

(2019) 08 GAU CK 0046

In the Gauhati High Court

Case No : Public Interest Litigation No. 25 Of 2018

J.M. Thangkhiew

APPELLANT

Vs

State Of Meghalaya

RESPONDENT

Date of Decision : 16-08-2019

Acts Referred:

Meghalaya Town And Country Planning Act, 1973 — Section 13, 29, 30A, 30A(1), 30(2), 30B, 30B(1), 31

Citation : (2019) 08 GAU CK 0046

Hon'ble Judges : Arup Kumar Goswami, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : K. Paul, N. Dutta, J. Roy, G.N. Sahewalla, D. Senapati, S.S. Dey, D.J. Kapil, H. Bezbaruah, K.N. Choudhury, P. Nongbri, K. Kharmawphlang

Final Decision : Disposed Off

Judgement

A.K. Goswami, J

1. Heard Mr. K. Paul, learned counsel for the petitioners. Also heard Mr. N. Dutta, learned Senior counsel, assisted by Mr. J. Roy, learned counsel, appearing for respondent No.3, Meghalaya Urban Development Authority (MUDA); Mr. D. Senapati, learned counsel, appearing for respondent No.5; Mr. S.S. Dey, learned Senior counsel, assisted by Mr. D.J. Kapil, learned counsel, appearing for respondent Nos.6, 12, 13, 14 & 20; Mr. H. Bezbaruah, learned counsel appearing for respondent Nos.7 and 8; Mr. K.N. Choudhury, learned Senior counsel appearing for respondent Nos.10 and 18; Mr. P. Nongbri, learned counsel appearing for respondent Nos.15, 19, 22 & 28 and Mr. K. Kharmawphlang, learned counsel appearing for respondent No.16.

2. Four practicing advocates of the High Court of Meghalaya had filed a Public Interest Litigation (PIL) on the issue of construction of high-rise buildings, multi-storied buildings, skyscrapers, which they contend, has raised concern as the State of Meghalaya being placed at Zone-5 of seismic activity, the city of Shillong may experience earthquakes which can go up to 8/9 on the Richter scale. It is

stated that though on inquiries being made the petitioners were informed that building permissions had been issued in conformity with Meghalaya Building Bye-Laws, 2011, framed under Meghalaya Town and Country Planning Act, 1973, because of rapid rise in number of high-rise buildings, multi-storied buildings, skyscrapers, etc., they doubt as to whether due procedures and norms are being followed by the concerned authority in respect of issuance of clearance/permission including inspections. It is pleaded that haphazard grant of permission/clearance in a mechanical manner for construction of multi-storied buildings extending beyond 4(four) storey in and around Shillong requires a serious look as in the event of an earthquake, collapse of buildings may lead to huge loss of human lives and property. The PIL was registered as PIL No.1/2014 in the High Court of Meghalaya.

3. While entertaining the PIL, an interim order dated 11.04.2014 was passed by the High Court of Meghalaya providing that no further construction shall be raised in private buildings in the city of Shillong beyond Ground+3. During the course of proceedings on 04.09.2014, taking note of the submission of the learned counsel for the PIL petitioners that interim order dated 11.04.2014 was violated, a Committee was constituted with the Deputy Commissioner/In-Charge Deputy Commissioner, East Khasi Hills, Shillong, as the Chairman with the following terms of reference:-

"(i) How many of the high rise buildings, which are now under constructions, are constructing in strict compliance with the permissions granted by the authority;

(ii) If there be any violation of the permissions granted by the authority in the ongoing constructions, necessary steps should be taken up by resorting to the provisions under the Meghalaya Town & Country Planning Act, 1973 and also the Meghalaya Building Bye Laws, 2011 i.e. by immediately sealing the unauthorized part of constructions with the help and assistance of the concerned authority i.e. the Deputy Commissioner/In-Charge Deputy Commissioner/ Chairman he/she and the concerned Superintendent of Police;

(iii) If necessary, criminal proceeding shall also be taken against the owners who had constructed the buildings in violation to the permissions granted to them."

4. The Committee submitted its report and identified certain buildings, both residential and commercial, which were constructed in violation of the building bye-laws in force as well as permission granted. The owners/builders of such buildings were arrayed as party respondents. After hearing the parties, the PIL was closed by an order dated 28.09.2015. In paragraphs 56 to 60, the High Court of Meghalaya had observed as under:-

"56. For the foregoing reasons and discussions, this Court is of the considered view that there is no alternative except to order demolition of the additional floors of the buildings above G+3 illegally constructed by the respondents No.5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 27 & 28. Accordingly, all the additional illegal constructions beyond G+3 shall be

demolished by the respondent No.3. The particulars of the illegally constructed floors of buildings of the private respondents No.5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 27 & 28 to be demolished are already mentioned in the aforesaid paras i.e. in para 18 for respondent No.5, para 19 for respondent No.6, para 20 for respondent No.7, para 21 for respondent No.8, para 22 for respondent No.9, para 24 for respondent No.10, para 25 for respondent No.11, para 27 for respondent No.12, para 28 for respondent No.13, para 30 for respondent No.14, para 32 for respondent No.15, para 34 for respondent No.16, para 38 for respondent No.18, para 39 for respondent No.19, para 40 for respondent No.20, para 42 for respondent No.22, para 43 for respondent No.23, para 45 for respondent No.25, para 48 for respondent No.27 and para 49 for respondent No.28.

57. The MUDA during the course of demolition drive shall seek the assistance of the Deputy Commissioner (Revenue), East Khasi Hills District, Shillong and Superintendent of Police, East Khasi Hills District, Shillong and also, if the need be, para military forces, so as to carry out the direction of demolition of additional floors of the buildings above G+3 illegally constructed by the private respondents No.5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 27 & 28 effectively and within a time frame of 15 days from today. The entire expenses incurred in demolishing the illegally constructed floors shall be borne by the private respondents No.5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 27 & 28 in proportion to the expenses incurred in demolishing their respective illegal constructions as noted hereinabove.

58. Seals of the buildings of the private respondents are to be broken only for the purpose of demolishing the illegally constructed floors above G+3. Both the Deputy Commissioner (Revenue), East Khasi Hills District, Shillong and Superintendent of Police, East Khasi Hills District, Shillong shall ensure maintenance of security as well as law and order during the demolition drive of illegally constructed floors above G+3 of the buildings in question. The MUDA shall not issue Completion Certificates under Bye-law 9 and Occupancy Certificates under Bye-law 10, till the floors illegally constructed by the private respondents i.e. respondents No.5-28 are completely demolished. Moreover, interim order(s) passed earlier shall stand merged with this final judgment and order.

59. Considering the rampant irregularities in granting the permissions for construction of buildings by the officials of the MUDA, it would not be in the public interest to let the erring officials go scot-free. The records for granting permissions to the respondents No.5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 & 28 have already been sealed by the Superintendent of Police, CBI, Shillong as ordered by this Court. The CBI shall thus register PE against the officers of MUDA who have granted permissions for constructions to the aforesaid respondents and by their acts of commission and omission benefitted the said respondents and also others whose buildings could

not be brought to the notice of the Court during the consideration of this case. The CBI shall also proceed against such builders and other persons who have been or were likely to be benefitted by such acts of commission and omission on the part of the officers of MUDA during the course of enquiry/investigation of the PE. The CBI is also directed to find out from the records of MUDA, as to, apart from the instant cases, in how many more such cases of illegal constructions presently existing in the city of Shillong, the building owners/builders have been benefitted by the acts of commission and omission on the part of officers of MUDA. The report shall be submitted to the Court on 15.10.2015 to find out as to whether the said erring officers of MUDA and building owners/builders are required to be prosecuted in the interest of justice. However, on the point of criminal liability of officers and others, the Office of this Court shall register a criminal petition which shall be listed on 15.10.2015 before appropriate Court for consideration and appropriate orders.

60. The Registry is directed to send a copy of this judgment and order to the Secretary MUDA respondent No.3, the Deputy Commissioner, East Khasi Hills District, Shillong, the Superintendent of Police, East Khasi Hills District, Shillong, and also to the Union Home Secretary and the Director General of all the para-military forces stationed in Shillong for immediate compliance."

5. A perusal of the above paragraphs of the judgment passed by the High Court of Meghalaya indicates that additional floors constructed over and above G+3 by respondent Nos.5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 27 and 28 are to be demolished by MUDA by taking such assistance as may be required within a period of 15 days and the expenses incurred would proportionately be realized from the said respondents. CBI was also directed to register a Preliminary Enquiry against the officers of MUDA, who granted permissions for construction to the said respondents and others whose buildings could not be brought to the notice of the Court, with a further direction to proceed against the builders and other persons who were benefitted. A suo moto criminal petition was also directed to be registered.

6. The respondent No.7 in PIL petition preferred a Special Leave Petition before the Hon?ble Supreme Court, which was registered as Civil Appeal No.10873/2016 arising out of SLP(C) No.28659/2015. The respondent No.8 had also preferred a Special Leave Petition and the same was registered as Civil Appeal No.10872/2016 arising out of SLP(C) No.28686/2016. The Hon?ble Supreme Court disposed of the said appeals by an order dated 15.11.2016 as follows:-

"Leave granted.

These appeals arise out of an Order dated 28.09.2015 passed by a Division Bench of the High Court of Meghalaya in PIL No. 1 of 2014 whereby the High Court has while dealing with several buildings allegedly violating the municipal by-laws directed that the top floor of the building constructed by the appellant

herein shall be demolished as the same has been illegally constructed.

The High Court has noted that several illegal constructions raised by several people in the city of Shillong were liable to be demolished and accordingly directed sealing and demolition of the same. The appellant herein who happened to be respondent No.7 before the High Court in the writ petition had been granted permission to construct a building comprising ground + three floors. The High Court has found that instead of confining the building to ground + three, the appellant had illegally constructed an additional floor hereby violating the sanctioned building/plan. The High Court has given its reasons for holding that the building actually constructed by the appellant is ground + four and not ground + three as was permitted. The appellant has questioned the correctness of the said finding of the High Court.

We have heard learned counsel for the parties at some length who have taken us through the impugned order. There is no manner of doubt that the High Court has proceeded to direct demolition of the top floor of the building constructed by the appellant on the clear finding that the said floor violates the sanctioned building plan. Learned counsel for the appellant however argues that the High Court was not correct in coming to that conclusion keeping in view the topography of area where the building was raised and the technical compulsions which any construction on the site was faced with. Be that as it may, we do not intend to pronounce finally on the submissions made before us by learned counsel for the parties. In our opinion, the appropriate course would be to remit the matter back to the High Court for reconsideration of the question whether any part of the building raised by the appellant is illegal and, if so, whether unauthorised diversion from the building plan can be compounded or any other mitigating measures taken.

We accordingly allow these appeals, set aside the order passed by the High Court to the extent the same relates to the building of the appellant herein and direct that the appellant shall be free to place before the High Court such further material as may possibly justify the construction raised by him. We make it clear that we have not expressed any opinion on the merits of the contentions urged before us. We further direct that while the High Court reconsiders the issue, the building constructed by the appellant shall continue to remain sealed subject to the ultimate outcome of the proceedings post remand.

With these directions these appeals are allowed and disposed of. The High Court may make an endeavour to expedite the hearing and disposal of the matters. No costs."

7. The respondent No.24 had also filed a Special Leave Petition, which was registered as SLP(C) No.20017/2016. The Supreme Court observed that MUDA shall consider the revised plan submitted by her and deal with the same in accordance with law. Another Special Leave Petition numbered as SLP(C) No.2859/2015 (Maruf Ilahi Vs. State of Meghalaya and others), was disposed of

on 14.03.2018 in terms of Civil Appeal No.10873/2016. As the Division Bench was not available before the High Court of Meghalaya at Shillong, the Hon?ble Supreme Court transferred all cases including the ones disposed of earlier arising out of the order dated 28.09.2015 passed by the High Court of Meghalaya to this Court and directed the parties to appear before this Court for further proceedings on 23.04.2018.

8. On such transfer, PIL No.1/2014 of the High Court of Meghalaya was registered in this Court as PIL No.25/2018. Accordingly, the matter was listed before this Court on 23.04.2018.

9. A perusal of the order dated 15.11.2016 passed in Civil Appeal No.10873/2016 would go to show that this Court is required to consider as to whether any part of the buildings raised by the respondents in question is illegal and, if so, whether unauthorized diversion from the building plan can be compounded or any other mitigating measures be taken. It is also noticed that submission was advanced on behalf of the appellant before the Hon?ble Supreme Court that the judgment of the High Court of Meghalaya was not correct in view of the topography of the area where the buildings were raised and the technical compulsions which were faced in respect of construction on the sites.

10. A perusal of the aforesaid order would go to show that the order of the High Court of Meghalaya was set aside only to the extent the same related to the building of the appellant. However, in view of the subsequent order dated 14.03.2018 in SLP(C) No.2859/2015 passed by the Hon?ble Supreme Court by which the petition was disposed of on the same terms as in Civil Appeal No.10873/2016, it has to be understood that the judgment and order passed by the High Court of Meghalaya was set aside to the extent of buildings of the appellants before the Hon?ble Supreme Court.

11. Taking note of the submission of the learned counsel for the parties, this Court in the order dated 17.07.2018 recorded that the enquiry reports submitted earlier do not conclusively indicate as to whether the alleged violations or deviations are in fact violations or deviations of the provisions of the building bye-laws as well as the provisions of the building permissions or such deviations are of the nature which can be compounded as urged upon by the respondent owners/builders or such deviations are inevitable in view of the topography of the site where they are constructed. This Court also noted that the earlier Committee constituted by the Court did not comprise of any technical person, who has the knowledge to determine the aforesaid factors. It is noted in the said order that there was a consensus that the examination of the constructions by a Committee consisting of experts in the subject would serve the interest of all the parties and accepting the unanimous suggestion that the Committee may consist of a person, who is a former town planner and who is unconnected with the dispute in question and who had not been indicted and investigated upon by the CBI pursuant to the earlier orders of the Court, and two Professors of Civil Engineering from the National Institute of Technology at Shillong, to be co-opted

as members of the Committee, so as to enable them to give their expert opinion on the nature of the construction made by the owners/builders, this Court at paragraphs 17, 18 and 19 stated as follows:-

"17. The suggestion as made by the respective parties is accepted. A suggestion has been made that Mr. B. Lato, Joint Director in the Directorate of Urban Affairs of the Government of Meghalaya, who had previously served as a Town Planner be made the Chairman of the expert committee. The said suggestion of the respective parties is accepted. Accordingly, a committee comprising of the following is constituted to examine the nature of the constructions made by the respondents and to submit a report whether such constructions are in conformity of the relevant provisions of the building Bye-laws as well as the permissions granted or whether if there is any such violation, such violation or deviation can be compounded, or further as to whether such violation or deviation is a necessary concomitant of the technical compulsion under which the constructions were undertaken in view of the topography of the respective sites. The committee would be:-

(i) Mr. B. Lato, Joint Director in the Directorate of Urban Affairs, Government of Meghalaya - Chairman

(ii) To be included from amongst the Senior Faculty members of the Department of Civil Engineering of the National Institute of Technology, Shillong as may be appointed/suggested by the Director of the institute - Member

(iii) To be included from amongst the Senior Faculty members of the Department of Civil Engineering of the National Institute of Technology, Shillong as may be appointed/suggested by the Director of the institute - Member

18. The Director of National Institute of Technology, Shillong is accordingly requested to look into the matter and nominate two senior and experienced faculty members of the Civil Engineering Department to be co-opted as the two members of the aforesaid committee. The Director is also requested that the said nomination be made within a period of 07(seven) days from being informed about this order. Upon the nomination being made, the committee shall undertake its exercise of doing the needful immediately and submit its report within a period of 04(four) weeks thereafter, which is expected to be on or before 27.08.2018.

19. Apart from enquiring as to what is indicated hereinabove, the learned counsel for the parties also insist that the following be also included as a reference for the committee:-

(i) Whether there is unauthorized diversion from the sanctioned plan, which can be regularized or compounded in terms of prevailing Meghalaya Building Bye Laws, 2011;

(ii) To suggest mitigating measures on individual case basis as per prevailing Meghalaya Building Bye Laws, 2011."

12. By the said order the enquiry and examination was directed to be made in respect of respondent Nos.5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25 and 28. It was further observed that while undertaking the exercise, the Committee shall give an opportunity of hearing to the respective owners/builders, whose buildings would be enquired into and they would be allowed to produce any relevant material that they may desire to produce to substantiate their respective claims and also give an opportunity of hearing to the petitioners to raise any objection against such construction. It was further observed that upon considering the contentions as may be raised or materials produced, the Committee is to submit report based upon factual findings and supported by reasons for its conclusion.

13. It is submitted at the bar that enquiry and examination was confined only to respondent Nos.5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25 and 28 as their cases only were to be considered in terms of the orders passed by the Hon'ble Supreme Court.

14. The Committee had thereafter submitted its report on 24.08.2018 and the same was taken on record by an order dated 04.09.2018 observing that this Court would not entertain any debate on the report so filed. Observations had been made in the report in respect of buildings in question including deviation from approved/sanctioned plan. Mitigation measures had also been suggested. The report in respect of the said respondents are as follows:-

Sl.

No.

Name of Respondent

No of floors permitted/ sanctioned

Observations

Any deviation from the approved/ sanctioned plan

Respondents' opinion

Petitioner

's opinion

Extracts from Meghalaya Building Bye Laws (MBBL) 2011

Mitigation measure as per prevailing MBBL, 2011

1.

Respondent No.5

Shri Narayan Prasad Jhunjhunwala R/O-Police Bazar, Shillong

G+3 as per MBBL 2001

(only for commercial purpose)

Based on the site investigation carried out on the 8th August 2018 by the Expert Committee members in presence of the respondent, (Shri Narayan Prasad Jhunjhuwala), following observations/findings were made:

The building has two components:

1. The First part (From front portion) of the building has Basement+G+4 floors.
2. The second part (from rear portion) of the building has Basement+G+4 floors.
3. No possibility of parking as the building is located at Police Bazar Road which is a free traffic zone.

The building has a

deviation by additional two(02) floors from the approved or sanctioned order.

Enclosed within the report

Annexure

-III

As per MBBL 2011, Clause

40, Table VIII,

Sl.No. 04, the maximum floor permissible (excluding basement) is four(04).

Also, from Note 1 (MBBL 2011,

page no.32) for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.
2. On submission of the revised drawing plans for regularization and with approval of the competent authority, the basement can be regularized as per MBBL 2011, Clause 2.7(h) and the competent authority to strictly monitor from time to time.
3. With the above suggestion the building has an additional of one (01) floor as per MBBL 2011. Thereby, the committee recommends that the additional floor constructed to be sealed.
4. Also, the committee recommends that the building be checked for structural safety aspects from experts for the extra floor constructed if the

building has not been designed keeping in view of possible future floor upgradation/extension.

2.

Respondent No.6

Shri Nilesh Tibrewalla R/O Thana Road, Police

Bazar, Shillong

G+3 as per MBBL 2001

(only for commercial purpose)

Based on the site investigation carried out on the 1st August 2018 by the Expert committee members in presence of the respondent (Shri Nilesh Tibrewalla), following observations/ findings were made:

1. The building has G+5 floors.
2. The ground floor to be used for covered parking.

The building has a

deviation by additional two (02) floors from the approved or sanctioned order.

Enclosed within the report

Annexure

-III

As per MBBL 2011, Clause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32) for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.
2. The building has an additional of one (01) floor as per MBBL 2011. Thereby, the committee recommends that the additional floor constructed to be sealed.
3. Also, the committee recommends that the building be checked for structural safety aspects from experts for the extra floor constructed if the building has not been designed keeping in view of possible future floor upgradation/extension.

3.

Respondent No.7

Shri Satyabrata Baidya

R/O Jail Road, Shillong

G+3 as per MBBL 2001

(only for residential purpose)

Based on the site investigation carried out on the 1st August 2018 by the Expert committee members in presence of the respondent (Shri Satyabrata Baidya), following observations/ findings was made:

1. The building has Basement+G+4 floors.

2. There is no parking

The building has a

deviation by additional two (02) floors from the approved or sanctioned

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011, page no.32),

1. The conditions laid down as per MBBL 2011 should be followed.

2. On submission of the revised drawing plans for regularization and with approval of the competent authority, the basement can be regularized as per MBBL 2011, Clause 2.7(h) and the competent authority to strictly

facility available as there is no access road available.
order.

for ground floor exclusively earmarked for parking, the permissible floor is G+4.

monitor from time to time.

3. With the above suggestion the building was an additional of one (01) floor as

per MBBL 2011. Thereby, the committee recommends that the additional floor constructed to be sealed.

4. Also, the committee recommends that the building be checked for structural safety aspects from experts for the extra floor constructed if the building has not been designed keeping in view of possible future floor upgradation/extension.

4.

Respondent No.8

Shri Ajit Das Gupta

R/O Jail Road, Shillong

G+3 as per MBBL 2001

(only for residential purpose)

Based on the site investigation carried out on the 1st August 2018 by the Expert committee members in presence of the respondent (Shri Ajit Das Gupta), following observations/ findings was made:

1. The building has Basement+G+4 floors.
2. There is no parking facility available as there is no access road available.

The building has a

deviation by additional two (02) floors from the approved or sanctioned order.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.
2. On submission of the revised drawing plans for regularization and with approval of the competent authority, the basement can be regularized as per MBBL 2011, Clause 2.7(h) and the competent authority to strictly monitor from time to time.

3. With the above suggestion the building was an additional of one (01) floor as per MBBL 2011. Thereby, the committee recommends that the additional floor constructed to be sealed.

4. Also, the committee recommends that the building be checked for structural safety aspects from experts for the extra floor constructed if the building has not been designed keeping in view of possible future floor upgradation/extension.

5.

Respondent No.10

Shri Uday N. Shukla

R/O Oakland, Shillong

G+3 as per MBBL 2001

(only for residential purpose)

Based on the site investigation carried out on the 3rd August 2018 by the Expert committee members in presence of the respondent (Shri Uday

N. Shukla), following observations/ findings was made:

The building has two components:

1. The First part (from front portion) of the building has G (habitable) +1st floor (parking)+ three(03) floors.

2. The second part (from rear portion) of the

The building has a

deviation by additional one (01) floor in the first part and two(02) floors in the second part.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible

floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.
2. On submission of the revised drawing plans for regularization and with approval of the competent authority, the basement can be regularized if it is solely used for non-habitable purpose and the competent authority to strictly monitor from time to time.
3. The MBBL 2011 specifies parking at ground level, however, if the competent building has Basement+ G(habitable)+1st floor (parking) +two(02) floors.
3. The 1st floor level is accessible to the PWD road.
authority regularizes parking at any level assessable to the road, and in this case the entire 1st floor is used for parking then the building is in accordance with the MBBL 2011.
4. Also, the committee recommends that the building be checked for structural safety aspects from experts for the extra floor constructed if the building has not been designed keeping in view of possible future floor upgradation/extension.

6.

Respondent No.12

M/s Mentok Ri- Project Pvt.

Ltd.

R/O Bivar Road, Shillong

G+3 as per MBBL 2001

(only for residential, commercial and office purpose)

Based on the site investigation carried out on the 3rd August 2018 by the Expert committee members in presence of the respondent , following observations/ findings were made:

1. The building constructed is not as per the approved drawings. Note: For easy reference of the building components/parts, the drawings provided has been divided into four blocks as below: (Photo copy of the approved drawing enclosed for reference)

Block A - 5 floors Block B - 5 floors Block C - 5 floors Block D - 4 & 2 floors

No as per the approved/ sanctioned order/ drawings

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.

2. Block A: An additional of one (01) floor as per MBBL 2011.

Block B: If the ground floor is solely used for parking purposes only, then this block is in accordance with the MBBL 2011.

Block C: The MBBL 2011 specifies parking at ground level, however, if the competent authority regularizes parking at any level (for which parking for Block C is at the first floor which is in continuation with ground floor of Block B) then this block is in accordance with the MBBL, 2011.

Block D: Presently, no extra floor as per MBBL 2011. Further construction of extra floors for this block may be subject to MBBL 2011.

3. Further construction of floors in Block A, B, C (for which columns were casted) will not be in accordance with MBBL 2011.

4. Since the construction of the building is not as per the approved drawings, the mitigation will be subject to submission of the revised drawings (as per the site condition) and approval of the competent authority.

7.

Respondent No.13

Shri Maruf Elahi,

R/O Bivar

G+4 as per MBBL 2011

(only for residential purpose)

Based on the site investigation carried out on the 7th August 2018 by the Expert committee members in presence of

The building has a

deviation by

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor

1. The conditions laid down as per MBBL 2011 should be followed.

2. On submission of the revised drawing plans for

Road, Shillong

the respondent (Shri Maruf Elahi), following observations/ findings was made:

The building has two components:

1. The First part (from front portion) of the building has basement (non-habitable)+G (parking)+4

2. The second part (from rear portion) of the building has basement (habitable) + G (parking)

+4.

additional one (01) floor from the approved or sanctioned order.

permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

regularization and with approval of the competent authority, the basement can be regularized if it is solely used for non-habitable purpose and the competent authority to strictly monitor from time to time.

3. With the above suggestion the building is in accordance with MBBL 2011.

4. Also, the committee recommends that the building be checked for structural safety aspects from experts for the extra floor constructed if the building has not been designed keeping in view of possible future floor upgradation/extension.

8.

Respondent No.14

Smt. Beroline Khongshei R/O Laban, Shillong

G+3 as per MBBL 2001

(only for commercial purpose)

Based on the site investigation carried out on the 8th August 2018 by the Expert committee members in presence of the respondent (Smt. Beroline Khongshei), following observations/ findings was made:

1. The building has G+4 floors with the partial ground floor available for parking facilities.
2. The building has no basement.

A

deviation of one (01) floor from the approved or sanctioned order.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.
2. On submission of the revised drawing plans for regularization and with approval of the competent authority and if the entire ground floor is solely used for parking purposes the building will be in accordance with MBBL 2011 and the competent authority to strictly monitor from time to time.
3. Also, the committee recommends that the building be checked for structural safety aspects from experts for the extra floor constructed if the building has not been designed keeping in view of possible future floor upgradation/extension.

9.

Respondent No.15

Shri Mohendro Rapsang

R/O Keating Road, Shillong

G+3 as per MBBL 2001

(only for commercial purpose)

Based on the site investigation carried out on the 1st August 2018 by the Expert committee members in presence of the respondent (Shri Mohendro Rapsang), following observations/ findings were made:

The building has two components:

1. The building has basement (parking)+ G (parking) +4 floors.

A

deviation of two (02) floors from the approved or sanctioned order.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.

2. Presently, the building is in accordance with MBBL 2011 and the building can be regularized with submission of the revised drawing plans with basement and ground floor to be used solely for non- habitable and parking purposes, respectively.

3. Further construction of the extra floor (i.e. the top floor for which only columns were casted) may be permitted as per MBBL 2011.

4. Also, the committee

recommends that the building be checked for structural safety aspects from experts for the extra floor constructed if the building has not been designed keeping in view of possible future floor upgradation/ extension.

10.

Respondent No.16

Shri Saini Pala R/O Motinagar, Shillong

G+4 as per MBBL 2011

(only for residential purpose)

Based on the site investigation carried out on the 6th August 2018 by the Expert committee members in presence of the respondent (Shri Saini Pala), following observations/ findings were made:

The building has two components:

1. The First part (from front portion) of the building has G (parking) + 4 floors.
2. The second part (from rear portion) of the building has basement (habitable) + G (parking) +4 floors.

A

deviation of one (01) floor from the approved or sanctioned order in the second part.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.
2. Presently, the building has additional one (01 floor) as per MBBL 2011 in the second part of the building.

However, the building can be regularized with submission of the revised drawing plans with basement to be used solely for non-habitable purposes. Then the building will be in accordance with MBBL 2011 and the competent authority to strictly monitor from time to time.

3. Also, the committee recommends that the building be checked for structural safety aspects from experts for the extra floor constructed if the building has not been designed keeping in view of possible future floor upgradation/extension.

11.

Respondent No.18

Manchin Fincon Pvt. Ltd. R/O Jail Road, Shillong

Basement+G

+4 as per

MBBL 2011

(where basement for parking; G for commercial; 1st, 3rd and 4th for

residential and 2nd for office)

Based on the site investigation carried out on the 6th August 2018 by the Expert committee members in presence of the respondent (Shri Manchin Fincon), following observations/ findings was made:

The building has two components:

1. The First part (from front portion) of the building has basement (non-habitable)+G (parking)+4

2. The second part (from rear portion) of the building has basement (habitable) + G (parking)

+4.

No deviation was found from the approved or sanctioned order.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.

2. Presently, the building has additional one (01 floor) as per MBBL 2011.

However, the building can be regularized with submission of the revised drawing plans with basement and ground floor to be used solely for non-habitable and parking purposes, respectively. Then the building

will be in accordance with MBBL 2011 and the competent authority to strictly monitor from time to time.

12.

Respondent No.19

Shri Kenneth

M. Lyngdoh R/O Bivar Road, Shillong

G+5 as per MBBL 2011

(only for residential purpose)

Based on the site investigation carried out on the 7th August 2018 by the Expert committee members in presence of the respondent (Shri Kenneth M. Lyngdoh),

following observations/ findings was made:

A

deviation was made in terms of providing a basement which was

not as per

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

1. The conditions laid down as per MBBL 2011 should be followed.

2. On submission of the revised drawing plans for regularization and with approval of the competent authority, the basement can

1. The building has presently partial basement

+G (parking) +2 floors.

the approved or sanctioned order.

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

be regularized if it is solely used for non-habitable purpose and the competent authority to strictly monitor from time to time.

3. Presently, the building is in accordance with MBBL 2011 byelaws, hence, further construction of extra floor(s) may be carried out as per prevailing MBBL 2011.

13.

Respondent No.20

Shri Sanjay Jhunhunwalla R/O Bivar Road, Shillong

G+5 as per MBBL 2001

(only for residential purpose)

Based on the site investigation carried out on the 7th August 2018 by the Expert committee members in presence of the respondent (Shri Sanjay Jhunhunwalla), following observations/ findings were made:

The building has two components:

1. The First part (from front portion) of the building has G(parking) + 3 floors.
2. The second part (from rear portion) of the building has G (habitable) +4 floors.

No deviation was found from the approved or sanctioned order.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.
2. The First part (from front portion) of the building with parking at the ground floor, the building may be permitted to construct additional floor(s) as per the conditions laid down in MBBL 2011.
3. The second part (from rear portion) of the building has additional of one (01) floor as per MBBL 2011. Thereby, the committee recommends that the additional floor constructed to be sealed.

14.

Respondent No.22

Shri Bavin Deren Marbaniang R/O Demseiniong Laitumkhrah, Shillong

Basement+G

+4 as per

MBBL 2011

(only for commercial purpose)

Based on the site investigation carried out on the 7th August 2018 by the Expert committee members in presence of the respondent (Shri Bavin Deren Marbaniang), following observations/ findings was made:

1. The building has Basement (parking)+G+ 3 floors.
2. In the top floor only the columns were casted for provision of another floor.

No deviation was found from the approved or sanctioned order.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.
2. The committee suggest that if no further floor is constructed (for which only columns were casted) the building is in accordance with the MBBL 2011.

15.

Respondent No.23

Shri Lamboklang Myllemngap R/O Motinagar, Shillong

G+5 as per MBBL 2011

(only for residential purpose)

Based on the site investigation carried out on the 6th August 2018 by the Expert committee members in presence of the respondent (Shri Lamboklang Myllemngap), following observations/ findings was made:

1. The building has G (parking)+5 floors.

No deviation was found from the approved or sanctioned order.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.

2. The building has an additional of one (01) floor as per MBBL 2011. Thereby, the committee recommends that the additional floor constructed to be sealed.

16.

Respondent No.25

Shri Allen Wood Swer R/O Fire Brigade, Laitumkhrah, Shillong

Basement+G

+3 as per

MBBL 2011

(where Basement for parking; G and 1st for commercial; 2nd office and restaurant; 3rd for Hotel)

Based on the site investigation carried out on the 6th August 2018 by the Expert committee members in presence of the respondent (Shri Allen Wood Swer), following observations/ findings was made:

1. The building has G (parking) +4 floor.

2. There is no basement in this building.

No deviation was found from the approved or sanctioned order.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible

floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.

2. The building is constructed in accordance with the prevailing conditions laid down by the MBBL, 2011.

17.

Respondent No.28

Shri Nicholas Wallang

R/O Boyce Road behind St. Anthony's College, Shillong

G+5 as per MBBL 2011

(only for commercial purpose)

Based on the site investigation carried out on the 6th August 2018 by the Expert committee members in presence of the respondent (Shri Nicholas Wallang), following observations/ findings was made:

1. The building has G+5 floors with complete parking facilities at the ground floor.

2. The building height is found to be less than 19.0 metre (approximately).

3. The building stands on a flat ground and there is no portion/part of the building to be termed as a basement floor.

No deviation was found from the approved or sanctioned order.

Enclosed within the report.

Annexure

-III

As per MBBL 2011, Cause

40, Table VIII, Sl. No.4, the maximum floor permissible (excluding basement) is four (04).

Also from Note 1 (MBBL 2011,

page no.32), for ground floor exclusively earmarked for parking, the permissible floor is G+4.

1. The conditions laid down as per MBBL 2011 should be followed.

2. The building has an additional of one (01) floor as per MBBL 2011. Thereby, the committee recommends that the additional floor constructed to be sealed.

15. From the above report, it is seen that the building of respondent Nos.5, 6, 7, 8 and 15 has two additional floors beyond the approval or sanctioned order. The building of respondent No.10 has one additional floor in the first part and two floors in the second part. The building of respondent Nos.13, 14 and 16 has one extra floor beyond the approval or sanctioned order. Though no deviation was found from the approved or sanctioned order in respect of respondent Nos.18, 23 and 28, each of the building has an additional floor as per Meghalaya Building Bye-Laws, 2011 indicating that the approval/sanctioned orders were not in accordance with law. In respect of Block-A of the building of respondent No.12, it is indicated that there is an additional one floor beyond the permissible limit. Mitigating measures had been suggested in respect of Blocks-B & C relating to parking to make the aforesaid Blocks conform to the Meghalaya Building Bye-Laws, 2011. It was also noticed that columns were cast for construction of additional floors in Blocks-A, B and C. In respect of respondent No.22, it was opined that the building which had basement (parking) plus G+3 floors would be in accordance with Meghalaya Building Bye-Laws, 2011, if no further floor is constructed though columns were cast.

16. At this stage, it is relevant to note that building permission was granted in respect of respondent Nos.5, 6, 7, 8, 10, 12, 14, 15 and 28 under the Meghalaya Building Bye-Laws, 2001. The building permission in respect of respondent Nos.13, 16, 18, 19, 20, 22, 23 and 25 were granted under the Meghalaya Building Bye-Laws, 2011, which came into effect from 21.07.2011.

17. It appears from the order of the Court dated 10.10.2018 that the learned counsel for the petitioners had submitted that some of the mitigating measures suggested do not conform to Meghalaya Building Bye-laws, 2011 and, therefore, such measures cannot be allowed to be implemented. Though in the earlier order of the Court dated 04.09.2018, it was recorded that the Court would not entertain any debate on the report so filed, in view of the submission of Mr. Paul as noted above, Mr. N. Dutta, learned Senior counsel appearing for MUDA submitted that, at the first instance, it would be appropriate for MUDA to examine as to whether the measures suggested are in consonance with the bye-laws. He had also submitted that after such examination and analysis, a report

would be placed before the Court so as to enable the Court to take such further action as it might consider necessary. The suggestion of Mr. Dutta was accepted by all the learned counsel appearing for the respective parties and the Court also felt that it would be appropriate to have the views of MUDA on the issue in question.

18. Pursuant to the order of this Court dated 10.10.2018, MUDA filed an affidavit indicating its response to the mitigating measures proposed by the Committee in a column under the heading "Mitigating measures proposed by MUDA" in respect of respondent Nos.5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25 and 28. Mitigating measures proposed by MUDA in respect of the aforesaid respondents are as follows:-

Sl.

No.

Respondent Number

Mitigating measures proposed by MUDA

1.

Respondent No.5

The mitigating measures suggested by the Expert Committee is agreeable subject to examination of revised drawings as proposed by the Expert Committee.

2.

Respondent No.6

The recommendation of the Expert Committee is agreeable.

However, as only the structural frame, i.e. only columns, beams and slab, have been constructed on the said floor and the walls of the said floor has not been constructed, this space may be allowed to be retained and utilized for non-habitable purposes as envisaged in Section 30(B) of the MTCP Act, 2004. The respondent may be directed to furnish an undertaking by way of Affidavit that he will not habitate it.

Other provisions of the bye-laws are to be complied.

3.

Respondent No.7

Revised drawings with proposal for filling the basement of the building is permissible as per Bye-law 8(g) of the MBBL 2011, Section 13(2) MTCP Act 1973

& Section 30B of the MTCP Amendment Act 2004.

The recommendation of the Expert Committee is agreeable.

However,

1. The basement can be regularized as per bye-law 2.7.
2. Since the walls (non-structural component) of a room in the said floor has been constructed, they may be dismantled and the said floor may be left open/non-habitable. The respondent may be directed to submit an undertaking by way of Affidavit that he will not habitate it.
3. Structural safety aspects shall be examined by SDRP constituted by the Authority as per bye-law 30(i) of the MBBL 2011.
4. Other provisions of the bye-laws are to be complied.
- 4.

Respondent No.8

Revised drawings with proposal for filling the basement of the building is permissible as per Bye-law 8(g) of the MBBL 2011, Section 13(2) of the MTCP Act 1973 & Section 30B of the MTCP Amendment Act 2004.

The recommendation of the Expert Committee is agreeable.

However,

1. The basement can be regularized as per bye-law 2.7.
2. Since the walls of the additional floor has not been constructed, the floor may be left open/non-habitable. The respondent may be directed to submit an undertaking by way of Affidavit that he will not habitate it.
3. Structural safety aspects shall be examined by SDRP constituted by the Authority as per bye-law 30(i) of the MBBL 2011.
4. Other provisions of the bye-laws are to be complied.
- 5.

Respondent No.10

Submission of revised drawings for deviation during construction is permissible as per Bye-law 8(g) of the MBBL 2011 and Section 13(2) of the MTCP Act 1973.

The recommendation of the Expert Committee is agreeable.

However,

1. The basement can be regularized as per

bye-law 2.7.

2. Parking need not necessarily be on the ground floor in view of the topography of the plot but can be allowed on the first floor which is accessible to the road.

3. Structural safety aspects shall be examined by SDRP constituted by the Authority as per bye-law 30(i) of the MBBL 2011.

4. Other provisions of the bye-laws are to be complied.

6.

Respondent No.12

The mitigation measures suggested by the Expert Committee is agreeable subject to examination of revised drawings as proposed by the Expert Committee.

7.

Respondent No.13

Submission of revised drawings for any alteration in use is permissible as per Bye-law 8(g) of the MBBL 2011 and Section 13(2) of the MTCP Act 1973.

The recommendation of the Expert Committee is agreeable.

However,

1. The basement can be regularized as per bye-law 2.7 and nomenclature may be changed to Basement & G+4.

2. Structural safety aspects shall be examined by SDRP constituted by the Authority as per bye-law 30(i) of the MBBL 2011.

3. Other provisions of the bye-laws are to be complied.

8.

Respondent No.14

Submission of revised drawings for deviation during construction is permissible as per Bye-law 8(g) of the MBBL 2011 and Section 13(2) of the MTCP Act 1973.

The recommendation of the Expert Committee is agreeable.

1. Structural safety aspects shall be examined by SDRP constituted by the Authority as per bye-law 30(i) of the MBBL 2011.

2. Other provisions of the bye-laws are to be complied.

9.

Respondent No.15

Submission of revised drawings for deviation during construction is permissible as per Bye-law 8(g) of the MBBL 2011, Section 13(2) of the MTCP Act 1973 & Section 30B of the MTCP Amendment Act 2004.

The recommendation of the Expert Committee is agreeable.

1. Use of basement shall be as per bye-law 2.7.
2. Ground floor should be used for parking purposes.
3. Structural safety aspects shall be examined by SDRP constituted by the Authority as per bye-law 30(i) of the MBBL 2011.
4. Other provisions of the bye-laws are to be complied.

10.

Respondent No.16

Submission of revised drawings for deviation or alteration during construction is permissible as per Bye-law 8(g) of the MBBL 2011, Section 13(2) of the MTCP Act 1973.

The recommendation of the Expert Committee is agreeable.

1. Use of basement shall be as per bye-law 2.7.
2. Structural safety aspects shall be examined by SDRP constituted by the

Authority as per bye-law 30(i) of the MBBL 2011.

3. Other provisions of the bye-laws are to be complied.

11.

Respondent No.18

Submission of revised drawings for any alteration in use is permissible as per Bye-law 8(g) of the MBBL 2011, Section 13(2) of the MTCP Act 1973.

The recommendation of the Expert Committee is agreeable.

1. The entire ground floor should be used for parking purposes.
2. Use of basement shall be as per bye-law 2.7.
3. Other provisions of the bye-laws are to be complied.

12.

Respondent No.19

Submission of revised drawings for deviation during construction is permissible as per Bye-law 8(g) of the MBBL 2011, Section 13(2) of the MTCP Act 1973 & Section 30B of the MTCP Amendment Act 2004.

The recommendation of the Expert Committee is agreeable.

1. The partial floor beneath the basement arising out of the topography of the plot and proposed to be filled is permissible as per the aforementioned clauses.
2. The basement may be regularized and put to uses as per bye-law 2.7.
3. Entire ground floor should be provided for parking purposes.
4. Nomenclature may be changed to Basement & G+4.
5. Structural safety aspects shall be examined by SDRP constituted by the

Authority as per bye-law 30(i) of the MBBL 2011.

6. Other provisions of the bye-laws are to be complied.

13.

Respondent No.20

First Part:

The recommendation of the Expert Committee is agreeable.

The respondent may limit the first part to G+4 only with ground floor parking.

Alternatively,

Revised drawing with proposal for creating a basement below the ground floor for the first part of the building is permissible as per Bye-law 8(g) of the MBBL 2011, Section 13(2) of the MTCP Act 1973 & Section 30B of the MTCP Act 2004.

1. Use of basement shall be as per bye-law 2.7.
2. The ground floor should be provided for parking purposes.
3. Other provisions of the bye-laws are to be complied.

Second Part:

The recommendation of the Expert Committee is agreeable.

Alternatively,

1. Under the aforementioned provisions of the Act and MBBL 2011 the surrounding area of the ground floor can be filled for changing it to

basement and accordingly its use shall be as per bye-law 2.7 OR

2. Since the walls (non-structural component) in the additional floor has been constructed, they may be dismantled and the said floor may be

left open/non-habitable. The respondent may be directed to submit an undertaking by way of Affidavit that he will not habitate it.

3. Structural safety aspects shall be examined by SDRP constituted by the Authority as per bye-law 30(i) of the MBBL 2011.

4. Other provisions of the bye-laws are to be complied.

14.

Respondent No.22

The recommendation of the Expert Committee is agreeable.

15.

Respondent No.23

The recommendation of the Expert Committee is agreeable.

Alternatively, the respondent may be directed to submit revised drawings which is permissible as per Bye-law 8(g) of the MBBL 2011, Section 13(2) of the MTCP Act 1973 & Section 30B of the MTCP Amendment Act 2004.

1. Provided the conditions of the plot are conducive for filling up the surrounding areas of the ground floor, the ground floor may be allowed to be changed to basement through filling of the surrounding areas as per Section 30(B) of the MTCP Amendment Act 2004.

2. For the purpose of alteration of ground floor to basement, the owner shall submit revised drawings as per bye-law 8(g) of the MBBL 2011 and sub-section

(2) of Section 13 of the MTCP Act 1973 for review by the Authority.

In this case, (i) Use of basement shall be as per bye-law 2.7 (ii) Ground floor should be provided for parking purposes in relation to Note-1 of bye-law 40 (iii)

Nomenclature be changed to Basement &

G+4 as the height is still within 19 meters.

3. Structural safety aspects shall be examined by SDRP constituted by the Authority under Bye-law 30(i) of the MBBL 2011 on matters relating to filling.

4. Other provisions of the bye-laws are to be complied.

16.

Respondent No.25

The recommendation of the Expert Committee is agreeable.

17.

Respondent No .28

The recommendation of the Expert Committee is agreeable.

However, revised drawings with proposal for filling up of the surrounding area for changing ground floor to basement is permissible as per Bye-law 8(g) of the MBBL 2011, Section 13(2) of the MTCP Act 1973 & Section 30B of the MTCPA Act 2004.

1. Use of basement shall be as per bye-law 2.7.
2. The new ground floor achieved should be provided for parking purposes.
3. Nomenclature may be changed to Basement & G+4 as the height is still within 19 meters.
4. Structural safety aspects shall be examined by SDRP constituted by the Authority as per bye-law 30(i) of the MBBL 2011 on matters relating to filling.
5. Other provisions of the bye-laws are to be complied.

19. MUDA had submitted a note dated 28.03.2019 indicating the mitigating measures suggested by the Committee and in the order dated 04.04.2019, it was observed that the respondent Nos.5, 10, 12, 16, 18, 19 and 23 had not submitted their revised plan and that respondent Nos.7, 8, 13, 14, 15, 20 and 28 had submitted their revised drawings. Taking note of the above factual position, the said respondents were permitted to submit revised drawings within a period of 15 days. It is also noted in the said order that so far as the respondent Nos.22 and 25 are concerned, it was submitted by the learned Senior counsel for MUDA that the building constructed by them would be in conformity if considered under Bye-laws, 2011. So far as respondent No.6, it was submitted that no revised drawing would be required as the proposal made by the Committee would be accepted by retaining the unauthorized portion but by sealing the same and not allowing utilization for habitable purpose. The Court observed that such aspects of the matter would be considered in its entirety along with other respondents after process in regard to them is completed. MUDA was also directed to submit its report in the form of an affidavit.

20. MUDA, thereafter, filed an affidavit on 27.05.2019 enclosing thereto the report in respect of the respondents in question except respondent No.28. Subsequently, MUDA filed an affidavit on 18.06.2019 explaining that the two pages which ought to have been numbered as Page Nos.90 and 91 in the said

affidavit were left out inadvertently and that the same be taken on record as Page-89A and 89B. The pages 89A and 89B pertain to the report in connection with the respondent No.28.

21. From the affidavit of MUDA dated 27.05.2019, it appears that a Structural Design Review Panel (SDRP) under Bye-law 30 of the Meghalaya Building Bye-laws, 2011 was constituted to examine the structural drawings/designs of the buildings in respect of respondent Nos.5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25 and 28. As per Bye-law 30, the SDRP is to review and certify the design prepared by the Structural Engineer on record or Structural Design Agency on record whenever referred to by the competent authority. Another Committee was constituted on 18.04.2019 to examine the revised building plans and to forward the preliminary observations to the technical branch/SDRP. It was provided that on submission of views/opinion and recommendation of the technical branch and the SDRP, the Committee is to process and finalize the mitigating measures for submission of final report. On 25.04.2019 one Executive Engineer, PWD (Buildings) was co-opted as member of SDRP. The Technical Branch of MUDA examined revised building plans with respect to structural design of the buildings in respect of respondent Nos.7, 8, 13, 18 and 20 and SDRP examined structural designs of the revised building plans in respect of respondent Nos.5, 6, 10, 12, 14, 15, 16, 19 and 28. The report in respect of the respondents in question submitted by MUDA is as follows:-

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

05

Shri Narayan Prasad Jhunjunwalla

, Police Bazar

1. Plot coverage=

60%

51%

(i) The rear portion of the building of approx. area of 67sqm is to be dismantled as proposed (structural beams, columns & slabs to be retained) for the entire Ground+4 floors and the basement is to be filled.

The walls at each floor/level abutting the dismantled portion shall be sealed completely.

Subsequent plot coverage is reduced to 51% and FAR is reduced to 2.

(ii) Ground floor shall be fully parking & commercial spaces may be relocated in the Basement.

(iii) Structural details tallying with the building plans should be submitted for assessing the feasibility of providing parking in the ground floor and addition of the ramp to

the ground floor.

i) Dismantling is permissible under Section 30B of the MTCP Amendment Act 2004.

ii) Use of basement for services, parking & functional use is permissible under byelaw 2.7(e), 2.7(f) and 2.7(h) of the MBBL 2011 and provided the requirement of proper lighting, ventilation and environmental conditions prescribed are complied.

2. FAR=2

2

3. Height=19 metres

18 metres

Basement, Ground+4 floors Uses: Basement: Parking + Services Ground floor: Commercial + Parking

First floor: Commercial Second floor: Commercial Third floor: Apartmental Fourth floor: Apartmental

Remarks & Recommendations:- Building permission sanction was granted for Commercial use under the MBBL 2001 for G+3

floors only. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be Basement (Parking+ Commercial), Ground+4 floors for Commercial & Apartmental use with Ground floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

06

Shri Nilesh Tibrewalla, Thana Road, Police Bazar

1. Plot

coverage= 60%

60%

(i) No walls shall be made on the unauthorized portion (5th floor) except towards the staircase position. It shall be used for services, non-FAR/non-habitable purposes etc. The respondent may be directed to furnish an undertaking by way of affidavit that he will not habitate the unauthorized 5th floor of the building.

(ii) The roof of the 4th floor shall be

treated as the terrace and services, non-FAR/habitable facilities viz.

a) Dismantling of the 5th floor slab will affect the structural members of the building, therefore, under Section 30B of the MTCP Amendment Act, 2004 where "... such development shall be removed by demolition, filling or otherwise by the owner..." mitigation measures as proposed to be adopted.

2. FAR=2

2

3. Height=19

15 metres

Ground+4 floors Uses: Ground floor: Parking First floor: Commercial Second floor: Commercial Third floor: Commercial

Respondent

Building Parameters

Proposed Mitigation Measures

water tanks, electrical panels etc. shall be placed thereon & no walling shall be permitted.

The entry to the 5th floor slab shall be sealed completely by brick walling.

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

Fourth floor: Commercial

Remarks & Recommendations:- Building permission sanction was granted for Commercial (Hotel) use under the MBBL 2001

for G+3 floors. Respondent had submitted application to the Authority for additional 2 floors. However, the same was constructed pending approval of the Authority. Of the two floors, one floor is within the permissible limits of the building bylaws whereas the other floor without walling has exceeded (in case brick walling were undertaken). The building upon adopting the mitigation measures will conform to the provisions of the MBBL, 2011 and nomenclature of the building will then be Ground+4 floors for Commercial (Hotel) use with Ground Floor parking with the additional floor to be used for services and non-FAR/non-habitable

purposes.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

07

Shri Satyabrata Baidya, Jail Road

4. Plot coverage= 50%

38.32%

(i) The setback area along with the basement shall be filled upto a height of 1.00 metres to reduce the height of the non-habitable floor to

1.50 metres.

(ii) Shear wall to be constructed at the non-habitable floor after filling at both the extreme corners of the building to increase the stability of the structure.

(iii) The walls of the additional room on the 4th floor should be dismantled and it should be left open/non- habitable. The respondent may be directed to submit an undertaking by way of affidavit that he will not use the same for habitable purposes.

This floor may be utilized to place water tanks for the purposes of household requirements and fire fighting purposes.

i) Filling is permissible as per Section 30B of the Meghalaya Town Country Planning Amendment Act, 2004.

ii) Sealing is permissible as per byelaw 11(ii) of the Meghalaya Building Bye Laws, 2011.

5. FAR=2

1.53

6. Height=19 metres

12 metres (14.4 metres including basement)

Basement, Ground+3 floors Uses: Basement:

Non-habitable Ground floor: Apartment First floor: Apartment Second floor: Apartment Third floor: Apartment

Remarks & Recommendations:- Building permission sanction was granted for Apartmental use under the MBBL 2001 for G+3

floors. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be Basement (non-habitable), Ground+3 floors for Apartmental use.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

08

Shri Ajit Dasgupta, Jail Road

1. Plot coverage=

50%

39.93%

(i) The setback area along with the basement shall be filled upto a height of 1.00 metres to reduce the height of the non-habitable floor to

1.50 metres.

(ii) Shear wall to be constructed at the non-habitable floor after filling at both the extreme corners of the

a) Filling is permissible as per Section 30B of the Meghalaya Town Country Planning Amendment Act, 2004.

b) Sealing is permissible as per byelaw 11(ii) of the Meghalaya Building Bye

2. FAR=2

1.6

3. Height=19 metres

12 metres (14.4 metres including
basement)

Basement, Ground+3 floors

Respondent

Building Parameters

Proposed Mitigation Measures

building to increase the stability of the structure.

(iii) Front and rear chajjas/balconies to be curtailed to 0.45 metres.

(iv) No brick walling or rooms should be built on the 4th floor and should be left open/non-habitable. The respondent may be directed to submit an undertaking by way of affidavit that he will not use the same for habitable purposes.

(v) The floor should be utilized to place water tanks for the purposes of household requirements and fire fighting purposes.

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and MBBL, 2011

Laws, 2011.

No.

Name

Permissible limits

As per revised drawings

Uses: Basement: Non-habitable Ground floor: Apartment First floor: Apartment Second floor: Apartment Third floor: Apartment

Remarks & Recommendations:- Building permission sanction was granted for Apartmental use under the MBBL 2001 for G+3

floors. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be

Basement (non-habitable), Ground+3 floors for Apartmental use.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

10

Shri Udan N. Shukla, Oakland

1. Plot coverage=

50%

54.84%

Front Part:

1. Portion of building walls under floor area amounting to 4.84% coverage which is in excess of the permissible limits has to be dismantled on every floor, i.e. G+4 floors.

In the portion of the building where dismantling of walls is not involved, the walls abutting the remaining portion should not have any openings (dead walls).

2. The walls of the Puja Room at the 5th floor should be dismantled since it has exceeded the permissible no. of floors and the respondent may be directed to submit an undertaking by way of affidavit that he will not use the same for habitable purposes. The floor should be used for services only.

Rear Part:

Basement of Rear Part and its surroundings should be filled up to 2/3rd floor height and retaining walls are to be constructed as per I.S. 14458 (Part 2): 1997.

1. Since plot coverage has exceeded by 4.84%, dismantling of portion of the building needs to be undertaken in order to bring the Plot coverage to 50%.

2. Dismantling of the structural members i.e. columns, beams and slabs will affect the structural stability of the building. Therefore, only the walls are proposed to be dismantled.

3. Alteration in the structure of the building/land and filling is permissible as per Section 13(2) of the MTCP Act 1973 and Section 30B of the MTCP Amendment Act 2004, respectively.

2. FAR=2

1.99

3. Height=19 metres

Front Part=15 metres

Rear Part= 14.2 metres.

Front Part: Ground+4 floors Uses:

Ground floor: Apartment First floor: Parking Second floor: Apartment Third floor: Apartment Fourth floor: Apartment Rear Part: Basement &

Ground+3 floors Uses: Basement: Non- habitable Ground floor: Apartment

First floor: Parking Second floor: Apartment Third floor: Apartment

Remarks & Recommendations:- Building permission sanction was granted for Apartmental use under the MBBL 2001 for G+3

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

floors. Upon submission of the revised building plans and examination of the same by the Authority, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be Basement (non-habitable) &

Ground+4 floors for Apartmental use with First Floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

12

M/s Mentok Ri-Project Pvt. Ltd., Bivar Road

1. Plot coverage=

50%

49.6%

The SDRP after checking the as- built drawings submitted has recommended for G+3 floors only due to the following reasons:

- a) Building permission was granted for G+3 floors only.
- b) The column ratio & excessive load eccentricity introduced by the placement of the beams is considered to be permissible upto G+3 floors only.
- c) As the existing counterfort retaining wall has no Toe & Shear key, it is found to be unsafe and hence it needs to be rectified accordingly. Otherwise, all the floors of a portion of the building have to be dismantled as per (i) 9.0m x 1.50m i.e. 13.50m uphill away from the Counterfort Retaining wall, &
(ii) 10.0m downhill away from the Counterfort Retaining wall, in order to ensure the safety of the remaining building as there seems to be no other alternate measures to attend to the rectification works stated above. The dismantling works shall be undertaken by an expert construction firm.
- d) Parking should be outside the building due to the above mentioned reasons.

Dismantling is permissible under Section 30B of the MTCP Amendment Act 2004.

2. FAR=2

Cannot be deduced

3. Height=19

metres

(i) Block A= 16m (Ground+4 floors) & 19m (with basement)

a) Basement: Not mentioned

b) Ground floor:

Parking

c) First floor:

Commercial

d) Second floor:

Apartment

e) Third floor:

Apartment

f) Fourth floor:

Apartment

(ii) Block B= 13.6m (First+3 floors) & 16m (with 2.4m non-habitable floor below first floor)

a) Non-habitable floor: Not mentioned

b) First floor:

Parking

c) Second floor:

Apartment

d) Third floor:

Apartment

e) Fourth floor:

Apartment

(iii) Block C= 18.8m (First+5 floors) & 21.2m (with 2.4m non- habitable floor below first floor)

a) Non-habitable floor: Not mentioned

b) First floor: Not mentioned

c) Second floor:

Parking

d) Third floor: Apartment

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

e) Fourth floor:

Apartment

f) Fifth floor: Apartment Sixth floor: Not completed.

(iv) Block D= 12.4m (First+3 floors) & 14.8m (with 2.4m non- habitable floor below first floor)

i) Non-habitable floor: Not mentioned

ii) First floor:

Apartment

iii) Second floor:

Parking

iv) Third floor:

Apartment

v) Fourth floor:

Apartment

(v) Block E= Upper Part= 4.8m+9.2m= 14m (2 non-habitable floor +3 floors)

a) 1st Non-habitable floor: Not mentioned

b) 2nd Non- habitable floor: Not mentioned

c) Second floor:

Apartment

d) Third floor:

Parking

e) Fourth floor: Apartment. Lower Part= 9.96m+9.2m= 19.16m (SPT+ 3 floors)

a) STP floor: Not mentioned

b) First floor:

Apartment

c) Second floor:

Parking

d) Third floor: Apartment

(vi) Block F= 9.96m+9.2m= 19.16m (SPT+ 3 floors)

a) STP floor: Not mentioned

b) First floor:

Apartment

c) Second floor: Parking

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

d)Third floor: Apartment

Remarks & Recommendations:- Building permission sanction was granted for Apartmental use under the MBBL 2001 for

Ground+3 floors only. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building is permissible upto Ground+3 floors only with parking outside the building. Further, in view of the observations regarding the Counterfort Retaining wall, it needs to be rectified otherwise all the floors of a portion of the building have to be dismantled, which shall be undertaken by an expert Construction Firm.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

13

Shri Maruf Elahi, Bivar Road

1. Plot coverage=

50%

48.73%

Height of lower portion of non- habitable floor (below plinth) to be reduced from 2.1 metres height to 1.5 metres height by filling and shear wall to be constructed after filling at both the extreme corners of the building to increase the stability of the structure.

a) Filling is permissible as per Section 30B of the MTCP Amendment Act, 2004.

2. FAR=2

1.85

3. Height=19 metres

16.5 metres (inclusive of 1.5 metres non- habitable floor)

Ground+4 floors with non- habitable floor Uses:

Non-habitable floor: 1.50 metres Ground floor: Parking

First floor: Apartment Second floor: Apartment Third floor: Apartment

Fourth floor: Apartment

Remarks & Recommendations:- Building permission sanction was granted for Apartmental use under the MBBL 2001 for G+4

floors with non-habitable floor of 1.50 metres below the ground floor. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL

2011 and nomenclature of the building will then be Ground+4 floors for Apartmental use with Ground Floor parking and non-habitable floor of 1.50 metres.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

14

Smt. Beroline Khongshei, Laban

1. Plot coverage=

60%

38.93%

a) Ground floor proposed to be provided for parking purposes and shear walls are to be constructed as per I.S. 1893:2016.

b) The two new columns proposed to support the closed cantilever projections of 2.10 m are in order and the consultant engineer shall ensure that they are erected/connected as per sound engineering practices.

Building will be in compliance to provisions of the MBBL 2011.

2. FAR=2

1.72

3. Height=19 metres

16.20 metres

Ground+4 floors

Uses: Ground floor: Parking

First floor: Commercial (Retail shops)

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

Second floor: Commercial (Guest house) Third floor: Commercial (Guest house)

Fourth floor: Commercial

(Guest house)

Remarks & Recommendations:- Building permission sanction was granted for Commercial use under the MBBL 2001 for G+3

floors. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be

Ground+4 floors for Commercial (Guest House) use with Ground Floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

15

Shri Mohendro Rapsang, Keating Road

1. Plot coverage= 60%

55.39%

(i) Surrounding area of basement is proposed to be filled and retaining walls are to be constructed as per drawings submitted.

(ii) First floor is converted to ground floor and the new ground floor achieved is proposed to be provided for parking purposes.

(iii) Shear walls are to be constructed at the parking floor as per I.S. 1893:2016.

a) Alteration in the structure of the building/land is permissible and filling as per Section 13(2) of the MTCP Act 1973 and Section 30B of the MTCP Amendment Act 2004 respectively.

(iv) FAR

=2

2

(v) Height=19 metres excluding Basement.

20.10m (17.10

metres plus 3.00 metres basement)

Basement, Ground+4 floors Uses: Basement: Services Ground floor: Parking

First floor: Commercial Second floor: Commercial Third floor: Commercial Fourth floor: Commercial

Remarks & Recommendations:- Building permission sanction was granted for Commercial use under the MBBL 2001 for G+3

floors. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be Basement (services), Ground+4 floors for Commercial (Hotel) use with Ground Floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

16

Smt. Saini Pala, Motinagar

1. Plot coverage=

50%

46.5%

Rear Portion:

(i) Basement to be used for Godown (storage use).

(ii) The 2 sides of the basement adjoining to the retaining wall should also be sealed and their

a) Use of basement for godown (storage use) is permissible under byelaw 2.7(a) of the MBBL 2011 and shall not be reckoned for the purpose of FAR as

2. FAR=2

1.9

3. Height=19 metres

18m

Front Portion:

Ground+4 floors

Respondent

Building Parameters

Proposed Mitigation Measures surrounding areas should be earth- filled upto 2/3rd of their height.

(iii) 4th floor of this portion should be dismantled.

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and MBBL, 2011

per byelaw 2.7(g).

b) Filling and alteration in the structure of the building/land is permissible as per Section 13(2) of the MTCP Act 1973 and Section 30B of the MTCP Amendment Act 2004.

c) Dismantling is permissible under Section 30B of the MTCP Amendment Act 2004.

No.

Name

Permissible limits

As per revised drawings

Uses: Ground floor: Parking

First floor: Apartment Second floor: Apartment Third floor: Apartment Fourth floor: Apartment Rear Portion: Basement,

Ground+4 floors Uses: Basement: Godown Ground floor: Parking

First floor: Apartment Second floor: Apartment Third floor: Apartment

Fourth floor: Apartment

Remarks & Recommendations:- Building permission sanction was granted for Apartmental use under the MBBL 2011 for G+4

floors. Upon submission of the revised building plans and examination of the same by the Authority, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building

will then be FRONT PORTION: Ground+4 floors for Apartmental use with Ground floor parking, REAR PORTION: Basement

(Storage) & Ground+3 floors for Apartmental use with First Floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

18

Manchin Fancon Pvt. Ltd., Jail Road

1. Plot coverage= 60%

53.07%

Ground floor provided for parking purposes and basement provided for parking & services.

Shear walls has to be provided at both the entrance corners of the building to increase the structural stability of the building.

Use of basement as a service floor and for parking purposes is permissible under byelaw 2.7(c) and 2.7(f) of the MBBL 2011.

2. FAR=2

1.58

3. Height=19

metres

18m

Basement & Ground+4 floors Uses: Basement: Services+ Parking

Ground floor: Parking

First floor: Commercial use Second floor: Office use

Third floor: Apartment Fourth floor: Apartment

Remarks & Recommendations:- Building permission sanction was granted for Apartmental cum office use under the MBBL

2011 for B, G+4 floors. Upon submission of the revised building plans and examination of the

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be Basement, Ground+4 floors for use with Apartmental cum Commercial

(Office) use Ground floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

19

Shri Kenneth Matthew Lyngdoh, Bivar Road

1. Plot coverage=

50%

44.67%

(i) Void area under plinth to be filled.

(ii) Basement to be used for parking and apartment with proper lighting, ventilation and environmental conditions to be complied.

(iii) The surrounding areas of the basement, left and right sides with reference to the internal road of the plot, shall also be filled upto 2/3rd floor height.

(iv) The void area below the basement and the setback area surrounding the basement has to be filled up and retaining walls are to be constructed as per I.S.14458(Part 2): 1997.

(v) Shear walls are to be constructed as the parking floor as per I.S. 1893:2016.

a) Alteration in the structure of the building/land and filling is permissible as per Section 13(2) of the MTCP Act 1973 and Section 30B of the MTCP Amendment Act 2004 respectively.

b) Use of basement for parking and habitable/living purposes use is permissible under byelaw 2.7(f) and 2.7(h) of the MBBL 2011 provided the requirement of proper lighting, ventilation and environmental conditions prescribed are complies.

2. FAR=2

2

3. Height=19

metres

18 metres

Basement & Ground+4 floors Uses: Basement: Services+ Apartment Ground floor: Parking

First floor: Apartment Second floor: Apartment Third floor: Apartment

Fourth floor: Apartment

Remarks & Recommendations:- Building permission sanction was granted for Apartmental use under the MBBL 2011 for G+5

floors. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be Basement (Parking spaces and apartment), Ground+4 floors for Apartmental use with Ground floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

20

Shri Sanjay Jhunjunwala & Smt. Sarita Jhunjunwala, Bivar Road

1. Plot coverage=

50%

39.67%

'X' Portion:

Basement proposed to be introduced below the ground floor by removing the earth filling at this stage shall not be allowed since no structural details of the flooring for the present plinth has been submitted, even though the consultant engineer has furnished a certificate that the foundation of the building is below the PWD road level. Hence, G+4 floors may be allowed and upon submission of the flooring details, the same may be considered by the Authority.

Rear Portion:

The retaining walls on the left and rear side are in existence. Therefore, the setback area at the left, rear and right

side has to be filled and retaining wall

a) Alteration in the structure of the building/land and filling is permissible as per Section 13(2) of the MTCP Act 1973 and Section 30B of the MTCP Amendment Act 2004 respectively.

b) Use of basement for parking and habitable/living purposes use is permissible under byelaw 2.7(f) and 2.7(h) of the MBBL 2011 provided the requirement of proper lighting, ventilation and environmental conditions prescribed are complies.

2. FAR=2

1.67

3. Height=19 metres

?X? Portion= 18 metres.

Rear Portion= 15 metres.

'X' Portion: Basement & Ground+4 floors Uses: Basement: Services Ground floor: Parking

First floor: Apartment Second floor: Apartment

Respondent

Building Parameters

Proposed Mitigation Measures

has to be constructed on the right side. Therefore ground floor can be converted to basement and proposed to be used for services. The respondent may be directed to submit an undertaking by way of an affidavit that he will not habitate it.

Nomenclature for this part of the building shall now be Basement & Ground+3 floors.

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

Third floor: Apartment Fourth floor: Apartment (Not constructed yet)

Remarks & Recommendations:- Building permission sanction was granted for Apartmental use under the MBBL 2011 for G+5

floors. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be:

'X' Portion: Ground+4 floors for apartmental use with Ground floor parking

&

Rear Portion: Basement (services use), Ground+3 floors for Apartmental use.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

22

Shri Bavin Daren Marbaniang, Demseiniong Laitumkhrah

1. Plot coverage= 60%

49%

No revised drawings are required as the building is in conformity with the provisions of the MBBL 2011.

Nomenclature of the building shall now be Basement & Ground+3 floors.

Building is in conformity with the provisions of the MBBL 2011.

2. FAR=2

1.86

3. Height=19

metres

17.8 metres

Basement & Ground+3 floors Uses: Basement: Parking

Ground floor: Commercial (Hotel)

First floor: Commercial (Hotel) Second floor: Commercial (Hotel)

Third floor: Commercial (Hotel)

Remarks & Recommendations:- Building permission sanction was granted for Commercial (Hotel) use under the MBBL 2001

for G+3 floors. Additional 2 floors building permission was granted for the same use under the MBBL 2011. Upon submission made by the respondent, the building is fully complied with the provisions of the MBBL 2011 and the building permission may now read as Basement,

Ground+3 floors for Commercial (Hotel) use with Ground floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

23

Shri Lamboklang Myllemngap, Motinagar

1. Plot coverage= 60%

The respondent did not submit the revised

drawings and hence plot

The respondent did not submit the revised drawings nor did he mention any mitigation measures to be adopted.

Alteration in the structure of the building/land is permissible and filling as per Section 13(2)

of the MTCP Act 1973 and Section 30B of the MTCP

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

coverage, FAR and height could not be deduced.

Hence the following mitigation measures is proposed:-

Similar mitigation measures as that in the case of Shri Nicholas Wallang (Respondent No.28) may be adopted as follows:

- a) Surrounding area of the ground floor may be filled upto 2/3rd floor height for converting ground floor to basement.
- b) The new basement achieved after filling and alteration shall be put to uses as per byelaw 2.7 of the MBBL 2011.
- c) First floor which is subsequently converted to ground floor is to be provided for parking purposes.
- d) Nomenclature of the building shall now be Basement & Ground+4 floors.

Amendment Act 2004 respectively.

2. FAR=2

3. Height=19 metres

Basement & Ground+4 floors Uses: Basement: Services+ Parking

Ground floor: Parking

First floor: Commercial use Second floor: Office use

Third floor: Apartment Fourth floor: Apartment

Remarks & Recommendations:- Building permission sanction was granted for Apartmental use under the MBBL 2011. Upon

adopting the mitigation measures will conform to the provisions of the MBBL 2011 and nomenclature of the building will then be Basement, Ground+4 floors for Apartmental use with Ground floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

25

Shri Allen Wood Swer, Fire Brigade, Laitumkhrah

1. Plot coverage= 60%

45.62%

No revised drawings are required as the building is in conformity with the MBBL 2011.

Nomenclature of the building shall now be Ground+4 floors.

Building is in conformity with the provisions of the MBBL 2011.

2. FAR=2

1.45

3. Height=19

metres

16.50 metres

Basement & Ground+3 floors Uses: Basement: Parking

Ground floor: Commercial First floor: Commercial Second floor: Commercial
Third floor: Commercial

Remarks & Recommendations:- Building permission sanction was granted for Commercial use under the MBBL 2011

Basement, Ground+3 floors. The building permission may now read as Ground+4 floors for Commercial use with Ground floor parking.

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP
(Amendment) Act, 2004 and MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

28

Shri Nicholas

1. Plot coverage=

52.5%

(i) Surrounding area proposed to be

a) Alteration in the structure

Respondent

Building Parameters

Proposed Mitigation Measures

Reasons and enabling provisions of the MTCP Act, 1973, MTCP (Amendment) Act, 2004 and

MBBL, 2011

No.

Name

Permissible limits

As per revised drawings

Wahlang, Lachumiere

60%

filled for converting ground floor to basement and proposed to be used for Restaurant & Services. Retaining walls are to be constructed as per Drawings submitted.

First floor is converted to ground floor and the new ground floor achieved is proposed to be provided for parking.

(ii) Shear walls are to be constructed at the Parking floor as per I.S.1893:2016.

(iii) The retrofitting measures proposed are to be taken up in the presence of the structural consultant.

of the building/land and filling is permissible as per Section 13(2) of the MTCP Act 1973 and Section 30B of the MTCP Amendment Act 2004 respectively.

Accordingly, surrounding area of the ground floor may be filled up to 2/3rd floor height for converting ground floor to basement.

b) Use of basement for services & functional use is permissible under bye-law 2.7(e) and 2.7(h) of the MBBL, 2011.

2. FAR=2

1.88

3. Height=19

metres

18.60 metres

Basement, Ground+4 floors Uses: Basement: Restaurant & Services Ground floor: Parking

First floor: Commercial (Hotel) Second floor: Commercial (Hotel)

Third floor: Commercial (Hotel) Fourth floor: Commercial (Hotel)

Remarks & Recommendations:- Building permission sanction was granted for Commercial (Hotel) use under the MBBL 2001

for G+3 floors. Additional 2 floors building permission was granted for the same use under the MBBL, 2011. Upon submission of the revised building plans and examination of the same by the competent authority of the MUDA, the building upon adopting the mitigation measures will conform to the provisions of the MBBL, 2011 and nomenclature of the building will then be Basement, Ground+4 floors are Commercial (Hotel) use with Ground Floor parking.

22. Mr. Dutta has submitted that the mitigating measures proposed are in consonance with the provisions of Meghalaya Town and Country Planning Act, 1973, as amended and Meghalaya Building Bye-Laws, 2011. It is submitted that as the buildings in question were not completed, even though the building permissions in respect of some of the buildings were granted under the Meghalaya Building Bye-Laws, 2001, on submission of revised drawings, mitigating measures are suggested based on the Meghalaya Building Bye-Laws, 2011. Placing reliance on the word "otherwise" as appearing in Section 30B of the Meghalaya Town and Country Planning Act, 1973, as amended, he contends that dismantling of a part of the building is permissible under Section 30B and sealing is permissible in terms of Clause 11(ii) of the Meghalaya Building Bye-Laws, 2011.

23. The Meghalaya Town and Country Planning Act, 1973, as amended by notification dated 16.08.2004, by virtue of Section 30A and 30B, provide for power to stop development and power to demolish a building, respectively. Section 30A(1) provides that where any development in any area has been commenced in contravention of the Master Plan or Development Scheme or without the permission, approval or sanction referred to in Section 13 and/or Section 29 or in contravention of any conditions subject to which such permission, approval or sanction has been granted, the Authority may, make an order requiring the development to be discontinued on and from the date of the service of the order and such order shall be complied with accordingly. Section 30B(1) provides that where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or

Development Scheme or without permission, approval or sanction referred to in Section 13 and Section 29 of the Act or in contravention of any of conditions subject to which such permission, approval or sanction has been granted, the Authority may, in addition to any prosecution that may be instituted under the Act, make an order directing that such development shall be removed by demolition, filling or otherwise by the owner, occupier, manager or by any person at whose instance the development has been commenced or is being carried out or has been completed within a period not exceeding thirty days from the date on which a copy of the order of removal with brief statement of the reasons thereof has been delivered. It is also provided that on the failure to comply with the order, the authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner, occupier, manager or any person at whose instance the development was commenced etc., as arrears of land revenue. However, no such order as contemplated under Section 31 shall be made unless a reasonable opportunity of show-cause is given to show-cause as to why the order shall not be made. According to Compact Oxford Reference Dictionary, 'dismantle' means 'take to pieces'. In the context of Bye-Law 30B(1), as the word 'otherwise' is associated with the word 'demolition', removal of any unauthorized construction by way of dismantling will be a permissible mode.

24. Bye-Law 40 of the Meghalaya Building Bye-Laws, 2011, which is stated to have come w.e.f. 21.07.2011, provides for specific Floor Area Ratio (FAR) and Plot Coverage stipulations as per Table-VIII given therein. From the said Table-VIII, it is seen that there are various types of occupancy such as residential bungalow, residential apartment, institution, etc. Maximum floor permissible including basement is 4(four) apart from special buildings for which maximum floor permissible is 6(six). Note 1 to that table indicates that if the ground floor is exclusively earmarked for covered parking purposes, an additional floor with height as indicated therein shall be permitted and the ground floor covered parking will not be counted for FAR. Special buildings are defined in Bye-Law 2.47 to mean those buildings with large scale activities at a time such as Hotel of 4 star category and above, public institutions, hospitals, shopping malls with multiplexes, ICT/BPOs, educational institutions having a minimum plot area of 6000 sq.m and a minimum plinth area of 3000 sq.m. Basement or cellar is defined to mean a lower storey of a building which is minimum 2/3rd of the floor height below the finished ground level. The uses that can be made to a basement is also indicated therein and it specifically excludes living purposes. Clause 86.1 provides that provisions of Meghalaya Building Bye-Laws shall not apply to the existing building, though provisions of the bye-law shall apply in case of any addition, alteration, erection or re-erection in the existing building. It appears that before the buildings in question were completed, Meghalaya Building Bye-Laws came into operation and that is how in the mitigating measures proposed by MUDA, reference is made to Meghalaya Building Bye-Laws, 2011.

25. Clause 9 of the Meghalaya Building Bye-Laws, 2011 provides that on

completion of the building, the applicant and the licensed technical personnel as the case may be, shall give notice to the authority in prescribed form as given in Form V and V(A). Bye-Law 10 deals with the Occupancy Certificate, which is mandatory for all buildings. Amongst others, it is provided that no person shall occupy or allow any person to occupy any building or part of a building for any purpose unless such building has been granted an Occupancy Certificate. It also provides for undertaking of inspection by the authority on receipt of notice of completion with regard to aspects indicated therein. Bye-Law 10.1 provides that after completion of the building, an Occupancy Certificate as given in Form VI shall be issued by the authority to confirm that such building is fit for occupation.

26. Mr. H. Bezbaruah, learned counsel appearing for respondent Nos.7 and 8; Mr. K.N. Choudhury, learned Senior counsel appearing for respondent Nos.10 and 18; Mr. S.S. Dey, learned Senior counsel appearing for respondent Nos.6, 12, 13, 14 & 20 and Mr. P. Nongbri, learned counsel appearing for respondent Nos.15, 19, 22, 25 & 28 had submitted that they have no objection to the report and would abide by the same and implement the measures suggested. None had appeared for respondent No.23 from the very beginning.

27. The respondent No.5 had filed an additional affidavit on 28.05.2019 in the context of the report submitted, wherein it is indicated that the ground floor shall be meant for full parking and commercial spaces may be relocated in the basement. It is stated that 75% of the ground floor is allocated for the purpose of parking and out of the balance 25%, a portion is covered by staircase and the rest is permitted to be allocated to two number of shops on rent basis as they were old tenants and since the space on the ground floor is reduced, they have been allocated rest of the space to which they are entitled to on the first floor. It is also pleaded that remaining portion of the parking can be easily made available in the basement.

28. The respondent No.16 has also filed an affidavit on 18.06.2019 in response to the affidavit of MUDA dated 21.05.2019 stating that mitigating measures proposed are unreasonable and not practical. It is stated that technical compulsion and topographical condition, which is elevation of the land from the rear side, were not taken into consideration and it was because of such elevation, the basement measuring 1132 sq.ft. had to be constructed and, therefore, the building conforms to Bye-Law 40 of the Meghalaya Building Bye-Laws, 2011. It is pleaded that she had consulted other civil engineers and experts in the field of construction and civil engineering and they had advised the respondent No.16 that instead of dismantling the portion of the building as opined by respondent No.3 in the affidavit, same can be corrected and mitigated by way of (a) retrofitting the structural components of the building, (b) roofing of the top floor by CGI sheet with wooden beams to lessen the weight, (c) I-section/steel joint as beam after dismantling the RCC slab, (d) or any other mitigating measures in consultation with the experts. The learned counsel for the respondent No.16 on the basis of the affidavit has submitted that respondent No.3 may be directed to

reconsider its opinion so that no prejudice is caused to the respondent No.16.

29. Mr. K. Paul, learned counsel for the petitioners submits that though the learned counsel appearing for respondent Nos.6, 7, 8, 9, 10, 12, 13, 14, 15, 18, 19, 22, 25 and 28 have submitted that they would abide by the mitigation measures as proposed by MUDA, it has to be ensured by MUDA that such mitigating measures are complied with in its entirety before the buildings are allowed to be used. He has further submitted that each of the above respondents must be directed to submit an affidavit before MUDA that they will not raise any construction in the buildings in view of the fact that some of the respondents, in violation of the building plan approved, had raised even two additional floors. So far as respondent No.5 is concerned, it is submitted that report submitted by MUDA suggests that ground floor shall be fully utilized for parking even though feasibility of providing parking in the ground floor and addition of ramp to the ground floor had not been assessed and, therefore, at this juncture, it cannot be said that the proposed mitigating measures will conform to the provisions of Meghalaya Building Bye-Laws, 2011. He submits that in any case, the plea taken for allowing the use of building, more particularly, the ground floor as suggested by respondent No.5 in the affidavit cannot be accepted. When MUDA had suggested the mitigating measures in respect of respondent No.16 and when violation of Meghalaya Building Bye-Laws, 2011 is otherwise writ large, the reliance placed by respondent No.16 on suggestion of so called experts that there can be other mitigating measures as indicated in the affidavit ought not to be accepted. So far as respondent No.23 is concerned, it is submitted that since no revised drawings had been submitted by the respondent No.23 and since the respondent No.23 had not participated in this proceeding, as the building has an additional floor as per Meghalaya Building Bye-Laws, 2011 and when G+5 floors were sanctioned, which is beyond the permissible limit of G+4 if the ground floor is exclusively earmarked for parking, mitigating measures proposed in respect of respondent No.23 ought not to be applied in case of respondent No.23 as suggested by MUDA and the additional floor constructed is to be either sealed or demolished. He has also submitted that liberty may be reserved to the petitioners or any other person to approach the High Court of Meghalaya by way of Public Interest Litigation in the event of noticing any construction in violation of the proposed mitigating measures.

30. So far as respondent No.5 is concerned, we find substance in the argument of Mr. Paul. It appears from the observations made in respect of respondent No.5 that ground floor shall be fully parking and commercial spaces may be relocated in the basement. However, it is clear from the observations made under (iii) of Proposed Mitigating Measures to the effect that structural details tallying with the building plans should be submitted for assessing the feasibility of providing parking in the ground floor and addition of the ramp to the ground floor, that it cannot be said with any certainty that it will be feasible to provide parking in the ground floor and addition of the ramp to the ground floor. If the same is not feasible, then the mitigating measures will not conform to the provisions of

Meghalaya Building Bye-Laws, 2011 and the nomenclature of the building cannot be "Basement (Parking + Commercial, Ground + 4 floors for Commercial & Apartmental use with Ground Floor parking" as indicated in the recommendations. If on submission of structural design, the SDRP comes to a conclusion that it will be feasible to provide parking in the ground floor and addition of the ramp to the ground floor, then the respondent No.5 will have to implement the mitigating measures suggested, failing which floors above G+3, for which permission was granted, shall be demolished by MUDA. On the other hand, if the SDRP comes to a conclusion that it will not be feasible to provide parking in the ground floor and addition of the ramp to the ground floor, MUDA may suggest alternative mitigating measures which, inevitably, have to be in consonance with Meghalaya Building Bye-Laws, 2011. In the event of not accepting such mitigating measures, floors above G+3, for which permission was granted, shall be demolished by MUDA.

31. We are not impressed by the argument of Mr. Kharmawplang, learned counsel for the respondent No.16 that some civil engineers and experts had suggested that the mitigating measures proposed are not reasonable and practical and there are other ways of providing mitigating measures. Who these civil engineers and experts are not indicated and we see no good reason to ignore the mitigating measures finally suggested. If the mitigating measures as suggested are not implemented by the respondent No.16, two additional floors shall be demolished.

32. As far as respondent No.23 is concerned, he had not submitted revised drawings and has also not participated in the instant proceedings. It is indicated in the report that in absence of revised drawings, plot coverage, FAR and height could not be deduced. Though no deviation was found from the approved or sanctioned order in respect of respondent No.23, the building has an additional floor as per Meghalaya Building Bye-Laws, 2011 and an extra floor was permitted demonstrating that approval/sanctioned order was not issued in accordance with law. In that view of the matter, we are of the opinion that mitigating measures in respect of respondent No.23 as suggested in respect of respondent No.28 cannot be adopted. Accordingly, the extra floor (top floor) shall be demolished by MUDA.

33. On due consideration and having regard to the submissions advanced, the mitigating measures suggested by MUDA which are available in the affidavit filed by respondent No.3 on 27.05.2019 in respect of respondent Nos.6, 7, 8, 10, 12, 13, 14, 15, 18, 19, 20, 22 & 25 and in the affidavit filed by respondent No.3 on 18.06.2019 in respect of respondent No.28 are accepted. MUDA has to ensure that mitigating measures are strictly complied with by them. They will not raise any other construction and to that effect they will file affidavit before MUDA within 4(four) weeks from this date.

34. If respondent No.16 also decides to accept and implement the mitigating measures suggested, an appropriate affidavit shall be filed before MUDA within 4(four) weeks from this date also indicating that she will not raise any other

construction. In that event, MUDA will ensure that mitigating measures are strictly complied. If no such affidavit is filed, MUDA will take recourse to demolition as indicated at paragraph 31.

35. The case of respondent No.5 shall be regulated in the manner indicated at paragraph 30. The respondent No.5 may submit required structural design within a period of 1(one) month from this date and thereafter within a period of 1(one) month, MUDA will inform whether it will be feasible to provide parking in the ground floor and addition of the ramp to the ground floor or not. If not, MUDA will suggest mitigating measures which will be in consonance with the provisions of the Meghalaya Building Bye-Laws, 2011. If the respondent No.5 decides to accept and implement the mitigating measures as suggested in the present proceeding or the mitigating measures to be suggested, as the case may be, an appropriate affidavit demonstrating acceptance for implementation of the mitigating measures shall be filed before MUDA within a period of 1(one) month from the date of communication of MUDA. An appropriate affidavit shall also be filed before MUDA within 4(four) weeks from this date indicating that he will not raise any other construction, failing which, floors above G+3, for which permission was granted, shall be demolished by MUDA.

36. No Occupancy Certificate shall be issued by MUDA until and unless mitigating measures are fully complied or demolition is effected, as the case may be. Sealing of the buildings of those respondents who want to implement the mitigating measures may be unsealed, if so required for the purpose. Wherever demolition is required as directed, after demolition is carried out, such buildings may be unsealed.

37. If during demolition drive, any assistance is sought by MUDA, such assistance shall be provided by the District Administration.

38. Before parting with the records, we direct MUDA to scrupulously follow the Meghalaya Building Bye-Laws, 2011 or any future bye-laws to be framed. The building plan submitted should be meticulously examined before grant of sanction/permission, so that no plea can be raised subsequently that because of topography of the land or technical compulsions required raising of construction not in accordance with the sanctioned plan. All relevant considerations including topography of the plot of land shall be taken into consideration and thereafter only permission shall be granted conforming to the stipulations contained in the bye-laws. Note to Bye-Law 8(a) mandates that within 20 days of receiving of an application, the authority, i.e. MUDA, shall visit and investigate the site and seek for modification, if any, required to be made in the proposal. Bye-Law 6 of the Meghalaya Building Bye-Laws, 2011 requires the owner to give a prior notice of 14 days to the authorities in prescribed proforma given in Form II before commencement of the work and the authority is required to inspect the work following the receipt of the notice to verify the same. Bye-Law 17, which deals with "Inspection" provides, amongst others, that after excavation of the foundation pits or trenches, it is mandatory for the authority to inspect and

approve the same. The facts of the instant case lead to the irresistible conclusion that there was no inspection whatsoever at any stage and provisions of the bye-laws in regard to inspection had been given a complete go by. If steps at the initial stages as required under the bye-laws had been taken and requisite inspections had been carried out, unauthorized construction and deviations from the building plan which came to the fore in this Public Interest Litigation would not have taken place.

39. Shillong, a beautiful city, is known as the Scotland of the East. Allowing haphazard and unauthorized construction has the potential of destroying the enchanting landscape of Shillong. MUDA must not also forget that Shillong is in Zone-5 of seismic activity. If it turns a blind eye and allows unauthorized constructions to take place under its very nose, some day we might have to pay a very heavy price.

40. As prayed for by the petitioners, we reserve the liberty to the petitioners or to any public spirited person to approach the High Court of Meghalaya by way of Public Interest Litigation on the issue of granting of sanction of building plan by MUDA in violation of prevailing bye-laws and raising of unauthorized constructions and, also if directions contained in this order are violated in any manner.

41. With the above directions and observations, the PIL is disposed of.

42. Registry will send back the records received from the High Court of Meghalaya along with a copy of this order.