

**HIGH COURT OF MADHYA PRADESH PRINCIPAL**

**SEAT AT JABALPUR**

**M.P. No.2861/1989**

Vijay Shanker Shukla & Others

Vs.

Municipal Corporation Jabalpur & Others

**M.P. No. 2876/ 1989**

Jainendra Kumar Jain

Vs.

Municipal Corporation, Jabalpur and others

**M.P. No.4140/1989**

Atul Agarwal & Others

Vs.

Municipal Corporation, Jabalpur & others

**Present:            Hon'ble Shri Rajendra Menon, J. &**

**Hon'ble Shri Sushil Kumar Gupta, J.**

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In M.P. No.2861/1989 petitioners Shri Vijay Shankar Shukla appears in person.

In M.P. No.2876/1989 Shri Kostubh Jha, learned counsel for the petitioner.

In M.P. No.4140/1989 none for the petitioner.

Shri Anshuman Singh, learned counsel appears for the Municipal Corporation, Jabalpur.

Shri Pushpendra Yadav, learned Govt. Adv. for the State.

The Contractor and the Developer appears in person and undertakes to file a written argument within 7 days but have not done so till pronouncing of the judgment.

Shri Shashank Verma and Alok Vagrecha, learned counsel for the intervenor.

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**ORDER**

(\_\_\_\_\_/8/2015)

**Per: Shri Rajendra Menon, J.**

As common questions of law and fact are involved in all these three petitions, they are being decided by this common order.

2. These petitions which have come up for hearing after a period of 27 years are glaring examples of a play ground / stadium being used, contrary to the law laid down by the Supreme Court in the case of **Krishan Lal Gera Vs. State of Haryana & Others – (2011)10 SCC 529** and various other judgments of the Supreme Court in the matter of illegal constructions being made contrary to the development plans, master plans and various other requirement of law with regard to constructions and developments in urban areas.

3. In the garb of financial crunch, the Municipal Corporation, Jabalpur which wanted to develop a permanent gallery in a stadium, so also to construct rooms/ offices for sports persons and sports association entered into an agreement under a promoter builder scheme with the respondent Contractor

(builder) and consequently a commercial complex has been constructed where various activities unconnected with sports or sports related activities, contrary to the development plan are being carried out. Making a complaint with regard to misuse of the stadium complex, these Public Interest Litigations were filed in the year 1989.

4. In the case of **Krishan Lal Gera** (supra), the Hon'ble Supreme Court has clearly held that no part of a stadium or sports ground can be used for non sport or commercial puepose un-connected with sporting activity. In the present case, in total disregard of the aforesaid Judgment, the master plan and the statutory development plan for the area, various activities are going on, in the complex in question which is not at all related to the sports or sports related activity. That apart, in the development and construction of the shopping complex, various principles of law laid down by the Supreme Court, deprecating the manner in which such constructions are made by builders in urban areas and cities contrary to the statutory master plan / development plans is also writ large in this case.

5. All these petitions have been filed in Public interest and grievance of the petitioners as indicated herein above are with regard to the act of the Municipal Corporation, Jabalpur and the respondent builder in the matter of constructing a commercial complex in the Wright Town stadium (Pandit Ravi Shanker Stadium) complex.

6. In M.P. No.2861/89 petitioners are residents of Wright Town, Jabalpur, staying in and around the stadium in question and have questioned the construction of a commercial complex. It is their case that the commercial complex being

constructed around the stadium which is a play ground, is without the authority of law. It is alleged that the construction for non residential purpose i.e. opening of shops are illegal, unauthorized and contrary to the provisions of law. It is said that for making the construction proper approval from the State Government or the Director of Town and Country Planning as is required under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973,(herein after referred to as “the Adhiniyam 1973”) has not been obtained. One of the petitioner in the said case Shri Vijay Shanker Shukla appeared in person and submitted a written note of argument. It is the case of these petitioners that for the purpose of development of the area within Municipal Corporation, Jabalpur, a development plan has been formulated and by referring to various provisions of Section 5, 14, 15, 16, 17 and finally Section 19 of the Adhiniyam 1973. It is said that the land use map has been published and a development plan in accordance to the requirement of Section 19(4) of the Adhiniyam of 1973 has also been issued known as “Jabalpur Development Plan”. It is said that in the land use map as per the development plan, this area is reserved for a play ground and recreational area and referring to clause 16.32 of the master plan, it is argued that such an area can be used only for the purpose of recreational uses such as parks, playgrounds, stadium, swimming pools and other purpose allocated for recreational activity and the permissible construction or use in such an area are petrol filling stations, restaurants, hotels, motels, residences incidental to recreation. It is said that by constructing a commercial shopping complex in and around the stadium, the land used plan is being violated. It is pointed out that when the administrator of the

Municipal Corporation, Jabalpur, sought permission and submitted the development plan for the construction, the same was not approved by the Joint Director, in the Department of Town and Country Planning. By referring to Annexure E dated 30.1.1989 and Annexure G dated 28.3.1989 it is argued that sanction for construction was denied, inspite of that without there being any permission in accordance to the Adhiniyam of 1973, the construction has been carried out. The petitioners point out that the entire construction is contrary to law and should be removed. Shri Shukla invites our attention to various documents available on record to argue that as per the master plan and development plan approved for the area, the stadium is reserved for sports and sports related activity and by permitting construction of shops which have no relation with sports or permissible activities the Municipal Corporation has deviated from the land use plan and therefore, the entire construction is liable to be dismantled. That apart, it is tried to be argued that the contract given for development of the area to the contractor respondents is also illegal as the work of the Corporation, statutory in nature under Section 80 and 84 of the M.P. Municipal Corporation Act, 1956 cannot be delegated to any other authority. Placing reliance on the following judgments the petitioner seeks for interference into the matter:

**M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and others – 1999(6) SCC 464; M/s Vishal Properties Pvt. Ltd. Vs. State of U.P. & Others – 2007(11) SCC 172; Bangalore Medical Trust Vs. B. S. Muddappa and ors – AIR 1991 SC 1902; Dr. G. N. Khajuria Vs. Delhi Development Authority – 1995(5) SCC 762; Krishan Lal Gera Vs. State of Haryana &**

**Others – (2011)10 SCC 529; MC Mehta Vs. UOI – (2006)4 CompLJ 450 SC; K.R. Shenoy Vs. Udipi Municipality – AIR 1974 SC 2177; Pleasant Stay Hotel Vs. Pilani Conservation Council – 1995(6) SCC 127; Cantonment Board, Jabalpur Vs. S. N. Awasthi – 1995 Suppl.(4) SCC 595; Debashis Roy Vs. Calcutta Municipal Corporation – 2005(12) SCC 317; Syed Muzaffar Ali Vs. Municipal Corporation of Delhi – 1995 Suppl.(4) SCC; Shanti Sports Club and another Vs. Union of India and others – (2009)15 SCC 705; Akhilendu Arjaria & Others Vs. Banarasidas and others – 1997(1) MPLJ 376; Intellectuals Forum, Tirupathi Vs. State of A.P. & Ors. - 2006(3) SCC 549 & Mrs. Susetha Vs. State of Tamil Nadu & Others – AIR 2006 SC 2893.**

7. In M.P. No.2876/1989 Shri Kostubh Jha appeared for the petitioners and adopted the same argument as was canvassed by the petitioner in M.P. No.2861/1989. However, in addition, he submits that once the State Government in their return has categorically stated that no permission has been granted and when from the documents filed by the State Government i.e. Annexure R/4 dated 6.1.1989, R/5 dated 30.1.89 and Annexure R/11 dated 28.2.89 so also from the letters of the Joint Director dated 11.7.89, permission is seen to be refused, the construction made based on the so called permission granted by the Director vide Annexure R/2 dated 5.7.89 contained in W.P. No.2861/89 is illegal. He submits that the construction made is contrary to the development plan and therefore, the entire construction should be removed.

8. In M.P. No.4140/1989 the petitioners who claim to be traders contended that by entering into the agreement

Annexure P/2 dated 20.1.1989 the Municipal Corporation has delegated its statutory powers under Section 80 and 84 of the M.P. Municipal Corporation Act, 1956 to the Builder and Developer which is not permissible and placing reliance on judgments of the Supreme Court in the case of **M.I. Builders Pvt. Ltd.** (supra) it is said that contract granted to the respondents is unsustainable.

9. Shri Anshuman Singh, learned counsel appearing for the Municipal Corporation took us through the provisions of Adhinyam of 1973, particularly the provisions of Section 13 to 19, the return filed by the State Government and argued that a sanctioned development plan as required under Section 19 has come into force and according to the State Government itself it has been published under Section 19(4) and all the petitioners accept this preposition. Accordingly, it is the case of the Municipal Corporation that they are entitled to make development in accordance to this development plan and for the same they applied to the competent authority under Section 28 of the Adhinyam of 1973. Even though initially the Joint Director by communications dated 30.1.89 filed as Annexure E and communication dated 28.3.89 Annexure G in M.P. No.2861/1989 and filed by the State Government as Annexure R/4 and R/5 along with their return in M.P. No.2876/89 indicated certain restrictions for according permission but the matter was re-examined at the instance of the Corporation, thereafter, the competent authority, namely the Director i.e. the Statutory Authority, vide Annexure R/2 dated 5.7.89 available in the record of M.P. No.2861/89, has granted permission, therefore, the construction made is after due permission. However, Shri

Anshuman Singh, referring to the permission granted vide Annexure R/1, did say that the permission granted is to make construction in accordance with the development plan and if there is any deviation from the approval so granted, to that extent only the Municipal Corporation can be directed to remove the irregularity, if any, and bring it in conformity with the requirement of the approval granted. Placing reliance on the judgment of the Supreme Court in the case of **1991 (3) SCC Pg. 91** namely **G.B. Mahajan & Others Vs. Jalgaon Municipal Council and others** and **Delhi Development Authority vs Skipper Construction Company(P) - 1996(4) SCC 622**, Shri Anshuman Singh argued that grant of contract to the contractor (builder) is within the permissible limits as provided in law and there is no illegality in the same. He argues that if the law laid down in the case of **G. B. Mahajan** (supra) is applied and if the so called offending provision of the agreement i.e. Clause 13 to 20 are analyzed, it would be seen that the Builder is only granted permission to make construction, recover the premium and recommend the first allottee. Thereafter, the lease has to be executed with the Corporation by the allottees. Builder is only a witness, right to the property is vested with the Corporation, rents are collected by the Corporation, even as per the law laid down in the case of **M.I. Builders Pvt. Ltd.** (supra) Shri Anshuman Singh Argues that there is no illegality in the agreement executed. That apart, Shri Singh invites our attention to the detailed report submitted by a Committee constituted by this Court and submits that there is no error in the contract awarded. Shri Anshuman Singh argues that in the facts and circumstances of the case, no indulgence should be made and if



at all this Court comes to the conclusion that any construction or allotment of the shops are in violation to the permission granted by the Director vide Annexure R/1 on 5.7.89, the Municipal Corporation would be correcting the same.

**10.** Shri Pushpendra Yadav, learned Government Advocate, appearing for the State Government, submitted that the State Government has not given any permission and, therefore, he has tried to indicate that the construction is not proper. However, when specific questions were asked as to whether the State Government has cancelled the order-dated 15.5.1989 – Annexure R/2, issued by the Director in exercise of powers under section 29 of the Adhinyam, the State Government was unable to say anything.

**11.** Shri Shashank Verma and Shri Alok Vagrecha appearing for the interveners, namely the shop-keepers who have been allotted the shops, argued that the entire construction has been done in accordance to the requirement of the rules. Wright Town area where the construction is done, is now a commercial area and if in a commercial area, the shops have been constructed, then there is no irregularity or illegality in the same.

**12.** Shri Shashank Verma also took us through the provisions of Sections 14, 15, 16, 17, 18 and 19 of the Adhinyam of 1973, and tried to indicate that the approved map as per section 19 has not been notified in the Gazette as required under section 19(4) and, therefore, the development plan as alleged by the petitioners have not come into force and by referring to the development plan approved for the year 1991 and 2005, learned counsel tried to argue that the development work

has been in accordance with these plans and, therefore, no interference should be made in the matter.

**13.** Shri Verma, learned counsel for the interveners, invited our attention to the judgments of the Supreme Court in the cases of **Krishan Lal Gera** (supra) and **M.I. Builders Pvt. Ltd.** (supra) in support of his contention to say that the construction done is in accordance with law and no interference is called for.

**14.** We have heard learned counsel for the parties at length and have perused the records.

**15.** From the material available on record, we find that these petitions are pending since 1989 and when the matter came up for hearing on 9.7.2002, this Court took note of the provisions of Clause 13, 18 and 20 of the agreement entered into between the Municipal Corporation and the builder and after considering arguments that were advanced by the parties concerned, thought it proper to constitute a Three Member Committee of Advocates and directed the said Committee to conduct a spot inspection and submit Report with regard to the following two points:

- (i) The number of shops existing in the market complex which is the subject matter in issue;
- (ii) The nature of trade or business carried out in the said shops.

**16.** In pursuance to the said order, the Committee of Advocates conducted its spot inspection and submitted its report dated 11.7.2002. We shall refer to this Report at a later point of time.

17. Thereafter, we find from the records that all these petitions were heard finally by a Division Bench and a detailed order was passed on 5.9.2003 by a Bench of this Court consisting of Hon'ble Shri Justice Dipak Misra (as he then was) and Hon'ble Shri Justice A.K. Shrivastava (since retired). All the contentions as were advanced before us now during the course of hearing, were considered in detail by the learned Bench. Even the judgments in the case of **MI Builders** (supra); **G.B. Mahajan** (supra); and, **Delhi Development Authority Vs. Skipper Constructions Ltd. - 1996(4) SCC 622** were considered and finally in paragraph 15 of the said order came to the conclusion that ordinarily the Court would have finally disposed of the petition, but they are not inclined to do so and finding various aspects of the matter which warrants inquiry, constituted a fact finding committee. The learned Bench constituted a Three Member fact finding Committee consisting of the Additional Chief Secretary, Government of MP; Secretary, Urban Administrative Department; and, a person to be nominated by the Director General, Central Bureau of Investigation, formulated eight questions to be answered by the Committee, detailed as question Nos. (a) to (h) and referred the matter to the Committee for submitting its report.

18. The eight questions, (a) to (h) formulated by the Committee reads as under:

- (a) Whether the shops which are in the stadium complex are utilized for any purpose, having any relationship with sports or sports entertainment?

- (b) Whether the Municipal Corporation Jabalpur had entered into any lease agreement in regard to the same?
- (c) Whether the builder has put the occupiers in possession, and if so, on what basis?
- (d) What premium the occupants of the shops had paid to the respondent No.2 and what rent they are paying to the Municipal Corporation?
- (e) Whether the occupiers of the shops are the first lease holders or they have taken sub-lease from someone else?
- (f) Whether the State as an actual fact granted permission to the Municipal Corporation to go ahead for the construction of this nature?
- (g) Whether such a construction should have been carried keeping in view the master plan? ; and,
- (h) Whether the permission for such construction was not necessary despite master plan being in existence?

**19.** Thereafter, on a application made on behalf of the Central Bureau of Investigation, by the counsel representing the Union of India, the Deputy Inspector General of Police, CBI, Bhopal was nominated as Member of the Committee. We find from the record that this three Member Committee, which consisted of Shri Sudhir Mishra, Deputy Inspector General of Police, CBI, Region Bhopal; Shri M.A. Khan, Secretary, Urban Administration Department, MP; and, Shri Arun Kumar, Additional Chief Secretary and Chairman, MP Electricity Board,

Board, conducted a detailed inquiry into the matter, held sitting on more than eight occasions between 24.11.2003 to 19.2.2004 and submitted a detailed report on 12.3.2004 alongwith various documents. This Report answers all the queries made by the Court in its order passed on 5.9.2003 and we find that most of the dispute that are now canvassed in this petition stands answered in this Report. Infact, the earlier Report submitted by the Three Member Advocate committee on 11.7.2002 also points out certain irregularities and illegalities in the allotment which were existing on 11.7.2002.

**20.** Having heard learned counsel for the parties at length and after taking note of two inspection reports available on record, we are of the considered view that based on the directions issued by this Court on 9.7.2002 and on 5.9.2003 and the consequential reports submitted in pursuance thereto, most of the controversy involved in the matter can be decided. However, before doing so, we deem it appropriate to refer to certain legal provisions which are applicable in the matter, analyse the objections raised by the parties in the backdrop of the same, the principles of law laid down in various judgments referred to at the time of hearing and thereafter proceeded to consider the reports filed by the respective parties.

**21.** One of the question that was canvassed at the time of hearing and the ground raised in M.P. No.4140/89 pertains to the act of the Municipal Corporation, Jabalpur in entering into the agreement/ contract Annexure P/2 dated 20<sup>th</sup> January 1989 with the respondent Builder/ Contractor and delegating the statutory power of the Municipal Corporation under Section 80 to the said Contractor. Section 80 of the Madhya Pradesh

Municipal Corporation Act, 1956, contemplates a provision governing the disposal of the Municipal property or properties vesting in or under the management of the Corporation. Sub section (1) thereof contemplates that no street land, public places etc. shall be sold, leased or otherwise alienated save in accordance with such rules as may be made in this behalf. In this petition, except for contending that the provisions of Clause 13 to 18 of the agreement are contrary to the requirement of Rule 80, nothing specific in nature is pointed out as to which part of the statutory rule or regulation is violated. On the contrary, we find under sub section (2) of Section 80 so also Section 84 that discretion is given to the Commissioner for the purpose of granting lease of immovable property. Similarly with the sanction of the Corporation, the Commissioner is authorized to lease, sell or otherwise convey any immovable property belonging to the Corporation. It is therefore, clear from the provisions of Section 80 that there is no prohibition in granting lease, selling or conveying the immovable property of the Corporation. However, the same is subject to certain restriction and control of the Municipal Corporation or its officers and the State Government. If the provisions of the agreement impugned in this writ petition is taken note of, it would be seen that the agreement with the Contractor or the Builder is for the purpose of development of the stadium by building a gallery on one side of the stadium and the need because of which the agreement was executed by the Municipal Corporation is spelt out in the reply filed by the Corporation. On going through the reply of the Municipal Corporation, we find that in the year 1988 the Municipal Corporation took a decision to replace the existing

mud gallery of the Stadium by constructing a RCC gallery. It was also decided to construct certain rooms to provide accommodation to athletes and sports association and other sports Organizations. However, as the financial condition of the Corporation was very bad and it did not have the resources to make the construction, a decision was taken by the Municipal Corporation to invite tender and call for offers to make the construction. It was decided that for the purpose of constructing 30 shops of the size 10ft. X 20 ft. a notice inviting tender be issued. Accordingly, tender notices were published in the daily Newspapers on 4.11.98 and it was advertised that offers are invited for construction of shop and any person will be entitled to obtain the shops by paying the premium of Rs. 1 Lacs and a monthly rent of Rs.400/-. It is said that in pursuance to this not a single offer was received and as the maintenance of the stadium was being adversely effected, the Municipal Corporation decided to make the construction and development through a promoter builder scheme and after due approval from the State Government, a notice inviting tender for development of the stadium was published in the daily Newspaper on 30<sup>th</sup> November 1998, on the basis of the offers received and various negotiations held, the offer submitted by the respondent Shri Jaspal Oberoi was accepted and the proposal that was advertised under this promoter builder scheme was that the shops will have to be constructed and the entire work done in accordance to the drawing and design prepared and approved by the Municipal Corporation. In the first phase 60 shops will have to be constructed. The size of each shop would be 10' X 20'. Entire construction will have to be in accordance to the specification

and map provided by the Municipal Corporation in front of the shops a 10 feet wide corridor will have to be made and above this corridor rooms are to be constructed measuring 10' x 10'. It was also notified that the shops and constructions to be made shall be as per the design approved by the Municipal Corporation and the entire structure will have to be on RCC beam. Between every 10 shops a staircase will have to be provided for going to the first floor gallery and rooms to be constructed. It was also indicated that in the rooms to be constructed in the first floor there shall be a corridor 3 feet wide (balcony) in front of each room. The entire work shall be executed under the supervision of the Municipal Corporation and if required alterations as suggested by the Municipal Corporation will have to be carried out. It was also stipulated that the person who gives the proposal will only be entitled to obtain a premium for allotment of shop from the prospective allottee to meet the expenses for undertaking the construction and nothing more. It was indicated that the entire construction and the property so created shall be the property of the Municipal Corporation and the ownership of the shops and rooms to be constructed in the first floor shall remain with the Municipal Corporation. The rents for the shop shall be collected by the Municipal Corporation at the rate of Rs.2/- per Sq.ft. Based on the aforesaid conditions, the offer of the respondent builder was accepted and as indicated herein above, the agreement was executed with him on 20<sup>th</sup> July, 1989. As per the agreement the respondent builder was only conferred the right to charge premium from the respective allottee of shop in lieu of the expenditure incurred for carrying out the construction work in and around the stadium.



The other conditions of the agreement i.e. clause 13 contemplates that the contractor builder shall complete the construction by 29<sup>th</sup> January 1990, that he shall only be entitled to allot the shop to the first allottee of a particular shop after due approval of the Municipal Corporation. On such allotment the agreement shall be executed by the Municipal Corporation. The rent of the shop shall be Rs.2/- per Sq.ft. Per month with condition for enhancement of rent by 15% every five year. Clause 14 contemplates that the Municipal Corporation will only allot shop by entering into an agreement as recommended by the builder. Clause 15 contemplates that in the lease to be executed between the allottee and the Municipal Corporation, the builder promoter Shri Jaspal Oberoi will also sign as a witness. Clause 16 contemplates that in case of breach of any provision of the agreement, the Municipal Corporation, Jabalpur will be entitled to take legal action against the person concerned. Clause 17 contemplates that the Municipal Corporation shall have all the right to get the agreement implemented and in case of any dispute to take a decision in the matter and promoter will abide by the same. In clause 18 the right for first allotment of the shop is given to the promoter builder and he is entitled to collect the premium. These are the offending provisions of the agreements as per the petitioners.

**22.** Before analyzing the matter any further at this stage it would be appropriate to look into various judgments which are available and which are applicable in the matter. The contention of the petitioners are that the agreement gives exclusive right to the builder to deal with the property of the Municipal Corporation and as this is not permissible under Section 80 of the

Municipal Corporation Act, the same is illegal. We have, in detail, reproduced the so-called offending parts of the agreement and we have also taken note of provisions of Section 80(1) (2) and sub section (c) of the Municipal Corporation Act which contemplates that the Municipal Corporation is given power through its Commissioner to lease or sell property of the Municipal Corporation. Now, we are required to examine as to whether the terms and conditions of the agreement as are detailed herein above can be said to be curtailing the rights or discretion available to the Municipal Corporation under Section 80 or amounts to relinquishing the rights of the Corporation in favour of the builder.

**23.** In the case of **G. B. Mahajan** (supra) similar agreement entered into with a private developer and builder for construction of commercial complex in Jalgaon Municipal Council was called into question. It was said that the permission granted by the Municipal Council, Jalgaon and the development being done through the builder developer amounts to giving up the right of the Municipal Council as contemplated under the Maharashtra Municipalities Act, 1965 and challenge was made on similar grounds. The Supreme Court examined the terms of the contract and finally came to the conclusion that a project, otherwise legal, does not become any the less permissible merely because the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The Supreme Court in the aforesaid case has taken note of various aspects of the matter, the scope of judicial review and has approved the action of the Municipal Council in undertaking development of the commercial complex through a

builder promoter scheme and while doing so, has laid down the principles in the following manner :-

“A project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The criticism of the project being 'unconventional' does not add to or advance the legal contention any further. The question is not whether it is un-conventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. Though there is a degree of public accountability in all governmental enterprises. But, the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost over-runs in projects, balancing of costs against time-scales, quality-control, cost-benefit ratios. etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies. There are essentially matters of economic policy with lack adjudicative disposition, unless they violate

constitutional or legal limits on power or have demonstrable pejorative environmental implications, or if they amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority. In the ever increasing tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the statute should be held permissible. Therefore, in the context of expanding exigencies of urban planning it will be difficult for the court to say that a particular policy option was better than another. The contention that the project is ultra vires the powers of the Municipal Council is not acceptable.

....

The contention regarding impermissible delegation is not tenable. The developer to the extent he is authorized to induct occupiers in respect of the area earmarked for him merely exercises, with the consent of the Municipal Council, a power to substitute an Occupier in his own place. This is not impermissible when it is with the express consent of the Municipal Council. It would be unduly restrictive of the statutory powers of the local authority if a provision enabling the establishment of markets and disposal of occupancy rights therein are hedged in by restrictions not found in the statute.

...

"Reasonableness" as test of validity is not the Courts own standard of reasonableness as it might conceive it in a given situation. A thing is not unreasonable in the legal sense merely because the court thinks it is unwise. Different contexts in which the operation of "Reasonableness" as test of validity must be kept distinguished. Some phrases which pass from one branch of law to another carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words "Reasonable", "Reasonableness" etc. The 'reasonableness' in administrative law must distinguish between proper use and improper abuse of power. The administrative law test of 'reasonableness' as the touch-stone of validity of the Resolution in the instant case is different from the test of the 'reasonable man' familiar to the law of torts, whom English Law figuratively identifies as the "man on the clapham omnibus". In the latter case the standards of the 'reasonable-man', to the extent such a 'reasonable man' is court's creation, is a mere transferred epithet. Yet another area of reasonableness which must be distinguished is the constitutional standards of 'reasonableness' of the restrictions on the fundamental rights of which the Court of Judicial Review is the arbiter.

....

While principles of judicial review apply to the exercise by a government body of its contractual

powers, the inherent limitations on the scope of the inquiry are themselves a part of those principles. In a matter even as between the parties, there must be shown a public law element to the contractual decision before judicial review is invoked. In the present case the material placed before the Court fails far short of what the law requires to justify interference.”

(Emphasis Supplied)

**24.** If the law laid down by the Supreme Court in the aforesaid case is applied in the present case and if the terms and conditions of the contract entered into between the Municipal Corporation and respondent No.2 builder is analyzed, we find that the same meets the requirement of law as laid down in the case of **G. B. Mahajan** (supra). In fact, as per the agreement except for giving a limited option to the builder to take premium from the prospective purchaser of the shop and recommending as to who should be the first person to whom the shop should be allotted, no right is given to the builder. The right to collect rent, the right to ownership of the property and all other right accruing out of the property is vested and retained by the Municipal Corporation. Therefore, it cannot be said that the agreement entered into is in violation to the rights available to the Municipal Corporation under Section 80. Similarly, if we apply the law laid down in the case of **Skipper Construction Company(P)** (supra) also, we can safely come to the conclusion that the agreement in question and terms and conditions of the agreement as analyzed by us herein above, does not offend or take away the statutory right of the Municipal Corporation as contemplated under Section

80. In fact, by merely giving the right to collect premium, the builder is only given the liberty to recover the cost incurred by him for construction and nothing more. This cannot be termed as an arbitrary or unreasonable decision looking to the nature of construction made and advantage that Municipal Corporation would derive from said construction.

25. During the course of hearing great emphasis was made on the judgment rendered by the Supreme Court in the case of **M.I. Builders Pvt. Ltd.** (supra), to say that the agreement is unsustainable. In the case of **M.I. Builders Pvt. Ltd.** (supra), the agreement was found to be arbitrary and totally unreasonable and impermissible under law. In the said case license was granted to the builder to construct an underground shopping complex of a permanent nature and hold it in its name for a period which was not indicated. The builder was also authorized to lease the shop on behalf of the Municipal Corporation, recover rents and in fact, the builder was given all the rights available to the Municipal Council to deal with the shopping complex without any restriction as if the builder was the owner of the shopping complex. It was after analyzing the terms and conditions of such an agreement that the Supreme Court held that it is an arbitrary and unreasonable agreement and cannot be sustained. In the said case of **M.I. Builders Pvt. Ltd.** (supra) the judgment rendered in the case of **G. B. Mahajan** (supra) was also considered and after referring to the same in para 39, Hon'ble Supreme Court came to the conclusion that the said judgment will not apply because the Court did not find any violation in the terms and conditions of the agreement in the case of **G.B. Mahajan** (supra), which was entirely different from the agreement entered into in the case of

**M.I. Builders Pvt. Ltd.** (supra). It is therefore, clear that the law laid down in the case of **M.I. Builders Pvt. Ltd.** (supra) cannot be applied in the present case as in the case of **M.I. Builders Pvt. Ltd.** (supra) the entire right, authority and power of Municipal Corporation was given to the builder for an indefinite period of time without any restriction which is not a position in the present case. In this case only a limited right of recovering the premium from the allottee of the shop and to recommend the person to whom the shop should be allotted is delegated by the Municipal Corporation and therefore, in the facts and circumstances of the case, we cannot hold that the agreement in question entered into between the respondent Municipal Corporation and Builder is contrary to law and required to be quashed in its totality. The agreement meets the requirement of reasonableness and therefore, can be enforced. However, in the execution of the agreement and in the final implementation of the project as per this agreement, if any violation has been committed, that would be examined by us and any consequential directions, if required, in that regard issued when we go through the report of the Committee constituted by this Court and we would examine if there is any violation with regard to the points which was referred to for consideration to these Committees. Accordingly, as far as the grounds raised by the petitioners to say that entering into the agreement for execution of the project in question itself is unsustainable, cannot be accepted. The agreement seems to be reasonable, meeting the requirement of law as laid down in the case of **G. B. Mahajan** (supra) and we are not inclined to quash or nullify the agreement in its totality except for considering as to what extent there is breach of this agreement in the actual



execution of the project and to that effect, if any consequential directions are to be issued.

**26.** In this regard we may also say the Supreme Court in the case of **Skipper Construction Company(P)** (supra) has held that unless and until the terms and conditions of the contract or the concerning circumstances shows that the State has acted malafidely or out of improper consideration or incorrect motive or in order to promote private interest of someone at the cost of the State, the Court will not interfere. In this case also the judgment in the case of **G.B. Mahajan** (supra) has been taken note of and finding that there is no improper abuse of power, interference was not required. Similar principles were laid down in the case of **Sterling Computers Limited Etc vs M & N Publications Limited And Ors. - 1993(1) SCC 445.** On analyzing the contract in question in the backdrop of all these judgments we do not find that the agreement in question doe not give us an impression that it has been entered into or its conditions and the concerning circumstances indicates any malafide act on the part of the Corporation nor is there any material to show any improper or incorrect motive or intention on the part of the Corporation in promoting the interest of the Builder as a prime consideration for award of contract. On the contrary this seems to be an agreement entered into for a genuine purpose of development of the Stadium and its surrounding area for the purpose of advancing sports related activity. Accordingly, we see no reason to hold the agreement to be illegal or liable to be quashed.

**27.** Having decided the question with regard to tenability of the agreement entered into between the parties, we now

propose to deal with the question as to whether the development of the complex in question is in accordance to the development plan prepared and approved under the Adhiniyam of 1973; and, whether sanction and approval of the competent authority as contemplated under the Adhiniyam have been obtained.

**28.** Before doing so, we may take note of various statutory provisions as are contemplated in the Adhiniyam of 1973.

**29.** The Adhiniyam 1973 was brought into force for the purpose of planned development and use of land in the State of Madhya Pradesh. It contemplates a provision for preparation of development plan, zoning plan, for ensuring that town planning schemes are made in a planned manner and are executed effectively. For the purpose of implementing the development plans, certain statutory authorities like Town and Country Planning Authority and the Special Area Development Authorities have been constituted. Provisions are also made for compulsory acquisition of land which can be used for development. Detailed procedure are laid down, in Chapter IV provisions are made from section 13 onwards for constituting Planning Area, direction to prepare development plan, preparation of existing land use maps and freezing of land use once the existing land use maps are prepared under section 15. Thereafter, in sections 17, contents of development plan and the ingredients necessary for preparation of a development plan are indicated. Section 18 contemplates as to how the draft development plan is to be published and objections invited. How the objections are to be considered and finally the sanctioned

development plan is prepared and notified in accordance to the requirement of Section 19.

**30.** Similarly, Chapter V deals with creation of zonal plan. Once the zonal plan and the developmental plans are created, control of development and use of land in accordance to these plans are provided in Chapter VI. Action to be taken if development is done contrary to the development plan are indicated and procedure for seeking permission to develop an area in accordance to the development plan are contained in Sections 27, 28 and 29. Under section 27, if the development is to be undertaken by the Union Government or the State Government, then the permission from the Director is to be obtained in accordance to the provisions of this Section. Similarly, if the development is to be done by any local authority or any other authority, constituted by the Adhiniyam 1973, then the same has to be done in accordance to the conditions stipulated in section 28. If the development is to be done by any other person other than the State Government or the Union or the Local Authority, it has to be in accordance to the provisions of Section 29.

**31.** In this case, from the documents and material available on record particularly the documents filed alongwith Misc. Petition No. 2861/1989 and 2876/1989, after following all the requirements of creating development plan and its preparation under sections 14, 15; its publication under section 18; the approved development plan under section 19 has come into force and according to the petitioners, the respondents and even the State Government, the sanctioned development plan as

contemplated under section 19 has been notified in the official gazette as per sub-section (4) of Section 19.

**32.** Even though during the course of hearing Shri Shashank Verma, learned counsel appearing for some of the interveners, tried to indicate that the sanctioned development plan has not been formulated in accordance to the requirement of the Adhiniyam of 1973 and no notified development plan in the official gazette as contemplated under sub-section (4) of Section 19 is available, at the instance of the objector, we are not inclined to accept such a contention, particularly when none of the petitioners, the State Government or the Municipal Corporation subscribe to such a contention. On the contrary, they all come out with a case that the sanctioned development plan has been made applicable and, therefore, we proceed under the assumption that the development plan as required under the Adhiniyam of 1973 has come into force.

**33.** Petitioners, in M.P. No.2861/1989, have brought on record the sanctioned map. As per this development plan, which is filed as Annexure A, and according to them in the portion marked 'Green' and identified with a X mark, the Wright Town Stadium is demarcated and the same is indicated to be recreational park.

**34.** That apart, vide Annexures B, C and D, petitioners in this petition have brought on record the Notification and procedure followed in compliance to the provisions of Section 15, 18 and 19 of the Adhiniyam of 1973. It is also an admitted position that under the Master Plan and Clause 16.32 therein, when the land use zone is classified as 'recreational', the permitted use are all recreational uses such as park, play-ground,

stadium, swimming pool and other activities incidental to recreation, including mela-grounds and exhibition grounds, and the specified uses permissible after approval from the competent authority are establishment of a petroleum filling station, restaurants, hotels, motels incidental to recreation and certain activities incidental thereto. It is, therefore, clear that the Wright Town stadium is notified as a recreational zone; the stadium is situated in the said area and in the approval granted by the Director vide Annexure R/2 dated 5.7.1989, it is indicated that for the purpose of development of the stadium and by approving the construction proposed by the Municipal Corporation, the land use permitted are park, play ground, hotel, motel etc and construction of everything except petroleum pump has been permitted. That apart, in this order, it is indicated that from the main entries door of the stadium, on both sides for about 60 feet, no shop shall be constructed or obstructions created.

**35.** From the aforesaid, it is clear that for the Wright Town Stadium, a development plan has been approved in accordance to the requirement of the Adhinyam and it cannot be said that there is no development plan for the area in question. Even though some of the petitioners, particularly petitioner in M.P. No.2861/1989, tried to indicate that the entire area i.e... the Wright Town area is demarcated as a residential area and, therefore, no commercial activity in the area is permissible, the interveners and the Municipal Corporation tried to refute the aforesaid by saying that Wright Town area is now both a residential and commercial area, we are of the considered view that for the purpose of determining the dispute in this writ petition, this aspect of the matter pertaining to the entire Wright

Town area is not required to be gone into by us. In these petitions, our scope of interference and jurisdiction is limited to the Wright Town stadium and the construction of the so-called shopping complex around the same and nothing more, and we propose to confine to this issue only.

**36.** Accordingly, we can now safely come to the conclusion that as per the development plan approved, the Wright Town stadium is notified as a recreational area, where sports and sports related activities can be carried out, as it has been notified to be used only as a stadium and a play ground. As such, we hold that in the area in question which is subject matter of dispute before us, in these petitions i.e... the Wright Town stadium now known as Pandit Ravi Shankar Shukla Stadium, only sports and sports related activities can be carried out and we are constrained to hold so because the area has been notified as a play ground and stadium and in the case of **Krishanlal Gera** (supra), Hon'ble the Supreme Court has held that when an area is ear-marked for a stadium, to be used as a play-ground, the infra-structure provided therein are meant for the benefit of the sports person, it has to be used for promotion of sports and activities to promote sports and allied activities and whenever by nepotism, favoritism and unwarranted government largeness to private interest, threats to frustrate such a scheme, comes to the notice of the High Court, the High Court is duty bound to strike at such an action.

**37.** It has been held by the Supreme Court that a stadium is meant for improvement of sports and benefit to sports-persons and activities related thereto. The Supreme Court has observed that slowly and steadily these are being ignored and in the garb of fund or financial constraints, maintenance of these complexes

and infra-structure facilities meant for sports are going into the hands of persons in an unauthorized manner, who are using it for non-sporting activities. It has been held by the Supreme Court in paragraph 22 of the aforesaid judgment that no part of the stadium or sports ground can be carved out for non-sport or commercial activity which is not permissible in a stadium. The Supreme Court in the aforesaid case has come out heavily and has criticized the act of the statutory authorities in permitting use of a stadium for purposes which is not at all related to sports or sports related activities.

39. Similar is the principle laid down in the case of **Shanti Sports Club** (supra), wherein also the Supreme Court has observed that land use and development of cities and urban area in a planned manner has to be achieved by rigorously imposing the Master Plan which is prepared after careful study of complex issues, scientific research and rationalization of law. If the judgment rendered in the case of Shanti Sports Club (supra) is read in its totality, we find that any action taken to convert an already approved area under a developed scheme for a particular purpose for any other purpose should be strictly dealt with and appropriate orders passed. The Supreme Court expresses its concern in this regard and lays down the principle in the following manner :-

“...The object of planned development has been achieved by rigorous enforcement of master plans prepared after careful study of complex issues, scientific research and rationalisation of laws. The people of those countries have greatly contributed to the concept of planned development of cities by

strictly adhering to the planning laws, the master plan etc. They respect the laws enacted by the legislature for regulating planned development of the cities and seldom there is a complaint of violation of master plan etc. in the construction of buildings, residential, institutional or commercial. In contrast, scenario in the developing countries like ours is substantially different. Though, the competent legislatures have, from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity.

74. In last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind



eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. ....This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should

be made with the town planning scheme and no relief should be given to the violator of the town planning scheme etc. on the ground that he has spent substantial amount on construction of the buildings etc. - K. Ramdas Shenoy v. Chief Officers, Town Municipal Council, Udipi 1974 (2) SCC 506, Dr. G.N. Khajuria v. Delhi Development Authority 1995 (5) SCC 762, M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu 1999 (6) SCC 464, Friends Colony Development Committee v. State of Orissa 2004 (8) SCC 733, M.C. Mehta v. Union of India 2006 (3) SCC 399 and S.N. Chandrasekhar v. State of Karnataka 2006 (3) SCC 208.

75. Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power

have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.”

40. Similar is the principle laid down in various other judgments relied upon by the parties, particularly petitioner Shri V.K. Shukla. All the judgments in one tone lay down a common principle of law to say that when a planned development of the area is required to be done in accordance to the statutory provision or law, any act on the part of the authorities to deviate from the development plan and make construction or use of the area in a manner contrary to the approved plan or scheme should be dealt with strict hand and all such activities which are contrary to the Master Plan or the Development Plan should be stopped and if required the buildings and structures brought down by judicial orders.

41. Similarly, in the case of **Muni Suvrat Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad & Others – 2006 AIR SCW 5192** the matter was considered by the Supreme Court and after considering the another judgment of the Supreme Court in

the case of **Syed Muzaffar Ali and others Vs. Municipal Corporation of Delhi – 1995 Supp (4) SCC 426**, in para 58, the matter has been dealt with in the following manner :-

“58. As pointed out by this Court in **Syed Muzaffar Ali and Others vs. Municipal Corporation of Delhi (supra)** that the mere departure from the authorized plan or putting up of a construction without sanction does not ipso fact and without more necessarily and inevitably justify demolition of the structure. There are cases and cases of such unauthorized construction and some are amenable to compounding and some may not be. According to learned counsel for the first respondent, the appellants have constructed the temple without obtaining any sanction whatsoever. There is serious breach of the licensing provisions or building regulations which may call for extreme step of demolition. In our view, these are matters for the Municipal Commissioner to consider at the appropriate time.”

In the above case instead of taking extreme step for demolition, the matter was remanded back to the Commissioner for reconsideration.

**42.** Similarly in the case of **Dr. G. N. Khajuria Vs. DDA – (1995)5 SCC 762**, it has been held by the Supreme Court that when large scale irregularities in construction is noted, consequential action should be taken for regularizing the same.

**43.** That being the principle of law and, therefore, in this case we are now required to consider as to whether in the

shopping complex constructed in and around Wright Town stadium, there is any deviation from the approved Development Plan, if so to what extent and, if required, the consequential orders to be passed therein. This we will do after referring to the two reports that have come on record.

44. For the present, we have only analyzed the principle of law applicable and have only indicated as to what is the land use for the area in question permissible under the Development Plan, created under the Adhinyam of 1973 and the law laid down by the Supreme Court in the matter of making developments and construction in contravention to such development plans and schemes. The last question which we are required to consider before analyzing the irregularities etc, if any, based on the inquiry report submitted, is a ground canvassed by the petitioners that the Municipal Corporation has made the construction without approval of the State Government and, therefore, the entire construction is illegal. We are also required to take note of the statement made by the State Government in the return, in a very vague and casual manner, which suggests that approval of the State Government was not available.

45. We have indicated hereinabove the requirement and provisions of section 28 of the Adhinyam of 1973, which contemplates a provision for development by the Local Authority or by any authority constituted under the Adhinyam of 1973. Section 28 contemplates that where a Local Authority intends to carry out development on any land for the purpose of that authority the procedure applicable under section 22 shall apply '*mutatis mutandis*' in respect of such an authority and under section 27(1) the authority is required to submit its proposal

alongwith the Development Plan and other details to the Director. In case Director raises any objection to the proposed development by pointing out that it is not in conformity with the Development Plan, necessary modification to the proposal to meet the objections of the Director are to be made and the State Government on receipt of the proposal together with the objection of the Director, shall approve the proposal with or without modifications or direct the office to make certain corrections.

**46.** In this case, we find that initially when the proposal was submitted the office of the Joint Director vide Annexure E dated 30.1.1989 did not approve the construction and directed that no construction should be made without any approval of the office of the Director. However, thereafter vide Annexure R/2 on 5.7.1989 as already indicated hereinabove, the permission was granted by the Director. The petitioners in M.P. No. 2861/1989 referres to a communication received by him i.e... petitioner No.1 vide Annexure G on 28.3.1989, to say that no permission has been granted. If this letter is seen, it shows that to a query made by the petitioner, the office of the Director indicated that upto 28.3.1989 no permission has been granted, but from the records it is seen that the Director thereafter accorded the permission vide Annexure R/2 on 5.7.1989.

**47.** However, from the return and the note-sheets filed by the Municipal Corporation and from the findings recorded by the Three Member Committee, which gave its report on 12.3.2004, we find that the Director gave the permission on 5.7.1989 and thereafter the State Government was apprised of the permission granted, the Commissioner of the Municipal

Corporation has communicated with the Secretaries to the State Government in the concerned department and till date there is no letter, communication, order or any statement on behalf of the State Government that this permission granted on 5.7.1989 is withdrawn by the State Government, cancelled or is without authority of the State Government. On the contrary, the Director, – who is a statutory authority acting on behalf of the State Government, indicates to have granted the permission subject to certain conditions stipulated therein. If the letter dated 5.7.1989 – Annexure R/2, available in the record, is scrutinized, it would be seen that it is a communication made by the Directorate of Town and Country Planning, MP, Bhopal to the Commissioner, Municipal Corporation, Jabalpur and this Directorate approves the proposal submitted by the Municipal Corporation and as the Directorate of Town and Country Planning is the competent authority under the statute to grant the approval, we have no doubt in our minds that the contentions of the petitioners that no approval has been obtained is not correct. Annexure R/1 dated 5.7.1989 is nothing but the approval of the competent authority under the Adhinyam of 1973 for making the construction.

**48.** At this stage, we may refer to the return filed by the State Government in this regard. The State Government in its return does not specifically give any reply to various assertions made by the parties. On the contrary, it only says that approval from the State Government has not been obtained. We do not know as to how and on what basis such a statement is made on behalf of the State Government. The State Government does not say anything about issuance of the order – Annexure R/1 i.e. 5.7.1989 by the Directorate of Town and Country Planning. The

return of the State Government is filed way back in the year 1989. The construction was done at that point of time and the State Government nowhere says that they have withdrawn the approval granted. The return of the State Government is filed in MP No.2876/1989 and in paragraphs 1, 2, 3 and thereafter in paragraph 4, it deal with the provisions of the Adhiniyam of 1973, the requirement of preparation of the zonal plan, developmental plan, preparation of such plants for the city of Jabalpur and finally in paragraph 5 says that under section 19 of the Adhiniyam of 1973, the Development Plan for the Jabalpur region was published in the official gazette and, therefore, the only contention of the State Government upto paragraph 6 is that the development plan has been approved and the area marked as Wright Town Stadium is ear marked for a play-field and a stadium as well as certain recreational activities. Thereafter, in paragraph 6, they speak about the Municipal Corporation, Jabalpur approaching the Town and Country Planning Department for construction of shops around Pandit Ravi Shankar Shukla Stadium. They have filed a copy of the letter dated 6.1.1989 and they say that the Joint Director rejected the request vide Annexure R-5 dated 30.1.1989; and, it is the same letter which has been filed by the petitioners in M.P. No.2861/1989, whereby it was stated that no development should be done without permission of the Director.

**49.** Thereafter, the Municipal Corporation again wrote to the Joint Director, who informed the Director about the request made by the Municipal Corporation on 30.1.1989 – Annexure R/6. All these communications made and filed by the State Government indicates that the State Government in the



Directorate of Nagar Tatha Gram Nivesh Adhiniyam was dealing with the Municipal Corporation and there is nothing to indicate that the Directorate had passed the order on 5.7.1989, without approval of the State Government or the Government has cancelled the same, finally in paragraph 7, they go make the following statement is made on behalf of the State Government :-

“..... It is respectfully submitted that even the letter written by Director on 5.7.1989 was in consonance with permissible uses as indicated under zoning regulations annexed above. ....”

**50.** From this stand of the State Government, it is crystal clear that the Director vide communication dated 5.7.1989 had granted permission to the Municipal Corporation to make the construction subject to their confining to the limits prescribed therein. Under such circumstances, the contention of the petitioners that the State Government had not accorded sanction cannot be accepted. We have to hold that limited to the extent and subject to the conditions and restrictions as is indicated in the letter dated 5.7.1989, permission has been granted and if any construction has been made in deviation to the said sanction or permission to that extent there would be illegality and this position was even accepted by Shri Anshuman Singh, learned counsel for the Municipal Corporation at the time of hearing. Accordingly, with regard to the third ground raised that the construction has been made without approval of the State Government, we find that the Directorate of Town and Country Planning of the State Government which is the competent authority under the Adhiniyam of 1973, did grant certain permission on 5.7.1989 and the Municipal Corporation

proceeded to take action on the basis of this communication. However, if there is any violation of the conditions based on which this permission was granted, the same shall be dealt with after going through the reports submitted on the basis of the inspection done.

**51.** Accordingly, as far as the legal questions involved in the writ petitions are concerned, we hold that the contract given by the Municipal Corporation to the builder in question is permissible under law and, therefore, the contract in its totality cannot be quashed. We further hold that the area in dispute i.e.... the Wright Town stadium, Jabalpur has been notified under the land use and development map as a play ground, stadium and a place which can be used for certain recreational activities and finally, we hold that vide communication – Annexure R/2 dated 5.7.1989, permission has been granted to the Municipal Corporation, Jabalpur for development of complex around the stadium limited to the extent indicated in the said communication.

**52.** Having so held, we shall now proceed to take note of two inquiry reports submitted as per directions of this Court; violations, if any, pointed out in these reports and thereafter consider the question of issuing consequential directions in the matter.

**53.** Having considered various aspects of the matter as detailed hereinabove, now it would be appropriate to take note of the orders passed by this Court on 9.7.2002 and 5.9.2003, the consequential inspection reports submitted in pursuance to these orders and then consider as to what is the exact nature of

illegality or irregularity in the matter and for the same what directions are required to be issued.

**54.** As already noted by us, initially on 9.7.2002, a detailed order was passed by this Court and even after taking note of the requirement of Clause 13, 18 and 20 of the agreement in question and after considering the question of the right available to respondent No.2 i.e... the builder in the matter of collecting premium, the directions issued by this Court was to constitute a Committee which was to conduct its spot inspection during the course of the day and the next day i.e... 10.7.2002 and submit a report on 11.7.2002. The Committee was to give its report on the following two aspects:

- (i) The number of shops existing in the market complex which is the subject matter in issue;
- (ii) The nature of trade or business carried out in the said shops.

**55.** On the basis of the aforesaid, a spot inspection report dated 11.7.2002 has been submitted by the Committee and the detailed report indicates that at the time of inspection various officials and authorities were present.

**56.** The Committee inspected the spot and found that there are 64 shops and a 35 feet wide godown, all of which are facing the road. The details of the 64shops; the names of the occupants; the nature of the business being undertaken in these shops, are indicated in the report submitted by the Committee. The nature of business being carried out in these shops which was noted by the Committee at the time of inspection shows that in many of the shops work of motor repairing, jeep repairing, car

repairing, denting and welding work, sale of motor parts, automobile, Air Conditioner selling; repairing, installation of A/c for motor vehicle; Auto-gas conversion; Godown keeping bore machine implements; automobile services stations were being carried out. However, in few of the shops, hotels and restaurants, establishment for selling surgical equipments, hospital equipments, wholesale business of garment, a pathology clinic, a Doctor's clinic, a sonography clinic, a retail medical shop, a beauty parlour, a Veterinary Clinic, STD booth, office of a borewell digging firm, office desktop publishing and certain shops were found to be closed. In one shop, Consultation Chamber of a Neuro-Surgeon and a big Godown 30' wide – belonging to Oberoi Tent House, were functional.

**57.** A perusal of this inspection report goes to show that most of the activities that were being carried out in the shops in question had no connection with or were not at all related to sports or sports related activities and except for certain hotel and restaurants and a medical shop or may be Doctors clinic and dispensary, STD Booth etc., none of the establishments functioning in the area could be said to be even remotely connected with sports or sports related activities. Most of the shops were carrying out business of motor repairing, automobile servicing, sale of motor parts, electrical parts and various other commercial activities which had no relationship with sports or its allied activities.

**58.** That being so, from the spot inspection that was conducted on 10.7.2002, it is clear that most of the commercial activities being carried out in these shops except a few, were not in accordance to the permission granted on 5.7.1989 nor was it in

accordance to the purpose for which the stadium in question was notified under section 19, of the Nagar Tatha Gramin Nivesh Adhiniyam. It is, therefore, clear that as on 10.7.2002, the activities in the shops that was constructed were impermissible activities, which if not stopped till date are required to be stopped forthwith.

**59.** Thereafter, the second order was passed on 5.9.2013 and as already indicated in the previous part of our order, the Hon'ble Court constituted a Committee consisting of the following three Members:

- (a) The Deputy Inspector General of Police, Central Bureau of Investigation;
- (b) Secretary, Urban Administration and Development Department, Government of MP, Bhopal.
- (c) Additional Chief Secretary, Government of MP, Bhopal.

**60.** This Committee was directed to conduct its inspection and in paragraph 17 of the order passed on 5.9.2003, the fact finding authority so constituted was given eight questions to be gone into and the report submitted to these aspects. The eight questions have already been detailed by us but for the sake of convenience, we detail them again herein under:

- (a) Whether the shops which are in the stadium complex are utilized for any purpose, having any relationship with sports or sports entertainment?
- (b) Whether the Municipal Corporation Jabalpur had entered into any lease agreement in regard to the same?

- (c) Whether the builder has put the occupiers in possession, and if so, on what basis?
- (d) What premium the occupants of the shops had paid to the respondent No.2 and what rent they are paying to the Municipal Corporation?
- (e) Whether the occupiers of the shops are the first lease holders or they have taken sub-lease from someone else?
- (f) Whether the State as an actual fact granted permission to the Municipal Corporation to go ahead for the construction of this nature?
- (g) Whether such a construction should have been carried keeping in view the master plan? ; and,
- (h) Whether the permission for such construction was not necessary despite master plan being in existence?

**61.** The report of the Committee dated 12.3.2004 is available on record and we find that the Committee consisted of Shri Sudhir Mishra. DIG, CBI, Bhopal; Shri M.A. Khan, Secretary, Urban Administration Development, Bhopal; and, Shri Arun Kumar Gupta, Additional Chief Secretary and Chairman, MPEB. The Committee visited the spot on various dates, went through and scanned the entire records available in the office of Municipal Corporation, Jabalpur; called for and inspected report in the Department concerned namely the Urban Administration Department; the Directorate of Nagar Tatha Gram Nivesh Adhinyam and after conducting its deliberations, meetings and inspections on 24.11.2003, 9.12.2003, 10.12.2003, 9.1.2004,

11.2.2004, 17.2.2004, 18.2.2004 and 19.2.2004 has submitted a detailed report answering each question, which were given to the Committee for inquiry.

**62.** From the report of the Committee, the following facts emerge :- Pandit Ravi Shankar Shukla Stadium is in possession and under administrative control of the Municipal Corporation, Jabalpur since the year 1952. It was only an open ground surrounded by road on all the four sides. The land was under the ownership of Municipal Corporation, Jabalpur, bears Plot No.554, Locality Subhash Nagar, Area 4,44,328 square feet. The revenue records in this regard is filed by the Committee as Annexure A/2 to its report. Thereafter, the Committee detailed about the financial crisis of the Municipal Corporation in the year 1988-89, the decision taken by the Municipal Corporation for construction of 30 shops initially; the advertisement published in the daily newspaper on 4.11.1988, calling for offers for allotment of the shop on a premium of Rs. 1 Lac and a rent of Rs.400/- per month and the fact that no offer was received in pursuance to this advertisement. The subsequent decision to make construction of the building under the Builder Promoter scheme, publication of the notice in this regard, consultation of the Commissioner of the Municipal Corporation and their administrators with the Chief Secretary of the Government, the Principal Secretary of the Department concerned and the oral approval granted by these authorities and finally publication of the advertisement calling for offers on 30.11.1988. Various action taken finally concluding in execution of the agreement with the builder in question M/s Jaspal Oberoi, Developer and Builder on 20.1.1989. Copy of the agreement dated 20.1.1989 has been filed by the Committee and

the features of the Agreement as have been detailed by us in this order are also taken note of. Thereafter, the Committee finds that the agreement has been entered into and construction of the shops commenced in the year 1990-91 and was in progress even when the writ petition was filed.

**63.** The Committee after inspecting various records available in the office of the Municipal Corporation and the Government, finds that after the decision was taken to make the construction under the Promoters Scheme, the then Administrator of the Municipal Corporation vide his communication dated 28.12.1989 – Ex.P/6 requested for approval and guidance from the State Government and in the notings, on the file, the Committee found that the then Administrator of the Corporation deliberated and discussed the issue with the Principal Secretary of the Government and it is noted that after assurance and approval from the Principal Secretary, the matter was proceeded further by issuing tender and taking various other steps. The Committee finds that as per the record, the proposal was for constructing 60 shops and thereafter permission was granted for constructing 5 additional shops, i.e. 65 shops in all. The Committee took note of the requirement of the agreement, found that at the time they conducted inspection as per Annexure P/7, the outstanding rent to be collected from various shop-keepers was Rs.7,41,975/-. The Committee after inspection of various documents came to the conclusion that approval was granted by the Directorate of Town and Country Planning in accordance to the requirement of the statute on 5.7.1989. However, it was incorporated in this permission that the development and the construction of the shops shall be used for the limited purpose as



indicated in the letter dated 5.7.1989 and on both side of the main gate, 60' land should be left open. However, the Committee found that after developing the shops, various activities are being carried out like motor part and scooter part dealership, repair of motor vehicles, printing press, lathe machine etc. All these are not only contrary to the permission granted and the development plan, but also creates nuisance and hinderance in proper use of the stadium. Certain irregularities in the execution of the lease-deed with the shop-keepers by the Promoter were also taken note of, in as much as instead of signature of the authority of the Municipal Corporation in the lease-deed i.e. execution of the lease for allotment by the Municipal Corporation, the lease-deed is said to have been executed by the Promoter himself and thereafter forwarded to the Municipal Corporation. The Committee also found that the Builder has spent more than Rs. 20 Lacs in the development of the area and even though he indicates that he has charged premium from Rs.30,000 to Rs.35,000/- from each allottee of the shop, by filing various documents Ex.P/14 and after recording statement of various shop-keepers, the Committee found that premium collected by the Promoter from the shop-keepers ranged from Rs.35,000/- to Rs.75,000/-. After taking note of all these facts, the final conclusion of the Committee with regard to each item referred to it is answered.

**64.** The Committee answers the 8 questions posed to it by this Court as under :-

- (a) Whether the shops which are in the stadium complex are utilized for any purpose, having any relationship with sports or sports entertainment ?

This question is answered by saying that the shops in the stadium complex mostly were not being used for any purpose having relationship with sports or sporting activities. It is held that in the complex constructed, the allottees of most of the shops are not carrying on any activity which is in relation to sports or sports related activity. It is found that in about 26 shops, at that point of time i.e. 2004, prohibited business are being carried out and even though the authorities of the Municipal Corporation said that they are taking action to stop them, in most of the shops activities contrary to the sports activity are carried out.

(b) Whether the Municipal Corporation, Jabalpur had entered into any lease agreement in regard to the same ?

With regard to this query it is held that the Municipal Corporation, Jabalpur has not entered into any lease agreement but according to the document available, the promoter builder after obtaining premium has himself entered into the agreement with the shop keepers but in these agreements and lease executed counter signature of representative of Municipal Corporation is available.

(c) Whether the builder has put the occupiers in possession, and if so, on what basis ?

This question is answered by holding 'yes'. It is indicated that as per the lease agreement executed with the Promoter builder, it is a promoter builder after whose approval the shops have been allotted but it is also indicated that the agreements have been signed by the promoter builder with the shop keepers and he has given possession to the

shopkeepers and because of the interim order and prohibition issued by the High Court in these petitions, the Municipal Corporation did not execute the lease agreement.

(d) What premium the occupants of the shops had paid to the respondent No.2 and what rent they are paying to the Municipal Corporation ?

It has been held with regard to this question that as per the documents produced by the Municipal Corporation and the promoter and after taking note of the statement of the promoter it is found that every shopkeeper has paid the premium amount to the builder Shri Jaspal Oberoi, but the accounts and bills of premium so obtained are not available with the Municipal Corporation. It is also indicated that in the agreement there was no condition that the builder is to submit the details of the premium collected by him from the Shopkeepers, with the Municipal Corporation. It is further indicated that even though the Builder in his statement says that he has collected premium between 30,000/- to 35,000/- Rupees but some shopkeepers says that they have given premium of Rs.40,000/- and some have paid about Rs.70,000 to 75,000/-. However, it is seen from the record that the premium receipts ranging from Rs.35,000/- to 75,000/- have been produced by the shopkeepers and are filed along with the report. That apart, it is found that rent of the shop is being collected in accordance with the agreement by the Municipal Corporation and as on date when the report was submitted,

i.e. in the year 2004 an amount of Rs.7,46,975/- was outstanding as rent.

(e) Whether the occupiers of the shops are the first lease holders or they have taken sub lease from someone else ?

On inspection it is found by the Committee that out of 65 shops allotted, in only 33 shops, the original occupiers are still carrying on their business. In 32 shops the present occupiers have obtained the possession from the original occupier and carrying out their business i.e. by sub lease.

(f) Whether the State as an actual fact granted permission to the Municipal Corporation to go ahead for the construction of this nature ?

This question pertains to grant of permission by the State Government and this question is answered by referring to various documents to say that the shops have been constructed in accordance to the provisions of law after obtaining due permission from the competent authority and the report also indicates that the Administrator has deliberated and discussed the issues on various occasion with the Principal Secretary of the Government and the records do indicate that constructions have been made after due permission and approval of the Government.

(g) Whether such a construction should have been carried keeping in view the master plan ? and

(h) Whether the permission for such construction was not necessary despite master plan being in existence ?

The last two questions are as to whether the permission for such construction was not necessary. It is held that the permission has been granted by the State Government and

reference to the permission given by the competent statutory authority i.e. Director on 5.7.1989 is made to say that this is an appropriate permission. As regard the question with regard to construction being made in deviation from master plan as was existing, it is held that even though the construction has been done after obtaining due permission and as per the master plan from the Director vide his letter dated 5.7.1989 but in actual use of the permission and in allotment of the shop illegality had been committed. It is held that the business activities in the complex is contrary to the permission granted.

**65.** On going through the report of the Committee and after analyzing the totality of the facts and circumstances of the case in the backdrop of various legal provisions and judgments as referred to by us herein above, we have to come to the following conclusion :-

(I) The Municipal Corporation entered into an agreement with the Builder and there is no illegality, arbitrariness or unreasonableness in entering into such an agreement.

(II) However, in the execution of the agreement the following illegalities/ irregularities have been committed :-

(a) Proper lease agreement have not been executed between the persons to whom the shops were allotted and the Municipal Corporation, Jabalpur, the agreement entered into is by the builder with counter signature of a representative of the Municipal Corporation this is not as per the agreement under the builder promoter scheme, dated 20.1.1989.

(III) Even though approval has been obtained from the State Government on 5.9.1989, the Director, Town and Country Planning for development of the stadium and construction of shops but actual use of the same is contrary to the approval granted, i.e. a play ground and a stadium is being used mostly for purpose unconnected with sports or sports related activities, which is not in accordance to the development plan.

**66.** On 10.8.2015 Shri Alok Vagrecha, learned counsel appearing for some of the interveners in M.P.2876/1989 has submitted a written submission on behalf of the intervenors. Most of the legal grounds raised by Shri Vagrecha has been considered by this Court. However, in the said written submission on behalf of the intervenors Shri Vagrecha points out that at the most Municipal Corporation, Jabalpur could be asked to regulate the business of the shop keepers in accordance with the permission granted vide letter dated 5.7.89 and he says in the said submission that the intervenors have no objection in case a direction is issued to the Municipal Corporation to regulate the nature of business and activities for which the shops may be utilized in future in accordance with the directions contained in the letter dated 5.7.89. This was also infact, a alternate submission that was made by Shri Anshuman Singh, learned counsel appearing for the Municipal Corporation at the time of hearing and after taking note of all the aforesaid submissions and findings recorded by us, we proposed to do so only in the matter.

**67.** Even though the development and construction of the shop has been undertaken in accordance to the development plan and land use of the area as required under the scheme

formulated in accordance to Section 19 of the Adhiniyam of 1973 but in fact, the actual use is not in accordance to the development plan in as much as most of the activities carried out in the 65 shops constructed under the promoter builder scheme are not in relation to anything connected with sports or sports related activity. Most of the shops are being used for purposes which have no relation with sports activities. Under such circumstances, we allow this petition and we direct the Municipal Corporation to :

- (i) Stop all activities in all or any of 65 shops which carry out business or functions or activities which are not in accordance to the permission granted on 5.7.1989 and which have no nexus with sports or sports related activities. All activities pertaining to motor repairing, auto repairing, bore-well parts, sale of automobile parts, electrical parts or any other equipment or material not at all connected with sports activity should be stopped forthwith. Only such activity should be permitted in the shops which are in connection with the sports or sports related activity.
- (ii) Only such activities be permitted in the shops which are in accordance to the requirement of the permission granted on 5.7.89 and have any co-relation with sports, sports related activities or the business activities or the functioning of the shops are for such purpose which are beneficial to the sports person who come to use the stadium or to the sports association who have offices in the complex or sportsman who stay in the rooms constructed when they come to participate in sporting activity. Only such business establishment or activities like hotels,

restaurants, medical shops etc. be permitted in these shops which are beneficiary to sportsman, sports-persons and the sports association operating in the stadium complex, except these all other activities should be prohibited.

(iii) As the agreement entered into with the builder contractor on 20<sup>th</sup> January 1989 was authorizing the builder to obtain premium from the first allottee of the shops and thereafter, recommend for allotment to be made and as this phase is already over, now the Municipal Corporation should take over the entire complex dis-engage the builder and contractor from any activity concerned with the shopping complex, its management or leasing and now all allotment and regularization of the allotment in accordance to the development plan and permission granted on 5.9.1989 should be undertaken by the Municipal Corporation.

(iv) The Municipal Corporation shall issue notice to all such shop owners who are carrying on activities which are impermissible, grant them adequate opportunity for stopping the same within a period of three months, give them an option either to change their business activity and bring in conformity with the requirement of the sanction granted or the development plan or else to vacate the shop and handover their possession to the Municipal Corporation.

(v) The Municipal Corporation shall take over possession of all the shops which are vacated in pursuance to this order and thereafter shall take steps for allotting these shops in accordance with the rules applicable for



allotment of shops and ensure that allotments are made strictly in accordance to the law i.e. the permission granted on 5.9.1989 and the development plan.

(vi) The Municipal Corporation shall ensure that proper lease agreement is entered into with all the allottees of the shop and even if any allottee of the shop is continuing with the occupation of the shop and is in possession on the basis of agreement entered into with the builder, which is found to be illegal by the Committee which submitted its report on 12.3.2004, the Corporation shall regularize the lease agreement after negotiation and discussion with the shop owner and bring it in conformity with the requirement of law and execute a fresh lease agreement. If the shop owner is not willing to enter into a fresh lease and bring the lease in conformity to the requirement of law, the Municipal Corporation shall be free to take such steps as may be permissible in accordance with law. The Municipal Corporation should regularize all the lease agreements with regard to each and every shop and make it in conformity with the rules and regulations applicable to the Municipal Corporation and it should be made clear in the agreement that the right of the builder with regard to shop stands discontinued or terminated and shop keepers shall not deal with the builder any further.

(vii) The 10 feet corridor in front of each shop should be free from obstructions, no business activity or any other activity should be permitted in this area and the same should be left free for movement of sports personnel and other persons who use the stadium. Any shop keeper

misusing the corridor should be treated as an encroacher and action taken against him as permissible in law.

(viii) The entire area in front of the stadium and surrounding it, should be kept free from encroachment. Illegal parking of the vehicle should be prevented and with the help of District Administration and the police authorities, the stadium and its surrounding area should be kept in such a manner that its utility for sports activities and by the sports personnel for sporting activity is optimized and by encroachment, illegal parking etc., no obstruction is created in the use of the stadium or its complex.

**68.** Municipal Corporation should comply with the aforesaid directions within a period of three months from the date of delivery of this judgment and submit a report to the Registrar General of this Court. Report so submitted shall be placed for consideration before this Court and in case no report is submitted within the period of three months from the stipulated period or by 30<sup>th</sup> November 2015. The Registrar General or the Principal Registrar (Judicial) should bring this fact to the notice of the appropriate Bench for taking action in accordance with law.

**69.** With the aforesaid, this petition stands allowed and disposed of. No orders on costs.

**(Rajendra Menon)**  
**Judge**

**(Sushil Kumar Gupta)**  
**Judge**