

**MINUTES OF
192nd MEETING OF
THE GOA TOWN & COUNTRY PLANNING BOARD
HELD ON 21/11/2023
AT 10.30 A.M**

MINUTES OF 192nd MEETING OF THE GOA TOWN & COUNTRY PLANNING BOARD HELD ON 21/11/2023 AT 10.30 A.M. IN CONFERENCE HALL, VAN BHAVAN, ALTINHO, PANAJI.

Following attended the meeting:

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|-----|--|------|-------------------------------|
| 1. | Shri. Vishwajit P. Rane,
Hon. Minister for TCP | ... | Chairman |
| 2. | Dr. Deviya Rane,
Hon'ble MLA, Poriem | | Member |
| 3. | Shri Santosh Fadte,
DCF, Forest Dept. | | Member |
| 4. | Shri Renq Menezes,
Dy. Director Agriculture,
Agriculture Dept. | | Member |
| 5. | Captain Sanjeev Srivastav
Senior Staff Officer (Works),
HQ Goa Naval Area. | | Member |
| 6. | Dr. Rupa Naik,
Dy. Director (PH),
Directorate of Health Services | | Member |
| 7. | Shri Rajesh Kale,
Dy. Director Tourism | ... | Member |
| 8. | Shri Shrinivas Dempo,
GCCCI President | ... | Member |
| 9. | Eng. Paresh Gaitonde | ... | Member |
| 10. | Arch. Rajeev M. Sukhthanker | ... | Member |
| 11. | Ms. Vertika Dagur | | Chief Town Planner (Land Use) |
| 12. | Shri. Rajesh J. Naik,
Chief Town Planner (Planning). | ... | Member Secretary |

Item No. 1: Confirmation of the Minutes of the 191st meeting of Town & Country Planning Board held on 21/09/2023.

Member Secretary informed that the Minutes of 191st meeting of TCP Board held on 25/10/2023 were circulated to the Members vide letter No. 36/1/TCP/502/2023/3516 dtd.14/11/2023 and since no comments on the same were received, the decisions as taken were implemented.

Members took note of the same and accordingly the Minutes of 191st meeting were treated as confirmed.

Item No. 2: Appeal under Section 52 (2) of the TCP Act, 1974 filed by Mrs. Dinamati Gomes, and her son Mr. Navnath Gomes alias Navnath Kankonkar V/s North Goa Planning and Development Authority. (File No. TP/B/APL/428/23)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Order bearing ref. No. NGPDA/ill-const./12/Tlg/1129/2023 dated 06/07/2023 issued by the Respondent NGPDA.

The Appellants states that aggrieved by the issuance of the Show Cause Notice dated 29.02.2022 having reference No. Ill/constn/55/Tlg/1455/2022 *before the NGPDA*, by which the Member Secretary has wrongly issued the Show Cause Notice which are *dehors* of law and records, and has wrongly dismissed the application dated 5.6.2023 objecting for the Advocates for the complainants and others vide Order dated 06.07.2023. The Appellants seek to challenge the legality and propriety of the Impugned Orders, seeks to prefer the present Appeal on such grounds mentioned herein below, which are taken without prejudice to one another.

Grounds:

- a. That the Impugned Orders are issued by the Respondent No. 2 is without following the prescribed procedure and the same is bad in law as well as on facts.
- b. The Impugned Orders have been passed in gross violation of the principles of Natural Justice.
- c. The Impugned Orders are passed by the Respondent No.2 over looking the facts on record and in complete bad faith.
- d. The Respondent No. 2 has not considered that there could not have been any show cause notice issued by the Respondent No. 2 as the reply of the Appellants were never considered.
- e. That the Respondent No. 2 as a Presiding officer in the matter has made statements confirming facts on her own while passing Second Impugned Order.
 “At the outset I wish to confirm that Adv. G. Panandiker is not on the panel of advocates of this authority and has not represented the NGPDA in any matter/case.”
 The said statement is contrary to records as place before the authority.
- f. That the Respondent No 2 has failed to examine that the Advocates have represented GPPDA which is now in turn NGPDA having appeared in the Hon'ble High Court in PIL Writ Petition Nos. 33/2022 and 48/2019 against the GPPDA and for the GPPA and in the Case bearing No. 12 are appearing before the authority.
- g. That the Respondent No. 2 has turned a blind eye to all the illegalities committed by Joe Mathias in the Survey No. 249/1-A of Taleigao Village, Tiswadi Taluka.
- h. That the Respondent No. 2 has granted various permissions to Joe Mathias having Order dated 14.06.2006 in the property bearing 249/1-A situated at Dona Paula Taleigao having ref no NGPDA 342/682/06, Order dated 02.02.2007 in the property bearing 249/1-A situated at Donapaula, Taleigao.

The Appellant therefore prays as under:

1. That the appeal be allowed by this Hon'ble Board and Show cause notice dated 29.02.2022 having reference number ill/constn/55/Tlg/1455/2022 before the NGPDA at Panaji of the North Goa Planning and Development Authority, in Complaint no 12, be quashed and set aside; and/or In the alternatively the matter be remanded after quashing and setting aside the impugned Order:
2. That the appeal be allowed by this Hon'ble Board and the application dated 5.6.2023 objecting for the advocates for the complainants and others vide Order dated 06.07.2023 and Development Authority, in Complaint No. 12, be quashed and set aside; and/or In the

alternatively the matter be remanded after quashing and setting aside the impugned Order;

3. Pending the hearing and adjudication of the present Appeal from the Impugned Orders, this Hon'ble Court may be pleased to stay the proceedings before the North Goa Planning and Development authority which is pending at Panaji, Goa;

The matter was listed in the agenda of 191st meeting of TCP Board held on 25/10/2023, however Advocate appearing on behalf of Appellant requested for some time to deal with preliminary reply filed by the Respondent, the matter was therefore adjourned.

Notices were accordingly issued to parties to remain present for the meeting for arguments in the matter.

Adv. Anjana Ghundapur holding for Adv. Matlock D'Souza appeared on behalf of Appellant and Adv. Gaurang Panandikar appeared for original complainant Shri Niteen Sant, whereas Adv. Hanumant Naik appeared for Respondent PDA. The Board heard all the parties and decision arrived to, is as under:

By this Order, the Board proceeds to dispose the present Appeal, which has been filed by the Appellants under Section 52(2) of the Goa Town and Country Planning Act, 1974 against Show Cause Notice dated 29/02/2022, issued by the North Goa Planning and Development Authority to the Appellants based on the complaint filed by Mr. Niteen Sant as well as Order dated 06/07/2023, passed by the North Goa PDA, in the proceedings conducted in respect of the said Show Cause Notice by which the application filed by the Appellants to debar the Advocate appearing for the Complainant.

This Board issued notices to the parties and accordingly, parties appeared before the Board in its 191st meeting held on 25/10/2023. During the said hearing of the Appeal, a Preliminary Reply was filed on behalf of North Goa Planning and Development Authority, wherein the objections were taken to the maintainability of the Appeal itself filed by the Appellants under Section 52(2) of the Town and Country Planning Act, 1974 against the Show Cause Notice dated 29/09/2022, wherein the Appellants were directed to Show Cause as to why the construction of Ground Floor, First floor and Second Floor with RCC frame structure with laterite masonry wall should not be demolished. It is say of the Authority that the appeal itself is not maintainable as there is no decision taken by the Authority.

In the said Preliminary Reply, it has been submitted that as far as prayer clause (b) is concerned as prayed in the Appeal, there is no provisions in the TCP Act to seek such an Order to debar Advocate appearing for the party or to file any Appeal under Section 52 (2) of the TCP Act.

During the said hearing in 191st TCP Board meeting held on 25/10/2023, Adv. Mr. Matlock D' Souza, who appeared for the Appellants accepted the position that no Appeal lies under Section 52(2) of Town and Country Planning Act, 1974 as far as the relief prayed in prayer clause (b) of the Appeal, which statement has been considered by the Board, however, since Advocate for the Appellants sought time to consider the reply filed, the time was granted and parties were informed that Appeal will be heard in the next meeting of the Board.

Accordingly, after issuing notices to respective parties, Appeal was shown on the Agenda of the Board meeting to be held on 21/11/2023. In the notice issued, parties were specifically informed to remain present before the Town & Country Planning Board on the said date and time, either in person or through their Advocate for hearing and submission of written statement, if any, failing which, it was informed clearly that the matter will be heard and decided ex-parte.

During the hearing of the Appeal, Adv. Anjana Ghundapur appearing for the Appellants and holding for Adv. Matlock D'Souza, filed an application for adjournment on the ground that Adv. Mr. Matlock D'Souza is unwell. During the hearing of the Appeal, Appellants did not filed any rejoinder dealing with the contents of the Preliminary Reply filed on behalf of the North Goa Planning and Development Authority, although time was sought on earlier hearing of the Appeal.

It was submitted by the Advocates appearing for the Respondents that the Appeal which is filed against the Show Cause Notice is not maintainable, as there is no provisions for filing Appeal against Show Cause Notice, which was issued to the Appellants seeking their explanation as to why action should not be taken against the construction. It was further submitted that the Appellants have submitted their explanations to the Show Cause Notice by filing replies and that the Appellants have participated in the proceedings initiated pursuant to Show Cause Notice and therefore, the Appeal may not be entertained.

It was further submitted by the Advocates appearing for the Respondents, that in the Preliminary Reply filed on behalf of the North Goa Planning and Development Authority, the reference is made to the Order passed by the Hon'ble High Court and that pursuant to the PIL WP filed by Respondent No. 1, the Show Cause Notice dated 29/09/2022 came to be issued which has been duly replied by the Appellants and thereafter, the Appellants as well as the complainant participated in the personal hearing which went on several occasions and when the hearing was to be concluded, the Appellants have filed Appeal, which cannot be entertained being not maintainable.

The Appellants filed Appeal challenging the Show Cause Notice issued by the North Goa Planning and Development Authority as well as the Order passed by the Member Secretary of NGPDA wherein the application filed by the Appellants to debar the Advocate for the complainant from participating in proceeding has been rejected.

The Board considered the Appeal as well as the Preliminary Reply and submissions made by the Advocates for the Respondents and the Petitioners, during the last meeting as well as for the present Meeting.

The Board is of the considered opinion that under Section 52 (2) of Town and Country Planning Act, 1974, the party to whom such Show Cause Notice is issued in relation to some illegal construction, the party can apply for retention of structure or prefer appeal. However, such recourse to Appeal can be taken on limited reasons of jurisdiction or power to issue Show Cause Notice. However once the party submit its reply to Show Cause Notice and participated in the proceedings initiated pursuant to the Show Cause Notice, such party cannot be permitted to prefer an Appeal when there is no decision taken on Show Cause Notice, as it is not known that the Authority issuing such Show Cause Notice can even pass favourable Order in favour of party against whom the Show Cause Notice is issued.

The Appellants in their Appeal has stated several facts as well as several grounds have been taken in reply to Show Cause Notice in the proceedings, which were conducted pursuant to the Show Cause Notice.

Adv. H. D. Naik for North Goa Planning and Development Authority also submitted that the hearing conducted pursuant to the Show Cause Notice is already concluded, however no decision has been taken on said Show Cause Notice since the Appellants have filed the aforesaid appeal before this Board.

The Board considered all aspects including the challenge taken by the Appellants in this Appeal and the Board is of the opinion that as far as prayer clause (b) is concerned, there is no specific provisions under the Act to challenge the rejection of the application filed by the Appellants to debar the Advocate from appearing in the proceedings before the Authority certainly not under Section 52 of the TCP Act.

The Board is also of the considered opinion that once the Show Cause Notice is issued and Appellants having participated in the proceedings before the Authority in the hearing that have been conducted on the Show Cause Notice, which is going on for last more than a year, the Appellants cannot be permitted to challenge Show Cause Notice, although specific time period is not prescribed and party has to otherwise prefer an Appeal in reasonable time, which has not been done in the present case, as the Appeal is filed after one year.

The Board is also of the opinion that the Appellants are always free to file Appeal, if any adverse Order is passed by the said Authority on Show Cause Notice issued to Appellants, which decision will have to be taken on merits of the case in accordance with provisions of the Act and Regulations.

Therefore, the Board is of opinion that there is no point to grant time to the Appellants as the Appeal filed by the Appellants is only against Show Cause Notice, which is not maintainable, as the Board did not find it appropriate to consider any other contentions raised by the Appellants and the Respondents on the merits of the Show Cause Notice. Accordingly, it is held that the Appeal filed by the Appellants only against Show Cause Notice cannot be entertained and the same is liable to be rejected.

The appeal therefore stands rejected.

Member Secretary was accordingly directed to communicate the decision of the Board to the concerned parties.

Item No. 3: Appeal under Section 52 of the TCP Act, 1974 filed by Shri Viraj Shirgaonkar V/s North Goa Planning and Development Authority. (File No. TP/B/APL/431/23)

Member Secretary informed that an Appeal is preferred to the Board under Section 52 of the Goa Town & Country Planning Act, 1974, against the Order bearing ref. No. NGPDA/62/TLG/1799/2023 dated 06/09/2023 issued by the Respondent NGPDA.

The Appellant states that vide ref. No NGPDA/1317/2532/2010 dated 15/1/2010, Appellant was granted Development Permission in accordance with the provisions of Section 44 of the Goa Town and Country Planning Act, 1974 for construction of multi family dwelling and compound wall with respect to land bearing Sy.No. 79/1, zoned as (S-2) Settlement in ODP and situated at Taleigao village.

The Appellant states that based on Development Permission dated 15/1/2010 bearing ref. No. NGPDA/1317/2532/2010, Respondent issued a revised Development Permission vide Order dated 02/07/2013 bearing ref. No. NGPDA/1317/741/2013 for construction of addition on the ground floor to the existing building comprising of flat and society's office with respect to Appellant land zoned as (S-2) Settlement zone in ODP situated at Taleigao village bearing Sy. No. 79/1 Q, plot number 11 by North Goa Planning and Development Authority.

The Appellant states that on 28/08/2015, the Appellant received a Show Cause Notice from the Respondent purportedly under Sec. 50 & 52 of the Goa Town Country Planning Act stating why action should not be taken for revoking the permission granted vide Order No. NGPDA/1317/741/2013 and alleging therein that the Appellant has manipulated the area in order to get benefit for approval of revised plan therefore by committing the said manipulation purposely and to avail benefit in F.A.R in order to get plan approved and regularize by engaging service of Architect in Sy.No. 79/1-Q.

By the said notice, the alleged illegalities were listed out and the Appellant was called upon to show cause within 7 days of the receipt of the said notice why action under Section 50 & 52 of the Town & Country Planning Act, 1974 namely revocation of permission and demolition of the structures referred therein should not be initiated.

By Reply dated 09/09/2015, the Appellant show caused against the said notice pointing out that Respondent did not supply him the copy of alleged legal notice dated 03/03/2015 and the alleged subsequent Representation dated 27/08/2015. Appellant further in his reply stated that the construction carried out in Sy.No.79/1-Q of village Taleigao of Tiswadi Taluka was in terms of the approved plan and construction license granted by the Village Panchayat and after obtaining completion certificate from Respondent's office, the occupancy certificate was issued by Village Panchayat of Taleigao, at this time, it was never pointed out by Respondent regarding any deviation or contravention of any condition mentioned in said Order passed by Respondent.

The Appellant by the reply further pointed out that the permission granted cannot be revoked after the grant of completion certificate/occupancy certificate mentioned under Sec 50 (1) the Town & Country Planning Act, 1974 and it would be unreasonable and contrary to the principle of natural justice, Appellant further pointed out that Respondent failed to identify the

nature and extend of the alleged unauthorized development. The Appellant by the reply further pointed out that Respondent had failed to show alleged manipulation or the benefit obtained on F.A.R. by Appellant and Appellant also asked for personal hearing.

The Appellant states that on 30/09/2015, the Appellant received a letter from Respondent stating that as per request made the Appellant in his reply dated 09/09/2015, Respondent is enclosing xerox copies of legal notice dated 03/03/2015 and representation dated 27/05/2015 and also requested to file detailed reply within 15 days.

The Appellant states that on 20/11/2015, Appellant filed reply to the letter dated 30/09/2015 stating that due to health issues of family member, Appellant was unable to file reply as he need time of 30 days to file detailed reply.

The Appellant states that on request made by him vide letter dated 20/11/2015, Respondent vide letter dated 08/12/2015 informed the Appellant that request made in letter dated 20/11/2015 was discussed in 59th Authority meeting and Authority member has decided to grant 07 days time to file reply as issue is sub-judice before Honourable High Court in Writ Petition No. 472/2015.

The Appellant states that on 17/12/2015, the Appellant filed additional reply pointing out that as regards to the allegation made that there is utilization of additional FAR by revising the plan, it is submitted that there is no utilization of FAR beyond the permissible limit of 80% and at the time of revision of plans, the walls adjoining the unit and the staircase have been included in the staircase for purpose of calculating FAR and which is permissible under building regulations in force.

The Appellant further pointed out that there is no manipulation of area statement as it was only after due scrutiny of plans and calculations, the Respondent was pleased to grant the revision and further Appellant call upon the Respondent to recall show cause notice and to grant opportunity for personal hearing. Without admitting any deviation, it was also pointed out that the deviation was within 5% permissible limit in terms of the Building Regulations and therefore compoundable.

The Appellant states that on 08/03/2016, the Appellant received a Notice under ref.No. NGPDA/1317/3428/2016 from the Respondent purportedly under Sec. 50 & 52 of the Goa Town & Country Planning Act by referring to replies filed by Appellant stating that in Authority meeting held on 02/02/2016, reply filed by Appellant was discussed and the Respondent came to conclusion that manipulation and fabrication was carried out by Appellant in the area statement and line diagram of revised plan by showing less area to get revised plan approved vide Order No. NGPDA/1317/741/2013 dated 02/09/2013 and also calling upon Appellant for personal hearing before the Chairman of the Respondent. The Appellant vide letter dated 16/03/2016 sought time for personal hearing, as the subject was technical and legal in nature and needed assistance of Advocate.

The Appellant states that vide letter under ref. No. NGPDA/1317/3524/2016 dated 22/03/2016, Respondent was pleased to fix the personal hearing on 01/04/2016 before the Chairman of the Respondent.

By Order dated 06/07/2016, the Respondent was pleased to hold that the Appellant has utilized excess FAR by 2.64% i.e. 24.70 m² built up area and was pleased to revoke the Development Permission Order under No. NGPDA/ 1317/741/2013 dated 02/07/2013 and also directing the demolition of the alleged illegal structure within 30 days of the receipt of the said final notice.

The Appellant states that thereafter, the Appellant was called for hearing in the matter by the Respondent on a number of occasions, however the hearings were adjourned on one count or other. In the course of these hearings on 05/04/2019, the Appellant filed written arguments in the matter.

By a notice dated 24/01/2023, the Appellant was again called for hearing on 08/02/2023. The Appellant was granted a hearing by the then Member Secretary of the Respondent, who had issued Notice dated 24/01/2023.

The Appellant states that to the Appellants shock and surprise on 07/09/2023, the Appellant received the impugned order whereby the Development Permission Order dated 02/07/2013 issued to the Appellant has been revoked and the Appellant is directed to demolish/remove the construction undertaken by the Appellant as per the revised Plan.

The Appellant states that before passing the Impugned Order, the Respondent Authority or the Member Secretary, who has passed the Impugned Order has failed to grant any hearing to the Appellant, which is in flagrant violation of the principles on natural justice and the remand order passed by this Hon'ble Court.

Aggrieved by the Impugned Order dated 06/07/2016, the Appellant prefers this Appeal on the following amongst other grounds, which are urged in the alternative and without prejudice to one another:

GROUND S

- i) The Appellant submits that the impugned order is bad in facts as well as in law and contrary to material produced on record;
- ii) The Appellant submits that the impugned order is in flagrant violation of the principles on natural justice and the remand order passed by this Hon'ble Court as the Respondent Authority or its Member Secretary who has passed the Impugned order has failed to grant any hearing to the Appellant;
- iii) The Appellant states that the finding of the respondent that the consent of the parties for whose benefit the stilt area was provided ought to have been obtained was necessary and there was suppression of fact that agreements for sale has been executed is perverse and contrary to law. Further such finding is in absence of any material on record;
- iv) The Appellant submits that the Respondent failed to appreciate that there was no utilization of excess FAR beyond the permissible limits. Further the Respondent failed to appreciate that at the time of revision of the plans the area of the walls adjoining the units and the staircase was included in the staircase for the purpose of calculating of FAR which was otherwise permissible under the Building Regulation in force and further the Respondent failed to give any cogent finding thereon:

The Appellant submits that the impugned Order passed on 6/9/2023 was received by the Appellant on 07/09/2023 and the Appellant has been directed to remove / demolish the alleged illegal development within 30 days from the receipt of the Impugned Order. The Appellant therefore submits that the appeal filed is within limitation as prescribed in law.

Member Secretary informed that the Appellant has prayed to call for the records and proceedings before the Respondent in respect of underlying the Order dated 6/9/2023 bearing ref. No. NGPDA/62/TLG/1799/2023 passed by the Member Secretary, North Goa Planning and Development Authority and after perusing the same, quash and set aside the same, thereby allowing the appeal.

During the discussion on the matter, Adv. Abhay Nachinolkar appearing for the Appellant, informed that the Senior Advocate appearing on behalf of Shri Viraj Shirgaonkar is not available and therefore requested for adjournment of the matter.

While arguing in the matter, Adv. Hanumant Naik appearing for Respondent North Goa PDA suggested that the complainant also needs to be joined as a party, as the action initiated by North Goa PDA was on the basis of his complaint. The same was agreed by the Board.

Considering the request made by the Appellant and the suggestions made by the Respondent, the Board decided to adjourn the matter.

Member Secretary was accordingly directed to issue notices to the concerned parties including to the complainant, whenever the matter is taken up for hearing by the Board.

Item No. 4: Appeal under Section 54 (2) of the TCP Act, 1974 filed by Mrs. Fatima Monteiro V/s North Goa Planning and Development Authority. (File No. TP/B/APL/424/23)

Member Secretary informed that the appeal is preferred against the letter of North Goa Planning and Development Authority bearing ref. No. NGPDA/ill/17-A/TAL/26/737/2021 dated 29/05/2023 regarding illegal filling of low lying land bearing Survey No. 46/1 of Taleigao.

Chief Town Planner (Landuse)/Member Secretary North Goa PDA, who was present for the meeting informed the Board that the matter has arisen out of a complaint filed by Mr. Christopher Menezes regarding illegal filling of low lying land in the property under Sy.No. 46/1 of Taleigao village. It was also informed by her that a letter dtd. 25/1/2023 was also received by the Authority from Dy. Director (DRO) to take action in the matter.

It was stated by Chief Town Planner (Landuse)/Member Secretary North Goa PDA that on the basis of complaint received, a letter dtd. 29/5/2023 was issued to Fatima Monteiro directing her to remove the filling without prior permission under Section 17A of TCP Act. It was therefore stated by her that although an appeal is filed under Section 54 (2) of the TCP Act, 1974, the same is not maintainable, as the action is initiated under Section 17A of the TCP Act and any development undertaken under Section 17A can be dealt only under provisions of Section 17B of the TCP Act.

The Board considered the arguments placed before it and the decision arrived to is as under:

“By this Order, this Board proceeds to decide the Appeal under Section 54(2) of the Town and Country Planning Act, 1974 filed by the Appellant Mrs. Fatima Monteiro against the North Goa Planning and Development Authority and Mr. Christopher Menezes.

The Appellant has filed the Appeal under Section 54(2) of the Town and Country Planning Act, 1974 challenging the letter dated 29/05/2023, wherein pursuant to the complaint filed by the Respondent No. 2 that the Appellant has carried out illegal filling of low-lying land in the property bearing Survey No. 46/1 of Taleigao village, wherein the Appellant had been directed to remove the said filling of land within thirty days from the receipt of the said letter, failing which action will be initiated under Section 17B of the Town and Country Planning Act, 1974.

The Board considered the entire documents produced alongwith the Appeal and from perusal of the documents, it is seen that the Appellant has been directed to remove the filling, which was noticed by the officials of the North Goa Planning and Development Authority in the inspection carried out on 23/05/2023 and it was further noticed that the said property is filled with soil and the part area is covered with PCC flooring, which has been done without taking prior permission as required under Section 17A of the Town and Country Planning Act, 1974.

Board took note that the Member Secretary of the North Goa Planning and Development Authority has stated that the North Goa Planning and Development Authority has not issued any direction under Section 54(1) of the Town and Country Planning Act, 1974 and the direction is only issued to remove the filling of the land, as the same has been done without obtaining any permission under Section 17A of the Town and Country Planning Act, 1974.

The Board considered the provisions of the Sections 17A and 17B as well as the provisions of the Section 54(1) and the Board is of the opinion that the said direction is issued under Section 17A of the Town and Country Planning Act, 1974 to remove the illegal filling, failing which necessary action as per Section 17B would be taken and considering the fact that

no direction is issued under Section 54(1), the Appeal filed by the Appellant under Section 54(2) of the Town and Country Planning Act, 1974 is not maintainable in law.

Accordingly, this Board hereby rejects the Appeal filed under Section 54(2) of the Town and Country Planning Act, 1974, if the Appellant is aggrieved by the said direction, he will have to take appropriate remedy as available in law.

The appeal therefore stands rejected.

Member Secretary was accordingly directed to communicate the decision of the Board to the concerned parties.

Item No. 5: Appeal under Section 52(b) of the TCP Act, 1974 filed by Shri Mahesh Nadar V/s South Goa Planning and Development Authority. (File No. TP/B/APL/433/23)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(b) of the Goa Town & Country Planning Act, 1974, against the Order bearing ref. No. SGPDA/P/6626/147/23-24 dated 08/05/2023 issued by the Respondent SGPDA.

It was further informed that the Appellant had applied for Technical Clearance for the multi dwelling units in the form of residential flats in the property situated at Gogal, Margao, bearing Chalta No. 26, 27, 28 and 29 of P. T. Sheet No. 120 of Margao City Survey. The Appellant states that the building was designed by the technical person i.e. Architect by adhering to the rules and regulations.

The Appellant states that the plan was put up before the Respondent being concerned Authority for granting permission and technical clearance/approval. Appellant also states that the Respondent rejected the proposed file that was put up for approval on the various grounds/observations mentioned in the Order/Letter dated 08/05/2023. The Appellant has informed that the Respondent has set-out eleven grounds/observations for the rejection/denied the Development Permission.

The Appellant states that out of the eleven grounds of rejection, he shall comply to all, except for Ground No. 3 and 7. It is further stated by Appellant that the objections raised are unsustainable i.e. the objections which states that on the Setback (Ground No. 3) minimum rear setback and side setback is not maintained as per the rules and regulations and also that the area of balcony exceeds 30% of the floor area i.e. Ground No. 7. Aggrieved by this, Appellant has filed the present Appeal.

The Appellant states that the Order mentions that he has not maintained minimum required rear setback and side setback as per the rules and regulations and the same is therefore challenged by him, by stating as under:

- I. The Respondent had rejected the proposal without any application of mind.
- II. The Respondent has ignored and he has not appreciated the Plan within the frame of rule Book.
- III. The Respondent erroneously miscalculated the FAR and without application of mind the Respondent has rejected the Approval upon his own imaginary policy.
- IV. The Respondent rear set-back and side set-back has been erroneously mentioned as "Not as per the Rule and Regulations". However the Respondent ought to have considered that the Rules and Regulations provide the set-back on the respective floors which the Respondent failed to calculate/appreciate.

- V. The area of the balconies is within the permissible floor area and in no sketch of imagination has exceeded 30% of the Floor Area. The Respondent has completely lost the site about the calculation of FAR and to appreciate that the area of the balcony has not exceeded 30% of the Floor Area.

The Appellant therefore prays as under:-

- a. The Order of Rejection/Observations made/passed by the Respondent may be quashed and set-aside thereby granting permission of Technical Clearance.
- b. The Proceeding Sheet/file bearing No. SGPDA/P/6626/147/23-24 may please be called for.

Member Secretary then informed that Notices were issued to parties to remain present for the meeting for arguments in the matter.

During the hearing, Respondent PDA was represented by Member Secretary Shri Shaikh Ali Ahmed, whereas the Appellant remained absent nor any Advocate appeared for him. Respondent PDA therefore suggested that the matter be adjourned and the same was agreed upon.

The matter therefore stands adjourned.

Item No. 6: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Sangappa Gangappa Gani V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/426/23)

Member Secretary informed that an Appeal is filed against the Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/ 1058 passed by the Respondent.

The Appellant submits that he is the owner of the house bearing H.No. 20 situated at Dabolim, Goa, which is constructed on the landed property surveyed under Sy.No. 60, Sub-division No.1 of Dabolim Village Mormugao Taluka of which Appellant is the co-owner of the plot which has been purchased vide Deed of Sale dtd. 23/1/2021 from the earlier owner Minakshi Sangappa Meti and Madadevi Sangappa Meti and immediately after the Sale Deed dtd. 23/1/2021, Appellant applied for mutation before revenue authority and also paid mutation fee thereof.

The Appellant states that the plot has been purchased alongwith part of structure existing therein in the said plot. The said construction was carries out after obtaining Development Permission bearing No. MPDA/9-M-94/2012-13/1834 dated 29/1/2013 from the Mormugao Planning and Development Authority.

The Appellant states that the NOC dated 10/3/2014 has been issued by the flag officer commanding for the construction of the house therein.

The Appellant states that the appellant have not violated any law at the time of construction of the structure nor any condition mentioned in the development permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant states that the Respondent not followed the proper procedure of law and also not considered the oral submission by the Appellant before the respondent notice dated properly after issuing a show cause 05/09/2022.

The Appellant submits that the respondent neither issued any inspection notice nor done any inspection before issuing the show cause notice. The said show cause notice even not mentioned the exact portion of structure nor any dimension or exactly which part is illegally

constructed. The said show cause notice dt.05/09/2022 was send without any proper documents on which respondent took a decision of sending show cause appellant approached the respondent , wherein orally the notice.

The Appellant states that the respondent had not taken into consideration at all the oral reply filed by the appellant before them alongwith whatever documents earlier owner (Vendor) had given to them. The appellant is the legal owner of the said premises.

The Appellant states that from the notice it is clear that at the time of issue of notice the Respondent has neither conducted any inquiry before issue of show cause notice or Demolition notice nor any personal hearing was given

The Appellant states that the said notice is vague and ambiguous, no details of the illegality mentioned, therefore the same need to be quashed and set aside by this Hon'ble Authority

The Appellant states that the appellant has not carried out any illegal construction .The notice sent to the appellant is without following proper procedure of law and its against the principles of natural Justice.

The appellant states that there is no Transgression Report about the alleged illegal construction. The respondent has never given a personal hearing to the appellant nor given any opportunity to explain the same before the demolition notice and same should be set aside on this count too.

The Appellant states that in the said Impugned demolition notice no reason of any nature of illegal construction is mentioned nor even reference of any oral reply by the appellant . Therefore from the contents of the said impugned Demolition Notice, it is clear that the respondent panchayat neither taken into consideration oral reply of the appellant filed before them nor given any personal hearing.

GROUND S OF APPEAL

- a) The Appellant respectfully submits that the impugned Demolition Notice issued by Respondent is gross abuse of the process and powers by the Respondent and the Said Impugned Demolition Notice is illegal, arbitrary, unreasonable and required to be quashed aside.
- b) The Appellant respectfully submits that the Respondent had issued impugned demolition notice without carrying out any site inspection and as such the same is defective and arbitrary without looking into factual position of the site.
- c) The Appellant respectfully submits that the appellant has not done any illegal construction as alleged in the Impugned demolition notice ,and same need to set aside on this fictitious ground.
- d) The Appellant respectfully submits that the said impugned demolition notice is against the principles of natural justice.
- e) The Appellant respectfully submits that the Respondent had not given any opportunity of personal hearings to the appellant.
- f) The Appellant states that this Hon'ble court has jurisdiction to hear and decide the aforesaid Appeal. The impugned demolition notice have been issued by the Respondent and an appeal against such notice is maintainable in law.

The Appellant Prays as under:

- 1) That this Hon'ble Court be pleased to quashed and Set aside Notice dtd. 04/11/2022 bearing No. PDA/9- N-88/2022-23/1058 issued by the Respondent.
- 2) That this Hon'ble Board be pleased to call for the records and proceedings from the Respondent with respect to the Demolition notice dt.04/11/2022 bearing No. MPDA/9-N-88/2022-23/1058.

- 3) That pending the hearing and final disposal of the present Appeal, restrain the Respondent in acting in furtherance of the Impugned Demolition Notice dt.04/11/2022 and from taking any action against the Appellant's structures.

Member Secretary informed that the notices were accordingly issued to the parties to remain present for the meeting for arguments in the matter.

During the hearing, Adv. Nikhil Pai appeared for Respondent PDA, whereas the Appellant was absent.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 7: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Maruti G. Phadke & Mrs. Sudha M. Phadke against Mormugao Planning and Development Authority. (File No. TP/B/APL/294/22)

Member Secretary informed that an appeal is filed against Order dated 04.11.2022 bearing ref No. MPDA/9-N-88(9-F-40)/2022-23/1094 passed by Mormugao Planning and Development Authority (MPDA) i.e. Respondent, to the extent that MPDA has grossly erred by holding that the development is carried out in violation/deviating from the approved plan. The Appellant being aggrieved by same has challenged the impugned order by the present appeal u/s 52(2)(b) of the TCP Act.

The Appellant states that the perusal of the impugned order clearly reveals that impugned order is cryptic, arbitrary, illegal, unreasoned, bad in law, without application of mind and is contrary to the provision of the Goa Land Development and Building Construction Regulations, 2010 (*Building Bye-laws*). Appellant further states that the impugned order suffers from material irregularity, is in violation of principle of natural justice and passed without giving appropriate reasonable opportunity to the Appellant to deal with the show-cause notice dated 05.09.2022 and therefore, is liable to be set-aside. It is further stated that the MPDA, rather than considering the reply dated 14.09.2022, and appreciating the fact that concerned structure has been constructed upon taking all the requisite permissions from all the competent authority, passed the

impugned order in contravention of the building bye-laws and the law laid down by the Hon'ble Supreme Court and other High Courts in catena of judgments/precedents.

The appeal memo further states that Appellant has purchased the plot No. 3 admeasuring 300 sq.mts. vide Deed of Sale dated 06.06.2005 and upon taking requisite permission from the Competent Authority, have constructed a Multi family Dwelling ground plus one structure existing thereon.

The Appellant upon obtaining requisite construction license dated 22.12.2014 bearing ref. No. VP/CHI/11/2014-15/23/342 from Village Panchayat of Chicalim and Development Permission dated 06.11.2014 bearing ref No. MPDA/9-F-40/2014-15/641 from MPDA, has constructed the structure.

The Appellant has also obtained completion Certificate dated 26.04.2016 bearing ref. no MPDA/9-F-40/2016-17/90 and has obtained Occupancy Certificate dated 31.05.2016 bearing ref No. VP/CHI/79/Occup/2016-17/5/494 from Village Panchayat of Chicalim. Flag Officer Commanding had also issued NOC dated 10.03.2014 for construction of concerned structure in the said property.

Furthermore, upon issuing the said Completion Certificate/Occupancy there have been no material alteration or changes to the concerned structure warranting any action in terms of provision of law. It is submitted that concerned structure as existing at *loco* is in terms of the approved plan and there is not variation or deviation of any nature. Any attribution that the concerned structure is unauthorised or illegal is specifically denied as being false and untrue.

Appellant states that somewhere in the year 2022, MPDA issued show cause notice dated 05.09.2022 to him contending the Flag Officer by letter dated 22.07.2022 have intimated MPDA that he has undertaken construction of house by Violating the Obstacle Limitation Surface (OLS) by 1.3028 mts. within the transitional surface in the said plot and called upon him to show-cause why action under section 52 of the TCP Act should not be taken. MPDA issued another letter titled as "Issuance of Final Order for unauthorised construction around Dabolim Airport, Goa infringing obstacle limitation surface." dated 17.08.2022

Appellant states that upon receipt of both the aforementioned letter from MPDA, that he has filed a composite reply dated 14.09.2022, wherein it is categorically brought to the notice of MPDA that the letter issued by Flag Officer dated 22.07.2022 and the directions of the Hon'ble High Court in fact pertains to taking action against unauthorised structure existing on Survey no. 60/2 of Dabolim Village and not 60/1 of Dabolim wherein the concerned structure has been constructed upon taking requisite permissions from Competent Authority including Flag Officer (Aviation), Goa.

The Appellant therefore states that the impugned order is bad in law, arbitrary, illegal, unreasoned, capricious, whimsical and *contra legem* and liable to be set aside.

The grounds mentioned by the Appellant are as under:

- a. The impugned order is bad in law, unreasoned, capricious, arbitrary, contrary to material on record, perverse and passed without considering the material on record and as such, liable to be quashed and set aside.
- b. The impugned order is vulnerable and is liable to be set aside in as much as the impugned proceedings stem out of letter dated 22.07.2022 issued by Flag Officer, which categorically records that "*a report of survey no. 60/2 was submitted for final order on 04.08.2021 with 41 obstructions as obstructions infringing Obstacle Limitation Surface (OLS). Survey no. 60/2 falls in Approach Surface of Runway.*"

This clearly indicates that OLS restrictions on height pertain to structures in survey no. 60/2. Whereas the construction of the Concerned structure falls within 60/1 of Village Dabolim and not 60/2 of Dabolim Village. That apart, Flag Officer has issued NOC for the concerned structure by letter dated 10.03.2014 therefore, it is apparent that impugned order is passed without any application of mind, completely in mechanical manner.

- c. The MPDA has failed to consider that structure is constructed pursuant to construction license dated 22.12.2014 bearing ref. No. VP/CHI/11/2014-15/23/342 from Village Panchayat of Chicalim and Development Permission dated 06.11.2014 bearing ref.No. MPDA/9-F-40/2014-15/641 from MPDA and NOC dated 10.03.2014 issued by Flag Officer that upon completion of construction, Village Panchayat and MPDA upon verifying that same is in-terms of the construction license and same is fit for human occupation, MPDA issued Completion Certificate dated 26.04.2016 bearing ref. No MPDA/9-F-40/2016-17/90 and Village Panchayat issued Occupancy Certificate dated 31.05.2016 bearing ref. No. VP/CHI/79/Occup/2016-17/5/494. Therefore submitted that Impugned Order is erroneous, bad in law, cryptic, arbitrary, unreasoned and liable to be quashed and set aside.
- d. The impugned order is in flagrant violation of principle of natural justice as MPDA without affording an opportunity of oral hearing on the matter has passed the impugned order. It is submitted that had an oral hearing was granted to this Appellant, the Appellant would have brought it to the notice of the MPDA that concerned structure does not fall within OLS restriction of Flag Officer and that same is constructed upon taking requisite permissions from concerned authorities and NOC of the Flag Officer.
- e. The MPDA in compliance with principle of natural justice ought to have afforded personal hearing to the Appellant herein. Considering the fact that by the impugned order there are far reaching civil consequences upon the Appellant herein, it was mandated that the Appellant are duly heard before passing the impugned order.
- f. The MPDA has grossly erred by failing to consider letter dated 22.07.2022 issued by Flag Officer and the Permissions/Licenses/NOC as regards concerned structure. The NGPDA ought to have verified the said facts by conducting appropriate site inspection in-terms of provision of law.
- g. The impugned order is untenable and bad in law as the same is vague, cryptic and arbitrary. It is submitted that perusal of the impugned order clearly reveals that MPDA has not verified the facts at *loco* and have been unduly influenced by the letter dated 22.07.2022 issued by Flag officer. In-fact the impugned order does not specify exactly which portion of the entire structure is unauthorised or violating obstacle limitation surface. The vagueness and generality of the impugned order itself renders it bad in law and liable to be quashed and set-aside.
- h. Without prejudice, assuming without admitting that there are certain violation of OLS, however, considering that MPDA has not conducted a site inspection to ascertain the portion of which is in violation, execution of the impugned order would not only jeopardise the structural stability and integrity of the remaining legal structure but would also render the Appellants and their children homeless.

- i. The impugned order is based on surmises and conjectures without any fact-finding exercise being done by the MPDA, in-fact perusal of the impugned order reveals that MPDA has been unduly influenced by the letter dated 22.07.2022 issued by Flag officer, without any application of mind in as much as the said letter refers to OLS violation by structures in property bearing survey no. 60/2. Whereas the construction of the Concerned structure falls within 60/1 of Village Dabolim and not 60/2 of Dabolim Village and considering that MPDA in consonance with provision of law without any site inspection to ascertain any violation of OLS restrictions has passed the impugned order in mechanical and arbitrary manner and as such same deserves to be quashed and set-aside.
- j. The impugned order is vulnerable, bad in law, contrary to the factual scenario at *loco* and is ought to be quashed and set aside as MPDA has failed to consider that structural situation as existing today has not been altered by the Appellant since grant of Completion Certificate and Occupancy in the year 2016 as such, any irregularity alleged today, after a span of 4 years is barred by delay and latches. Alterations/Modification, if any should have been suggested prior to issue of the completion certificate and occupancy.
- l. The impugned order suffers from material irregularity, perversity and is passed by the MPDA to please the Complainants without considering the material on records.
- m. The impugned order passed by MPDA is unreasoned and without spelling out any findings in the impugned order and the same is passed in a cryptic and arbitrary manner.
- k. The MPDA erred in law by not considering the documents and materials on record and failed to exercise jurisdiction vested in it in terms of law and without application of mind to the facts of the case and as such the same is liable to be rejected.
- l. Any other further ground that may be advanced or raised during the course of arguments in the interest of justice with leave of this Hon'ble Authority.

The Appellant states that the Respondent issued the impugned directions and have fixed arbitrary timeline of 30 days to demolish the concerned structure. If the structure is demolished it shall cause huge financial loss and jeopardising to the Appellant besides affecting the structural stability/integrity of the entire structure.

The Appellants are the owner of the said property and considering that the concerned structure is put up after obtaining valid license/occupancy, the Appellant has a good prima-facie case. The balance of convenience lies in favour of the Appellants and as such, operation of the impugned order ought to be stayed pending hearing and final disposal of the present appeal.

It is stated that in light of facts and circumstance stated herein above, the Appellant is entitled for a order from this Hon'ble Authority quashing and setting aside the impugned Order dated 04.11.2022 bearing ref.No. MPDA/9-N-88(9-F-40)/2022-23/1094 passed by Mormugao Planning and Development Authority wherein the MPDA has issued demolition order against the Appellants.

The Appellant states that pending hearing and final disposal of the present appeal, the Appellant is entitled for an Order of this Hon'ble Authority calling for the records and proceedings in the Case No. MPDA/9-N-88(9-F-40)/2022-23/1094 from MPDA.

The Appellant states that pending hearing and final disposal of the present appeal, the Appellant is entitled for an Order of this Hon'ble Authority staying the operation of the impugned order and restraining Respondent (MPDA) from taking any coercive action.

The Appellant states that if the operation of the impugned order is not stopped great loss and or injury will be caused to the Appellant and the proprietary rights of the Appellant would be jeopardizes.

The Appellant is filing the present appeal invoking Section 52(2)(b) of the Goa Town and Country Planning Act, 1974, challenging the order passed by the NGPDA dated 04.11.2022 and as such this Hon'ble Authority has power and jurisdiction to entertain, hear and decide the present appeal.

The Appellant has therefore prayed:

For an order of this Hon'ble Authority calling for the records and proceedings in the case No. MPDA/9-N-88(9-F-40)/2022-23/1094 from MPDA and on perusal of records and proceedings for an order quashing and setting aside the impugned order dated 04.11.2022 bearing ref No. MPDA/9-N-88(9-F-40)/2022-23/1094 passed by Mormugao Planning and Development Authority;

Member Secretary further informed that the matter was earlier placed before 187th meeting held on 20/03/2023 and the same was adjourned due to non-availability of details of reasoning for issue of demolition notice.

During the present hearing, Appellant was represented by Adv. A.P. Sawant, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. A. P. Sawant appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 8: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Joao Baptiste Pereira against Mormugao Planning and Development Authority. (File No. TP/B/APL/282/22)

Member Secretary informed that an appeal is filed against Order dated 04/11/2022 bearing ref.No. MPDA/7-P-99/2022-23/1104 passed by the Mormugao Planning and Development Authority i.e. Respondent. The Appellant states that prior to the notice dated 04/11/2022 a show cause notice dated 05/09/2022 was sent to the Appellant. No transgression report was attached to the said notice. The Appellant has duly replied the said notice vide its reply dated 26/09/2022, and have given the factual position of the matter. However despite the said reply the Respondent has issued the notice dated 04/11/2022.

The Appellant states that he has not carried out any illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 1.962 square metres., within the approach funnel zone in the property bearing Plot No.26, of survey No.176/1, of Sancoale Village Mormugao Goa. The Appellant states that his house has been constructed as per the approved plans of the Respondent.

The Appellant further states that the Respondent No.1 without going into the facts of the matter,has sent a Notice dated 04/11/2022 under Section 52 of the Town and Country Planning Act, 1974. The Respondent has sent a Demolition notice without even inspecting the site and the said notice is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of any Act, law and the rules applicable.

The Applicant states that he has not carried out any illegal construction in violation of any rules and regulations. The construction has been carried out by keeping proper setback, and also as per the plan approved by the Respondent.

The Notice sent to the Applicant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant states that in order to harass the Appellant and on the false complaint, the notice has been sent, The notice is sent in a very casual manner without even going into the factual position. The Respondent is acting on the basis of the complaint filed by some authority without even looking into the reality of the structure.

The Appellant was surprised to receive the Final notice from the Respondent directing him to demolish/remove the illegal development within 30 days from the receipt of the notice, failing which this Authority shall cause the demolition/removal of the same. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice".The Applicant states that there is no Transgression report about the alleged illegality to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent No.1, Appellant has present the present appeal.

The grounds mentioned by the Appellant are as under:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.

- c) The Appellant has not carried out any illegal construction or development as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind, and on the false complaint filed by the Flag Officer Commanding.
- f) The Notice is not supported by any documentary evidence, and is absolutely vague without even showing any illegal development extension which is given by the Respondent and bad in law and hence liable to be rejected. The Respondent had not looked into the Complaint filed by the Flag Officer and has not conducted an inquiry into the matter.
- g) The impugned notice has been issued on political pressure by not looking into the reality at the site.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the earlier notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) The Appellant has necessary documents to show that his house has been constructed as per the approved plan of the Respondent.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust, illegal, non-application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 15/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence the Appeal is within time.

The Appellant has therefore prayed:

- a. To call for Record and Proceedings in Order/Notice dated 04/11/2022 under reference No.MPDA/7-P-99/2022-23/1104 and after Perusing the same may be quashed and set aside.
- b. Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary then informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023 and the same was adjourned as the Appellant requested for details of specific illegalities committed by him.

During the present hearing, Adv. Nikhil Pai appeared for Respondent PDA, whereas the Appellant was absent.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the

construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 9: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Parshuram H. Naik against Mormugao Planning and Development Authority. (File No. TP/B/APL/281/22)

Member Secretary informed that the Appellant submitted the appeal memo as under:

By deed of sale dated 26th May 2009, registered before the Sub Registrar of Mormugao, under Registration No. 612, at pages 209 to 222, Book No I, Volume No. 956, dated 29/05/2009, the Appellant purchased a plot bearing Plot No. D-28, admeasuring 300 sq. mts. of the property surveyed under No. 174/1-A of Sancoale village, Mormugao Taluka.

By virtue of the said Deed of Sale, applicant has become the owner in possession of the said plot No. D-28, admeasuring 300 sq. mts. of the property surveyed under No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant obtained permission and approval from the Village Panchayat of Sancoale and Mormugao Planning and Development Authority, towards the construction of the residential house in the plot No. D-28 of the property surveyed under No. 174/1-A of Sancoale Village.

In pursuance to the said permission and approval from the concerned authorities, the Appellant carried out the construction of the house in the said plot and occupies the said house alongwith his family in the year 2010 and since then, he is in peaceful occupation and possession of the house bearing No. 174/1-A in the plot No. 28, of the property surveyed under No. 174/1-A of Sancoale village without any obstruction or objections from any authority.

That the office of the respondent was pleased to issue show cause notice dated 05/09/2022 to the Appellant. The said show cause notice was replied by him by reply dated 17/10/2022, stating therein that the wrong notice has been issued to the Appellant, as the Appellant is the owner in possession of the plot No. 28 of the property surveyed under No. 174/1-A of village Sancoale and that show cause which was issued to the Appellant was in respect to the plot No. 27.

The Appellant further states that the Respondent thereafter issued Notice dated 04/11/2022, under ref. No. MPDA/9-N-88(7-N-170) 2022-23/1103, stating therein that this Authority issued Notice under ref.No. MPDA/9-N-88(7-N-170) 2022-23/799 dated 05/09/2022

for carrying out illegal development i.e. construction of house by violating the Obstacles Limitation Surface (OLS) by 3.9215 mts., within the approach funnel in the property bearing plot No. D-27 of survey No. 172/1-A of Sancoale, Mormugao Taluka and was directed to demolish/remove the illegal development referred above within 31 days from the receipt of this notice.

The Appellant states that he replied to the said notice vide letter dated 17/11/2022 stating that he is the owner in possession of the Plot No. 28 of the property surveyed under No. 174/1-A of Sancoale village and that the notice is issued to the Appellant claiming that the Appellant is the owner of the Plot No. 27 of the property surveyed under No. 172/1-A of Sancoale village.

The impugned notice is passed under Section 52 of the Goa Town and Country Planning Act and hence this appeal in terms of Section 52(2)(b).

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Appellant is not the owner of the Plot No. D-27 surveyed under No. 172/1-A, but owner of the Plot No. D-28 of the property surveyed under 174/1-A of Sancoale village and on this count itself impugned notice dated 04/11/2022 deserves to be withdrawn.
- b) That the impugned notice is bad in law as the authority did not carry out the site inspection and without site inspection, the respondent issued show cause notice and the impugned notice.
- c) The Member Secretary came to the erroneous finding that the Appellant carried out illegal development i.e. construction of the house by violation of the obstacles limitation surface (OLS) by 3.9215 mts. within the approach funnel in the property bearing plot No. D-27 of survey No. 172/1-A of Sancoale village, Mormugao Taluka, without there being any inspection report.
- d) The Member Secretary failed to take into account that the Appellant has carried out construction with the permission from the concerned authorities i.e. the Village Panchayat of Sancoale and the Mormugao Planning and Development Authority.
- e) The impugned notice is malicious and without justifications; it is non-speaking notice and the same cannot be allowed to operate on flimsy or extraneous grounds.
- f) The Member Secretary failed to apply its minds to the facts of the case. The notice is non-speaking and hence liable to be set aside.
- g) The impugned notice is contrary to good development and a clear violation and in breach of the development regulations.
- h) That the impugned notice is illegal, unwarranted by the facts on record, superficial and inconsistent with and contrary to the documentary evidence on record.
- i) The impugned notice suffers from non-application of mind and is contrary to the provisions of law.

The Appellant has therefore prayed:

- a) That the record and proceedings of the Respondent pertaining to this file be called for.
- b) That the impugned notice dated 04/11/2022 be quashed and set aside.
- c) Pending hearing and final disposal of the appeal, dated 04/11/2022 be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Sudhir K. Naik, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Sudhir K. Naik appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

The Board may deliberate.

Item No. 10: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/320/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1056 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/820 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 48 by violating the Obstacle Limitation Surface (OLS) by 2.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 48 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

The Appellant states that by the said Communication dated 03rd October, 2022, he has requested the Respondent to furnish specific details and identification of House No. 48 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time there from to submit the response to the notice.

The Respondent, issued Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basic principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions "construction of House No. 48". It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 48. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1056 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 11: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/321/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1044 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/830 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 09 by violating the Obstacle Limitation Surface (OLS) by 3.2 mts. within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission

of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 09 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 09 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basic principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner.
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 09”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 09. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1044 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 12: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/322/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1046 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/821 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 47 by violating the Obstacle Limitation Surface (OLS) by 4.2 mts. within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission

of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 47 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 47 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 47”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 47. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1046 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 13: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/323/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1037 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/833 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 05 by violating the Obstacle Limitation Surface (OLS) by 2.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission

of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 05 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 05 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 05”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 05. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1037 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 14: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/324/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1036 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act, the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/834 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 04 by violating the Obstacle Limitation Surface (OLS) by 5.2 mts. within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission

of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 04 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 04 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 04”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 04. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing Ref. No. MPDA/9-N-88/2022-23/1036 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 15: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/325/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1032 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the same has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing Ref No. MPDA/9-N-88/2022-23/827 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 41 by violating the Obstacle Limitation Surface (OLS) by 6.2 mts. within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 41 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

The Appellant stated that, by the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 41 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions "construction of House No. 41". It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 41. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing Ref. No. MPDA/9-N-88/2022-23/1032 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the Respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other

prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 16: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/326/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1031 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/831 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 08 by violating the Obstacle Limitation Surface (OLS) by 4.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 08 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 08 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions "construction of House No. 08". It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 08. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1031 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 17: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/327/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1024 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/815 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of pump house near Zuari Children's playground by violating the Obstacle Limitation Surface (OLS) by 2.45 mts. within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 04th October, 2022, Appellant requested for further time to respond to the show cause notice as the same could not be finalized with 15 days.

Appellant thereafter submitted a detail Response dated 31st October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 1st November, 2022.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;

- c) The Impugned Notice is issued without even adverting to or considering the detail response dated 31st October, 2022 furnished by the Appellant;
- d) The observation in the Impugned Notice that the Appellant has shown cause by its letter dated 04th October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent for further time to file its response to the show cause notice;
- e) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- f) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- g) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject pump house had been erected in or about 1973, almost 49 years prior in point of time;
- h) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- i) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject pump house was erected in or about 1973, almost 49 years prior in point of time;
- j) The Respondent completely ignored the facts as stated in the Response dated 31st October, 2022 that the said pump house is a temporary structure erected with AC sheet roof and is utilized to protect the pump used for pumping water to guest houses within the township. It is respectfully submitted that erection of a temporary pump house would not amount to development under the Act and as such purported action under Section 52 of the Act is uncalled for;;
- k) The Respondent failed to consider that the Appellant has been paying a lumpsum amount as house tax to the Village Panchayat of Sancoale for all these years, which covers all the structures constructed though not specifically identified as such;
- l) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- m) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1024 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in

the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 18: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/328/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1025 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/824 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 44 by violating the Obstacle Limitation Surface (OLS) by 4.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 44 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 44 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basic principles of natural justice expected to be complied by a statutory authority;

- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 44”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 44. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1025 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 19: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/329/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1026 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/810 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of vermi compost unit by violating the Obstacle Limitation Surface (OLS) by 20.7 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 04th October, 2022, Appellant requested for further time to respond to the show cause notice as the same could not be finalized with 15 days.

Appellant thereafter submitted a detail Response dated 31st October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 1st November, 2022.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without even adverting to or considering the detail response dated 31st October, 2022 furnished by the Appellant;
- d) The observation in the Impugned Notice that the Appellant has shown cause by its letter dated 04th October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent for further time to file its response to the show cause notice;
- e) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;

- f) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- g) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject vermi compost unit had been erected in or about 2008, almost 14 years prior in point of time;
- h) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- i) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject vermi compost unit was erected in or about 2008, almost 14 years prior in point of time;
- j) The Respondent completely ignored the facts as stated in the Response dated 31st October, 2022 that the vermi compost unit erected is a temporary structure erected by using GI poles and covered by galvalium sheets. It is also respectfully submitted that erection of a vermi compost unit would not amount to development under the Act and, as such, action under Section 52 of the Act is uncalled for;
- k) The Respondent failed to consider that the Appellant has been paying a lumpsum amount as house tax to the Village Panchayat of Sancoale for all these years, which covers all the structures constructed though not specifically identified as such;
- l) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- m) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1026 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 20: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/330/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1027 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/812 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of orchid pump house by violating the Obstacle Limitation Surface (OLS) by 12.00 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 04th October, 2022, Appellant requested for further time to respond to the show cause notice as the same could not be finalized with 15 days.

Appellant thereafter submitted a detail Response dated 31st October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 1st November, 2022.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without even adverting to or considering the detail response dated 31st October, 2022 furnished by the Appellant;
- d) The observation in the Impugned Notice that the Appellant has shown cause by its letter dated 04th October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent for further time to file its response to the show cause notice;
- e) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- f) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- g) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973

and the commercial production was started and the subject orchid pump house had been erected in or about 2002, almost 20 years prior in point of time;

- h) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- i) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject orchid pump house was erected in or about 2002, almost 20 years prior in point of time;
- j) The Respondent completed ignored the facts as stated in the Response dated 31st October, 2022 that the orchid pump house is a temporary structure erected with AC sheet roof and is utilized to protect the pump used for the orchid project. It is also respectfully submitted that erection of a temporary orchid pump house would not amount to development under the Act and, as such, action under Section 52 of the Act is uncalled for;
- k) The Respondent failed to consider that the Appellant has been paying a lumpsum amount as house tax to the Village Panchayat of Sancoale for all these years, which covers all the structures constructed though not specifically identified as such;
- l) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- m) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1027 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 21: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/331/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1029 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/811 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of orchid project by violating the Obstacle Limitation Surface (OLS) by 12.7 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 04th October, 2022, Appellant requested for further time to respond to the show cause notice as the same could not be finalized with 15 days.

Appellant thereafter submitted a detail Response dated 31st October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 1st November, 2022.

The Respondent, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred the Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without even adverting to or considering the detail response dated 31st October, 2022 furnished by the Appellant;
- d) The observation in the Impugned Notice that the Appellant has shown cause by its letter dated 04th October, 2022, is a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent for further time to file its response to the show cause notice;
- e) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- f) That reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;

- g) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject orchid project had been erected in or about 2002, almost 20 years prior in point of time;
- h) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- i) That initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject orchid project was erected in or about 2002, almost 20 years prior in point of time;
- j) The Respondent completely ignored the facts as stated in the Response dated 31st October, 2022 that the orchid project erected is a temporary structure erected by using GI pipes and covered with a shade net. It is also respectfully submitted that erection of a temporary orchid project would not amount to development under the Act and, as such, action under Section 52 of the Act is uncalled for;
- k) The Respondent failed to consider that the Appellant has been paying a lumpsum amount as house tax to the Village Panchayat of Sancoale for all these years, which covers all the structures constructed though not specifically identified as such;
- l) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- m) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing Ref. No. MPDA/9-N-88/2022-23/1029 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 22: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/332/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing Ref. No. MPDA/9-N-88/2022-23/1030 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/832 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 06 by violating the Obstacle Limitation Surface (OLS) by 1.2 mtrs within the IHS in the property at Sancoale Village, Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 06 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 06 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner.
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions "construction of House No. 06". It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 06. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;

- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1030 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 23: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/333/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1043 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/822 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 46 by violating the Obstacle Limitation Surface (OLS) by 4.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 46 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 46 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 46”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 46. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;

- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1043 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 24: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/334/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1042 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/823 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 45 by violating the Obstacle Limitation Surface (OLS) by 5.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 45 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 45 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions "construction of House No. 45". It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 45. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;

- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1042 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 25: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/335/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1035 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act, and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/826 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 42 by violating the Obstacle Limitation Surface (OLS) by 5.2 mtrs

within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 42 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 42 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions "construction of House No. 42". It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 42. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1035 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent MPDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 26: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/336/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1034 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/825 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 43 by violating the Obstacle Limitation Surface (OLS) by 4.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 43 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 43 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions "construction of House No. 43". It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 43. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1034 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other

prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 27: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/337/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1033 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing Ref No. MPDA/9-N-88/2022-23/828 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 40 by violating the Obstacle Limitation Surface (OLS) by 8.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 40 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 40 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 40”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 40. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1033 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the

construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 28: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/338/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1023 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/809 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of street light pole near Zuari Children's playground by violating the Obstacle Limitation Surface (OLS) by 10.20 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 04th October, 2022, Appellant requested for further time to respond to the show cause notice as the same could not be finalized with 15 days.

Appellant thereafter submitted a detail Response dated 31st October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 1st November, 2022.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without even adverting to or considering the detail response dated 31st October, 2022 furnished by the Appellant;
- d) The observation in the Impugned Notice that the Appellant has shown cause by its letter dated 04th October, 2022, is not only shocking but also a complete

misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent for further time to file its response to the show cause notice;

- e) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- f) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- g) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject light pole had been erected in or about 1973, almost 49 years prior in point of time;
- h) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- i) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject light pole was erected in or about 1973, almost 49 years prior in point of time;
- j) The Respondent completed ignored the fact that it was stated in the Response dated 31st October, 2022 that a thorough search was conducted to trace old records, however, despite best efforts the records could not be traced as regards specific permissions and / or licenses obtained in respect of the structures constructed almost four decades earlier. It is also respectfully submitted that erection of a street light pole would not amount to development under the Act and, as such, action under Section 52 of the Act is uncalled for;
- k) The Respondent failed to consider that the Appellant has been paying a lumpsum amount as house tax to the Village Panchayat of Sancoale for all these years, which covers all the structures constructed though not specifically identified as such;
- l) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- m) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1023 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the

Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 29: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/339/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1045 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/835 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 03 by violating the Obstacle Limitation Surface (OLS) by 4.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 03 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 03 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent issued Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;

- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 03”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 03. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1045 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 30: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/340/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1061 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/814 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of management hall by violating the Obstacle Limitation Surface (OLS) by 11.90 mts. within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 04th October, 2022, Appellant requested for further time to respond to the show cause notice as the same could not be finalized with 15 days.

Appellant thereafter submitted a detail Response dated 31st October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 1st November, 2022.

The Respondent issued Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds;

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without even adverting to or considering the detail response dated 31st October, 2022 furnished by the Appellant;
- d) The observation in the Impugned Notice that the Appellant has shown cause by its letter dated 04th October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent for further time to file its response to the show cause notice;
- e) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- f) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- g) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial

production was started and the subject management hall had been erected in or about 1995-96, almost 27 years prior in point of time;

- h) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- i) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the management hall was erected in or about 1995-96, almost 27 years prior in point of time;
- j) The Respondent completely ignored the fact that it was stated in the Response dated 31st October, 2022 that a thorough search was conducted to trace old records, however, despite best efforts the records could not be traced as regards specific permissions and / or licenses obtained in respect of the structures constructed almost two decades earlier;
- k) The Respondent failed to consider that the Appellant has been paying a lumpsum amount as house tax to the Village Panchayat of Sancoale for all these years, which covers all the structures constructed though not specifically identified as such;
- l) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- m) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1061 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 31: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/341/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1052 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/838 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of Guest House No. 2 by violating the Obstacle Limitation Surface (OLS) by 14.90 mts. within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 04th October, 2022, Appellant requested for further time to respond to the show cause notice as the same could not be finalized with 15 days.

Appellant thereafter submitted a detail Response dated 31st October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 1st November, 2022.

The Respondent issued Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice failing.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without even adverting to or considering the detail response dated 31st October, 2022 furnished by the Appellant;
- d) The observation in the Impugned Notice that the Appellant has shown cause by its letter dated 04th October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent for further time to file its response to the show cause notice;
- e) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- f) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- g) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject guest house no. 2 had been erected in or about 1977-78, almost 45 years prior in point of time;
- h) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect

of any development or change of use of land within four years of such development or change.

- i) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject guest house no. 2 was erected in or about 1977-78, almost 45 years prior in point of time;
- j) The Respondent completely ignored the fact that it was stated in the Response dated 31st October, 2022 that a thorough search was conducted to trace old records and the Appellant could locate an approved plan of a structure which correlates to the subject guest house no. 2, which plan has a stamp of the Member Secretary and also the Panchayat;
- k) The Respondent failed to consider that the Appellant has been paying a lumpsum amount as house tax to the Village Panchayat of Sancoale for all these years, which covers all the structures constructed though not specifically identified as such;
- l) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- m) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1052 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 32: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/342/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1051 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act, and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/839 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of Guest House No. 1 by violating the Obstacle Limitation Surface (OLS) by 18.90 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 04th October, 2022, Appellant requested for further time to respond to the show cause notice as the same could not be finalized with 15 days.

Appellant thereafter submitted a detail Response dated 31st October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 1st November, 2022.

The Respondent issued Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without even adverting to or considering the detail response dated 31st October, 2022 furnished by the Appellant;
- d) The observation in the Impugned Notice that the Appellant has shown cause by its letter dated 04th October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent for further time to file its response to the show cause notice;
- e) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- f) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- g) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject guest house no. 1 had been erected in or about 1981-82, almost 40 years prior in point of time;
- h) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.

- i) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject guest house no. 1 was erected in or about 1981-82, almost 40 years prior in point of time;
- j) The Respondent completed ignored the fact that it was stated in the Response dated 31st October, 2022 that a thorough search was conducted to trace old records, however, despite best efforts the records could not be traced as regards specific permissions and / or licenses obtained in respect of the structures constructed almost four decades earlier;
- k) The Respondent failed to consider that the Appellant has been paying a lumpsum amount as house tax to the Village Panchayat of Sancoale for all these years, which covers all the structures constructed though not specifically identified as such;
- l) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- m) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1051 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 33: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/343/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1049 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/829 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 10 by violating the Obstacle Limitation Surface (OLS) by 1.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 10 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 10 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent issued Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions "construction of House No. 10". It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 10. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide

specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;

- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1049 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 34: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/344/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1028 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/813 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of security guard room near guest house No. 1 by violating the Obstacle Limitation Surface (OLS) by 14.90 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 04th October, 2022, Appellant requested for further time to respond to the show cause notice as the same could not be finalized with 15 days.

Appellant thereafter submitted a detail Response dated 31st October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 1st November, 2022.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basic principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without even advertent to or considering the detail response dated 31st October, 2022 furnished by the Appellant;
- d) The observation in the Impugned Notice that the Appellant has shown cause by its letter dated 04th October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent for further time to file its response to the show cause notice;
- e) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- f) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- g) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject security guard room near guest house no. 1 had been erected in or about 1973, almost 49 years prior in point of time;
- h) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- i) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject security guard room near guest house no. 1 was erected in or about 1973, almost 49 years prior in point of time;
- j) The Respondent completely ignored the fact that it was stated in the Response dated 31st October, 2022 that a thorough search was conducted to trace old records, however, despite best efforts the records could not be traced as regards specific permissions and / or licenses obtained in respect of the structures constructed almost four decades earlier;
- k) The Respondent failed to consider that the Appellant has been paying a lumpsum amount as house tax to the Village Panchayat of Sancoale for all these years, which covers all the structures constructed though not specifically identified as such;

- l) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- m) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1028 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 35: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/345/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1048 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/836 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 02 by violating the Obstacle Limitation Surface (OLS) by 6.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 02 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 02 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 02”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 02. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1048 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 36: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/346/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1047 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/837 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 01 by violating the Obstacle Limitation Surface (OLS) by 5.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 01 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

By the said Communication dated 03rd October, 2022, Appellant requested the Respondent to furnish specific details and identification of House No. 01 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent without furnishing any details, issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions "construction of House No. 01". It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 01. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1047 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 37: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/347/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1039 dated 04th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellants on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/818 dated 5th September, 2022, was issued by the Respondent to the Appellant No. 1 purporting to allege that the Appellant had carried out construction of Ammonia Plant by violating the Obstacle Limitation Surface (OLS) by 4.3 mtrs. within the IHS in the property at Sancoale Village, Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

The Appellant No. 2 herein, Paradeep Phosphate Ltd. (PPL) have, pursuant to the Business Transfer Agreement executed by PPL with the Appellant No. 1 herein, Zuari Agro Chemicals Ltd. (ZACL) on 01st March 2021, acquired the Fertilizer Plant at Zuarinagar, Goa and associated businesses of ZACL on slump sale basis with effect from 01st June, 2022. This was intimated to the Respondent vide Letter dated 14th September, 2022. As such, the subject matter of the Show Cause Notice belongs to PPL, Appellant No. 2 herein.

Accordingly, Appellant No. 2 herein submitted a detail Response dated 03rd October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 03rd October, 2022.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without considering and appreciating the detail Response dated 03rd October, 2022 furnished by the Appellant No. 2.
- d) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellants;
- e) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- f) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject ammonia plant had been erected in or about 1973, almost 49 years prior in point of time;
- g) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- h) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject ammonia plant was erected in or about 1973, almost 49 years prior in point of time;
- i) It is respectfully submitted that the Goa, Daman & Diu Town & Country Planning Act, 1974 itself came into force only with effect from 02nd April 1976, which is subsequent to the erection of the subject construction of the Show Cause Notice. As such, contention in the Impugned Notice that the Development Permission under Section 44 of the Town & Country Planning Act, 1974 for said construction has not been obtained, is itself fallacious and improper;
- j) A thorough search was conducted to trace old records, however, despite best efforts the records could not be traced as regards specific permissions and / or licenses obtained in respect of the structures constructed almost five decades earlier;
- k) The Respondent completely ignored the documentary records placed alongwith the Reply dated 03rd October, 2022 and, in fact, failed to even advert to these documents while issuing the Impugned Notice;
- l) The Respondent completely ignored that as the structures were in the vicinity of Dabolim Airport, ZACL had, prior to commencing the construction and development of the manufacturing plant, sought clearance from the Naval authorities by its Letter dated 31st July, 1969 to proceed with construction of the structures and in response to the said Letter, vide Letter dated 10th September 1969, the Naval Officer in charge, Goa conveyed its No Objection in setting up of the Fertilizer Plant at the new site by the Navy;
- m) It is respectfully submitted that the Respondent completely ignored the Letter dated 30th October, 1969 issued by the Office of the Naval Officer in charge, Goa granting its final No Objection to the setting up of the Fertilizer Plant and it is only upon receipt of such permission / approval from the Naval Authorities that the Plant was set up;
- n) It is respectfully submitted that the Respondent not only failed to consider but failed to even advert to the documents relied upon alongwith the Reply dated 03rd October, 2022 and has proceeded to issue the Impugned Notice without any reasons and in a very casual manner.

- o) The Impugned Notice is issued without affording a personal hearing to the Appellants and, as such, illegal and null and void;
- p) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1039 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 38: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/348/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1040 dated 04th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellants on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/819 dated 5th September, 2022, was issued by the Respondent to the Appellant No. 1 purporting to allege that the Appellant had carried out construction of Ammonia Plant by violating the Obstacle Limitation Surface (OLS) by 19.7 mtrs. within the IHS in the property at Sancoale Village, Mormugao

Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

The Appellant No. 2 herein, Paradeep Phosphate Ltd. (PPL) have, pursuant to the Business Transfer Agreement executed by PPL with the Appellant No. 1 herein, Zuari Agro Chemicals Ltd. (ZACL) on 01st March 2021, acquired the Fertilizer Plant at Zuarinagar, Goa and associated businesses of ZACL on slump sale basis with effect from 01st June, 2022. This was intimated to the Respondent vide Letter dated 14th September, 2022. As such, the subject matter of the Show Cause Notice belongs to PPL, Appellant No. 2 herein.

Accordingly, Appellant No. 2 herein submitted a detail Response dated 03rd October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 03rd October, 2022.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds.

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without considering and appreciating the detail Response dated 3rd October, 2022 furnished by the Appellant No. 2.
- d) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellants;
- e) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- f) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject ammonia plant had been erected in or about 1973, almost 49 years prior in point of time;
- g) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- h) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject ammonia plant was erected in or about 1973, almost 49 years prior in point of time;
- i) It is respectfully submitted that the Goa, Daman & Diu Town & Country Planning Act, 1974 itself came into force only with effect from 02nd April 1976, which is subsequent to the erection of the subject construction of the Show Cause Notice. As such, contention in the Impugned Notice that the Development Permission under Section 44 of the Town & Country Planning Act, 1974 for said construction has not been obtained, is itself fallacious and improper;
- j) A thorough search was conducted to trace old records, however, despite best efforts the records could not be traced as regards specific permissions and / or licenses obtained in respect of the structures constructed almost five decades earlier;
- k) The Respondent completely ignored the documentary records placed alongwith the Reply dated 03rd October, 2022 and, in fact, failed to even advert to these documents while issuing the Impugned Notice;

- l) The Respondent completely ignored that as the structures were in the vicinity of Dabolim Airport, ZACL had, prior to commencing the construction and development of the manufacturing plant, sought clearance from the Naval authorities by its letter dated 31st July, 1969 to proceed with construction of the structures and in response to the said Letter, vide Letter dated 10th September 1969, the Naval Officer in charge, Goa conveyed its No Objection in setting up of the Fertilizer Plant at the new site by the Navy;
- m) It is respectfully submitted that the Respondent completely ignored the Letter dated 30th October, 1969 issued by the Office of the Naval Officer in charge, Goa granting its final No Objection to the setting up of the Fertilizer Plant and it is only upon receipt of such permission / approval from the Naval Authorities that the Plant was set up;
- n) It is respectfully submitted that the Respondent not only failed to consider but failed to even advert to the documents relied upon alongwith the Reply dated 03rd October, 2022 and has proceeded to issue the Impugned Notice without any reasons and in a very casual manner.
- o) The Impugned Notice is issued without affording a personal hearing to the Appellants and, as such, illegal and null and void;
- p) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1040 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 39: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/349/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1038 dated 04th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellants on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/817 dated 5th September, 2022, was issued by the Respondent to the Appellant No. 1 purporting to allege that the Appellant had carried out construction of Power Station by violating the Obstacle Limitation Surface (OLS) by 4.2 mtrs. within the IHS in the property at Sancoale Village, Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

The Appellant No. 2 herein, Paradeep Phosphate Ltd. (PPL) have, pursuant to the Business Transfer Agreement executed by PPL with the Appellant No. 1 herein, Zuari Agro Chemicals Ltd. (ZACL) on 01st March 2021, acquired the Fertilizer Plant at Zuarinagar, Goa and associated businesses of ZACL on slump sale basis with effect from 01st June, 2022. This was intimated to the Respondent vide Letter dated 14th September, 2022. As such, the subject matter of the Show Cause Notice belongs to PPL, Appellant No. 2 herein.

Accordingly, Appellant No. 2 herein submitted a detail Response dated 03rd October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 03rd October, 2022.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basis principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without considering and appreciating the detail Response dated 03rd October, 2022 furnished by the Appellant No. 2.
- d) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellants;
- e) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- f) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject Power Station had been erected in or about 1973, almost 49 years prior in point of time;
- g) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.

- h) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject Power Station was erected in or about 1973, almost 49 years prior in point of time;
- i) It is respectfully submitted that the Goa, Daman & Diu Town & Country Planning Act, 1974 itself came into force only with effect from 02nd April 1976, which is subsequent to the erection of the subject construction of the Show Cause Notice. As such, contention in the Impugned Notice that the Development Permission under Section 44 of the Town & Country Planning Act, 1974 for said construction has not been obtained, is itself fallacious and improper;
- j) A thorough search was conducted to trace old records, however, despite best efforts the records could not be traced as regards specific permissions and / or licenses obtained in respect of the structures constructed almost five decades earlier;
- k) The Respondent completely ignored the documentary records placed alongwith the Reply dated 03rd October, 2022 and, in fact, failed to even advert to these documents while issuing the Impugned Notice;
- l) The Respondent completely ignored that as the structures were in the vicinity of Dabolim Airport, ZACL had, prior to commencing the construction and development of the manufacturing plant, sought clearance from the Naval authorities by its Letter dated 31st July, 1969 to proceed with construction of the structures and in response to the said Letter, vide Letter dated 10th September 1969, the Naval Officer in charge, Goa conveyed its No Objection in setting up of the Fertilizer Plant at the new site by the Navy;
- m) It is respectfully submitted that the Respondent completely ignored the Letter dated 30th October, 1969 issued by the Office of the Naval Officer in charge, Goa granting its final No Objection to the setting up of the Fertilizer Plant and it is only upon receipt of such permission / approval from the Naval Authorities that the Plant was set up;
- n) It is respectfully submitted that the Respondent not only failed to consider but failed to even advert to the documents relied upon alongwith the Reply dated 03rd October, 2022 and has proceeded to issue the Impugned Notice without any reasons and in a very casual manner.
- o) The Impugned Notice is issued without affording a personal hearing to the Appellants and, as such, illegal and null and void;
- p) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1038 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the

construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 40: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/351/22)

Member Secretary informed that an Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1041 dated 04th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellants on 14th November, 2022.

A Show Cause Notice bearing ref No. MPDA/9-N-88/2022-23/816 dated 5th September, 2022, was issued by the Respondent to the Appellant No. 1 purporting to allege that the Appellant had carried out construction of Urea Plant by violating the Obstacle Limitation Surface (OLS) by 10.90 mtrs. within the IHS in the property at Sancoale Village, Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

The Appellant No. 2 herein, Paradeep Phosphate Ltd. (**PPL**) have, pursuant to the Business Transfer Agreement executed by PPL with the Appellant No. 1 herein, Zuari Agro Chemicals Ltd. (**ZACL**) on 01st March 2021, acquired the Fertilizer Plant at Zuarinagar, Goa and associated businesses of ZACL on slump sale basis with effect from 01st June, 2022. This was intimated to the Respondent vide Letter dated 14th September, 2022. As such, the subject matter of the Show Cause Notice belongs to PPL, Appellant No. 2 herein.

Accordingly, Appellant No. 2 herein submitted a detail Response dated 03rd October, 2022 to the subject show cause notice. The said Response was received by the Respondent on 03rd October, 2022.

The Respondent issued the Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basic principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;

- c) The Impugned Notice is issued without considering and appreciating the detail Response dated 03rd October, 2022 furnished by Appellant No. 2.
- d) The Impugned Notice is unreasoned and passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellants;
- e) It is respectfully submitted that reliance placed on Section 53 of the Act in the subject show cause notice is absolutely fallacious and misplaced;
- f) The Respondent completely ignored the material placed on record that the fertilizer plant alongwith structures were constructed in or about the year., 1973 and the commercial production was started and the subject urea plant had been erected in or about 1973, almost 49 years prior in point of time;
- g) The Impugned Notice issued in purported exercise of powers under Section 52 of the Act, is absolutely without jurisdiction in as much as the said Section 52 makes it expressly clear that the Authority is authorized to initiate action only in respect of any development or change of use of land within four years of such development or change.
- h) It is respectfully submitted that initiation of action under the purported Section 52 of the Act is impermissible and illegal in as much as the subject urea plant was erected in or about 1973, almost 49 years prior in point of time;
- i) It is respectfully submitted that the Goa, Daman & Diu Town & Country Planning Act, 1974 itself came into force only with effect from 02nd April 1976, which is subsequent to the erection of the subject construction of the Show Cause Notice. As such, contention in the Impugned Notice that the Development Permission under Section 44 of the Town & Country Planning Act, 1974 for said construction has not been obtained, is itself fallacious and improper;
- j) A thorough search was conducted to trace old records, however, despite best efforts the records could not be traced as regards specific permissions and / or licenses obtained in respect of the structures constructed almost five decades earlier;
- k) The Respondent completely ignored the documentary records placed alongwith the Reply dated 03rd October, 2022 and, in fact, failed to even advert to these documents while issuing the Impugned Notice;
- l) The Respondent completely ignored that as the structures were in the vicinity of Dabolim Airport, ZACL had, prior to commencing the construction and development of the manufacturing plant, sought clearance from the Naval authorities by its Letter dated 31st July, 1969 to proceed with construction of the structures and in response to the said Letter, vide Letter dated 10th September 1969, the Naval Officer in charge, Goa conveyed its No Objection in setting up of the Fertilizer Plant at the new site by the Navy;
- m) It is respectfully submitted that the Respondent completely ignored the Letter dated 30th October, 1969 issued by the Office of the Naval Officer in charge, Goa granting its final No Objection to the setting up of the Fertilizer Plant and it is only upon receipt of such permission / approval from the Naval Authorities that the Plant was set up.
- n) It is respectfully submitted that the Respondent not only failed to consider but failed to even advert to the documents relied upon alongwith the Reply dated 03rd October, 2022 and has proceeded to issue the Impugned Notice without any reasons and in a very casual manner.
- o) The Impugned Notice is issued without affording a personal hearing to the Appellants and, as such, illegal and null and void;
- p) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1041 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Narcinva A. S. Verenkar who appeared on behalf of the respondent informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter, hence, the matter was adjourned.

During the present hearing, Appellant was represented by Adv. Yogesh Nadkarni, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Yogesh Nadkarni appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 41: Appeal under Section 52(2) of the TCP Act, 1974 filed by M/s Goa Shipyard Ltd. V/s Mormugao Planning and Development Authority and Goa Industrial Development Corporation. (File No. TP/B/APL/312/22)

Member Secretary informed that the Appellant has filed appeal against Notice/Order No. MPDA/9-N-88/2022-23/1054 dated 04/11/2022 issued by the Respondent PDA herein purportedly under Section 52 of the Town and Country Planning Act, 1974, directing the Appellant to demolish/remove warehouse located in plots No. 23 to 26, 33 to 36 of Sancoale Village, Mormugao Taluka, in the property survey under No. 185, which notice is hereinafter referred to as the impugned order.

The Appellant states that a Triplicate Deed of Lease dated 25/01/2018, executed between Appellant, Respondent No. 2 and Umicore Anandeya India Pvt. Ltd. and registered on 29/01/2018 under No. MOR-BK 1-00170-201A before the Sub-Registrar, Mormugao, Goa the Appellant acquired leasehold rights to a plot of land alongwith a building thereon i.e. factory building erected by the previous lessee, located in plots No. 23 to 26, 33 to 36 in Survey No. 185 at Sancoale Industrial Estate of Respondent No. 2.

The Appellant further states that one M/s Anandya Oxides, a partnership firm had initially acquired the said plot of land from the Respondent No. 2 GIDC by registered Deed of Lease dated 12/10/1994, which had erected factory building thereon. That thereafter there was change in the constitution of the said lessee as it was converted to a private limited company, Anandya Zinc Oxides Pvt. Ltd. which name was subsequently changes to Umicore Anandya

India Pvt. Ltd. All aforesaid was incorporated in the Deed of Addendum/Modification dated 29/10/2010 executed between the said company and Respondent No. 2 by registered deed.

That as per the information of the Appellant, based on the content of the deed of lease dated 12/10/1994 referred to above, the warehouse building was erected in the plot by the original Lessee after obtaining permission dated 24/11/1993 from Respondent No. 2 and Occupancy Certificate dated 04/06/1997 from concerned Village Panchayat of Sancoale. That subsequently the Respondent No. 2 also approved the extension to the building with a permission dated 04/10/2012 to said Lessee and issued Occupancy Certificate on 08/09/2017.

That the area where the Sancoale Industrial Estate of Respondent No. 2 is situated was first notified as planning area vide notification No. 4-5-2-84-UDD(part)/05/2737 dated 27/09/2005 published in the Official Gazette Series I No. 25 dated 27/09/2005 issued under sub section (1) and (2) of section 18 of the Town and Country Planning Act, 1974. That prior thereto vide notification No. 4-5-2-84-UDD(part)/04 dated 23/06/1993 published in Official Gazette series I No. 13 dated 24/06/1993 the planning area notified for the purpose of section 18 was only area comprising of Mormugao Municipal Council.

The Appellant states that he received Show Cause Notice under ref. No. MPDA/9-N-88/2022-23/801 dated 05/09/2022 from the Respondent No. 1 stating that Flag Officer Commanding vide letter dated 22/07/2022, addressed to Directorate General Civil Aviation has brought to his notice that Appellant has carried out construction of warehouse by violating the Obstacle Limitation Surface (OLS) by 1.2 mts. within the approach funnel in the property bearing survey No. 185/P-23 to 26, 33 to 36 of Sancoale village, Mormugao Taluka without prior permission as required under Section 44 of the Town and Country Planning Act, 1974 and hence, Appellant was directed to Show Cause why action under section 52 of Town & Country Planning Act 1974 should not be initiated for the illegal development under section 52 of said Act.

That prior thereto the Appellant has received a communication under reference No. MPDA/9-N-88/2022-23/619 dated 17/08/2022 from the Respondent No. 1 enclosing therewith copy of the letter dated 22/07/2022 from Captain (Air) Commanding Officer addressed to the Director General (Civil) Aviation, New Delhi, directing to submit clarification to the Respondent No. 1 in respect thereof.

That the aforesaid communication dated 22/07/2022 referred to Judgement of Hon'ble High Court of Bombay at Goa and direction of Union of India to act upon the report made by the Flag Officer Commanding Naval, Goa Naval Area to issue final order for unauthorized constructions in survey No. 60/2 and around Dabolim Airport. It referred to the preliminary survey carried out around Dabolim Airport in the months of December and May 2022, which noted prima facie approximately 200 constructions which were likely to continue aeronautical obstruction and the Officer in-charge of Aerodrome served notifications as per para 3 of the Aircraft Rules, 1994 upon the owners seeking details of the construction.

That, However, the information based on which the aforesaid survey conducted was insufficient. That thereafter Joint survey was conducted by representatives of Respondent No. 1 and Goa Police in the months of May and June 2022 as per para 5 of the Aircraft Rule, 1994. After noting at clause (b) of para 6 of report of said survey that 7 constructions constitute aeronautical constructions based on calculation, as per the data provided by Respondent No. 2, Commanding Officer requested to issue final Order in accordance with para 6 of the Aircraft Rules, 1994 directing all residents to reduce the height of the construction/demolish the structure in compliance with Obstacle Limitation Criteria.

The Appellant states that vide letter dated 30/08/2022 addressed to the Respondent No. 1, he had sought clarifications in respect of the survey conducted by the authorities referred to above and also informed that it has not increased the height of the original structure which it acquired from the previous Lessee of Respondent No. 2, GIDC. Therefore, the statement that subject structure was erected by the Appellant was totally incorrect, inasmuch as the Appellant has neither erected the warehouse nor made any alternations thereto with respect to the height. It was also pointed out that it is not clear from the communication of Respondent No. 1 or from the referred communication from the Commanding Officer that which portion of the building

structure is infringing the permissible height as the purported survey was done in absence of the Appellant.

That however no clarification as sought was provided by Respondent No. 1 in response to the aforesaid letter from Appellant.

That the Appellant replied to the show cause notice by reply dtd. 22/9/2022 stating that

- a) That the direction from the Director General of Civil Aviation to Respondent No. 1 at para 7 of the referred communication did not disclose that it is based on any power of delegation under the Aircraft Act, 1934 or the Rules framed thereunder.
- b) That consequently, notice under Section 52 of Town and Country Planning Act, 1974 issued by Respondent No. 1 based on such direction in letter dtd. 22/7/2022, is not competent under the said Aircraft Act.
- c) That Section 52 of Town and Country Planning Act, 1974 is limited to situations provided under clauses (a) to (f) of sub section(1) of Section 51 of the said Act. None of the said situations are attracted in the present case.
- d) That in the circumstances, Respondent No. 1 lacked jurisdiction to issue the Show Cause notice or demolition notice.
- e) That without prejudice, there is no violation of any building regulations while erecting the subject structure by the original lessee as permitted by the Respondent No. 2, GIDC. That the subject structure is not unauthorized.

That it may be noted that there is no allegation in said communication of Commanding Officer that Appellant has not obtained prior permission of Respondent No. 1 under section 44 of Town and Country Planning Act, 1974 as it falsely contended in the Show Cause Notice.

Aggrieved by the impugned Notice/Order dtd. 4/11/2022, the Appellant challenges the same in this Appeal on the following grounds which are urged without prejudice to one another.

1. The impugned Notice/Order is without jurisdiction.
2. The Show Cause Notice as well as the notice of demolition is issued under the provision of Town and Country Planning Act, 1974 by Respondent No. 1, the Planning Authority when the subject area where building was located was not notified as planning area under Respondent No. 1.
3. The demolition notice proceeds on the sole ground that the development permission under Section 44 of the Town and Country Planning Act, 1974 has not been obtained from the Respondent No. 1 without any subjective satisfaction as to whether it was required to be obtained.
4. That whereas the Show Cause Notice proceeds on the communication dtd. 22/7/2022 from Flag Officer Commanding to the Director General Civil Aviation, which was squarely referring to the Aircraft Act and Rules thereunder, and not to permission under Section 44 of Town and Country Planning Act, 1974. Respondent No. 1 has usurped the jurisdiction under the said Act, which it did not have.
5. There is total non consideration of the reply of the Appellant to the show cause notice by the Respondent No. 1. Therefore action is patently arbitrary.
6. That the communication dtd. 22/7/2022 from Flag Officer Commanding to the Director General Civil Aviation, at para 7 thereof contemplated issuance of the order under Aircraft Rules, 1994, and not under Town and Country Planning Act, 1974. That in as much as Respondent No. 1 has presumed jurisdiction under Aircraft Rules, 1994, without any delegation, the impugned notice is bad in law.

That if pending this appeal, the impugned notice/order is executed, irreparable loss and injury will be caused to the Appellant. It is therefore, just and proper that pending the hearing and final disposal of the appeal the impugned notice/order be stayed.

The Appellant has therefore prayed:

- a) Appeal be allowed.
- b) The impugned notice/order dated 04/11/2022 (exhibit A) be quashed and set aside;
- c) Pending the hearing and final disposal of the appeal the impugned notice dated 04/11/2022 be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Narcinva A. S. Verenkar holding for Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Ashish U. Dhuri, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Ashish U. Dhuri appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 42: Appeal under Section 52(2) of the TCP Act, 1974 filed by M/s Goa Shipyard Ltd. V/s Mormugao Planning and Development Authority and Goa Industrial Development Corporation. (File No. TP/B/APL/313/22)

Member Secretary informed that the Appellant has filed appeal against Notice/Order No. MPDA/9-N-88/2022-23/1055 dated 04/11/2022 issued by the Respondent PDA herein under Section 52 of the Town and Country Planning Act, 1974, directing the Appellant to demolish/remove old building located in plots No. 63 to 65, 74 to 75 of Sancoale Village, Mormugao Taluka, in the property survey under No. 181, which notice is hereinafter referred to as the impugned order.

The Appellant states that a Triplicate Deed of Lease dated 03/02/2012, executed between Appellant, Respondent No. 2 and one Shri Dinesh Nadar, registered on 15/02/2012 under No. 209 of Book I Vol. 1366 pages 274-321 before the Sub-Registrar, Mormugao, Goa the Appellant acquired leasehold rights to a plot of land alongwith a building thereon at Plots 63 to 65, 74 to 75 in Survey No. 181 at Sancoale, Mormugao Taluka from its previous Lessee Shri Dinesh S. Nadar, Proprietor of Firm, M/s Golden Fishnet Industries.

The Appellant further states that the said previous lessee has acquired the said plot of land alongwith building thereon from the Respondent No. 2 GIDC by Tripartite registered Deed of Lease dated 14/01/2010, between said lessee, Respondent No. 2 and original lessees Shri Sandeep Bharne and Sharmila Sandeep Bharne. That thereafter the Respondent No. 2 had permitted Dinesh Nadar, the lessee, to transfer the leasehold rights of the plots along with building to the Appellant and according Respondent No. 2 allotted the said plots of land with the building thereon to the Appellant.

That as per the information of the Appellant, based on the content of the deed of lease dated 14/01/2010 referred to above, the old building was erected in the plot by the original Lessee somewhere in the year 1979. That the Appellant has applied to Respondent No. 2 for further information therefore.

That the area where the Sancoale Industrial Estate of Respondent No. 2 is situated was first notified as planning area vide Notification No. 4-5-2-84-UDD(part)/05/2737 dated 27/09/2005 published in the Official Gazette Series I No. 25 dated 27/09/2005 issued under sub section (1) and (2) of section 18 of the Town and Country Planning Act, 1974. That prior thereto vide notification No. 4-5-2-84-UDD(part)/04 dated 23/06/1993 published in Official Gazette series I No. 13 dated 24/06/1993 the planning area notified for the purpose of section 18 was only area comprising of Mormugao Municipal Council.

The Appellant states that he received Show Cause Notice under ref. No. MPDA/9-N-88/2022-23/800 dated 05/09/2022 from the Respondent No. 1 stating that Flag Officer Commanding vide letter dated 22/07/2022, addressed to Directorate General Civil Aviation has brought to his notice that Appellant has carried out construction of warehouse by violating the Obstacle Limitation Surface (OLS) by 5.2 mts. within the approach funnel in the property bearing survey No. 181/P-63 to 65, 74 and 75 of Sancoale village, Mormugao Taluka without prior permission as required under Section 44 of the Town and Country Planning Act, 1974 and hence, Appellant was directed to Show Cause why action under Section 52 of Town & Country Planning Act 1974 should not be initiated for the illegal development under section 52 of said Act.

That prior thereto the Appellant has received a communication under reference No. MPDA/9-N-88/2022-23/615 dated 17/08/2022 from the Respondent No. 1 enclosing therewith copy of the letter dated 22/07/2022 from Captain (Air) Commanding Officer addressed to the Director General (Civil) Aviation, New Delhi, directing to submit clarification to the Respondent No. 1 in respect thereof.

That the aforesaid communication dated 22/07/2022 referred to Judgement of Hon'ble High Court of Bombay at Goa and direction of Union of India to act upon the report made by the Flag Officer Commanding Naval, Goa Naval Area to issue final order for unauthorized constructions in survey No. 60/2 and around Dabolim Airport. It referred to the preliminary survey carried out around Dabolim Airport in the months of December and May 2022, which noted prima facie approximately 200 constructions which were likely to continue aeronautical obstruction and the Officer in-charge of Aerodrome served notifications as per para 3 of the Aircraft Rules, 1994 upon the owners seeking details of the construction.

That, However, the information based on which the aforesaid survey was conducted was insufficient. That thereafter Joint survey was conducted by representatives of Respondent No. 1 and Goa Police in the months of May and June 2022 as per para 5 of the Aircraft Rule, 1994. After noting at clause (b) of para 6 of report of said survey that 7 constructions constitute aeronautical constructions based on calculation, as per the data provided by Respondent No. 2, Commanding Officer requested to issue final Order in accordance with para 6 of the Aircraft Rules, 1994 directing all residents to reduce the height of the construction/demolish the structure in compliance with Obstacle Limitation Criteria.

The Appellant states that vide letter dated 30/08/2022 addressed to the Respondent No. 1, he had sought clarifications in respect of the survey conducted by the authorities referred to above and also informed that it has not increased the height of the original structure which it acquired from the previous Lessee of Respondent No. 2, GIDC. Therefore, the statement that subject structure was erected by the Appellant was totally incorrect, inasmuch as the Appellant has neither erected the warehouse nor made any alternations thereto with respect to the height. It

was also pointed out that it is not clear from the communication of Respondent No. 1 or from the referred communication from the Commanding Officer that any direction was issued to the Respondent No 2 GIDC as contemplated under sub section 3 of section 9A of the Aircraft Rules, 1994.

That however no clarification as sought was provided by Respondent No. 1 in response to the aforesaid letter from Appellant.

That the Appellant replied to the show cause notice by reply dtd. 22/9/2022 stating that

- a) That the direction from the Director General of Civil Aviation to Respondent No. 1 at para 7 of the referred communication did not disclose that it is based on any power of delegation under the Aircraft Act, 1934 or the Rules framed thereunder.
- b) That consequently, notice under Section 52 of Town and Country Planning Act, 1974 issued by Respondent No. 1 based on such direction in letter dtd. 22/7/2022, is not competent under the said Aircraft Act.
- c) That Section 52 of Town and Country Planning Act, 1974 is limited to situations provided under clauses (a) to (f) of sub section(1) of Section 51 of the said Act. None of the said situations are attracted in the present case. The Respondent No. 1 has no jurisdiction over the area in the ear 1979 when the structure erected.
- d) That in the circumstances, Respondent No. 1 lacked jurisdiction to issue the Show Cause notice or demolition notice.
- e) That without prejudice, there is no violation of any building regulations while erecting the subject structure by the original lessee as permitted by the Respondent No. 2, GIDC. That the subject structure is not unauthorized.

That there is no allegation in said communication of Commanding Officer that Appellant has not obtained prior permission of Respondent No. 1 under section 44 of Town and Country Planning Act, 1974 as it falsely contended in the Show Cause Notice.

Aggrieved by the impugned Notice/Order dtd. 4/11/2022, the Appellant challenges the same in this Appeal on the following grounds which are urged without prejudice to one another.

1. The impugned Notice/Order is without jurisdiction.
2. The Show Cause Notice as well as the notice of demolition is issued under the provision of Town and Country Planning Act, 1974 by Respondent No. 1, the Planning Authority when the subject area where building was located was not notified as planning area under Respondent No. 1. The Planning Authority when the subject area where building was located was not notified as planning area under Respondent No. 1.
3. The demolition notice proceeds on the sole ground that the development permission under Section 44 of the Town and Country Planning Act, 1974 has not been obtained from the Respondent No. 1 without any subjective satisfaction as to whether it was required to be obtained.
4. That whereas the Show Cause Notice proceeds on the communication dtd. 22/7/2022 from Flag Officer Commanding to the Director General Civil Aviation, which was squarely referring to the Aircraft Act and Rules thereunder, and not to permission under Section 44 of Town and Country Planning Act, 1974. Respondent No. 1 has usurped the jurisdiction under the said Act, which it did not have.
5. There is total non consideration of the reply of the Appellant to the show cause notice by the Respondent No. 1. Therefore action is patently arbitrary.
6. That the communication dtd. 22/7/2022 from Flag Officer Commanding to the Director General Civil Aviation, at para 7 thereof contemplated issuance of the order under Aircraft Rules, 1994, and not under Town and Country Planning Act, 1974. That in as much as Respondent No. 1 has presumed jurisdiction under Aircraft Rules, 1994, without any delegation, the impugned notice is bad in law.

That if pending this appeal, the impugned notice/order is executed, irreparable loss and injury will be caused to the Appellant. It is therefore, just and proper that pending the hearing and final disposal of the appeal the impugned notice/order be stayed.

The Appellant has therefore prayed:

- d) Appeal be allowed.
- e) The impugned notice/order dated 04/11/2022 (exhibit A) be quashed and set aside;
- f) Pending the hearing and final disposal of the appeal the impugned notice dated 04/11/2022 be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Narcinva A. S. Verenkar holding for Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Ashish U. Dhuri, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Ashish U. Dhuri appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 43: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Kamla Prasad Yadav against Mormugao Planning and Development Authority. (File No. TP/B/APL/314/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-16)/2022-23/1122 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant states that the project 'SAFFIREE ENCLAVE' situated at Dabolim Goa has been constructed on the landed property plot B surveyed under survey No. 63/2,3 & 4 of Dabolim village, Mormugao Taluka of which Appellant is an owner.

The said building has been constructed as per the building plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

As per MPDA Development Permission the NOC from the Civil Aviation Authorities are required only when the plot is falling within Funnel Zone and as per MPDA letter dated 12/11/2019 the said plot where the building has been constructed does not fall within Funnel Zone and hence no NOC is required from the Indian Navy.

The Appellant states that the said building has been completed in all respect and has obtained the completion certificate for the building from the Respondent and has also obtained occupancy certificate for the building from the Village Panchayat of Chicalim and the flat premises are been sold to various buyers who are now occupying the said building.

The Appellant have not violated any law at the time of construction of building nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan with all valid permissions required at the relevant time.

If any permission was required besides the permissions obtained by the Appellant, then Respondent would not have granted the Development Permission nor the completion certificate.

The Appellant states that granting of permissions by the Respondent for the said building shows that no other permissions were required at the relevant time under prevailing law.

The Appellant stated that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same.

Instead the Respondent has issued Demolition Notice dated 05/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site.

The said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Appellant states that the Notice sent to him is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him hence the notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of Appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.

- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- (a) To quash and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-16)/2022-23/1122 issued by Respondent.
- (b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-16)/2022-23/1122.
- (c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the

Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 44: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Pramod A. Bandekar against Mormugao Planning and Development Authority. (File No. TP/B/APL/295/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1113 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 432 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 17 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka of which Appellant is the co-owner of the plot which has been purchased vide the Deed of Sale dated 21/1/2022 registered before the sub registrar of Mormugao under No. MOR-1-107-2022 dated 25/7/2022 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 432 having an cemented roof and having a height of less than 3 mts. existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-95/2012-13/1932 dated 29/1/2013 from Respondent PDA and permissions from various other authority. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding, the said plot bearing Plot No. 17, where the house has been constructed has the permissible height of 7.2 mts. based on which the Respondent has granted the Development Permission.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same.

Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site.

The Appellant further states that the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him and hence the notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- (a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1113 issued by Respondent.
- (b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1113.
- (c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 45: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Kamla Prasad Yadav against Mormugao Planning and Development Authority. (File No. TP/B/APL/315/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-18)/2022-23/1121 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant that the project 'GAUTAM ENCLAVE' situated at Dabolim Goa has been constructed on the landed property plot No. 15 surveyed under survey No. 59 Sub division 1 of Dabolim village Mormugao Taluka of which Appellant is an Developer.

The said building has been constructed as per the building plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

As per MPDA Development Permission, the NOC from the Civil Aviation Authorities are required only when the plot is falling within Funnel Zone and as per MPDA letter dated 12/11/2019 the said plot where the building has been constructed does not fall within Funnel Zone and hence no NOC is required from the Indian Navy.

The Appellant states that the said building has been completed in all respect and has obtained the completion certificate for the building from the Respondent and has also obtained occupancy certificate for the building from the Village Panchayat of Chicalim and the flat premises are been sold to various buyers who are now occupying the said building.

The Appellant have not violated any law at the time of construction of building nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan with all valid permissions required at the relevant time.

If any permission was required besides the permissions obtained by the Appellant, then Respondent would not have grant the Development Permission nor the Completion Certificate.

The Appellant states that granting of permissions by the Respondent for the said building shows that no other permissions were required at the relevant time under prevailing law.

The Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 05/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him and hence the notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.

- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time .

The Appellant has therefore prayed:

- (a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-18)/2022-23/1121 issued by Respondent.
- (b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-18)/2022-23/1121.
- (c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the

Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 46: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Kamla Prasad Yadav against Mormugao Planning and Development Authority. (File No. TP/B/APL/305/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-12)/2022-23/1123 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

It is the case of the Appellant that the project 'SAHARA RESIDENCY' situated at Dabolim Goa has been constructed on the landed property plot B surveyed under survey no 63/ 5 of Dabolim village, Mormugao Taluka of which Appellant is an owner.

The said building has been constructed as per the building plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

As per MPDA Development Permission the NOC from the Civil Aviation Authorities are required only when the plot is falling within Funnel Zone and as per the MPDA letter dated 12/11/2019 the said plot where the building has been constructed does not fall within Funnel Zone and hence no NOC is required from the Indian Navy.

The Appellant states that the said building has been completed in all respect and has obtained the completion certificate for the building from the Respondent and has also obtained occupancy certificate for the building from the Village Panchayat of Chicalim and the flat premises are been sold to various buyers who are now occupying the said building.

The Appellant have not violated any law at the time of construction of building nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan with all valid permissions required at the relevant time.

If any permission was required besides the permissions obtained by the Appellant, then Respondent would not have grant the Development Permission nor the Completion Certificate.

The Appellant states that granting of permissions by the Respondent for the said building shows that no other permissions were required at the relevant time under prevailing law.

The Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 05/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him and hence the notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-12)/2022-23/1123 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-12)/2022-23/1123 .
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 47: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Ahmed Usman Patel against Mormugao Planning and Development Authority. (File No. TP/B/APL/302/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1126 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 519 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 17 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 21/1/2022 registered before the sub registrar of Mormugao under No. MOR-1-107-2022 dated 25/7/2022 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 519 having an cemented roof and having a height of less than 3 mts. existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-95/2012-13/1932 dated 29/1/2013 from Respondent PDA and permissions from various other authority. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding the said plot bearing Plot No. 17, where the house has been constructed has the permissible height of 7.2 mts. based on which the Respondent has granted the Development Permission.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. The Appellant further stated that the Respondent has sent a Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.

- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- (a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1126 issued by Respondent.
- (b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1126.
- (c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 48: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Ganpat Raghoba Nagam against Mormugao Planning and Development Authority. (File No. TP/B/APL/319/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1070 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house, which has been constructed on the landed property bearing Plot No. 17, surveyed under Survey No. 60, Sub division No. 1 of Dabolim village Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 21/1/2022 registered before the sub registrar of Mormugao under No. MOR-1-107-2022 dated 25/7/2022 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of house having an cemented roof and having a height of less than 3 mts. existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-95/2012-13/1932 dated 29/1/2013 from Respondent PDA and permissions from various other authority. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding, the said plot bearing Plot No. 17 where the house has been constructed has the permissible height of 7.2 mts., based on which the Respondent has granted the Development Permission.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent has not issued any Show cause notice to him, which is mandatory required under the law thereby denying the opportunity of fair hearing to the Appellant. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Appellant stated that the Respondent has sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous and no details of the illegality are mentioned, as such same has to be quashed and set aside as the show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The said demolition notice dated 04/11/2022 is referred to as "The Impugned Notice". The Appellant states that there is no Transgression report about the alleged illegality given to him and hence the notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Show cause notice has not been issued to the Appellant which is mandatory required under the law thereby denying the opportunity of fair hearing
- i) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- j) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quash and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1070 issued by Respondent.

- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1070.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 49: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Rihana Kutboddin Talwai against Mormugao Planning and Development Authority. (File No. TP/B/APL/311/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1128 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 430 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 45 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot which has been purchased vide the Deed of Sale dated 6/7/2021 registered before the sub registrar of Mormugao under No. MOR-1-1028-2021 dated 16/7/2021 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 430 existing therein in the said plot. The said construction was carried out after obtaining Development permission bearing No. MPDA/9-M-94/2012-13/1834 dated 29/1/2013 from Respondent. The NOC dated

10/3/2014 has been issued by the Flag Officer Commanding for the construction of the house therein.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. The Appellant stated that the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him and hence the notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.

- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1128 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1128.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the

Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 50: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Savitri Inas Kauripal against Mormugao Planning and Development Authority. (File No. TP/B/APL/316/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1110 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 414 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 45 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. The Appellant is the co-owner of the plot which has been purchased vide the Deed of Sale dated 6/7/2021 registered before the sub registrar of Mormugao under No. MOR-1-1028-2021 dated 16/7/2021 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 414 existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-94/2012-13/1834 dated 29/1/2013 from Respondent. The NOC dated 10/3/2014 has been issued by the Flag Officer Commanding for the construction of the house therein.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him and hence the notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- (a) That this Hon'ble Board be pleased to quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1110 issued by Respondent.
- (b) That this Hon'ble Board be pleased to call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1110.
- (c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai

had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 51: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Laxmibai Lamani against Mormugao Planning and Development Authority. (File No. TP/B/APL/318/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1112 passed by the Respondent.

The Appellant is the owner of house bearing No. EHN 527 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 17 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot which has been purchased vide the Deed of Sale dated 21/1/2022 registered before the sub-registrar of Mormugao under No. MOR-1-107-2022 dated 25/7/2022 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 527 having an cemented roof and having a height of less than 3 mts. existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-95/2012-13/1932 dated 29/1/2013 from Respondent and permissions from various other authority. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding the said plot bearing Plot No. 17 where the house has been constructed has the permissible height of 7.2 mts. based on which the Respondent has granted the Development Permission.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.

- 1) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1112 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1112.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 52: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Shri Sannabasappa Harijan against Mormugao Planning and Development Authority. (File No. TP/B/APL/317/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1115 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 514 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 17 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 21/1/2022 registered before the sub registrar of Mormugao under No. MOR-1-107-2022 dated 25/7/2022 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 514 having an cemented roof and having a height of less than 3 mts. existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-95/2012-13/1932 dated 29/1/2013 from Respondent and permissions from various other authority. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding the said plot bearing Plot No. 17 where the house has been constructed has the permissible height of 7.2 mts. based on which the Respondent has granted the Development Permission.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant have not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant also states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- (a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1115 issued by Respondent.
- (b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1115.
- (c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 53: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Hajrath Kuntaji against Mormugao Planning and Development Authority. (File No. TP/B/APL/350/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1063 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No. 11 admeasuring 367.15 sq. mts. surveyed under Survey No. 60, Sub division No. 1-AD of Dabolim village, Mormugao Taluka. Appellant is the owner which has been purchased by Appellant vide the Deed of Sale dated 14/7/2017 registered before the sub registrar of Mormugao under No. MOR-BK1-01181-2017 dated 18/7/2017 situated at Dabolim Goa from Anthony Micheal and Sandra Micheal.

The Appellant states that he has obtained the Conversion Sanad under No. 11/DYC-MOR/CONV/35/2019/865 from the office of Dy. Collector/SDO, Mormugao Goa dated 28/5/2021. The house situated in the said plot is an old one having cemented roof. As per the letter dated 7/11/2000 issued by the flag officer commanding the said plot bearing Plot No. 11 wherein the house has been constructed has the permissible height of 6.4 mts. The height of the said house is within permissible limits.

The Appellant states that he has not violated any law at the time of construction of structure as the house is an old one and does not require any permission under the law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are

mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Appellant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 18/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- (a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1063 issued by Respondent.
- (b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1063.
- (c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 54: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Renudevi Kashiram Nishad against Mormugao Planning and Development Authority. (File No. TP/B/APL/299/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1127 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 381 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 45 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot which has been purchased vide the Deed of Sale dated 6/7/2021 registered before the sub registrar of Mormugao under no MOR-1-1028-2021 dated 16/7/2021 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 381 existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-94/2012-13/1834 dated 29/1/2013 from Respondent. The NOC dated 10/3/2014 has been issued by the Flag Officer Commanding for the construction of the house therein.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.

- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- (a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No.MPDA/9-N-88/2022-23/1127 issued by Respondent.
- (b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No.MPDA/9-N-88/2022-23/1127.
- (c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 55: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Bhalachandra Khadapkar against Mormugao Planning and Development Authority. (File No. TP/B/APL/310/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1070 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant states that he alongwith Ramanna Kavadimatti are the joint owners of the plot No. 43 admeasuring 300 sq. mts. surveyed under Sy. 60/1 of Dabolim Village which plot has been purchased vide the Deed of sale dated 30/09/2009 registered before the Sub Registrar of Mormugao under No. 1253 at pages 109 to 124 Book No. I Vol No. 1003 dated 1/10/2009. The Plot No. 43 was partitioned to form the separate property surveyed under survey No. 60 Sub division 1-Y of Dabolim village.

The permissible height is 3.40 mts. in the plot No. 43 and NOC for the height clearance of residential building in plot No. 43 which has been granted by Flag Office Commanding, Headquarters, Goa Naval area, Vasco Da Gama vide letter dated 19/08/2014.

The Appellant furthers states that since there was no shelter, he alongwith Ramanna Kavadimatti have construction the temporary structure in the said plot and which structure does not require any permission from the authority. The height of the structure is much below the permissible height.

The Appellant states that structure existing in the plot is an very old structure which was existing much prior to Appellant purchasing the said plot which structure does not require any permission from the Respondent and has not violated any law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 05/09/2022 to which Appellant has replied with all supporting document but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 05/11/2022 under section 52 of the Town and Country Planning Act 1974. The said notice sent is very vague and ambiguous and no details of the illegality are mentioned, as such same has to be quashed and set aside as the show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The said demolition notice dated 04/11/2022 is referred to as "The Impugned Notice". The Appellant states that there is no Transgression report about the alleged illegality given to him and hence the notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection. The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to given any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 18/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quash and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1117 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1117.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 56: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Sameema Hussain Asif against Mormugao Planning and Development Authority. (File No. TP/B/APL/297/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1071 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No.16 admeasuring 350 sq. mts. surveyed under Survey No. 60/1, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased by Appellant vide the Deed of Sale dated 02/01/2008 registered before the sub registrar of Mormugao under No. 14 at pages 184 to 206 Book No. I, Volume No. 777 dated 3/1/2008 dated 03/01/2008 situated at Dabolim Goa from 1. Mr. Rui Manuel Da Silva Costa Araujo, 2. Mrs. Esmeralda Lumen Da Costa Araujo, 3. Mrs. Aileen Da Costa Araujo, 4. Mrs. Leila Rita Da Costa Araujo, 5. Mr. Cosme Francisco Bompato Da Silva Costa Araujo 6. Mr. Bernarndino Da Silva Costa Araujo and 7. Miss Maria Fernando Da Costa Araujo.

The house situated in the said plot is an old one having cemented roof. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding the said plot bearing Plot No. 16, wherein the house has been constructed has the permissible height of 5.3 mts. The height of the said house is within permissible limits.

The Appellant states that he has not violated any law at the time of construction of structure as the house is an old one and does not require any permission under the law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site.

The said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant stated that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Appellant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this

Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1071 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1071.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 57: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Shri Bapusaheb Parshuram Sannaki against Mormugao Planning and Development Authority. (File No. TP/B/APL/298/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-94)/2022-23/1125 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 366 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 45 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 6/7/2021 registered before the sub

registrar of Mormugao under No. MOR-1-1028-2021 dated 16/7/2021 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 366 existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-94/2012-13/1834 dated 29/1/2013 from Respondent. The NOC dated 10/3/2014 has been issued by the Flag Officer Commanding for the construction of the house therein.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.

- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-94)/2022-23/1125 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-94)/2022-23/1125.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 58: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Shambhu Amonkar against Mormugao Planning and Development Authority. (File No. TP/B/APL/296/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1130 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 365 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 45 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 6/7/2021 registered before the sub registrar of Mormugao under No. MOR-1-1028-2021 dated 16/7/2021 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 365 existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-94/2012-13/1834 dated 29/1/2013 from Respondent. The NOC dated 10/3/2014 has been issued by the Flag Officer Commanding for the construction of the house therein.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site.

The said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1130 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1130.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 59: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Babulal R. Nadaf against Mormugao Planning and Development Authority. (File No. TP/B/APL/300/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1082 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No. 23 admeasuring 350 sq. mts. surveyed under Survey No. 60, Sub division No. 1E of Dabolim village, Mormugao Taluka. Appellant is the owner which has been purchased by Appellant vide the Deed of Sale dated 27/1/2015 registered before the sub registrar of Mormugao under No. MOR-1-00117-2015 dated 27/1/2015 situated at Dabolim Goa from Anthony Micheal and Sandra Micheal.

The house situated in the said plot is an old one having cemented roof. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding, the said plot bearing Plot No. 23, wherein the house has been constructed has the permissible height of 5.3 mts. The height of the said house is within permissible limits.

The Appellant states that he has not violated any law at the time of construction of structure as the house is an old one and does not require any permission under the law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site.

The said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Appellant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant herein prefers the present appeal before this Hon'ble Court. The said Appeal is preferred on the following amongst other grounds which are taken without prejudice to one another.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.

- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1082 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1082.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 60: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Umesh Naik against Mormugao Planning and Development Authority. (File No. TP/B/APL/354/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-74)/2022-23/1085 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No. 42, admeasuring 248 sq. mts. surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased by Appellant vide the Deed of Sale dated 19/8/2005 registered before the sub registrar of Mormugao situated at Dabolim Goa ..

The said house has been constructed as per the building plan approved by Respondent and after obtaining all the necessary permissions required for the said construction. Prior to obtaining all the permissions, the Conversion Sanad was obtained from the office of Dy. Collector and also NOC is from the Indian Navy was obtained for height clearance.

The Appellant states that the said house has been completed in all respect and has obtained the completion certificate for the said house from the Respondent and has also obtained occupancy certificate for the house from the Village panchayat of Chicalim.

The Appellant states that he has not violated any law at the time of construction of building nor any condition mentioned in the Development permission issued by the Respondent and the construction has been carried out as per the approved plan with all valid permissions required at the relevant time. If any permission was required besides the permissions obtained by the Appellant, then Respondent would not have grant the Development Permission nor the Completion Certificate.

The Appellant states that granting of permissions by the Respondent for the said building shows that no other permissions were required at the relevant time under prevailing law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 05/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection. The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-74)/2022-23/1085 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-74)/2022-23/1085.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 61: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ellova Yamnappa Harijan against Mormugao Planning and Development Authority. (File No. TP/B/APL/308/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1111 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 518 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 17 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 21/1/2022 registered before the sub registrar of Mormugao under No. MOR-1-107-2022 dated 25/7/2022 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 518 having an cemented roof and having a height of less than 3 mts. existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-95/2012-13/1932 dated 29/1/2013 from Respondent and permissions from various other authority. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding the said plot bearing Plot No. 17 where the house has been constructed has the permissible height of 7.2 mts. based on which the Respondent has granted the Development Permission.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.

- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1111 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1111.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 62: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Kavita Pravin Kamble against Mormugao Planning and Development Authority. (File No. TP/B/APL/304/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1114 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 521 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 17 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 21/1/2022 registered before the sub registrar of Mormugao under No. MOR-1-107-2022 dated 25/7/2022 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 521 having an cemented roof and having a height of less than 3 mts. existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-95/2012-13/1932 dated 29/1/2013 from Respondent PDA and permissions from various other authority. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding the said plot bearing Plot No. 17, where the house has been constructed has the permissible height of 7.2 mts. based on which the Respondent has granted the Development Permission.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.

- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1114 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1114.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further

informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 63: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ramesh Shivappa Madar against Mormugao Planning and Development Authority. (File No. TP/B/APL/307/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1116 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

It is the case of the Appellant that the part of the structure EHN 517 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 17 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka of which Appellant is Owner.

The Appellant is the owner of house bearing No. EHN 517 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 17 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 21/1/2022 registered before the sub registrar of Mormugao under No. MOR-1-107-2022 dated 25/7/2022 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 432 having an cemented roof and having a height of less than 3 mts. existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-95/2012-13/1932 dated 29/1/2013 from Respondent PDA and permissions from various other authority. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding, the said plot bearing Plot No. 17, where the house has been constructed has the permissible height of 7.2 mts. based on which the Respondent has granted the Development Permission.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1116 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1116.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 64: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ajay Singh against Mormugao Planning and Development Authority. (File No. TP/B/APL/253/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1059 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No. 40 admeasuring 247.53 sq. mts. surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the owner which has been purchased by Appellant vide the two Deed of Sale dated 13/7/2011 and 15/1/2016 registered before the sub registrar of Mormugao situated at Dabolim Goa. The plot number has been wrongly mention in the notice instead of 38 the plot number has been mentioned as 40.

The house situated in the said plot is an old one having cemented roof. The height of the said house is within permissible limits.

The Appellant has states that he has not violated any law at the time of construction of structure as the house is an old one and does not require any permission under the law.

The Appellant also states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same.

Upon receiving the Show cause notice the Appellant has complied with the show cause notice by removing the obstacle limitation surface by 0.1725 mts. of the constructed house as per the show cause notice. Thereby reducing the height of the structure by 0.1725 mts. in order to fall the structure within the permissible height. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under Section 52 of the Town and Country Planning Act, 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Appellant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.

- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The Impugned Notice does not show the portion of house to be demolished or the illegal portion neither the sketch is annexed to the notice showing the part to be demolished.
- l) The Impugned notice does not specify which structure is required to be demolished nor identifies the structure to be demolished.
- m) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1059 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1059.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. B.P. Sardesai, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. B.P. Sardessai appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 65: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Demappa Vantamuri against Mormugao Planning and Development Authority. (File No. TP/B/APL/356/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-V-44)/2022-23/1087 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No. 18 admeasuring 231.75 sq. mts. surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the owner of the plot, which has been purchased by Appellant vide the Deed of Sale dated 12/7/2012 registered before the sub registrar of Mormugao situated at Dabolim Goa.

The said house has been constructed as per the building plan approved by Respondent and after obtaining all the necessary permissions required for the said construction. Prior to obtaining all the permissions the Conversion Sanad was obtained from the office of Dy. Collector and also NOC is from the Indian Navy was obtained for height clearance.

The Appellant states that the said house has been completed in all respect and has obtained the completion certificate for the said house from the Respondent and has also obtained occupancy certificate for the house from the Village Panchayat of Chicalim.

The Appellant states that he has not violated any law at the time of construction of building nor any condition mentioned in the Development permission issued by the Respondent and the construction has been carried out as per the approved plan with all valid permissions required at the relevant time.

If any permission was required besides the permissions obtained by the Appellant, then Respondent would not have grant the Development Permission nor the Completion Certificate.

The Appellant states that granting of permissions by the Respondent for the said building shows that no other permissions were required at the relevant time under prevailing law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 05/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are

mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of Appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection. The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this

Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-V-44)/2022-23/1087 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-V-44)/2022-23/1087.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 66: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Mahamud Shaikh against Mormugao Planning and Development Authority. (File No. TP/B/APL/306/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1129 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 391 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 45 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 6/7/2021 registered before the

sub registrar of Mormugao under No. MOR-1-1028-2021 dated 16/7/2021 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 391 existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-94/2012-13/1834 dated 29/1/2013 from Respondent. The NOC dated 10/3/2014 has been issued by the Flag Officer Commanding for the construction of the house therein.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant also states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act, 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.

- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The Impugned Notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1129 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1129.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 67: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Anand Lamani against Mormugao Planning and Development Authority. (File No. TP/B/APL/303/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1064 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 513 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 17 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village Mormugao Taluka. Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 21/1/2022 registered before the sub registrar of Mormugao under No. MOR-1-107-2022 dated 25/7/2022 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 513 having an cemented roof and having a height of less than 3 mts. existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-95/2012-13/1932 dated 29/1/2013 from Respondent PDA and permissions from various other Authority. As per the letter dated 7/11/2000 issued by the Flag Officer Commanding the said plot bearing Plot No. 17 where the house has been constructed has the permissible height of 7.2 mts. based on which the Respondent has granted the Development Permission.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states he has not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as states by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1064 issued by Respondent.
- b) That this Hon'ble Board be pleased to call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1064.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 68: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Seeta Anil Naik against Mormugao Planning and Development Authority. (File No. TP/B/APL/309/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-94)/2022-23/1081 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing No. EHN 415 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 45 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village Mormugao Taluka of which Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 6/7/2021 registered before the sub registrar of Mormugao under No. MOR-1-1028-2021 dated 16/7/2021 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure EHN 415 existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-94/2012-13/1834 dated 29/1/2013 from Respondent. The NOC dated 10/3/2014 has been issued by the Flag Officer Commanding for the construction of the house therein.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant states that he has have not violated any law at the time of construction of structure nor any condition mentioned in the Development permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to

the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.

- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. Hence Appeal is filed within time.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-94)/2022-23/1081 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-94)/2022-23/1081.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 69: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Maria Surendra Kumar Chaudhary against Mormugao Planning and Development Authority. (File No. TP/B/APL/358/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-C-49)/2022-23/1090 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is widow of Mr. Surendra Kumar Chaudhary, who is the owner of House No. 52/3 of Plot No. 4 Surveyed under Survey No. 60/1-C of Dabolim Village.

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No. 4 admeasuring 300 sq mts surveyed under Survey No. 60 Sub division No. 1-C of Dabolim village, Mormugao Taluka which has been purchased by Appellant vide the Deed of Sale dated 13/11/2007 registered before the sub registrar of Mormugao situated at Dabolim Goa.

The said house has been constructed as per the building plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

Prior to obtaining all the permissions the conversion sanad was obtained from the office of Dy. Collector and also NOC is from the Indian Navy was obtained for height clearance.

The Appellant further states that the said house has been completed in all respect and has obtained the completion certificate for the said house from the Respondent and has also obtained occupancy certificate for the house from the village panchayat of Chicalim.

The Appellant states that he has not violated any law at the time of construction of building nor any condition mentioned in the Development permission issued by the Respondent and the construction has been carried out as per the approved plan with all valid permissions required at the relevant time.

If any permission was required besides the permissions obtained by the Appellant, then Respondent would not have grant the Development Permission nor the completion certificate.

The Appellant states that granting of permissions by the Respondent for the said building shows that no other permissions were required at the relevant time under prevailing law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 05/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality has not been given to the Appellant. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection. The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. The Appeal ought to have been filed on 10/12/2022 but the same has been filed on 06/03/2023 therefore there is delay of 87days.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-C-49)/2022-23/1090 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-C-49)/2022-23/1090.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 70: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ramji Prasad against Mormugao Planning and Development Authority. (File No. TP/B/APL/359/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-P-52)/2022-23/1088 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant alongwith Lakhan Prasad is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No. 5 admeasuring 500 sq mts surveyed under Survey No. 60 Sub division No. 1 of Dabolim village, Mormugao Taluka which has been purchased by Appellant vide the Deed of sale dated 31/10/2003 registered before the sub registrar of Mormugao situated at Dabolim Goa.

The said house has been constructed as per the building plan approved by Respondent and after obtaining all the necessary permissions required for the said construction. Prior to obtaining all the permissions the conversion sanad was obtained from the office of Dy. Collector and also NOC is from the Indian Navy was obtained for height clearance.

The Appellant states that the said house has been completed in all respect and has obtained the completion certificate for the said house from the Respondent and has also obtained occupancy certificate for the house from the Village Panchayat of Chicalim.

The Appellant further states that he has not violated any law at the time of construction of building nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan with all valid permissions required at the relevant time.

If any permission was required besides the permissions obtained by the Appellant, then Respondent would not have grant the Development permission nor the completion certificate.

The Appellant states that granting of permissions by the Respondent for the said building shows that no other permissions were required at the relevant time under prevailing law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection. The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. The Appeal ought to have been filed on 10/12/2022 but the same has been filed on 08/03/2023 therefore there is delay of 89 days.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-P-52)/2022-23/1088 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-P-52)/2022-23/1088.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 71: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Shobha Kamata Prasad against Mormugao Planning and Development Authority. (File No. TP/B/APL/360/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-P-75)/2022-23/1086 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No. 39 admeasuring 247.53 sq mts surveyed under Survey No. 60 Sub division No. 1-K of Dabolim village, Mormugao Taluka which has been purchased by Appellant vide the Deed of sale dated 25/01/2005 and 04/12/2019 registered before the sub registrar of Mormugao situated at Dabolim Goa.

The said house has been constructed as per the building plan approved by Respondent and after obtaining all the necessary permissions required for the said construction. Prior to obtaining all the permissions the conversion sanad was obtained from the office of Dy. Collector and also NOC is from the Indian Navy was obtained for height clearance.

The Appellant states that the said house has been completed in all respect and he has obtained the completion certificate for the said house from the Respondent and has also obtained occupancy certificate for the house from the village panchayat of Chicalim.

The Appellant further states that he has not violated any law at the time of construction of building nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan with all valid permissions required at the relevant time.

If any permission was required besides the permissions obtained by the Appellant, then Respondent would not have grant the Development Permission nor the completion certificate.

The Appellant states that granting of permissions by the Respondent for the said building shows that no other permissions were required at the relevant time under prevailing law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 05/11/2022 under section 52 of the Town and Country Planning Act, 1974. The Respondent sent a demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.

- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent. The Impugned notice is issued without giving any valid reasons, and without any site inspection. The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- i) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- j) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. The Appeal ought to have been filed on 10/12/2022 but the same has been filed on 06/03/2023 therefore there is delay of 87days.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-P-75)/2022-23/1086 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-P-75)/2022-23/1086.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 72: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Channaveerappa Jamalingappanava against Mormugao Planning and Development Authority. (File No. TP/B/APL/361/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1057 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No. 11 admeasuring 367.15 sq mts surveyed under Survey No. 60, Sub division No. 1-AD of Dabolim village, Mormugao Taluka. Appellant is the owner which has been purchased by Appellant vide the Deed of sale dated 14/7/2017 registered before the sub registrar of Mormugao under No. MOR-BK1-01181-2017 dated 18/7/2017 situated at Dabolim Goa from Anthony Micheal and Sandra Micheal.

The Appellant states that he has obtained the conversion sanad under No. 11/DYC-MOR/CONV/35/2019/865 from the office of Dy. Collector/SDO, Mormugao Goa dated 28/5/2021.

The house situated in the said plot is an old one having cemented roof. As per the letter dated 7/11/2000 issued by the flag officer commanding the said plot bearing Plot No. 11 wherein the house has been constructed has the permissible height of 6.4 mts. The height of the said house is within permissible limits.

The Appellant states that he has not violated any law at the time of construction of structure as the house is an old one and does not require any permission under the law.

The Appellant further states that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same. Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site and the said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Appellant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant. The Appeal ought to have been filed on or before 10/12/2023 but has been filed on 6/3/2023 therefore there is a delay of 87 days in filing appeal.

The Appellant has therefore prayed:

- a) To quash and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1057 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1057.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 73: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Renuka Hadlageri against Mormugao Planning and Development Authority. (File No. TP/B/APL/362/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1062 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house bearing no A-1 situated at Dabolim Goa has been constructed on the landed property bearing Plot No. 45 surveyed under Survey No. 60, Sub division No. 1 of Dabolim village, Mormugao Taluka of which Appellant is the co-owner of the plot, which has been purchased vide the Deed of Sale dated 6/7/2021 registered before the sub registrar of Mormugao under No. MOR-1-1028-2021 dated 16/7/2021 situated at Dabolim Goa from Siddappa Sangappa Meti and Neelamma Siddappa Meti.

The said plot has been purchased alongwith part of structure A-1 existing therein in the said plot. The said construction was carried out after obtaining Development Permission bearing No. MPDA/9-M-94/2012-13/1834 dated 29/1/2013 from Respondent.

The NOC dated 10/3/2014 has been issued by the Flag Officer Commanding for construction of the house therein.

The said structure has been constructed as per the plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

The Appellant have not violated any law at the time of construction of structure nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan.

The Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same.

Instead the Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site.

The said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Appellant states that there is no Transgression report about the alleged illegality has not been given to the Appellant. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal:

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- h) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- i) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- j) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which, this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant for the said work shall be recovered from the Appellant. Hence appeal is filed within time.

The Appellant has therefore prayed:

- a. To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1062 issued by Respondent.
- b. To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1062.
- c. Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 74: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Hariram Sharma against Mormugao Planning and Development Authority. (File No. TP/B/APL/363/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1067 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

It is the case of the Appellant that the Appellant is the owner of house situated at Dabolim Goa, which has been constructed on the landed property bearing Plot No.38 admeasuring 247.53 sq. mts. surveyed under Survey No. 60, Sub division No.1 of Dabolim village, Mormugao Taluka of which Appellant is the owner which has been purchased by Appellant vide the Deed of Sale dated 30/08/2019 registered before the sub registrar of Mormugao situated at Dabolim Goa from Mr. Uma Umesh Yadav and Umesh Yadav.

The house situated in the said plot is an old one having cemented roof. The height of the said house is within permissible limits.

The Appellant have not violated any law at the time of construction of structure as the house is an old one and does not require any permission under the law.

The Respondent issued show cause notice dated 5/9/2022 which was received by the Appellants wife as the Appellant was at his native place in Calcutta as his mother was unwell and bedridden.

Thereafter Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974, which was received by the Appellants wife as the Appellant was at his native place as his mother was unwell and bedridden.

Only on 25/1/2023 when the Appellant came down from native place at the relevant time the Appellant's wife inform him that notice were issued by the Respondent that time Appellant became aware of the Show cause notice and Final notice being issued to Appellant.

The notices were issued without giving fair hearing to the Appellant therefore bad in law.

The said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Appellant states that there is no Transgression report about the alleged illegality has not been given to the Appellant. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant herein prefers the present appeal before this Hon'ble Court. The said Appeal is preferred on the following amongst other grounds which are taken without prejudice to one another.

Grounds of appeal as stated by the Appellant:

- a. That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b. That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c. That the impugned notice and the show cause notice were never served on the Appellant
- d. That the impugned notices were issued without giving fair hearing to the Appellant therefore bad in law.

- e. The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- f. The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- g. The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- h. The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- i. The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- j. The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- k. Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- l. No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- m. The Impugned notice does not show the portion of house to be demolished or the illegal portion neither the sketch is annexed to the notice showing the part to be demolished.
- n. The Impugned notice does not specify which structure is required to be demolished nor identifies the structure to be demolished.
- o. The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1067 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1067.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 75: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ramesh Fatji against Mormugao Planning and Development Authority. (File No. TP/B/APL/364/22)

Member Secretary informed that an appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1080 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant is the owner of house situated at Dabolim Goa which has been constructed on the landed property bearing Plot No.29 admeasuring 350 sq mts surveyed under Survey No.60, Sub division No.1 of Dabolim village, Mormugao Taluka. Appellant is the owner of the plot, which has been purchased by Appellant vide the Deed of Sale dated 19/04/2001 registered before the sub registrar of Mormugao under No. 467 at pages 21 to 31 in book No. I vol.No.321 dated 12/07/2001 situated at Dabolim Goa from Mr. Rui Manuel Da Silva Costa Araujo and others.

The owner of the plot is Appellant father namely Suresh Fatji and the house is owned by Appellant mother namely Suhasini Fatji and the Appellant does not have any right in the plot and house. The house situated in the said plot is an old one having cemented roof. The height of the said house is within permissible limits.

The Appellant states that he has not violated any law at the time of construction of structure as the house is an old one and does not require any permission under the law.

The Appellant further states that the Respondent issued show cause notice dated 5/9/2022 which was not received by the Appellant nor by any family members of Appellant at any point of time. Thereafter Respondent has issued Demolition Notice dated 04/11/2022 under section 52 of the Town and Country Planning Act 1974, which was not received by the Appellant nor by any family members of Appellant at any point of time.

Only on 27/1/2023, when the Appellant had gone to inquiry with the Respondent as to any notice has been served on Appellant as most of the people in the vicinity had received notices from Respondent.

At the relevant time Appellant became aware of the notice has been served on the person by name Ramesh Madar and thereafter Appellant meet that person and collected copy of the notice from him and the said notices were issued without giving fair hearing to the Appellant therefore bad in law. The said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Notice sent to the Appellant is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice" The Appellant states that there is no Transgression report about the alleged illegality given to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) That the impugned notice were never served on the Appellant and
- d) That the impugned notices were issued without giving fair hearing to the Appellant therefore bad in law.
- e) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- f) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- g) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- h) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- i) The Respondent does not have any power to issue the notice for violation of obstacle limitation surface.
- j) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- k) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- l) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- m) The Impugned notice does not show the portion of house to be demolished or the illegal portion neither the sketch is annexed to the notice showing the part to be demolished.
- n) The Impugned notice does not specify which structure is required to be demolished nor identifies the structure to be demolished.

- o) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant.

The Appellant has therefore prayed:

- a) To quashed and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1080 issued by Respondent.
- b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1080.
- c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Member Secretary informed that the matter was earlier placed before 187th meeting of TCP Board held on 20/03/2023, during which Adv. Chetan Palekar appeared for the Appellant whereas Adv. Nikhil Pai appeared for Respondent PDA. During the hearing, Adv. Nikhil Pai had offered to file a reply/comments of behalf of MPDA and had requested for adjournment of the matters and the matter was therefore adjourned.

During the present hearing, Appellant was represented by Adv. Chetan Palekar, whereas Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Chetan Palekar appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 76: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Everton Vales V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/365/23)

Member Secretary informed that an Appeal is preferred to the Board under Section 52 (b) of the Goa Town & Country Planning Act, 1974, against the Order bearing ref. No. MPDA/9-N-88(7-V-76)/2022-23/1684 dated 27/02/2023 issued by the Respondent MPDA.

The Appellant states that the Appellant is the lawful Attorney of Mrs. Ava Maria Vales as per General Power of Attorney bearing registration no. 121989 / 2015 dated 22 May 2015.

The Appellant herein is the co-owner of the plot C-10 admeasuring an area of 420.16 sq. mts. forming part of the property bearing Survey No. 174/1-A-3, of Sancoale Village of the Mormugoa Taluka, South Goa, Goa which Plot is hereinafter referred to as the "SAID PLOT".

The Appellant was issued a letter under No. MPDA/9-N-88/2022-23/1538 dated 07/02/2023 by the Respondent wherein it has been alleged that the Appellant has carried out construction of a building (Greva Solitaire) by violating the Obstacle Limitation Surface (OLS) by 3.4706 mtrs within the approach funnel of Dabolim Village, Mormugao Taluka.

The Appellant vide his letter dated 13th February 2023 submitted a detailed reply wherein it was brought to the notice of the Respondent that the Appellant was not in a position to verify as to how the Flag Commanding Officer had arrived at the conclusion that the Appellant had carried out construction that violated the OLS by 3.4706 mtrs, as no such details were furnished to the Appellant by the Respondent and that the construction of the Appellant was carried out with all the necessary approvals from the concerned authorities including the approvals from the Respondent.

The Respondent has now issued a fresh notice bearing ref. No. MPDA/9-N-88(77-V-76)/2022-23/1684 dated 27/02/2023 under Section 52 of the Town & Country Planning Act claiming that the said reply of the Appellant has not been satisfactory, compelling the Appellant to file the present Appeal.

The Appellant submits that by virtue of a Court Decree the Said Plot was allotted to the Appellant and had applied to the Office of the Town and Country Planning Department, Mormugao Goa for construction of a residential building along with a compound wall and Technical Clearance Order vide Ref No. DH/5262/3/MTP/15/205 dated 05/03/2015 was obtained by the Appellant.

The Appellant states that prior to carrying his construction he obtained NOC from the Naval Authorities for height level and as per the said NOC a height of 12.4 mtrs. from the highest contour was granted for the said construction.

The Appellant further states that after obtaining NOC from the Naval authorities, he submitted a file for construction to the office of the Respondent as per the height permitted by the Naval Authorities.

The Appellant further submits that upon obtaining the Development Permission, the Construction License was obtained for the said construction vide Construction License No. 42/2015-16 dated 25.11.2015 and No. 3/2017-18 dated 04/04/2017. The Appellant states that the said Plot was granted conversion Sanad issued by the office of the Collector, vide letter No. COL/SG/CONV/98/2011/6139 dated 29.06.2012.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate. The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-V-76/2017-18/250 dated 19.06.2017.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the Office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2017-18/415 dated 28/06/2017.

The Appellant state that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of residential building (Gr+3) in plot C-10, property bearing Survey No. 174/1-A-3, of Sancoale Village around Dabolim Airport, Mormugao Taluka, Goa.

The Appellant states that inspite of obtaining the said NOC from the Naval authorities and applying for construction as per the NOC granted by the Naval Authorities, the Appellant had drawn plans within the permissible height and carried out the said construction as per the approvals.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that the Respondent granted NOCs for sale of Flat/Apartments/Shops in the said complex and upon obtaining the said NOCs for sale the Appellant created third party rights to the shops and apartments and he is no longer the owner of the majority shops/apartments and the said persons are not parties to the said Notices issued by the Respondent.

The Appellant further submits that the MPDA has not taken into account that the Naval Authorities have carried out a proper survey to identify the exact violation if any by the Appellant and the said allegations are vague without any concrete details.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone is in close vicinity of a hill full of trees which has a far greater height then the height of the Appellant's building.

The Appellant further submits that the Naval authorities themselves have carried out construction in the area for which they do not seek any permission from the concerned State authorities and have built buildings of more than 5 to 6 floors claiming that the concerned Act does not require them to obtain any permissions from the State Authorities and are themselves the violators of law.

The Appellant states that the aircraft technology as on today have aircrafts which have short take off and short landing and do not require to curb such height restrictions even though the Appellant has not violated the height permitted for his construction.

The Appellant states that since the Respondent has failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above Appeal.

Being aggrieved by the said Notice in terms of section 52 of the Town & Country Planning Act, the Appellant herein prefers the present Appeal on the following grounds:

GROUND

- i. The said Notice dated 27/02/2023 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.

- iv. The Notice dated 27/02/2023 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 07.02.2023 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has prior to issuing the said Notice date 27/02/2023 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant states that the cause of action accrued on or about the last week of February when the Appellant was served with the notice dated 27/02/2023 by post and the said Appeal is within the period of limitation.

The Appellant states that this Authority has the jurisdiction to hear and decide the said Appeal. The Appellant have not filed any other appeal before any Court or Authority on the same subject matter.

The Appellant therefore prays:

- 1) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 27.02.2023.
- 2) to quash and set aside/recall/revoke the letter dated 27/02/2023 vide ref No. MPDA/9-N-88(7-V-76)/2022-23/1684.
- 3) to stay the execution of the letter dated 27/02/2023 vide ref No. MPDA/9-N-88(7-V-76)/2022-23/1684.

Member Secretary informed that notices were accordingly issued to parties to remain present for the meeting for arguments in the matter.

During the hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 77: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Everton Vales V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/368/23)

Member Secretary informed that an Appeal is preferred to the Board under Section 52 (b) of the Goa Town & Country Planning Act, 1974, against the Order bearing ref. No. MPDA/9-N-88(7-V-75)/2022-23/1683 dated 27/02/2023 issued by the Respondent MPDA.

The Appellant most respectfully submits as under:

The Appellant herein is the co-owner of the plot measuring an area of 4332.00 sq. mts. forming part of the property bearing survey No. 174/1-A-2 and 174/1-A-4, of Sancoale Village of the Mormugao Taluka, South Goa, Goa which Plot is hereinafter referred to as the "SAID PLOT".

The Appellant was issued a letter under No. MPDA/9-N-88/2022-23/1541 dated 07/02/2023 by the Respondent wherein it has been alleged that the Appellant has carried out construction of a House (Greva Plaza) by violating the obstacle Limitation Surface (OLS) by 5.9108 mtrs., within the approach funnel of Dabolim Village, Mormugao Taluka.

The Appellant vide his letter dated 13th February 2023 submitted a detailed reply wherein it was brought to the notice of the Respondent that the Appellant was not in a position to verify as to how the Flag Commanding Officer had arrived at the conclusion that the Appellant had carried out construction that violated the OLS by 5.9108 mtrs., as no such details were furnished to the Appellant by the Respondent and that the construction of the Appellant was carried out with all the necessary approvals from the concerned authorities including the approvals from the Respondent.

The Respondent has now issued a fresh notice Ref. No. MPDA/9-N-88(7-V-75)/2022-23/1683 dated 27/02/2023 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, compelling the Appellant to file the present Appeal.

The Appellant submits by virtue of a Court Decree the Said Plot had applied to the office of the Mormugao Planning and development Authority, Mormugao Goa for construction of a residential building along with a compound wall vide Development Permission No. MPDA/7-V-75/2016-17/1323 dated 27/12/2016 and renewed vide No. MPDA/7-V-75/2019-20/1302 dated 17/12/2019 were obtained by the Appellant.

The Appellant states that prior to carrying his construction he obtained NOC from the Naval Authorities for height level and as per the said NOC a height of 8.4 mtrs for Block A and 9.9 mtrs for Block B, from the highest contour was granted for the said construction.

The Appellant further states that after obtaining NOC from the Naval authorities, he submitted a file for construction to the office of the Respondent as per the height permitted by the Naval Authorities.

The Appellant further submits that upon obtaining the Development Permission, the Construction License was obtained for the said construction vide Construction License No. 2/2017-18 dated 04.04.2017 and renewed letter vide no. VP/S/21/2020-21/199 dated 08-06-2020.

The Appellant states that the Said Plot was granted conversion Sanad issued by the office of the Collector, vide letter No. COL/SG/CONV/78/2011/6140 dated 29.06.2012 and letter No. 11/28/2011/DYC/32 dated 03/01/2012.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No.

- MPDA/7-V-75/2018-19/941 dated 19.11.2018
- MPDA/7-V-75/2018-19/1182 dated 21.12.2018
- MPDA/7-V-75/2019-20/1559 dated 21.02.2020
- MPDA/7-V-75/2020-21/209 dated 23.06.2020
- MPDA/7-V-75/2020-21/1017 dated 11.02.2021
- MPDA/7-V-75/2021-22/1425 dated 08.12.2021

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No.

- VP/S/2018-19/2276 dated 22/02/2019
- VP/S/2019-20/3658 dated 05/03/2020
- VP/S/2019-20/3761 dated 20/03/2020
- VP/S/2020-21/450 dated 19/08/2020
- VP/S/2021-22/27 dated 05/04/2021
- VP/S/2021-22/2835 dated 14/01/2022

The Appellant state that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of residential building (Gr+1, for Block A) and (Gr+2, for Block B) in property bearing Survey No. 174/1-A-2 and S.No.174/1-A-4 Plot No. 1, of Sancoale Village around Dabolim Airport Mormugao Taluka, Goa.

The Appellant states that in spite of obtaining the said NOC from the Naval authorities and applying for construction as per the NOC granted by the Naval Authorities, the Appellant had drawn plans within the permissible height and carried out the said construction as per the approvals.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that the Respondent granted NOCs for sale of Flat/Apartments/Shops in the said complex and upon obtaining the said NOCs for sale the Appellant created third party rights to the shops and apartments and he is no longer the owner of the majority shops/apartments and the said persons are not parties to the said Notices issued by the Respondent.

The Appellant further submits that the MPDA has not taken into account that the Naval Authorities have carried out a proper survey to identify the exact violation if any by the Appellant and the said allegations are vague without any concrete details.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone is in close vicinity of a hill full of trees which has a far greater height than the height of the Appellant's building.

The Appellant further submits that the Naval authorities themselves have carried out construction in the area for which they do not seek any permission from the concerned State authorities and have built building of more than 5 to 6 floors claiming that the concerned Act does not require them to obtain any permissions from the State Authorities and are themselves the violators of law.

The Appellant states that the aircraft technology as on today have aircrafts which have short take off and short landing and do not require to curb such height restrictions even though the Appellant has not violated the height permitted for his construction.

The Appellant states that since the Respondent has failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Notice in terms of section 52 of the Town & Country Planning Act, the Appellant herein prefers the present Appeal on the following grounds:

GROUND

- i. The said Notice dated 27/02/2023 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 27/02/2023 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 07.02.2023 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has prior to issuing the said Notice date 27/02/2023 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant states that the cause of action accrued on or about the second week of November when the Appellant was served with the notice dated 27/02/2023 by post and the said Appeal is within the period of limitation.

The Appellant states that this Authority has the jurisdiction to hear and decide the said Appeal. The Appellant have not filed any other appeal before any Court or Authority on the same subject matter.

The Appellant therefore prays:

- 1) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 27.02.2023.
- 2) to quash and set aside/recall/revoke the letter dated 27/02/2023 vide ref No. MPDA/9-N-88(7-V-75)/2022-23/1683
- 3) to stay the execution of the letter dated 27/02/2023 vide ref No. MPDA/9-N-88(7-V-75)/2022-23/1683
- 4) to call for records and proceedings from the office of the Respondent pertaining to the present matter.

Member Secretary informed that notices were accordingly issued to parties to remain present for the meeting for arguments in the matter.

During the hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 78: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Everton Vales V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/366/23)

Member Secretary informed that an Appeal is preferred to the Board under Section 52 (b) of the Goa Town & Country Planning Act, 1974, against the Order bearing ref. No. MPDA/9-N-88(7-V-59)/2022-23/1681 dated 27/02/2023 issued by the Respondent MPDA.

The Appellant most respectfully submits as under:

The Appellant herein is the co-owner of Plot No. 1, admeasuring an area of 3600.00 sq. mts. forming part of the property bearing survey No. 177 sub-division 1 - A of Sancoale Village of the Mormugoa Taluka, South Goa, Goa which Plot is hereinafter referred to as the "SAID PLOT".

The Appellant was served with a Show Cause Notice bearing No. MPDA/9-N-88/2022-23/1540 for one Greva Residency – 1 and MPDA/9-N-88/2022-23/1539 for one Greva Residency – 2, both dated 07/02/2023 asking for clarification to a letter claimed to be received from the Commanding Officer. However, no letter received from the Commanding Officer was annexed nor furnished to the Appellant to verify the contents of the same.

The Appellant submitted a reply to the Said Show Cause Notices of the Respondent dated 13/02/2023 whereby it was informed to the Appellant that prior to the said construction the Appellant had obtained the height clearance from the Naval Authorities and only thereafter the plans for construction were submitted and approved as per the height so permitted.

As per the said Show Cause Notices bearing No. MPDA/9-N-88/2022-23/1539 and MPDA/9-N-88/2022-23/1540 both dated 07/02/2023 by the Respondent wherein it has been alleged that the Appellant has carried out construction of a House/Building of one Greva Residency - 1 and one Greva Residency - 2) by violating the obstacle Limitation Surface (OLS) by 0.8396 mtrs. and 0.17 mtrs. respectively within the approach funnel of Dabolim Village, Mormugao Taluka.

The Appellant vide his letter dated 13th February 2023 submitted a detailed reply in relation to the Show Cause Notice dated 07 February 2023, wherein it was brought to the notice of the Respondent that the Appellant was not in a position to verify as to how the Flag Commanding Officer had arrived at the conclusion that the Appellant had carried out construction that violated the OLS by 0.8396 mtrs. and 0.17 mtrs. respectively, as no such details were furnished to the Appellant by the Respondent and that the construction of the Appellant was carried out with all the necessary approvals from the concerned authorities including the approvals from the Respondent.

The Respondent has now issued a fresh notice bearing Ref. No. MPDA/9-N-88(7-V-59)/2022-23/1682 for one Greva – Residency 1 and MPDA/9-N-88(7-V-59)/2022-23/1682 for one Greva Residency - 2, both dated 27/02/2023 claiming to be a notice under Section 52 of the Town & Country Planning Act stating that the said Reply submitted to the Respondent by the Appellant has not been satisfactory, compelling the Appellant to file the present Appeal.

The Appellant submits that he was gifted the Said Plot and had applied to the Office of the Town Planner, Mormugao Goa for construction of a Commerical / Multi – Family Unit, along with a compound wall vide Order No. MPDA/7-V-11/06-07/2423 dated 16/03/2007 and MPDA/7-V-11/09-10/1881 dated 14/1/2010 (revised) and Development Permission vide No. MPDA/7-V-11/2011-12/570 dated 04.07.2011 were obtained by the Appellant.

The Appellant states that prior to carrying his construction he obtained NOC from the Naval Authorities for height level and as per the said NOC a height of 8.5 meters and 7.00 meters was granted for the said construction of Greva Residency.

The Appellant further states that after obtaining NOC from the Naval authorities, he submitted a file for construction to the Office of the Respondent as per the height permitted by the Naval Authorities for Greva Residency.

The Appellant further submits that upon obtaining the Technical Clearance Orders, the Construction Licenses were obtained for the said construction vide Construction License No. 03/2007-2008 dated 11/04/2007, 63/2009-10 dated 05/02/2010, and 32 dated 29/08/2011.

The Appellant states that the Said Plot was granted conversion Sanad issued by the office of the Collector, vide letter No. AC-II/SG/CONV/153/2007 dated 29/1/2008.

The Appellant submits that upon completion of the constructions as per the permissions/licenses issued by the concerned authorities, the Appellant approached the Office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said constructions were issued vide Order No. MPDA-7-V-11/2012-13/625 dated 25/07/2012; Order No. MPDA/7-V-11/2012-13/1768 dated 16/01/2012 and Order No. MPDA/7-V-11/2012-13/1252 dated 17/10/2012

The Appellant submits that upon completion of the constructions as per the permissions/licenses issued by the concerned authorities, the Appellant approached the Office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy Certificates vide letter Nos. VP/S/2013-14/176 dated 25/4/2013; VP/S/2013-14/152 dated 20/04/2013 and VP/S/2013-14/153 dated 20/04/2013.

The Appellant state that prior to the said constructions and prior to the plans for the said constructions, the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of commercial and residential buildings in Survey No. 177, Plot No. 1, of Sancoale Village around Dabolim Airport Mormugao Taluka, Goa.

The Appellant states that after obtaining the said NOC from the Naval authorities and applying for construction as per the NOC granted by the Naval Authorities, the Appellant had drawn plans within the permissible height and carried out the said construction as per the approvals.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said constructions of Greva Residency were as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that the Respondent granted NOCs for sale of Flat/Apartments/Shops in the said complex and upon obtaining the said NOCs for sale the Appellant created third party rights to the shops and apartments and he is no longer the owner of the majority shops/apartments and the said persons are not parties to the said Notices issued by the Respondent.

The Appellant further submits that the Respondent has not taken into account whether the Naval Authorities have carried out a proper survey to identify the exact violation, if any by the Appellant, and the said allegations are vague without any concrete details.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct. Furthermore, it is unknown to the Appellant as to how the Respondent has defined his constructions as Greva Residency – 1 and Greva Residency – 2. The details provided by the Respondent in their said Show Cause Notices dated 07/02/2023 and Notices dated 27/02/2023 are vague and ambiguous. Moreover, a Notice dated 04/11/2022 with respect to the Said Plot was already received from the Respondent by the Appellant to which the Appellant has already filed an Appeal before this Hon'ble Court. Issuing of multiple notices by the Respondent for the Said Plot, is mere harassment and cost for the Appellant.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone is in close vicinity of a hill full of trees which has a far greater height than the height of the Appellant's building.

The Appellant further submits that the Naval authorities themselves have carried out construction in the area for which they do not seek any permission from the concerned State authorities and have built building of more the 5 to 6 floors claiming that the concerned Act does not require them to obtain any permissions from the State Authorities and are themselves the violators of law.

The Appellant states that the aircraft technology as on today have aircrafts which have short take off and short landing and do not require to curb such height restrictions even though the Appellant has not violated the height permitted for his construction.

The Appellant states that the said Notices dated 27/2/2023 clearly states that constructions could not be surveyed and it is merely claimed to be an obstruction.

The Appellant states that since the Respondent has failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above Appeal.

Being aggrieved by the said Notice in terms of section 52 of the Town & Country Planning Act, the Appellant herein prefers the present Appeal on the following grounds:

GROUND

- i. The said Notices dated 27/02/2023 are bad in law and against the principles of natural justice.
- ii. The said Notices are arbitrary and capricious and are issued to the Appellant without proper enquiry merely to harass the Appellant with multiple notices.
- iii. The said Notices are without any application of mind.
- iv. The Notices dated 27/02/2023 are liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out legal constructions with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the constructions of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his constructions.
- viii. The Show Cause Notices dated 07.02.2023 is perverse and contrary to the material on record.
- ix. The notices are defective and suffers from procedural lapses.
- x. The Respondent has prior to issuing the said Notices dated 27/02/2023 failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant states that the cause of action accrued on or about the last week of February when the Appellant was served with the notice dated 27/02/2023 by post and the said Appeal is within the period of limitation.

The Appellant states that this Authority has the jurisdiction to hear and decide the said Appeal. The Appellant have not filed any other appeal before any Court or Authority on the same subject matter.

The Appellant therefore prays:

- 1) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notices dated 27.02.2023 in relation to one Greva Residency – 1 and one Greva – Residency – 2.
- 2) to quash and set aside/recall/revoke the notices dated 27/02/2023 vide ref No. MPDA/9-N-88(7-V-59)/2022-23/1681 and ref No. MPDA/9-N-88(7-V-59)/2022-23/1682.

- 3) to stay the execution of the notices dated 27/02/2023 vide ref No. MPDA/9-N-88(7-V-59)/2022-23/1681 and ref No. MPDA/9-N-88(7-V-59)/2022-23/1682.
- 4) to call for records and proceedings from the office of the Respondent pertaining to the present matter.

Member Secretary informed that notices were accordingly issued to parties to remain present for the meeting for arguments in the matter.

During the hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 79 Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Bhaskar K. Gangulikar V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/301/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174 sub-division 1 -A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was issued a letter under ref. No. MPDA/9-N-88/2022-23/634 dtd. 18.08.2022 by the Respondent asking for clarification to a letter claimed to be received from the Commanding Officer.

The Appellant vide his reply dated 27.08.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Appellant was served with a notice under ref. No. MPDA/9-N-88/2022-23/781 dt. 05.09.2022 alleging about illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 1.9148 mtrs., within the approach funnel in the property bearing Plot Nos. 1 & 12 of Survey No. 176-1 of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 04.10.2022 submitted his detailed reply / explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has then issued a notice under ref. No. MPDA/9-N-88(7-G-53)/2022-23/1095 dated 4.11.2022 under Section 52 of the Town & Country Planning Act, claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot, had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Development Permission was granted vide No. **MPDA/7-G-53/2009-10/1314 dt. 15.10.2009.**

The Appellant further submits that upon obtaining the Technical Clearance Order, the Construction License was obtained for the said construction vide Construction License No. 46/2006-07 dated 24.11.2006.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector, vide letter No. AC-II/SG/CONV/14/2009 dated 14.08.2009.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/ licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-G-63/06-07/1138 dated 06.10.2006.

The Appellant submits that upon completion of the construction of dwelling house as per the permissions/ licenses issued by the concerned authorities, he approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2009-10/778 dated 05.11.2009.

The Appellant state that prior to the said construction and prior to the plans for the said construction, he has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities, the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height then the height of the Appellant's building.

The Appellant states that the Respondent prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) To call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide No. MPDA/9-N-88/2022-23/1095.
- (c) To stay the execution of the letter dated 4.11.2022 vide No. MPDA/9-N-88/2022-23/1095.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in

the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 80: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Srinivas Kannan V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/291/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was issued a letter under No. MPDA/7-K-124/2022-23/623 dt. 17.08.2022 by the Respondent asking for clarification to a letter claimed to be received from the Commanding Officer.

The Appellant vide his reply dated 29.08.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Appellant was served with a notice under ref. No. MPDA/7-K-124/2022-23/785 dt. 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.7745 mts., within the approach funnel in the property bearing Plot No. A1-4 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 16.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has then issued a notice under ref. No. MPDA/7-K-124/2022-23/1105 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house alongwith a compound wall and Development Permission was granted vide No. MPDA-7-K/124/2016-17/395 dated 8.7.2016.

The Appellant further submits that upon obtaining the Technical Clearance Order, the Construction License was obtained for the said construction vide Construction License No. 33/2016-17.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector, vide letter No. 11/04/DYC-MOR/CONV/2015/2316 dated 25.06.2015.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-K-124/2017-18/1308 dated 08.03.2018.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, he approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2018-19/284 dated 17.05.2018.

The Appellant further submits that NOC for the said construction from the Primary Health Centre was issued by a Medical Officer vide letter No. PHCC/CORT/NOC/OCCU/17-18/1685 dated 20.03.2018.

The Appellant state that prior to the said construction and prior to the plans for the said construction, he has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities, the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height then the height of the Appellant's building.

The Appellant states that the Respondent prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.

- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide ref. No. MPDA/7-K-124/2022-23/1105.
- (c) To stay the execution of the letter dated 4.11.2022 vide ref. No. MPDA/7-K-124/2022-23/1105.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 81: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Digambar Bhute V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/283/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref.No. MPDA/7-B-100/2022-23/787 dt. 05.09.2022 alleging about illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 2.7534 mtrs., within the approach funnel in the property bearing Plot No. E-4 of Survey No. 174/1 of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 12.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has then issued a notice under ref. No. MPDA/7-B-100/2022-23/1097 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot, had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house alongwith a compound wall and Development Permission was granted vide No. MPDA/7-B-100/2016-17/660 dt. 26.08.2016 and Technical Clearance Order ref. No. DH/5620/3/MTP/15/893 dt. 22/09/2015.

The Appellant further submits that upon obtaining the Technical Clearance Order, the Construction License was obtained for the said construction vide Construction License No. 36/2015-16 dated 17.11.2015 and No. 44/2016-17 dated 10/10/2016.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector, vide letter No. AC-II/SG/CONV/40/2003 dated 01.04.2004.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-B-100/2017-18/712 dated 16.11.2017.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2017-18/1253 dated 19.01.2018.

The Appellant further submits that NOC for the said construction from the Primary Health Centre was issued by a Medical Officer vide his letter No. PHCC/CORT/NOC/2015-16/868 dated 21.10.2015.

The Appellant state that the Respondent at the time of submission of the building plans did not insist on any NOC from the office of the Flag Commanding Officer (Navy)

The Appellant states that several structures in and around and vicinity are granted approvals/NOCs for height for more than the height of the construction of the Appellant. The Appellant has carried out his construction as per his technical approval granted to him by the Respondent.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height then the height of the Appellant's building.

The Appellant states that the Respondent prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.

- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) To call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide No. MPDA/7-B-100/2022-23/1097.
- (c) To stay the execution of the letter dated 4.11.2022 vide No. MPDA/7-B-100/2022-23/1097.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 82: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Puttudas Naik V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/284/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174 sub-division 1 -A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref.No. MPDA/7-N-173/2022-23/591 dt. 12.08.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 4.5016 mts., within the approach funnel in the property bearing Plot No. D-14 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka. The Appellant filed a reply dated 29/8/2022.

The Appellant was served with a show cause notice vide a letter No. MPDA/7-R-96/2022-23/790 dated 5.9.2022. The Appellant vide his reply dated 15.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-N-173/2022-23/1109 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree duly approved by the MPDA and upon purchasing the said plot, had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Development Permission was granted vide No. MPDA/7-N-173/2010-11/1652 dt. 25.01.2011.

The Appellant further submits that upon obtaining the Technical Clearance Order, the Construction License was obtained for the said construction vide Construction License No. 57/2010-11 dated 28.02.2011.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector, vide letter No. AC-II/SG/CONV/30/2009 dated 18.11.2009.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-N-173/2012-13/1538 dated 05.12.2012.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2013-14/45 dated 6.04.2013.

The Appellant state that prior to the said construction and prior to the plans for the said construction, the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities, the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height than the height of the Appellant's building.

The Appellant states that the aircraft technology as on today have aircrafts which have short take off and short landing and do not require to curb such height restrictions even though the Appellant has not violated the height permitted for his construction INS Hansa, the survey so conducted is with respect of the property bearing survey No. 60/2 of Dabolim Village, Mormugao Taluka, Goa and no mention is made of the property bearing survey No. 177 sub-division 1 of Sancoale Village.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide No. MPDA/7-N-173/2022-23/1109.
- (c) To stay the execution of the letter dated 4.11.2022 vide No. MPDA/7-K-173/2022-23/1109.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 83: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mrs. Priscilla Memon V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/287/22)

Member Secretary informed that the Appellant is the co-owner of the plots admeasuring an area of 450 sq.mts. and 270 sq.mts., forming part of the property bearing survey No. 174 sub-division 1 -A of Sancoale Village of Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-M-107/2022-23/783 dt. 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 5.4149 mtrs., within the approach funnel in the property bearing Plot No. A1-6, A1-6/2 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant vide her reply dated 15.09.2022 submitted her detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-M-107/2022-23/1107 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that she had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot, had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Vide Technical Clearance Order vide No. DH/5494/3/MTP/15/825 dated 31.08.2015.

The Appellant further submits that upon obtaining the Technical Clearance Order the Construction License was obtained for the said construction vide Construction License No. 26/2015-16 dated 09.10.2015.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector vide letter No. AC-II/MOR/CONV/09/2015/6803.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-M-107/2017-18/1316 dated 09.03.2018.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2018-19/69 dated 10.04.2018.

The Appellant further submits that NOC for the said construction from the Primary Health Centre was issued by a Medical Officer vide his letter No. PHCC/CORT/NOC/15-16/ dated 29.09.2015.

The Appellant state that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant further submits that while applying for NOC for Height Clearance from Navy, contour details were submitted based on drawings made by MPDA approved Civil Engineer and Site Elevation, Public Works Department, S.D. IV W. D. VIII (Bldgs. South), Vasco-da-Gama, Goa, dated 21.11.2013.

The Appellant further states that after submitting documents for application for NOC for height clearance from Navy, that a technical team from the Navy visited the site and verified the Site Elevation submitted by the Appellant and based on the findings of the technical team and the

documents submitted by the Appellant, the Navy granted the Appellant with NOC for height clearance vide their letter bearing ref. No. 46/210/1 PM dated 26.06.2014.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities, the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height then the height of the Appellant's building.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide ref. No. MPDA/7-M-107/2022-23/1107.
- (c) To stay the execution of the letter dated 4.11.2022 vide ref. No. MPDA/7-M-107/2022-23/1107.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 84: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Israel Shaikh V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/286/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-S-241/2022-23/784 dt. 05.09.2022 alleging illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 5.7546 mts., within the approach funnel in the property bearing House No.12AB, Plot No. 02 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 15.09.2022 submitted his detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-S-241/2022-23/1106 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Development Permission was granted vide No. MPDA/7-S-241/2016-17/1085 dt. 11.11.2016.

The Appellant further submits that upon obtaining the Technical Clearance Order the Construction License was obtained for the said construction vide Construction License No. 54/2016-17 dated 15/12/2016.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-S-241/2017-18/1183 dated 22/02/2018.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2018-19/154 dated 19.04.2018.

The Appellant further submits that NOC for the said construction from the Primary Health Centre was issued by a Medical Officer vide his letter No. PHCC/CORT/NOC/15-16/1296 dated 03.03.2016.

The Appellant states that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities, the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height than the height of the Appellant's building.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide ref. No. MPDA/7-S-241/2022-23/1106.
- (c) To stay the execution of the letter dated 4.11.2022 vide ref. No. MPDA/7-S-241/2022-23/1106.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted

the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 85: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Nemu Rajput V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/288/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1-A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-R-96/2022-2023/790 dated 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 2.6213 mtrs., within the approach funnel in the property bearing Plot No. D-9 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 15.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Appellant vide his reply dated 15.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-R-96/2022-23/1108 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree for which NOC was issued by the office of the MPDA and upon purchasing the said plot had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Vide Technical Clearance Order vide No. DH/5152/3/MTP/15/918 dated 28.09.2015.

The Appellant further submits that upon obtaining the Technical Clearance Order, the Construction License was obtained for the said construction vide Construction License No. 33/2015-16 dated 02.11.2015.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector, vide letter No. AC-II/SG/CONV/30/2009 dated 18.11.2009.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-R-96/2016-17/1182 dated 02.12.2016.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2016-17/1449 dated 28.11.2016.

The Appellant further submits that NOC for the said construction from the Primary Health Centre was issued by a Medical Officer vide his letter No. PHCC/CORT/NOC/15-16/838 dated 12.10.2015.

The Appellant state that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house and NOC from the Naval authorities vide NOC under Letter No. 46/210/1/NVR dated 10th March, 2014 was obtained.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone is in close vicinity of a hill, which has a far greater height then the height of the Appellant's building.

The Appellant further submits that the Naval authorities themselves have carried out construction in the area for which they do not seek any permission from the concerned State authorities and have built building of more than 5 to 6 floors claiming that the concerned Act does not require them to obtain any permissions from the State Authorities and are themselves the violators of law.

The Appellant states that the aircraft technology as on today have aircrafts which have short take off and short landing and do not require to curb such height restrictions even though the Appellant has not violated the height permitted for his construction INS Hansa, the survey so conducted is with respect of the property bearing survey No. 60/2 of Dabolim Village, Mormugao Taluka, Goa and no mention is made of the property bearing survey No. 177 sub-division 1 of Sancoale Village.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant, claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide ref. No. MPDA/7-R-96/2022-23/1108.
- (c) To stay the execution of the letter dated 4.11.2022 vide ref. No. MPDA/7-R-96/2022-23/1108.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 86: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Sampath Joseph Vaz V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/289/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref.No. MPDA/9-N-88/2022-23/607 dt. 17.08.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.6756 mts., within the approach funnel in the property bearing Plot No. D-27 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka. The Appellant filed a reply dated 30/8/2022.

The Appellant was served with a notice under ref. No. MPDA/9-N-88/2022-23/798 dt. 5.9.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.6756 mts., within the approach funnel in the property bearing Plot No. D-27 of Survey No. 174/1 of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 12.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-J-32/2022-23/1093 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Development Permission was granted vide No. MPDA/7-V-70/2012-13/899 dt. 30.08.2012.

The Appellant states that prior to carrying his construction he obtained NOC from the Naval Authorities for height level and as per the said NOC a height of 8.5 meters was granted for my said construction.

The Appellant further submits that upon obtaining the Technical Clearance Order the Construction License was obtained for the said construction vide Construction License No. 46/2012-13 dated 29.11.2012.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector, vide letter No. AC-II/SG/CONV/30/2009 dated 18.11.2009.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. DH/5370/3/MTP/14/562 dated 04.08.2014.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2014-15/825 dated 12.11.2014.

The Appellant further submits that NOC for the said construction from the Primary Health Centre was issued by a Medical Officer vide his letter No. PHCC/CORT/NOC/2015-16/1296 dated 03.03.2016.

The Appellant state that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities, the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height then the height of the Appellant's building.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.

- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide ref. No. MPDA/9-N-88/2022-23/1093.
- (c) To stay the execution of the letter dated 4.11.2022 vide ref. No. MPDA/9-N-88/2022-23/1093.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the

Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 87: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mrs. Annie Fernandes V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/285/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1-A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-F-91/2022-23/788 dt. 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 4.6421 mts., within the approach funnel in the property bearing Plot No. C-9 of Survey No. 174/1-A-3 of Sancoale Village, Mormugao Taluka.

The Appellant vide her reply dated 15.09.2022 submitted her detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No MPDA/7-N-91/2022-23/1098 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant to file the present Appeal.

The Appellant submits that she had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Development Permission was granted vide No. MPDA/7-F/91/2016-17/402 dated 8.7.2016.

The Appellant further submits that upon obtaining the Technical Clearance Order the Construction License was obtained for the said construction vide Construction License No. 26/2016-17 dated 04/08/2016.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector vide letter No. COL/SG/CONV /98/2011/6139 dated 29.06.2012.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-F-91/2018-19/56 dated 06.04.2018.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2018-19/303 dated 21.05.2018.

The Appellant further submits that NOC for the said construction from the Primary Health Centre was issued by a Medical Officer vide her letter No. PHC/CORT/NOC/OCCU/2016-17/592 dated 09.08.2016.

The Appellant state that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities, the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height then the height of the Appellant's building.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in her construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) That their Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide ref. No. MPDA/7-N-91/2022-23/1098.
- (c) To stay the execution of the letter dated 4.11.2022 vide ref. No. MPDA/7-N-91/2022-23/1098.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 88: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Gurunath Kesanur V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/290/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugoa Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was issued a letter under No. MPDA/9-N-88/2022-23/608 dt. 17.08.2022 by the Respondent asking for clarification to a letter claimed to be received from the Commanding Officer.

The Appellant vide his reply dated 30.08.2022 submitted his detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Appellant was served with a notice under ref. No. MPDA/7-K-110/2022-23/797 dt. 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.7792 mts., within the approach funnel in the property bearing Plot No. D-15 of Survey No. 174/1-A of Sancoal Village, Mormugao Taluka. The Appellant vide his reply dated 12.09.2022 submitted his detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-K-110/2022-23/1102 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant to file the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Development Permission was granted vide No. MPDA/7-K-110/2011-12/1425 dt. 22.11.2011 and Technical Clearance Order Reference No. DH/5272/8/MTP/14/449 dt. 02/07/2014.

The Appellant further submits that upon obtaining the Technical Clearance Order the Construction License was obtained for the said construction vide Construction License No. 14/2014-15 dated 25.09.2014.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector, vide letter No. AC-II/SG/CONV/30/2009 dated 18.11.2009.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. DH/5272/3/MTP/14/806 dated 23.10.2014.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2014-15/996 dated 8.12.2014.

The Appellant state that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant states that inspite of all obtaining the said NOC from the Naval authorities and applying for construction as per the NOC granted by the Naval Authorities the Appellant had drawn plans within the permissible height and carried out the said construction as per the approvals.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide No. MPDA/7-K-110/2022-23/1102.
- (c) To stay the execution of the letter dated 4.11.2022 vide No. MPDA/7-K-110/2022-23/1102.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the

Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 89: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Bhupesh Jain V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/293/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-J-32/2022-23/791 dt. 5.9.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.23 mts., within the approach funnel in the property bearing Plot No. D-10 of Survey No. 174/1 of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 15.09.2022 submitted his detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-J-32/2022-23/1099 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant to file the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Development Permission was granted vide No. MPDA/7-J-25/2017-18/1398 dt. 22.03.2018.

The Appellant states that prior to carrying his construction he obtained NOC from the Naval Authorities for height level and as per the said NOC a height of 8.5 meters was granted for my said construction.

The Appellant further submits that upon obtaining the Technical Clearance Order, the Construction License was obtained for the said construction vide Construction License No. 7/2018-19 dated 27.04.2018.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector vide letter No. AC-II/SG/CONV/30/2009 dated 18.11.2009.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-J-25/2018-19/553 dated 02.08.2018.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2018-19/1231 dated 12.10.2018.

The Appellant further submits that NOC for the said construction from the Primary Health Centre was issued by a Medical Officer vide his letter No. PHCC/CORT/NOC/Occu/2018-19/872 dated 03.10.2018.

The Appellant state that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities, the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height then the height of the Appellant's building.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.

- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- a) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide ref. No. MPDA/7-J-32/2022-23/1099.
- c) To stay the execution of the letter dated 4.11.2022 vide ref. No. MPDA/7-J-32/2022-23/1099.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 90: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Everton Vales V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/292/22)

Member Secretary informed that the Appellant is the co-owner of the plot admeasuring an area of 3600.00 sq. mts. forming part of the property bearing survey No. 177, sub-division 1 - A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a letter No. MPDA/9-N-88/2022-23/638 dated 18/8/2022 asking for clarification to a letter claimed to be received from the Commanding Officer. No letter received from the Commanding Officer was annexed nor furnished to the Appellant to verify the contents of the same.

The Appellant submitted a reply to the said letter of the Respondent dated 29/8/2022 whereby, it was informed to the Respondent that prior to the said construction the Appellant had obtained the height clearance from the Naval Authorities and only thereafter the plans for construction were submitted and approved as per the height so permitted.

The Appellant was issued a letter under No. MPDA/9-N-88/2022-23/780 dt. 05.09.2022 by the Respondent wherein it has been alleged that the Appellant has carried out construction of a House (Greva Residency) by violating the obstacle Limitation Surface (OLS) by 2.0464 mtrs within the approach funnel of Dabolim Village, Mormugao Taluka.

The Appellant vide his letter dated 12th September 2022 submitted a detailed reply wherein it was brought to the notice of the Respondent that the Appellant was not in a position to verify as to how the Flag Commanding Officer had arrived at the conclusion that the Appellant had carried out construction that violated the OLS by 2.0464 meters as no such details were furnished to the Appellant by the Respondent and that the construction of the Appellant was carried out with all the necessary approvals from the concerned authorities including the approvals from the Respondent.

The Respondent has now issued a notice under ref. No MPDA/9-N-88/2022-23/1118 dated 04/11/2022 under Section 52 of the Town & Country Planning Act and stating that the said reply of the Appellant has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that his father was allotted a sub divided plot by virtue of a Court Decree and upon obtaining the said plot had applied to the office of the Town Planner, Mormugao Goa for construction of a residential building alongwith a compound wall and Order vide No. MPDA/7-V-11/09-10/1881 dated 14/1/2010 and Development Permission vide No. MPDA/7-V-11/2011-12/570 dt. 04.07.2011 were obtained by the Appellant.

The Appellant states that prior to carrying his construction he obtained NOC from the Naval Authorities for height level and as per the said NOC a height of 8.5 meters was granted for my said construction.

The Appellant further states that after obtaining NOC from the Naval authorities, he submitted a file for construction to the office of the Respondent as per the height permitted by the Naval Authorities.

The Appellant further submits that upon obtaining the Technical Clearance Order, the Construction License was obtained for the said construction vide Construction License No. 63/2009-10 dated 05.02.2010 and 03/2007-2008 dated 11-04-2007.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector, vide letter No. AC-II/SG/CONV/153/2007 dated 29.1.2008.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA-7-V-11/2012-13/625 dated 25.07.2012 and vide letter No. MPDA/7-V-11/2012-13/1768 dated 16.01.2012.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/licenses issued by the concerned authorities, the Appellant approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2013-14/176 dated 25/4/2013 (part), Occupancy Certificate vide letter No. VP/S/2013-14/152 dated 20/04/2013 and Occupancy Certificate vide letter No. VP/S/2013-14/153 dated 20/04/2013.

The Appellant further submits that NOC for the said construction from the Primary Health Centre was issued by a Medical Officer vide his letter No. PHCC/CORT/NOC/12-13/1379 dated 09.02.2013.

The Appellant state that prior to the said construction and prior to the plans for the said construction the Appellant has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of residential building (Gr+1) in bearing Survey No. 177, Plot No. 1, of Sancoale Village around Dabolim Airport Mormugao Taluka, Goa.

The Appellant states that after obtaining the said NOC from the Naval authorities and applying for construction as per the NOC granted by the Naval Authorities, the Appellant had drawn plans within the permissible height and carried out the said construction as per the approvals.

The Appellant states that the Respondent had prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that the Respondent granted NOCs for sale of Flat/Apartments/Shops in the said complex and upon obtaining the said NOCs for sale the Appellant created third party rights to the shops and apartments and he is no longer the owner of the majority shops/apartments and the said persons are not parties to the said Notices issued by the Respondent.

The Appellant further submits that the MPDA has not taken into account that the Naval Authorities have carried out a proper survey to identify the exact violation if any by the Appellant and the said allegations are vague without any concrete details.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone is in close vicinity of a hill, which has a far greater height than the height of the Appellant's building.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant further submits that the Naval authorities themselves have carried out construction in the area for which they do not seek any permission from the concerned State authorities and have built building of more than 5 to 6 floors claiming that the concerned Act does not require them to obtain any permissions from the State Authorities and are themselves the violators of law.

The Appellant states that the aircraft technology as on today have aircrafts which have short take off and short landing and do not require to curb such height restrictions even though the Appellant has not violated the height permitted for his construction INS Hansa, the survey so conducted is with respect of the property bearing survey No. 60/2 of Dabolim Village, Mormugao Taluka, Goa and no mention is made of the property bearing survey No. 177 sub-division 1 of Sancoale Village.

The Appellant states that the said letter dated 22/7/2022 clearly states that constructions of the building complex Greva Residency could not be surveyed and it is merely claimed to be an obstruction.

The Appellant states that since the Respondent has failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The said Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The said notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The said Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) That this Authority be pleased to call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4/11/2022 vide ref No. MPDA/9-N-88/2022-23/1118.
- (c) To stay the execution of the letter dated 4/11/2022 vide No. MPDA/9-N-88/2022-23/1118.

Member Secretary informed that the matter was earlier placed before 187th meeting of the Board held on 20/03/2023. Adv. Tome Carvalho appearing on behalf of Appellant, submitted that the Appellant has applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authority and therefore requested for adjournment and hence the matter was adjourned.

Member Secretary then informed that notices were issued to parties to remain present for the meeting for arguments in the matter.

During the present hearing, Adv. Tomy Carvalho appeared for Appellant whereas the Respondent PDA was represented by Adv. Nikhil Pai.

While arguing in the matter Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in certain cases, the Naval Authorities have granted the NOCs and whereas in some the same have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. Tomy Carvalho appearing for the Appellant also agreed for the same.

After deliberation on the same, the Board considered the suggestion as made and it was decided to issue notices to Naval Authorities as well to give their say in the matter of appeal filed by different parties and accordingly it was decided to issue the notices to the Naval Authority informing them about the next date of the TCP Board meeting.

The Board was also informed that the Hon'ble High Court has directed the Board to decide on various appeals, within a stipulated period, and that this given period has already expired.

The Board therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

It was therefore decided to hear the matter, once the above is complied.

Item No. 91: Proposed construction of residential building consisting of 48 units in property bearing Sy. No. 25/2-A of Nerul village of Bardez Taluka.

Member Secretary informed that the North Goa District Office, Town & Country Planning Department, Mapusa, Goa, has earlier issued Technical clearance vide Order No. TPB/4321/NER/TCP-20/268 dated 17/01/2020, to Mr. Lalit Verma, for construction of residential building in property bearing Sy. No. 25/2-A of Nerul village of Bardez Taluka, after obtaining approval from the Government.

It was further informed that a complaint was received from Mr. Rohan Kalangutkar, requesting the Department to revoke/ cancel the above approval granted as the proposed construction did not have the required existing 6 mts. wide access road. The Complainant lodged the complaint citing the judgment dated 11/01/2020 passed by the Hon'ble High Court of Bombay at Goa, in Writ Petition No. 372 of 2009 which requires road to be 6 mts. to permit multi family dwelling units.

The Board was then informed that North Goa District Office had then issued a notice to the applicant, thereby keeping in abeyance its Technical Clearance Order dated 17/01/2020, till the 6 mts. wide road is constructed or any such documentary evidence is produced by the applicant regarding availability of 6 mts. road to his property.

The Board was then briefed that the applicant has thereafter vide his letter dated 30/03/2023 submitted a resolution of the Village Panchayat, wherein it was resolved that the storm water drains abutting the roads would be constructed and covered with RCC slab and also reconstruction of collapsed road shoulders would be carried out by it.

Subsequently, the applicant has then submitted a letter dated 26/05/2023, stating that 6 mts. wide access road to Sy. No. 25/2-A along the storm water drain would be developed by him in consultation with the Village Panchayat to the standard width as specified in the GLDBCR.

The applicant vide his another letter dated 04/08/2023 has also stated that due to the stoppage of construction of the proposed building, he has to bear irreparable loss of business money, resources construction material, etc. and has therefore requested to recall/ set aside the Order dated 01/08/2022 and letter dated 07/07/2023 issued by the Department and to allow him resumption of construction work of building approved earlier.

The Board deliberated in detail on the matter and took note on the approval granted by the Department and subsequent resolution adopted by the Villae Panchayat. Board also took note of the letters of the applicant whereby he has undertaken to develop the road which serves as an access to his property.

Considering the above, the Board decided that the request as made by applicant could be considered and the permission restored with the condition that the applicant shall develop the access road to his property, as per PWD specifications, prior to applying for issue of completion order.

Member Secretary was accordingly directed to communicate the decision of the Board to the office of Senior Town Planner (North) for further needful at their end.

Item No. 92: Proposed administrative office building with cash vault with double basement floor and compound wall in plot No.1 of EDC Complex, Patto Plaza, Panaji-Goa.

Member Secretary informed that the North Goa Planning and Development Authority has received an application from Reserve Bank of India for grant of Development Permission under section 44 of Town and Country Planning Act, 1974 for administrative office building with cash vault having double basement floor and compound wall in plot No.1 of EDC Complex, Patto Plaza, Panaji-Goa.

North Goa PDA has informed that as per ODP-2011 of Panaji, the property is earmarked as SPC Special Commercial zone (250 FAR).

Member Secretary informed that the proposal submitted by Reserve Bank of India is for construction of administrative office building and compound wall. As per plans submitted, the building consists of two (2) level basement i.e. lower basement and upper basement, a ground floor, stilt floor and six upper floors.

As per the drawing, it is seen that two levels of basement are proposed. Lower basement consists of vault and other activities and whereas upper basement consist of parking and vault, which is continuing from lower basement floor, thus having height of 10.20 mts.

It is mentioned that the vault operation is the key feature in the proposed administrative office building for Reserve Bank of India.

Member Secretary of North Goa PDA, who was present for the meeting informed that as per Regulation 27 VI (a), maximum intermediate height permissible for basement is 4.50 mts. between undersides of roof slab and therefore the applicant has sought relaxation from the existing bye-laws for basement and for proposed vault, which is having height of 10.20 mts. thus exceeding the height beyond what is prescribed under the regulation.

Member Secretary of North Goa PDA further informed that the proposal also requires relaxation in maximum permissible use of the basement floor, which otherwise is exempted from FAR only if 90% of it is utilized for parking of vehicles and that in the present case, the percentage of space used for parking is much lesser than the required as much of the area under basement is utilized for services or safe deposit vault.

The case was discussed in the 92nd meeting of the North Goa Planning & Development Authority held on 09-11-2023, wherein the proposal was discussed and deliberated, especially as regards to Rule 27 VI (a) and Rule 63 (a) of Regulations in force, which states as under:

(a) Maximum intermediate height permissible for basement is 4.50 mts. between undersides of roof slab and as per Rule 63 and

(b) Basement is exempted from FAR calculation only if 90% of the basement is utilized for parking of vehicles and the remaining area is used for services or safe deposit vault in case of banks.

It was then informed by Member Secretary NGPDA that the Authority was of the opinion that the regulations in this regard is required to be relaxed in the instant case, as the vault operation in the proposed RBI building is the key feature and therefore it was decided that the proposal be forwarded to the Government for seeking relaxation in Rule 27 VI (a) and Rule 63 (a), i.e to permit vault with the height of 10.20 mts., which is located in lower and upper basement and also to consider the basement free of FAR although the entire basement is not proposed for parking purpose.

The Board deliberated at length and considering the proposal as that received from Reserve Bank of India and the justification given for requirement of relaxation, the Board decided to take into consideration the merit of case and therefore recommended the relaxation of regulation as regards to extent and height of the vault as that proposed in basement and also for consideration of basement free of FAR, although the same strictly was not fitting within the regulations prescribed for the same.

Member Secretary was accordingly directed to forward the proposal to the Government for further approval.

Item No. 93: Proposal for relaxation of road width for residential cum commercial building in property bearing survey no. 110/5, Taleigao village, Tiswadi Taluka.

Member Secretary informed that the North Goa Planning and Development Authority has received a representation from Shri. Swapneel Nachinolcar, partner of M/s. Priority Constructions, requesting to consider the proposal under amended regulation, notified vide Notification No. 21/1/TCP/2021-23/Steering Committee/106 dated 09/08/2023, for construction of residential cum commercial building in property bearing survey No. 110/5, admeasuring an area of 9662 m² and situated in Village Panchayat of Taleigao, Tiswadi Taluka, as per

Member Secretary, North Goa PDA, who was present for the meeting informed that vide his representation, the applicant has informed that his property under reference is earmarked as SPR (SPECIAL RESIDENTIAL ZONE) in the ODP 2028 of Taleigao Planning Area and is accessible by existing 8.00 mts road.

It was further informed that earlier, NGPDA had issued Development Permission for construction of commercial and residential building having 24 mts. height in the property under reference and the same was issued based on the existing 8 mts. wide tarred road. The Board also briefed that the project as approved consists of a basement floor, stilt floor for parking of vehicles and upper floors for residential purpose. The building consists of 04 Nos. of shops and total 128 flats (4 blocks of 32 units each) on all floors. A setback of 6.50 mts. is maintained all around the building and required 15% open space is also earmarked on the site plan.

Member Secretary North Goa PDA further informed that the project is challenged in the Hon'ble High Court of Bombay at Goa, by one of the co-owner Mrs. Smita Krishna Naik and the Court has passed an Order against the project, as the access of 10.00 mts. is not available on site as required under the regulations in force. Member Secretary then informed that the work of the said project is stopped since 18/4/2023.

It was then informed that the project proponent has requested to consider their proposal as per Regulation No. 6A.4, Note 16, having reference to Annexure 27XII, as published vide Notification No. 21/1/TCP/2021-23/steering committee/106 in Official Gazette (Extraordinary No. 2), Series I, No.18 dated 09/08/2023, wherein the requirement of minimum width of road for various multi dwelling residential buildings, commercial buildings (resorts/hotels) and industrial buildings has been amended.

It was further informed that the applicant vide his representation has further stated that as per the amended regulation as above, the accessibility of 6.00 mts wide road is required for 180 units for plot area upto 20,000m², whereas the applicant states that his property is accessible by

8.00 mts. wide road and the project is having only 128 nos. of flats and the total area of his property is 16198 m² and therefore fits within the requirement of the regulations.

Member Secretary, North Goa PDA then informed that the matter was discussed in the 92nd meeting of North Goa Planning and Development held on 09-11-2023, wherein, it was brought to the notice of the Authority that the amended Annexure 27XII is applicable only for zones I-1 to I-3 and S-4/R-4 to S-1/ R-1, and the same should be read with note 16 which reads as under:

“(ii) in Note (16), for the expression "Further, at the time of approval of development plans, minimum 6 meters wide right of way should be available on the site.", the expression "Notwithstanding minimum width of road in zones 1-1 to 1-3 and S-4/R-4 to S-1/R-1 specified in regulation 6A.4, TABLE-VIII, the minimum width of road requirements for buildings shall be as per ANNEXURE-XII" shall be substituted”.

Member Secretary, North Goa PDA then brought to the notice of the Board that the Authority was also informed that as per the regulations referred, minimum 10.00 mts. right of way is required for the SPR zone, however the same can only be relaxed for proposal of re-development where there is no scope of expansion of existing road and provided that minimum 8.00 mts. access is available.

Member Secretary, North Goa PDA then informed that the Authority was of the opinion that the request as made by the proponent cannot be considered favorably as Annexure 27XII was not found to be applicable in the present case, however it was decided by the Authority to refer the matter to the Government for appropriate decision and accordingly the proposal is submitted for consideration of the Government.

The Board deliberated the matter in detail and took note that the development has already been carried out by the project proponent based on the Development Permission granted to him and therefore felt it appropriate to consider the present case under amended regulation and as per Annexure 27 XII. The Board took note that as per the provisions of Annexure 27 XII, for a property admeasuring 20000 sq.mts or more, the requirement is only of road having minimum width of existing road as 6.00 mts. and wherein upto 180 units can be permitted.

The Board observed that in the present case, the property under reference is having area less than 20000 sq.mts. i.e. having an area of 16198 sq.mts. only and the permissions/ planning is only for 128 No. of units. The Board also took note that in the present case, the property is serviced majorly by a 8 meter wide existing road and besides there is also a proposed ODP road having 10 meter width, which touches the property.

The Board also considered that the project as approved by North Goa PDA has also received NOC from the Fire Department vide ref No. DFES/FP/HB/295/23-24/223 dated 03.10.2023, which is placed on record by the applicant.

Considering the factual position and the development carried out, the Board decided to consider the proposal under Regulation No. 6A.4, Note 16, having reference to Annexure 27XII and accordingly recommended its approval.

Item No. 94:- Cases considered by the Committee constituted as per Notification under No. 36/1/TCP/503/2023/3349 dated 31/10/2023.

Member Secretary informed that the Government vide Notification No. 21/1/TCP/2021-23/Steering Committee/107 dtd. 9/8/2023 and published in Official Gazette, Series I, No. 18 dtd. 09/08/2023 has notified the amendment to GLDBCR-2010, which provides for following:

“(2) The Government on recommendation of the Town and Country Planning Board shall grant additional height and FAR to the proposals on case to case basis in consideration of the locational aspect, nature of development, use proposed, information available and on any such other criteria, if required. Such relaxation shall however not be relaxed for more than 20% permitted in the prevailing Regulations.”

It was then informed that subsequently, a Corrigendum vide Notification No. 21/1/TCP/2021-23/Steering Committee/119 dtd. 21/8/2023 was issued in Official Gazette, Series I, No. 21 dtd. 24/08/2023 stating that the regulation as referred above shall be read as under:

“The Government on recommendation of the Town and Country Planning Board shall grant additional height and FAR to the proposals on case to case basis in consideration of the locational aspect, nature of development, use proposed, information available and on any such other criteria, if required.”.

The Board was then informed that 1st meeting of the Committee, as constituted vide Notification No. 36/1/TCP/503/2023/3349 dated 31/10/2023 was held on 16/11/2023 in the office of the Chief Town Planner (Planning), TCP Dept., Panaji, during which, the proposals as forwarded by Taluka Offices/PDAs were considered and the decisions as taken under the amended regulation were then placed before the Board as under:

“a) Proposal of Parul Education Foundation in Sy. No. 78/1 of Quitol village, Quepem Taluka as per Notification dated 31/10/2023.

The Committee noted that Parul Education Foundation has sought for additional FAR and height for their proposed construction of institutional campus at Sy.No. 78/1 of Quitol village, Quepem Taluka. The total plot area or the property is 56,480 m² and is accessible by existing 8.00 m wide road. As per the Regional Plan for Goa, the village Quitol is having VP-2 category with permissible FAR of 60.

The Committee also noted that the department has earlier granted technical clearance to the Parul Education Foundation for construction of institutional campus with permissible FAR of 50, as the plot area exceeded 4000 m² and having permissible height of 9.00 mts. vide Technical Clearance Order No. TPQ/CT/7702/Q-Quitol/78/1/2023 dated 26/07/2032.

The Committee perused the regulations and noted that for Institutional zone, maximum permissible FAR is 100 for all plots fronting roads having width less than 8m. and permissible FAR of 125 if the width of the road is more than 8mts. The Committee also noted that the FAR of 150 can be granted in Zone -P with maximum permissible height as 16m. The Committee also noted that institutional buildings are permitted under Settlement zone as per RPG-2021 policies and the use permitted by the Department in the present case is an Educational Institution.

The Committee perused the proposal and noted that the additional FAR and height is sought by the institution to accommodate the requirement of institution.

The Committee noted that as per regulations, for high rise building, a minimum access of 10m wide road is required and that in the present case, the existing width of the road is 8m. which is having right of way of 15 mts. as per Regional Plan for Goa.

The Committee further observed that as per the amended regulation the maximum permissible FAR or the property under reference is 60, thus it was observed that the institution has sought a total FAR of 132.20, which is 72.20 higher than the maximum permissible limit of 60.

Considering the enabling provisions and having studied locational aspect, nature of development, use proposed, and merit of the case, the Committee recommended for total FAR of 132.20 with maximum height of 22.05 mts., thereby allowing additional height of 13.05 mts. above the permissible height of 9.00 mts. under Settlement zone, which otherwise is 16.00 mts. for Institutional zone.

The Committee recommended the above for the purpose of placing the same before the TCP Board for its further consideration.”

The Board deliberated in detail on the proposal submitted and conformity of the same in terms of notified regulations regarding the same. The Board took note that the proposal stands recommended by the Committee constituted for the purpose and therefore considered the proposal for approval at its end.

The proposal as submitted by Parul Education Foundation stands recommended by the Board.

Member Secretary was accordingly directed to forward the proposal as submitted by Parul Education Foundation for the approval of the Government, as required under the procedure prescribed.

“b) Proposal of Mustifund Primary School, Higher School & Higher Secondary School in Sy. No. 44/1 (part) and 44/3 (part) of Cujira village, Tiswadi Taluka.

The Committee noted that the proposal is received from Mustifund Primary School, Higher School & Higher Secondary School for grant of additional FAR and Coverage for their institution located at the Cujira Education Complex. The Committee noted that the school is already approved by the Department having FAR of 100 and within the maximum permissible height. The zone of the property having area of 9347.00 m² is Institutional.

As per the proposal received, the applicant has requested for additional FAR of 12.80, thereby making total FAR as 112.80. The project proponent has not sought for any additional height, however, a request is made to relax the coverage from 33% to 45%.

The Committee perused the regulations and noted that for Institutional zone, maximum permissible FAR is 100 for all plots fronting roads having width less than 8m. and permissible FAR of 125 if the width of the road is more than 8mts. The Committee also noted that the FAR of 150 can be granted in Zone -P with maximum permissible height as 16m. The Committee also noted that institutional buildings are permitted under Settlement zone as per RPG-2021 policies and the use permitted by the Department in the present case is an Educational Institution.

Considering the enabling provisions and having studied locational aspect, nature of development, use proposed, and merit of the case, the Committee recommended for total FAR of 112.80.

As regards to relaxation of coverage to 45%, the Committee observed that its scope is limited only to the extent of FAR and height aspects and any further consideration for relaxation of coverage from 33% to 45% shall have to be dealt by the TCP Board.

The Committee recommended the above for the purpose of placing the same before the TCP Board for its further consideration.”

The Board discussed at length on the proposal received and took note of the findings and recommendation of the Committee. After deliberation, the Board considered the recommendation of the Committee for grant of additional FAR of 12.80.

As regards to relaxation of coverage from 33% to 45%, which the applicant has requested to house the additional facilities of the school, the Board was of the opinion that education institution needs to be facilitated for providing quality education and for upgrading their infrastructure. The Board took note that in the present case, additional coverage is sought to cover the area to protect it from rain and which is intended to provide a common space within the complex, without compromising the setbacks etc.

The Board took note that the proposal for grant of additional FAR stands recommended by the Committee constituted for the purpose and therefore considered the same for approval at its end. Considering the reasons cited, the Board also recommended for relaxation of coverage from 33% to 45%.

The proposal as submitted by Mustifund Primary School, Higher School & Higher Secondary School therefore stands recommended by the Board for grant of additional FAR and relaxation of coverage, as requested for.

Member Secretary was accordingly directed to forward the proposal as submitted by Mustifund Primary School, Higher School & Higher Secondary School for the approval of the Government, as required under the procedure prescribed.

“c) Proposal of M/s. Kamat Realty in Sy. No. 371/2 (Plot No. 27 to 31) of Socorro village, Bardez Taluka.

The Committee noted that M/s. Kamat Realty has requested for additional FAR of 30 and additional height of 2.3m. It was noted by the Committee that the Department had earlier granted approval for building in the property with a height of 9.20 m and with FAR of 80 in view of past commitment. The total area of the property is 2,434.53m² and is accessible by existing 8m. wide road. The zone of property is Settlement. The project proponent has submitted the Conversion Sanad for use of land, from agriculture to non-agricultural purpose (Residential) issued in the year 2003.

The Committee noted that project proponent has requested for additional FAR and Height, which can be permitted with 8.00 mts. road, as the building will not be high rise building, even after considering the relaxation of height upto 11.50 mts.

Considering enabling provisions and having studied locational aspect, nature of development, use proposed, and merit of the case, although applied for FAR of 110, the Committee recommended for total FAR of 100 only with a height of 11.50 mts. thereby allowing additional height of 2.30 mts.

The Committee recommended the above for the purpose of placing the same before the TCP Board for its further consideration.”

The Board deliberated in detail on the proposal submitted and conformity of the same in terms of notified regulations regarding the same. The Board took note that the proposal stands recommended by the Committee constituted for the purpose and therefore considered the proposal for approval at its end.

The proposal as submitted by M/s. Kamat Realty stands recommended by the Board.

Member Secretary was accordingly directed to forward the proposal as submitted by M/s. Kamat Realty for the approval of the Government, as required under the procedure prescribed.

“d) Proposal from Mr. Rohan R. Kamat, POA holder of Committee Member of Miramar SBI Employees Co-op. Housing Society Ltd. in the property bearing Chalta No. 12 of P.T. Sheet No. 115 of Panaji Town, Tiswadi Taluka.

The Committee noted that the proposal is for re-development of the building at Miramar belongs to SBI Employees Co-op Housing Society Ltd. The building was constructed in the year 1969 and the structure is very old. The property is accessible by 12m. wide road. At present, the building is constructed having FAR of 80% with 11.5m. height. As per Panaji ODP-2011, zone of the property is S2. The total area of property is admeasuring to 1008.00m².

The project proponent has submitted Conversion Sanad issued on 16/03/2023 for special residential (SPR) with FAR of 200 in accordance with zoning provision of ODP-2021 of Panaji.

As per the plan submitted, the project proponent has proposed a Ground + 6 floors building with basement having total FAR of 199.91 with building height of 23.90m and has therefore requested for additional FAR of 120 and additional height of 12.5 mts.

The Committee perused the regulations and noted that since property is accessible by 12m. road, high rise building can be permitted with strict compliance to fire and safety regulations.

Considering enabling provisions and having studied locational aspect, nature of development, use proposed, and merit of the case, the Committee decided to recommend additional FAR of 120 and additional height of 12.5m. for re-development purpose subject to compliance to fire and safety regulations.

The Committee recommended the above for the purpose of placing the same before the TCP Board for its further consideration.”

The Board deliberated in detail on the proposal submitted and conformity of the same in terms of notified regulations regarding the same. The Board took note that the proposal stands recommended by the Committee constituted for the purpose and therefore considered the proposal for approval at its end.

The proposal as submitted by Mr. Rohan R. Kamat, POA holder of Committee Member of Miramar SBI Employees Co-op. Housing Society Ltd. stands recommended by the Board.

Member Secretary was accordingly directed to forward the proposal as submitted by Mr. Rohan R. Kamat, POA holder of Committee Member of Miramar SBI Employees Co-op. Housing Society Ltd. for the approval of the Government, as required under the procedure prescribed.

“e) Proposal from Mr. Rohan R. Kamat, POA holder of Mr. Manoj Caculo and others in the property bearing Chalta No. 5 of P.T. Sheet No. 84 situated at Panaji.

The Committee noted that the proposal is for re-development of the building in the property having an area of 1079 m². The zone of the property as per Panaji ODP-2011 is Settlement S2 with maximum permissible FAR of 80 with maximum permissible height of 11.5m. Property is accessible by existing 10m. wide road. There is one existing building in the dilapidated condition in the said plot comprising of G+3 upper floor having residential flats. The said building was constructed in the year 1968-69 as per Construction License submitted by the project proponent.

The Committee noted that the project proponent has obtained the Conversion Sanad dated 23/06/2022 for non-agriculture purpose (residential) with SPR zone having FAR of 200 which was in accordance with zoning provision of ODP-2021 of Panaji. The project proponent has proposed additional FAR of 120 and the additional height of 12.5m., thereby total FAR will become 200 and height of the building will be 24m.

The Committee perused to the proposal vis-à-vis the Goa Land Development and Building Construction Regulations, 2010 and noted that high rise building can be permitted in the property under reference as the same is accessible by existing 10m. wide road, subject to strict compliance to the Fire and life safety regulation. The Committee noted that as per the plans submitted, the building proposed shall have a basement, stilt floor and 8 upper floors.

Considering enabling provisions and having studied locational aspect, nature of development, use proposed, and merit of the case, the Committee after discussion decided to recommend the grant of additional FAR to the extent of 120 with additional height of 12.5m., thereby total FAR will be 200 and total height of building will be 24m. subject to strict compliance of fire and safety regulations as applicable.

The Committee recommended the above for the purpose of placing the same before the TCP Board for its further consideration.”

The Board deliberated in detail on the proposal submitted and conformity of the same in terms of notified regulations regarding the same. The Board took note that the proposal stands recommended by the Committee constituted for the purpose and therefore considered the proposal for approval at its end.

The proposal as submitted by Mr. Rohan R. Kamat, POA holder of Mr. Manoj Caculo and others stands recommended by the Board.

Member Secretary was accordingly directed to forward the proposal as submitted by Mr. Rohan R. Kamat, POA holder of Mr. Manoj Caculo and others for the approval of the Government, as required under the procedure prescribed.

“f) Proposal from Mr. Anil Kumar, representative of Deventure Hotels and Resorts Pvt. Ltd. in the property bearing Sy. No. 13/4 of Anjuna village, Bardez Taluka.

The Committee noted that project proponent has requested for additional FAR of 40 and additional height of 9 mts. in addition to the existing permissible FAR of 60 and height of 9.0mts. in the property bearing Sy. No. 13/4 of Anjuna village, Bardez Taluka. The total area of property under reference is 8,575m² and same is earmarked as Settlement as per the Regional Plan for Goa - 2021. Property is accessible by existing 8.00 mts. wide road.

The Committee noted that the Department has already issued a Technical Clearance in the property under reference vide Technical Clearance Order dated 27/03/2019, for construction of hotel building & swimming pool within FAR of 60 and height of 9m. Applicant has submitted revised plan with FAR of 98.85 and with a height of building as 18m. The project proponent has also requested to relax the requirement of road width from 10m. to 8m.

The Committee deliberated on the proposal as regards to relaxation of road from required 10m. to 8m. and noted that no such relaxation is available under regulation and also there is no mandate with Committee to relax such requirements. The Committee also noted that, since existing road is only 8m. wide, high-rise building are not permitted.

The Committee therefore deliberated the proposal and recommended the additional FAR of 20 with additional height of 2.5m. The Committee also suggested that project proponent shall give an undertaking that this will not be a 4 or 5 star category hotel, as other regulations are already notified for grant of additional FAR for 4 & 5 Star Hotels by making necessary payment against the additional floor area to be released.

Considering the enabling provisions and having studied locational aspect, nature of development, use proposed, and merit of the case, although applied for total FAR of 100 and height of 18 mts., the Committee recommended for total FAR of 80 only with height of 11.50 mts.

As regards to relaxation of road from required 10m. to 8m. the Committee observed that its scope is limited only to the extent of recommending additional FAR and height and any further consideration for relaxation of road from 10 m to 8 m shall have to be dealt by the TCP Board.

The Committee recommended the above for the purpose of placing the same before the TCP Board for its further consideration.”

The Board discussed at length on the proposal received and took note of the findings and recommendation of the Committee. After deliberation, the Board decided that the proposal for grant of higher FAR is for the purpose of hotel building to accommodate additional rooms. Considering therefore the need of the hospitality sector and requirement of additional rooms to cater to the demand of tourism sector, the Board decided to grant of additional FAR of 98.85 and relaxation of height as applied for, to accommodate the additional FAR.

As regards to relaxation of road width, the Board was of the opinion that being a hotel, the same needs to be considered, as only additional rooms shall be accommodated through grant of additional FAR.

The Board therefore took note of the proposal as submitted for grant of additional FAR, height and relaxation of road width and recommended the same.

The proposal as submitted by Deventure Hotels and Resorts Pvt. Ltd. therefore stands recommended by the Board for grant of additional FAR, height and relaxation of road width, as applied for.

Member Secretary was accordingly directed to forward the proposal as submitted by Deventure Hotels and Resorts Pvt. Ltd. for the approval of the Government, as required under the procedure prescribed.

“g) Proposal from Shri. Balchandra Balaji Kamat in the property bearing Chalta No. 45 of P.T. Sheet No. 99 of Panaji Town, Tiswadi Taluka.

The Committee noted that the proposal is for re-development of the property having an area of 504 m². The zone of the property as per Panaji ODP -2011 is Settlement S2 with FAR of 80. The property is accessible by 12m. wide road. The original structure was constructed in the year 1981 and is in dilapidated condition. The existing structure is comprising of G+2 upper floor having residential flats.

The project proponent has sought additional FAR of 120 in addition to the existing permissible and additional height of 12.5m. The project proponent has submitted the plans with FAR of 199.99 with building height of 24.00 mts. The Committee deliberated the proposal, vis-à-

vis regulations applicable and noted that high rise building can be permitted on 12m. access road subject to strict compliance to the Fire and Safety regulation.

Considering the enabling provisions and having studied locational aspect, nature of development, use proposed, and merit of the case, the Committee therefore recommended the grant of additional FAR of 120 with additional height to the extent of 12.5m. in addition to the permissible FAR and height, subject to strict compliance of fire and safety regulations.

The Committee recommended the above for the purpose of placing the same before the TCP Board for its further consideration.”

The Board deliberated in detail on the proposal submitted and conformity of the same in terms of notified regulations regarding the same. The Board took note that the proposal stands recommended by the Committee constituted for the purpose and therefore considered the proposal for approval at its end.

The proposal as submitted by Shri. Balchandra Balaji Kamat stands recommended by the Board.

Member Secretary was accordingly directed to forward the proposal as submitted by Shri. Balchandra Balaji Kamat and others for the approval of the Government, as required under the procedure prescribed.

h) Applicability of Notification No. 21/1/TCP/2021-23/Steering Committee/119 dtd. 21/8/2023 for the proposals for 20% higher FAR for 4 & 5 Star Hotels:

Member Secretary informed that the Committee constituted under Regulations No. 6.1.1 regulation, note (2) of clause (a), for grant of higher FAR and height, deliberated whether if additional FAR and height could be granted even for 4 and 5 star category hotels, as similar provisions already exist for grant of additional FAR to 4 or 5 star hotels by payment of processing fee and charges applicable.

Member Secretary then informed that it was observed by the Committee that grant of higher FAR under Notification dtd. 21/8/2023 for 4 & 5 star hotels, may amount to loss of revenue to the Government, as the applicant in such cases are required to pay premium for obtaining additional FAR, as provided under regulation 6A.4, Note (20) of GLDBCR-2010.

Member Secretary informed that the Committee was therefore of the opinion that the matter be deliberated by the Board for clarity purpose.

The Board deliberated on the same and was of the clear view that grant of higher FAR as provided Regulations No. 6.1.1 regulation, note (2) of clause (a) shall not be made applicable to the proposals for grant of additional FAR for 4 or 5 star hotels as provided under regulation 6A.4, Note (20) of GLDBCR-2010.

The Board therefore directed the Member Secretary to take note of the same while deciding on the applications, if received any for 4 or 5 star hotels.

Item No. 95: Cases considered by the Committee constituted as per Order No. 28/1-7/PDA/GEN PERMISSION/TCP-2023/3409 dated 08/11/2023 for carrying out scrutiny, verification and examination of proposals received for approval under section 44 of the TCP Act.

Member Secretary informed that the Government vide Order No. 28/1-7/PDA/GEN-PERMISSION/TCP-2023/2483 dated 17/08/2023 and Order No. 28/1-7/PDA/GEN-PERMISSION/TCP-2023/3377 dated 03/11/2023 has issued direction for streamlining the procedure in issuing various permission by the Planning and Development Authority to improve functioning of PDAs and the clearance process needs to be expedite under Ease of Doing Business initiative (EoDB).

It was then informed that the Government in exercise of the powers under Section 132 of the TCP Act, directed that all the permissions for approval of sub-division of land for the properties having total area of 25000 m² and building having floor area above 25000 m² under Section 44 of TCP Act shall be dealt at the level of Member Secretary/Town Planning Officer of PDAs by obtaining Government approval for the same.

The subject was further discussed in the 190th meeting of Town & Country Planning Board held on 21/09/2023 and it was decided that applications received in this regard shall be forwarded by the concerned Planning & Development Authorities to the Chief Town Planner (Planning) for the purpose of placing the same before the Town & Country Planning Board for its consideration and decisions on the same and which shall thereafter be submitted to the Government for its approval.

Member Secretary then informed that a meeting of the Committee, as constituted vide Order No. 28/1-7/PDA/GEN-PERMISSION/TCP-2023/3409 dated 08/11/2023 was held on 16/11/2023 in the office of the Chief Town Planner, TCP Dept, Panaji, during which, a proposal as forwarded by Mormugao Planning & Development Authority was considered by the Committee and the decision taken in the matter was read out to the Membres, which is as under:

“Proposal of Impactum Lands Pvt. Ltd. in Sy. No. 178/1-A-Q-3 of Sancoale village, Mormugao Taluka.

Mormugao Planning Development has initially granted sub-division approval (provisional) vide development permission order dated 03/04/2023, in the property bearing Sy. No. 178/1-A-Q (part) of Sancoale village, Mormugao Taluka in the name of Zuari Industry Ltd. (original owner). The zone of the property is S1 as per ODP of Vasco-Da-Gama Planning area - 2030.

Conversion Sanad to the property admeasuring to 1,11,745 m² bearing Sy. No. 178/1-A-Q (part) of Sancoale village, is issued by the Collector (South) vide Sanad dated 26/12/2022.

The Electricity Department has granted No Objection Certificate for proposed plotted developments vide their N.O.C. dated 16/03/2023 valid for the period of 06 months from dated of issue of the N.O.C.

The property fall within the funnel zone of the Dabolim Airport. The Naval Authorities has issued N.O.C. for construction of residential building in the said survey number. The building permitted is having ground+5 floors and overhead tank in favour of M/s. Zuari Global Ltd. vide N.O.C. dated 10/11/2022.

The Zuari Industry Ltd. transferred the property to M/s. Ultra Dwell Real Estate LLP and accordingly Development Permission for carrying out the sub-division of land (provisional) was transferred to M/s. Ultra Dwell Real Estate LLP vide Development Permission order dated 04/08/2023 by MPDA.

The Ultra Dwell Real Estate LLP, further sold the said project to M/s. Impactum Lands Pvt. Ltd. Accordingly, the Mormugao Planning & Development Authority has again transferred the Development Permission for carrying out sub-division of land (provisional) to M/s. Impactum Lands Pvt. Ltd. vide Development Permission order dated 10/08/2023.

The Committee noted the details of the proposal as under :

The Impactum Lands Pvt. Ltd. has made an application to Mormugao Planning & Development Authority for revised sub-divisional approval (provisional) in the property bearing Sy. No. 178/1-A-Q-3 (partitioned plot) having an area of 1,11,745 m².

The project proponent has modified the sub-division proposal based on the Rules notified for affordable housing project notified on 16/03/2023.

The amenities plot is earmarked as per the regulations for uses as listed under amended Regulations 12.7.

As submitted by the applicant, the Committee took note of the layout and area statement of the sub-division layout, applied for provisional approval, as under:

Sr. No.	Particulars	Details
1	Total Area of the Property	1,11,745 sq. mtrs.
2	Area under 3.5 mtrs. Buffer zone for electrical high tension line	2,528 sq. mtrs.
3	Effective plot area	1,09,217 sq. mtrs.
4	Open Space (15%)	16,726 sq. mtrs.
5	Open Space-1	11,463 sq. mtrs.
6	Open Space-2	5,263 sq. mtrs.
7	Total Car Parking provided in Open Space-1 and 2 (219 Nos. + 98 Nos.)	316 Nos.
8	Total Number of plots	316 Nos.
9	Areas under amenities (6.49%)	7083 sq. mtrs.
10	Area under Plots (316 Nos.)	61,570 sq. mtrs.
11	Area under internal roads	23,838 sq. mtrs.

Sr. No.	Plot size in Sq. Mtrs.	No. of Plots	Percentage
(a)	Plots between 100 sq. mtrs. to 150 sq. mtrs.	119	38%
(b)	Plots between 150 sq. mtrs. to 225 sq. mtrs.	179	57%
(c)	Plots between 226 sq. mtrs. to 250 sq. mtrs.	6	2%
(d)	Plots between 251 sq. mtrs. and above	12	4%
	Total	316	100%

It was also observed that provision for the following amenities is made in the layout:

- i. Amenities plot proposed as per regulation
- ii. Open space with 20% parking provisions (stack parking) in both the open space
- iii. Terrace Rain water Harvesting Tanks-2
- iv. Garbage Room
- v. IT Room with Security Cabin

After deliberation on the proposal, the Committee has decided as under:

It was noted by the Committee that the proposal is for revised sub-division approval (provisional) in Sy. No. 178/1-A-Q-3 (portioned plot) of Sancoale village, Marmugao Taluka. The Sub-division (provisional) was initially approved in the name of Zuari Industry Ltd. on 03/04/2023.

The Conversion Sanad is already granted for the property admeasuring an area of 1,11,745 m2 for non-agriculture purpose (residential) by the collector (South).

The Electricity Department has also issued NOC for proposed plotted development in the said property. However required a fresh approval as NOC was only valid for six months.

The property falls within funnel zone of Dabolim Airport. Building height clearance of G+5 building was granted by Navy in this plot vide NOC dated 10/11/2022. The committee also noted that on query raised by MPDA regarding NOC required for sub-division of land, the Navy as per their letter dated 14/05/2020 informed that there is no mandate to issue NOC for sub-division of large plot into smaller plots.

The Committee noted that this property has changed many hands and now the M/s. Impactum Lands Pvt. Ltd. is the current owner of the property, who has applied for revised sub-division of land (provisional) under rules for affordable housing project under the Goa (Regulations of Land Development and Building Construction) Act, 2008 and other regulations as applicable under the Goa Land Development and Building Construction Regulations, 2010.

The Committee found that the proposal is as per rules and regulations in force and the Committee recommended the proposal for the purpose of placing the same before the TCP Board for its further consideration."

The Board discussed thoroughly on the proposal submitted and conformity of the same in terms of notified regulations regarding the same. The Board took note that the proposal stands recommended by the Committee constituted for the purpose and therefore considered the proposal for approval at its end.

Member Secretary was accordingly directed to forward the proposal as submitted by Impactum Lands Pvt. Ltd. for the approval of the Government, as required under the procedure prescribed.

Item No. 96: Regularization of existing Temple at land bearing in Sy. No 32/3 of Corlim village, Tiswadi Taluka.

Member Secretary informed that the Tiswadi Taluka Office of TCP Dept. is in receipt of an application for regularization of existing Temple in the property bearing Sy. No 32/3 of Corlim village, Tiswadi Taluka and the same has been forwarded by Mr. Bhiku V. Dhulapkar, President of Shree Sateri Ravalnath Devasthan Dhulapi, Corlim, Tiswadi-Goa. The area of the plot is 400m².

It was further informed that as per Regional Plan for Goa 2021, the property under reference is earmarked as "Settlement Zone". As per Release I, village Corlim is classified as VP-1 category with max. permissible FAR 80 and max. permissible height of 11.50 mts. (excluding stilt). The property is not listed in the probable survey numbers identified by Sawant & Karapurkar Committee, State Level Expert Committee, Araujo Committee nor South Goa Forest Division Committee.

As per the report submitted by Tiswadi Taluka Office, provisions of Section 17-A of the TCP Act is not applicable to the property under reference and provisions of Agriculture and forestry are also not applicable to the property under reference, as there is no sign of any agriculture & forestry in the plot.

It is mentioned by Tiswadi Taluka Office that the site under reference has been inspected by their official and it is observed that plot is abutting to existing 3.00 mts. wide road towards Western side as shown on the site plan submitted by the applicant. It is further informed by Tiswadi Taluka Office that as shown in the site plan, there is an existing re-constructed structure in the plot, which is shown for regularization.

As seen from the information furnished by Tiswadi Taluka office, the said office had earlier rejected the proposal and observations were communicated vide letter No. TIS/Tos33/COR/TCP2023/1075 dtd 12/06/2023, as under:

1) The applicant has to submit the clear title documents.

2) Minimum required front setback of 5.00mtrs and minimum width of access/ road of 8.00 mts. is not available as required for cultural/religious building as per regulation no. 6A.3. 1(B) of GLDBCR-2010.

It is further informed by Tiswadi Taluka Office that a complaint was received from Mr. Nilu Monu Dulapkar, raising therein the objections for the application as submitted by Mr. Bhiku Vishnu Dhulapkar for regularization of existing construction of Temple Shree Sateri Ravalnath Devasthan in Sy.No. 32/1 or 32/3 of village Dhulapi, Corlim, Tiswadi Goa.

It is brought to the notice by Tiswadi Taluka Office that as per the records available with the said office, matter regarding construction of Temple under reference was before the H'onble High Court of Bombay at Goa, which was filed by Mr. Nilu Monu Dhulapkar V/s State of Goa and others in Writ Petition No. 141/2023 and the same was disposed by the H'onble High Court vide Order dtd. 07/11/2023, directing the Panchayat/ BDO to implement the stop work order and to see that the illegal structure put up in defiance of the stop work order, is demolished within a period of 3 months.

It is informed by Tiswadi Taluka Office that their office is now in receipt of a representation from Shri Bhiku Vishnu Dhulapkar, President of Shree Sateri Ravarnath Devasthan stating that the name of Shree Sateri Devasthan Mandal is mentioned in the occupants

column in Form I&XIV and that there was an old Temple already in existence within the plot since last more than 100 years and that the said Temple is reflected in the authentic survey plan issued by Directorate of Settlement and Land Records.

The applicant has also submitted a copy of original plan and re-surveyed plan. It is further stated by the applicant that since the religious structure was constructed long back, the setbacks, as required under the present regulations, have not been maintained and therefore, it is requested to give relaxation considering the religious sentiments of the people residing in the locality, who are worshipping Shree Sateri Devi since long back.

Appeal as made by the devotees of the said Devasthan is also forwarded alongwith the request. The applicant has therefore requested to consider the facts as mentioned and to consider the relaxation of regularization of existing Temple.

Tiswadi Taluka Office has forwarded the same representation as above for relaxation of regulations for consideration of regularization of Temple for placing the same before the TCP Board for an appropriate decision in the matter.

The matter deliberated at length and various documents as submitted by the applicant were perused. Also, the ownership documents as submitted by the applicant alongwith the representation were seen and the Board was of the opinion that the proposal needs consideration as the Temple was already existing and the evidence for the same is place on record by the applicant. It was also observed from the documents submitted that the structure existing earlier on the site was not in accordance with the prevailing regulations and considering that the re-construction has been carried in line with the existing structure, the same could be considered for relaxation of regulations as regards to setbacks and accessibility to the plot.

The Board therefore recommended for relaxation of setbacks and accessibility for the purpose of regularisation of re-constructed Temple in the manner applied to Tiswadi Taluka Office.

Member Secretary was accordingly directed to forward the recommendation of the Board to the Government for its consideration and approval.

Item No. 97: Any other item with permission of the Chair.

No other issue was discussed under this item.