CASE NO.:
Appeal (civil) 8561 of 1997

PETITIONER:
Howrah Municipal Corpn. & Others

RESPONDENT:
Ganges Rope Co. Ltd. & Others

DATE OF JUDGMENT: 19/12/2003

BENCH:
Shivaraj V. Patil & D.M. Dharmadhikari.

JUDGMENT:
J U D G M E N T

Dharmadhikari J.

By this appeal, the Howrah Municipal Corporation challenges the Division Bench judgment dated 05.9.1997 of the High Court of Calcutta whereby it has reversed the judgment dated 6.8.1996 passed in Writ Petition No.2561 of 1994 of learned Single Judge of that Court. The Division Bench has directed grant of sanction for construction of three additional floors to the multi-storeyed complex which is already constructed up to four floors belonging to respondent - Ganges Rope Co. Ltd.

The learned Single Judge in his order found that although the sanction for construction for additional three floors to the existing complex, sought by the respondent \026 company, was delayed by the Corporation without any justification, its prayer for grant of sanction for additional three floors cannot be granted as the Howrah Municipal Corporation Building Rules 1991 framed under the provisions of Howrah Municipal Corporation Act 1980 (for short "the Act") have been amended and the resolution of the Corporation issued thereunder prohibit multi-storeyed construction above one plus two floors on G.T. Road, Howrah.

The Division Bench of the High Court by the impugned judgment by taking a contrary view has held that sanction for construction of the multi-storeyed complex of respondent - company up to fourth floor having been granted by orders of the High Court in the earlier Writ Petition with liberty reserved in favour of the company to seek sanction up to 7th floor, it was not open to the Corporation to refuse sanction only because after expiry of the stipulated period of sixty days provided in the rules for grant of sanction or refusal and expiry of the extended period granted by the High Court, Building Rules have been amended prohibiting construction of multi-storeyed buildings above third floor on the G.T. Road, Howrah.

Only few relevant dates and facts are necessary for deciding the controversial issue regarding sanction of additional three floors to the multi-storied complex. The respondent-company first applied for sanction for construction of its complex up to seven floors on 6.7.1992. Since the sanction was not granted within the prescribed period of sixty days in accordance with the Building Rules, it approached the High Court in Writ Petition. The learned Single Judge made the following directions in his order passed on 26.4.1993:-

"I dispose of this application with a direction upon the Howrah Municipal Corporation authorities to consider and dispose of the petitioners' application for grant of sanction of the building plan

submitted by them on 6th July, 1992, within a period of four weeks from date in accordance with the provisions of Howrah Municipal Corporation and the Building Rules.

In default, the parties are at liberty to mention the matter."

The period granted to the Corporation to decide the application for sanction was extended by a further period of three weeks by learned Judge on 28.5.1993. Since the Corporation did not either grant or refuse the sanction even within the extended time, the respondent approached the High Court again on 23.12.1993. The Court passed the following order :-

"It appears that sanction of building Plan within Howrah Municipal area is permissible up to ground plan 4th floor level and as contended on behalf of the petitioners even up to 7th floor level.'

This submission made on behalf of the appellants is not disputed on behalf of the Howrah Municipal Corporation.

Having regard to the above, I dispose of the application by directing the Howrah Municipal Corporation to grant sanction to the petitioners' Plan submitted on 6th July 1992 up to the 4th floor level, if all the requirements are duly complied with by the writ petitioners. Such sanction must be given by the Howrah Municipal Corporation within one month from the date of communication of this order. The Howrah Municipal Corporation is directed to notify the petitioners the necessary sanctioning copies and the same is to be deposited by the petitioners upon being so notified.

This order will not prevent the petitioners from applying for further sanction if the same at all permissible at a later date. The application is thus disposed of."

[Underlining to add emphasis]

It is not in dispute that after the order dated 23.12.1993 on grant of sanction by the Corporation, construction in the Building Complex up to 4th level has been completed. On the basis of the above order in which liberty was given to the present respondent company to apply for further sanction to construct beyond 4th floor up to 7th floor, further sanction was sought by letter dated 27th May, 1994, addressed to the Corporation with separate building plans for three additional floors.

Since the Corporation did not accept the application and communicated no order of sanction, the respondent-company again approached the High Court. Learned Single Judge of the High Court in his order dated 24.6.1994, by referring and reproducing the earlier order of the High Court dated 23.12.1993, held that as the right to the company was reserved to apply for sanction for further floors, the Corporation was bound to accept the construction plan. The learned Judge directed that on the application with plan submitted for construction of three additional floors, the Corporation should pass appropriate orders within four weeks from the date of submission of the plan and receipt of copy of the order.

Armed with the above order, the company again approached the Corporation by letter dated 28.6.1994 to grant sanction of construction of three additional floors. The Corporation wrote back on 28.7.1994 demanding from the company submission of fresh plans. Second letter dated 19.9.1994 was also addressed by the Corporation to the Company requiring submission of requisite number

of prints of proposal, tax clearance certificate, previous sanctioned plan, indemnity bond for deep foundation work, proposal plans approved by Fire Service Authority and other documents showing permission for 'change of user'. The company along with the letter dated 10.8.1994 complied with the directions and submitted the required papers and documents.

When the application for sanction for construction of additional three floors, filed by respondent company was pending for sanction with the Corporation, the Government of West Bengal by Notification published in the Calcutta Gazette (Extraordinary) dated 15.7.1994, in exercise of powers under section 215 of the Act amended the 'Building Rules' restricting height of high rising buildings to the prescribed level depending upon the width of the street on which the building is proposed to be constructed. This restriction on the height of the building proportionate to the width of the street was prescribed in table under sub-rule (1) Rule 20. For streets including G.T. Road with width up to 18-20 metres, the permissible height of buildings prescribed is 36 metres. The permissible construction, therefore, for G.T. Highways could be up to 36 metres i.e. about 11 to 12 floors. Under amended sub-rule (3) of Rule 20, however, the Commissioner, with approval of Mayor-in-Council, was granted power to restrict the height of high rising buildings in specified areas and wards keeping in view the limited civic amenities. Sub\026rule (3) of Rule 20, as amended by Notification dated 15.7.1994, needs to be reproduced as Corporation has placed heavy reliance on the same to justify refusal of sanction:-

"Notwithstanding anything contained in sub-rules (1) and (2), if the Commissioner, having regard to (a) the existing water supply, sewerage and drainage system in any ward or part thereof, or (b) the traffic carrying capacity of a street in any ward or part thereof, or (c) the density of population of that area, or (d) the commercial activity of that area, or (e) the conditions of the existing building, is of the opinion that the erection of any building exceeding 10 metres in height or execution of any work in such ward or part thereof will put additional burden on the existing civic services, he may sanction erection of such building or execution of such work subject to such restrictions of height and F.A.R. or conditions including uses as he may deem fit to impose, provided that no such action shall be taken by the Commissioner without the prior approval of the Mayor-in-Council."

In exercise of powers under sub-rule (3) of Rule (20) (as amended with effect from 15.7.1994) with due approval of Mayor-in-Council, the Commissioner of the Corporation imposed a restriction on construction of buildings exceeding ten metres in height in the prescribed wards and streets which include GT Road on which the respondent seeks sanction for construction of additional three floors. The relevant resolution of the Corporation dated 02.9.1994 in its relevant parts reads thus :
"Having regard to \026
1. The existing water supply, sewerage and drainage system in any Ward or part thereof, or

2. The traffic carrying capacity of a street in any ward or part thereof, or

3. The density of population of that area or

4. The commercial activity of that area or

5. The conditions of the existing building, it is unanimously felt that erection of any building exceeding 10 mts in height in

the following Ward/Street will put additional burden to existing civic services and therefore following decision is taken in terms of Rule 20(3) of amended H.M.C. Building Rules :-

a) The height of the building is to be restricted within 10 metres in the Ward Nos. 12 to 16, 29 to 31 and 33 to 40.

b) In case of G.T. Road facing South to North of any order Wards other than above in item (1) restriction of new building proposals upto 10 metre of height to be imposed upon the holdings which fall within 50 metres to both sides of the road. But in practising so, when a holding is affected partly, in that case the entire holding should be considered as affected holding.

c) In cases of holdings with reference to Kona Express Highway & 100' HIT Road from Beliapole to Natabar Paul Road crossing they should also be dealt with as per Item (2) above.
Decision

The above mentioned orders of Mayor dated 10.7.94 in regard to amendments of H.M.C. Building Rules, 1991 permissible height of Building, Floor Area Ratio & conditions including uses is confirmed.

Certified to be true copy of the origin.
Sd/-
Secretary,
Howrah Municipal Corporation"

[Underlining for pointed attention]

On the basis of the amended Rule 20 which came into force with effect from 15.7.1994 and the consequential resolution dated 18.7.1994 of the Corporation which was taken with the approval of Mayor-in-Council, the Corporation by letter dated 16.9.1994 informed the respondent company that in view of the restrictions imposed on the height of buildings on GT Road, the sanction sought by them for additional three floors cannot be granted. The proposal for further construction, therefore was "treated as cancelled."

Learned counsel appearing for the Corporation in assailing the impugned order of the Division Bench contends that in view of the amendment introduced by the State of West Bengal to the Building Rules and the consequent resolution taken by the Corporation restricting height of buildings on GT Road, the Corporation had no option but to refuse the sanction for construction of three additional floors and this communication of the Corporation although delayed, cannot be described as malicious or against public interest. It is also contended on behalf of the Corporation that on the orders of the Court directing sanction within a specified period, no vested right was created in favour of the company to seek sanction for construction of additional three floors. The Division Bench was clearly in error in coming to the conclusion that the unamended rules and regulations in force on the date of submission of the application seeking sanction for further construction, would govern the matter of sanction and the subsequent amendment to the Building Rules cannot take away the alleged vested right for seeking sanction by the company.
Learned counsel argued that a claim for such vested right for sanction for construction was negatived in comparable circumstances in two decisions of this Court viz. Usman Gani J.Khatri of Bombay vs. Cantonment Board [1992 (3) SCC 455] and State of West Bengal vs. Terra Firma investment & Trading Pvt. Ltd. [1995 (1)

SCC 125].

On the other side learned counsel appearing for the respondent- company took this Court through the various orders made by the High Court from time to time in successive Writ Petitions filed by the company. The provisions of the Act and the Building Rules were read to contend that the Division Bench was fully justified in coming to the conclusion that on the date the High Court allowed the company to submit plans for sanction for construction of additional three floors and fixed a period within which the Corporation had to decide the application for sanction, a vested right had been created in favour of the company to seek sanction on the basis of the unamended Building Rules as they existed. It is argued that on the basis of subsequent amendment to the rules, it is not open to the Corporation to refuse sanction when the Corporation is found to have maliciously and for extraneous reasons delayed the processing of application for sanction much beyond the period fixed for the purpose by the last order of the High Court in the earlier writ petition.

Learned counsel submits that had the application for sanction submitted with plans by the company for constructing three additional floors been decided within the time allotted by the High Court, the company would naturally have got the order of sanction because by that date the amended Building Rules and the consequent resolution of the Corporation restricting height of buildings on G.T. Road had not come into force.

The main question that falls for consideration before us is whether, by the order of the Court in which a period was fixed for the Corporation to take a decision on the application for sanction for construction of additional floors, any vested right has been created in favour of the company to seek sanction for the construction of additional three floors irrespective of subsequent amendment to the Building Rules and the resolution of the Corporation putting restrictions on the height of high rising buildings on GT Road.

The subject of sanction of construction is governed by the provisions of the Act, Rules and Regulations as also the Resolution of the Corporation which was taken with approval of Mayor-in-Council. The statutory provisions regulating sanction for construction within the municipal area are intended to ensure proper administration of the area and provide proper civic amenities to it. The paramount considerations of regulatory provisions for construction activities are public interest and convenience. On the subject of seeking sanction for construction, no vested right can be claimed by any citizen divorced from public interest or public convenience.

To decide on the justification of the claim raised on behalf of the company that the order of Court fixing a time limit for the Corporation to decide its application for sanction creates a vested right, it would be necessary to examine the relevant provisions of the Act, Rules and the Regulations. Chapter XII of the Act contains provisions regulating sanction for construction or erection of buildings in the area within the limits of the Corporation. Section 173 states : "No person shall use any piece of land as a site for erection of a new building except in accordance with the provisions of this Act and the regulations made under this Act in relation to such erection of building." Section 174 requires : "Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information or document as may be prescribed." Section 175 reads:-

"Section 175. The Commissioner shall sanction the erection of building ordinarily within a period of sixty days unless any further information or document be called for or sanction be

refused in the meantime on such grounds as may be prescribed."
[Emphasis added]

What is to be noted from Section 175 (quoted above) is that a period of sixty days is not a firm outer limit as the words "sixty days" are prefixed by the word "ordinarily." It is also to be noted that the provisions of the Act under consideration, compared with other Corporation Acts of other States, do not provide for 'deemed sanction' or 'deemed rejection' after expiry of the prescribed period fixed for deciding the application for sanction.

In the case of Chet Ram Vashist v. Municipal Corporation of Delhi & Anr. [1980 (4) SCC 647], the provisions contained in Section 313 of the Delhi Municipal Corporation Act, 1957 came up for consideration where not only a period of sixty days was prescribed for according or disallowing sanction for construction but proviso under sub-section (5) of that section further provided that in no case, passing of orders on the application for sanction shall be delayed beyond sixty days after necessary information demanded by the Corporation has been received. Even on such specification of fixed period, this Court held :-

"Sub-sections (3) and (5) of Section 313 prescribe a period within which the Standing Committee is expected to deal with the application made under sub-section (1). But neither sub-section declares that if the Standing Committee does not deal with the application within the prescribed period of sixty days it will be deemed that sanction has been accorded. The statute merely requires the Standing Committee to consider the application within sixty days. It stops short of indicating what will be the result if the Standing Committee fails to do so. If it intended that the failure of the Standing Committee to deal with the matter within the prescribed period should imply a deemed sanction it would have said so. They are two distinct things, the failure of the Standing Committee to deal with the application within sixty days and that the failure should give rise to a right in the applicant to claim that sanction has been accorded. The second does not necessarily follow from the first. A right created by legal fiction is ordinarily the product of express legislation. It seems to us that when sub-section (3) declares that the Standing Committee shall within sixty days of receipt of the application deal with it, and when the proviso to sub-section (5) declares that the Standing Committee shall not in any case delay the passing of orders for more than sixty days the statute merely prescribes a standard of time within which it expects the Standing Committee to dispose of the matter. It is a standard which the statute considers to be reasonable. But non-compliance does not result in a deemed sanction to the lay-out plan."

The provisions of the Act, therefore, contemplate an express sanction to be granted by the Corporation before any person can be allowed to construct or erect a building. Thus, in ordinary course, merely by submission of application for sanction for construction, no vested right is created in favour of any party by statutory operation of the provisions. The question then is whether such a vested right can be deemed to have been created by the fixation of time limit by the Court in its order for considering the application for sanction. In the order dated 23.12.1993 sanction was granted for construction up to 4th floor level and for further construction it was observed thus:

"This order will not prevent the petitioners from applying for further sanction if the same at all permissible at a later date."

After the above order, the company applied for sanction of additional three floors. The stand of the company, as contained in letters, addressed to the Corporation, appears to be that it was entitled to seek sanction on the same application which it had earlier filed with plans for seven floors and on which under the orders of the court in the first writ petition, sanction was granted up to four floors. The Corporation sent replies and sought documents and additional information from the company. It was insisting on the company to submit fresh application for sanction with plans of three additional floors to their existing construction. This insistence on the part of the Corporation cannot be termed as malicious or a deliberate attempt on their part to delay the processing of the application. Rule 3 of the Building Rules supports the stand of the Corporation that for re-erecting or making addition to the existing building, submission of fresh plan for sanction was necessary. Rule 3 reads:

"Rule 3. Prohibition of building without sanction:

(1) No person shall erect a new building or re-erect or make addition to, or alteration of, any building or cause the same to be done without obtaining sanction from the Commissioner and where necessary, a development permit from the concerned authority under the West Bengal Town and Country (Planning and Development) Act, 1979."

Rule 4 further reinforces requirement of a fresh application for sanction with Plans for additional three floors. Rules 4 reads thus :-

"Rule 4. Notice for erection or alteration of a building : -
(1) every person who intends to make a new building on any site, whether previously built upon or not, or re-erect or make additions to, or alteration of, any building shall apply for sanction by giving notice in writing to the Commissioner."

On behalf of the company it was argued that Rules (3) & (4) apply in normal circumstances but in this case there was an order of the High Court reserving a 'liberty' and a right to the company to seek sanction for further construction above 4th floor.

It is not possible for the court to read more into the order dated 23.12.1993 whereby the court merely observed that the applicant will not be 'prevented' from applying for further sanction. This one observation cannot be read to absolve the applicant from the obligations prescribed in Rules 3 & 4 of the Building Rules.

On a subsequent approach by the respondent - company to the High Court, by order dated 24.6.1994, learned Single Judge merely 'expected' the Corporation to pass the appropriate orders on the pending application for sanction of additional floors to the company within a period of four weeks. The relevant part of the order states :-

"it is expected that the Howrah Municipal Corporation shall pass appropriate orders within four weeks from the date of submission of the Plan and receipt of copy of the order."

According to the company, on the expiry of period of four weeks fixed by order dated 24.6.1994, there was no justification for the Corporation to keep the application for sanction pending and to allow it to be rendered infructuous as a result of the amendment to the Building Rules which came into force by Gazette Notification on 15.7.1994. On behalf of the Corporation it is denied that despite the order of the court granting four weeks, the application for sanction was deliberately not considered by the Corporation. It is submitted

that there was no time-bound mandate by the court to the Corporation.

In our considered opinion, by the order of the Court dated 23.12.1993 observing that the petitioner is 'not prevented from applying' for further sanction of additional floors above fourth floor and the 'expectation' expressed in the subsequent order of the Court dated 24.6.1994 , from the Corporation to decide the pending application for sanction within four weeks, no vested right in favour of the respondent \026 company can be said to have been created to obtain sanction on the unamended rules, as they existed on the date of their second application.

It has been urged very forcefully that the sanction has to be granted on the basis of Building Rules prevailing at the time of submission of the application for sanction. In the case of Usman Gani (supra), the High Court negatived a similar contention and this Court affirmed the same by observing thus:
"In any case, the High Court is right in taking the view that the building plan can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30.4.1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now.

If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get advantage of the regulations amended to their benefit."
[underlining to add emphasis]

This Court, thus, has taken a view that the Building Rules or Regulations prevailing at the time of sanction would govern the subject of sanction and not the Rules and Regulations existing on the date of application for sanction. This Court has envisaged a reverse situation that if subsequent to the making of the application for sanction, Building Rules, on the date of sanction, have been amended more favourably in favour of the person or party seeking sanction, would it then be possible for the Corporation to say that because the more favourable Rules containing conditions came into force subsequent to the submission of application for sanction, it would not be available to the person or party applying.

The decision in Gani J.Khatri (supra) was followed by this Court in the case of State of West Bengal vs. Terra Firma Investment and Trading Pvt. Ltd. [1995 (1) SCC 125]. That case arose as a result of amendment introduced in the Act in the year 1990 restricting building heights within limits of Calcutta Municipal Corporation to 13.5 metres. Applications for sanction pending for construction with height above 13.5 metres were rejected because of the above restriction. In that case also the applicants claimed a vested right to get their plans passed and sanctioned as they were submitted prior to the amendment made to Calcutta Municipal Corporation Act in 1990. This Court on examining the object in restricting height of buildings in the city of Calcutta due to limited resources for civic amenities upheld the Amendment Act and negatived the claim of vested right set up by the applicants on the basis of unamended provisions and building regulations. Relying on the decision of Usman Gani J.Khatri (supra), this Court observed :-

"How can the respondent claim an absolute or vested right to get his plan passed by Writ of a Court merely on the ground

that such plan had been submitted by him prior to 18.12.1989? By mere submission of a plan for construction of a building which has not been passed by the competent authority no right accrues. The learned Single Judge of the High Court should have examined this aspect of the matter as to what right the respondent had acquired by submission of the plan for construction of high rise building before its application was rejected by the statutory provision."

This court further observed :-
"It is well settled that no malice can be imputed to the legislature. Any legislative provision can be held to be invalid only on grounds like invalid legislation incompetence or being violative of any Constitutional provisions."

Relying on Usman Gani's case (supra), this Court reiterated that 'builders do not acquire any legal right in respect of the plans until sanctioned in their favour'.

Learned counsel appearing for the respondent company tried to distinguish the decisions in the cases of Usman Gani and Terra Pharma (supra) stating that in the present case the vested right arose because of a time bound order of the Court. It is argued that the time bound orders of the Court were not only disregarded but, as has been found by the High Court, deliberately flouted for extraneous reasons. It is submitted that the claim of sanction for additional three floors available to the company on the date of submission of application for sanction with plans could not have been frustrated by the Corporation by deliberate delay in processing the application and raising pleas and objections to the plan.

We do not find that there was any deliberate delay on the part of the Corporation. We have found that the stand of the Corporation, on the basis of Building Rules, cannot be held to be erroneous that for seeking three additional floors, the company was required to file fresh application for sanction with necessary particulars, documents, plans and enclosures. The company complied with the necessary requirements but thereafter, the Building Rules were amended and restrictions have been imposed on height of buildings on the GT Road. It cannot, therefore, be held that the action of the Corporation is malicious. The Building Rules were amended by the State and the Corporation can have no bona fide or mala fide hand in it. After the amended Building Rules were notified, the Corporation on relevant ground of limited resources for civic amenities in a congested city like Howrah, with the approval of Mayor-in-Council, could legally impose legitimate restrictions on the height of buildings, on specified wards, roads and localities. It is to be noted from the relevant resolution of the Corporation that restrictions with regard to the height of buildings are not imposed only on GT Road but there are several specified wards and areas in which such restrictions are applied. This Court cannot accept that such a legislative change and consequent resolution came to be passed and got approved only to frustrate the pending application of the company.

We have examined the provisions of section 175 of the Act fixing 'ordinarily' period of 'sixty days' for granting or refusing sanction. We have also examined Rule 13 of the Building Rules which also prescribes a period of 'sixty days' from the date of application for grant or refusal of sanction for construction. Neither the provisions of the Act nor the Rules, however, provide for 'deemed sanction' or 'deemed refusal' on the expiry of sixty days' period. Therefore, without express sanction, no construction is permissible contrary to the provisions in Chapter XII of the Act and Rule 3 of the Building Rules which prohibit 'construction or erection of new building or addition or alteration to any existing building' without obtaining

sanction for construction.

The above stated legal position is not disputed on behalf of the respondent \026 company. What is being contended is that the order of the High Court fixing a period for the Corporation to decide its pending application for sanction creates a vested right in favour of the applicant company to seek sanction for its additional proposed construction on the basis of Building Rules, as they stood prior to the amendment introduced to the Building Rules and the consequent Resolution of the Corporation restricting the height of buildings on G.T. Road. It is undeniable that after the amendment of the Building Rules and the Resolution passed by the Corporation thereunder restrictions imposed on heights of buildings on specified wards, roads and localities would apply to all pending applications for sanction. The question is whether any exception can be made to the case of the applicant seeking sanction who had approached the court and obtained consideration of its applications for sanction within a specified period. We have extracted above, the various orders passed by the High Court in writ petitions successively filed by the company in an effort to obtain early sanction for its additional construction of three floors on the buildings in its multi-storeyed complex already completed up to 4th floor. In none of the orders of the High Court, there is a mandate issued to the Corporation to grant a sanction. What was directed by the High Court in the first order was merely a 'liberty' or option to the company to seek sanction for additional three floors. In the subsequent order, an 'expectation' was expressed for decision of the pending applications within a period of four weeks. There was, thus, in favour of the company an order of the High Court directing the Corporation to decide its pending applications for sanction within the allotted period but non-compliance thereof by the Corporation can not result in creation of any vested right in favour of the company to obtain sanction on the basis of the Building Rules as they stood on the date of making application for sanction and regardless of the amendment introduced to the Building Rules. Neither the provisions of the Act nor general law creates any vested right, as claimed by the applicant \026 company for grant of sanction or for consideration of its application for grant of sanction on the then existing Building Rules as were applicable on the date of application. Conceding or accepting such a so-called vested right of seeking sanction on the basis of unamended Building Rules, as in force on the date of application for sanction, would militate against the very scheme of the Act contained in Chapter XII and the Building Rules which intend to regulate the building activities in a local area for general public interest and convenience. It may be that the Corporation did not adhere to the time limit fixed by the court for deciding the pending applications of the company but we have no manner of doubt that the Building Rules with prohibition or restrictions on construction activities as applicable on the date of grant or refusal of sanction would govern the subject matter and not the Building Rules as they existed on the date of application for sanction. No discrimination can be made between a party which had approached the court for consideration of its application for sanction and obtained orders for decision of its application within a specified time and other applicants whose applications are pending without any intervention or order of the court.

The argument advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived. The word 'vest' is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word 'vest' has also acquired a meaning as "an absolute or indefeasible right" [See K.J. Aiyer's 'Judicial Dictionary' (A complete Law Lexicon),

Thirteenth Edition]. The context in which respondent - company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to 'ownership or possession of any property' for which the expression 'vest' is generally used. What we can understand from the claim of a 'vested right' set up by the respondent-company is that on the basis of Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the court for its consideration, it had a 'legitimate' or 'settled expectation' to obtain the sanction. In our considered opinion, such 'settled expectation', if any, did not create any vested right to obtain sanction. True it is that the respondent-company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such 'settled expectation' has been rendered impossible of fulfillment due to change in law. The claim based on the alleged 'vested right' or 'settled expectation' cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such 'vested right' or 'settled expectation' is being sought to be enforced. The 'vested right' or 'settled expectation' has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a 'settled expectation' or so-called 'vested right' cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon.

In the matter of sanction of buildings for construction and restricting their height, the paramount consideration is public interest and convenience and not the interest of a particular person or a party. The sanction now directed to be granted by the High Court for construction of additional floors in favour of respondent is clearly in violation of the amended Building Rules and the Resolution of the Corporation which restrict heights of buildings on GT Road. This Court in its discretionary jurisdiction under Article 136 of the Constitution cannot support the impugned order of the High Court of making an exception in favour of the respondent \026 company by issuing directions for grant of sanction for construction of building with height in violation of the amended Building Rules and the resolution of the Corporation passed consequent thereupon.

For all the above reasons, in our opinion, the learned Single Judge was right in rejecting the prayer of the respondent company in public interest and the Division Bench of the High Court committed an error in directing grant of sanction for further construction above four floors to the respondent company in clear violation of the existing building rules and the resolution of the Corporation.

In the result, the appeal preferred by the Corporation succeeds and is allowed. The impugned order of the Division bench of the High Court dated 5.9.1997 is hereby quashed and that of the learned Single judge restored. In the circumstance, however, we shall direct the parties to bear their own costs in this appeal.