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**(2014) 10 MP CK 0064**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 2281/2013**

Ashish Kumar

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision :** 31-10-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226  
General Clauses Act, 1897 — Section 29, 6, 6(c), 6(e)  
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 2(c), 29, 30, 31, 32

**Citation :** (2015) 2 MPLJ 540

**Hon'ble Judges :** K.K. Trivedi, J

**Bench :** Single Bench

**Advocate :** R.K. Verma, Learned Senior Advocate Assisted by Saurabh Shrivastava, Learned Counsel, Advocate for the Appellant; Rajesh Tiwari, Learned Govt. Advocate and Anshuman Singh, Learned Counsel, Advocate for the Respondent

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## Judgement

K.K. Trivedi, J.—This writ petition under Article 226 of the Constitution of India, invites challenge to the order dated 12.12.2012, said to be passed by the Building Officer of Municipal Corporation, Jabalpur, whereby the permission is granted to the petitioners to construct a multi storied building in terms of the proposal of construction made, keeping the maximum height at 18 meters and making construction on 30% of the open land maintaining 1.5 Floor Area Ratio (hereinafter referred to as FAR for brevity), as also the order dated 20.1.2013, passed by the Commissioner of Municipal Corporation, communicating a decision on the appeal fled by the petitioners intimating that in terms of the provisions of M.P. Bhumi Vikas Niyam, 2012 (hereinafter referred to as the Development Rules, 2012 for short), the permission has rightly been granted by the competent Authority keeping in view the specific provisions of Rule 105(b) of the aforesaid Development Rules, 2012, hence the appeal of petitioners is rejected.

2. The brief facts giving rise to this writ petition are, that the petitioners are the

developers, colonizers and builders, and have constituted a firm for the said purposes in the name and style of Surendra Dixit & Nitin Dhimole Associates. A land was obtained by the petitioners, at Gorakhpur, Banarsidas Bhanot Ward, Jabalpur, and an agreement was executed on 23.7.2011. For the land admeasuring 0.439 hectares a development plan was made. At the relevant time, the M.P. Bhumi Vikas Niyam, 1984 (hereinafter referred to as the Development Rules, 1984 for short) were in vogue and the requisite application was required to be made before the Joint Director Town and Country Planning, Jabalpur. Such an application was made, which was considered by the High Rise Committee in its meeting dated 3.1.2011. Certain terms and conditions were laid down and the said permission was granted to the petitioners on 18.3.2011. In terms of the Development Rules, 1984, the FAR was granted at 2.5 as per plan to construct a building containing 42 fats in Block-A and 72 fats in Block-B. The petitioners were called upon to deposit the requisite amount, which was deposited on 16.5.2012.

3. The petitioners were required to obtain a building permission from the Municipal Corporation, Jabalpur. A sanction was also required under the M.P. Nagar Palika (Registration of Colonizer, Terms and Conditions) Rules, 1988 (hereinafter referred to as the Rules of 1988 for short). Since the application was made, in terms of the provisions of the Rules of 1988, an agreement to mortgage the property in question was executed by the petitioners with the Commissioner Municipal Corporation, Jabalpur, on 31.5.2012. The object of the agreement was to secure payment of the development charges in terms of the Rules of 1988 and for that purpose 27 fats, shown in the plan were said to be mortgaged with the Municipal Corporation. Before the execution of the agreement, the petitioners were called upon to deposit certain amount in the Municipal Corporation which amount according to the petitioners was deposited. The petitioners thereafter submitted the application for grant of sanction to construct the building on 23.5.2012. It will not be out of place to mention here that after making of the application for grant of sanction to construct the building, a permission was issued to the petitioners by the Municipal Corporation on 6.6.2012 under the provisions of Rules of 1988. In terms of this sanction, the petitioners were required to complete the development work on the site within a period of three years from the date of issue. It is also to be noted that the petitioners were asked to make appropriate application for grant of sanction to construct the building in terms of the provisions of Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as the Act of 1956 for short) and in terms of the Development Rules of 1984.

4. When the application of the petitioners was pending consideration, a memo was issued to the petitioners by the respondent No. 3 on 13.6.2012, intimating that with effect from 1.6.2012 the Development Rules of 2012 have become applicable in the State of Madhya Pradesh, therefore, a revised plan was to be submitted by the petitioners for grant of sanction to construct the building. On receipt of this letter, the petitioners replied that since all formalities for grant of

sanction to construct high rise building were completed when the Development Rules, 1984, were in vogue, even the application also was made by the petitioners for grant of sanction to construct a building when the Development Rules, 2012 were not made applicable, therefore, their application was to be considered under the old provisions of the Rules and not under the new Rules. It was also pointed out that under the M.P. Prakoshtha Swamitva Adhiniyam, 1976, the declarations were required to be made by the developers which were already made by the petitioners on 19.9.2012. When these facts were pointed out, it was submitted that the application of the petitioners be considered for grant of building permission in terms of the provisions of the Rules which were in vogue on the date when the application was made as a created right was not to be taken away only on the ground that the new Rules have come into force during pendency of the said application. It is the case of the petitioners that these submissions were not considered in appropriate manner and the order was issued on 12.12.2012 reducing the FAR, as a result changing the complete plan of construction made by the petitioners. They preferred the appeal against such an action of the Building Officer, but the same has been turned down vide order dated 24.1.2013, therefore, the writ petition is required to be filed.

5. On service of the notice of the writ petition, the respondents No. 2 and 3, the main contesting parties have filed their returns and have contended that the Development Rules, 2012 became applicable with effect from 1.6.2012 and in terms of the provisions of Rule 105 of these Rules, since the pending application of the petitioners was to be considered only and only under the new Rules, where a restriction of FAR upto 1.5 only was prescribed, rightly the sanction was granted to the petitioners in terms of the said provisions of Development Rules of 2012. It is contended that previous application submitted by the petitioners were made for the purposes of seeking permission from the Town and Country Planning and permission from the Municipal Corporation under the Colonizer Rules, therefore, if any sanction was granted under those provisions at that time, ipso facto the petitioners would not be entitled to claim that the accrued right is not to be denied to them. Since the provisions of the Rules 105(1) (b) of Development Rules of 2012, have not been called in question, a simple meaning would be that the petitioners' application was to be considered under the Development Rules, 2012, which has rightly been done by the respondents. Hence, the entire claim made by the petitioners is misconceived. These aspects were considered by the appellate Authority and rightly appeal of the petitioners has been rejected as is communicated to the petitioners, therefore, no interference in the order so passed by the respondents in respect of the petitioners, is called for in the present writ petition, which deserves to be dismissed. Though a rejoinder is filed but it is submitted by the petitioners that the calculation of FAR by the respondents even under the Development Rules 2012, is not correct. In terms of the Schedule-V (Table V) framed under Rule 42(2) of the Development Rules, 2012, the petitioners would be entitled to get FAR at 2.25. It is contended that the claim made with respect to consideration of

the application of the petitioners under the Development Rules, 1984, is not abandoned, but in alternative these submissions may also be taken note of.

6. Heard learned counsel for the parties at length and perused the record.

7. The main controversy in the present writ petition voice around the question whether in view of the repeal of the Development Rules, 1984, any right conferred under the said Rules would be absolute right available to the petitioners or not in the matter of grant of building permission. In other words, if the Development Rules, 1984 are treated to be repealed, any benefit extended under the said Rules would be absolute and would be available to the petitioners or not.

8. Yet, another question would be whether the building application made by the petitioners on the strength of the permission granted by the development authorities, would be treated to be an application under the Development Rules and would be considered only and only under the provisions of the Development Rules, 2012, in terms of the specific provisions made under Rule 105 (1)(b) of the said Rules. Lastly, it has to be examined who would be the competent authority to sanction the FAR and whether such a FAR could be changed while considering the application for grant of building permission by the Municipal Corporation only because of coming into force of the Development Rules of 2012.

9. For the purposes of appreciating and resolving the aforesaid questions raised in the present writ petition, it would be appropriate to first examine the provisions of the Act under which the Development Rules are made. The M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as the Act of 1973 for brevity) is promulgated to make provisions for planning and development and use of land; to make better provision for the preparation of development plans and zoning plans with a view to ensuring town planning schemes are made in a proper manner and their execution is made effective, to constitute Town and Country Planning Authority for proper implementation of town and country development plan, to provide for the development and administration of special areas through Special Area Development Authority, to make provision for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with the matters aforesaid. Thus, the Act is special one and has override effect on any other provisions made in respect of development in any other general enactments.

10. Keeping in view the object of the Act of 1973, the definition of "building" as prescribed under Section 2(c) of the Act of 1973 is also relevant. However, other definitions of the Act are not that much materially important, therefore, reference of the same are not required to be made. Yet, it would be necessary to examine some more definitions as given under the Act of 1973. Therefore, the relevant definitions which are to be kept in mind are being reproduced including the definition of "building" which read thus:-

"2(c). "building" means a house, hut, shed or other structure for whatever

purposes and with whatever material constructed and every parts thereof, whether temporary or permanent and whether used as human habitation or not and includes a well, latrine, drainage work, fixed platform, verandah, plinth, door steps, compound wall, fencing and the like, and any work connected therewith but does not include plant or machinery comprised in a building."

2(d). "building operation "includes-

- (i) [erection or re-erection or demolition] of a building or any part thereof;
- (ii) roofing or re-roofing of any part of building or an open space;
- (iii) any material alteration or enlargement of a building;
- (iv) any such alteration of a building as is likely to alter its drainage or sanitary arrangements, or materially affect its security;
- (v) the construction of a door opening on any street or land not belonging to the owner.

2(f) "development" with its grammatical variations means the carrying out of a building, engineering, mining or other operation in, or over or under land, or the making of any material change in any building or land or in the use of either, and includes sub-division of any land;

2(k) "local authority" means

- (i) a Municipal Corporation constituted by or under the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956);
- (ii) a Municipal Council or Nagar Panchayat constituted by or under the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961);
- (iii) a Gram Panchayat constituted under the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994).

11. The object and purpose of the Act of 1973 is to constitute an authority to prepare the development plans within the planning areas. Once the planning areas are notified and a Development Authority is constituted by the State Government, without the permission for development, nobody can undertake a development or construction work within the planning area. The specific provisions in this respect are made under Section 29 of the Act of 1973. For the aforesaid purposes power to make Rule is conferred on the State Government under Section 85 and this is how the Development Rules were made in the year 1984, which have now been replaced by the Development Rules of 2012.

12. The field of operation of the Rules is for the purposes of fulfilling the provisions of the Act of 1973. Section 29 of the Act of 1973 prescribes that any person not being the Union Government, State Government, a Local Authority or a Special Authority constituted under the Act, intending to carry out any development on any land, shall make an application in writing to the Director for

permission, in such form and containing such particulars and accompanying with such documents, complying with the provisions of the Act and Rules and Bye-Laws, relating to the Development in the natural hazard prone area as may be prescribed. Section 30 of the Act of 1973 lays down the prescription of grant or refusal of permission, which read thus:-

"30. Grant or refusal of permission.-(1) On receipt of an application under Section 29, the Director may, subject to the provisions of this Act, by order in writing,

(a) grant the permission unconditionally;

(b) grant the permission, subject to such conditions as may, be deemed necessary under the circumstances;

(c) refuse the permission;

[Provided that in case of an application under sub-section (3) of Section 29, the Director shall not pass any order under clause (a) or (b) herein above unless he has heard such persons as may have interest in the proposed modification and considered encumbrances, if any, created in the land or building. The interest and encumbrances that may be considered, procedure for such consideration, manner in which encumbrances, if any, may be remedied and the form or order shall be such as may be prescribed.]

(2) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(3) Any permission granted under subsection (2) with or without conditions shall be in such manner as may be prescribed.

(4) Every order under sub-section (2) shall be communicated to the applicant in such manner as may be prescribed.

(5) If the Director does not communicate his decision whether to grant or refuse permission to the applicant within [sixty days] from the date of receipt of his application, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of [sixty days]:

Provided that in computing the period of [sixty days] the period in between the date of requisitioning any further information or documents from the applicant and date of receipt of such information or documents from the applicant shall be excluded."

13. An appeal against the order granting permission or refusing permission is prescribed under Section 31 of the Act of 1973. A further revision to the State Government is provided under Section 32 of the Act of 1973. Every permission granted under Section 30, or by an order in appeal under Section 31 or in a revision under Section 32 of the Act of 1973, shall remain in force for a period of three years from the date of such grant and thereafter it shall lapse as is

specifically provided under Section 33 of the Act of 1973. There is a provision for extension of the period from year to year by the orders of the Director with a rider that such extension shall not exceed a total period of five years of such sanction, from the date on which the permission was initially granted. There is yet another provision, which makes it permissible to seek fresh sanction after the lapse of earlier sanction, as it is provided that such lapse shall not bar any subsequent application for fresh permission under the Act of 1973. Therefore, the field of operation of the Act of 1973 is planning and development in notified planning areas and therefore, the Act of 1973 is a specific special Act in the said field.

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

" 2(5). "Authority having jurisdiction" (hereinafter referred to in these rules as "Authority" in relation to development and building activities means-

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

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

15. The Development Rules, 1984, were made under the same powers which have been exercised by the State Government for making of the Development Rules, 2012. Therefore, if the definitions mentioned in the said Development Rules, 2012 are examined, virtually the same definitions have been incorporated

in the new Rules only with the change of serial number. The definition of "Authority" having jurisdiction as was given in Rule 2(5) of the Development Rules, 1984, is reproduced at the same place at the same serial number in the Development Rules, 2012. The definition of FAR given in Rule 2(29) of the Development Rules, 1984 is separately given under Rule 2(30) of the Development Rules, 2012, which reads thus:-

"2(30). "Floor Area Ratio" (FAR) means the ratio of total built up area in a building on all floors to the total plot-area of the land in question. The built up area shall mean the total built up area on all floors excluding the area under lift wells, service ducts, machine room for lifts, water tanks, escalator, lift lobby, fire escapes, ramps, refuse chutes and service ducts, mezzanine floor, balcony (upto a width of 1.20 mtrs) parking areas, parking floors, mechanized parking areas, porch, service floors, podiums, private garage (not exceeding 25 sq. mtrs.), servant quarter (not exceeding 25 sq. mtrs.), basement subject to the provision of rule 76, corridors, arcades, lobbies, mumpsee, staircases, entrance lobby or foyer atrium which is not used for commercial, activity, pump room and two watchmen hut each not exceeding 6 sq meters, but shall include covered projections exceeding the limits prescribed under rule 58.

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

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

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

17. From the definition of authority given under Rule 2(5) of the Development Rules, it is clear that separate applications are required to be made for the purposes of grant of permission to develop the land and an application for grant of building permission. The authorities are distinctly prescribed for grant of such permission and sanction specifically. The application for grant of approval of a plan to construct a building is required to be made before the development authority, which is required to be considered by the Director of Town and Country Planning and permission is required to be granted in terms of the relevant provision of the Rules referred to herein above. Once the permission is granted,

the intending builder/person interested in making the construction is required to apply to the Municipal Corporation or the Municipal Council as the case may be for grant of building permission, under the relevant Municipal Laws read with the relevant Development Rules. For the said purposes, the relevant provisions of Rules and their effect and operation are required to be examined.

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

19. From a perusal of Sub-rule (2) of Rule 14 of Development Rules, 1984, it is clear that this Rule specifically prescribes that permission for development and in addition a permission for building shall be necessary for commencement of building activities involving development of land as a composite building Scheme. Sub-rule (3) of Rule 14 of the Development Rules, 1984, specifically prescribes that for construction for ground floor tenements, with walls of non-combustible material on plots not exceeding 50 square metres in site and service schemes on plinth of 30 centimetres above ground level and with a living room of not less than 7.5 square metres, no building permission shall be required. Similarly, under rule 17 of the Development Rules, 1984, various provisions were made with respect to the preparation of development plan which nowhere prescribes the standard of construction of building, the total built up area, the FAR which is to be maintained and all other necessary requirements of a building plan. However, provisions of such a Rule make it clear that a tentative building plan is to be prepared and is required to be placed before the Development Authority for the purposes of considering whether the development of the land is to be

permitted for the purposes and object of making a building as suggested in the building plan or not. Nothing more is prescribed under the said Rule, with respect to the building permission or the building plan.

20. Once such a notice is given, the same is to be considered in terms of the Rules made under Part-IV of Development Rules, 1984, which deals with Development Control. Certain specifications have been made in Rule 37, 38 and 39 while considering the application for grant of development permission by the Development Authority. There are various other provisions made in the same Chapter making provisions for consideration of even high rise buildings, but none of the said provisions specifically prescribes that the permission required to be granted by the Development Authority would attain finality. A complete perusal of the said provision made in Part-IV of the Rules leaves no room of doubt that only permission is granted by the Development Authority for the purposes of development subject to final sanction of building plan by the concerning competent authority.

21. Part-V of the Development Rules, 1984 deals with General Building Requirements, which specifically deals with classification of buildings, prescription of FAR, assessment of the same and grant of sanction. For the first time, the FAR is prescribed under Rule 61 of the Development Rules, 1984, which makes it clear that FAR would be such as prescribed in the said Rules. The height limit of the building is also prescribed in this part. The Authority to grant sanction for building permission according to this Scheme is only the Corporation Authority and not Development Authority. Therefore, it has to be held that while granting the permission to develop, the Development Authority only makes the recommendation for prescription of the height of the building or the FAR, which is to be maintained by the developer. A recommendation made by the Development Authority, will not constitute an absolute right in favour of any developer to get the building sanction as well on the same terms.

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

23. As has been pointed out herein above, for the first time, the FAR is prescribed in Rule 61, which falls within the provisions of Part-V of the Development Rules, 1984. Therefore, it is only and only the Building Officer of the Municipal Corporation or the Municipal Corporation itself to decide what

would be the appropriate FAR to be granted to any builder for the purposes of construction of building. In light of this discussion, now it is to be examined what controls are in the hands of the Municipal Corporation in respect of construction of building within the municipal area.

24. The building control is in the hands of the Municipal Corporation as is prescribed under Chapter XXIV of the Act of 1956. Section 293 creates a prohibition of erection or re-erection of buildings without the permission. The said provision reads thus:-

"293. Prohibition of erection or re-erection of buildings without permission.-

(1) No person shall-

(i) erect or re-erect any building; or (ii) commence to erect or re-erect any building; or

(iii) make any material external alteration to any building or

(iv) construct or re-construct any projecting portion of a building which the Commissioner is empowered by section 305 to require to be set back or is empowered to give permission to construct or re-construct,-

(a) unless the Commissioner has either by an order in writing granted permission or has failed to intimate within the prescribed period his refusal of permission for the erection or re-erection of the building or for the construction or re-construction of the projecting part of the building; or

(b) after the expiry of one year from the date of the said permission or such longer period as the Commissioner may allow or from the end of the prescribed period, as the case may be:

Provided that nothing in this section shall apply to any work, addition or alteration which the Corporation may by byelaw declare to be exempt.

(2) If a question arises whether a particular alteration in or addition to an existing building is or is not a material alteration, the matter will be determined by the Commissioner.

(3) Any person aggrieved by the order of the Commissioner in this behalf may appeal to the district court within thirty days of such order in the manner prescribed therefor and the decision of the district court shall be final."

25. A notice is required to be given under Section 294 of the Act of 1956. The power is given to the Commissioner of the Municipal Corporation to refuse grant of permission for erection or re-erection of buildings. Section 296 of the Act of 1956 prescribes the grounds on which proposed building on the site may be disapproved. Section 297 of the Act of 1956 prescribes the ground on which permission to erect building may be refused. The fact remains that the building plan if it is in a development area, is required to be approved by the Development Authority, but is required to be sanctioned only by the Municipal

Authorities.

26. As has been pointed out, an application was made by the petitioners for grant of permission for development of area and for approval of the plan before the Development Authority. The said application was already considered and decided in terms of order dated 18.3.2011. Certain conditions were mentioned in the said permission order. It would be appropriate to refer to the conditions mentioned in the said permission, therefore, the same is reproduced hereunder:-

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27. From perusal of the permission order, it would be clear that there were specific conditions mentioned that any building operation was to be started only after obtaining the building sanction from the Municipal Corporation and no objection from the concerning authority. Therefore, it was nothing, but only a development permission. It was also made clear that after obtaining the building sanction from the Corporation, a copy of the said sanction order was to be deposited in the office of the Development Authority.

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

"6. Effect of repeal.-Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

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

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

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

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

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

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

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

(b) any application submitted under the repealed rules, pending at the commencement of these rules shall be continued and disposed of in accordance with the provisions of these rules i.e. Madhya Pradesh Bhumi Vikas Rules, 2012;

(c) nothing in these rules shall be construed as depriving any person to whom these rules apply of any right of appeal which had accrued to him under the rules

hereby repealed."

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

32. Now the question is whether any right had accrued to the petitioners to claim sanction for construction of the building in terms of the permission granted by the competent Development Authority. Learned counsel for the petitioner has invited attention of this Court to the provisions of the Act of 1973, has contended that in terms of the provisions of Section 6 of the General Clauses Act, such repeal would not affect the right of the petitioners. For that learned Senior counsel for petitioners has placed his reliance in the case of M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, and has contended that though dealing with the accrued right in Rent Control and Eviction, the Apex Court has categorically held that the accrued rights cannot be taken away. The reliance is also placed in the case of J.S. Yadav Vs. State of U.P. and Another, and it is contended that though dealing with the service matters, the Apex Court while interpreting the word "vested" has categorically held that such vested right cannot be taken away. Further, relying on the decision in the case of A.P. Dairy Development Corporation Federation Vs. B. Narasimha Reddy

and Others, , learned counsel for the petitioners has contended that since the Development Rules, 2012, have not been made applicable with retrospective effect, the rights which were available to the petitioners in terms of the Repealed Rules, the permissions which were granted under the Repealed Development Rules, 1984, would remain valid and the petitioners were to be granted the sanction for construction in terms of the permission already granted.

33. Learned counsel appearing for the respondent Municipal Corporation, has contended that in terms of the provisions of either Rules, there was a requirement of three separate permission and sanction for construction of building. The first permission was to be obtained under the Development Rules which were in vogue. The second permission was to be obtained under the Colonizer Rules, 1998 and the third sanction was to be obtained to start the construction of building in terms of the Corporation Act. No doubt, the petitioners were given the permission by the Development Authorities on 18.3.2011, the colonizer permission was granted on 6.6.2011, but their application which was made for grant of building permission on 23.5.2012, was not decided till the Development Rules, 2012, have come in force and, therefore, their application was to be considered only and only under the Development Rules, 2012. The permissible FAR is granted to the petitioners and as such, no relief in that respect can be granted to the petitioners.

34. As has been pointed out, the application of Section 6 of the General Clauses Act has already been tested and explained. The Apex Court in the case of Ambalal Sarabhai Enterprises Ltd. (supra) has dealt with such a situation in paragraphs 26, 27, 30 & 31, which read thus:

"26. As a general rule, in view of Section 6, the repeal of an statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words such repeal does not effect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties gets crystalised on that date. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find Clause (c) of Section 6, refers the words any right, privilege, obligation acquired or accrued under the repealed statute would not be affected by the repealing statute. We may hasten to clarify here, mere existence of a right not being acquired or accrued, on the date of the repeal would not get protection of Section 6 of the General Clauses Act.

27. At the most such a provision can be said to be granting a privilege to the landlord to seek intervention of the Controller for eviction of the tenant under the Statute. Such a privilege is not a benefit vested in general but is a benefit granted and may be enforced by approaching the Controller in the manner prescribed under the statute. On fling the petition for eviction of the tenant the

privilege accrued with the landlord is not affected by repeal of the Act in view of section 6(c) and the pending proceeding is saved under section 6(e) of the Act.

30. In this connection the decision of this Court in *M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others*, may be seen. Para 15 of the judgment which is relevant is quoted hereunder:

15. The distinction between what is, and what is not a right preserved by the provisions of Section 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere hope or expectation of, or liberty to apply for, acquiring a right. In *Director of Public Works v. Ho Po Sang* Lord Morris speaking for the Privy Council, observed:

"It may be, therefore, that under some repealed enactment, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should be or should not be given. On a repeal, the former is preserved by the Interpretation Act. The latter is not. "

(Emphasis supplied)

It must be mentioned that the object of Section 31(2)(i) is to preserve only the things done and action taken under the repealed Ordinance, and not the rights and privileges acquired and accrued on the one side, and the corresponding obligation or liability incurred on the other side, so that if no right acquired under the repealed Ordinance was preserved, there is no question of any liability being enforced.

31. In the case of *Bansidhar and Others Vs. State of Rajasthan and Others*, a Constitution Bench of this Court interpreting the provisions of section 6 of the Rajasthan Tenancy Act, 1955, which is pari-material with section 6 of the Act, it was observed (SCC pp. 570-71, paras 29-30):

"29. This takes us to the next question whether in the present cases even if the provisions of Section 6 of the Rajasthan General Clauses Act, 1955, are attracted, the present cases did not involve any rights accrued or obligations incurred so as to attract the old law to them to support initiation or continuation of the proceedings against the landholders after the repeal. It was contended that even if the provisions of the old Act were held to have been saved it could not be said that there was any right accrued in favour of the State or any liability incurred by the landholders in the matter of determination of the ceiling area so as to attract to their cases the provision the old law. The point emphasised by the learned counsel is that the excess land would vest in the State only after the completion of the proceedings and upon the landholder signifying his choice as to the identity of the land to be surrendered. Clauses (c) and (e) of Section 6 of the

Rajasthan General Clauses Act, 1955, provide, respectively, that the repeal of an enactment shall not, unless a different intention appears, affect any right, privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid.

30. For purposes of these clauses the right must be accrued and not merely an inchoate one. The distinction between what is and what is not a right preserved by Section 6 of the General Clauses Act, it is said, is often one of great fineness. What is unaffected by the repeal is a right acquired or accrued under the repealed statute and not a mere hope or expectation of acquiring a right or liberty to apply for a right."

35. The cardinal rule of interpretation is that while interpreting the statute the Courts are required to keep in mind three principles; (i) the object and purpose of making of the statute, (ii) the plain and simple dictionary meaning of the words used in the statute, and (iii) whether the simple meaning of the words used in the statute fulfills the object sought to be achieved by the statute. As has been described herein above, the object of the Act of 1973 is not only the development but the control of building. The plain and simple meaning of the word authority used in the definition and the entire body of the statute is made very clear inasmuch as for different part of the Rules different authorities are prescribed in the definition of local authorities. Now in view of this, if the simple meaning of the provision made in aforesaid different part of the Development Rules of 1984 are examined, it would be clear that the authorities are distinctly prescribed for taking a final decision in the matter either for grant of development permission or for grant of building permission. If an authority which is not competent to make a specific sanction, for the purposes of building permission, even if any recommendation is made by the said authority, in case in hand, the development authority, that would be only a recommendatory suggestive prescription of condition and not an absolute or conclusive sanction on the part of the said authority. This has to be seen that the development authority while granting permission to develop the land though may suggest grant of a particular FAR but the said permission will not constitute an absolute right in favour of the seeker of such permission.

36. As has been explained herein above, there were three fold applications to be made, (i) for grant of permission from the Development Authority, (ii) grant of licence or permission from the Colonizer Authority, and (iii) an application for grant of building permission. The two applications were required for permission to enable the petitioners to apply for grant of building permission and, therefore, if such permission were granted by the competent Authority under the relevant Rules, which were in force at the relevant time, the petitioners could have made the application before the Municipal Corporation for the purposes of grant of building sanction, but as has been pointed out, the said building sanction was

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

"20. "The word "vested" is defined in Black's Law Dictionary (6th Edition) at page 1563, as vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent." Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or 15 persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edition) at page 1397, "vested" is defined as (law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest." (See: Masammat Bibi Sayeeda and Others etc. Vs. State of Bihar and Others, .

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property etc. Such "settled expectation" can be rendered impossible of fulfillment due to change in law by the Legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide: Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others, .

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course."

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

38. Now lastly, it is to be examined whether sub-clause (b) of sub-rule (1) of Rule 105 of the Development Rules 2012 is applicable while considering the application for grant of building permission by the Municipal Corporation or not. The submission which the respondents have made by way of filing the return is that when the application made by the petitioners for building permission was pending the Development Rules of 2012 became operative and in terms of the said Rules their application was to be considered by the Municipal Corporation.

39. From the Scheme of the Development Rules, 1984 itself, it was clear that no vested or absolute right accrued to the petitioners to claim grant of building sanction even when the Development Rules, 1984 were in force. Rightly the application of the petitioners was considered by the Corporation under the provisions of Development Rules, 2012 in terms of the specific provisions made under Rule 105(1)(b) of the said Rules. As application made for grant of building sanction was also to be considered under the provisions of Development Rules, it was to be treated as one made under the provisions of Development Rules and since it was not decided till 1st of June 2012 and was pending consideration, it was to be decided only and only under the provisions of Development Rules, 2012. The FAR was rightly granted to the petitioners in terms of the provision of Development Rules, 2012. As has been discussed herein above, the change in the Development Rules, 1984 was with an object to make certain changes looking to the various circumstances which have glaringly become hazardous to the human inhabitants. The rapid growth of buildings, the damage to the Fauna and flora and the danger to the environmental conditions were all tested by the Rule Making Authority and that is how a change in the FAR was provided. That being so, if while considering the application for grant of building sanction, the Municipal Corporation has considered the specific provision of FAR made in the Development Rules, 2012, it cannot be said that any wrong is committed by the

Corporation Authorities or the building sanction Authorities. Though the return was not happily drafted and broadly all these facts were not brought to the notice of the Court in writing, but on examination of the Rules and a proper scrutiny, the contentions raised by the petitioners are not acceptable.

40. In view of the aforesaid discussions, the writ petition fails, deserves to be and is hereby dismissed. However, there shall be no order as to costs.