

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 3549 of 2024**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 11308 of 2024**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 11656 of 2024**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 11584 of 2024**  
**With**  
**CIVIL APPLICATION (FIXING DATE OF EARLY HEARING) NO. 1 of 2024**  
**In**  
**R/SPECIAL CIVIL APPLICATION NO. 11584 of 2024**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 11675 of 2024**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 4052 of 2024**  
**With**  
**CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2024**  
**In**  
**R/SPECIAL CIVIL APPLICATION NO. 4052 of 2024**  
**With**  
**CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2025**  
**In**  
**R/SPECIAL CIVIL APPLICATION NO. 4052 of 2024**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK sd/-**

<b>Approved for Reporting</b>	<b>Yes</b>	<b>No</b>
	Yes	

**MAHIL INFRA A PARTNERSHIP FIRM**  
**Versus**  
**AIRPORT AUTHORITY OF INDIA & ORS.**

**Appearance:**  
**MS MEGHA JANI SENIOR COUNSEL WITH MR JINESH H KAPADIA(5601)**  
**for the Petitioner(s) No. 1 in SCA No.3549 of 2024**  
**MR NIMIT Y SHUKA for the petitioner(s) No.1 in SCA No.4052 of 2024**  
**MS KRUTI SHAH for MR RONITH JOY for the petitioner(s) No.1 in SCA**

No.11656, 11584 and 11675 of 2024  
MR BHADRISH RAJU WITH MR DHANESH R PATEL(8226) for the  
Respondent(s) No. 1  
MR ANUJ K TRIVEDI(6251) for the Respondent(s) No. 3  
MR DEEP D VYAS(3869) for the Respondent(s) No. 4  
NOTICE SERVED BY DS for the Respondent(s) No. 2

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**CORAM:HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

**Date : 30/04/2026**  
**COMMON JUDGMENT**

1. All these petitions involve a common and identical issue, and arise out of similar facts and circumstances; therefore, they are being disposed of by this common judgment,
2. **Rule** returnable forthwith. Mr. Dhanesh Patel, learned counsel waives service of notice of rule for and on behalf of respondent No.1, Mr. Anuj K. Trivedi, learned counsel waives service of notice of rule for and on behalf of respondent No.3 and Mr. Deep D. Vyas, learned counsel waives service of notice of rule for and on behalf respondent No.4.
3. With the consent of the learned counsels appearing for both the sides, the petitions are taken up for final hearing and final disposal today.
4. The petitioners have preferred present petitions under Articles 14, 19 (1)(g), 21, 226 and 227 of the Constitution of India r/w the provision Aircraft 1934 r/w the provision of Aircraft Demolition of Obstructions Caused by Buildings and Trees etc. Rules, 1994 and under the provision of Ministry of Civil Aviation (Hight Restrictions for Safeguarding of Aircraft Operations) Rules 2015, seeking below mentioned relief/s.

5. In Special Civil Application No.3549 of 2024 the petitioner has prayed for below mentioned relief/s:-

*“6. (a) To issue a writ of mandamus or a writ, order or direction in the nature of writ of mandamus commanding the Airport Authority of India to get an aeronautical study carried out by International Civil Aviation Organization at the expense of the petitioner, as prescribed in the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, and thereafter take decision on demolition of construction as may be found infringing the safety standards for aircraft operations in accordance with law;*

*(b) To issue a writ of mandamus or a writ, order or direction in the nature of writ of mandamus commanding the Airport Authority of India to accept and consider appeal of the petitioner for revision of height clearance offline without insisting on removal of construction of 4.88 meters which is identified today as being over the permissible top elevation prescribed in No Objection Certificate dated 2.12.2020. Annexure-P1.*

*(c) To pass an ex parte ad interim order restraining the Municipal Corporation or any other authority from removing or insisting upon removing the construction made on Final Plot No. 51 in Town Planning Scheme No. 75 (Muthiya - Hanspura) situated at Village Hanspura, Taluka Asarva, Ahmedabad pending the hearing and disposal of the present petition; Annexure-P1.*

*(d) To pass any other order or orders in favour of the petitioners as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.”*

5.1 In Special Civil Application No.11308 of 2024 the petitioner has prayed for below mentioned relief/s:-

*“6 (a) To issue a writ of mandamus or a writ, order or direction in the nature of writ of mandamus commanding the Airport Authority of India to get an aeronautical study carried out by International Civil Aviation Organization at the expense of the petitioner, as prescribed in the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, and thereafter take decision*

*on demolition of construction as may be found infringing the safety standards for aircraft operations in accordance with law;*

*(b) To pass an order quashing and setting aside quashing and setting aside the impugned orders of rejection of No Objection Certificates dated 26.08.2022 & 21.6.2023 passed by the Respondent No.1 annexed to the Petition as Annexure - D herein and declare the same to be illegal and bad in law and thereby violative of Articles 14 & 21 of the Constitution of India, 1950;*

*(c) To pass an ex parte ad interim order restraining the Municipal Corporation or any other authority from removing or insisting upon removing the construction made on land bearing Final Plot no. 446 in Town Planning Scheme No. 39 (Naroda - 1) having sub plot no.2, block/building A plus B plus C, survey no. 568/2 plus 569/P situated at mouje Naroda, Taluka Asarva, Dahegam Road, Ahmedabad 382330, pending the hearing and disposal of the present petition;*

*(d) To pass any other order or orders in favor of the petitioner as this Hon'ble Court deems fit in the facts and circumstances of the case"*

5.2 In Special Civil Application No.4052 of 2024 the petitioner has prayed for below mentioned relief/s:-

*"9. (A) This Hon'ble Court may be pleased to admit and allow the present Petition;*

*B. This Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction quashing and setting aside the Impugned Order dated 15.01.2024 passed by the Respondent No. 2 (ANNEXURE - P1 (COLLY)) and Impugned Decision dated 15.12.2023 (communicated to the Petitioner on 30.01.2024) passed by the Respondent No. 1 (ANNEXURE-P1 (COLLY));*

*C. This Hon'ble Court, during the admission and pendency of the present Petition, may be pleased to stay the operation and implementation of the Impugned Order dated 15.01.2024 passed by the Respondent No. 2 (ANNEXURE - P1 (COLLY)) and Impugned Decision dated 15.12.2023 (communicated to the Petitioner on 30.01.2024) passed by the Respondent No.*

*1 (ANNEXURE - P1 (COLLY)) and an aeronautical study Project Site 'Radhe Skyline - 2 of the Petitioner be conducted by the Respondent Authority in presence of the Petitioner;  
D. For ex-parte interim and ad-interim reliefs in terms of prayer (C) above;  
E. For such other and further reliefs which this Hon'ble Court in the facts of the present case may deem fit."*

5.3 In Special Civil Application No.11656 of 2024 the petitioner has prayed for below mentioned relief/s:-

*"6(a) To issue a writ of mandamus or a writ, order or direction in the nature of writ of mandamus commanding the Airport Authority of India to get an aeronautical study carried out by International Civil Aviation Organization at the expense of the petitioner, as prescribed in the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, and thereafter take decision on demolition of construction as may be found infringing the safety standards for aircraft operations in accordance with law;*

*(b) To pass an ex parte ad interim order restraining the Municipal Corporation or any other authority from removing or insisting upon removing the construction in the name and style of 'M/s Satved Platinum' made on land bearing Final Plot no. 446 in Town Planning Scheme No. 39 (Naroda - 1) situated at mouje Naroda, Taluka Asarva, Dahegam Road, Ahmedabad - 382330, pending the hearing and disposal of the present petition;*

*(c) To pass any other order or orders in favor of the petitioner as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."*

5.4 In Special Civil Application No.11675 of 2024 the petitioner has prayed for below mentioned relief/s:-

*"6(a) To issue a writ of mandamus or a writ, order or direction in the nature of writ of mandamus commanding the Airport Authority of India to get an aeronautical study carried out by International Civil Aviation Organization at the expense of the petitioner, as prescribed in the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, and thereafter take decision on demolition of construction as may be found infringing the*

*safety standards for aircraft operations in accordance with law;*

*(b) To pass an ex parte ad interim order restraining the Municipal Corporation or any other authority from removing or insisting upon removing the construction on the land bearing Final Plot No.424 in Town Planning Scheme No.70, Block No.28, Khata No. 258, Taluka Asarva Ahmedabad - 382330, pending the hearing and disposal of the present petition;*

*(c) To pass any other order or orders in favor of the petitioner as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."*

5.5 In Special Civil Application No.11584 of 2024 the petitioner has prayed for below mentioned relief/s:-

*"6 (a) To issue a writ of mandamus or a writ, order or direction in the nature of writ of mandamus commanding the Airport Authority of India to get an aeronautical study carried out by International Civil Aviation Organization at the expense of the petitioner, as prescribed in the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, and thereafter take decision on demolition of construction as may be found infringing the safety standards for aircraft operations in accordance with law;*

*(b) To pass an order quashing and setting aside quashing and setting aside the impugned orders dated 29.4.2024 passed in appeal by the Respondent No.2 annexed to the Petition as Annexure - D herein and declare the same to be illegal and bad in law and thereby violative of Articles 14 & 21 of the Constitution of India, 1950;*

*(c) To pass an ex parte ad interim order restraining the Municipal Corporation or any other authority from removing or insisting upon removing the construction made on land bearing Final Plot no. 446 in Town Planning Scheme No. 39 (Naroda - 1) situated at mouje Naroda, Taluka Asarva, Dahegam Road, Ahmedabad 382330, pending the hearing and disposal of the present petition;*

*(d) To pass any other order or orders in favor of the petitioner as this Hon'ble Court deems fit in the facts and*

*circumstances of the case”*

## **FACTS**

### **Facts of Special Civil Application No. 3549 of 2024:-**

6. The petitioner is a partnership firm engaged in real estate development in the State of Gujarat. The partners purchased land bearing Final Plot No. 51 in Town Planning Scheme No. 75 (Muthiya Hanspura), situated at Village Hanspura, Taluka Asarva, Ahmedabad, through a registered sale deed in October 2020. The petitioner proposed to develop the land by constructing commercial and residential buildings under a scheme named “Star Icon and Paradise,” comprising four towers—one tower having five floors and the other three towers having approximately thirteen floors each.

6.1 Rule 4 of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 provides that no structure shall be constructed or erected within a radius of twenty kilometers from the Aerodrome Reference Point of a civil or defence aerodrome without obtaining a No Objection Certificate (NOC) for height clearance. Since Village Hanspura is situated approximately eight kilometers from Ahmedabad International Airport, the petitioner was required to obtain such clearance. Accordingly, the petitioner applied to the Airports Authority of India through the online NOC Application System (NOCAS), and permission was granted on 02.12.2020 for construction up to a restricted height of 102.7 meters above mean sea level.

6.2 Thereafter, the petitioner applied to the Ahmedabad Municipal Corporation for development permission under the provisions of the Gujarat Provincial Municipal Corporations Act, 1949. The construction plan submitted by the petitioner provided for four towers: Block A comprising cellar parking and six floors with a height of 24.97 meters, and Blocks B, C, and D comprising thirteen floors with a height of 43.65 meters. The proposed construction ensured that the top elevation would remain within the limit permitted by the Airports Authority of India. The Ahmedabad Municipal Corporation granted development permission on 28.12.2020.

6.3 After obtaining all requisite statutory permissions and clearances, the petitioner commenced construction at the site in January 2021. The construction was carried out strictly in conformity with the sanctioned plans, and periodic inspections by municipal authorities did not reveal any irregularity. The construction now stands completed, with Blocks B, C, and D having a height of 43.65 meters, as permitted by the Municipal Corporation.

6.4 Subsequently, the petitioner learned that Ahmedabad International Airport Limited, by its letter dated 25.06.2022 addressed to the District Collector, Ahmedabad, reported that certain buildings under construction had exceeded the height permitted under the NOC issued by the Airports Authority of India. The petitioner's project, "Star Icon and Paradise," was included in the said list, stating that the measured top elevation of the building was 107.58 meters as against the permissible elevation of 102.7 meters, indicating an excess of

4.88 meters. Acting upon this communication, the Ahmedabad Municipal Corporation issued a notice dated 22.08.2022 directing the petitioner to stop further construction and remove the alleged excess construction. As a result, the Building Use Certificate has not been issued, thereby preventing occupation of the premises by prospective residents.

6.5 The petitioner clarified to the concerned authorities that the height of the building from ground level is 43.65 meters, strictly in accordance with the permission granted by the Municipal Corporation, and that no excess construction has been carried out. It was explained that, at the time of grant of the NOC, the site elevation was recorded as 54.58 meters above mean sea level, and on that basis, permission was granted up to 102.7 meters. However, the ground elevation at the site has subsequently been recorded at a higher level, resulting in the top elevation exceeding the permissible limit, despite the actual height of construction remaining unchanged.

6.6 The petitioner submits that the alleged violation has occurred not due to any unauthorized construction, but due to variation in the recorded ground elevation data. The petitioner, therefore, approached the authorities with a request to conduct an aeronautical survey and expressed willingness to bear the prescribed charges. Such a survey determines whether the structure poses any hazard to aircraft operations, on the basis of which a decision regarding height clearance is taken.

6.7 The petitioner was advised to file an appeal seeking revision of the height clearance. However, as per Aerodrome Safeguarding Circular (ADSAC) 08 of 2020, appeals can only be filed through the online portal, which does not accept applications where construction has already exceeded the permissible top elevation. The system accepts appeals only where construction has not commenced or where the alleged excess portion has been removed. Consequently, the petitioner has been unable to file the appeal online.

6.8 The petitioner thereafter submitted a representation dated 18.01.2024 to the Airports Authority of India, pointing out the difficulty in filing the online appeal and requesting consideration of its case for an aeronautical study without insisting on removal of the alleged excess construction. The petitioner further states that several similarly situated projects in the vicinity faced comparable issues due to variation in ground elevation. In those cases, since construction had not exceeded the permissible top elevation at the relevant stage, their appeals were accepted online, and the Appellate Committee allowed such appeals by granting revised height clearances, thereby increasing the permissible top elevation for those projects.

**Facts of Special Civil Application No. 4052 of 2024:-**

7. The Petitioner is a partnership firm incorporated on 01.04.2019 and is engaged in the business of civil construction and real estate development. The Petitioner has

developed a scheme known as “Radhe Skyline - 2,” comprising four blocks (A, B, C, and D) on T.P.S. No. 241 (Nana Chiloda), F.P. No. 199, Survey No. 277, Taluka Gandhinagar, strictly in accordance with the permissions granted and the approved plans, and has obtained registration under the applicable real estate regulatory framework.

7.1 The Petitioner obtained a No Objection Certificate (NOC) from the Airports Authority of India on 13.09.2019, permitting a maximum top elevation of 102.7 meters above mean sea level, which was based on a ground elevation of 60.43 meters and accordingly allowed construction up to 42.20 meters in height from ground level. Thereafter, the Petitioner received development permission from the Ahmedabad Urban Development Authority on 30.01.2020 for construction of a residential-cum-commercial building consisting of twelve floors in Blocks A, B, C, and D, with a permissible height of 42.20 meters.

7.2 The Petitioner carried out the construction in full compliance with all applicable laws and permissions, as evidenced by progress certificates issued on 25.01.2022 by the Ahmedabad Municipal Corporation after physical verification, confirming that the construction was in accordance with the approved plans. However, the Petitioner subsequently received a communication dated 07.09.2022 from the Ahmedabad Municipal Corporation enclosing a letter dated 16.08.2022 issued by the Sardar Vallabhbhai Patel International Airport Authority, directing stoppage of construction work and requiring the Petitioner to obtain

necessary height clearance before proceeding further.

7.3 The said communication also referred to a list of buildings allegedly infringing the permissible top elevation, which included two adjacent projects developed by Riddhi Siddhi Buildcon (Ornet Heights) and Saanvi Infra (Maple Heights), both of which were subsequently granted revised NOCs permitting higher top elevations despite being similarly situated and located in comparable proximity to the airport.

7.4 It is pertinent to note that prior to the issuance of the aforesaid communication, the Petitioner had already completed the entire construction of the scheme as on 02.09.2022 in full compliance with the sanctioned plans, which is further corroborated by the Architect's Certificate dated 05.09.2022.

7.5 Thereafter, as a matter of abundant caution, the Petitioner applied on 05.04.2023 for a revised NOC under Rule 6A, seeking enhancement of the permissible top elevation from 102.7 meters to 106.54 meters. The Respondent Authority, by communication dated 07.06.2023, called upon the Petitioner to furnish requisite plans and documents, which were duly submitted by the Petitioner on 29.11.2023 along with a renewed request for consideration of the revised NOC.

7.6 Despite the aforesaid, an impugned order dated 15.01.2024 came to be passed in an arbitrary and illegal manner. Thereafter, by communication dated 30.01.2024, the Petitioner was informed that in the Appellate Committee

meeting held on 15.12.2023, the application seeking a revised NOC had been rejected and directions were issued to initiate action under the applicable rules.

7.7 Notably, in the very same meeting, the Appellate Committee approved revised height permissions for another similarly situated project, thereby demonstrating discriminatory treatment. The Petitioner was neither granted an opportunity of hearing nor informed prior to the decision, and the order is ex facie cryptic and non-speaking.

7.8 The aforesaid actions have placed the Petitioner in a highly prejudicial situation wherein, on the one hand, an arbitrary decision has been taken without adherence to the principles of natural justice, and on the other hand, consequential directions have been issued requiring removal of construction.

### **Facts of Special Civil Application No. 11308 of 2024**

8. The Petitioner is a partnership firm engaged in the business of real estate development in the State of Gujarat. The partners of the firm own land bearing Final Plot No. 446 in Town Planning Scheme No. 39 (Naroda-1), having Sub-Plot No. 2, Blocks A, B, and C, Survey Nos. 568/2 and 569/P, situated at Mouje Naroda, Taluka Asarva, Dahegam Road, Ahmedabad. The Petitioner proposed to develop the said land by constructing commercial and residential buildings and has constructed six towers, each comprising fourteen floors, under a scheme named "Dev Aashish Sky."

8.1 Rule 4 of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 provides that no structure shall be constructed or erected within a radius of twenty kilometers from the Aerodrome Reference Point of a civil or defence aerodrome without obtaining a No Objection Certificate (NOC) for height clearance. Accordingly, the Petitioner applied to the Airports Authority of India through the online No Objection Certificate Application System (NOCAS), and permission was granted on 08.02.2019 permitting construction up to a restricted height of 102.7 meters above mean sea level.

8.2 Thereafter, the Petitioner applied to the Ahmedabad Municipal Corporation for development permission under the provisions of the Gujarat Provincial Municipal Corporations Act, 1949. The construction plan provided for six towers, Blocks A to F, each comprising fourteen floors. The proposed construction ensured that the top elevation would remain within the limit permitted by the Airports Authority of India, and development permission was granted on 26.05.2023.

8.3 After obtaining all requisite statutory permissions and clearances, the Petitioner commenced construction at the site, and the entire construction was carried out strictly in accordance with the sanctioned plans. The site was regularly inspected by municipal authorities, and no illegality was found. The construction now stands completed, with the height of Blocks A to F being 44.66 meters (from plinth level), in conformity with the permission granted by the Municipal

Corporation.

8.4 Subsequently, the Petitioner learned that Ahmedabad International Airport Limited, by a letter dated 19.04.2022 addressed to the District Collector, Ahmedabad, reported that certain buildings had exceeded the height permitted under the NOC issued by the Airports Authority of India. The Petitioner's project "Dev Aashish Sky" was included in the said list, stating that the measured top elevation of the building was 106.68 meters as against the permissible elevation of 102.7 meters, indicating an excess of 3.98 meters.

8.5 The Petitioner thereupon approached the concerned authorities and clarified that the height of the buildings from ground level is strictly as permitted by the Municipal Corporation and that no excess construction has been carried out. It was explained that, at the time of grant of the NOC, the site elevation was recorded as 53.5 meters above mean sea level, on the basis of which construction was permitted up to 102.7 meters. The Municipal Corporation had permitted construction up to 44.66 meters, resulting in a total elevation of 98.16 meters, which is within the permissible limit. However, the ground elevation at the site has subsequently been recorded at a higher level, approximately 58.2 meters, thereby leading to the top elevation exceeding the permissible limit, despite the actual constructed height remaining unchanged.

8.6 The Petitioner submits that the alleged violation has arisen not due to any unauthorized construction but on

account of variation in the recorded ground elevation. The Petitioner, therefore, requested the authorities to conduct an aeronautical survey and expressed willingness to bear the prescribed charges, as such a survey determines whether the structure poses any hazard to aircraft operations.

8.7 The Petitioner was, however, advised to apply for a fresh NOC. Such applications came to be rejected on 26.08.2022 and 21.06.2023, and no appeal has been preferred thus far.

8.8 It is further submitted that several other buildings in the vicinity faced similar issues due to variation in ground elevation, and in such cases the Appellate Committee allowed applications by increasing the permissible top elevation—in some instances up to 114.51 meters and in others up to 107.32 meters.

8.9 It is also pertinent to note that, in a similar factual scenario, the Hon'ble Delhi High Court directed the conduct of an aeronautical survey during the pendency of an appeal and thereafter directed the Appellate Authority to consider the matter in light of the survey report. This Hon'ble Court has also taken cognizance of a similar issue in a separate petition.

### **Facts of Special Civil Application No.11656 of 2024:-**

9. The Petitioner is a partnership firm engaged in the business of real estate development in the State of Gujarat. The partners of the firm own land bearing Final Plot No. 446 in

Town Planning Scheme No. 39 (Naroda-1), situated at Mouje Naroda, Taluka Asarva, Dahegam Road, Ahmedabad. The Petitioner proposed to develop the said land by constructing commercial and residential buildings and has constructed two towers, each comprising fourteen floors, under a scheme named "Satved Platinum."

9.1 Rule 4 of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 provides that no structure shall be constructed or erected within a radius of twenty kilometers from the Aerodrome Reference Point of a civil or defence aerodrome without obtaining a No Objection Certificate (NOC) for height clearance. Accordingly, the Petitioner applied to the Airports Authority of India through the online No Objection Certificate Application System (NOCAS), and permission was granted on 08.02.2019 permitting construction up to a restricted height of 102.7 meters above mean sea level.

9.2 Thereafter, the Petitioner applied to the Ahmedabad Municipal Corporation for development permission under the provisions of the Gujarat Provincial Municipal Corporations Act, 1949. The construction plan provided for two towers, Blocks A and B, each comprising fourteen floors. The proposed construction ensured that the top elevation would remain within the limit permitted by the Airports Authority of India, and development permission was granted on 16.12.2019.

9.3 After obtaining all requisite statutory permissions and

clearances, the Petitioner commenced construction at the site, and the entire construction was carried out strictly in accordance with the sanctioned plans. The site was regularly inspected by municipal authorities, and no illegality was found. The construction now stands completed, with the height of Blocks A and B being 44.1 meters (from plinth level), in conformity with the permission granted by the Municipal Corporation.

9.4 Thereafter, Ahmedabad International Airport Limited, by a letter dated 22.09.2023, informed that during an aeronautical survey inspection it was observed that certain buildings had been constructed beyond the height permitted under the NOC issued by the Airports Authority of India. The Petitioner's project "Satved Platinum" was included in the said list, stating that the measured top elevation of the building was 106.85 meters as against the permissible elevation of 102.7 meters, indicating an excess of 4.15 meters.

9.5 The Petitioner approached the concerned authorities and clarified that the height of the buildings from ground level is strictly as permitted by the Municipal Corporation and that no excess construction has been carried out. It was explained that, at the time of grant of the NOC, the site elevation was recorded as 53.5 meters above mean sea level, on the basis of which construction was permitted up to 102.7 meters. The Municipal Corporation had permitted construction up to 44.1 meters, resulting in a total elevation of 97.6 meters, which is within the permissible limit. However, the ground elevation at the site has subsequently been recorded at approximately

57.19 meters, thereby leading to the top elevation exceeding the permissible limit, despite the actual constructed height remaining unchanged.

9.6 The Petitioner submits that the alleged violation has arisen not due to any unauthorized construction but on account of variation in the recorded ground elevation. The Petitioner, therefore, requested the authorities to conduct an aeronautical survey and expressed willingness to bear the prescribed charges, as such a survey determines whether the structure poses any hazard to aircraft operations.

9.7 The Petitioner was thereafter advised to file an appeal seeking revision of the height clearance, and such an appeal has been filed and is presently pending adjudication. The Petitioner further states that several other buildings in the vicinity faced similar issues due to variation in ground elevation, and in such cases the Appellate Committee allowed applications by increasing the permissible top elevation—in some instances up to 114.51 meters and in others up to 107.32 meters.

9.8 It is also submitted that, in a similar factual scenario, the Hon'ble Delhi High Court directed the conduct of an aeronautical survey during the pendency of an appeal and thereafter directed the Appellate Authority to consider the appeal in light of the survey report. This Hon'ble Court has also taken cognizance of a similar matter raising comparable issues.

## **Facts of Special Civil Application No.11675 of 2024**

10. The Petitioner is a partnership firm engaged in the business of real estate development in the State of Gujarat. The partners of the firm own land bearing Final Plot No. 424 in Town Planning Scheme No. 70, Block No. 28, Khata No. 258, Taluka Asarva, Ahmedabad. The Petitioner proposed to develop the said land by constructing commercial buildings and has constructed one tower comprising six floors under a scheme named "M/s Kalash Parisar."

10.1 Rule 4 of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 provides that no structure shall be constructed or erected within a radius of twenty kilometers from the Aerodrome Reference Point of a civil or defence aerodrome without obtaining a No Objection Certificate (NOC) for height clearance. Accordingly, the Petitioner applied to the Airports Authority of India through the online No Objection Certificate Application System (NOCAS), and permission was granted on 29.04.2019 permitting construction up to a restricted height above mean sea level.

10.2 Thereafter, the Petitioner applied to the Ahmedabad Municipal Corporation for development permission under the provisions of the Gujarat Provincial Municipal Corporations Act, 1949. The construction plan provided for one tower, Block A, comprising six floors. The proposed construction ensured that the top elevation would remain within the limit permitted by the Airports Authority of India, and development

permission was granted on 11.06.2019.

10.3 After obtaining all requisite statutory permissions and clearances, the Petitioner commenced construction at the site, and the entire construction was carried out strictly in accordance with the sanctioned plans. The site was regularly inspected by municipal authorities, and no illegality was found. The construction now stands completed, with the height of Block A being 44.1 meters (from plinth level), in conformity with the permission granted by the Municipal Corporation.

10.4 Subsequently, the Petitioner learned that Ahmedabad International Airport Limited, by a letter dated 19.04.2022 addressed to the District Collector, Ahmedabad, reported that certain buildings had exceeded the height permitted under the NOC issued by the Airports Authority of India. The Petitioner's project "M/s Kalash Parisar" was included in the said list, stating that the measured top elevation of the building exceeded the permissible top elevation, thereby indicating excess construction beyond the approved limit and recommending legal action for reduction of the excess height.

10.5 The Petitioner approached the concerned authorities and clarified that the height of the building from ground level is strictly in accordance with the permission granted by the Ahmedabad Municipal Corporation and that no excess construction has been carried out. It was explained that, at the time of grant of the NOC, the site elevation was recorded at a particular level above mean sea level, on the basis of

which permission was granted up to the prescribed top elevation. The Municipal Corporation had permitted construction up to 44.1 meters, resulting in a total elevation within the permissible limit. However, the ground elevation at the site has subsequently been recorded at a higher level, thereby leading to the top elevation exceeding the permissible limit, despite the actual constructed height remaining unchanged.

10.6 The Petitioner submits that the alleged violation has arisen not due to any unauthorized construction but on account of variation in the recorded ground elevation data. The Petitioner, therefore, approached the authorities with a request to conduct an aeronautical survey and expressed willingness to bear the prescribed charges, as such a survey determines whether the structure poses any hazard to aircraft operations and forms the basis for grant or refusal of height clearance by the Airports Authority of India.

10.7 The Petitioner further states that several other buildings in the vicinity faced similar issues due to variation in ground elevation, and in such cases the Appellate Committee allowed applications by increasing the permissible top elevation—in some instances up to 114.51 meters and in others up to 107.32 meters. It is also submitted that, in a similar factual scenario, the Hon'ble Delhi High Court directed the conduct of an aeronautical survey during the pendency of an appeal and thereafter directed the Appellate Authority to consider the matter in light of the survey report. This Hon'ble Court has also taken cognizance of a similar issue in a separate

petition.

### **Facts of Special Civil Application No.11584 of 2024**

11. The Petitioner is a partnership firm engaged in the business of real estate development in the State of Gujarat. The partners of the firm own land bearing Final Plot No. 446 in Town Planning Scheme No. 39 (Naroda-1), situated at Mouje Naroda, Taluka Asarva, Dahegam Road, Ahmedabad. The Petitioner proposed to develop the said land by constructing commercial and residential buildings and has constructed five towers, each comprising fourteen floors, under a scheme named "Sahitya Hills and Icon."

11.1 Rule 4 of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 provides that no structure shall be constructed or erected within a radius of twenty kilometers from the Aerodrome Reference Point of a civil or defence aerodrome without obtaining a No Objection Certificate (NOC) for height clearance. Accordingly, the Petitioner applied to the Airports Authority of India through the online No Objection Certificate Application System (NOCAS), and permission was granted on 08.02.2019 permitting construction up to a restricted height of 102.7 meters above mean sea level.

11.2 Thereafter, the Petitioner applied to the Ahmedabad Municipal Corporation for development permission under the provisions of the Gujarat Provincial Municipal Corporations Act, 1949. The construction plan provided for five towers,

Blocks A to E, each comprising fourteen floors, and the proposed construction ensured that the top elevation would remain within the limit permitted by the Airports Authority of India. Development permission was granted on 10.06.2019.

11.3 After obtaining all requisite statutory permissions and clearances, the Petitioner commenced construction at the site, and the entire construction was carried out strictly in accordance with the sanctioned plans. The site was regularly inspected by municipal authorities, and no illegality was found. The construction now stands completed, with the height of Blocks A to E being 49.14 meters (from plinth level), in conformity with the permission granted by the Municipal Corporation.

11.4 Subsequently, the Petitioner learned that Ahmedabad International Airport Limited, by a letter dated 19.04.2022 addressed to the District Collector, Ahmedabad, reported that certain buildings had exceeded the height permitted under the NOC issued by the Airports Authority of India. The Petitioner's project "Sahitya Hills and Icon" was included in the said list, stating that the measured top elevation of the building was 107.03 meters as against the permissible elevation of 102.7 meters, indicating an excess of 4.33 meters, and recommending legal action for reduction of the excess height.

11.5 The Petitioner approached the concerned authorities and clarified that the height of the buildings from ground level is strictly in accordance with the permission granted by the

Ahmedabad Municipal Corporation and that no excess construction has been carried out. It was explained that, at the time of grant of the NOC, the site elevation was recorded as 53.5 meters above mean sea level, on the basis of which construction was permitted up to 102.7 meters. The Municipal Corporation permitted construction up to 49.14 meters, resulting in a total elevation of 102.64 meters above mean sea level, which was within the permissible limit. However, the ground elevation at the site has subsequently been recorded at approximately 57.19 meters, thereby leading to the top elevation exceeding the permissible limit, despite the actual constructed height remaining unchanged.

11.6 The Petitioner submits that the alleged violation has arisen not due to any unauthorized construction but on account of variation in the recorded ground elevation. The Petitioner, therefore, requested the authorities to conduct an aeronautical survey and expressed willingness to bear the prescribed charges, as such a survey determines whether the structure poses any hazard to aircraft operations. The Petitioner was thereafter advised to file an appeal seeking revision of the height clearance. Such appeal was filed but came to be rejected by order dated 29.04.2024.

11.7 It is further submitted that several other buildings in the vicinity faced similar issues due to variation in ground elevation, and in such cases the Appellate Committee allowed applications by increasing the permissible top elevation—in some instances up to 114.51 meters and in others up to 107.32 meters.

11.8 It is also submitted that, in a similar factual scenario, the Hon'ble Delhi High Court directed the conduct of an aeronautical survey during the pendency of an appeal and thereafter directed the Appellate Authority to consider the matter in light of the survey report. This Hon'ble Court has also taken cognizance of a similar matter and issued notice in a petition raising comparable issues.

11.9 In view of the aforesaid facts and circumstances, all the petitioners have filed aforesaid petitions.

12. Heard Ms. Megha Jani, learned Senior Counsel for Mr. Jinesh H. Kapadia, learned counsel for the petitioner in Special Civil Application No.3549 of 2024, Mr. Nimit Shukla, learned counsel for petitioner in Special Civil Application No.4052 of 2024, Ms. Kruti Shah, learned counsel for Mr. Ronith Joy, learned counsel for the petitioner in Special Civil Application No.11308 of 2024, 11656 of 2024, 11675 of 2024 and 11584 of 2024 and Mr. Bhadrish Raju, learned counsel for Mr. Dhanesh Patel, learned counsel for respondent No.1 and Mr. Anuj K. Trivedi, learned counsel for respondent No.3 and Mr. Deep D. Vyas, learned counsel for respondent No.4.

## **SUBMISSION OF THE PETITIONER**

### **Special Civil Application No. 3549 of 2024**

13. The learned Senior counsel for the petitioner submits that the towers constructed by the petitioner are strictly in

conformity with the building permission granted by the Ahmedabad Municipal Corporation, which itself is based upon the permissible top elevation specified by the Airports Authority of India. It is submitted that present situation, wherein the buildings are alleged to exceed the permissible top elevation, has arisen not on account of any unauthorized or additional construction carried out by the petitioner, but solely due to variation in the recorded ground/surface elevation, an aspect beyond the control of the petitioner and not attributable to it in law. In such circumstances, characterizing the petitioner's construction as being in breach of the permissible top elevation is arbitrary, erroneous, and unsustainable. It is submitted that the respondents have further erred in not considering the petitioner's request for conducting an aeronautical study, which is essential to determine whether the structure in question poses any actual hazard to air traffic movement or aircraft operations. It is submitted that as per Clause 5 of Schedule II of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, an aeronautical study may be conducted to assess whether an existing object adversely affects the safety or operation of aircraft, with the primary objective being to ensure safety of air navigation and efficient utilization of airspace. It is submitted that if upon such study it is conclusively established that the structure poses a hazard, the petitioner undertakes to remove the excess portion; however, the respondents cannot insist upon demolition as a precondition without first determining, through such study, whether the structure actually constitutes

a safety risk. It is further submitted that directing demolition of the existing structure at this stage would defeat the very object of the 2015 Rules as well as the Guidelines for Aeronautical Study issued by the Airports Authority of India, as the need for such study arises precisely in cases where there is a discrepancy between the permitted and constructed height. It is submitted that in the present case, the petitioner's appeal has not been considered and therefore appropriate directions ought to be issued to the respondents to decide the same and conduct an aeronautical study without insisting upon prior demolition. It is submitted that the respondents have acted arbitrarily in requiring demolition of the alleged excess construction as a precondition for considering the petitioner's application for revision of permissible top elevation, particularly when several similarly situated projects in the vicinity have been granted revised height permissions. It is further submitted that there is no statutory provision mandating demolition as a condition precedent for consideration of an application for revision of height clearance or for conducting an aeronautical study. It is submitted that the petitioner reiterates that the construction has been carried out strictly in accordance with permissions granted by the Ahmedabad Municipal Corporation and that any deviation in top elevation is solely attributable to subsequent variation in ground elevation. It is submitted that the failure of the Appellate Committee to consider the petitioner's appeal and request for aeronautical study has caused severe financial prejudice, as the petitioner has invested substantial amounts in a project which now stands

fully constructed but cannot be put to use. It is submitted that in the absence of consideration of the petitioner's request, the petitioner would be rendered remediless, which is violative of principles of fairness and due process and adversely affects the petitioner's right to seek effective legal recourse against arbitrary action of statutory authorities.

13.1 It is further submitted that subsequent to the filing of the present petition, a material development has taken place which has a direct bearing on the issues involved herein. It is submitted that the petition challenges, inter alia, the refusal of the respondent authorities to conduct an aeronautical survey and to consider the petitioner's request for revision of permissible top elevation in respect of land bearing Survey No. 20, Final Plot No. 51, Town Planning Scheme No. 75 (Muthiya-Hanspura), Sub Plot No. 1/1, situated at Village Hanspura, Taluka Asarva, District Ahmedabad. It is submitted that during the pendency of the petition, the petitioner has consistently relied upon instances of similarly situated projects being granted revised permissible top elevation by the competent authority. It is now submitted that an adjoining project situated on the very same Survey No. 20, Final Plot No. 51, Town Planning Scheme No. 75, being Sub Plot No. 1/2, has been granted revised height clearance by the competent authority, whereby the permissible top elevation has been enhanced to 114.50 meters above mean sea level. It is submitted that this subsequent development has a direct and substantial bearing on the controversy involved, as both properties form part of the same survey number and final plot

under the same town planning scheme and are identically situated in terms of geographical location and proximity to the aerodrome. It is submitted that the grant of revised height clearance in respect of the adjoining plot clearly demonstrates that upward revision of permissible top elevation is permissible in the subject area and that the respondent authority has exercised such jurisdiction in respect of similarly situated properties.

## **SUBMISSION OF THE RESPONDENT**

### **Special Civil Application No. 3549 of 2024**

14. At the outset, and without prejudice to the other contentions, it is submitted that the present petition is mala fide, misleading, and an abuse of the process of this Hon'ble Court. It is denied that the petitioner has lawfully constructed the building or that the action of the respondents is arbitrary or violative of principles of fairness. It is further denied that the alleged breach of permissible top elevation has occurred due to change in ground level. It is submitted that the petitioner's structure is admittedly in violation of the No Objection Certificate (NOC) issued by the Airports Authority of India. It is submitted that the petitioner has failed to appreciate the mandatory procedure under Aerodrome Safeguarding Circulars (ADSAC) 05 and 08 of 2020, which clearly provide that any application for revised NOC can be entertained only after the structure is first brought into conformity with the originally granted NOC and thereafter an appeal may be preferred through the prescribed NOCAS

portal. It is submitted that in the present case, since the construction itself is in violation of the existing NOC, no aeronautical survey can be conducted at this stage.

14.1 It is further denied that the ground elevation has changed in the manner alleged by the petitioner. It is submitted that the site elevation of 54.58 meters above mean sea level was furnished by the petitioner itself at the time of seeking NOC in 2020, and the petitioner cannot now resile from its own representation. It is submitted that the petitioner's plea regarding change in ground level is baseless and an afterthought to justify an admitted breach of the NOC conditions.

14.2 It is submitted that it is the sole responsibility of the petitioner to ensure compliance with the sanctioned NOC, and the respondent authority is only required to verify whether the construction conforms to the granted clearance. It is submitted that the respondents are not required to investigate the reasons for violation.

14.3 It is further submitted that any appeal under Rule 11 of GSR 751(E) is maintainable independently, and there is no procedural bar. However, as per the applicable ADSAC guidelines, consideration of revised NOC or aeronautical study is permissible only when the structure conforms to the original NOC conditions. The petitioner cannot be permitted to take benefit of its own wrong, as such a course would defeat the very purpose of aviation safety regulations and open floodgates for unauthorized constructions followed by

retrospective regularization.

14.4 It is further submitted that the petitioner itself admits non-compliance with the NOC conditions, and therefore, the present attempt to seek aeronautical survey or revision of NOC is premature and not maintainable in law. It is reiterated that the procedure prescribed under ADSAC 05 and 08 of 2020 is being strictly followed in order to ensure aviation safety and public safety at large, and no deviation therefrom is permissible.

## **SUBMISSION OF THE PETITIONER**

### **Special Civil Application No. 11308 of 2024**

15. Learned counsel for the petitioner submits that the towers constructed by the petitioner are strictly in conformity with the building permission granted by the Ahmedabad Municipal Corporation, which itself is based on the permissible top elevation specified by the Airports Authority of India. It is submitted that the present situation, wherein the buildings are alleged to exceed the permissible top elevation, has arisen not on account of any additional or unauthorized construction by the petitioner, but solely due to variation in the recorded ground/surface elevation, a factor beyond the control of the petitioner and not attributable to it in law. It is submitted that in such circumstances, describing the petitioner's construction as infringing the permissible top elevation limit is arbitrary and erroneous. It is further submitted that the respondents have erred in not considering the petitioner's

request for conducting an aeronautical study, which is necessary to assess whether the structure in question actually causes any hindrance to air traffic movement or aircraft operations. As per Clause 5 of Schedule II of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, an aeronautical study may be conducted to determine whether an existing object adversely affects the safety or operation of aircraft, the primary objective being to ensure safe air navigation and efficient utilization of airspace based on applicable flight procedures. It is submitted that if upon such study it is conclusively established that the structure causes any hindrance, the petitioner undertakes to remove the excess portion; however, the respondents cannot insist upon demolition without first determining, through such study, whether the structure actually constitutes a safety hazard. It is further submitted that directing demolition of the existing structure at this stage would be contrary to the object sought to be achieved by the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 as well as the Guidelines for Aeronautical Study issued by the Airports Authority of India on 11.07.2014, inasmuch as the requirement of an aeronautical study arises precisely in cases where there is a discrepancy between the permissible height under the NOC and the actual constructed height. In the present case, the request for height clearance has been rejected without conducting such a study, and therefore appropriate directions deserve to be issued to the respondents to conduct an aeronautical study without insisting upon prior

demolition of the existing structure. It is further submitted that the respondents have erred in refusing to grant revised No Objection Certificate to the petitioner despite similarly situated adjoining buildings having been granted revised height permissions, thereby indicating arbitrariness and discriminatory treatment.

15.1 It is submitted that there is every likelihood that the petitioner's application would also merit acceptance, and in such circumstances, requiring the petitioner to first demolish the alleged excess construction and thereafter permitting reconstruction upon grant of revised clearance would serve no meaningful purpose and would only result in undue hardship, inconvenience, and wastage of resources. The petitioner reiterates that the construction has been carried out strictly in accordance with the building permission issued by the Ahmedabad Municipal Corporation, and no additional construction beyond the sanctioned plan has been undertaken. Although the overall top elevation may exceed the limit specified in the No Objection Certificate issued by the Airports Authority of India, such deviation is solely attributable to subsequent variation in ground level elevation. It is further submitted that the refusal to grant NOC and the non-consideration of the request for aeronautical study have caused severe financial prejudice, as substantial investments have been made in a fully completed project which cannot be put to use. The petitioner submits that in the absence of consideration of the request for aeronautical study and height revision, the petitioner would be rendered remediless, which

is violative of the principles of fairness, reasonableness, and due process, and adversely affects the petitioner's right to seek effective legal recourse against arbitrary action of statutory authorities. It is further submitted that the impugned action and decision of the respondents are arbitrary, illegal, and unsustainable in law.

### **SUBMISSION OF THE RESPONDENT**

#### **Special Civil Application No. 11308 of 2024**

16. Learned counsel for the respondent has denied that the ground elevation has changed from 53.5 meters to 58.2 meters in the manner alleged by the petitioner. The said averment is baseless, misconceived, and an afterthought, introduced to justify an admitted breach of the conditions of the No Objection Certificate. It is further submitted that the petitioner cannot now be permitted to take shelter under the plea of change in ground elevation, particularly when the NOC was granted on the basis of site elevation of 53.5 meters above mean sea level, as declared and submitted by the petitioner itself at the relevant time. It is submitted that the petitioner, having obtained the benefit of the NOC on the basis of its own representations, is estopped from disputing the same. It is further submitted that since the construction is admittedly not in conformity with the granted NOC, the petitioner is first required to bring the structure in compliance with the sanctioned NOC conditions, and only thereafter can any request for survey or revision be

considered in accordance with the applicable rules and circulars.

16.1 Learned counsel for the respondent has denied that the alleged excess in permissible top elevation has arisen due to any fortuitous change in ground level. It is submitted that the site elevation of 53.5 meters above mean sea level was specifically furnished by the petitioner itself at the time of applying for the NOC in 2019, and the same formed the basis for grant of height clearance. It is submitted that the petitioner cannot now resile from its own declared and accepted data in order to justify a violation of the NOC conditions. It is submitted that the allegations regarding subsequent change in ground level are therefore incorrect, misleading, and not supported by any credible material.

## **SUBMISSION OF THE PETITIONER**

### **Special Civil Application No. 4052 of 2024**

17. Learned counsel for the petitioner submits that the Impugned Order dated 15.01.2024 as well as the Impugned Decision dated 15.12.2023 (communicated on 30.01.2024) are illegal, perverse, arbitrary, and bad in law. It is submitted that the impugned actions are ex facie violative of the principles of natural justice, inasmuch as while passing the Impugned Order dated 15.01.2024, Respondent No. 2 was fully aware of the decision dated 15.12.2023 rejecting the application for revised NOC, which was communicated to the petitioner only on 30.01.2024, yet the same has not been dealt with or even

referred to in the Impugned Order, thereby giving rise to serious doubts regarding the manner in which the decision has been taken. It is further submitted that there was no justifiable reason for communicating the decision dated 15.12.2023 to the petitioner only on 30.01.2024, i.e. after passing of the Impugned Order dated 15.01.2024. At no stage was the petitioner afforded any opportunity to present its case as mandated in law, more particularly under Rule 6A of the relevant Rules of 1994.

17.1 It is further submitted that the action of the respondent authority is wholly arbitrary, inasmuch as similarly situated adjacent buildings, namely "Ornet Heights" and "Maple Heights," have been granted permissible top elevations of 108.37 meters and 106.24 meters respectively, which are higher than that of the petitioner. The impugned order also fails to consider that the said buildings are located in closer proximity to the airport as compared to the petitioner's project "Radhe Skyline-2," thereby rendering the impugned action discriminatory and violative of Article 14 of the Constitution of India. It is further submitted that the Impugned Decision dated 15.12.2023 (communicated on 30.01.2024) has been passed without assigning any reasons whatsoever and without affording any opportunity of hearing to the petitioner, as mandatorily required under Rule 6A of the Rules of 1994, and is therefore a non-speaking, arbitrary and unsustainable decision.

17.2 It is further submitted that the No Objection Certificate granted on 13.09.2019 permitted construction up to 42.20

meters from ground level after taking into consideration the ground elevation of 60.43 meters above mean sea level. The Ahmedabad Municipal Corporation (AMC) has approved the construction height and has conducted periodic inspections/verification confirming that the construction is in accordance with the sanctioned plans, including height. Therefore, the direction now issued requiring the petitioner to remove or demolish a part of the constructed structure is wholly illegal, arbitrary, and contrary to law. It is reiterated that the height of the building is strictly in accordance with the NOC dated 13.09.2019 and the sanctioned plans issued by AUDA/AMC.

17.3 It is further submitted that the due process prescribed under the applicable statutory framework, namely the Act read with the 2015 Rules and the Rules of 1994, has not been followed. In this regard, it is submitted that no notification as mandated under Section 9A of the Act read with Rule 3 of the Rules of 1994 has been served upon the petitioner. Further, in terms of Rule 5 of the Rules of 1994, reasonable prior notice is required to be given to the owner before any physical verification is undertaken; however, in the present case, no such notice was issued, and the petitioner was not present at the time of alleged verification. Moreover, Rule 6A mandates that an opportunity of hearing must be granted to the owner prior to taking any decision; in the present case, no such opportunity was granted before passing the impugned decision.

17.4 It is further submitted that the impugned action suffers

from gross arbitrariness and discrimination, particularly in view of the fact that while rejecting the petitioner's application for revised NOC, the respondent authority has simultaneously granted revised NOC to similarly situated adjacent buildings with higher permissible top elevations, without any justifiable basis or reasoning. It is well settled that statutory powers must be exercised in a fair, reasonable, non-arbitrary, and non-discriminatory manner, and any deviation therefrom renders the action illegal and void.

17.5 It is further submitted that the petitioner has been left in a state of complete procedural uncertainty, inasmuch as the decision rejecting the application was taken without hearing the petitioner on 15.12.2023, the Impugned Order dated 15.01.2024 was passed without reference to the said decision, and thereafter the said decision was communicated only on 30.01.2024. As a result, the appellate remedy under Rule 6A of the Rules of 1994 stands rendered illusory and an empty formality, as the petitioner is required to challenge an order passed without due process before the very authority which has already pre-decided the matter. Such a procedure is unknown to law and violates principles of natural justice, due process, and fair play.

17.6 It is further submitted that in view of the aforesaid gross illegalities, the impugned directions requiring the petitioner to reduce the height of alleged obstructions such as overhead tank, lift room, parapet wall, and slab top of Building Blocks A, B, C, and D to a permissible limit of 105.12 meters are wholly arbitrary, draconian, and unsustainable in law, and are

liable to be quashed and set aside.

17.7 It is submitted that the impugned order as well as the impugned decision are arbitrary, perverse, and violative of the petitioner's fundamental rights under Articles 14, 19, 265, and 300A of the Constitution of India. It is further submitted that the impugned action, being contrary to law and vitiated by non-compliance of mandatory procedure, deserves to be quashed and set aside.

## **SUBMISSION OF THE RESPONDENT**

### **Special Civil Application No. 4052 of 2024**

18. Learned counsel for the respondent denied that the Final Order dated 15.01.2024 was passed by Respondent No. 2 without affording any opportunity of hearing to the petitioner. It is submitted that the Decision dated 15.12.2023 has been taken by the Appellate Committee strictly in accordance with the prescribed procedure under Aerodrome Safeguarding Circular (ADSAC) 05 and 08 of 2020, and there is no violation of principles of natural justice as alleged.

18.1 With respect to Para 1(f), it is denied that there is any illegality in the impugned action. It is submitted that as per the NOC dated 13.09.2019, the petitioner was permitted a maximum height of 102.70 meters AMSL; however, the petitioner has constructed up to 106.24 meters AMSL, which is in clear violation of the sanctioned NOC issued by AMC as

well as the answering respondent.

18.2 With respect to Para 4(B) and (C), it is denied that Respondent No. 2 was required to consider the Decision dated 15.12.2023 while passing the Order dated 15.01.2024. It is submitted that both proceedings are independent, the former being under ADSAC 08 of 2020 and the latter under Rule 6 of the 1994 Rules, and therefore no such co-relation is required in law.

18.3 With respect to Para 4(D), it is denied that Rule 6A of the 1994 Rules governs the process of revised NOC. It is submitted that revised NOC proceedings are governed strictly by ADSAC 08 of 2020, and not by Rule 6A, which applies to appellate proceedings. with respect to Para 4(J), it is denied that the impugned action is discriminatory. It is submitted that revised NOCs granted to adjacent buildings were issued strictly in accordance with applicable procedure after compliance with mandatory requirements under ADSAC guidelines, and for valid and justified reasons as recorded in the respective cases. with respect to Para 4(K) and (L), it is submitted that the respondent authorities have acted strictly in accordance with GSR 751(E), the 1994 Rules, and ADSAC 05 and 08 of 2020, and therefore the impugned decision and order are legal, valid, and in consonance with law. With respect to Para 4(M), it is denied that there is any procedural illegality. It is submitted that the impugned Decision dated 15.12.2023 has been passed under ADSAC 08 of 2020 and the

impugned Order dated 15.01.2024 under Rule 6 of the 1994 Rules. An efficacious statutory remedy of appeal under Rule 6A of the 1994 Rules is available to the petitioner against the impugned order, and the petitioner is required to avail the same.

### **SUBMISSION OF THE PETITIONER**

#### **Special Civil Application No. 11656 / 11675 / 11584 of 2024**

19. Learned counsel for the petitioners submits that the towers constructed by the petitioner are strictly in conformity with the building permission granted by the Ahmedabad Municipal Corporation, which is itself based on the permissible top elevation specified by the Airports Authority of India. It is submitted that the present situation, wherein the buildings are stated to be exceeding the permissible top elevation, has arisen not on account of any additional construction carried out by the petitioner beyond the sanctioned permission, but solely due to variation in the recorded ground/surface elevation, a factor wholly beyond the control of the petitioner and not attributable to it in law. In such circumstances, characterizing the petitioner's construction as infringing the permissible top elevation limit is arbitrary, erroneous, and unsustainable.

19.1 Learned counsel for the petitioners submits that the respondents have erred in not considering the petitioner's request for conducting an aeronautical study, which is

essential to determine whether the permission granted by the Ahmedabad Municipal Corporation and the Airports Authority of India would in any manner cause hindrance to air traffic movement or aircraft operations. It is submitted that under Clause 5 of Schedule II of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, an aeronautical study may be conducted to determine whether an existing object adversely affects the safety or operation of aircraft. It is submitted that the primary objective of such study is to ensure the safety of air navigation and efficient utilization of airspace and airport infrastructure based on instrument and visual flight procedures in operation and those planned for normal aircraft operations. It is submitted that if, upon such study, it is conclusively established that the structure causes any aviation hazard, the petitioner undertakes to remove the excess portion. However, the respondents cannot insist upon demolition without first determining, through such study, whether the structure actually constitutes a safety concern.

19.2 Learned counsel for the petitioner further submits that directing demolition of the existing structure would be contrary to the object sought to be achieved by the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, as well as the Guidelines for Aeronautical Study issued by the Airports Authority of India on 11.07.2014. The requirement of an aeronautical study arises precisely at the stage where there is a discrepancy between the height permitted under the No Objection

Certificate and the actual constructed height. In the present case, appropriate directions deserve to be issued to the respondents to conduct an aeronautical study without insisting upon prior demolition of the existing structure. It is further submitted that similarly situated adjoining buildings have been granted revised permissions; therefore, there exists a reasonable possibility that the petitioner's application may also be allowed. In such circumstances, no useful purpose would be served by first requiring demolition of the alleged excess construction and thereafter permitting reconstruction upon grant of revised clearance, as it would only result in unnecessary hardship, inconvenience, and wastage of resources.

19.3 Learned counsel for the petitioner submits that the construction has been carried out strictly in accordance with the building permission issued by the Ahmedabad Municipal Corporation, and no additional construction exceeding the sanctioned plan has been undertaken. Although the overall height of the buildings may exceed the maximum permissible height under the No Objection Certificate issued by the Airports Authority of India, such deviation has arisen solely due to subsequent variation in the ground level elevation. It is further submitted that the non-consideration of the petitioner's request for an aeronautical study has resulted in severe financial prejudice, as substantial investment has been made in the project and the building stands fully constructed.

### **SUBMISSION OF THE RESPONDENT**

**Special Civil Application No. 11656 / 11675 / 11584 of 2024**

20. Learned counsel for the respondent has denied that the ground elevation has altered from 53.5 meters to 57.19 meters on its own. He has submitted that the said averment is false, baseless, and an afterthought raised to justify an admitted breach of the conditions of the No Objection Certificate. It is further submitted that the petitioners cannot now be permitted to take advantage of such a plea, particularly when the NOC was granted on the basis of the site elevation of 53.5 meters above mean sea level as furnished by the petitioners. The petitioners, having obtained the benefit of the NOC on the strength of its own representations, is estopped from disputing the correctness thereof. It is further submitted that since the construction is admittedly not in conformity with the granted NOC, the petitioners are required to first bring the structure in compliance with the sanctioned NOC conditions, and only thereafter can any request for aeronautical study be considered in accordance with the applicable rules and circulars.

20.1 Learned counsel for the respondents denied that the alleged excess in permissible top elevation is due to any fortuitous change in ground level. The site elevation of 59.82 meters above mean sea level was specifically declared and submitted by the petitioners at the time of seeking the NOC in 2019, and the same formed the basis for grant of height

clearance. The petitioners cannot now resile from its own declared and accepted data. It is further submitted that as per the conditions contained in the NOC dated 29.04.2019, the permissible top elevation has been granted solely on the basis of site coordinates and site elevation submitted by the applicants, and the Airports Authority of India neither assumes responsibility nor authenticates the correctness of such data. The said condition further stipulates that if at any stage it is found that the actual data is different, the NOC shall stand null and void and action shall be taken in accordance with law, including initiation of proceedings under the Aircraft (Demolition of Obstruction caused by Buildings and Trees etc.) Rules, 1994. In view thereof, it is submitted that the petitioners are responsible for providing incorrect data, and consequently the construction is in violation of the NOC conditions. It is further submitted that such structure does not qualify as an "existing object" under GSR 751(E), and therefore no aeronautical study can be conducted in respect thereof.

21. In support of her argument, learned counsel for the petitioner has relied upon the decisions of the High Court of Delhi in case of ***KGA Investments vs. Union of India and Ors. dated 20.11.2018 passed in W.P.(C) 9509 of 2018 & C.M. No.38741 of 2018*** and in the case of ***M/s. Rajasthan Patrika Private Limited vs. Union of India and Ors. dated 24.2.2025 passed in W.P.(C) 896 of 2025 & CM APPL.4400 of 2025 (stay)*** and submits that present petitions may be allowed.

22. In view of the above, Mr. Bhadrish Raju, learned counsel for the respondent submits that all these orders passed by the Delhi High Court is having a persuasive value and it is not binding upon this Court, however he is unable to controvert the orders passed by the Delhi High Court.

### **ANALYSIS**

23. I have perused the relevant documents and material placed on record. I have also gone through the record of the petition as well as the relevant facts of the petitions.

24. It appears that the petitioners had applied for an aeronautical survey to be carried out by the International Civil Aviation Organization at the petitioner's expense; however, the said request was denied by the respondent authority on the ground that the petitioners had breached the permission granted to them. According to the respondents, permission was granted for construction up to 102.7 meters, whereas the existing construction measures is more than 102.7 meters. Consequently, a notice came to be issued directing the petitioners to stop the construction on the ground that it was in breach of the granted permission. In response thereto, the petitioners submitted a reply contending that the construction was within the permissible limit; however, without prejudice, it requested that, if the construction is found to be beyond the permissible limit, an aeronautical re-survey be conducted. The said request was rejected by the respondent authority solely by relying upon the provisions of the relevant circular.

25. The petitioners have pressed into service the orders passed by the Delhi High Court in the cases of **KGA Investments (supra)** and **M/s. Rajasthan Patrika Private Limited (supra)**, wherein an identical issue was considered and decided. The Delhi High Court dealt with the contention raised by the respondents that, since the petitioners had committed a breach by exceeding the maximum permissible height sanctioned under the applicable aviation regulations, the authority was justified in directing the petitioners to remove the objectionable construction, and only thereafter would an aeronautical survey be conducted.

26. This issue has been raised by all the petitioners in the present group of petitions. Their submission is that, before requiring removal of the said construction, the authority should first satisfy itself by conducting a fresh aeronautical survey at the cost of the petitioners. However, the respondents refused to accept this request, and therefore, the Court is required to examine this issue.

27. Upon considering the rival submissions of the parties, I am of the opinion that the prayer made by the petitioners for conducting an aeronautical survey/study—so as to assess whether the existing structure adversely affects, or is likely to significantly affect, the safety and regularity of aircraft operations at the concerned airport—deserves consideration, even while keeping in mind the objections raised by the respondents.

28. It is true that, as per the stand of the respondents, the

petitioners have committed a breach by violating the N.O.C. granted by the authority and by raising construction beyond the permissible limits, thereby contravening Rule 7 of GSR 751(E) as well as the conditions stipulated in the relevant circular, particularly Clause 6.2.1. which reads as under:-

*“The appeal for the aeronautical study shall not be considered under the following circumstances:-*

*6.2.1 The appellant has violated any of the terms and conditions of the duly issued NOC, including the permitted top elevation.”*

29. Considering another angle, the decision of the respondents with regard to denying the request made by the petitioners is completely irrational and arbitrary. In the case of identically or similarly situated persons in the nearby area, the authority has considered such cases, however, the request made by the petitioners was turned down only on the ground that first they shall remove the disputed construction, and only thereafter the request for an aeronautical study can be considered, which itself is irrational and arbitrary. Equally, important and indeed fundamental to the policy in the Indian Law that a court and so also a quasi-judicial the executive functionary must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. That the quasi-judicial / executive functionaries / authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or other. Non-application of mind is a defect that is fatal to any adjudication.

30. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording the reasons in support of the decision which the court or authority is taking. The adjudicatory authority must apply its mind in that view, so deeply embodied in our jurisprudence that it can be described as a fundamental policy of our Indian Law. A decision which is arbitrary or irrational, such that no reasonable person would have arrived at the same, will not be sustained in a court of law.

31. This arbitrariness and irrationality of decision is tested on the touchstone. The standard of reasonableness is open to challenge in a court of law. In the present case, from the perusal of the record, the petitioners have pointed out the decision rendered by the Delhi High Court in a similar set of facts; however, the authority, without considering the same, has directed the petitioners to first remove the construction as directed by the authority, and only thereafter will consider the request for an aeronautical study of the structure in question, which is completely erroneous, irrational, and arbitrary. Therefore, in such circumstances, this Court exercises jurisdiction under Article 226 of the Constitution of India, as it amounts to a complete violation of the fundamental rights guaranteed under Articles 14 and 16. Further, upon perusal of the decision rendered by the Delhi High Court, I am in complete agreement with the same, and therefore, the petition is required to be entertained.

32. The insistence of the respondents that the petitioners

must first remove the objectionable portion of the construction before any such survey is conducted is unjustified and untenable in the facts of the present case.

33. In order to arrive at a just and proper conclusion, the request of the petitioners ought to be considered in the first instance, and an aeronautical survey should be conducted at their cost. Accordingly, the stand taken by the respondents cannot be sustained.

34. A perusal of GSR 751(E), namely the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, reveals that the same incorporates the concept of “shielding criteria” and provides for the conduct of an aeronautical study as well as a CNS simulation study for the purpose of assessing the maximum permissible height of structures, particularly in cases where such structures fall within the shadow of a higher natural terrain or permanent structure. The maximum permissible height of a structure may be determined on the basis of the said shielding criteria, provided that the proposed or existing structure is located in proximity to an obstacle of equal or greater height and does not pose any risk to aviation safety.

35. After considering the relevant rules and provisions, the Delhi High Court had occasion to deal with similar arguments advanced by the respondents in denying the petitioner’s request. In those circumstances, the Court, after examining its earlier decisions in M/s. ***DBS Reality vs. Union of India (2018 DHC 686)*** and ***KGA Investments (supra)***, arrived at

a conclusion and passed the order.

36. While denying the similar dispensation to the petitioners would amount to discrimination and arbitrary treatment of the petitioners, which leads to a violation of Article 14 of the Constitution of India. While recording the reasons and after considering the guidelines for concluding the aeronautical study issued by the Aerodrome Safeguarding Circular (ADSAC) 05 of 2020, it is specifically provided that the conduct of an aeronautical study shall be subject to a fee of Rs. 20 Lakhs plus applicable GST, and the petitioners are willing to bear the requisite charges and also undertakes to abide by the findings of the aeronautical study, it seems that the petitions are required to be allowed and the respondents are directed to complete the aeronautical study at the cost of the petitioners, as prayed for in the present petitions.

37. While looking at the Aeronautical Study Guidelines as outlined in the Aerodrome Safeguarding Circular (ADSAC) 05 of 2020, it is evident that the same is in derogation of the provisions of GSR 751(E), and upon perusal thereof, there is no restriction or any embargo on conducting an aeronautical study to determine the maximum permissible height of the structure solely based upon Circular Clause 6.2, when a No Objection Certificate is issued by the Airport Authority of India; the same is required to be construed in alignment with GSR 751(E), and on referring to the same, it cannot be construed as an embargo or any restriction which cannot be imposed in the absence of any statutory provision contained in rules viz. GSR 751(E), or in case of any inconsistency, or in

the absence of any rules. Therefore the Delhi High Court, while examining the said eventuality, ultimately passed the order and allowed the petition and directed the respondents to carry the aeronautical study at the cost of the petitioners.

38. At this stage, it is also appropriate to refer the decision of the Delhi High Court in case of ***Manav Infrastructure Pvt. Ltd vs. Union of India*** dated 4.4.2022 in W.P.(C) No.13963 of 2021, wherein identical issue has been decided by the Delhi High Court.

39. In view of the above, and in view of the decisions of the Delhi High Court in cases of ***KGA Investments (supra)***, ***M/s. Rajasthan Patrika Private Limited (supra)*** and ***Manav Infrastructure (supra)***, the decision of denying the request of the petitioners is hereby rejected. Even the notices issued, directing that the objectionable construction be removed before carrying out the aeronautical survey/study, are also quashed and set aside. If any communication issued by the respondents subsequently after filing of the petitions is also quashed and set aside, the respondents are hereby directed to consider the findings of the aeronautical survey/study which is directed to be conducted hereinabove, and to pass a fresh order determining the maximum permissible heights of the petitioners' structures. If there is any violation of the construction permission granted by the authority, after taking into account the findings of the aeronautical survey/study, it is open for the respondents to take appropriate steps; and if it is ultimately found that the petitioners have committed a breach/violation of the

permission, then to remove the objectionable structure at the cost of the petitioners. The respondents are hereby directed to carry out the aeronautical survey/study of the structure in question, at the cost of the petitioners, as early as possible.

40. For the foregoing reasons, all the petitions are allowed. Rule is made absolute to the aforesaid extent. The connected Civil Applications also stands disposed of.

SURESH SOLANKI

Sd/-  
(HEMANT M. PRACHCHHAK,J)