

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 71 OF 2010

Society for Promotion of Equality,
Awareness and Rights ("SPEAR"),
a Society duly registered under the
Societies Registration Act, 1860,
having its registered office, Sunbeam,
3 Pareja House, Sasmira Marg,
Worli, Mumbai-400 025. Petitioner

: V E R S U S :

1. The National Sports Club of India
Having registered office at Mathura Road,
New Delhi and Mumbai Region at
Lala Lajpatrai Marg,
Worli, Mumbai-400 018.
- 1(a) The Special Administrator of
Sardar Vallabhbhai Patel Stadium,
83-A, Central Avenue, Sainik Farm,
New Delhi-110062 and at National
Sports Club of India, situate at Mumbai
2. The Mumbai Municipal Corporation
Having its office at MCGM Building,
Mahapalika Marg, Mumbai-400 001.
3. Chief Engineer, Development Plan,
Municipal Corporation of Greater Mumbai
Mahapalika Road, Mumbai-400 001.
4. The Union of India, represented by
The Secretary, Ministry of Environment

& Forest, Paryavaran Bhavan, CGO
Complex, Lodhi Road, New Delhi-110 003.

5. State of Maharashtra, represented
by the Secretary, Urban Development
Department, Government of Maharashtra,
Mantralaya, Mumbai
6. Member Secretary, Maharashtra
Coastal Zone Management Authority,
New Administration Bldg, Mantralaya,
Mumbai.
7. The Secretary, Mumbai Heritage
Conservation Committee, Municipal
Corporation of Greater, Mumbai,
Annex Building, Mahapalika Marg,
Mumbai-400 001.
8. Shashi Prabhu & Associates,
Wankhede Stadium, North Stand,
'A' & 'C' Block, D Road,
Churchgate, Mumbai-400 020.
9. The Central Bureau of Investigation,
Having its office at Tanna House,
Nathmal Parekh Marg, Behind
Sahakari Bhandar, Near Regal
Theatre, Colaba, Mumbai. Respondents

Mr. Owen Menenzes with Mr. Ramchandra Yadav i/by. Amey
Tamhane, Advocate for the petitioner.

Mr. E.P. Bharucha, Senior Advocate and Mr. D.D. Madon, Senior
Advocate with Mr. Sarosh Bharucha, Mr. D.J. Kakalia, Mr. Shaun
Fanthome and Ms. Bhavna Singh i/by. M/s. Mulla and Mulla &
C.B. & C, Advocate for respondent no.1.

Mr. K.K. Singhvi, Senior Advocate with Ms. Geeta Joglekar,
Advocate for respondent-BMC.

Ms. S.M. Dandekar, Assistant Government Pleader
Advocate for respondent-State.

Ms. S.I. Shah, Advocate for respondents no.4 and 9.
Ms. Sharmila Deshmukh, Advocate for respondent no.6.

CORAM :- MOHIT S. SHAH, C.J. &

SMT. R.P. SONDURBALDOTA, J.

JUDGMENT RESERVED ON : 26th August, 2011.

JUDGMENT PRONOUNCED ON: 22nd December, 2011.

JUDGMENT (Per : Smt. R.P. SondurBaldota, J) :-

1. In this petition purporting to be Public Interest Litigation, the petitioner NGO has prayed for direction to the Municipal Corporation of Greater Mumbai (hereinafter referred to as 'Municipal Corporation') and respondent no.8-Shashi Prabhu & Associates, (hereinafter referred to as 'the Contractor') to demolish Sardar Vallabhbhai Patel Stadium ('SVP Stadium' for short) situate at Lala Lajpatrai Marg, Worli, Mumbai and to restore the stadium to the public as it originally existed. The petitioner has also prayed for a direction to the Central Bureau of Investigation

(respondent no.9) to investigate the matter regarding sanctions/approvals granted by the Municipal Corporation (respondent no.2) for reconstruction of the SVP Stadium and to register a case under the Prevention of Corruption Act, 1988 against the officers of respondent no.1-The National Sports Club of India, officers of respondent no.2 and respondent no.8.

2. SVP Stadium as it existed on city survey No.4147 (plot no.11) since the year 1943 was a velodrome for cycling enthusiasts. Respondent no.1-National Sports Club of India, a Club registered under the Societies Registration Act, 1860 established to co-operate with the appropriate authorities and organizations interested in promoting sports to promote outdoor and indoor games and sports for members and public at large, applied to the Municipal Corporation for the aforesaid plot of land admeasuring 7113.76 sq. mts. The Municipal Corporation accepted the proposal of respondent no.1, NSCI on 27th April, 1950 and granted permission to erect buildings thereon. Thereafter possession of the land was given to NSCI on 1st January 1951, on which it constructed various buildings. The completion certificate in respect of the buildings constructed was issued by Municipal Corporation on 19th May

1958. On 11th May, 1993, the Municipal Corporation granted lease of the aforesaid land to respondent no.1-NSCI by an indenture of lease (Exhibit-F). The lease deed in it's recital lists 14 buildings constructed by NSCI on the land including Administrative building, Club house, Badminton hall, Stadium etc. In the year 1998, NSCI found that the building of the stadium had become dilapidated. It, therefore proposed it's reconstruction.

3. On 15th September, 2000, the State Government issued notification enhancing the prescribed FSI for development of land for gymnasia, gymkhana, clubs, stadium, swimming pool, recreation ground, playground and ancillary uses to these activities. (Annexure 'L'). This notification was issued pursuant to the representation made by several clubs to enhance the FSI from 0.15 and accordingly, the State Government enhanced the FSI to 1.00 but such enhanced FSI was allowed on 50% of the area for the said amenities. On 24th November, 2000 Mumbai Heritage Conservation Committee clarified that the SVP Stadium was not included in the sanctioned list of heritage buildings. On 6th November, 2001, the Municipal Corporation addressed a letter (Exhibit-K) to the contractors giving remarks on the development

plan and indicating that the land is situate in the residential zone and the development of land will have to be in accordance with Regulation **31(4)(a)** of the Development Control Regulations, **1991**, that clearance from MHCC would be necessary and that remarks from Assistant Municipal Commissioner (Estates) will have to be obtained separately before any development. Again on **21st** December, **2001** Municipal Corporation addressed a letter to the Contractors stating that NSCI property is not a heritage structure (Exhibit-9B). On **12th** February, **2002** respondent no.8 Contractors addressed a letter (Exhibit-11) to the Executive Engineer, (Building proposals) of the Municipal Corporation, requesting approval for reconstruction. The said letter also indicated that application for reconstruction was also made to the Urban Development Department of the State Government. By letter dated **29th** November, **2002** (Exhibit-14), the State Government informed the NSCI that the State Government has no objection to redevelop the land in question with project cost exceeding Rs.5 crores.

4. On **26th** March, **2003** respondent no.1-NSCI submitted draft plan for approval (Exhibit-N). On **1st** April, **2003** the Municipal Corporation issued IOD (Exhibit-15) in the following terms :

- “1. That the Commencement Certificate under Section 44/69 (1)(a) of the M.R. & T.P. Act will not be obtained before starting the proposed work.
2. That the compound wall is not constructed on all sides of the plot clear of the road widening line with foundation below level of bottom of road side drain without obstructing the flow of rain water from the adjoining building to prove possession of holding starting the work as per D.C. Regulation No. 3((27).
3. That the low lying plot will not be filled upto a reduced level of atleast 92 T.H.D. or 6” above adjoining road level whichever is higher with murum earth, boulders etc. and will not be levelled, rolled, consolidated and sloped towards road side, before starting the work.
4. That the Structural Engineer will not be appointed. Supervision memo as per Appendix XI (Regulation 5(3)(ix) will not be submitted by him.
5. That the structural design and calculation for the proposed work accounting for seismic analysis as per relevant I.S. Code and for existing building showing adequacy thereof to take up additional load will not be submitted before C.C.”

On 10th April, 2003 respondent no.1-NSCI made an application for development and grant of Commencement Certificate under Sections 44 and 69 of the MRTP Act, 1966. On 20th June, 2003 the Municipal Corporation issued Commencement Certificate to respondent no.1-NSCI. On 4th October, 2003 the Fire Department

issued NOC for reconstruction (Exhibit-N-3). On 29th November, 2004, the plan was approved for Sardar Vallabhbhai Patel Stadium. On 13th January, 2009 respondent no.1, NSCI submitted the amended plans. On 1st April, 2009 Municipal Corporation approved the amended plans subject to certain conditions set out therein. On 4th April, 2009 the Municipal Corporation granted No Objection and occupation permission for sports hall building (ground floor) (Exhibit-18). On 1st February, 2010 the Municipal Corporation addressed a letter to respondent no.1, NSCI granting no-objection and occupation permission for sports hall building (ground + 2 upper floors) (Exhibit-19). On 18th June, 2010 the petitioner filed the present PIL.

5. Before setting out the contentions raised by the petitioner, we must know that respondent no.1, NSCI has raised a preliminary objection about gross delay in challenging the IOD granted by the Municipal Corporation as far back as in 2003. It is submitted that apart from the fact that no explanation is given for such a gross delay of 7 years, the construction of the Stadium and the ancillary use is complete on the ground floor and two upper floors and that occupation certificate is also granted by the

Municipal Corporation. It is submitted that respondent no.1 has already started using a portion of the club. The relevant averments as paragraph (2) of the affidavit in reply of respondent no.1, NSCI read thus :-

“2(a)....The actual physical work of reconstruction of the stadium commenced in January 2004. Work has been going on at the site of the stadium for the last 7 years. The work is now 90% complete. The civil work has been completed and only internal work remains. The reconstructed stadium stands on the site. The only work which remains and which is being carried on at present is internal work. The stadium stands facing the Arabian Sea on the landward side of the Dr. Annie Besant Road. Thousands of cars travel on this road and pass by the Stadium on a daily basis. It is a very prominent location and the stadium cannot be missed as one passes by. Despite all of the above, the petitioner has filed this petition after 7 years of daily large scale construction work going on at the site, after the work of reconstruction is 90% complete. There is not a sentence in the petition even attempting to explain the gross delay on the part of the petitioner in filing this petition. The only feeble attempt made to explain the delay is in paragraph-14 of the petition where the petitioner makes a bald statement that there was no undue delay or lapse on its part in filing this petition as it only recently came to know about the alleged serious illegal activities committed by respondent nos.1 and 2. No explanation is provided as to why the petition was not filed many years ago when the reconstruction work was being openly carried out at the site for the last 7 years. No explanation is provided as to how the petitioner came to know about the alleged illegalities in the reconstruction of the stadium. All of a sudden, after 7 years, the petitioner has approached this Hon'ble Court

seeking final reliefs in the nature of demolishing the fully reconstructed stadium and interim/ad-interim reliefs in the nature of staying any further progress towards completion of the project.....”

6. Having regard to the aforesaid, we are of the view that there is definitely gross delay on the part of the petitioner in filing this petition purporting to be PIL. The only explanation offered by the petitioner is that on 4th February, 2010 they read in the newspapers about the litigation filed by some of the members of the club against respondent no.1 club and thereafter they made enquiries and that they came to learn about the illegalities in not obtaining the permission from respondent no.6-Maharashtra Coastal Zone Management Authority. This explanation can hardly be said to be satisfactory. Besides, the litigation referred to in the the alleged news report itself was four years old and the interim order passed therein was three years old.

7. Mr. E.P. Bharucha, the learned Senior Counsel appearing for respondent no.1, submits that, the delay of seven years in the petitioner filing this PIL must be treated as fatal since during the period of delay, respondent no.1 has altered its position by completing the construction upto 90% at investment of huge

amount. Respondent no.1 also engaged several persons for the work of construction thereby creating interests of the third parties. He submits that although delay may not be the sole ground for dismissing of Public Interest Litigation, but, the facts and circumstances of the present case makes it just and equitable that the petition is dismissed. Mr. Bharucha seeks support in his submission from the decision of the Apex Court reported in Bombay Dyeing & Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group & Ors., reported in AIR 2006 S.C. Page 1489. The observations relied upon by Mr. Bharucha, from the decision read as follows :

342. Delay and laches on the part of the writ petitioners indisputably has a role to play in the matter of grant of reliefs in a writ petition. This Court in a large number of decisions has categorically laid down that where by reason of delay and/ or laches on the part of the writ petitioners, the parties altered their positions and/or third parties interests have been created, public interest litigations may be summarily dismissed. Delay although may not be the sole ground for dismissing a public interest litigation in some cases and, thus, each case must be considered having regard to the facts and circumstances obtaining therein, the underlying equitable principles cannot be ignored. As regards applicability of the said principles, public interest litigations are no exceptions. We have heretofore noticed the scope and object of public interest litigation. Delay of such a nature in some cases

is considered to be of vital importance. (See Chairman & MD, BPL Ltd., vs. S.P. Gururaja and others, (2003) 8 SCC 567).

343. In Narmada Bachao Andolan v. Union of India [(2000) 10 SCC 664], this Court held:

“..... Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the Court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles, applicable to litigation will not apply. Laches is one of them.”

8. We find much force in the argument of Mr. Bharucha. We notice that there is no rejoinder to the facts stated by respondent no.1- NSCI that the work of construction of stadium had commenced in the year 2004 and it went on for 7 years. The location of the stadium being a very prominent one, it could not have been missed by anyone travelling by Dr. Annie Besant Road. In the circumstances, the claim of the petitioner that it's members learnt about it from a newspaper report in February 2010 is difficult to believe. The petition is thus liable to be dismissed on this ground alone. Nonetheless in deference to the extensive arguments advanced on merits of the disputes raised in the

petition, we propose to consider the petition on merits also.

9. On merits, the petitioner contends that the land in question was in non-development zone and therefore the Municipal Corporation could not have granted any building permission for FSI of 1.00. The permission granted by respondent no.4 was for repairs/reconstruction of the authorised building and permission was granted for existing FSI norms and without change in existing use. However, the open to sky stadium which was accessible to public at large is demolished and respondent no.1 NSCI has constructed and developed the closed stadium and basement by giving total disregard to the Environment Protection Act, 1986, CRZ Notification, MRTP Act and Development Control Regulations. It is submitted that closed stadium cannot be used by the public at large as it was used earlier and thus, the public at large has been deprived of a recreation ground which was available to it since the year 1943. In the old stadium, people could play outdoor games such as hockey, football and cricket and conduct athletics. Now, the open ground has been reduced to a substantially smaller area and it could not be made playable for outdoor games of football, hockey, cricket and athletics as the

minimum areas required for these sports cannot be made for the present stadium. The central arena is 75 mts. diameter and that too concrete, on which outdoor games cannot be played. The petitioner alleges that the concrete arena is infact made for the purpose of holding film award shows and entertainment shows.

10. The petitioner contends that construction of basement by respondent no.1, NSCI is violative of Clause-5 of the lease deed as also CRZ regulations. It is next submitted that the plot under reference is reserved in the revised development plan for recreation ground but still the proposal was submitted by showing the plot to be under residential zone to avail the FSI of residential zone.

11. The petitioner alleges that respondent no.1, NSCI has constructed the stadium and the club house for commercialization of stadium though no commercial activity can be allowed in CRZ II (Green Zone) as per notification dated 19th February, 1991 and the lease deed. Reliance is placed on the Architect's report to show that substantial portion of the stadium will be used for commercial activities.

12. The first objection of the petitioner relates to violation of

FSI rules. This objection is two-fold. First objection is about the index of floor space applicable to the land and the second is about the calculation of the area available for construction based upon the FSI applicable to the land. The petitioner alleges that the area statement submitted along with the plans for construction is incorrect.

13. The petitioner contends that though as per the Coastal Zone Management Plan, **0.15** FSI is permitted under the CRZ notification of **1991**, respondent no.1 has utilized one FSI claiming benefit of notification dated **15th** September, **2000**. Paragraph **3(3)** of CRZ notification of **1991** relied upon by the petitioner, reads as under :

“FSI upto **15%** shall be allowed in respect of parks, playgrounds, regional parks and other open spaces falling in CRZ-II. Use of such vacant places shall be restricted to construction of civil amenities, stadium, gymnasium etc. meant for recreational/related activities. Residential/commercial use of such open space shall not be permissible.”

According to the petitioner, Mumbai Municipal Corporation by its letter dated **4th** February, **2002** had in fact rejected the proposal of respondent no.1, NSCI claiming benefit under the notification on the ground that the same is not applicable to the case since the

plot of land in question falls in CRZ area. However, admittedly after the proposal of respondent no.1, NSCI was rejected by the Municipal Corporation, the Architect for respondent no.1 NSCI had applied to the Urban Development Department of Government of Maharashtra for “No-Objection Certificate” from the point of view of Coastal Regulation Zone/CRZ, for reconstruction of the property of SVP Stadium. The Urban Development Department by the letter dated 29th November, 2002 addressed to the Architect of respondent no.1, NSCI granted ‘No -Objection’ in the following terms :

“ As per the proposal of sanctioned Development Plan of G/S ward of Brihanmumbai Municipal Corporation this plot earmark for existing Sardar Vallabhai Patel Stadium and partly reserved for Bus bay and partly reserved for proposed D.P Road. As per the Coastal Zone Management Plan (CZMP) approved by MOEF, Govt of India on 19/1/2009, the land under reference falls in CRZ-II Category.

. As per the MOEF’s Notification dated 19th February, 1991 in CRZ-II area reconstruction of authorised bldg. is permitted subject to existing FSI norms and without change in the existing use.

. Accordingly, I am directed to inform you that the Govt. has no objection to redevelop the land under reference with project cost exceeding Rs.5 crores, from CRZ point of view, subject to condition that development on the land shall be as per the MOEF

Notification dated **19/2/1991** and subsequent modification therein & Development Control Regulations prevailing as on **19/2/1991.**"

In the circumstance, there can be no substance in the complaint of the petitioner, of illegal use of FSI i.e. FSI higher than that available over the land.

14. This brings us to the grievance of the petitioner about calculation of the total area available for construction on the land. The petitioner at paragraph 4.15 of the petition, refers to two proformas, proforma-A and proforma-B. Mr. Menenzes, the learned counsel for the petitioner, submits that the method or procedure adopted by the Architect of respondent no.1, NSCI for calculation of the total area available for construction under the two proformas is incorrect, it is not the procedure prescribed by law. He further submits that where a statute prescribes a certain procedure for something, the same must be adhered to and there can be no deviation therefrom. In this connection, he relies upon two decisions of the Apex Court in Haresh Dayaram Thakur V/s. State of Maharashtra and Others reported in (2000) 6 SCC page 179 and Kuwar Pal Singh by lrs. V/s. State of U.P. and Others reported in (2007) 5 SCC page 85. In the decisions cited, the

Apex Court holds that where any statutory provision provides a particular manner for doing a particular act, then that thing or act must be done in accordance with the manner prescribed therefor in the Act.

15. The calculation mentioned in the petition as proforma-A is as follows : The entire plot of land of SVP Stadium, admeasures **77,005.81** sq.mts out of which, a portion admeasuring **6757.22** sq.mts is covered by hutments. After deducting this area, the land in possession of respondent no.1 would be **70,248.59** sq.mts. After further deductions for, D.P Road, Bus-bay area and setback area the total land left in the hands of respondent no.1 would be **60,765.89** sq.mts. On this land, respondents no.1 and 8 showed existing built up area as of **34,643.75** sq.mts., by combining the area of the SVP Stadium of **33719.10** sq.mts and that of administrative building of **924.65** sq.mts. Respondent no.1, NSCI proposed to pull down the existing construction of **34643.75** sq. mtrs. for erection of enclosed stadium and a warm-up building together admeasuring **26433.904** sq. mtrs. Mr. Menenzes, argues that, the SVP Stadium being open to sky, respondent no.1, NSCI could not have claimed the area covered by the Stadium.

Therefore, the present construction, according to him, is way beyond the construction legally permissible on the land.

16. The calculation mentioned in proforma-B is about the net area permissible for ancillary uses, which is 15% of the area of the plot of land. With the area of **70,248.59** sq. mtrs. of the plot of land, the net area permissible for ancillary uses would be **10537.29** sq. mtrs. Since respondent no.1, NSCI is already using **10330.68** sq. mtrs. as the built up area, the balance that becomes available to them would be **206.61** sq. mtrs.. Adding to this, the area of **924.65** sq. mtrs. of the demolished administrative building, an area of **1131.26** sq. mtrs. was shown available for ancillary use. According to the petitioner, this calculation was incorrect. Respondent no.1, NSCI could not have taken into account ground floor of the ancillary structure for the purpose of calculation as the same was already covered in the total plot area of **70248.59** sq.mts. What was available for them was only the area of first and second floor of the building, that is two-third of **924.65** sq.mts. Out of this, respondent no.1 proposed canteen of **1,116.80** sq.mts thereby leaving balance of only **14.46** sq.mts for ancillary use.

17. Respondent no.1, NSCI as well as, the building

construction regulating authorities i.e. respondents no.2, 3 and 5 dispute that the earlier Stadium being open to sky cannot be a Building. There is nothing indicated by the petitioner from any of the building constructions rules and regulations to indicate that SVP Stadium cannot be said to be a Building. As regards the area available for ancillary uses, respondent no.1, NSCI denies that the ancillary structure was situate on or was part of the plot admeasuring 70,248.59 sq. mtrs. It denies that the ground floor of the ancillary building already having been taken into account in the total plot size of 70248.59 sq. mtrs. ought to have been deducted from the area covered by the ancillary building. It denies only 2/3rd of the area of ancillary building i.e. 2/3rd of 924.65 sq. mtrs. should have been considered for calculations. We have carefully gone through the record and the documents produced before us and are satisfied that the proposal for reconstruction sent out by respondent no.1 was routinely considered by all the relevant authorities. There is nothing to even suggest that the proposal was hurriedly considered or that the proposal was approved for any extraneous reasons. Therefore, we find no merit in the grievance aired.

18. The second violation alleged on part of respondent no.1 is construction of basement in CRZ-II area. The petitioner contends that there is an express provision in the Indenture of lease dated 11th May, 1993 against excavation. The same reads as follows :

“5. Not to make any excavation upon any part of the land hereby demised nor remove any stone ravel clay earth or other material therefrom.”

It is contended that there is an express prohibition against excavation and no provision is made for permission for extraction upon ground in the said Indenture. Though there is no provision at all to make a basement in the CRZ area, still the Municipal Corporation has permitted and respondent no.1 has constructed the basement. It is further contended on behalf of the petitioner that the extraction of ground water is also banned in the CRZ areas for making basement. It is permitted only for construction of hotel in the CRZ-III areas alone. It is not permitted in CRZ-II or CRZ-I areas. For extraction of water in CRZ-III areas, permission of ground water authorities is required to be taken.

19. The lease-deed dated 11th May, 1993 permits respondent no.1, NSCI to undertake construction activities on the said plot. Respondent no.1, NSCI contends that no construction activities

can be carried out without some excavation of the land. Further in view of the requisite sanction from respondent no.2 Municipal Corporation in this regard, the question of violation of Clause-5 of the lease-deed does not arise. It is the case of Respondent no.1, NSCI that there was no extraction of ground water in the present case and therefore there was no question of violation of the CRZ Notification or obtaining any permission of the ground water authorities. We see that there is nothing on record to indicate that there was any extraction of water at the time of its excavation of land for construction authorities. For the purpose of construction of a building some excavation at the site is inevitable. It has been rightly submitted by Mr. E.P. Bharucha, on behalf of respondent no.1, NSCI that the purport of Clause-5 of the lease-deed is completely missed by the petitioner. What is sought to be prevented by the clause is pure and simple excavation of soil and simplicitor transfer of the soil to another place. In our opinion, the interpretation sought to be given by the petitioner upon Clause-5 of the lease-deed regarding ban on excavation is not correct. It's interpretation does not go hand in hand with the permission for construction granted to respondent

no.1.

20. The third violation alleged is about the commercial activities planned in the newly constructed stadium. The petitioner contends that the the Coastal Zone Management Plan for Maharashtra does not permit any residential or commercial use of open space. Respondent no.1-NSCI in its affidavit-in-reply at para-28 states that, it is yet to finally determine the precise user or layout of the newly constructed area. It makes a statement that any user will be in strict accordance with the terms of the lease deed and subject to the conditions therein. In it's affidavit in rejoinder, the petitioner alleges that part of the ground floor has been given on 3 years lease to MOCHA/Coffee Shop which denotes commercial use of the premises. Mr. Bharucha states that the Coffee shop is now closed for general public and is open only for members of respondent no.1, NSCI. We are inclined to accept the statements made on behalf of respondent No.1, NSIC, on both the past user as well as the future user of the premises.

21. The petitioner next contends that the Notification dated 19th Feb 1991 does not permit any construction activity in CRZ-II area. It permits only reconstruction of the authorised building

and such reconstruction is subject to existing FSI norms. The reconstruction is also permitted subject to condition that there will be no change in the existing use. The petitioner alleges that the construction in the present case is a completely new construction and not reconstruction of the existing structure. It is pointed out on behalf of the petitioner that the SVP Stadium was open to sky and what is constructed now is a close-door Stadium. There is no doubt that earlier Stadium was open to sky. However, the term `reconstruction of the building' is not expected to mean construction of replica of the earlier structure. As long as the structure constructed is for Stadium for sports, its reconstruction in another form cannot be complained of.

22. Lastly, it is submitted that respondent no.1 could not have changed the existing use of SVP Stadium. Mr. Menenzes, submits that the existing use of SVP Stadium was as under :-

“An Olympic Oval (Stadium) suitable for national and international context, athletics, cycling, hockey, football, wrestling and other games as may be approved by the Corporation from time to time.”

The Stadium was also to be open for use of the school children, registered sports organizations etc. on the non-event days.

Further, the Indenture required that the Stadium should be made available atleast on **15** Special events in a year for activities/events to be conducted by the Municipal Corporation or any other organization on the direction of the Municipal Commissioner. The lease provided for the rates to be charged for the events which are as under :

- (i) Sports activities arranged/conducted by Bombay Municipal Corporation shall be free of charge.
- (ii) Sports activities arranged by the organization/bodies other than Bombay Municipal Corporation shall be charged regular charges of the club.
- (iii) The use of the Olympic Oval (Stadium) by the public or other Clubs on non-event days shall be regulated by the National Sports Club of India in accordance with rules to be framed by the Club and approved by the Municipal Commissioner.

The petitioner alleges that in the present case, respondent no.1 has not only constructed closed stadium but also reduced the size of the stadium. Consequently the playground has literally vanished and in its place small size cement concrete closed ground has come into existence. Therefore, no children or public at large can play any game in the newly constructed stadium. As such the

public at large has lost its recreation ground, as well as, Stadium. Mr. Menenzes, wants this Court to apply `public trust doctrine to the facts of the present case for issuance of demolition of the construction made by respondent no.1. He refers to the decision of the Apex Court in the case of Fomento Resorts And Hotels Limited and another V/s. Minguel Martins and Others. reported in (2009) 3 Supreme Court Cases 571 and in particular para-65 which reads as under :

65. We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the Court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.

23. Respondent no.1 contends that SVP Stadium has never been a public recreation ground. It was never open for use to the general public in the sense that anybody could simply walk into the stadium and use the facilities for sports. It was always meant

for its members and it's use by non-members is regulated by the the use as mentioned herein above. Therefore, there is no question of the general public being deprived from any recreational ground.

24. In order to appreciate the concern for general public shown by the petitioner and the reply of respondent no.1, NSCI thereto, reference must be made to the terms of the lease deed dtd. 11th May 1993. As already mentioned earlier, the recital to the lease deed lists various constructions in existence on the plot of land since the year 1958. The list includes Stadium, Swimming Pool, Badminton hall, Tennis Court, Club House, Administrative building etc. The lease deed does not contain an absolute bar against erection of new building or pulling down of the existing building. These activities can be undertaken with previous consent in writing of the Commissioner or City Engineer for the purpose as provided by Clause 3. The use of the building on the land is prescribed by Clause 19, which reads as under :

"19. To use the buildings for the time being on the demised land only for:-

- i) An Olympic Oval (Stadium) suitable for National and International context athletics,

cycling, hockey, football, wrestling and other games as may be approved by the Corporation from time to time; AND

- ii) A Club House with residential rooms, garages, servants quarters, swimming pool, badminton and tennis courts, recreation, squash courts, Billiards, Table Tennis and any other permitted sports and club activities.

AND not to use the said premises or any part thereof or permit the same to be used for any business, trade, occupation or purposes whatsoever other than as aforesaid without the consent in writing of the Commissioner and not at any time to permit stables factories or shops on the demised land in particular not to use the demised premises of any part thereof for sale, or consumption of opium, ganja, bhang or other intoxicating drugs be country or foreign and whether the sale be by retail or wholesale AND not to do or suffer to be done on the said premises anything which may be or become nuisance injuries or offensive to the Corporation or the Owners or occupiers of this or any other property in the neighbourhood. The club shall be permitted to run liquor bar at such plans approved by Municipal Commissioner for the some of members of club exclusively and the club will have to pay Bombay Municipal Corporation scheduled charges in this regard.

The next relevant clause would be Clause 12, which reads as under:

- '12. That the Club House shall be for that use of the members of the National Sports Club of India only but the Olympic Oval (Stadium) be open for the use of School children, interred Sports organisation, etc. on non-event days AND whereas Stadium should be made available at least on

fifteen special events in an year for activities/events to be conducted by the Bombay Municipal Corporation or any other organisation on the protection of Municipal Commissioner, the Club shall charge the rate for time events as below :

- i) Sports activities arranged/conducted by Bombay Municipal Corporation shall be free of charge
- ii) Sports activities arranged by the organisation/bodies other than Bombay Municipal Corporation shall be charged regular charges of the club.
- iii) The use of the Olympic Oval (Stadium) by the Public or other clubs on even days shall be regulated by the National Sports Club of India, in accordance with rules to be framed by the Club and approved by the Municipal Commissioner.

Clause 15 of the deed permits use of the Stadium for purposes other than sports activities subject to prior permission of the Municipal Commissioner. Clause 2A of the deed mandates respondent no.1, NSCI to layout and maintain a garden admeasuring 2216.62 sq. yards at North and lawn near Stadium of the benefit of the public. Further the open space having width of 150 feet along Lala Lajpatrai Marg was required to be developed as a garden for the use of public. However, this space can be used for car parking by the members for club functions. The space can also be used for conducting marriages and social functions of the members themselves and the members of their

family on payment of charges.

25. Thus perusal of the lease deed is sufficient to show that the Stadium was meant for use by members of respondent no.1, NSCI with further specified use permitted by others. The entry of the general public is limited to the gardens maintained by respondent no.1, NSCI. There can also be social events conducted in the premises subject to the conditions set out in the leased deed. As regards the use of the Stadium by schools, respondent no.1 has placed on record the relevant extracts from the minutes of the meeting of the Regional Committee of respondent no.1 held on 30th August 2011 regarding the charges for the use of the swimming pool, stadium and its sporting facilities. As per the said resolution, respondent no. 1 will not charge any amount for the activities arranged or conducted by the Municipal Corporation of Greater Mumbai or for the sports activities. It is further stated that respondent no.1 will also not charge any amount from the Municipal Corporation schools for the use of swimming pool though the same are not part of the stadium or the school catering to children with special needs, requiring the use of the swimming pool. As regards the other

schools which do not fall under the above categories, respondent no.1 will charge Rs.6,000/- per day plus taxes for the use of the swimming pool.

26. The above facts show that the use of the Stadium by respondent no.1, NSCI is not contrary to the terms of the lease deed. As regards the sports activities of Hockey, Football, Wrestling and cycling etc. are concerned none of the associations concerning these sports have aired any grievance. Besides respondent no.1 NSCI as the Sports Club is expected to be alive to the different sports activities gaining popularity from time to time and mould its activities within the bounds of the lease deed. It is not expected to shut its eyes to different newer sports coming up and becoming popular. But at the same time, it must be said here by way of a note of caution that respondent no.1, NSCI while conducting its various activities must never lose sight of its objects which are the purpose of its existence and promote outdoor and indoor games, sports for its members and public at large.

27. For all the above reasons, we dismiss the petition. Parties shall bear their own costs.

[Smt. R.P SondurBaldota, J]

[Chief Justice]