. Reply affidavit filed by respondent no.6 on 20/4/2009 is pointed out to show stand therein that sanction granted is as per Section 52 of the 1958 Act read with Extension Rules. Later affidavit filed on 12/11/2009 by it is also pointed out to show how it attempts to explain the earlier report of its CEO and erroneously interprets communication dated 14/10/1994 in order to favour respondent no.5. He states that directions issued on 1/12/2010 are still not obeyed by either respondent no.5 or then respondent no.4 and 6. Affidavits filed on 18/7/2008 and on 2/2/2011 by respondent no.4 Gram Panchayat are also pointed out to show how it now urges that Extension Rules are not applicable. (C). According to him in spite of cognizance by this Court, 4 new buildings have come up and all reports initially prepared without any influence support the cause and case of Petitioners. Hence, these unauthorized structures must be demolished.

4. Arguments of respondents, other than respondent no.5. (A). Shri Mokadam, learned Counsel appearing on behalf of respondent no.6 Zilla Parishad points out that as sanction given by Gram Panchayat is as per Section 52 of the 1958 Act and Extension Rules, no action under Section 142 thereof was warranted. He also points out the reasons for contending that Municipal Rules do not apply. (B). Shri Johrapurkar, learned counsel appearing on behalf of respondent no.4 Gram Panchayat relies upon reply filed by it on 29/1/2008 to urge that Municipal Rules permit hostel and educational institute in "C" class. S.142 of 1958 Act ought to have been resorted to by Petitioners and cancellation or suspension of the Gram Panchayat resolutions granting sanctions ought to have been sought. Thus an alternate and equally efficacious remedy was/is available to them. From paragraph no. 2 onwards of later affidavit filed on 2/2/2011, sanctions or permissions given by

respondent no.4 from time to time, are shown. Extension Rules of 1967 are argued to be not relevant as there is no new village site here and also no appointment of any extension officer. It is further urged that all sanctions are in the name of recorded owners only. Rule 40 of the Meeting Rules governing the meetings of Gram Panchayat requires each resolution to be sent to Zilla Parishad and Section 137 of the 1958 Act enables Zilla Parishad to call for records and Zilla Parishad never found it necessary to exercise that power. Bar of action provided under Section 180(2) of 1958 Act is also pressed into service. Learned Counsel in this background, points out a statement on affidavit that it did not receive any notice of inquiry allegedly conducted by authorities. He further points out that 3 modifications in building plan changing it from House to Hostel were allowed as per law. (C). Learned A.G.P. relies upon the communication dated 14/10/1994 and also material brought on record through reply affidavits to state that the constructions are found illegal by the State Government and also by the Chief Executive Officer of Zilla Parishad.

5. Arguments of respondent no.5 - Society. Shri De, the learned Counsel for respondent no.5 has advanced arguments firstly about the validity of the cognizance taken by this Court as PIL, its maintainability and lastly, on merits; clarifying that all contentions were without prejudice to each other and in the alternative. (A). He contends that letter originally written to Hon'ble The Chief Justice is making grievance about only one construction i.e., Hostel on plot no. 12 to 17 in residential area. The structure is stated to be G.F. + 3 stories and nuisance due to its use to only 15 writers of that letter. It is not in representative capacity. This letter was placed before the Hon'ble Chief Justice by Registrar with two options. The alleged cause has arisen in territorial jurisdiction of Nagpur Bench and hence, cognizance needed to be taken by the Senior Judge (also referred as Administrative Judge) at Nagpur. Rule 2A of the [Bombay High Court Appellate Side Rules, 1960](#) (hereinafter referred to as "the Appellate Side Rules" for short), then regulating the PIL are relied upon. It is urged that said Judge is aware normally of prevailing local situation and authority given to such Hon'ble Judge therefore, is, with some purpose. 2003(4) Mah.L.J. 635 (pl.B) (Surendra Ramchandra Jichkar vs. State of Maharashtra), is relied upon to buttress this contention. Therefore order of Hon'ble Chief Justice dated 30/10/2007 accepting it

to be PIL is urged to be void. (1992)1 SCC 534-(para 19)- AIR 1992 SC 1555- (Shrisht Dhawan (Smt) v. Shaw Bros.),is cited for this. (1993) 2 SCC 507 (para 18)-(Chiranjilal Shrilal Goenka v. Jasjit Singh),is pointed out to show concept of coram non judis and (2008) 7 SCC 738 (para 23)- (M.V. Janardhan Reddy v. Vijaya Bank), to urge it does not create any right or obligation. (B). Shri De, learned counsel states that Petitioners, only 15 in number, can not maintain such petition which is in self interest only. There pleadings are vague and there is no full dis-closer. Fate of police complaint filed by them is not pleaded and its copy also is not annexed. Personal data of each petitioner, necessary to understand their position in life and society is not pleaded. With the result their credentials or bonafides are not available and Hon'ble The Chief Justice has not looked into it at all. According to him to understand their grievance, a proper map showing location of their houses, of Hostel/College, distance separating them was essential to enable a legal decision about treating their grievance as PIL. All petitioners are claimed to be affluent and educated citizens well placed in life and hence, PIL is not a remedy for them. It is also pointed out that students of respondent no.5 had earlier lodged police complaint against highhanded acts of these petitioners and thereafter, they have started making grievance only to counter said complaint. He contends that there are 2 other Colleges in the vicinity and they have come up even without non-agricultural permission. Still, petitioners have not made any grievance. Petitioners are acting at the instance of these other institutes and not bonafide or in public interest. (C) It is urged that the other residents have never made any complaints and houses or structures of Petitioners are in violation of Municipal Rules. The petitioners have purchased their respective plots long after the constructions of respondent no.5 were over and they,also, have not made any grievance about the other buildings in their letter. Representation to Collector or then letter by him to CEO, Zilla Parishad or to SDO show complaint about only Hostel building i.e., one structure and no grievance about other structures. All these factors show acquiescence on their part. (D). Attention is invited to photograph of college building to urge that its construction was already over with other buildings and no complaint about the same was made at any time. This Court has not taken cognizance of these other buildings in PIL and subsequent addition of said grievance to PIL is not legally possible. PIL is filed on 15/10/2007

and amendment about other buildings has come on 9/6/2008 which is not earlier cleared by either Hon'ble The Chief Justice or Senior Judge as PIL. Hence, such amendment can not relate back to the date of such sanction or clearance. According to him, this is nothing but back-door entry of other matter into PIL. (E). The respondent no.5 is providing free education and hostel facility to students from backward/weaker strata of society and its work is more important to public than the grievance expressed by Petitioners. List of such 66 students is pointed out. Attention is also invited to list of other cities where Hostels are permitted in residential areas. It is urged that population of village Nalwadi is only 8052. The injury complained of is therefore urged to be not legal. (F). In these circumstances, Shri De, learned counsel contends that as disputed questions of facts arise the petitioners ought to have taken recourse to alternate remedies under the 1958 Act or then to Civil Court and instant PIL at their behest is not sustainable. Had respondent no.5 received due opportunity before taking cognizance of the matter as PIL, all these relevant facets could have been scrutinized before treating it as PIL. Learned Counsel states that respondent no.5 has raised all structures after due sanctions and clearances. Hearing it would have resulted in invoking correct jurisdiction by the petitioners saving harassment of respondent no.5 and others. It is pointed out that concerned Registrar at Bombay had pointed out two alternatives available and hence, before Hon'ble The Chief Justice decided to accept one out of them, opportunity of hearing needed to be extended to petitioners. The verification of bonafides or credentials of petitioners is must at the thresh-hold only. (1993) 4 SCC 10-(para 9)-AIR 1993 SC 2155-(Rattan Lal Sharma v. Managing Committee, Dr Hari Ram (Co- Education) Higher Secondary School), is pressed into service. It is urged that the Hon'ble Chief Justice has not recorded any reasons for selecting a particular course or then for treating it as PIL. (2010) 4 SCC 785-(para12)(Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing v. Shukla and Brothers), and(1998) 5 SCC 513 (para 27) AIR 1998 SC 2050-(State of W.B. v. Shivananda Pathak), are relied upon here. A substantive writ petition vide W.P. 5933 of 2010 was filed in this regard by it and was allowed to be withdrawn on 16/12/2010 with liberty to respondent no.5 to raise all contentions in defense in this petition. Already, on 13/12/2010 appropriate submissions were filed in writ petition raising the same.

(G). To demonstrate the situation in which and nature of grievance that can be looked into as PIL, he relies upon (2005)3 SCC 91 --(R and M Trust vs. Koramangla Residents Vigilance Group)--AIR2005 Sc 894 (para 23 to 37), AIR 2006 SC 2643--(Kushum Lata vs. Union Of India)-(para 13), (2008) 3 SCC 542--AIR 2008 SC 1614-- (Divine Retreat Centre vs. State of Kerla and Others)-(para 57,59,61,63,64). (H). Respondent no. 5 commenced the construction in 2000 and the College existed prior to Petitioners erecting their houses. Though sanction uses the word "house", map itself employs the words like - retiring room, class room, library etc. Hence, initial sanction was to College only. It is urged that restriction on height i.e., to have G+2 stories came later. Request to add one more floor was duly made on 1/4/2002 and it was granted on 6/4/2002. Petitioners purchased their plots long after this and their houses are at sufficiently long distance. He reiterated that police complaint by one student against one of the Petitioners has started this dispute. (2010)11 SCC 557--(para 48 to 53)-- Manohar Lal vs. Ugrasen and Ghaziabad Development Authority vs. Ugrasen), as also 2010 (1) SCALE 492 (para 196 to 198)=(2010) 3 SCC 402-(State of Uttaranchal vs. Balwant Singh Chauhan) are pressed into service in this connection. (I). Our attention is drawn to pursis/submissions dated 13/12/2010 and documents placed with it to urge that all 6 buildings are having valid sanctions and title vests in respondent no.5. It is further urged that present respondent no.5 was not given any previous notice by any authorities before undertaking the inspection and their reports are not binding on it. He contends that Petitioners are themselves not very clear about the legal provisions applicable to constructions in dispute. Petitioners in letter rely upon Municipal Rules while High Court order dated 12/1/2011 calls for information in the light of Extension Rules. According to Gram Panchayat, it is Section 52 of the 1958 Act which is relevant. Relying upon Section 45 of the 1958 Act, he points out entry 44 in Schedule-I and then Rule making power contained in Section 176 thereof to urge that Extension Rules can not apply and Respondents have not violated its Rule 7. In the alternative, it is urged that Petitioners have also violated said Rule 7 and support is being taken from chart prepared and produced by respondent no.5 for this. He further relies upon assertion of Zilla Parishad that Municipal Rules are not applicable and that is correct as per communication dated 14/10/1994. Government has not given any reply about interpretation of this

communication and Petitioners have not filed any rejoinder disputing this stance of Zilla Parishad. It is stated that Section 176 and 177 envisage rule or bye-law making only after previous publication. Section 323 of the 1965 Act is read out to urge that alleged Standardized Building Bye-laws are only guide lines which even concerned Municipal Council is required to adopt and in absence of order U/Section 323(3), it has no statutory force. Without prejudice, bye-laws 2.11,2.21,2.29 are read out to urge that Hostel is covered by Cl. 2.29. Bye-law 20 and then Appendix-G is used to show that in C class municipal area, educational institutes are allowed in residential zone also. Order dated 12/10/2007 passed by SDO permitted non- agricultural use for educational purpose and it has been given after due publicity and calling of objections. Permission given by Collector on 9/8/2005 to sale to respondent no.5 survey no. 63/1 area 1.87 H to one Siddhartha Doifode for educational purpose is also relied upon. It is urged that all building plans were prepared by competent architect and sanctioned u/S 52 of 1958 Act by the Gram Panchayat. Reply filed by respondent no.4 Gram Panchayat is relied upon to substantiate this plea. View of this Court in 2009(2) Mah.L.J. 714--(Shirdi Nagar Panchayat vs. Gordia Budget Hotel) (learned Single Judge--para 2,7 and 8) is banked upon to show validity of such permission u/Section 52. (J). Section 142 of the 1958 Act and it's scope as explained by Full Bench of this Court in 2004(2) Mah.L.J. 874-para 44 - (Sanjay Govind Sapkal vs. Collector of Dhule) and 2009(5) Mah.L.J. 711-para 9 --(Sandip Diwakar Joshi vs. Corporation of City of Nagpur), construing it as alternate remedy are heavily relied upon for seeking dismissal of PIL on that account. It is contended that Petitioners never approached Zilla Parishad and impleaded it later before this Court after matter was treated as PIL . Any omission or inaction on part of Zilla Parishad can not constitute a cause to sustain a PIL. (K). Order VII Rule 7 of Code of Civil Procedure is also relied upon to argue that relief needs to be specific and it can not be vague in such cases. The letter even after amendment speaks of only Hostel building on plot nos. 12 to 17 and the details like area of construction or plot or extent of alleged unauthorized construction are given.

6. Shri Kilor, learned Counsel has first addressed us on question of maintainability and later replied to defense arguments of respondent nos. 4, 5 and (A). He points out that the Hon'ble The Chief Justice is Head of State Judiciary and of Nagpur

Bench also. Hence, exercise of power to treat letter as PIL by Hon'ble Chief Justice is not vitiated at all. It is pointed out that Hon'ble Chief Justice could have transferred the case from Nagpur to Mumbai and vice-versa. (2010)10 SCC 320--(State of Uttar Pradesh vs. Neeraj Chaube and Others) (para 9-10), (2000)2 SCC 391--(R. Rathinam vs. State by DSP, District Crime Branch) (para 9-10) and (1998) 1 SCC 1--(State of Rajasthan vs. Prakash Chand and Others)(para 10 and 59) are cited to explain the scope of powers of Hon'ble Chief Justice. It is urged that there is difference between "treating" a letter as PIL and in "entertaining" it as PIL. Once the matter is registered as PIL, Division Bench hearing it on judicial side has to decide it as PIL. (B). As by taking cognizance as PIL, no civil consequences ensue, hearing at that stage is not necessary at all. It offers an opportunity to correct and Zilla Parishad as also other authorities could have verified facts and initiated suitable action. It is not adversarial but a avenue for participative justice. He relies upon (2010) 3 SCC 402, para 36-37 (supra). (2009) 15 SCC 351 (para 33) (A. Abdul Farook vs. Municipal Council, Perambalur) is relied upon to urge that therefore strict rules of pleading do not apply. (C). It is contended that material on record clearly demonstrates collusion between Gram Panchayat and respondent no.5 because of later's political influence. Stand taken by respondent nos. 4 and 6 is contrary to law and to favour respondent no.5. Contents of paragraph 5E of writ letter and affidavit filed on 22/6/2011, para 4/5 are pressed into service. Attention is invited to resolution of Gram Panchayat dated 27/6/2007 to show how casually sanction is given to construct on plot nos. 12 to 17. New 5 buildings therefore could come up inspite of the cognizance by this Court. (2003)4 SCC 1--(para 4,9,10)--(Mohd. Aslam vs. Union of India)is relied upon to urge that technical or narrow approach in such matters is not permissible. Availability of PIL in such matters is sought to be supported from observations of Hon'ble Apex Court in para 55,74 and 75 in AIR 2010 SC 1030--(Priyanaka Estates International Pvt. Ltd. vs. State of Assam). (2004) 8 SCC 733--(Friends Colony Development Committee vs. State of Orissa)(para 20,22,25,26,28-7) is also relied upon to show how Hon'ble Apex Court has approached the rampant problem of unauthorized illegal constructions in Cuttack city. Reply affidavits of SDO and deliberate erroneous interpretation of communication dated 14/10/1994 by Zilla Parishad is pointed out to urge that Section 142 of the 1958 Act is not at all an adequate or efficacious

remedy here. Change in stand of Zilla Parishad is also commented upon to support this argument. Pleading that these authorities had earlier refused/neglected to act in letter (PIL) is also relied on. (D). It is pointed out that the respondent no.5 also has on affidavits consistently accepted the application of Municipal Rules to the structures raised by it and then, altered it suddenly to Section 52 of the 1958 Act. It is further urged that the construction was going on during pendency of petition, and contrary to its own affidavits, the Municipal Rules are also breached by raising excess construction i.e., in excess of FSI and in marginal space. Paragraph 4 of affidavit of Petitioner 15 dated 10/8/2009 is urged to be asserting this position only and effort is made to show that it contains an apparent typographical error. He states that Petitioners engaged his services in February, 2008 and after receipt of all replies appropriate amendment was sought. The amendment is on same lines and does not alter the nature of writ petition but advances the same public cause. He argues that till 2007, only college was complete and construction of hostel was going on. Thereafter, other constructions have also come up. Affidavits of respondent no.4 Gram Panchayat filed on 2/2/2011 and filed on 4/3/2011 are relied upon to show that location of these constructions beyond "gaothan" i.e., village area is accepted. Resolution of Gram Panchayat dated 22/10/1999 is pointed out to show that Gram Panchayat did not even consider FSI or marginal space. Hence, Section 52 of 1958 Act can not apply. AIR 2006 S.C. 1325(M. C. Mehta v. Union of India), is relied to show how Hon'ble Apex Court has dealt with such problem. In AIR 1950 S.C. 27 (A. K. Gopalan v. State of Madras), manner of achieving balance between rights of individual and society is pointed out. Air 2004 SC 2615 (paras 33,35 and 26)-(Indian Banks' Assn. v. Devkala Consultancy Service) and (2006) 5 SCC 28 (para 23,31,32)--(T.N. Godavarman Thirumulpad vs. Union of India and Others) are relied upon to establish locus of Petitioners. In the alternative, it is urged that this Court can even discharge Petitioners and note blatant illegalities to proceed suo motu. He states that action may be directed against alleged illegalities in structures of Petitioners also. Total population of Nalwadi is 8052 to show that Nalwadi is not even worth a "C" class municipal council and respondent no.5 has used FSI 4 times more than the legally available. After the orders of this Court dated 1/12/2010, the grounds about college and other structures and

malafides were added.

7. Shri De, learned Counsel, in rejoinder has reiterated that law of pleadings and burden of proof also applies to PIL and present petitioners have failed to meet it. He relies upon judgment of Hon'ble Apex Court in case of Narmada Bachao Andolan v. State of Madhya Pradesh and Another reported at 2011(5) SCALE 624, for this proposition. He points out the respondent no.5 is not estopped from pointing out correct legal provisions applicable to their constructions. Here neither Zilla Parishad nor State Government have acted under Section 176 of the 1958 Act to frame any Rules in that regard. The argument of Petitioners requesting this Court to act suo motu or of action against their structures is stated to be to save lost face, and by way of after-thought and malafide one.

8. Here We find it necessary to narrate the contents of the communication dated 8/10/2007 sent by Petitioners and treated as PIL by this Court. (A). Perusal of letter dated 8/10/2007 reveals that it is in the form of application. Applicants therein are described as "Citizens of Shri Swami Samartha Nagari, through its Shri Swami Samartha Anyay Niwaran Samiti, Nalwadi, Tq. and Dist. Wardha and then 15 names appear. 5 Non-applicants shown in the letter are Tahsildar, Collector, Sub-Divisional Officer, Gram Panchayat-Nalwadi and Mahila Vikas Sanstha i.e., present respondent no.5. Thereafter it is urged that the application may kindly be treated as public interest litigation. Below its object stated is to take the action against non-applicants nos. 1 to 4 for failure in discharging their official duties and for appropriate direction to non-applicant no. 5 not to use residential plots for commercial purpose. They have pleaded that they have purchased and constructed on plots in field survey no. 56/1, Mouza Nalwadi. They have annexed the order of SDO dated 12/2/1989 by which said survey number was converted to residential purpose. Entire survey number is only for residential use. Then bye-law no. 20.1 and Appendix G of Municipal Rules is pointed out and entire layout is claimed to come under residential zone R-1. It is pleaded that commercial purpose is strictly prohibited. Communication dated 14/10/1994 of Urban Development Department also figures in it. (B). Respondent no.5 is stated to be association of rich powerful and politically influential persons who have started a College in the vicinity. Hostels for boys and girls are also stated to be constructed in residential

area by violating rules and provisions. It is also claimed that respondent no.5 has thus violated law and because of money, power and political influence, respondent nos. 1 to 4 bound to execute law are utterly negligent. Grant of permission by respondent no.4 to G+2 structures is urged to be illegal. Then current development is pointed out by pleading that respondent no.5 is constructing a ladies hostel on plot nos. 12 to 17 in residential layout on survey no. 56/1 and respondent no.4 has by going beyond law and overlooking permissible user and also for G+3 storied building. They have alleged that application was moved on 2/1/2007 and permission was granted on 11/7/2007. Then they have pointed out how construction of college and hostel, the increased traffic has created nuisance and caused mental, financial and physical loss to them. Narrow layout roads and rash driving by students, vulgar comments and harassment to families is also disclosed. They have then pointed out representation made by them in writing and orally to Respondent nos. 2 to 4. On democracy-day, representation was made to respondent no.2. On 29/8/2007 complaint was given to respondent no.3. None of the Respondents paid any heed to it. After this complaint, work is still stated to be on, use of some gunda element by respondent no.5 and implication of citizens in false criminal cases. Absence of proper drainage system, water seepage in walls, tube wells and diseases. Public nuisance is pointed out with failure on part of Respondent nos. 2 to 4 to control it. Prayer is to take action against these Respondents for their negligence. Direction is also sought to stop and remove the construction on plot 12 to 17. Other appropriate relief against Respondent nos. 2 to 5 is also claimed. (C). On 9/6/2008, this letter or application has been amended. In amended part they have pointed out that after their complaint dated 28/9/2007, respondent no.1 and 3 conducted inquiry and found permission given by respondent no.4 bad. These authorities accordingly informed respondent no.6 Zilla Parishad. But Zilla Parishad failed to exercise its powers. It is alleged that the college building is also illegal as it is in residential zone. All plans submitted to Gram Panchayat were of plots for residential purpose and commercial structures have come up. For College, actually map of house was submitted and Gram Panchayat is hand in glove with the respondent no.5. The structures are alleged to be in violation of Municipal Rules and Extension Rules. As respondent no.6 Zilla Parishad did nothing, request for detail inquiry and proper action against the

authorities and officers is asked. Inquiry is prayed into illegal construction and illegal permissions by respondent no.4 and in failure on part of respondent no.6 to act. Removal of all illegal constructions with punishment for all officers/authorities found guilty is therefore requested by him.

9. It is first necessary to note how illegal and un-authorized development is viewed by the Hon'ble Apex Court. (A). Judgment of Hon'ble Apex Court in AIR 2010 SC 1030-- (Priyanaka Estates International Pvt. Ltd. vs. State of Assam.), particularly in para 55, 74 and 75 are important here. Following observations show that interest of society or public at large is prejudiced because of unauthorized constructions.

"74. Even though on earlier occasions also, under similar circumstances, there have been judgments of this Court which should have been a pointer to all the builders that raising unauthorized construction never pays and is against the interest of society at large, but, no heed to it has been given by the builders. Rules, Regulations and Bye-laws are made by Corporation or by Development Authorities, taking in view the larger public interest of the society and it is a bounden duty of the citizens to obey and follow such Rules which are made for their benefit. If unauthorized constructions are allowed to stand or given a seal of approval by court then it is bound to affect the public at large. An individual has a right, including a fundamental right, within a reasonable limit, it inroads the public rights leading to public inconvenience, therefore, it is to be curtailed to that extent.

75. The jurisdiction and power of courts to indemnify a citizen for injuries suffered due to such unauthorized or illegal construction having been erected by builder/colonizer is required to be compensated by them. An ordinary citizen or a common man is hardly equipped to match the might and power of the builders.

76. In the case in hand, it is noted that number of occupiers were put in possession of the respective flats by the builder/developer constructed unauthorizedly in violation of the laws. Thus, looking to the matter from all angles it cannot be disputed that ultimately the flat owners are going to be the greater sufferers rather than builder who has already pocketed the price of the flat.

77. It is a sound policy to punish the wrong-doer and it is in that spirit that the courts have moulded the reliefs of granting compensation to the victims in exercise of the powers conferred on it. In doing so, the courts are required to take into account not only the interest of the petitioners and the respondents but also the interest of public as a whole with a view that public bodies or officials or builders do not act unlawfully and do perform their duties properly." (B). In AIR 2005 S.C. 1-(2004) 8 SCC 733(Friends Colony Development Committee vs. State of Orissa)(para 20,22,25,26,28-7), Hon'ble Apex Court has considered S.91, S.92 of Orissa Development Authorities Act (14 of 1982), and Regn. 1 Cuttack Development Authority (Planning and Building Standard) Regulations (2001). It is found that construction activity in city of Cuttack presented a sordid state of affairs and stringent actions by ruthlessly demolishing illegal constructions and non-compoundable deviations therefore necessary. Unwary purchasers of such buildings are held entitled to be compensated and responsibility was fixed on officials whose duty it was to prevent unauthorized constructions. Regularization of deviations is held permissible only in case of bonafide deviations and directed to be dealt with by multi-membered High Power Committee. Heavy penalty to be imposed on erring professional builders, Fund to compensate unwary purchasers to be built up therefrom. In paragraph 28(7), the Hon'ble Apex Court observes that if High Court feels that illegal/ unauthorized building activities in Cuttack are so rampant as to be noticed judicially, it may suo motu register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability.(C). In Mohd. Aslam v. Union of India reported at (2003) 4 SCC 1), the Hon'ble Apex Court has considered the technical objections raised in situation when it has treated letters, telegrams or postcards or news reports as writ petitions. In such petitions, on the basis of pleadings that emerge in the case after notice to different parties, relief can be given or refused. Therefore, Court should not approach matters where public interest is involved in a technical or a narrow manner. Particularly, when Court has entertained the petition, issued notice to different parties, new parties have been impleaded, it would not be appropriate for the Court to dispose of the petition on such grounds. In proceeding before Hon'ble Apex Court initiated as a public interest petition, several reliefs were claimed but after the interested parties were

impleaded and their pleadings were put forth, Hon'ble Apex Court gathered what crystallized therefrom as the controversy involved. (D). AIR 2006 S.C. 1325(M. C. Mehta v. Union of India) shows how the Hon'ble Apex Court has dealt with such problems of conflicts. In AIR 1950 S.C. 27 (A. K. Gopalan v. State of Madras), rights of individual and society are balanced by expressing that there cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint, for that 'would lead to anarchy and disorder. The possession and enjoyment of all rights, as was observed by the Supreme Court of America in Jacobson v. Massachusetts, 197 U. S. 11, are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community. "The question, therefore, arises in each case of adjusting the conflicting interests of the individual and of the society. In some cases, restrictions have to be placed upon free exercise of individual rights to safeguard the interests of the society; on the other hand, social control which exists for public good has got to be restrained, lest it should be misused to the detriment of individual rights and liberties.

10. Respondent no.5 has raised various preliminary objections. While considering the same one by one, We point out that reference to it is again being made below after noticing the reports of various public officers on the structures raised by respondent no.5. (A). One out of them is cognizance taken by Hon'ble The Chief Justice at Bombay. 2003(4) Mah.L.J. 635 (pl.B) (Surendra Ramchandra Jichkar vs. State of Maharashtra), considers Chapter IV Clause 2A in [Bombay High Court Appellate Side Rules, 1960](#), then regulating public interest litigation Jurisdiction. Petition challenging the location of Country Liquor Shops in residential locality was entertained as public interest litigation and said powers exercised by learned Single Judge are held de hors and inconsistent with the provisions of clause 2A of Chapter IV of the Rules. It is further said that in view of the above referred specific provision, petition involving public interest is required to be heard only by the Division Bench, that too only after obtaining orders, if the matter is at Bombay from the Hon'ble the Chief Justice and if the matter is before the Benches, from the Senior-most Judge available at the concerned Benches. The provision is found absolutely unambiguous and clear and gives jurisdiction to entertain public interest litigation only to the Division Bench, that too after obtaining necessary permission

as contemplated in clause 2A of Chapter IV of the Rules. (B). In (1992)¹ SCC 534-AIR 1992 SC 1555(Shrisht Dhawan (Smt) v. Shaw Bros.), the Hon'ble Apex Court states that error in assumption of jurisdiction should not be confused with mistake, legal or factual in exercise of jurisdiction. In the former the order is void whereas in the latter it is final unless set aside by higher or competent court or authority. An order which is void can be challenged at any time in any proceeding. A permission granted under rent control legislation once permitted to attain finality becomes unassailable on error in exercise of jurisdiction. It could be challenged later or in execution only if it could be brought in the category of a void or ultra vires permission. Such invalidity can arise if jurisdiction is exercised by misrepresentation of facts either about existence of vacancy or nature of premises. In other words what attains finality in accordance with law cannot be permitted to be re-agitated or reopened except in the larger social interest of preventing a person from practicing deceit. Therefore an error of jurisdictional fact which could entitle a Controller to re-examine the matter in the context of relevant provision i.e., Section 21 of the [Delhi Rent Control Act, 1958](#) is the same, namely, fraud or collusion. Ratio in *Noronah* to this extent was reiterated and accepted as correct exposition of law in *Shiv Chander Kapoor*. It has to be understood as such. (C). Position of the Hon'ble Chief Justice assumes importance here. Hon'ble Apex Court in (2010)¹⁰ SCC 320 (*State of Uttar Pradesh vs. Neeraj Chaube and Others*) (para 9-10) holds that :-- "9. The High Court had taken note of various judgments of this Court including *State of Maharashtra v. Narayan Shamrao Puranik*², *Inder Mani v. Matheshwari Prasad*³, *State of Rajasthan v. Prakash Chand*⁴, *R. Rathinam v. State*⁵ and *Jasbir Singh v. State of Punjab*⁶ and various judgments of the High Courts and came to the conclusion that the Chief Justice is the master of roster. The Chief Justice has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in sub-section (3) of Section 51 of the States Reorganization Act, 1956, but inheres in him in the very nature of things. The Chief Justice enjoys a special status and----- Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court only if the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from this

procedure is permissible.

10. In case an application is filed and the Bench comes to the conclusion that it involves some issues relating to public interest, the Bench may not entertain it as a public interest litigation but the court has its option to convert it into a public interest litigation and ask the Registry to place it before a Bench which has jurisdiction to entertain the PIL as per the Rules, guidelines or by the roster fixed by the Chief Justice but the Bench cannot convert itself into a PIL and proceed with the matter itself." (D). Same view is expressed in (2000)2 SCC 391 (R. Rathinam vs. State by DSP, District Crime Branch) (para 9-10) and then in (1998) 1 SCC 1 (State of Rajasthan vs. Prakash Chand and Others) (para 10 and 59). In paragraph 59 of last judgment Hon'ble Apex Court has laid down broad conclusions which emerge from various judgments. (E). The above judgments nowhere support the contention that in High-Courts with benches, powers available to the Hon'ble the Chief Justice are exercisable only at principal seat and not at its benches. More over, even if Chapter IV Clause 2A of [Bombay High Court Appellate Side Rules, 1960](#) is to be applied, here the Senior Judge or the Administrative Judge at Nagpur Bench was independently approached and, with due application of mind, the Senior Judge decided to call for report of the Collector. Thus, independently cognizance was also taken at Nagpur. The report of the Collector does not disclose any material to even remotely suggest that cognizance as PIL was not warranted. Taking cognizance of PIL is mostly an administrative exercise and it is not necessary to hear the alleged wrong doer at that stage. Such aggrieved person can always make suitable grievance when matter is being judicially examined by the regular bench. The law does not contemplate a hearing before taking cognizance as PIL and further challenges to the orders taking cognizance of either Hon'ble Chief Justice or the Senior Judge by the aggrieved party. If arguments of Shri De, learned counsel are to be accepted two hearings i.e., one before the cognizance and later hearing on judicial side after such cognizance become imperative. Such a course of action may lead to uncertainty and delay thereby militating with the very basics of concept of PIL. Persons attempting to invoke that jurisdiction may in such an eventuality be forced to regular civil or other jurisdiction for immediate interim relief appropriate to their grievance. It is clear that all the available grounds for urging that grievance should

not be treated as PIL therefore need to be raised as defences or objections during hearing of such PIL by regular bench on judicial side and not by separate writ petition. The earlier Division Bench of this Court has rightly disposed of earlier W.P. No.5933 of 2010 filed in this regard by respondent no.5 which was allowed to be withdrawn on 16/12/2010 by giving it liberty to raise all such objections as defences in this matter. As such there is no question of opportunity of hearing or then recording of reasons by the Hon'ble Chief Justice or Senior Judge at benches and hence, the case law cited for that purpose need not be considered. It also needs to be noted that the Senior Judge at Nagpur in October did call for report of respondent no.2- Collector. Said report is dated 6/14-12-2007 and after its perusal only the notice has been issued to Respondents on 19/12/2007. The Senior Judge who did call for that report on administrative side was also a Senior Judge and party to order dated 19/12/2007. Thus even if any lacuna is presumed as cognizance was first taken at Mumbai still the later steps taken at Nagpur sufficiently make amends for it. A court with inherent lack of jurisdiction like Single Judge has not interfered in the matter at all. Hence, even on this count the objection is unsustainable. The provisions made in High Court Appellate Side Rules to avoid frivolous petitions have been substantially complied with and the concept of "coram non judis" or other related arguments do not need discussion here. Even otherwise, in present facts We are satisfied that respondent no.5 has not suffered any prejudice due to alleged non-hearing or no- reasons.

11. Other objection to the tenability are due to alleged acquiescence by Petitioners and their credentials or absence of its verification. (A). Petitioners are residents of Nalwadi and their houses are in layout in survey no. 56/1. The construction of hostel going on when letter dated 8/10/2007 was written by the Petitioners is in same survey number. In (2005)3 SCC 91(R and M Trust vs. Koramangla Residents Vigilance Group)--AIR 2005 SC 894 (para 23 to 37), Hon'ble Apex Court states :--"23. This sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends. Hon'ble Apex Court has also noted that Prof. S.B. Sathe has summarized the extent of the jurisdiction which has now been exercised in the following words : "PIL may, therefore, be described as satisfying one or more of

the following parameters. These are not exclusive but merely descriptive : Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, under-trial prisoners, prison inmates.) Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganized labour, etc.) Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children, bonded labour, unorganize labour, etc.) Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes). Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums.) Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water." 25. In this connection reference may be made to a recent decision given by this Court in the case of Dattaraj Nathuji Thaware v. State of Maharashtra and Ors. (S.L.P. (C) No.26269 of 2004) in which Hon'ble Pasayat J, has also observed as follows : "Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta." (B). On delay and laches, Hon'ble Apex Court has observed that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. Court cannot disturb the third party interest created on account of delay. Hon'ble Apex Court was of the opinion that delay in case before it is equally fatal as the construction was already started by the appellant in 1987 and building had come up to three floors. Thereafter it was stopped in 1988 and in March, 1991 it resumed after permission was granted. The Writ Petition was filed in November, 1991 while in the meanwhile construction was complete. Therefore, delay was held fatal. It was also brought to Hon'ble Court's notice that 46 multi storey buildings had come up with more than three and four

floors each. What is important is the observation of Hon'ble Apex Court on this. It reads :-"35. However, we are satisfied that there is no prohibition under the provisions of the Act and Rules putting the ceiling on construction of the multi-storey building. We are also satisfied that the delay is also fatal in the present case "In facts before us, there is no creation of any third party interest and multi storey buildings with excess FSI are not sustainable as per any legal provisions. This ruling therefore helps the cause of Petitioners. (C). Facts in AIR 2006 SC 2643--(Kushum Lata vs. Union Of India)show that the appellant styled the petition as PIL though it related to a tender where she herself was a tenderer. In another petition, questioning legality of the auction, she was a party. The High Court was therefore held justified in dismissing the writ petition styled as a PIL. Observations of Hon'ble Apex Court in paragraph 13 are in this background and words of caution and restraint in exercise of PIL jurisdiction are reiterated. We may also note that in AIR 2006 S.C. 1489--(Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group), Hon'ble Apexnotes that public interest litigations have been entertained more frequently where a question of violation of the provisions of the statutes governing the environmental or ecology of the country has been brought to its notice in the matter of depletion of forest areas and/or when the executive while exercising its administrative functions or making subordinate legislation's has interfered with the ecological balance with impunity. Hon'ble Apex Court in (2008) 3 SCC 542--AIR 2008 SC 1614 (Divine Retreat Centre vs. State of Kerla and Others) lays down that the document petitioning the Court for relief should be supported by satisfactory verification. It is held to be more so where petitions are received by the Court through the post. Reason noted by Hon'ble Court is it is never beyond the bound of possibility that an unverified communication received through the post by the Court may in fact have been employed malafide, as an instrument of coercion or blackmail or other oblique motive against a person named therein who holds a position of honour and respect in society. The Hon'ble Apex Court states that court must be ever vigilant against the abuse of its process. It cannot do that better in the matter than insisting at the earliest stage, and before issuing notice to the respondent, that an appropriate verification of the allegations be supplied. The public Interest Litigant must disclose his identity so as to enable the Court to decide that the informant is not a wayfarer or officious intervener

without any interest or concern. The Court should be prima facie satisfied that the information laid before it is of such a nature that it calls for examination and this prima facie satisfaction may be derived from the credentials of the informant, namely, what is the character or standing of the informant or from the nature of the information given by him, namely, whether it is vague and indefinite or contains specific allegations as a result of survey or investigation or from the gravity or seriousness of the complaint set out in the information or from any other circumstance or circumstances appearing from the communication addressed to the court or to a Judge of the court on behalf of the court. Here in facts before us the letter is not anonymous and identity of Petitioners is not in dispute. The letter contains necessary details which rule out any falsity in its contents. Moreover, the Senior Judge at Nagpur did call for report of Collector and after its perusal the notice has been issued to Respondents. (D). In (2010)11 SCC 557--AIR 2010 S.C. 2210 (Manohar Lal vs. Ugrasen and Ghaziabad Development Authority vs. Ugrasen), Hon'ble Apex Court finds that the State Government, could not have entertained directly the applications by Sh. Ugrasen and Sh. Manohar Lal. The action of the State Government is held arbitrary and abuse of power as the State Government deprived GDA exercise of its power under the Act. Hon'ble Court also noted that none of the parties considered it proper to place the authentic documents before the Court to help it to determine real facts. The Land Policy provided only for allotment of land in residential area. The fact of illegal allotment of land in commercial area was brought to the notice of the Apex Court vide affidavit of the Vice-Chairman, GDA dated 27.5.2010 which was not brought on record before the High Court by GDA or by the State Government. The appellants had also not disclosed that land allotted to them was in commercial area. Hon'ble Supreme Court held that a person invoking equity in exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. Such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court. Hon'ble Apex Court found it a fit case for ordering enquiry or initiating proceedings for committing criminal contempt of the Court as the parties succeeded in misleading the Court by not

disclosing the true facts. It further observed that:-- "However, we are not inclined to waste court's time further in these cases. Our experience has been that the so-called administration is not likely to wake-up from its deep slumber and is never interested to redeem the limping society from such hapless situations. We further apprehend that our pious hope that administration may muster the courage one day to initiate disciplinary/criminal proceedings against such applicants/erring officers/ employees of the authority, may not come true. However, we leave the course open for the State Government and GDA to take decision in regard to these issues and as to whether GDA wants to recover the possession of the land already allotted to these applicants in commercial area contrary to the Land Policy or value thereof adjusting the amount of compensation deposited by them, if any."

12. Though several judgments have been cited, We find it necessary to mention AIR 2010 S.C. 2050 =(2010) 3 SCC 402-(State of Uttarnchal vs. Balwant Singh Chauhal), where Hon'ble Apex Court has laid down certain norms and important out of it are :-- "(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L. (4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL. (5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition. (6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation. (8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations. "While tracing history of PIL in country, Hon'ble Apex Court noted that the public interest litigation is an extremely important jurisdiction exercised by the Supreme Court and the High Courts. The Courts in a number of cases have given important directions and passed orders which have brought positive changes in the country. The Courts' directions have immensely benefited marginalized sections of the society in a number of cases. It has also helped in protection and preservation of

ecology, environment, forests, marine life, wildlife etc. etc. The court's directions to some extent have helped in maintaining probity and transparency in the public life. Hon'ble Apex Court while exercising its jurisdiction of judicial review realized that a very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy had been denied justice for time immemorial and in fact they have no access to justice. Predominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society, Hon'ble Court has initiated, encouraged and propelled the public interest litigation. The litigation is upshot and product of Hon'ble Apex Court's deep and intense urge to fulfill its bounded duty and constitutional obligation. The courts expanded the meaning of right to life and liberty guaranteed under Article 21 of the Constitution. The rule of locus-standi was diluted and the traditional meaning of 'aggrieved person' was broadened to provide access to justice to a very large section of the society which was otherwise not getting any benefit from the judicial system. In paragraph 36, Hon'ble Apex Court observes that little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. Hon'ble Court states that the narrow concepts of 'cause of action', 'person aggrieved' and individual litigation are becoming obsolescent in some jurisdictions. In (2009) 15 SCC 351 (para 33)=2009 AIR SCW 5292 (A. Abdul Farook vs. Municipal Council, Perambalur), in paragraph 17, Hon'ble Apex Court noted that in a public interest litigation of nature before it, it is not necessary for the Court to abide by the strict rules of pleadings and even if it is found that the petitioners are busy bodies, the courts while discharging them, could proceed to deal with the public interest litigation suo motu. This discussion also shows that there can not be any estoppel or acquiescence in such matters when this Court has found the cause presented to it as public cause and cognizance is taken in larger public interest. Discussion little later reveal despite the reports of various authorities, the wrongful and highhanded refusal by the respondents to discharge their obligation, as also efforts made by them to protect respondent no.5 in the matter, all exposing abuse of power and position. It emphasizes need to adopt approach adequate to restore rule of law and a need for rejection of all technical objections being raised by respondent no.5 and other respondents to support him.

The restraints recognized by Hon'ble Apex Court are not meant to enable wrongdoers and manipulators to avoid the legal vindication and to protect or to succeed in enjoying the benefits of their misdeeds by continuing to indulge in activities prejudicial to public at large. Respondent no.5 or for that purpose none of the respondents before us have for a minute repented for their attitude and acts.

13. Argument of bar to entertain a PIL due to availability of alternate remedy needs outright rejection not only because facts here call for a rather liberal approach but also as same is misconceived. Said contention is based on Section 142 of the 1958 Act. Its scope is explained by Full Bench of this Court in 2004(2) Mah.L.J. 874-para 44 - (Sanjay Govind Sapkal vs. Collector of Dhule) and 2009(5) Mah.L.J. 711-para 9- (Sandip Diwakar Joshi vs. Corporation of City of Nagpur), treats somewhat similar provision in City Of Nagpur Corporation Act, 1948, as alternate remedy. Contention is, that petitioners never approached Zilla Parishad and impleaded it directly here after matter is treated as PIL . The bar of alternate remedy is self imposed and never absolute in writ jurisdiction under Article 226 of the Constitution. Rigour of such bar must get diluted or it must be held as not available in PIL jurisdiction. In present facts, when matter is properly taken cognizance of as PIL, it is obvious that same is due to apparent failure on part of State Government and Local Bodies to effectively discharge their statutory obligations. When Petitioners did approach Collector and Gram Panchayat for redressal and those authorities ignored it, it is obvious that their refusal to act is not mere omission. Even one Chief Executive Officer of respondent no.6 Zilla Parishad has found all structures of respondent no.5 illegal. Looking to the large scale constructions undertaken and completed by the respondent no.5 and change in stance of authorities to favour it , their collusion with respondent no.5 is seen. None of these authorities have come up with defence that their employees noticed these structures and found nothing wrong with it. We find that these Local Bodies, their employees and also the elected representatives have tacitly permitted the constructions to come up. They are party to it and are interested in protecting it. The deliberate wrong interpretation of communication dated 14/10/1994 by Zilla Parishad itself exposes its bias in the matter. respondent no.6 has filed incorrect affidavit to mislead this Court. Asking the Petitioners to approach these authorities will be nothing but to oblige respondent no.5 by giving

it a further and undue time. In the light of observations of Hon'ble Apex Court in *State of Uttaranchal vs. Balwant Singh Chauhan*-(supra), it is apparent that at least in facts at hand, remedy under Section 142 can not be viewed as alternative and equally efficacious remedy to bar exercise of its PIL jurisdiction by this Court. We are also considering the reports of Collector, Wardha; One Chief Executive Officer of respondent no.6, Sub-divisional Officer and Block Development Officer below and conduct of respondent no.4 and 6. These authorities did not act when law obliged them to and helped respondent no.5 at that crucial juncture. Their complicity in the matter also shows that moving under Section 142 of the 1958 Act would have been an empty formality. Bar of alternate remedy as urged in this situation is misconceived. If Gram Panchayat has really sent the resolutions granting sanction to structures of respondent no.5 to respondent no.6 Zilla Parishad as asserted by it, respondent no.6 could have and should have itself taken appropriate cognizance and initiated steps to stop those constructions. Nothing prohibited it from initiating those steps even during pendency of present PIL.

14. Which Building laws or regulations apply to constructions raised by respondent no.5 is the next important issue. (A). Respondent no.5 claims that permission was granted by respondent no.4 and its structures are approved by that respondent. Respondent no.4 Gram Panchayat has in turn claimed that permission has been granted as per Section 52 of the 1958 Act. It has stated that plots on which construction is made are not earmarked for extension of village site and were beyond gaon area i.e., beyond village or abadi area. Therefore Extension Rules, 1967 are not applicable. Hence, it is relying upon only Section 52 of the 1958 Act. We therefore find merit in contention of the Petitioners that as lands are beyond village area, the permission could not have been accorded by Gram Panchayat. Gram Panchayat has also asserted that permission to change user was granted by competent authority and lay-out was also sanctioned by competent revenue authority i.e., Sub-divisional Officer. Zilla Parishad has in its affidavit reply filed on 12/11/2009 stated that its earlier admission about unauthorized nature of construction was wrong. It came up with case that Municipal Rules are not applicable here and permission granted by Gram Panchayat is as per law. It is urged that there is no demarcation as residential or

commercial under Section 52 of the 1958 Act. Its earlier affidavit filed on 20/4/2009 shows applicability of Section 52 of the 1958 Act read with Extension Rules. It is urged that 40% of the plot area can be constructed upon and hence, permission given by Gram Panchayat was legal. With reply filed on 12/11/2009, copy of letter dated 14/10/1994 is also produced to show that applicability of Municipal Rules stands excluded by it. Bare perusal of communication dated 14/10/1994 is enough to reject this statement in as much as, it emphasizes that Municipal Rules should be followed for villages where there is no Municipal Council and development scheme has not been framed. It expressly cancels letter dated 8/12/1993 to the contrary issued by the Director, Town Planning. (B). It is obvious that sites on which respondent no.5 has raised constructions are in revenue area and not included in area for which development plan exists. Gram Panchayat can accord sanction if plots approved in layout which is also sanctioned by revenue authorities are within its limits. Admittedly, even as per respondent nos.4, 6 and 5 this is not the case of extension of gaothan or village site. The Municipal Rules therefore needed to be followed. Gram Panchayat can not skirt/breach Municipal Byelaws as also Extension Rules and permit constructions to come up or then many-fold FSI to respondent no.5. After realizing the FSI problem, Gram Panchayat and Zilla Parishad have thought it proper to invoke Section 52 only and urge that there is no restriction either on user or on FSI in it. Thus effort is to show that neither Municipal Rules nor the Extension Rules apply. Section 52 of the 1958 Act is applicable in entire existing village where old structures stand and it is to be used along with Extension Rules for sites beyond existing village. When Gram Panchayat proceeds to grant permission to construct, it has to be either as per Section 52 or then these Rules. Even if it is presumed that it can grant sanction in relation to building sites not in gaothan area or not forming a village site, it can not exercise unbridled or unguided powers for that purpose. Only inference possible is legislature has permitted Gram Panchayat to use said power in relation to existing Gaothan or then new village site as per Extension Rules and other places are excluded from its jurisdiction. In any case, if such other places are held amenable to its jurisdiction, it follows that construction has to be in conformity with the Municipal Rules by adhering to letter dated 14/10/1994 on the subject. Respondent no.1 Tahsildar and Collector have in their affidavit pointed out that

permission given by respondent no.4 to respondent no.5 is not legal. Bare perusal of Extension Rules reveal hollowness in contention of respondent nos. 4 to 6 that same are applicable to new village sites and not in existing Gaothan. As the name of Rules indicates the purpose is also to regulate buildings. It is not only for extension of village on sites recognized as such under Extension Rules. Section 176 (2) of the 1958 Act provides for making of rules under entry 44 of schedule 1 for prescribing the principles for the extension of village sites and also for regulation of buildings. Chapter III of 1958 Act is about administrative powers and duties. It's Section 45 also deals with those powers of Panchayats. Schedule-I enlists subjects of activities including development activities. Entry 44 reads "Extensions of village sites and regulation of buildings in accordance with such principles as may be prescribed." The Extension Rules are framed under this power. It contains no express provision which will show an intention to restrict its applicability only to plots in layout for site selected for village extension as per Rule 3. Here layout is sanctioned by revenue authorities and is not in village or gaothan area of respondent no.4. Thus it is a new site not forming part of existing village and Gram Panchayat can not overlook requirements of Extension Rules, if it claims right to regulate building activities therein. Otherwise one will get two types of layouts in same village. One where no Rules restricting FSI or requiring marginal space apply and other subject to it. It is therefore obvious that to claim right to regulate building operations beyond existing gaothan area, Gram Panchayat has to accept that site is subject to its jurisdiction as per Extension Rules. Conclusions being reached little later in this judgment will reveal that construction here is much in excess of 40% of permissible limit prescribed by Rule 7 of Extension Rules. Respondents 4 to 6 are therefore attempting to avoid its application. They therefore fall upon Section 52 of the 1958 Act. (C) Section 52 of the 1958 Act has heading "control on erection of buildings. Its sub-section 4 speaks of bye-laws also. Section 177 speaks of bye-laws. Subsection 2 clause (viii) enables bye-law for the repair and removal of dangerous or ruinous buildings. Clause (ix) is important and it permits bye-law to be framed for prevention of erection of buildings without adequate provisions for ventilation or the laying out or location of streets. This language suggesting a negative measure or imposing a restriction itself is enough to gather that proposed building is in crowded or

congested area of village where there are no proper plots laid out. Hence when re-erection becomes necessary, the bye-law prohibiting it is envisaged so that at least at that stage some provision for ventilation and public street can be insisted upon. Thus design is to introduce at-least basic planning in old congested area of a village. No bye-laws are pointed out to us by any of the Respondents. In any case, it is obvious that such bye-laws can not be extended to constructions in dispute before us. It is enough here to note that Section 52(6) of the 1958 Act expressly stipulates that nothing in Section 52 applies to buildings erected for industrial or commercial purpose. Here, respondent no.5 has not erected building of college or Hostels for residential purpose. When basic purpose or design is to introduce some discipline or possible elements of planning even in existing village, the legislation can not be construed in a manner sacrificing the same for sites beyond village or new sites. It will be enabling a new congested village to come up at different place and defeat the very purpose of enacting Section 52 or the Extension Rules. Constructions to be sanctioned by Gram Panchayat will be either on sites subject to Section 52 or then the Extension Rules. No other type of sites are envisaged by the 1958 Act and Rules/Bye-laws framed under it. The nature of permissible activity i.e., one which is not commercial or industrial will have to be understood accordingly so as to harmonize with this design. Definitely, a new structure of new educational institute can not be introduced in existing Gaothan under Section 52(6) in this mode or manner. Thus effort of respondent no.5 and respondent nos.4 and 6 to take shelter behind Section 52 is erroneous and unsustainable. Shri De, learned counsel had argued that though in plans submitted to respondent no.4, the structure was shown as "house", but actual map has shown the rooms as library, class-rooms, common room etc. i.e., revealing the decision to use it for college. The argument overlooks this scheme and bar in Section 52(6) and also the fact that had sanction been sought for college, the Gram Panchayat could not have even touched that plan. This argument therefore exposes the collusion between respondent no.5 and respondent no.4 to defeat the legal provisions. Thus trust reposed in Respondents by the democracy through the Statutes under which they are born has been betrayed. Respondent no.5 through Dr. Rajesh Ghanshyam Bhoyar has filed undertaking on affidavit dated 27/6/2007 with Gram Panchayat which also shows construction of house and mentions that

though layout is sanctioned, it is not as per rules. We find law as applied in Manohar Lal vs. Ugrasen and Ghaziabad Development Authority vs. Ugrasen (supra), by the Hon'ble Apex Court more germane here. (D) When Section 52 of the 1958 Act is out of picture and contention is Extension Rules are not applicable to the layout of respondent no.5 here, it is apparent that Gram Panchayat has exercised powers over area or constructions not subjected to its jurisdiction. In present matter, in any case, the policy as envisaged in communication dated 14/10/1994 could not have been ignored by the Gram Panchayat. Respondent nos. 4 and 6 can not contend that this communication is not binding upon them. Contention of respondent no.5 that Municipal Rules are only model bye-laws not even binding on "C" class municipal council need not be considered here as these bye-laws are not being forced upon respondent no.4 by any statute. State Government with desire to have uniformity in such development in areas for which there are no development plans, has asked the authorities to follow it. Validity of this communication is not attacked before us by any of the Respondents. Section 323 of the 1965 Act or its Sub-section (6) have therefore no bearing on this matter. Reliance upon its appendix to demonstrate that educational activities viz., college or hostel are allowed thereunder in residential zone is without any merit in as much as respondent nos. 4 to 6 are not accepting applicability of 14/10/1994 communication and building plans of respondent no.5 are not sanctioned under the Municipal Rules. Order dated 12/10/2007 passed by SDO, though may permit non-agricultural user for educational purpose after inviting objections or then permission given by Collector on 9/8/2005 to purchase by respondent no.5 of survey no. 63/1 area 1.87 H from one Siddartha Doifode, though be for educational purpose, alleged layout therein showing various plots of not more than 150 Sq. Mtrs. or 200 Sq. Mtrs. also have been accepted by SDO or Revenue Authorities. Hence, after layout of such small plots came legally into force, its commercial exploitation is ruled out. As small plots could not have been put to such user, respondent no.5 has un-authorizedly clubbed them together and this consolidation of said plots needed to be justified by respondent nos. 6 and 4. It is also evident that though Municipal Rules permit educational activities in such layout, while sanctioning the proposed buildings to house the college or hostel, feasibility thereof needs to be examined and provisions for FSI or FAR and

marginal space are to be scrupulously guarded. The sanctioning authority in that eventuality, has to find out available infrastructure and then match it with load of such project in that area. Small plots meant for residence of a family can not be highhandedly allowed to be amalgamated illegally and put to such unforeseen purpose thereby exposing layout to a burden which it was/is never designed to shoulder.

15. It also follows from the above discussion that respondent no.5 has not obtained sanction from competent authority at all and respondent nos. 4 to 6 are aware of this. (A). If Gram Panchayat has to accord sanction, as the area is beyond its Gaothan, 40% of each plot can only be constructed. Gram Panchayat accepts that lay-out was not sanctioned by it. It therefore can not modify the lay-out by permitting consolidation of two or more plots together and by clubbing their FSI/FAR. As Municipal Rules apply, sanction for construction also has to be from authority who sanctioned lay-out and the clubbing or consolidation must also be approved by that authority. On 1/12/2010, this Court directed respondent no.5 to disclose when and under whose orders plots were consolidated. By orders dated 12/1/2011, this Court directed respondent no.4 Gram Panchayat to file separate affidavit in relation to each structure erected within its jurisdiction giving details of permission, provision of law under which permission was granted and whether such permissions are in conformity with law. Till date no orders permitting consolidation are pointed out either by respondent no.4 or by respondent no.5. As per Municipal Rules, 60% of plot area can be constructed and ground + two floors are only allowed. Municipal Rules do not contemplate change or modification in plot or clubbing/consolidation thereof at stage of sanction to building plan. Here, respondent no.5 has not applied to proper authority for such sanction and there is no order of consolidation of plots. None of the respondent nos. 4 to 6 have complied with above directions of this Court. But then, along with pursis later on amended as submission (not supported by any affidavit), the respondent no.5 has filed documents in purported compliance with orders of this Court dated 1/12/2010. Those documents are about 6 structures on 4 different survey numbers viz. survey no. 63/1, 55/1, 60/2 and 56/1. We proceed to consider the same one by one. (B). As per it, total 6 plots i.e., plot no. 37 to 42 in survey no. 55/1 are used to erect a single educational building or college building. Said building is total 4 floors and

"24/4/2006" is mentioned on it as date of sanction. 6 more plots from same survey number i.e., plot nos. 31 to 36 are again used for erection of a college building as per plan cleared on 30/4/2002. The plans shown as sanctioned do not show location of these plots in layout on survey no. 55/1 or then part of structure as falling on any particular plot out of 6 plots mentioned in application for sanction. Admittedly, there is only one college building and hence, which plot number supports the given portion thereof is not clear. It appears that G+2 structure of college was sanctioned in 2002 itself. Why for adding one more floor i.e., 3rd story, other 6 plots were required to be added in 2006 is not clear from drawings. Architect drawing plans has not given total plot area or areas and portion being left open to sky in any of these plans. Order giving sanction to these 12 plots with layout plan is not filed. Apart from this, plot no. 4 in survey number 63/1 is also shown as used for educational building. Apparently it is mentioned twice in the list with pursis and plans/maps are also more than one. First plan shows location of plot no. 4 also and plan is shown as sanctioned by Gram Panchayat on 29/5/2008. It is G+2 floors. Second plan approved on 31/12/2003 shows construction of college building on plot nos. 1 to 3 in survey no. 63/1. In previous plan plot no. 4 is shown on extreme south at boundary of lay-out. Plot no. 1 is at northern boundary stretching all along its northern boundary. An internal road of 9 Mtrs. separates it from open space and plot no.2, both located adjacent but parallel to plot 1 and on its southern side. After this open space and plot 2, there is another 9 Mtrs. Road parallel to earlier road and then plot no. 4 forming southern boundary. On the western side of plot no. 1, 2 and 4 is north-south 9 Mtrs. road and beyond it i.e., at western boundary of layout is shown plot no. 3. Thus plot 4 forms southern boundary of layout in 63/1 while plot no. 3 constitutes its western boundary as per this plan. Location map in relation to structure in second plan on plot no. 1 to 3 shows plot nos. 1 to 3 spread on south- east side of layout while plot no. 4 as farthest plot on northern side but on north-east only in layout. After these plots 1 to 4, a south-north road parallel to all 4 plots is shown on their western side. On the other side of this road, 6 other plots are shown. Open space has also been shown at north-west corner of layout with 3 Mtrs. road separating it. Both 9 Mtrs. road shown in later location map do not figure here. Thus entire orientation of layout undergoes a drastic change in later map prepared by very same architect. How

the placements of plots or location of roads are changed, that too few years after raising of structure as per plan of 2003 is not explained by anybody. No revised order of revenue authority sanctioning such change is produced. Survey no. 60/2 with plot nos. 39 to 44 - total 6 plots, is shown to support hostel building. This plan is shown as sanctioned on 19/8/2006 but then there is no location map or layout plan to understand placement inter-se of these 6 plots or the part of 4 storied building which individually they may support. Plan sanctioned on 27/6/2007 shows a hostel building consisting of 4 floors. It is on 6 plots i.e., plot nos. 12 to 17 in survey no. 56/1. Petitioners have their residential houses in same layout. Respondent no.5 has with this building plan given a location map which again does not show plots 12 to 17 separately. It shows a continuous stretch of land without indicating any distinctive number and internal divisions. Hence, here also placement inter-se of these 6 plots or the part of 4 storied building they support can not be comprehended. Petitioners have referred to this structure in their letter to this Court. As per layout produced by petitioners these plots are spread across and form part of northern boundary of layout. As per order of Tahsildar dated 12/2/1989, total area of these 6 plots is 150 Sq. Mtrs. each X 6 plots = 900 Sq. Mtrs.

16. On the strength of these maps and details provided by respondent no.5, Petitioners have made calculations to point out what is 40% permissible plinth area under Extension Rules and 60% under Municipal Rules. Those details building wise can be summarized below:--

Building	Total area	Construction Permissible	Survey of plot/s	done.	Construction Number.	In Sq. Mtrs.	In Sq. Mtrs.
1	1035	414	621	2(55/1)	1020	2566	408
2	612	2196	548	828	4(56/1)	900	1822.29
3	1386	2196	548	828	5(63/1)	1H.6R.	1830.76
4	1830.76	2 Acres.	4178.92				

Thus, in first 4 buildings above in survey 55/1, 60/2 and 56/1, construction is much more and percentage by which it exceeds is also exorbitant. Apart from other apparent violations already noticed, absence of any marginal space is the main grievance about these 4 structures. Same grievance is also made about remaining 2 buildings i.e., at number 5 and 6, but then looking to the area of plot in survey no. 63/1, We fail to understand it. Moreover Petitioners have not given details of permissible 40% or 60% construction area about these two buildings. In so far as survey no. 56/1 is

concerned, Petitioners are residents of layout in it only and percentage of excess construction varies from 500% to 400% depending upon the relevant building legislation. As we have found that Municipal Rules are relevant, permissible plinth area is 540 Sq. Mtrs. and structure can not be G+3. Structure above 2nd floor is thus illegal. However if there is no marginal space by the side of any of the structures, it is apparent that entire land has been constructed upon and that itself will exceed 40% or 60% of the land area i.e., of plots concerned together. Hence, G+3 in such situation will be 10 times to 6.5 times of the legally permitted construction. Here we can not ignore that Petitioners have not objected to the sanction by Gram Panchayat on the ground that sanction has to be by some other authority. They only point out that sanction has to be as per Municipal Rules. Perhaps their houses in layout in Survey 56/1 also have sanction from Gram Panchayat. In reply affidavit as filed on 29/1/2008, respondent no.5 has asserted that respondent no.4 Gram Panchayat has followed Municipal Rules. Even by adding paragraph 11(c) to this reply on 15/9/2008, said stand is attempted to be substantiated by relying upon the government communication dated 14/10/1994. After realizing the excess construction above 2nd floor, the stand is sought to be changed by urging that there can be no estoppel against law. The provision in Section 52 of the 1958 Act is conveniently found open to raise defences to all types of violations and accordingly stand has been modified with support of Zilla Parishad. But then it is indisputable that respondent no.5 has consolidated various plots sanctioned as separate plots in layout and raised construction upon it of either Hostel or College buildings. The orders permitting such amalgamation of plots to support single structure will have to be passed by modification of layout originally sanctioned and therefore, by competent revenue authority as per Maharashtra Land Revenue Code, 1966. Those orders will also need technical evaluation of the proposed user and existing situation on spot. No such orders are pleaded or pointed out despite orders of this Court either by respondent no.5 or respondent no.4. Respondent nos.1 and 2 have come up specifically with stand that said construction is illegal. Construction effected by amalgamation or consolidation of various plots is thus in breach of sanctioned layout plan itself. It at-once becomes clear that there are no such orders by any authority and unauthorized structures and use thereof by respondent no.5 is bound to exert

unforeseen pressure or load to the prejudice and annoyance of residents.

17. We will now like to see reports by public authorities as filed on record. (A) This Court received the report of Collector, Wardha dated 14/12/2007. It mentions that on survey no. 56/1, area 2H.02R non- agricultural user has been allowed by Tahsildar on 12/2/1989 and residential user on it is on. It also points out purchase of plot nos. 12 to 17 in that layout by respondent no.5 and Gram Panchayat on 27/6/2007 has sanctioned construction of house on it. Thereafter, respondent no.5 started construction of hostel on it. Construction is found to be illegal and hence instructions to stop it were issued and as jurisdiction to deal with it vests with respondent no.6 Zilla Parishad, Chief Executive Officer was informed. (B) Sub-divisional Officer has written to Chief Executive Officer on 14/12/2007 in response to Zilla Parishad's letter dated 5/12/2007 and intimated that said construction being illegal needed to be stopped. His attention is also invited to Section 142 of the 1958 Act and powers available to Zilla Parishad to review the sanction granted by Gram Panchayat. He has also communicated that under Section 52 of the 1958 Act, the permission could not have been granted and though Gram Panchayat was asked to stop that work, Gram Panchayat did not take any steps. Hence, SDO pointed out need to take action under Section 39 of that Act against Sarpanch and Secretary of Gram Panchayat. (C) Report of Block Development Officer, Panchayat Samiti, Wardha dated 20/11/2007 mentions how these plots 12 to 17 are purchased by respondent no.5. He also states that Dr. Rajesh Bhoyar on 2/1/2007 sought permission to construct girl's hostel but Gram Panchayat permitted construction of house. Sanction is stated to be beyond rules and as no marginal space is left, construction is illegal. He states that work is in progress and pits have been dug in 13 meters width and 60 meters length, nature of construction is commercial on residential plots/layout and hence, contrary to Section 52(6) of the 1958 Act. This report of BDO is in pursuance of letter of Deputy CEO dated 1/10/2007 and complaint of Petitioners on "Lokshahi Din" i.e., Democracy Day. Its copy is sent by him to Collector, CEO as also Deputy CEO of Zilla Parishad and Sarpanch/Secretary of Gram Panchayat. (D) We also have a spot inspection report of Naib Tahsildar regarding visit dated 17/11/2007 on record. It mentions plot nos. 12 to 17 in survey no. 56/1, digging work to erect pillars for boys and girls hostel. Layout and plots are stated to be for residential

use and intention of respondent no.5 to put it to commercial use as hostel is noted. (E). Chief Executive Officer, Zilla Parishad has on 5/12/2007 noted that Shri Rajesh Bhoyar sought permission to build hostel but Gram Panchayat permitted him to build house. It is further stated by her that no marginal space is left and construction was illegal in the light of Section 52(6) of the 1958 Act. It is also noted that though the Gram Panchayat was asked to stop that work, its cognizance was not taken. (F) Report of Block Development Officer after visit on 3/1/2008 reveals that the college of respondent no.5 viz. New Arts College is in Nalwadi in Murarka layout. It is in survey no. 55/1 and total area of said survey is 14320. 00 Sq. Mtrs. He has pointed out that Rajesh Bhoyar purchased plot 31(225Sq.Mtrs), his son Dhiraj purchased plot no. 33 and 34(area-150Sq.Mtrs. each). Adjacent plots 35(area-150 Sq.Mtrs) and 36 (area-195 Sq. Mtrs.) are purchased by Pankaj-other son of Rajesh. Thus 6 plots in a row were purchased. Gram Panchayat gave permission on 22/10/1999 but then the work was not started. A consolidated house plan was then submitted by these three persons and Gram Panchayat on 30/8/2000 gave sanction to this revised plan. No construction was started and Principal of College submitted plan for 3 storied building which was cleared by Gram Panchayat on 30/4/2002. Thereafter, a three storied college building was constructed in violation of Gaothan principles. Thus in terms of Section 52(3) of the 1958 Act, the plan had lapsed but the the revisions were allowed mechanically without noticing either the facts seen in plan or then law. Trouble to residents due to college students is also noted in spot inspection. Block Development Officer has found it proper to advise complaints i.e., residents to approach Court. (G). In this background, judgment reported at 2009(2) Mah.L.J. 714 (Shirdi Nagar Panchayat vs. Gordia Budget Hotel) and relied upon by Shri De, learned Counsel, heavily needs scrutiny. From arguments it can be gathered that it is this judgment which prompted respondent no.5 and 6 to alter their stance and to bank upon Section 52 of the 1958 Act. There the learned Single Judge has considered Section 52 of Bombay Village Panchayat Act, 1958, Section 340(2) of Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965 and Section 43, 156 of Maharashtra Regional and Town Planning Act, 1966. Question of formation of Municipal Council and its effect on building permission granted by erstwhile village Panchayat has been gone into and it is noted that respondent's

construction had commenced within one year. Hence, in view of the order passed by the State Government u/s 340(2) of Municipalities Act, the said building permission granted by Shirdi Village Panchayat continued in force within the area of Shirdi municipality, respondent was found entitled to carry on the building construction in accordance with the said building plan even after 10-1-1990 when municipal council came into being. However as on 29.3.1990 notification of its intention to prepare the development plan for Shirdi u/s 43 of Town Planning Act was published by the Government, after 29-3-1990, the respondent is held entitled to carry out construction only in accordance with the draft development plan and that too only after obtaining a building permission u/s 44 and 45 of Town Planning Act. It is held that no construction could be carried out without such permission in view of the express bar contained in section 156 (b) of Town Planning Act. The Shirdi Village Panchayat granted permission to respondent no.1 to construct the ground+7 storied building. Soon thereafter the construction was commenced and till January, 1990, R.C.C. framework of the ground+2 upper floors was completed. On 10th January, 1990, the Government of Maharashtra, by virtue of the powers vested in it under the provisions of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965 (for short the Municipalities Act) issued a notification declaring that with effect from 10th January, 1990 the area within the limits of the revenue village and gaathan of village Shirdi would be a municipal area. Nature of construction either as commercial or otherwise allowed in gaathan area of Shirdi or then bar under Section 52(6) of the 1958 Act are the issues not required to be looked into in this judgment. This judgment therefore does not lay down any law relevant for present adjudication.

18. Consideration by us above of various reports and facts also reveals that though illegalities came to knowledge of Chief and Deputy CEO of Zilla Parishad, Sarpanch and Secretary of Gram Panchayat, the same were overlooked and illegalities were allowed or tolerated by permitting respondent no.5 to complete the structures without stopping the construction activity. Can such Respondents or the even respondent no.5 be heard raising objection about availability of alternate remedy under Section 142 of the 1958 Act Answer obviously is "No". As according to respondent nos. 4 to 6, Municipal Rules do not apply and sanction is not sought or granted under the same, reliance thereupon to urge that educational activities

are permitted thereunder in residential area, is misconceived. In any case, in that eventuality, respondent no.5 has to explain how its construction of G+3 and in excess of 60% of the plot area (FSI) can be viewed as legal even under it. When the constructions are contrary to both the laws i.e., Extension Rules or then Municipal Rules, the effort of respondent no.5 to justify it has to fail. Not only this as it is in excess of permissible FSI under any of these Rules and also breach the marginal space requirement, the same are not entirely compoundable and can not be regularized. Section 52(6) of the 1958 Act renders all sanctions given by Gram Panchayat bad. Thus having raised structures contrary to law highhandedly and due to influence, respondent no.5 can not raise defenses like acquiescence or estoppel against the Petitioners. The spot visit by various authorities may be without previous notice to or behind the back of respondent no.5, still respondent no.5 has failed to bring on record anything to show even possibility of prejudice to it because of the same. Petitioners may have purchased their plots/houses even after the completion of impugned constructions and were already put to use, still they have every right to make all efforts to restore the legal user in the layout. Even an individual has that locus and grievance of respondent no.5 that only handful of residents are making it or majority is not supporting their cause, is unsustainable. Endeavor of respondent no.5 to demonstrate that these structures are being used for providing free education and free residential facilities to backward class students also does not render them legal. If such arguments are accepted, influential organizations like respondent no.5 will buy lands, develop and use it as per their wish and succeed in forcing that user upon law and society. Respondent no.5 in such situation can not contend that its structures are old and hence, cognizance of grievance against it can not be taken in PIL or then at the instance of Petitioners who also may have raised excess constructions. Respondent nos. 4 and 6 are legally duty bound to take action in respect of such violations by Petitioners but then that does not stop this Court from taking suitable steps against respondent no.5. Contention that Petitioners have made grievance about other structures after one year of cognizance of petition as PIL by this Court, is therefore erroneous and no law stops this Court from acting in such matters where there is manifest abuse of position. There is no question of amendment resulting in any back door introduction of any cause in PIL after this Court allowed

that amendment. By allowing that amendment on 9/6/2008, this Court has accepted that grievance also as PIL. Moreover, here the Hon'ble Chief Justice has after perusal of grievance as contained in letter dated 8/10/2007 written by the Petitioners found it necessary to take cognizance as PIL. The Senior/Administrative Judge at Nagpur had in the meanwhile independently called for report from Collector, Wardha and notice to Respondents in the matter has been ordered only after perusal of that report. Thus, after prima-facie satisfaction only report was called and Senior Judge of this Court while taking up the matter on judicial side, has passed these orders issuing notice. Hence, contention that Senior administrative judge at Nagpur did not apply mind or Hon'ble The Chief Justice at Bombay could not have passed orders taking cognizance are all unwarranted in present facts. It is also explicit that relevant investigation was then carried out and thereafter only the cognizance to the prejudice of respondent no.5 was taken, that too by asking it to show cause. The contention that credentials of the Petitioners were not ascertained at threshold is therefore equally erroneous. The arguments about the genesis of litigation viz. whether the Petitioners behaved wrongfully with students or then the students first filed police complaint against the petitioner no.1 and as a protection from police, Petitioners made grievances about structures of respondent no.5 by way of afterthought are all irrelevant and must yield to law and public convenience.

19. With these findings other objections, again technical in nature raised by respondent no.5 need brief consideration. It is not the case of respondent no.5 that students or activities of other two institutions located in the vicinity are also causing or may cause similar nuisance to Petitioners. If they wanted to bring on record their victimization at the instance of such other institutes, they ought to have placed requisite details giving the distance and location etc. to show ulterior motive impelling the Petitioners. However, overall consideration of the matter gives us an impression that respondent no.5 is attempting to raise all possible defenses in roving attitude to save its face. Person to whom the lands belonged or then who applied to Gram Panchayat for sanction and in whose name plan was approved are not very relevant in this background. Petitioners reside in same survey number in which the last Hostel is constructed by respondent no.5. Hence and looking to the grievance made non-compliance with Order VII Rule 7 CPC is not fatal at-least

in this matter.

20. Reliefs prayed for in PIL are thus granted in following terms. The respondent no.6 Zilla Parishad, respondent no.4 Gram Panchayat as also respondent no.3 Collector, Wardha and respondent no.3 Sub- Divisional Officer to forthwith initiate steps for removal of illegal structures raised by respondent no.5 in accordance with law. During pendency of such action and time taken for its completion, said respondents are free to put seal on Hostel building erected on plot nos. 12 to 17 in layout in survey no. 56/1 of Mouza Nalwadi forthwith. In addition, We also direct Divisional Commissioner, Nagpur Division to :-

(1)To hold or to arrange to hold enquiry against Shri V.M. Jadhao, Deputy C.E.O./Shri Manusmare and the then chief Executive Officer/s of Zilla Parishad who have sworn affidavits filed before this Court.

(2)To find out concerned Zilla Parishad CEO, Councilor or Panchayat members, Gram Panchayat Members, Sarpanch, Secretary and employees, and also why they did not detect or report or act against the unauthorized structures coming up at Nalwadi.

(3)To find out concerned Revenue Officers and employees like Collector, Sub-divisional Officers, Tahsildar's, Talathi's, Patwari's etc. and as to why they did not detect or report the unauthorized structures coming up at Nalwadi.

(4)To initiate steps to prohibit repetition of such illegalities in area.

(5)To initiate or then arrange to initiate appropriate legal action against other illegal structures which may have come up or coming up in the area.

(6)To submit list of all such elected representatives and Officer bearers, Officers, Employees of all these Bodies, Authorities found prima-facie involved to this Court with nature of action --disciplinary as also for disqualification, proposed to be undertaken against them. Deaths, Terminations or Retirements in the meanwhile, if any or expiry of period of 4 years thereafter shall not be the ground for excluding any name from such list.

(7)Office of Divisional Commissioner, Nagpur to complete necessary preliminary investigation within 3 months and report to be filed with Registrar(J) of this Court at Nagpur by 7/12/2011. Copy of said report be sent to Petitioner 1 and 2 by Registered Post A/D and affidavits be filed by respondent no.1 accordingly by 15/12/2011. If report is not filed by 07/12/2011, Registrar(J) to list matter for appropriate cognizance. Petitioners can also approach if they do not receive the preliminary report by 15/12/2011.

(8)State Government, Divisional Commissioner and Collector, Wardha are made responsible for compliance with these directions.

(9)As State Government as also Divisional Commissioner are not party Respondents, Petitioners to bring this order to their knowledge by serving it personally and by Registered post acknowledgment due.

(10)Applications for extension of time to comply, if any, shall be accompanied by the steps taken to show the vigilance and diligence in responsibility fastened.

(11) State Government through its Rural Development Department to bring this order to the notice of all Gram Panchayat Members/Secretaries.

21. We accordingly allow the Public Interest Litigation with costs of Rs. 10,000/- payable to Petitioners and Rs. 10,000/ - to Offices of respondent no.1 to 3 by respondent no.5. Similarly respondent no.4 and 6 shall also pay Rs. 5000/- respectively as costs to all Petitioners.

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