IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

WRIT PETITION No. 19332 of 2021

BETWEEN:-

DEVI AHILYA NEW CLOTH MARKET CO. LTD THR. MANAGING DIRECTOR SHRI HANSRAJ JAIN 74, M.T. CLOTH MARKET (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. THE SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD, INDORE (MADHYA PRADESH)**

3. **INDORE MUNICIPAL COPORATION THR COMMISSIONER/BUILDING OFFICER ZONE 13 MUNICIPAL CORPORATION OFFICE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMAY BAJAJ, P.L./G.A. FOR STATE AND SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.3/IMC)

WRIT PETITION No. 21216 of 2021

BETWEEN:-

1. **RAJKUMAR RAJDEV S/O SHRI GANESHOMAL, AGED ABOUT 62 YEARS, OCCUPATION: BUSINESS 64, KATJU COLONY (MADHYA PRADESH)**

2. **SMT. SARITA RAJDEO W/O SHRI RAJKUMAR, AGED ABOUT 62 YEARS, OCCUPATION: BUSINESS 64, KATJU COLONY (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE COMMISSIONER/BUILDING OFFICER ZONE 13 MUNICIPAL CORPORATION OFFICE (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 21400 of 2021

BETWEEN:-

SMT. MAYADEVI W/O SHRI MADHAVDAS ASRANI OCCUPATION: BUSINESS 86, SOUTH KATJU COLONY (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE**

COMMISSIONER/BUILDING OFFICER ZONE-13, MUNICIPAL CORPORATION OFFICE (MADHYA PRADESH)

2. JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 21511 of 2021

BETWEEN:-

NEHA W/O SHRI PRATIK GOYAL OCCUPATION: BUSINESS 3/3, SOUTH TUKOGANJ, INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. MUNICIPAL CORPORATION THRU. COMMISSIONER/BUILDING OFFICER INDORE (MADHYA PRADESH)

2. JOINT DIRECTOR DIRECTORATE OF TOWN AND COUNTRY PLANNING A.B. ROAD (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 21960 of 2021

BETWEEN:-

KRATIKA JAIN W/O SHRI BAHUBALI SETHI OCCUPATION: BUSINESS 55, NEMINAGAR JAIN COLONY (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE THROUGH COMMISSIONER/BUILDING OFFICER ZONE-13, MUNICIPAL CORPORATION OFFICE (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 23078 of 2021

BETWEEN:-

PRADIP KUMAR S/O SHRI RATANLAL BANDI OCCUPATION: BUSINESS 21 M.T. CLOTH MARKET (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE COMMISSIONER/ BUILDING OFFICER ZONE 13 MUNICIPAL CORPORATION OFFICE INDORE (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 23082 of 2021

BETWEEN:-

VEER CHAND S/O SHRI BASANTILAL MANAWAT OCCUPATION: BUSINESS 241, M.T. CLOTH MARKET (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE COMMISSIONER/ BUILDING OFFICER ZONE 13 INDORE MUNICIPAL CORPORATION (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 23887 of 2021

BETWEEN:-

GHANSHYAMDAS S/O SHRI MANGILAL OCCUPATION: BUSINESS 382, CHHAPIHEDA TEH. KHILCHIPUR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE COMMISSIONER / BUILDING OFFICER ZONE 13 INDORE MUNICIAPL CORPORATION (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD**

INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 25737 of 2021

BETWEEN:-

DINESH CHHABADIA S/O SHRI PRABHUDAS OCCUPATION: BUSINESS 177/8 M.T. CLOTH MARKET (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE THR. COMMISSIONER / BUILDING OFFICER ZONE 13 MUNICIPAL CORPORATION OFFICE (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 27114 of 2021

BETWEEN:-

ASHOK KUMAR S/O SHRI ARJUNDAS WADHWANI OCCUPATION: BUSINESS 92, M.T. CLOTH MARKET (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE THR. COMMISSIONER/BUILDING OFFICER ZONE 13 MUNICIPAL CORPORATION OFFICE (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 27878 of 2021

BETWEEN:-

NILESH KUMAR S/O SANTOSH KUMAR JAIN OCCUPATION: BUSINESS 25/8, YASHWANT NIWAS ROAD, INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION THRU. COMMISSIONER/BUILDING OFFICER ZONE-13, MUNICIPAL CORPORATION OFFICE INDORE (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 28757 of 2021

BETWEEN:-

SURESH KUMAR LALWANI S/O SHRI KASTURCHAND JAIN OCCUPATION: BUSINESS 92, M.T. CLOTH MARKET (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE THR. COMMISSIONER/ BUILDING OFFICER ZONE 13 MUNICIPAL CORPORATION OFFICE (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 929 of 2022

BETWEEN:-

DURGASHANKAR SONI S/O SHRI MOHANLAL SONI OCCUPATION: BUSINESS 27/1 LODHIPURA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE THR. COMMISSIONER/ BUILDING OFFICER ZONE 13 MUNICIPAL CORPORATION OFFICE INDORE (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND**

COUNTRY PLANNING AB ROAD, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

WRIT PETITION No. 4824 of 2022

BETWEEN:-

ASHISH GARG S/O SHRI KALYANMAL GARG OCCUPATION: BUSINESS R/O 22 PATEL NAGAR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI V.K. JAIN, SENIOR ADVOCATE WITH MS. VAISHALI JAIN, ADVOCATE)

AND

1. **MUNICIPAL CORPORATION INDORE COMMISSIONER/ BUILDING OFFICER ZONE 13 MUNICIPAL CORPORATION OFFICE (MADHYA PRADESH)**

2. **JOINT DIRECTOR TOWN AND COUNTRY PLANNING A.B. ROAD INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA, ADVOCATE FOR RESPONDENT NO.1/IMC AND SHRI AMAY BAJAJ, P.L./G.A. FOR STATE)

…….....

Reserved on : 01.12.2023

Pronounced on : 23.01.2024

….....

These petitions having been heard and reserved for orders, coming on for pronouncement this day, the Court passed the following:

ORDER

Heard finally.

2] This order shall also govern the disposal of the other connected

writ petitions as a common question of law is involved. For the sake of convenience, the facts as narrated in W.P. No.19332 of 2021 are being taken into consideration.

3] This petition has been filed by Devi Ahilya New Cloth Market Company Limited, a Company registered under Section 25 of the Companies Act, 1956. The Company was registered on 28/02/1999 for the purposes of developing a colony for its shareholders and members and to sell the same to them.

4] So far as the facts of the case are concerned, the petitioner Company sought to develop a colony as New Cloth Market at village Tejpur Gadbadi, Indore comprising of Survey Nos.117, 118/2, 119, 120/2, 121/2, 124/1/2, 125/2, 127/2, 128/2, 129/2, 130, 131, 132/1 and 133, in all admeasuring 46.30 acres. This land was reserved for commercial purposes in the Master Plan.

5] The case of the petitioner is that 1139 cloth traders of Indore formed the aforesaid Company for the said purpose of developing a colony, for which, the petitioner Company also purchased the aforesaid lands through a registered sale deed dated 07/11/1990 having obtained various permissions and exemptions under the Urban Land (Ceiling and Regulation) Act, 1976 and other permissions. Subsequently, the petitioner Company also applied for the development permission (Layout approval) which was firstly granted on 02/03/1995 by respondent No.2, Joint Director Town and Country Planning, which was subsequently amended/revised on 27/11/1997, 02/11/2000, 13/05/2004 and lastly on 01/02/2005 as per the prevailing of MP Bhumi Vikas Niyam, 1984 (hereinafter referred to as the ‘Rules

of 1984') and Master Plan, 1991.

6] It is the further the case of the petitioner that after obtaining the relevant permission the petitioner applied for grant of development permission from the respondent No.3 the Indore Municipal Corporation, which was also granted on 02/01/2006 and thereafter, the Company completed the development according to the sanctioned layout plan by the Town and Country Planning Department. The permission dated 02/01/2006 issued by the Indore Municipal Corporation is also placed on record. Subsequent to that, the petitioner Company also started allotting the plots to its members/shareholders and executed registered sale deeds of almost all the plots in favour of its members and the members are now applying individually for sanction of building plans on their respective plots and huge number of members have already constructed their buildings. Subsequently, the petitioner also applied for transfer of the colony to the respondent No.3 as required by law and the colony has already been handed over to the respondent No.3 vide letter dated 15/11/2018.

7] To the utter surprise of the petitioner, after having granted several building permissions, respondent No.3 has started issuing show cause notices to some of the members on the ground that their plots are within the distance of 30 meters from the river, hence, construction be stopped by them and why the building permission granted to them be not revoked, and despite the reply being filed by the plot holders, they are not permitted to complete their construction as per the sanctioned building plan. Subsequently, on 19/06/2019 respondent No.3 Indore Municipal Corporation wrote a letter to the

respondent No.2 the Joint Director of Town and Country Planning, Indore that about 48-50 plots are falling within 30 meters distance from river and a distance of 30 meters from river has to be maintained according to Bhumi Vikas Niyam, 2012 (hereinafter referred to as the 'Rules of 2012') and Master Plan, 2021. Hence, layout plan be amended/revised. The petitioner also filed its objection to the said letter on 01/08/2019 stating that since the layout plan has already been sanctioned and even the development permission has already been granted according to the Rules of 1984 and Master Plan 1991 and the development was also done accordingly and the plots are allotted and sold to the members, some of whom have already raised their construction after obtaining permissions, hence, the Rules of 2012 and Master Plan 2021 shall not be applicable. The petitioner has also placed on record the reply filed by the respondent No.2 Joint Director Town and Country Planning dated 18/09/2019 to the reply sent by the respondent No.3 Indore Municipal Corporation on 19/06/2019 clarifying the legal position that since the layout plan and development permission were sanctioned at the time when the Rules of 1984 and Master Plan 1991 were in force, hence, reference to the Rules of 2012 and Master Plan 2021 cannot be made to seek amendment in the layout plan. It was also mentioned that amendment/revision of any sanctioned layout plan can only be done under Section 29(3) of the Adhiniyam on the application of the petitioner. This position was further reiterated in its letter dated 24/09/2019 by the Joint Director, Town and Country Planning sent to the Director, however, despite the aforesaid stand taken by the Town

and Country Planning, respondent No.3 has kept the permissions and applications on hold and has stopped accepting building permission application. Hence, the petitioners, seeking intervention of respondent No.1, the State Government through its Secretary Urban Administration and Development Department submitted a representation dated 20/01/2020 for issuance of the directions to the respondent No.2 and 3, however, no directions have been issued on the same. Thus, the respondent No.3 has continued to withhold the applications vide its communication dated **14/03/2020** wherein, it is informed that a request has been made to the Joint Director, Town and Country Planning to revise the layout plan of Devi Ahilya New Cloth Market and hence, no further building permission will be granted to any plot of this colony till the new revised map is issued. The petitioners have again sought the permissions for sanctioning the building permissions but to no avail and subsequently, on **15/06/2021**, the Joint Director of Town and Country Planning has issued a notice to the petitioner stating that their 48-50 plots are falling within the distance of 30 meter from the river, hence, revised plan of the colony be submitted to which, a reply was also sent by the petitioner on 01/07/2021, stating that the petitioner has been granted the development permission vide order dated 01/02/2005, in accordance with law as prevailing on that day including the Master Plan and the plots have already been sold to the members of the petitioner Company and also informed about the letters issued by the Municipal Corporation in this behalf on **15/01/2021 and 19/06/2019**, which have been referred to in the notice dated **15/06/2021** by the Joint Director.

8] Being aggrieved of the notice dated 15/06/2021 and other notices dated 15/01/2021, 14/03/2020 (Annexure-P/13), 19.06.2019 (Annexure-P/8) passed by the respondent Nos.2 and 3, this petition has been filed.

9] Shri V.K.Jain, learned senior counsel for the petitioner has drawn the attention of this Court to all the aforesaid documents and it is submitted that the development permission (Layout plan) was sanctioned by the respondent No.2, the Joint Director of Town and Country Planning on 01/02/2005. Thereafter, the Municipal Corporation has also granted development permission on 02/01/2006, at that time, Rules of 1984 and Master Plan, 1991 were in force. It is submitted that Rules of 1984 have been repealed by the new Rules of 2012, which came into force on 01/06/2012, whereas, the Master Plan, 2021 came into force on 01/01/2008 and Clause 6.3.11 of which provides that if layout is sanctioned prior to commencement of Master Plan-2021, the previously sanctioned development permission shall continue to remain in force. Thus, it is submitted that the development permission granted earlier is already saved by the subsequent Master Plan of 2021, and the Master Plan of 2021 cannot be applied retrospectively to disturb the earlier permissions granted by the Town and Country Planning. It is also submitted that even Rule 105 of the Rules of 2012 clearly provides that, *the repeal shall not affect the validity of the licences previously granted to the engineers, town planners etc, the previous operation of said rules or anything done or any action taken thereunder*. Thus, it is submitted that the respondent No.3 has clearly erred in withholding the building permission sought

by the respective plot owners and the letters dated 19.06.2019 and 14.03.2020 are liable to be quashed and the respondents be directed to start granting building permissions to the respective plot owners of the members of the petitioner Company who have filed the connected writ petitions.

10] On the other hand, the petition has been opposed by the respondents, and the replies have also been filed by the respondent No.1, 2 and respondent No.3 Indore Municipal Corporation, Indore, as also the additional reply and rejoinder.

11] In the reply filed by the respondent No.3 Indore Municipal Corporation, they have referred to the decision rendered by the National Green Tribunal, Central Zone, Bench Bhopal vide order ***dated 19/07/2017*** in the case of ***Kishore Samrite Vs. Union of India*** in which following directions have been issued:-

> "Learned counsel submits that the information is still awaited. We direct that at present all building permissions that may have been granted for allowing construction within 30 meters of the Full Tank Level (FTL) of all the lakes in the State shall be put on hold. Copy of this order shall be sent to that Chief Secretary, who in turn is directed to ensure the compliance by the forwarding the appropriate directions to the local authorities. Copy be also given to the Principal Secretary, Urban Development Department for compliance.
>
> Companies of this order shall be reported by the learned counsel for the State on the next date of hearing.
>
> Let the matter be listed on 23rd August, 2017."

12] Thus, it is stated that the Municipal Corporation is duty bound to comply with the order passed by the National Green Tribunal and in this regard Directorate of Urban Administration and Development, M.P. vide its order dated 25/09/2017 has also issued directions to all

the Commissioners of the Municipal Corporation to comply with the directions of the National Green Tribunal and in pursuance thereto, the respondent No.3 has written a letter dated 19/06/2019 (Annexure-P/8) to the petitioner, which is under challenge in this petition. Subsequently, another letter dated 15/01/2021 has also been issued by the respondent No.3 to the petitioner directing the petitioner to change the layout plan. Thus, it is submitted that the aforesaid letters have been issued by the respondent No.3 in compliance with the orders passed by the NGT and Directorate of Urban Administration and Development M.P. Thus, no case for interference is made out as the respondent No.3 has rightly stopped granting building permissions in the petitioner's colony, which if granted, would be in breach of the order passed by the NGT, and in line with the aforesaid stand, the respondent No.2 has also written a letter to the petitioner on 15/06/2021, which is also under challenge in this petition. Thus, it is submitted that 48-50 plots which are falling within the 30-meter distance from the river *Saraswati* cannot be granted permission as the change in the layout plan taking into account the 30 meter range, would affect the entire colony. It is also submitted that the petitioner had obtained the development permission from the respondent No.2 by declaring the river as '*Nala',* which is a material suppression of fact.

13] Counsel appearing for the respondent No.3 has also submitted that Clause (b) of Sub Rule 1 of Rule 105 of the Rules of 2012 provides that any application submitted under the repealed Rules, pending at the commencement of these Rules shall be continued and

disposed of in accordance with the provisions of these Rules *i.e.*, M.P. Bhumi Vikas Rules, 2012. Thus, it is submitted that since in the Rules of 2012 and the Master Plan of 2021 no construction can be made within 30 meter distance from the river, the respondent No.3 has rightly rejected the applications filed by the respective plot owners for construction on their plots.

14] In rejoinder to the aforesaid reply, the petitioner has reiterated its claim that it was accorded the layout plan way back on 02/01/2006, and thereafter, building permission has also been granted by the respondent No.3 vide order dated 25/06/2011, and has also relied upon Rule 50(b) of Rules of 1984, which provides that construction cannot be made if the site is within the distance of 9 meter of highest watermark and in case of a major water force nearby, 15m from the defined boundary of water source, whichever is more. Reliance is also placed on Clause 6.15.3 of the Indore Development Plan 2021 (Master Plan) which came into force on 01/01/2008. Reliance is also placed on Sections 72 and 73 of the *Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam*, 1973 (hereinafter referred to as the 'Adhiniyam of 1973'), which provide for the power of the State Government of supervision, control and to give directions. Counsel for the petitioner has submitted that as per the clarification issued by the State Government vide letter dated 03/04/2012 (Annexure-P/17), it is clearly opined that the Master Plan 2021 has come into force on 01/01/2008, and prior to that all the development permissions which have been granted by the Town And Country Planning would hold good for the purposes of giving construction permission by the Municipal Corporation. Thus, it is

submitted that the aforesaid letter has been issued by the State Government while exercising its powers under Sections 73 and 74 of the Adhiniyam.

15] It is also stated that so far as the order dated 19/07/2017 passed by the NGT is concerned, it does not relate to the Adhiniyam of 1973 and M.P. Bhumi Vikas Niyam and the development plan sanctioned thereunder, and otherwise also, it is in respect of lakes only and not the rivers. It is also submitted that in the said case the final order has also been passed on 13/12/2021, but the same would not have any bearing on the outcome of the present case as the sanction was already granted much prior to even the interim order dated 19/07/2017 passed by the NGT. It is also submitted that the contention of the respondent No.3 that the petitioner has made a false representation that the said river is a *nala,* is also misconceived and incorrect as it is common knowledge that the aforesaid river has been referred to as *nala* in the city of Indore. It is further submitted that reliance on Master Plan 2021 cannot be placed by the respondents to deny the permission to the members of the petitioner Company. It is also submitted that there is no provision in the Adhiniyam or Rules to compel any person to amend the layout plan and in the present case when not only the entire development has been completed, but the same has also been certified, and the plots have already been sold to various members of the petitioner Company running into more than 1100 plots, and since the project has already been handed over to the respondent No.3 Indore Municipal Corporation, it is practically impossible for the petitioner to amend/revise the layout plan. Thus, it is submitted that the reply filed

by the Municipal Corporation be rejected and the petition be allowed.

16] In their reply to the petition, the respondent No.2 Town and Country Planning has reiterated what is stated by the respondent No.1 State. It is also stated that the respondent Nos.1 and 2 are not the competent authority to grant building permission to the petitioner as it is the respondent No.3, who is the competent authority in the matter of grant of building permission. It is also submitted that the petitioner could have applied for modification/amendment of the layout plan as provided under Section 29(3) of the Adhiniyam of 1973.

17] An additional reply dated 13/12/2022 has also been filed by the respondent No.3 Municipal Corporation contending that the Municipal Corporation has put on hold the building permissions by invoking Rule 25 of the Madhya Pradesh Bhumi Vikas Rules and have recalled and revoked such building permissions granted within 30 meter of FTL in accordance with the order passed by the NGT. It is also submitted that the building permissions have already been refused to three plot holders namely Jagdish Kasat, Pankaj Parmar, Vandana Parmar and Shri Mohit Chandwani.

18] Yet another additional reply has also been filed by the respondent No.3 on 07/01/2023 by referring to a letter issued in the month of February 2005 to submit that the **development permission** and **building permissions** are two independent permissions from two independent authorities, and the final sanction of the construction of building has to be obtained separately and the grant of development permission by respondent No.2 does not *ipso facto* entail an absolute right to the petitioner to construct the building in the absence of

building sanction, it is also stated that the Building Officer has committed no error in asking the petitioner to revise their applications in terms of the applicable laws namely, the Rules of 2012 and Development Plan of 2021. It is also submitted that the writ petition against the notice issued under Rules 25 of the Rules of 2012 is also not maintainable as no jurisdictional error has been committed by the respondent No.3 in issuing the aforesaid letter and apart from that, an alternative remedy of appeal under Rule 25(A) of the Rules of 2012 and Section 31 of Adhiniyam of 1973 is available to the petitioner and thereafter, a revision under Section 32 is also available to the State Government.

19] Shri Amol Shrivastava, learned counsel for the respondent No.3 IMC has also banked upon an order passed by this Court at Jabalpur in the case of ***Ashish Kumar Vs. State of M.P.*** reported as ***(2015) 2 MPLJ 540***, which according to Shri Shrivastava, squarely covers the issue involved in this case as in the said decision, this Court, in no uncertain terms has held that building plan in a development area must be sanctioned by the Municipal authority only as per the Rules of 2012. Attention of this Court has also been drawn to paras 31, 36 and 37 of the aforesaid judgement. Thus, it is submitted that on this ground only, this petition is liable to be dismissed.

20] In rebuttal, Shri V.K.Jain, learned sr. counsel for the petitioner has submitted that the aforesaid judgement is clearly distinguishable and is not applicable under the facts and circumstances of the case as in the aforesaid case, the issue which was involved was of FAR as the petitioner therein was claiming the FAR under the old Rules of 1984

whereas, the respondents' contention was that the Rules of 2012 would be applicable. Counsel has also submitted that even in the aforesaid decision, this Court has clearly held that there are three fold applications to be made, (i) for grant of permission from the development authority, (ii) grant of license or permission from the colonizer's authority and (iii) an application for grant of building permission. It is also submitted that the first two applications were required for permission to enable the petitioners to apply for grant of building permission and, therefore, if such permissions were granted by the competent Authority under the relevant Rules, which were in force at the relevant time, the petitioners can make the application before the Municipal Corporation for the purposes of grant of building sanction which has to be decided as per the prevailing Rules only. It is also submitted that in the said decision it has further been described that mere grant of development permission will not automatically become an absolute right for building sanction. Since the two aspects are differently dealt with under the different provision of the Development Rules, the building sanction was also to be granted keeping in view the Development Rules which were in vogue, therefore, though the application of the petitioners was made prior to coming into force of the Development Rules, 2012, but incidentally the same has remained pending and not decided till the Development Rules, 2012 were brought in force and, therefore, the said application was to be considered only and only under the provision of the Development Rules, 2012. Thus, it is submitted that when the development permission was granted to the petitioner under the Rules

of 1984 and as per the Master Plan, 1991, although the respondents were required to consider the building permissions on the basis of the provisions of the Rules of 2012, they were not authorized to reconsider the development permission already granted to the petitioner in respect of the development of the colony under the Rules of 1984. Shri Jain has also submitted that so far as the building permission is concerned, the same has to be considered under the Rules of 2012 only and in that case, the respondents are entitled to implement the rules on 2012. Thus, it is submitted that the petition deserves to be allowed.

21] Heard counsel for the parties and perused the record.

22] From the record it is apparent that in the case at hand, the interpretation of the Rules of 1984 as also the Rules of 2012 is involved in the light of the provisions of the Adhiniyam of 1973. Thus, at this stage it would be apt to refer to the relevant rules of the provisions as aforesaid.

23] For the purpose of this petition, Rules 2(5), 2(56) and 50(b) of the Rules of 1984 are relevant, which read as under:-

> **"2(5). "Authority having jurisdiction**" (hereinafter referred to in these rules as "Authority" in relation to development and building activities means –
>
> | | |
> |---|---|
> | (a) For permission for development of land in planning area and non planning area authorized | The Director of Town and Country Planning or any other officer authorised by him in this behalf. |
> | (i) making of any material change in land includes sub-division of land use of land in terms of occupancy.
(ii) the Corporate development inclusive of group housing projects. (iii) any type of building, including height of | |

building etc. (iv) development of land, construction/alteration, demolition of building in area beyond Municipal area but within planning area.	
(b) For permission for construction/alteration, demolition of building in planning area and non planning area - 13 (i) In any area falling within the local a Municipal Corporation or Municipality and over which Special Area Development Authority has no jurisdiction. (ii) In any area over which a Special Area Development Authority has jurisdiction.	Such Municipal Corporation or Municipal Council, as the case may be or such other authority or officer authorized by or under the relevant Municipal Law to grant such permission. Such Special Area Development Authority or such other officer of the Authority as may be authorised by such authority in this behalf.

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2(56). "**Sanctioned plan**" means the set of plans and specifications submitted under the rules in connection with a building and duly approved and sanctioned by the Authority.

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50. Requirements of Site.- No piece of land shall be used as a site for the construction of building-

(a) xxxx

(b) if the site is within a distance of **9 metres** of the highest water mark and if there be major water course nearby the distance of the plot from the same shall be 9 metres from average high flood mark or **15 metres from the defined boundary of water course, whichever is more**;"

24] So far as the Rules of 2012 are concerned, Rules 3, 4 and 13 read as under:-

> **"3. Applicability of the rules. –** (1) Where land is to be developed or redeveloped into sub-divisions, plots or colonies, the rules shall apply to all such development and modifications if any therein.
>
> (2) Where a building is erected, the rules shall apply to the design and construction of the building.
>
> (3) Where the whole or any part of the building is demolished, the rules shall apply to any remaining part and to the work involved in demolition.
>
> (4) Where a building is to be altered the rules shall apply to the

whole building whether existing or new, except that the rules shall apply only to part if that part is completely self-contained with respect to facilities and safety measures.
(5) Where the occupancy of a building is to be changed, the rules shall apply to all parts of the building affected by the change.
4. Existing building.- Nothing is these rules shall require the demolition, alteration or abandonment of a building existing on the date on which the relevant provisions of these rules come into force nor prevent continuance of the use or occupancy of an existing building unless in the opinion of the Authority, such building or portion thereon constitute a hazard to the safety of the adjacent property or to the safety of the occupants of the building itself.
xxxxxxxx
13. Development/Building permission issued prior to these rules.- Any permission, sanction or approval given or order passed or any action taken or anything done in respect of the matters covered by these rules under any law or rule in force immediately before the commencement of these rules shall be governed in accordance with the provisions of law or rules under which such sanction or approval was given order was passed or any action was taken or anything was done, as if these rules have not come into force : Provided that at the time of application for renewal of such permission fresh sanction under these rules shall be required for that part of the work which had not started and the same may be granted."

25] Sections 2(f), 13(3), 24, 72, 73 and 74 of the Adhiniyam of 1973 reads as under:-

"2(f) "development" with its grammatical variations means the carrying out of a building, engineering, mining or other operation in, or over or under land, or the making of any material change in any building or land or in the use of either, and includes sub- division of any land.
xxxxxxx
13. Planning area. –
(1) xxxxxxx
(2) xxxxxxx
[(3) Notwithstanding anything contained in the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956), the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961) or the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994), the Municipal Corporation, Municipal Council or the Nagar Panchayat or a Panchayat, as the case may be, shall, in relation to the planning areas, from the date of the notification

issued under sub-section (1), cease to exercise the powers, perform the functions and discharge the duties which the State Government or the Director is competent to exercise, perform and discharge under this Act.]

Xxxxxx

72. State Government's power of supervision and control. - The State Government shall have power of superintendence and control over the acts and proceedings of the officers appointed under Section 3 and the authorities constituted under this Act.

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74. Power of Government to review plans etc., for ensuring conformity. - Notwithstanding anything contained in any other enactment for the time being in force, the State Government may, with a view to ascertaining that no repugnancy exists or arises with the provisions of this Act or the rules made thereunder, review the town improvement schemes, building plans or any permission for construction sanctioned or given by any authority under development plans, sanctioned under any enactment for the time being in force and may revoke, vary, or modify any scheme, plan, permission or sanction in order to bring such scheme, plan, permission or sanction in conformity with the provisions of this Act :

Provided that no order under this section shall be made without giving a reasonable opportunity of being heard to the persons affected thereby."

26] Section 426 of the Municipal Corporation Act reads as under:-

"426. Rules for inspection of institution and works of Corporation The Government may make rules authorising inspection under this Act by servants of the Government, of Institutions and works which are under the Management and control of the Corporation and regulating such inspection.

426.A. Removal of difficulties.-- If any difficulty arises in giving effect to the provisions of this Act, **the State Government may, by order, do anything not inconsistent with the provisions of this Act which appears to it to be necessary or expedient for the purpose of removing the difficulty.**

426. B. Delegation of powers.-- The State Government may, by notification delegate to any officer subordinate to it all or any of the powers conferred upon it by or under this Act except the power under section 422."

27] So far as the decision rendered by the Co-ordinate Bench of this

Court in the case of ***Ashish Kumar (Supra)*** is concerned, it is also necessary to refer to the relevant paras of the said decision as on the face of it, it appears that it provides that building plan in a development area shall only be sanctioned by a Municipal authority and it has to be as per the Development rules of 2012. The relevant paras of the same read as under:-

> **"14 :** The Scheme of the Rules are required to be examined and the object of the said Rules are also to be considered first to ascertain whether any change in the Development Rules is required to be taken into consideration by the Building Sanction Authority or not. For the said purposes the authorities, the fields, objects and reasons of the Rules are required to be examined. The provisions were made under the Development Rules, 1984, for grant of such sanction only, therefore, the Rules of 1984 were made for the purposes of fulfilling the objects of the Act of 1973, as is clear from the provisions of Section 85 of the Act of 1973. Since the development plans were to be approved under Rule 27 of the Rules of 12 1984, permission was required to be granted for the said purposes. The definition as was provided under the Rules is also to be kept in the mind. The definition as laid down under Rule 2(5), 2(29) and 2(56) are relevant for consideration of the controversy involved in the present case, therefore, the same are reproduced :-
>
> **"2(5). "Authority having jurisdiction**" (hereinafter referred to in these rules as "Authority" in relation to development and building activities means –

(a) For permission for development of land in planning area and non planning area authorized	The Director of Town and Country Planning or any other officer authorised by him in this behalf.
(i) making of any material change in land includes sub-division of land use of land in terms of occupancy. (ii) the Corporate development inclusive of group housing projects. (iii) any type of building, including height of building etc. (iv) development of land, construction/alteration, demolition of building in area beyond Municipal area but within planning area.	

(b) For permission for construction/alteration, demolition of building in planning area and non planning area - 13 (i) In any area falling within the local a Municipal Corporation or Municipality and over which Special Area Development Authority has no jurisdiction. (ii) In any area over which a Special Area Development Authority has jurisdiction.	Such Municipal Corporation or Municipal Council, as the case may be or such other authority or officer authorized by or under the relevant Municipal Law to grant such permission. Such Special Area Development Authority or such other officer of the Authority as may be authorised by such authority in this behalf.

2(29). "Floor Area Ratio" means the ratio of the permissible total of built up area in a building on all floors to the total plot area of the land in question. (The ratio stipulates the maximum of built quantity and no variations or exceptions shall be allowed, except as specifically provided. The built up area as stated would construe the total built up area on all floors with the exception of lift wells, service ducts, machine room for lifts, water tanks, covered parking areas, one entrance lobby/foyer on ground floor, corridors, arcades, lobbies, mumptee, staircases but inclusive of covered projections exceeding the limits prescribed under Rule 58.

2(56). "Sanctioned plan" means the set of plans and specifications submitted under the rules in connection with a building and duly approved and sanctioned by the Authority."

15 : The Development Rules, 1984, were made under the same powers which have been exercised by the State Government for making of the Development Rules, 2012. Therefore, if the definitions mentioned in the said Development Rules, 2012 are examined, virtually the same definitions have been incorporated in the new Rules only with the change of serial number. The definition of '***Authority***' having jurisdiction as was given in Rule 2(5) 14 of the Development Rules, 1984, is reproduced at the same place at the same serial number in the Development Rules, 2012. The definition of FAR given in Rule 2(29) of the Development Rules, 1984 is separately given under Rule 2(30) of the Development Rules, 2012, which reads thus :-

> "2(30). "Floor Area Ratio" (FAR) means the ratio of total built up area in a building on all floors to the total plot-area of the land in question. The built up area shall mean the total built up area on all floors excluding the area under lift wells, service ducts, machine room for lifts, water tanks, escalator, lift lobby, fire escapes, ramps, reftise chutes and service ducts, mezzanine floor, balcony (upto a width of 1.20 mtrs) parking areas, parking floors, mechanized parking areas,

porch, service floors, podiums, private garage (not exceeding 25 sq. mtrs.), servant quarter (not exceeding 25 sq. mtrs.), basement subject to the provision of rule 76, corridors, arcades, lobbies, mumptee, staircases, entrance lobby or foyer atrium which is not used for commercial, activity, pump room and two watchmen hut each not exceeding 6 sq meters, but shall include covered projections exceeding the limits prescribed under rule 58.

Provided that in commercial use premises, the area of foyer(s) or entrance lobby (s) located on the ground floor which exceeds 20% of permissible ground coverage shall be counted in the FAR.

Note : If the built form below the ground or reference level is used as habitable accommodation because of the existing topography such area may be permitted as habitable area and shall be counted in the Floor Area Ratio."

16 : A comparison of these two definitions will show that barring for some changes in excluding the areas of construction, much or less the definition of the FAR was the same. Lastly, the definition of "Sanctioned Plan" 15 as prescribed in Rule 2(56) of the Development Rules, 1984, is the same and there is virtually no change in the said definition except that the same is now provided under Rule 2(61) of the Development Rules, 2012. The change in the concept of FAR was with certain objects and for that reasons, when there was a change made in the definition, the concept of the FAR was changed and, accordingly, the limit of the said area is also prescribed differently.

17 : From the definition of authority given under Rule 2(5) of the Development Rules, it is clear that separate applications are required to be made for the purposes of grant of permission to develop the land and an application for grant of building permission. The authorities are distinctly prescribed for grant of such permission and sanction specifically. The application for grant of approval of a plan to construct a building is required to be made before the development authority, which is required to be considered by the Director of Town and Country Planning and permission is required to be granted in terms of the relevant provision of the Rules referred to herein above. Once the permission is granted, the intending builder/person interested in making the construction is required to apply to the Municipal Corporation or the Municipal Council as the case may be for grant of building permission, under the relevant Municipal Laws read with the relevant Development Rules. For the said purposes, the relevant provisions of Rules and their effect and operation are required to be examined.

18 : Since permission was granted to the petitioners at the time when the Development Rules, 1984 were in 16 vogue, it would be appropriate to examine whether an absolute permission was granted to the petitioners by the Development Authority or not. Part-III of the Development

Rules, 1984 deals with Permission and Inspection. Rule 14 of Development Rules, 1984 prescribes that no person shall carry out any development or erect, re-erect or make alterations or demolish any building or cause the same to be done without obtaining a prior permission in writing in this regard from the Authority. Here the word "Authority" is to be examined in terms of the definition prescribed in the very same Rules. As has been explained herein above, the definition specifically prescribes different authorities having different jurisdiction to deal with the subject matters prescribed in the Rules. It will not be out of place to mention here that Authority having jurisdiction is specifically referred as a word "Authority" in the entire Scheme of the Development Rules, 1984 as is clear from the definition of Authority having jurisdiction given under Rule 2(5) of the aforesaid Development Rules. Therefore, for the purposes of permission for development of land in planning area and non-planning area, the Director of Town and Country Planning or any other Officer authorised by him in that behalf was the Authority to grant such permission. For permission for construction/alteration, demolition of a building in planning area and non-planning area if it falls within the Municipal Corporation, the Municipal Corporation was the authorised Authority under the Development Rules, 1984 to grant such permission.

19 : From a perusal of Sub-rule (2) of Rule 14 of Development Rules, 1984, it is clear that this Rule specifically prescribes that permission for development and in addition a permission for building shall be necessary for commencement of building activities involving development of land as a composite building Scheme. Sub-rule (3) of Rule 14 of the Development Rules, 1984, specifically prescribes that for construction for ground floor tenaments, with walls of non-combustible material on plots not exceeding 50 square metres in site and service schemes on plinth of 30 centimetres above ground level and with a living room of not less than 7.5 square metres, no building permission shall be required. Similarly, under rule 17 of the Development Rules, 1984, various provisions were made with respect to the preparation of development plan which nowhere prescribes the standard of construction of building, the total built up area, the FAR which is to be maintained and all other necessary requirements of a building plan. However, provisions of such a Rule make it clear that a tentative building plan is to be prepared and is required to be placed before the Development Authority for the purposes of considering whether the development of the land is to be permitted for the purposes and object of making a building as suggested in the building plan or not. Nothing more is prescribed under the said Rule, with respect to the building permission or the building plan.

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22 : <u>The distinction in granting the permission to develop with the approval of the plan and grant of actual building permission is to be kept</u>

in mind in terms of the provisions made under Rule 21(4) of the Development Rules, 1984. It is also to be seen that the developer after obtaining permission of development is required to obtain 19 building permission and then to keep such documents available at site before starting the construction. The entire Scheme of the Rules as prescribed in Part-IV deals with the development of the area and not with the building plan which is specifically dealt with in Part-V for which the competent authority to grant sanction would be only the local Municipal Authority in terms of the Municipal Laws as prescribed in the definition 2(5) of the Development Rules, 1984.

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28 : In view of this, now it has to be examined whether any absolute right had accrued to the petitioners in terms of the permission letter dated 18.3.2011 or not. What would be the effect of the repeal of the Development Rules, 1984 and whether only because said permission was protected under the Development Rules, 2012, the building sanction authority was required to grant building permission in terms of the permission granted by the Development Authority. As has been contended by the learned Senior counsel for petitioners, the effect of repeal is required to be examined in terms of the provisions of General Clauses Act, 1897 (hereinafter referred to as the Act of 1897 for brevity). For the said purposes, the provision of Section 6 and 29 of the Act of 1897 are relevant therefore, the same are reproduced thus :-

> ***"6. Effect of repeal.-*** Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not –
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed

as if the repealing Act or Regulation had not been passed."

"***29. Saving for previous enactments, rules and bye-laws.-*** The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act."

29 : A plain and simple meaning of these provisions would be that in case any Rules which were in vogue on earlier occasion and certain acts have been done under the said Rules, are subsequently repealed, the act done or the right accrued under the said Rules while the same were in vogue would not be taken away unless specifically provided in the new Rules or Act. For this reason, now the provisions of the Development Rules, 2012, and specially the provisions of Repeal and Savings are required to be examined. Rules 13 of the Development Rules, 2012, prescribed the Savings. The same is reproduced as a whole:-

"13. Development/Building permission issued prior to these rules.- Any permission, sanction or approval given or order passed or any action taken or anything done in respect of the matters covered by these rules under any law or rule in force immediately before the commencement of these rules shall be governed in accordance with the provisions of law or rules under which such sanction or approval was given order was passed or any action was taken or anything was done, as if these rules have not come into force :

Provided that at the time of application for renewal of such permission fresh sanction under these rules shall be required for that part of the work which had not started and the same may be granted."

30 : Similarly, Rule 105 of Development Rules, 2012 prescribes Repeal and Saving, which reads thus :-

105. Repeal and Savings.-(1) The Madhya Pradesh Bhoomi Vikas Rules, 1984 and the amendments made therein, from time to time, hereby stand repealed, provided that,

(a) such repeal shall not affect the validity of the licences previously granted to engineers, town-planners etc, the previous operation of the said rules, or anything done, or any action taken, thereunder;

(b) any application submitted under the repealed rules,

> pending at the commencement of these rules shall be continued and disposed of in accordance with the provisions of these rules i.e. Madhya Pradesh Bhumi Vikas Rules, 2012;
> (c) nothing in these rules shall be construed as depriving any person to whom these rules apply of any right of appeal which had accrued to him under the rules hereby repealed."

31 : The plain and simple reading of Rule 13 of Development Rules, 2012, leaves no room to doubt that all previous sanction granted under the Development Rules, 1984, would remain in operation even when the Rules are repealed and any right accrued under the said sanction would not be jeopardised only because of coming into force of the Development Rules, 2012. Similarly, the first part of Rule 105 prescribes that the repeal of the Development Rules, 1984, shall not affect the validity of the licences previously granted to the engineers, town planners, etc. and the previous operation of the said Rules, or anything done, or any action taken thereunder. Probably this will not be required to be interpreted as all acts done, orders passed under the Development Rules, 1984 are protected by this clause. The other part of this deals with safeguarding the appeals or any other proceedings, instituted under the Development Rules, 1984. The said part is also not materially important. The only clause which according to the respondents is applicable in the present case is sub-clause (b) of sub-rule (1) of Rule 105. This deals with making of the applications at the time when the Development Rules, 1984 were in vogue which could not be decided and were pending when the Development Rules, 2012 were brought in force. The specific condition mentioned in this clause is that all such applications shall be continued and disposed of in accordance with the provisions of these Rules i.e. M.P. Bhoomi Vikas Rules, 2012. This particular provision made in Rule 105 is, therefore, an express provision of the intention of Rule Making Authority. Whether the applications were made before coming into force of the Development Rules, 2012, or not was immaterial. The fact which was to be taken note of was whether the application was decided prior to coming into force of the Development Rules, 2012 or not. Of course this provision would be applicable to such application for grant of permission of development made before the Development Authorities, and which were not decided. The applications which were considered and decided were not to be treated as pending applications.

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36 : As has been explained herein above, there were three fold applications to be made, *(i) for grant of permission from the Development Authority, (ii) grant of licence or permission from the Colinizer Authority, and (iii) an application for grant of building*

permission. The two applications were required for permission to enable the petitioners to apply for grant of building permission and, therefore, if such permission were granted by the competent Authority under the relevant Rules, which were in force at the relevant time, the petitioners could have made the application before the Municipal Corporation for the purposes of grant of building sanction, but as has been pointed out, the said building sanction was also to be granted under the relevant provisions of the Development Rules read with provisions of the Act of 1956. It has further been described that mere grant of development permission will not automatically become an absolute right for building sanction. Since the two aspects are differently dealt with under the different provision of the Development Rules, the building sanction was also to be granted keeping in view the Development Rules which were in vogue. Therefore, though the application of the petitioners was made prior to coming into force of the Development Rules, 2012, but incidentally the same has remained pending and not decided till the Development Rules, 2012 were brought in force and, therefore, the said application was to be considered only and only under the provision of the Development Rules, 2012. These findings are required to be recorded in terms of the law already laid down by the Apex Court in the cases of J.S. Yadav (supra) and Andhra Pradesh Dairy Development Corporation Federation (supra). A vested right only, available to the petitioners was not to be denied. The law as has been discussed by the Apex Court in that respect in the case of J.S. Yadav (supra) in paragraphs 20, 21 and 22, explains this, which reads thus :-

> "20. "The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.' Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or 15 persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as (law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest." (See: Mosammat Bibi Sayeeda & Ors. etc. v. State of Bihar & Ors. etc., AIR 1996 SC 1936).
>
> 21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled

> expectation" to obtain right to enjoy the property etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the Legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide: Howrah Municipal Corpn. & Ors. v. Ganges Rope Co. Ltd. & Ors., (2004) 1 SCC 663).
>
> 22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course."

37 : Therefore, it has to be held that no vested right had accrued to the petitioners to claim grant of building sanction only under the provisions of the Development Rules, 1984. In fact, there was no absolute right accrued to the petitioners to claim such building permission even when the Development Rules, 1984 were in vogue and if under the circumstances, the building sanction authority was of the opinion that the petitioners were not to be granted the FAR of 2.5, a sanction could have been granted for a lesser FAR. That being so, the entire contentions raised by learned Senior counsel for the 36 petitioners that a vested right has been taken away by the respondent Municipal Corporation by passing the order impugned cannot be accepted. This is further to be seen from the provisions of the Rules prescribed in Part-III of the Development Rules where specific provisions are made in Sub-Rule (2) of Rule 14 of Development Rules, 1984 as also Rule 12(3) of Development Rules, 2012 that both the permission for development and in addition, a permission for building shall be necessary for commencement of the building activities. The development permission was depending on grant of building sanction, as a composite plan was made by the petitioners for development and building."

(*Emphasis Supplied*)

28] A perusal of the aforesaid decision rendered by the co-ordinate Bench of this Court clearly reveals that in the said case the issue of grant of FAR which the petitioner was claiming under the old Development Rules. This judgement does not suggest that even the development permission and the grant of license or permission from the colonizer authority would also have to be reviewed, which have been granted as per the old Rules of 1984 and the Master Plan 1991,

while considering an application for grant of building permission which was filed under the Rule of 1984, and is to be decided as per the Development Rules of 2012. What this Court has held is that an application for building permission which was filed as per the Rules of 1984 has to be decided as per the Development Rules of 2012 only, which is the mandate of clause (b) of Sub Rule 1 of Rule 105 of the Rules of 2012. Thus, the aforesaid decision cannot be pressed into service to hold that even the development permission and the colonizer permissions are not valid after the Development Rules of 2012 came into force. Thus, the aforesaid decision is clearly distinguishable and has only limited application in the facts and circumstances of the case regarding those applications for building permission which were either filed prior to commencement of the Development Rules of 2012 or have been filed subsequent thereto.

29] A perusal of the record also reveals that on 09.05.2022, this Court has also passed an interim order in favour of the petitioners to carry out the construction activities in respect of those plots which are not disputed. The aforesaid order reads as under:-

> "Heard on the question of admission.
>
> Counsel for the petitioners has sought the interim reliefs, however, he is pressing for the interim relief No.(iii) only, which is reproduced as under:-
>
> > "(iii) the Respondent No.3 may kindly be directed at least to grant building permissions to the plots, having no concerned with the present controversy."
>
> Counsel for the petitioners has submitted that the controversy involved in the case is in respect of the plots situated in the vicinity of 30 meters area of the river Saraswati, as has been directed by the National Green Tribunal ((hereinafter referred as the"NGT") in its order dated 19.7.2017, which has also been filed along with the reply by the respondent No.3 / Indore Municipal Corporation, Indore and thereafter, the State Government has also passed the order for compliance of the

aforesaid order passed by the NGT.

Counsel has further submitted that the petitioner, (in W.P. No.19332/2021) is a registered company and various plots have been sold to the share holders as per the sanctioned map in the year 2005, and thereafter the order of NGT has been passed directing the State Government to ensure that there should be no construction within 30 meters of Full Tank Level (FTL) all the lakes in the State. It is further submitted that obeying the aforesaid order, the petitioners are also not inclined to make any construction within vicinity of 30 meters of bank of the river Saraswati as this issue is under challenge before this Court only and any future construction on this strap would be governed by the final order passed in this petition, however, in the sanctioned map, there are other 1100 odd plots also involved which have nothing to do with the present controversy. Thus, it is submitted that the aforesaid plot holders be allowed to carry out the construction and other activities in respect of the plots which do not come within 30 meters limit of the river.

Shri Manoj Munshi, counsel appearing for the respondent No.3/ Indore Municipal Corporation, Indore has opposed the prayer and it is submitted that as per the NGT's order as also the order passed by the State Government, the Municipal Corporation is the duty bound to comply with the same and in such circumstances, no construction can be made until the final disposal of this petition.

On due consideration of the rival submissions and on perusal for the documents filed on record, it is found that so far as the NJT's order is concerned, the same reads as under:-

> "Learned counsel submits that the information is still awaited. We direct that at present all building permissions that may have been granted for allowing construction within 30 meters of the Full Tank Level (FTL) of all the lakes in the State shall be put on hold. Copy of this order shall be sent to the Chief Secretary, who in turn is directed to ensure the compliance by the forwarding the appropriate directions to the local authorities. Copy be also given to the Principal Secretary, Urban Development Department for compliance.
>
> Companies of this order shall be reported by the learned counsel for the State on the next date of hearing.
>
> Let the matter be listed on 23rd August, 2017."
>
> ***(emphasis supplied in original)***

On perusal of the aforesaid order, this Court finds that the dispute is purely in respect of the plots which are situated within the vicinity of 30 meters of the bank of Saraswati river. However, so far as the other 1100 odd plots are concerned, they are not situated within the aforesaid area and in such circumstances, to restrain them from further construction

> work would be onours to them as the plots have been sold by the petitioner to the respective plot holders in the year 2005 itself and all the development activities have already been complete. In view of the same, it is directed that till the final disposal of this petition, the petitioner or any other person shall not construct or carry out any activity within the vicinity of 30 meters area of the bank of Saraswati river as has been directed by the respondent No.2 to the petitioner. However, so far as the other plots are concerned, they are excluded from the order passed by the NGT and as such, the Respondent No.3 is directed to grant building permissions to the plot owners in accordance with law and allow them to carry out other development activities pursuant thereto.
>
> Let the matter be listed in the week commencing 01/8/2022.
>
> Signed copy of the order be kept in Writ Petition No.19332/2021 and the copy whereof be placed in the other connected W.P.Nos.21216/2021,21400/2021,21511/2021,21960/2021,23078/2021, 23082/2021, 23887/2021, 25737/2021, 27114/2021, 27878/2021, 28757/2021, 00929/2022, 04824/2022."

30] Thus, it is apparent that this court has already directed the respondents to allow the building permission of those plot owners of the colony whose plots are outside the 30-meter perimeter from river Saraswati, meaning thereby, the layout plan of the colony is not to be disturbed as it has been sanctioned by the competent authority in accordance with law.

31] Now, coming to the merits of the case, it is found that the petitioner Company was constituted under Section 25 of the Companies Act for the purpose of providing plots to its shareholders on 'no profit no loss' basis and was not constituted to earn any profits. It is also found that in pursuance of their objective, the petitioner have also purchased a huge piece of land ad-measuring 46.30 acres at Village Tejpur, Gadbadi bearing Survey Numbers as aforesaid and also obtained the development permission (layout sanction) for New Cloth Market from respondent No.2, which were granted in a phased manner on 02/09/1995, 27/11/1997, 02/11/2000, 13/11/2004 and lastly

on 01/02/2005 as per the prevailing Rules of 1984, and based on the aforesaid sanction, the Municipal Corporation also granted its development permission on 01/02/2006, vide Annexure P/3. A careful reading of the aforesaid documents and the provisions cited above would lead this Court to believe that the respondent No.3 cannot seek the review of the plan and ask the petitioner or the respondent No.2 to issue a fresh plan as per the Rules of 2012, and if the respondent No.3's contentions are to be accepted, it would frustrate the very purpose of Rule 105 of the Rules of 2012, which clearly provides that, '*the repeal shall not affect the validity of the licences previously granted to the engineers, town planners etc, the previous operation of said rules or anything done or any action taken thereunder shall not be affected'*.

32] Thus, this Court finds force in the submissions as advanced by Shri Jain, senior counsel appearing for the petitioner that the respondent No.3 cannot be permitted to interfere with the sanction of plan earlier granted to the petitioner under the Rules of 1984 as the earlier orders passed by the respondent No.2 are already saved by Rule 105 of the Rules of 2012. This Court is also of the considered opinion that while considering the separate applications of the plot owners for building permission, the respondent No.3 is required to follow the Rules of 2012 as also provisions of the Municipal Corporation Act, which are in respect of control and powers of the State Government.

33] So far as the final order dated 13/12/2021, passed by the National Green Tribunal is concerned, counsel for the petitioner has

submitted that the aforesaid order was passed in respect of the seven water bodies of the Balaghat city and although, certain other observations have also been made by the Green Tribunal, hence those observations could not be made applicable on the parties involved in the present petition.

34] On perusal of the said order passed by the Green Tribunal, reference may be had to its paras 15, 18 and 19 which read as under:-

> "15. At the outset, we make it clear that this Tribunal is not a forum to go into correctness or otherwise of the decisions already taken in any other judicial proceedings. Thus, scope of proceedings before this Tribunal is to deal with the environmental issues. With regard to individual issues, without expressing any opinion in these proceedings, it is made clear that any party is free to take remedies in accordance with law.
>
> xxxxxx
>
> 18. In view of above, as far as issue to protection of water bodies generally is concerned, the same stands concluded and the authorities in the State of MP may deal with the matter in accordance with the said directions. Needless to say that in the light of judgment of the Hon'ble Supreme Court in M.K. Balakrishnan and Ors. vs. Union of India, M.C. Mehta v. Kamal Nath & Ors. and Hinch Lal Tiwari v. Kamala Devi, the State Authorities are under obligation to protect the water bodies. Water becoming contaminated cannot be a ground to change the land use and destroy such water body.
>
> 19. The application will stand disposed of accordingly with a direction that the compliance of environmental norms for protection of water bodies may be monitored in every district by the District Magistrate at regular intervals which may also be monitored by the Chief Secretary of the State in accordance with the directions of this Tribunal on the subject quoted above. Since any decision of the State Authorities has to be compliant with the Central Environmental Laws on the subject, inter alia, Air Act, Water Act, Environment (Protection) Act, 1986 and Rules/Orders framed thereunder, including Wetland Rules, any earlier decision including decision with regard to change of land use or master plan may be liable to be revisited in the light thereof.
>
> 20. Since we have not found it viable to go into individual violations simultaneously with the larger general issue of protection of water bodies, any individual surviving grievance is left open to be gone into independently in any independent

> proceeding in respect of such individual issue by setting out such individual grievance, impleading concerned individual party and giving the date of cause of action to determine whether the matter is within the prescribed limitation as per NGT Act."
>
> *(Emphasis Supplied)*

35] Counsel for the respondents, on the other hand, has submitted that even in the final order passed by the Green Tribunal, a general direction has been issued to the authorities and to every District Magistrate to ensure proper monitoring of the water bodies for their protection and any earlier decision including decision with regard to change of land use or Master Plan, may be liable to be revisited in the light of the aforesaid order.

36] Having considered the aforesaid submissions as well, this Court is of the considered opinion that the aforesaid decision of the NGT would not be applicable in the facts and circumstances of the case where all the requisite permissions under the law were already obtained by the petitioners under the provisions of M.P. Bhoomi Vikas Niyam, 1984 and the Master Plan, 1991 whereas, the respondents are applying the provisions of M.P. Bhoomi Vikas Niyam, 2012 and Master Plan, 2021 to reject the building permission of the petitioners. Admittedly, neither the land use has been changed, nor the Master Plan has been revisited so far as the land in question is concerned, and as this Court has already held that the decision rendered by the co-ordinate Bench of this Court in the case of ***Ashish Kumar (supra)*** is distinguishable, the petitioners are entitled to obtain the building permission in accordance with law, as the building permission cannot be denied on the basis of the Rules of 2012 that the plot is within the 30 meters from the water body. This Court is also of the considered

opinion that while deciding the application for building construction, the respondents may resort to the subsequent rules for the purposes of FAR etc, but the permission itself cannot be rejected altogether, citing the provisions of subsequent Rules or the new Master Plan. In view of the same, the petition stands allowed and the impugned orders dated 19/06/2019, 14/03/2020, 15/01/2021 and 15/06/2021 are hereby quashed.

37] Let a copy of this order be kept in other connected writ petitions.

38] With the aforesaid, the petitions are ***allowed*** and ***disposed of***.

(SUBODH ABHYANKAR)
JUDGE

Bahar