

(2018) 03 MP CK 0053

In the Madhya Pradesh High Court

Case No : WRIT PETITION NO. 12830 OF 2011 (PIL)

Satish Nayak

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 07-03-2018

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 299 (A), 305, 308A
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 19, 24, 24(3), 31, 85
Madhya Pradesh Land Revenue Code, 1959 — Section 172
Madhya Pradesh Bhumi Vikas Rules, 1984 — Rule 57, 81

Citation : (2018) 03 MP CK 0053

Hon'ble Judges : HEMANT GUPTA, J;VIJAY KUMAR SHUKLA, J

Bench : Division Bench

Advocate : Rajendra Tiwari, N.K. Tiwari, P.K. Saxena, Samdarshi Tiwari, Amit Seth, Sanjay K. Agrawal, Manoj Sharma, Piyush Tiwari, Anshuman Singh

Final Decision : Dismissed

Judgement

'''

The present petition, filed in public interest, levels allegations of illegalities and negligence of the respondent Nos.3 and 4 in respect of construction of'''

Mansarovar Complex at Maharana Pratap Nagar, Bhopal leading to traffic chaos in the area."'''

2. It is alleged that a building has been raised over the land of M.P. State Road Transport Corporation but without proper building plan nor adequate'''

area for parking has been provided, therefore, road is being used for parking purposes. It is also pointed out that the Government constituted a'''

committee of three members which has given a report that the Municipal Corporation has not followed the rules at the time of sanction of the map but'''

still no action has been taken. The report dated 29th September, 2010 has been attached with the writ petition." ,,,

3. On behalf of the Municipal Corporation, in a report filed on 5th March, 2014 (I.A. No.2841/2014), it has been stated to the following effect:-" ,,,

â??2. This Hon'ble Court vide order dated 07/01/14 was pleased to issue directions to the Municipal Corporation to submit compliance report ,,,

highlighting the steps taken by the Corporation in resolving the issues, hence the instance report is being filed." ,,,

3. The answering respondent respectfully submits that, paid parking facility has been set up at Zone No. 10, Ward No. 44 near Mansarowar Complex," ,,,

M.P. Nagar, Bhopal. The land available for paid parking near Mansarowar Complex is admeasuring about 800 sq. mt, which would be evident from" ,,,

memo dated 17/02/14 issued by Zonal Officer, Zone No. 10, Municipal Corporation, Bhopal. Copy of memo dt. 17/02/14 is annexed herewith as" ,,,

ANNEXURE-IA/1 ,,,

4. It is further submitted that the vehicle which are being parked on the main road near Mansarowar Complex (including BRTC Corridor Road) are not ,,,

being allowed to be parked as on date, since the answering respondents has declared the said particular area as 'No Parking Zone'. Thus, paid parking" ,,,

service has been established at the land adjacent to Mansarowar Complex, Bhopal. Thus, as on date adequate parking space is available near" ,,,

Mansarowar Complex, Bhopal.â??" ,,,

4. In another affidavit filed on 28th March, 2016 (I.A. No.4206/2016), the Corporation-Respondent No.3 has stated to the following effect: Â Â" ,,,

â??5. In reply to the letter dt. 2.05.2015, the department vide letter dt." ,,,

13.07.2015 clarify the position regarding violation of not providing off street parking and area of marginal open space in short MOS is being used as ,,,

off street parking. A copy of letter dt. 13.07.2015 is annexed herewith as ANNEXURE-IA/2 ,,,

6. As soon as the answering respondent received the letter dt. 13.07.2015 it immediately sent a proposal to the state govt. for cancellation of the ,,,

building permission dt. 29.05.2002 on the basis of which the Mansarowar Complex was constructed because as per provision of Section 299 (A) of ,,,

the M.P. Municipal Corporation Act 1956 only State Govt. has power to cancel or revise permission for construction of a building. A copy of proposal ,,,

dt. 16.07.2015 is annexed herewith as ANNEXURE-IA/3. It is submitted that the proposal is still pending with state authorities. It would thus be seen,,,

that the answering respondent has taken all measures promptly and the matter is pending with the state authorities whenever the state govt. will take,,,

its decision the answering respondent will comply the same.â??,,,

5. The State Government filed its response on 19th December, 2016 (I.A. No.16780/2016) along with an order dated 24th September, 2016 passed by",,,

the State Government whereby the proposal of the Municipal Corporation, Bhopal to cancel the building permission granted to the respondent No.4",,,

was rejected and that the Municipal Corporation was directed to proceed against the respondent No.4 in terms of the provisions of the Municipal,,,

Corporation Act, 1956 (hereinafter referred to as â??the 1956 Actâ?). It is, thereafter, the Municipal Corporation again submitted compliance report",,,

on 11th April, 2017 (I.A. No.4885/2017), wherein it was stated to the following effect:" ,,,

â??3. A bare perusal of the report dated 8/4/2017 would reveal that multilevel parking at Ibrahimipura Area and Moti Masjid area has already been,,,

completed and the same is already being used by public. Photographs attached with the Report dated 8/4/2017 would reveal that 75% construction of,,,

Multilevel parking at M.P. Nagar area is already completed and five months time would be necessary for complete construction. Photographs,,,

attached with the Report dated 8/4/2017 would reveal that 65% construction of Multilevel parking at New Market Area is already completed and near,,,

about six months time would be necessary for complete construction. Photographs attached with the Report dated 8/4/2017 would reveal that 80%,,,

construction of Multilevel parking at Bairagarh area is already completed and near about six months time would be necessary for complete,,,

construction.,,,

4. Thus answering respondent is thus taking sincere and dedicated efforts to ensure that sufficient parking space is made available to public in time,,,

bound manner within the territorial limits of Bhopal Municipal Corporation.â??,,,

6. Another affidavit was filed on behalf of the Municipal Corporation on 29th June, 2017 (I.A. No.7689/2017) wherein it is averred that the Municipal",,,

Corporation granted permission for construction of Commercial Complex on 29th May, 2002 and that as per the prevailing norms, the permission ought",,,

to have been granted by leaving 4.50 Meter strip on either side of the building and 4.50 Meter in front of building for off-street parking but the same,,,

was not done. It was also averred that construction was made as per the sanctioned plan.,,,

7. A detailed reply has been filed by the respondent No.4 on 14th July, 2017 (I.A. No.8401/2017) wherein it is pointed out that the said respondent is",,,

not the owner of the Mansarovar Complex, which is owned by M.P. Road Transport Corporation. The respondent No.4 is only a contractor, who has",,,

raised construction under Build-Operate-Transfer contract (BOT). It is further pointed out that Mansarovar Complex has been constructed on the,,,

land bearing Khasra No.27/1/2, Plot No.1 having area admeasuring 5 Acres in total, situate at R-Depot Complex, Hoshangabad Road, Opposite",,,

Habibganj Railway Station, Bhopal. M.P. State Road Transport Corporation invited applications for construction of commercial shopping complex on",,,

1.90 Acres land (i.e. 7688 Square Meter) out of the aforesaid 5 Acres of land on 29th July, 1999. The respondent No.4 was given the work of",,,

construction of commercial complex being the highest bidder. The building plan was approved after completing the formalities on 29th May, 2002.",,,

Such permission was granted to M.P. Road Transport Corporation. It is pointed out that in accordance with the site plan Annexure R-4/12 and the site,,,

plan attached with Annexure R4/14 issued by the Municipal Corporation, Bhopal, after leaving 22.50 Meter wide space from the centre of the",,,

National Highway No.7 located in the east of the Complex, there exists a 7.5 Meter wide service road and thereafter, a 4.5 Meter wide open parking",,,

space has been provided. It is also pointed out that the completion certificate was issued on 31st December, 2003 i.e. seven years prior to filing of the",,,

present public interest litigation.Â",,,

8. On 18.07.2017, the Commissioner, Municipal Corporation appeared before this Court and stated that the building plan was sanctioned without",,,

leaving a strip of 4.5 Meter for off-street parking (sic open space) within the complex. The Municipal Commissioner further stated that the,,,

construction in lieu of open space cannot be compounded in terms of Section 308-A of the 1956 Act. The relevant order reads as under:- Â",,,

â??Ms. Chhavi Bhardwaj, Commissioner, Municipal Corporation, Bhopal and Mr. Devendra Singh Rana, In-charge Divisional Manager of M.P. Road",,,

Transport Corporation, Bhopal are present in Court in terms of an order passed by this Court on 12.07.2017. Such direction was necessitated in view",,,

of the fact that the building plan of a plot area 1005.43 Square Meter was sanctioned without leaving a strip of 4.5 Meters for off-street parking within",,,

the complex.,,,

It is the stand of the Municipal Corporation that the building plan was sanctioned by including 4.5 Meters for off-street parking as a part of the main",,,

building.,,,

At one stage, the Municipal Corporation proposed cancellation of sanction of the building plan but the matter was referred to the State Government",,,

and the State Government in its decision dated 24.09.2016 has taken a stand that once the building has been constructed as per the sanctioned building",,,

plan, no further action is necessary.",,,

It is in this background, it was desired to find out the response of the officers of the Municipal Corporation and M.P. Road Transport Corporation, the",,,

owner of the plot. The owner of plot has earlier granted contract for construction of the building to respondent No.4, but, during the course of hearing",,,

it has been pointed out that the contractor has left the construction midway and the association of occupants has subsequently completed the",,,

construction and are managing the building.,,,

Ms Bhardwaj points out that the construction over 4.5 Meters for off-street parking is not compoundable in terms of Section 308-A of the M.P.,,,

Municipal Corporation Act, 1956. It is pointed out that had this construction been compoundable, the compounding fee would be in the sum of Rs.",,,

3,84,57,697.50. Ms Bhardwaj points out that an area of 4.5 Meters wide strip of land comes to 5027 Square Meters out of total constructed area of",,,

19222 Square Meters i.e. almost 25% of the total constructed portion is not legally permissible.,,,

On the other hand, Mr. Rana, who is representing M.P. Road Transport Corporation, states that the Corporation is in the red and has no finances and",,,

that the affairs of the Corporation are being managed by the State Government. It is also pointed out that M.P. Road Transport Corporation has not",,,

been impleaded as a party in the writ petition, therefore, nothing more can be said about the contentions raised now.",,,

After hearing the learned counsel for the parties, we deem it appropriate to

implead M.P. Road Transport Corporation as one of the Respondents." ,,,

Thus, M.P. Road Transport Corporation, Bhopal through its Managing Director, is ordered to be impleaded as respondent No.5." ,,,

Admittedly construction of an area of more than 5000 square meters is illegal and non-compoundable. There are two options in these circumstances.,,,

One is to direct to demolish the unauthorized, noncompoundable construction, which may not be in public interest as the resources of the Country have" ,,,

been used for raising such construction. The second is to direct the Respondents to pay penalty for allowing to raise construction in violation of the,,,

building bye laws so that with the funds made available, alternative parking can be provided near the constructed complex." ,,,

Since the construction of over 5027 Square Meters is not permissible, therefore, the composition fees of un-compoundable violation can be in the sum" ,,,

of Rs.40,000/- per square meter, which comes to be more than Rs.20.00 Crores. But the lump sum payment of Rs.20.00 Crore would be adequate" ,,,

compensation for unauthorized construction to enable the State Government to raise construction of multistorey parking facility.,,,

Learned counsel appearing for the respondents including newly added respondent M.P. Road Transport Corporation seek a week's time to file their,,,

response.Â ,,,

Let the response be filed on or before 28.07.2017. List on 01.08.2017.â?? ,,,

9. This Court has passed different orders from time to time but the issue, which is required to be decided was crystallised in the order dated 2nd" ,,,

August, 2017, which reads as Â under:-" ,,,

â??The question which arises for consideration is whether 4.5 meters of strip as off-street parking is required separately to be provided while,,,

permitting the construction of a mercantile building or that the off-street parking is separate from the open spaces required to be left in terms of the,,,

Madhya Pradesh Bhumi Vikas Rules, 1984 (for short â??Rulesâ??) provide for the conditions of raising construction of the buildings in the State." ,,,

Part-V General Building Requirements of Rules classifies the Buildings. Clause (ii) provides for â??Open Spaces (within a Plot)â?. The â??Open,,,

Spaceâ? has been defined in Rule 2(43) of the Rules to mean an area forming an integral part of the plot left open to the sky. In terms of Rule 55(2)," ,,,

the â??Open Spacesâ? are meant to cater the lighting and ventilation

requirement of the building. In terms of Rule 57 Clause (d) for a business,,,
mercantile and storage building, the "Open Spaces" around the building
cannot be less than 4.5 meters. Such "Open Spaces" are required to",,,
be provided within a plot.,,,

On the other hand, "Parking Space" is required to be provided as per Rule 81
of Rules. There is off-street parking spaces as per the",,,

specifications given in Appendix-L and other than off-street parking spaces as
given in Appendix L-A. As per Appendix-L, the requirement of off-",,,

street parking in a city having a population of 2,00,000 " 10,00,000 is 100
square meters carpet area or fraction there of.",,,

The stand now taken by the Municipal Corporation is that the "Open Spaces"
provided in Rule 57 of the Rules and the "Parking Space" as,,,

contemplated in Rule 81, is not required to be separately provided. It is also
argued that the Development Plan (Master Plan) of Bhopal has been",,,

published under Section 19 of the Madhya Pradesh Nagar Tatha Gram Nivesh
Adhiniyam, 1973 in the year 1995, therefore, such Development Plan",,,

will have preference over the Rules.,,,

Prima facie, we find that the "Open Space" mentioned in Rule 57 and "Parking
Space" in Rule 81 are distinct and have to be provided in a",,,

mercantile building. Still further, Section 24 of the Act under which Rules have
been framed, gives preference to the Rules framed than the provisions",,,

of any other Statute. Therefore, the Rules will have preference over the
Development Plan published for the area of Bhopal.",,,

Â 10. The argument of the learned counsel for the petitioner is that the Municipal
Corporation has sanctioned the building plan in contravention of,,,

Madhya Pradesh Bhumi Vikas Rules, 1984 (for short "the 1984 Rules").",,,

Though the said Rules now stand repealed by Madhya Pradesh Bhumi Vikas
Rules, 2012 (for short "the 2012 Rules"), but, for the purposes of",,,

the present writ petition, it is the 1984 Rules alone, which have to be examined.
Such Rules have been framed in exercise of the powers conferred",,,

under Section 85 read with Sub-section (3) of Section 24 and Section 31 of
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No.23 of",,,

1973) (for short "the 1973 Act").,,,

11. The argument of the learned counsel for the petitioner is that the Municipal
Corporation has sanctioned the building plan of the Commercial,,,

Complex in contravention of the 1984 Rules as the open space is required to be left within the plot area and such open space cannot be less than 4.50,,,

Meter around the building. The requirement of off-street parking is as per Appendix-L in the 1984 Rules, which is required to be provided in terms of",,,

Rule 81 of the Rules. It is contended that the stand of the Corporation that â?? open spacesâ? provided under Rule 57 of the 1984 Rules and,,,

â??parking spacesâ? as contemplated in Rule 81 of the said Rules is same and not required to be provided separately is total misreading of 1984,,,

Rules.,,,

12. On the other hand, the argument of the respondents is that the building plan was sanctioned on 26th April, 2002. Such sanction was clarified on",,,

13th July, 2015. As per the said communication, 4.50 Meter strip is reserved for off-street parking and the same width is kept as open area on all four",,,

sides of the building as well. In the communication dated 26th April, 2002, the building plan was sanctioned with the following conditions:-",,,

â??1. This opinion is given for the land in agreement for B.O.T. scheme, and will not be applicable for other nearby land;",,,

2. The norms for FAR and ground coverage designated for city centre in table 4-T-4 and 4-T-5 in Bhopal Development Plan 2005 shall be applicable;,,,

3. After ensuring the 60 meter width of National Highway located towards east of the site in question, a minimum of 4.5 Meter broad strip to be kept",,,

reserved for off street parking;,,,

4. As per Rule 57(d) of M.P. Bhumi Vikas Rules, 1984, open area of 4.5 Meter to be kept on all four sides of the building;â??"",,,

Â *** ***,,,

13. However, in the subsequent communication dated 13th July, 2005, it was stated to the following effect:-",,,

OFFICE OF THE JOINT DIRECTOR, TOWN AND COUNTRY",,,

PLANNING, DISTRICT BHOPAL-SEHORE-RAISEN, MADHYA",,,

PRADESH,,,

Kachnar E-5 Paryavaran Parisar Arera Colony,,,

E-Mail: Bhopal @ Mptownplan.gov.in,,,

Number 1789 G-50/Na Gra Ni/Ji ka/Â Â Â Â Bhopal, Dated 13/07/2015",,,

To,"",,,

Chief City Planner, Municipal Corporation, Bhopal." ,,,

Subject:-Regarding grant of building permission for construction of Maansarovar Complex in contravention of rules.,,,

Â Ref:-Â Letter No.247/BPS/2015 Bhopal Dated 02-05-2015,,,

By the above referred letter, it has been stated that your office may be apprised with the opinion on the conclusions arrived at in the enquiry" ,,,

conducted by the joint enquiry committee constituted by the Directorate of Urban Administration & Development, Bhopal and the copy of building" ,,,

permission of Mansarovar Complex.,,,

It has been recorded in the conclusion of the enquiry conducted by the joint enquiry committee that after ensuring the 60 meter width of National ,,,

Highway in front of the building, 4.5 mts of open space was proposed on four sides of the building, a minimum of 4.5 meter strip was to be reserved" ,,,

for off street parking but in the map open area of 4.5 meter in the front and on both sides has been left and sanctioned for parking, no provision for off" ,,,

street parking has been made in the permission.,,,

It has been mentioned in the condition number 4 of letter vide no 1286/G-50/Zi Ka/Na Gra Ni/2002 Bhopal dated 26-04-2002 issued from the office of ,,,

the Joint Director, T&CP that an open area of 4.5 meter area to be kept on all four sides of the building and has also been mentioned in condition" ,,,

number 3 that, After ensuring the 60 meter width of National Highway, a minimum of 4.5 meter strip shall be reserved for off street parking, meaning" ,,,

that after 60 meter wide road, off street parking was sanctioned on 4.5 meter front open area itself." ,,,

JOINT DIRECTOR ,,,

Â Â TOWN AND COUNTRY PLANNING Â DISTRICT OFFICE BHOPALÂ?? ,,,

14. The Bhopal Development Plan-2005 has been published in the M.P. Gazette (Extraordinary) on 9th June, 1995 in terms of Section 24 of the 1973" ,,,

Act. It is contended that Bhopal Development Plan-2005 will prevail over the 1984 Rules as the overall control of development and use of the land in ,,,

the planning area vests with the Director, therefore, the requirement of the open spaces or a parking area has to be examined in the light of the" ,,,

conditions in Development Plan rather than in the 1984 Rules.,,,

15. The relevant provisions of the 1973 Act and the 1984 Rules so far as they are

relevant for the purposes of the present petition, reads as under:-",,,

M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973",,,

2. Definitions. - In this Act, unless the context otherwise requires, -",,,

^ *** ***,,,

(f) ""development"" with its grammatical variations means the carrying out of a building, engineering, mining or other operation in, or over or under land,",,

or the making of any material change in any building or land or in the use of either, and includes sub-division of any land;"",,,

(g) ^development plan^ means a plan prepared and brought into operation under sections 18 and 19;^",,,

^ *** ***,,,

(o) ^planning area^ means any area declared to be a planning area under this Act and non-planning area shall be construed accordingly. (o-1)^",,,

^plot^ means any piece of land having a definite shape and size, and duly approved by the Director;^",,,

^ *** ***,,,

24.^ State Government to control development and use of land. - (1) The overall control of development and use of land in the State shall vest in the",,,

State Government.,,,

(2) Subject to the provisions of sub-section (1) and the rules made under this Act, the overall control of development and use of land in the planning",,,

area shall vest in the Director with effect from such date as the State Government may, by notification, appoint in this behalf."",,,

(3) The State Government may make rules to regulate the control of development and use of land in planning area and non-planning area in the State,,,

and may, by notification, apply the said rules to any planning area or non-planning area from such date as may be specified therein and where the rules",,,

are made applicable to a non-planning area, such notification shall define the limits of the non-planning area:"",,,

Provided that different rules may be made for different classes of local authorities in a planning area or non-planning area, as the case may be."",,,

(4) On application of rules to a planning area, the provision of this chapter in its application to that planning area, shall be subject to the provisions of the",,,

rules.,,,

(5) On application of rules to any non-planning area, the following consequences shall ensue, namely :-" ,,,

(i) relevant provision of the law relating to local authority empowering the local authority to control development and use of land or any other ,,,

enactment under which the authority entrusted with the functions of development and use of land is constituted and the rules, or bye-laws, if any, " ,,,

made thereunder shall cease to apply to the area comprised within the limits of the local authority or any other authority, as the case may be; " ,,,

(ii) the local authority or any other authority whose function it is to control development and use of land under any law relating to local authority or ,,,

under any other enactment for the time being in force shall, notwithstanding anything contained in any such law or enactment, be bound to give effect " ,,,

to the provisions of the rules made under this Act.â?? ,,,

25. Conformity with development plan. - (1) After the coming into force of the development plan, the use and development of land shall conform to " ,,,

the provisions of the development plan: ,,,

Provided that the Director/Zila Yojana Samiti, may, at its discretion, permit the continued use of land for the purpose for which it was being used at " ,,,

the time of the coming into operation of the development plan. ,,,

Provided further that such permission shall not be granted for a period exceeding seven years from the date of coming into operation of the ,,,

development plan. ,,,

(2) Notwithstanding anything contained in Section 172 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) every permission to divert " ,,,

land granted under that section shall be subject to the provisions of this Act. ,,,

26. Prohibition of development without permission. - After the coming into operation of the development plan, no person shall change the use of any " ,,,

land or carry out any development of land without the permission in writing of the Director. ,,,

Â *** ***, ,,,

Madhya Pradesh Bhumi Vikas Rules, 1984" ,,,

â??2. Definitions. - In these rules, unless the context otherwise requires- " ,,,

Â *** ***, ,,,

(10)Â â??Building lineâ? means the line up to which the plinth of a building

adjoining a street or an extension of a street or a strip of land earmarked,,,
or reserved for future construction of street may lawfully extend. It includes the
lines prescribed, if any, in any scheme. The building line may change",,,
from time to time as decided by the Authority;,,,

Â *** ***,,,

(19) "Covered Area" means the area of the land covered by the plinth of the
building at the ground floor level and shall be counted as the ground,,,

coverage. This shall exclude the area covered by projections at slab level and
area of the plinth not covered by roof of at top. Cantilevered projections,,,

up to an extent of one third of the Marginal Open Space shall be permissible on
the upper slab level with a clear height for vehicular/pedestrian,,,

movement. These projections cannot be made at height below 2.5 meter from
the ground level. This projection shall not construe to be covered area.,,,

Area covered on the second and third floor levels as cantilever projection with at
least 5.5 meter clear space below for movement, but not within the",,,

setback/marginal open space, shall not be counted in covered area. All areas in
the building shall be counted in covered areas except for service ducts,",,,

garage on ground floor and lift wells.,,,

Â *** ***,,,

(43) "Open space" means an area forming an integral part of the plot left open
to the sky.",,,

(44) "Front open space" means an open space across the front of a plot
between the building line and the front boundary of the plot;,",,,

(45) "Rear open space" means an open space across the rear of a plot between
the rear of the building and the rear boundary of the plot; (46) "Side",,,

open space" means an open space across the side of the plot between the side
of the building and the side boundary of the plot;,",,,

Â *** ***,,,

46. Building Line.--Subject to rule 56, building line shall be set back at least 3
metres from internal means of access in a layout of buildings in a plot.",,,

Â *** ***,,,

PART V - GENERAL BUILDING REQUIREMENTS,,,

(i) Classification,,,

54. Classification of Buildings.-,,,

^ *** ***,

^ (ii) Open Spaces (within a Plot),,

55. General ^? Every room intended for human habitation shall abut on an interior or exterior open space or an open verandah open^ to such interior,, or exterior open^ space.,,

(2) Open spaces to cater for lighting and ventilation requirement. The open spaces inside or around building have essentially to cater for the lighting and,, ventilation requirements of the rooms abutting such open spaces, and in the case of building abutting streets in the front, rear or sides, the open spaces",,, provided shall be sufficient for the future widening of such streets.,,

(3) Open spaces separate for each building or wing.- The open spaces shall be separate or distinct for each building and where a building has two or,, more wings, each wing shall have separate or distinct open spaces for the purposes of light and ventilation of the wings.",,,

(4) Separation between accessory and main buildings more than 7 metre in height shall not be less than 1.5 metres. For buildings up to 7 metres in,, height no such separation shall be required.,,

^ *** ***,

57. Open spaces for other occupancies.- Open spaces or other occupancies shall be as follows :-,,

(a) Educational Buildings.- Except for nursery school, the open spaces around the building shall be not less than 6 metres.",,,

(b) Institutional Buildings.- The open spaces around the building shall be not less than 6 metres; and,,

(c) Assembly Buildings.- The open space at front shall be not less than 12 metres and the other spaces around the building shall be not less than 6,, metres.,,

Note.- However if assembly buildings are permitted in purely residential zones, the open spaces around the building shall not be less than 12 metres.",,,

(d) Business, Mercantile and Storage Buildings. - The open spaces around the buildings shall be not less than 4.5 metres. Where these are situated in",,, purely residential zone or residential with shops line zone, the open spaces may be relaxed.",,,

(e) Industrial Buildings. - The open spaces around the building shall be not less

***" ,,,

18. The Development Plan has parking standards as well as dimensions for on-street car parking bays. In respect of commercial building, one car" ,,,

parking space is required per 50 square meter of floor space where shops sizes exceed 20 square meter or in upper income group areas; 100 square ,,,

meter of floor space in other areas; and 200 square meter of floor space where shop sizes are less than 10 square meter.Â ,,,

19. We have heard the arguments and called upon the Municipal Corporation to disclose the total plot area and total area on front and all sides of the ,,,

Commercial Complex. The details have been submitted along with the affidavit of Dr. Shubhashish Banerjee, Chief City Planner, Municipal" ,,,

Corporation, Bhopal dated 19th February, 2018, which are as under:-" ,,,

Site Inspection Report ,,,

1. Total Plot area - 7688.80 Sq.Mtrs. ,,,

2. Open area in front and on sides - 1360.48 Sq. Mtrs. ,,,

3. Area of ducts and cutoutsÂ - 509.09 Sq. Mtrs. ,,,

4. Total of 2 and 3Â - 1869.57 Sq. Mtrs. ,,,

5. Covered area on ground as per site - 5819.23 Sq. Mtrs (75.68%) ,,,

20. In the light of the statutory provisions and respective stand of the parties, we need to examine the sole question: as to whether off-street parking" ,,,

provided at the time of construction of the complex is sufficient compliance of requirement of leaving open space within the plot area. As per the ,,,

petitioner, 4.50 Meter of open space is required within the plot area and 4.50 Meter of area is required for off-street parking is in addition to the open" ,,,

spaces, which are left for lighting and ventilation purposes whereas, only off-street parking has been provided for in front of the building, which" ,,,

contravenes the statutory provisions. Therefore, in terms of the order passed by the Supreme Court in Writ Petition (Civil) No.337 of 2013 (Babita" ,,,

Badasaria & others vs. Patna Municipal Corporation & others) the building constructed in contravention of the statutory rules is required to be ,,,

demolished. Per contra, learned counsel for the respondents relied upon a Supreme Court decision reported as (2017) 1 SCC 667 (Ravindra" ,,,

Ramchandra Waghmare v. Indore Municipal Corporation and others) in respect of Section 305 of the 1956 Act. ,,,

21. The first question requires to be examined is whether Bhopal Development Plan 2005 published in terms of Section 24 of the 1973 Act overrides,,, the 1984 Rules published under the same 1973 Act. We find that Bhopal Development Plan, though published after framing of 1984 Rules, but does",,,, not deal with the micro planning requirement, which is required to be satisfied while raising construction of the building within the area of Municipal",,,, Corporation. On the other hand, the Development Plan specifies the use of the land for specified purposes, the requirement in respect of height of",,,, building, FAR and other restrictions but it is a macro planning of the area whereas, micro planning is left to be controlled by the 1984 Rules now",,,, substituted by 2012 Rules. May be, if any Rule of 1984 Rules or for that matter 2012 Rules is contrary to the Development Plan, the Development",,,, Plan can be given preference, but, both; the Development Plan and the 1984 Rules will co-exist and both have to be complied with while raising",,,, construction of commercial and institutional buildings. Clause 4.3 of Chapter-IV of the Development Plan published, itself states that the norms and",,,, regulations which are not specified in Chapter-IV, in such matters the provisions as contained in 1984 Rules shall be applicable. The Development",,,, Plan, Annexure R4/12, does not deal with the off-street parking or the open spaces within the plot area which are regulated and controlled by 1984",,,, Rules.Â",,,,.

22. The respondent No.4 has produced a communication dated 19.01.2004 (Annexure R4/14) from M.P. State Road Transport Corporation, Bhopal",,,, addressed to the Executive Engineer, Public Works Department, National Highway Division, Bhopal for permission to shift the electric polls and the",,,, service road on National Highway No.12. Such plan shows that there is 7.5 Meter service road and thereafter, there is off street parking area and",,,, then starts the building. If such plan is read with Annexure R4/12, the building plan of the complex, it shows that after 7.5 Meter service road, parking",,,, area parallel to NH-12 is reflected and after the parking area, building line starts. A perusal of the site plan shows that 4.50 Meter of parking area is",,,, left on both sides of the building within plot area, whereas, in front, parallel to National Highway, 4.50 Meter width land is left but the building has no",,,, boundary-wall as required in terms of Part-V read with Rule 2(44) of the 1984 Rules. Therefore, 4.50 Meter strip is either off-street parking or open",,,,.

space in terms of Rule 81 and Rule 57 of the 1984 Rules. But the owner of the plot has to provide both 4.50 Meter width of strip as off-street parking,,, and similar width for open space.,,,

23. A perusal of the photographs attached with intervention application, Annexure IA/23 shows that 4.5 Meter wide strip is used as paid parking",,,, facility by the Municipal Corporation. The said parking is not a parking facility provided on the plot owned by M.P. Road Development Corporation but,,, appears to be a parking on public land as is apparent from the building line. On the other hand, the photographs (Annexure R4/21) produced by the",,,, respondent No.4 shows that the vehicles parked are on public land as well as on footpath, which is higher in level than the road level but cannot be",,,, conveniently used as parking. Such photographs read with the photographs attached by the intervener show that no parking area has been left in front,,, of the complex except the public land leading to traffic chaos. The photographs produced by the respondent No.4 show that there is a parking on the,,, eastern and southern sides but there is a parking problem in front of the complex.,,,

24. Part-V of the 1984 Rules provides for general building requirements. It classifies different buildings as per Rule 54 thereof, whereas Rule 55",,,, provides for open spaces within a plot whereas parking area is provided under Rule 57 of such general building requirements. Rule 57(d) of the 1984,,, Rules pertaining to business mercantile and storage buildings provides that open spaces around the buildings shall be not less than 4.5 meters. This 4.5,,, meter is area within the plot area, which is apparent from the heading Clause (ii) of Part-V of the Rules. Apart from the said fact, the front open",,,, space as defined in Rule 2(44) of the 1984 Rules, means an open space across the front of a plot between the building line and the front boundary of",,,, the plot. The Appendix-L, Clause L-1 is categorical that spaces to be left out for off-street parking shall be in addition to the open spaces left for",,,, lighting and ventilation purpose as given in Rule 80. It appears that Rule 80 is printed by mistake, as it is Rule 55, which deals with provisions of open",,,, spaces within a plot for lighting and ventilation requirement. Therefore, front open space of 4.5 Meter has to be left in the complex within a plot",,,, whereas the parking space in terms of Rule 81 of the 1984 Rules read with Appendix L is to meet the requirement of parking spaces as off-street,,,.

parking. The requirement for parking is warranted for the convenience of the persons visiting building so that there is no traffic chaos whereas, the",,,

requirement of open space is meant for circulation area and to take care of overflow of vehicles. As Sub-clause (2) of Clause L-1 of Appendix L,,,

contemplates that 50 percent of the open spaces required under Rule 55 around buildings may be allowed to be utilized for parking or loading or,,,

unloading spaces, provided that minimum distance of 3.6 meters around the building shall be kept free from any parking, loading or unloading spaces.",,,

Therefore, 4.5 Meter open space is to be partly required for parking and partly for circulation area of not less than 3.6 Meter.",,,

25. Therefore, to assert that leaving of 4.5 Meter as off-street parking specifies the requirement of open spaces contemplated by Rule 57 read with",,,

Rule 2(44) of the 1984 Rules, is not correct. That was the understanding of the Municipal Corporation earlier but subsequently the Corporation",,,

changed its stand to assert that off-street parking and the open space parking is one and the same thing. Not only the Rules are separate, requirement",,,

is separate and the purpose is distinct therefore, off-street parking cannot be treated to satisfy the requirement of open spaces contemplated to be",,,

provided in Rule 57 of the Rules. The consistent stand of the Corporation was that the building has been constructed in violation of the statutory Rules,,,

even when the Commissioner appeared before the Court on 18th July, 2017. It is, thereafter, the Corporation has taken a somersault to contend that",,,

the open space in terms of Rule 57 of the 1984 Rules and off-street parking as required under Rule 81 of the 1984 Rules is one and the same thing.,,,

We do not find any satisfactory explanation for change of the stand of the Corporation.,,,

26. A perusal of the communication dated 26th April, 2002 would show that there was clear stipulation while granting sanction of the building's plan",,,

that after 60 meters width of National Highway located towards east of the site in question, a minimum of 4.5 Meter broad strip to be kept reserved",,,

for off-street parking. There was also a condition No.4 that an open area of 4.5 Meter has to be kept on all four sides of the building as per Rule 57(d),,,

of the 1984 Rules. With such clear conditions in the sanction granted, therefore, the argument that not leaving the open spaces in the plot area is",,,

clearly in violation of not only the Rules but sanction granted. The communication dated 13th July, 2015 was addressed during the pendency of the

writ",,,

petition. Such interpretation is obviously not correct, inasmuch as the off-street parking is dealt with in Rule 81 of the 1984 Rules whereas requirement",,,

of leaving open spaces on all four sides is requirement of Rule 57 of the 1984 Rules. Two requirements cannot be clubbed together. Therefore, initially",,,

the Corporation was right in saying that off-street parking and open spaces are separate requirements. The requirement of the Rules is clear and",,,

categorical. The stand of the Corporation initially was that there is problem of parking. It is not that parking woes have come to end now. The problem",,,

of parking is additionally for the reason that no open space was left in front within the boundary wall as required under Rule 57 of the 1984 Rules",,,

therefore, the understanding of the building plan by the Municipal Corporation is against the statutory Rules framed.",,,

27. The judgment of the Supreme Court in Ravindra Ramchandra Waghmare (supra) deals with the right of the Corporation over the land claims to be",,,

vested in them and to take action in terms of Section 305 of the Municipal Corporation Act, 1956. We do not find such question arises even remotely",,,

in the present writ petition.,,,

28. On 18.07.2017, the Commissioner of the Municipal Corporation has given a note that the excess covered area at the ground floor is 1005.43",,,

Square Meter. Since five floors have been constructed, therefore, total excess area is 5027.15 Square Meter. The compounding fee for such area as",,,

per the Collector guidelines, would be Rs.3,84,57,697.50. It is also mentioned in the said communication that 5027.15 Square Meter is the excess area",,,

covered on 4.5 Meter wide strip and that such excess construction is not compoundable. Keeping in view the fact that the building has been",,,

constructed in violation of the statutory Rules, one option is to direct the demolition of the excess area, which may not be in public interest, as the",,,

building has been constructed with material resources of the country and the areas have been sold or allotted to different persons. The other option is",,,

to direct the payment of compensation for permitting the Municipal Corporation to provide for alternative parking area in the vicinity of the complex so",,,

that problem of traffic congestion is met. Therefore, in terms of calculations of the Corporation that if the compounding is permissible, an amount of",,,

Rs.3,84,57,697.50 would be compounding fee. The fact is that the owner of the

plot has caused construction to be raised in violation of the building" ,,,
plans, therefore, the payment of twice of the amount calculated by the Municipal Corporation i.e. Rs.7,50,00,000/- (rounded off) would be fair and just" ,,,
amount of compensation in lieu of demolition of the building so that amount can be utilised for providing multiple level parking near the building in ,,,
question. ,,,

29. In view of the above, we issue the following directions:-" ,,,

(I) The M.P. Road Transport Corporation shall pay a sum of Rs.7,50,00,000/- (Rupees Seven Crore Fifty Lac) within six months from today to the" ,,,

Municipal Corporation; ,,,

(II) If the amount, as aforesaid, is not paid within six months then the Municipal Corporation shall have a liberty to demolish the excess construction" ,,,

raised in violation of the building bylaws.Â Â Â Â ,,,

30. With the aforesaid observations and directions, the present petition stands disposed of." ,,,