IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 24th OF FEBRUARY, 2025

WRIT PETITION No. 23511 of 2021

M/S DWARKA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Amit Agrawal – Learned Senior Counsel with Shri Arjun Agrawal – Learned counsel for the petitioners.

Shri Bhuwan Gautam – Learned Government Advocate for the respondents/State.

Ms. Archana Kher – Learned counsel for respondent No.4.

"Reserved on : 11.02.2025"

"Pronounced on : 24.02.2025"

ORDER

Per: Justice Sushrut Arvind Dharmadhikari

This Writ Petition under Article 226 of the Constitution of India has been filed by the petitioners challenging the order dated 24.08.2021 (Annexure P/24), order dated 11.10.2021 (Annexure P/27) and notice dated 21.10.2021 (Annexure P/29) passed in case No.0024/B-121/2021-22 by respondents No.2, 3 and 4 respectively.

2. In this petition, the petitioners have prayed for the following reliefs:

> "(a) Notification dated 29/01/2001 (Annexure-P/31) purporting to create Divisional Commissioner as ex officio

appellate authority under Section 31 of M.P. Nagar Tatha Gram Adhiniyam, 1973 be declared to be ultra vires, the provisions of section 31 and section 85(2)(x) of the Adhiniyam as also Rule 23 of MP Nagar Tatha Gram Nivesh Rules 2012; **AND**

(b) The impugned Rule 25A of the Bhumi Vikas Rules 2012 (Annexure-P/30) creating a right of appeal under section 31 of the Adhiniyam may be declared as ultra vires the Constitution being violative of Article 14 and section 31 and section 85(2)(x) of the Adhiniyam and basic structure of the Constitution for want of salient characteristics and standards of a judicial authority in accordance with Constitutional conventions as laid down in Madras Bar Assn. v. Union of India (2014) 10 SCC 1 by a Constitution Bench Para 136 and 137; **AND**

(c) The impugned ex-parte enquiry report dated 24/08/2021 (Annexure-24) and the impugned Order dated 11/10/2021 solely based on the said report may kindly be quashed; **AND**

(d) Impugned Order of Collector dated 11/10/2021 (Annexure-P/27) and consequential notice dated 17/10/2021 (Annexure-P/28) may kindly be quashed and the impugned Order dated 21/10/2021 (Annexure-P/29) may kindly be quashed; AND e) The notice dated 21/10/2021 (Annexure-P/33) may kindly be quashed; **AND**

(f) The development permission granted by Respondent No. 3-T&C Dept. dated

10/10/2019 (Annexure-P/15); development permission granted by Respondent No. 4 Municipal Corporation dated 25/05/2019 (Annexure-P/18) and building permission granted by Municipal Corporation dated 14/10/2019 (Annexure-P/19) may kindly be restored in favour of the Petitioners; **AND**

(g) The wire fencing put up the by Respondent No. 1 as per his Order (Annexure-P/27) visible in the photographs (Annexure-P/32) separating the premises of the Petitioners from survey no. 43/1 as luculent from point (A) to (A) may kindly be directed to be removed forthwith; **AND**

(h) Any other relief which this Hon'ble Court may deem fit along with the costs may kindly be granted.

(i) The impugned order dated 25/10/2021 (Annexure-P/36) passed by Respondents in compliance of the impugned order dated 11/10/2021 (Annexure- P/27) cancelling the Nazul NOC of the Petitioners dated 14/01/2019 (Annexure-P/13) may kindly be quashed; **AND**

(j) The Impugned Order dated 26/10/2021 (Annexure-P/37) passed by Respondent NO. 3 in compliance of the impugned order dated 11/10/2021 (Annexure- P/27) cancelling the sanctioned layout and development permission of the Petitioners dated 21/02/2019 (Annexure-P/15) may kindly be quashed; **AND**

(k) The impugned demand notice dated 26/10/2021 (Annexure-P/38) raising a

demand of Rs. 2,40,000/-against demolition charges for demolishing RCC road in front the building of the petitioner issued by the Ratlam Municipal Corporation may also kindly be quashed; **AND**
(m) The Nazul NOC dated 14/01/2019 (Annexure-P/13) and development permission dated 21/02/2019 (Anenxure-P/15) may kindly be restored."

3. Facts draped in brevity, necessary for the adjudication of the present petition are being reproduced as hereunder:-

i. The petitioners are developers of real estate and had developed a residential cum commercial building project in the name of "Dwarka" in Ratlam on the lands owned by them and the chronology of how the title of subject land came to be vested in petitioners is as hereunder:-

S.No.	Date	Particulars
1.	20/11/1945	By a *Robkar*, 3 Bighas and 18 Biswa of land of survey no. 43/1131 was given on lease by the erstwhile Maharaja to one *Jagannath Kagdi* for industrial purpose.
2.	18/12/1949	*Jagannath Kagdi* sold the lands with oil mill to one *Mangi Ram*.
3.	1955	Execution Case No. 10/1955, at the instance of one *Narendra Kumar Jhalani*, the aforesaid property was attached and auctioned by Civil Court and purchased by *M/s. Nandram Jawaharlal* and sale

		certificate was issued.
4.	05/11/1956	The TIT allotted land to M/s. *Nandalal Jawaharlal* land admeasuring 8736 sq.ft. on Dhamnod Road on eastern side.
4A.	21/02/2019	The lease has been renewed in the name of Partners of Petitioner No. 2.
5.	27/10/1973	Entire land was sold by M/s. *Nandalal Jawaharlal* to Jiwaji Sugar Co. Ltd.
6.	28/07/1983	A portion of land was sold by *Jiwaji Sugar Co. Ltd.* to various members of a *Bohra family* who are part of Petitioner No. 2. This sale deed was eventually registered on 27/11/1986.
7.	03/07/1995	Remaining portion of the land was sold by *Jiwaji Sugar Co. Ltd.* to *Haidri and Co.* (Petitioner No. 2).
8.	2006-2009	The purchasers of the land, namely, partners of Petitioner No. 2 unsuccessfully pursued the proceedings for their mutation.
9.	06/01/2011	In *WP 7963/2009- Saifuddin vs. State*, single bench of this Hon'ble Court directed mutation of the name of Petitioners on the subject lands.
10.	01/04/2013	The Collector in case no. 3/A-20(4)/2012-13 directed the mutation to be carried out.
11.	21/06/2013	In case no. 31/A-6/2012-13, the Tehsildar

		directed for mutation and assigned survey no. 43/1131/MIN-1 to the land admeasuring 0.760 Hectares i.e. 40850 sq.ft.
12.	24/11/2017	A partnership deed was executed between three individuals constituting a partnership firm "*Dwarka*" (Petitioner No. 1) wherein Saifuddin and Farida contributed 11300 sq.ft. of land out of survey no. 43/1131/MIN-1 to the partnership.
13.	02/08/2018	10 new partners were inducted vide amended partnership deed and they contributed their portion of survey nos. 43/1131/MIN-1 to the partnership.
14.	18/10/2019	A development agreement was executed between Petitioner No. 1 and 2 and as per this agreement, a total 45200 sq.ft. of land was made available for development.
15.	2021	Khasra Entry and Jamabandi show that 40,850 sq.ft. of land is mutated in the name of *Haidri and Co.* and 40850 sq.ft. of land was mutated in the name of *Saifuddin and Ors*. who are partners of Petitioner No. 2.

ii. All the necessary statutory permissions and sanctions were obtained by the petitioners for development of the said project, chronology of which is being reproduced as hereunder:-

S.No.	Date	Particulars
1.	20/11/2018	The petitioners applied for NOC before Nazul Officer.
2.	27/12/2018	A Panchnama was prepared by the Revenue Inspector and it was recorded that govt. land is not affected and on the *eastern side* of the property, existence of a *public road* was found, namely, *Sailana Road*.
3.	28/12/2018	The Tehsildar Nazul passed an order and recorded that on the *eastern side* of the subject lands, *public road* exists and directed for issuance of NOC.
4.	14/01/2019	The Nazul Officer issued NOC mentioning that on *eastern side* of the subject lands, *Sailana Road* exists.
5.	21/02/2019	The T&C sanctioned a layout plan clearly mentioning that on *eastern side*, public road and *Sailana Road Overbridge* are situated
6.	03/04/2019	The subject land was diverted by SDO.
7.	25/05/2019	The Municipal Corporation granted building permission under Colonization

		rules, 1988 and in clause no. 14 of the development permission, it was mentioned that adjoining the subject lands, approach road will have to be connected to existing or proposed public roads.
8.	14/10/2019	The Municipal Corporation granted building permission after payment of requisite fee.
9.	31/12/2019	The project of the Petitioner was registered with RERA.

iii. While the project of the petitioners was nearing completion, a complaint was made by one Ashok Jain alleging encroachment on subject land of Survey No. 43/1, however, on enquiries conducted by the SDO and Municipal Corporation in the year 2019 and 2020, the complaint was found to be false.

iv. Subsequently, the Collector, Ratlam passed an order on 09.08.2021 constituting a three-member Committee and referred the question of validity of T&C sanctions to the said committee. Subsequently, the said Committee submitted an ex-parte report to the Collector on 24.08.2021 behind the back of the petitioners and found that the sanctions such as the layout sanction by T&C and the building permission granted by the Municipal Corporation are bad in law quintessentially on the ground that the petitioners were granted access/approach through survey no.43/1 which is a Government

land and the petitioners are guilty of encroaching the Government land. This enquiry was conducted behind the back of the petitioners and without furnishing a copy of this enquiry report, the Collector, Ratlam passed an order on 11.10.2021 directing all the authorities to cancel the permissions by issuing mandamus. Consequently, all permissions were cancelled later on, which led to filing of the present petition.

4. <u>ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONERS:-</u>

(i) Learned Senior Counsel for the petitioners argued that in the Writ Petition, averments of facts regarding acquisition of title to the disputed/subject land by the petitioners have been made and these assertions regarding title of the petitioners have not been disputed by the respondents in their returns.

(ii) Learned Senior Counsel for the petitioners has drawn our attention to the photographs (Annexure P/32) to show that dispute relates to a portion of land comprised in survey No. 43/1 admeasuring 15276 Sq. ft. and recorded in the revenue records as Government land. Further, it was submitted that this portion of the land was designated in the Master Plan of Ratlam (Annexure P/39) as a part of a public road/street admeasuring 30 meters i.e. *Sailana over bridge* to *Biryakhedi* and this portion of survey No. 43/1 is also proposed as a regional road from *Sailana Over bridge* to *Aro Aasharam* having width of 36 meters in the draft master plan of Ratlam, 2035 (Annexure P/40).

(iii) Learned Senior Counsel further elaborated that this portion of

Survey No. 43/1 although recorded as Government land in revenue records but in light of Rule 2(72) of the Bhumi Vikas Rules, 2012 as also the judgment of Hon'ble Apex Court in ***R.R. Waghmare V. IMC*** reported in ***(2017) 1 SCC 667***, the disputed survey No. 43/1 would have to be considered as either "*an existing street*" or "*a proposed street*". Therefore, the same was correctly considered by the statutory authorities for granting sanction treating the said portion of survey no.43/1 as an approach road for the project of the petitioners.

(iv) Learned Senior Counsel further pointed out that after the sanctions were granted, two complaints were made regarding use of survey No. 43/1 as approach road and on both occasions the inquiries ended in favour of the petitioners.

(v) Learned Senior Counsel submitted that so far as the statutory sanctions under M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 or M.P Town and Country Planning Act, 1973, (hereinafter referred to as "Adhiniyam, 1973" or "Act of 1973") and M.P. Municipal Corporation Act, 1956 are concerned, the Collector does not possess any jurisdiction to re-open the validity of such statutory sanctions and to appoint committee for conducting inquiry into such sanctions as has been constituted by Collector on 09.08.2021 in the present case. Consequently, illegally constituted Committee's *ex-parte* report dated 24.08.2021 (Annexure P/24) and impugned order of the Collector dated 11.10.2021 (Annexure P/27) led to revocation of Nazul NOC (Annexure P/36), cancellation of layout by T&C (Annexure P/37) and demand of

Rs.2,40,000/- for demolition of RCC road (Annexure P/38). Hence, it is submitted that the aforesaid actions are based on orders and reports, which are without jurisdiction and hence, are liable to be quashed in light of the well established legal principle that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order.

(vi) Learned Senior Counsel has further submitted that so far as cancellation of building permission on 21.10.2021 (Annexure P/27) is concerned, on 28.09.2020, Rule 25-A was inserted in the Bhumi Vikas Rules (hereinafter referred to as "BVR") creating a right of appeal against such order *mutatis-mutandis* under Section 31 of the Adhiniyam, 1974.

(vii) Learned Senior Counsel has further submitted that Section 31 of the Adhiniyam, 1973 provides for an appeal to an appellate authority "*as may be prescribed*". It was further submitted that U/s 2 (32) of the M.P. General Clauses Act, 1957 the word "*prescribed*" means prescribed by the Rules. In continuation it was submitted that section 85(2)(X) the Adhiniyam confers power upon the State Government to frame Rules regarding "*the authority to which*"; "*manner in which*" and "*fee payable on memorandum of appeal*". It was further submitted that in exercise of power U/s 85 of the Act of 1973, Rules have been framed, namely, M.P. Nagar Tatha Gram Nivesh Niyam, 2012. Under Rule 23 the Appellate Authority is not mentioned. Hence, no appellate authority has been constituted.

(viii) Learned Senior Counsel has further argued that a notification dated 29.01.2001 (Annexure P/31) was issued by the State Government nominating Divisional Commissioner as ex-officio Appellate Authority. According to the petitioners, since neither the M.P Town and Country Planning Act, 1973 nor the M.P. Nagar Tatha Gram Nivesh Niyam, 2012or the Bhumi Vikas Rules, 2012 contain any enabling provision conferring any power to State Government to issue a notification, such a notification being a legislative exercise, is ultra-vires the Act.

(ix) Learned Senior Counsel has also challenged the constitutional validity of Rule 25-A on the ground that being part of subordinate legislation i.e. the Rules framed under the Act of 1973, the Rule can neither enlarge the scope of Section 31 nor can it create a substantive right. In support of the said contention, reliance has been placed by Learned Senior Counsel upon the judgments of Hon'ble Apex Court in ***Kerala SEB V. Thomas Joseph reported in (2023)11 SCC 1737*** and ***Indian Express Newspapers V. UOI reported in (1986) 1 SCC 641.***

(x) Learned Senior Counsel also submitted that the action of the collector to constitute a committee for examining questions that the statutory sanctions were given by the authorities culpably to extend benefit to the petitioners are *ex-parte* report dated 24.08.2021 (Annexure P/24) and order of collector dated 11.10.2021 (Annexure P/27) and then revocation of building permission by Annexure P/29, cancellation of Nazul NOC by Annexure P/36 and cancellation of sanctioned layout by Annexure

P/37 at the instance of the Collector by the competent authorities constitutes "*Malice in law*". In support of this submission reliance is placed upon judgments of Hon'ble Apex Court in ***State of A.P and Ors. Vs. Goverdhanlal Pitti (2003) 4 SCC 739; Punjab State Electricity Board Vs. Zora Singh and Ors. (2005) 6 SCC 776 and Somesh Tiwari Vs. Union of India and Ors. (2009) 2 SCC 592.***

5. <u>ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENTS:-</u>

(i) Learned Counsel for the respondents supported the validity of Rule 25-A and notification (Annexure P/31) and cited various judgments to explain the meaning of the expression "*Mutatis Mutandis*" and "*as may be prescribed*".

(ii) Learned Counsel for respondents submitted that the words *mutatis-mutandis* are used by the legislature to incorporate provisions of another legislation into a subsequent legislation and is a well known concept recognized in interpretation of statutes. Learned counsel for the respondents has placed reliance upon ***Ashok Service Centre and Ors. Vs. State of Orissa (1983) 2 SCC 82, Rajasthan State Industrial Development and Investment Corporation and Anr. Vs. Diamond and Gem Development Corporation Ltd. and Anr., (2013) 5 SCC 470, Bangalore Development Authority and Anr. Vs. State of Karnataka and Ors. (2022) 14 SCC 173; Insolvency and Bankruptcy Board of India Vs. Satyanarayan Bankatlal Malu and Ors. (2024) 6 SCC 508 and District Co-Operative Central Bank Employees and***

Officers Federation Vs. State of M.P and Ors. (2018) 4 MPLJ 443.

(iii) Learned Counsel for the respondents for explaining the meaning of expression "*as may be prescribed*" reliance is placed upon ***BSNL Vs. TRAI (2014) 3 SCC 222; Surinder Singh Vs. Central Government and Ors. (1986) 4 SCC 667; Union of India Vs. S. Srinivasan (2012) 7 SCC 683; Orissa State (Prevention and Control of Pollution) Board Vs. Orient Paper Mills and Ors. (2003) 10 SCC 421 and Power Machine India Ltd. Vs. State of Madhya Pradesh (2017) 7 SCC 323.***

(iv) Learned Counsel for respondents placing reliance on their respective pleadings submitted that since survey no. 43/1 is recorded in revenue records as a government land then notwithstanding the said piece of land to be a street earmarked in the Master Plan, it cannot be used as an approach road.

(v) It was further submitted by Learned counsel for the Respondent no. 4 that against order of revocation of building permission (Annexure P/29) the petitioners should be relegated to remedy of appeal under Rule 25-A of the Bhumi Vikas Rules, 2012.

6. Except for the aforesaid submissions, no other submissions were pressed into service by learned counsel for the parties. Accordingly, we have heard learned counsel for the parties and perused the record with the aid of learned counsel for the parties.

7. In light of the pleadings and arguments advanced by the parties, following issues arise for consideration before this court:-

I. Whether the land use of government land is governed by Revenue

Records or master Plan? What is the nature of Development Plan (Master Plan) in a planning area?

II. What are the statutory sanctions obtained by the petitioners and its effect thereof?

III. What will be the effect of outcome of two previous enquiries conducted against the petitioners?

IV. What is the effect of Ex-parte proceedings conducted against the petitioners?

V. What is the legal sanctity of notification dated 29.01.2001 and the appellate authority constituted by such notification?

VI. Is the provision of Rule 25-A of BVR, 2012 ultra-vires the constitution and the parent act?

ANALYSIS, DISCUSSION AND FINDINGS

I. LAND USE OF THE SUBJECT LAND ANDNATURE OF DEVELOPMENT PLAN (MASTER PLAN) IN A PLANNING AREA

8. Since the dispute between the parties is regarding survey no. 43/1 area 15276 Sq. ft, recorded in revenue record as government land, the land use of this portion of land in the master plan is required to be examined in the light of the statutory provisions.

9. Fruitful reference can be made here to the judgment of Apex Court in the case of ***R.R. Waghmare (supra)***relied by learned senior counsel for the petitioners, wherein it has been held by Hon'ble Apex Court as hereunder:-

> ***"21. It is apparent that the development plan once prepared is binding upon the development authorities in the planning area***

as well as on the Municipal Corporation and other local authorities as the case may be. They cannot modify and permit the user in contravention thereof. In other words, restriction is imposed upon the owners on enjoyment of the property in violation of the development plan/regional plan, as the case may be.

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24. It is apparent from the provisions contained in the 1973 Act the three different provisions for preparation of regional plan, development plan (master plan) and town development scheme. The regional plan is prepared by the State Government. The development plan is prepared as per the provisions contained in Chapter IV, Sections 13 to 19 and once development plan has been finalised, it is binding on the development authorities as well as the Municipal Corporation, Municipal Council and other local authorities functioning in the planning area. Town development scheme can be framed by the development authorities and it may declare its intention to do so with the prior approval of the State Government.

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32. In our considered opinion, it is clear that Section 305 deals with the power of Corporation to regulate line of buildings. If any part of the building falls within the regular line of a public street either existing or as determined for the future or beyond the front of immediately adjoining building, the Corporation may issue a notice either that part which is projecting or some portion of the part projecting, shall be removed or that when the building is rebuilt, the portion projecting shall be set back to and the portion of the land

> *added to the street by such "setting back or removal", shall henceforth be deemed to be part of the public street and shall vest in the Corporation.*
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> ****
>
> *56. ……. Various rights of ownership which ordinarily vest in an owner, are restricted by the regional plan, development plan or the town development scheme, as the case may be. User of the owner's land, property cannot be in derogation to any of them.* ***Development plan is binding upon the Corporation and local authorities and all concerned including the owners.*** *Though they can transfer the property but subject to such restrictions which the property will carry with it.* ***If the land falls in a regular line of public street, no construction can be raised, no projection can be made by owner whereas it can be removed or set back, as the case may be. In case acquisition is resorted to under Sections 78 and 79, public street can never be widened and the entire purpose of preparation of the development plan shall stand defeated.*** *"*

10. Interestingly, Rule 2(72) of the Bhumi Vikas Rules, 2012 also provides on the same lines as under:-

> *"(72)* *"street" means* *any means of access namely highway street, lane pathway, alley, stairway, passageway, carriageway, footway, square place or bridge, whether a thoroughfare or not over which the public have a right of passage or access****, or have had access uninterruptedly whether existing or proposed in any sanctioned plan or co-ordination plan or Development/ Zoning Plan and includes*** *all bunds, channels, ditches,*

storm water drains, culverts, sidewalks, traffic islands roadside trees and hedges retaining walls, fences barriers and railings within the street lines"

11. From the law laid down by the Apex Court and a purposeful reading of Rule 2(72) defining "*street*" it becomes crystal clear that if a piece of land, whether government, private or otherwise, is designated for a particular land use of road (either existing or proposed) then notwithstanding the land being recorded in revenue records under MPLRC as government land/nazul land, its land use shall have to be governed by the provision of the Master Plan and not in accordance with the land use given in the Revenue Records.

12. In this regard the Government of M.P. has also issued a circular dated 19.06.2013 being no. F-3/155/2013/32 wherein directions have been given that if a piece of land is actually used or is proposed in Master Plan as a street then it shall be treated to be a street and accordingly layouts shall be sanctioned by the T&C authorities.

13. In the light of the aforesaid settled position of law, argument of the Respondents in their respective returns that unless the land use of survey no. 43/1is shown as "*road/street*" in *Wazib-ul-Arz* U/s 242 of MPLRC, then it shall prevail over the master plan is not acceptable for the reason that Hon'ble Apex Court in the case of ***Ramkanya Bai V. Jagdish*** reported in ***2011 (4) MPLJ 298*** has clearly held in *Para 15* that *Wazib-ul-Arz* is the record of customs in a village with regards to easements, right to fishing in privately owned lands and water bodies and in section 242 (1) of MPLRC, the legislature has clearly spelt out that right of irrigation, way, easement and fishing should be in respect of

any land or water body "*not belonging to or controlled or managed by the State Govt. or a local authority*".

14. In view of the aforesaid position of law, if we consider the master plan of Ratlam (Annexure P/39) then it is clear that the survey no. 43/1 situated between Sailana over bridge and petitioners land is a part of street as per the Master Plan. This fact is also corroborated in clause 13 of the impugned order dated 26.10.2021 (Annexure P/37) which we shall reproduce in forthcoming paragraphs.

II. STATUTORY SANCTIONS OBTAINED BY THE PETITIONERS

15. The petitioners have produced along with the writ petition various sanctions granted by the authorities before the petitioners undertook and almost finished the development of their residential cum commercial building project named "*Dwarka*".

16. A brief reference and reproduction of material portions of statutory sanctions is apposite to be reproduced before we proceed to consider the effect of those statutory sanctions in this case.

(i) On 28/12/2018 the Tahsildar passed an order (*Annexure P/12*) based on the *Panchnama* report mentioning the boundaries and issued Nazul NOC on 14/01/2019 again mentioning boundaries (*Annexure P/13*).

(ii) On 21/02/2019 layout was sanctioned by *Annexure P/15* after spot inspection by Nihal Mujalde mentioning that on eastern side- "मार्ग स्थित होकर सैलाना ओवर ब्रिज स्थित है।"

Clause 5 provides as under:-

"म.प्र. शासन आवास एवं पर्यावरण मंत्रालय भोपाल के

आदेश क्र. एफ–3/155/2013/32/ भोपाल दिनांक 19/06/2013 एवं म.प्र. भूमि विकास नियम 2012 के नियम 2(72)के अनुसार विषयांकित भूमि तक यातायात संरचना को दृश्टिगत रखते हुए वर्तमान मे विद्यमान तथा किसी योजना मे प्रस्तावित मार्ग को नियम अनूसार मार्ग की परिमापित मानते हुए विकास की अनुज्ञा दिए जाने के निर्देश दिये गये है। तद्नुसार संलग्न स्थल मानचित्र में दर्शित प्रस्तावित अनुमोदित मार्गो से समन्वय किये जाने के प चात् नियम– 38 के प्रावधानों के अंतर्गत पहॅूच मार्ग निर्धारित चौडाई की उपलब्ध हो रही है। संलग्न मानचित्र अनुसार मार्ग की भूमि को यथावत् रखनी होगी तथा संमन्वित भी किया जाना होगा।"

(iii) On 25/05/2019 permission for development of colony (Annexure P/18) reads as under:-

"14. आवासीय बहुमंजिला भवन का विकास निर्माण कार्य प्रारंभ किये जाने के पूर्व प्रश्नाधीन भूमि सीमांकन राजस्व विभाग से कराया जाना अनिवार्य होगा नगर तथा ग्राम निवेश विभाग द्वारा अनुमोदित अभिन्यास के आसपास मार्गों पर विद्यमान मार्गो पर भवन/फ्लेट पर समस्त खुले क्षेत्रों पर के समस्त मार्गों की निरंतरता को समयोजित करना अनिवार्य होगा।"

III. EFFECT OF TWO PREVIOUS ENQUIRIES AND OUTCOME

17. One complaint was made by one Ashok Jain that petitioners are encroaching upon govt. land of survey no.43/1. The then Collector, Ratlam directed the SDO to hold an inquiry and submit a report. On 10.10.2019 a report was submitted by the SDO to the Collector (Annexure P/21). The relevant and important portion of the said factual report of the SDO is reproduced for ready reference:-

"राजस्व निरीक्षक नजूल द्वारा मौके पर अतिरिक्त भूमि

> 15276 वर्गफीट जो पूर्व से ही सर्वे क्रमांक 43/1 रकबा 1.710 हेक्ट मद शासकीय नजूल म.प्र. शासन दर्ज है। भूमिस्वामियों द्वारा स्वामित्व की भूमि पर विधिवत अनुमति प्राप्त कर निर्माण कार्य किया जा रहा है। मौके पर सर्वे नम्बर 43/1131 एवं चेतक ब्रिज के मध्य 15276 वर्गफीट भूमि जो कि सर्वे नम्बर 43/1 कि है, मौके पर रिक्त होकर रास्ते के उपयोग हेतु है जिसमें कोई निर्माण नहीं किया जा रहा है। शिकायत नस्तिबद्ध योग्य है।"

18. On 24.10.2019 the Collector concurred with the fact finding report of the SDO and forwarded his report to the State Govt. on 24.10.2019 (Annexure P/22) again mentioning as under:-

> "राजस्व निरीक्षक नजूल द्वारा मौके पर अतिरिक्त भूमि 15276 वर्गफीट जो पूर्व से ही सर्वे क्रमांक 43/1 रकबा 1.710 हेक्ट मद शासकीय नजूल म.प्र. शासन दर्ज है। भूमिस्वामियों द्वारा स्वामित्व की भूमि पर विधिवत अनुमति प्राप्त कर निर्माण कार्य किया जा रहा है। मौके पर सर्वे नम्बर 43/1131 एवं चेतक ब्रिज के मध्य 15276 वर्गफीट भूमि रिक्त होकर रास्ते के उपयोग हेतु है जिसमें कोई निर्माण नहीं किया जा रहा है। शिकायत नस्तिबद्ध योग्य है। प्राप्त प्रतिवेदन की छायाप्रति पत्र के संलग्न सादर प्रेषित।"

19. Again one Rajeev Rawat submitted a complaint and a 6 member committee of Municipal Corporation submitted a report to the Commissioner on 26.08.2020 (Annexure P/23) mentioning as under:-

> "उपरोक्त के साथ ही सर्वे क्रमांक 43/1131 तथा चेतक ब्रिज के मध्य 15276 वर्गफीट भूमि रिक्त रास्ते के उपयोग हेतू पाया गया तथा इस संपूर्ण भूमि के संबंध में की गई शिकायत को नस्तीबद्व योग्य पाया गया।"

Para 15 to 18 of this report neither found any encroachment nor any constructions against sanction was found.

20. From the position of law as discussed by us in Para 7 to 13 and the facts of statutory sanctions clearly establish that survey no. 43/1 area 15276 Sq ft is situated between Sailana over bridge and lands of the

petitioner, and although such land is recorded in revenue record as Government/Nazul land, however its land use is of a street/road as per the Master Plan of Ratlam (Annexure P/39) and as proposed in draft Master Plan 2035 (Annexure P/40).

IV. EX-PARTE PROCEEDINGS AGAINST THE PETITIONERS AND ITS EFFECT

21. A perusal of *ex-parte* report dated 24.08.2021 (Annexure P/24) shows that the Collector Ratlam by his order no. 2625/colony cell/2021 dated 09.08.2021 constituted a committee of Commissioner Municipal Corporation, SDO Ratlam and Deputy Director T&C and referred two questions to the said committee, which are as under:-

> "i. Whether Municipal Corporation and T&C have extended undue benefit to the petitioner by treating Govt land as a road/street?
>
> ii. Survey No. 43/1 is a govt. land then under which order the coloniser has constructed a CC Road?

22. Learned Senior Counsel for the petitioners has seriously raised an issue that under the Adhiniyam, 1973 and Rules made there under, including Bhumi Vikas Rules, the Collector is neither an appellate nor a revisional nor a superior authority conferred with any jurisdiction to examine the validity of statutory sanctions such as layout sanctions and building permissions. To support this submission Learned Senior Counsel relied on judgment of Hon'ble Apex Court in the case ***Manoharlal V. Urgasen (2010) 11 SCC 557***.

23. *Per Contra*, learned counsel for the respondents have supported the action of the Collector on the footing that Collector being the

principal head of District Administration enjoys such powers over all administratively subordinate officers. On this basis it was submitted that the action of the Collector in constituting the committee is justified including all consequential actions.

24. A perusal of the judgment of the Apex Court in ***Manoharlal (Supra)*** shows that Hon'ble Apex Court has taken a consistent view that unless a special statute confers power upon any authority merely because the said authority is superior in the hierarchy, such superior authority shall not have jurisdiction unless sanctioned by the statute. In this regard observations of the Apex Court are apt to be quoted:-

> ***"12. In Rakesh Ranjan Verma v. State of Bihar [1992 Supp (2) SCC 343 : 1992 SCC (L&S) 866 : (1992) 21 ATC 521 : AIR 1992 SC 1348]*** *the question arose as to whether the State Government, in exercise of its statutory powers could issue any direction to the Electricity Board in respect of appointment of its officers and employees. After examining the statutory provisions, the Court came to the conclusion that the State Government could only take the policy decisions as to how the Board will carry out its functions under the Act. So far as the directions issued in respect of appointment of its officers was concerned, it fell within the exclusive domain of the Board and the State Government had no competence to issue any such direction. The said judgment has been approved and followed by this Court in U.P. SEB v. Ram Autar [(1996) 8 SCC 506 : 1996 SCC (L&S) 1023] .*
>
> ***13. In Bangalore Development Authority v. R. Hanumaiah [(2005) 12 SCC 508]*** *this Court held that the power of the*

Government under Section 65 of the Bangalore Development Authority Act, 1976 was not unrestricted and the directions which could be issued were those which were to carry out the objective of the Act and not those which are contrary to the Act and further held that the directions issued by the Chief Minister to release the lands were destructive of the purposes of the Act and the purposes for which BDA was created.

14. In Bangalore Medical Trust v. B.S. Muddappa [(1991) 4 SCC 54 : AIR 1991 SC 1902] *this Court considered the provisions of a similar Actnamely, the Bangalore Development Authority Act, 1976 containing a similar provision and held that the Government was competent only to give such directions to the Authority as were in its opinion necessary or expedient and for carrying out the purposes of the Act. The Government could not have issued any other direction for the reason that the Government had not been conferred upon unfettered powers in this regard. The object of the direction must be only to carry out the object of the Act and only such directions as were reasonably necessary or expedient for carrying out the object of the enactment were contemplated under the Act. Any other direction not covered by such powers was illegal.*

15. In Poonam Verma v. DDA [(2007) 13 SCC 154 : AIR 2008 SC 870] *a similar view has been reiterated by this Court dealing with the provisions of the Delhi Development Authority Act, 1957. In the said case, the Central Government had issued a direction to make allotment of flat out of turn. The Court*

held as under : (SCC pp. 160-61, paras 13 & 15)

> *"13. ... Section 41 of the Act, only envisages that the respondent would carry out such directions that may be issued by the Central Government from time to time for the efficient administration of the Act. The same does not take within its fold an order which can be passed by the Central Government in the matter of allotment of flats by the Authority. Section 41 speaks about policy decision. Any direction issued must have a nexus with the efficient administration of the Act. It has nothing to do with carrying out of the plans of the authority in respect of a particular scheme.*
>
> ***
>
> *15. Evidently, the Central Government had no say in the matter either on its own or under the Act. In terms of the brochure, Section 41 of the Act does not clothe any jurisdiction upon the Central Government to issue such a direction."*

16. ***In State of U.P. v. Neeraj Awasthi [(2006) 1 SCC 667 : 2006 SCC (L&S) 190]*** *this Court held as follows in the context of government directions : (SCC p. 683, para 41)*

> *"41. Such a decision on the part of the State Government must be taken in terms of the constitutional scheme i.e. upon compliance with the requirement of Article 162 read with Article 166 of the Constitution of*

India. In the instant case, the directions were purported to have been issued by an officer of the State. Such directions were not shown to have been issued pursuant to any decision taken by a competent authority in terms of the Rules of Executive Business of the State framed under Article 166 of the Constitution of India."

17. In Purtabpore Co. Ltd. v. Cane Commr. of Bihar [(1969) 1 SCC 308 : AIR 1970 SC 1896] *this Court has observed : (SCC p. 315, paras 11-12)*

"11. ... The power exercisable by the Cane Commissioner under Clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone—not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognised by Clause 6 read with Clause 11 but the responsibility for making those orders was asked to be taken by the Cane Commissioner.

12. The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy

of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior."

18. In Chandrika Jha v. State of Bihar [(1984) 2 SCC 41 : AIR 1984 SC 322] *this Court while dealing with the provisions of the Bihar and Orissa Cooperative Societies Act, 1935, held as under : (SCC p. 48, para 13)*

"13. The action of the then Chief Minister cannot also be supported by the terms of Section 65-A of the Act which essentially confers revisional power on the State Government. There was no proceeding pending before the Registrar in relation to any of the matters specified in Section 65-A of the Act nor had the Registrar passed any order in respect thereto. In the absence of any such proceeding or such order, there was no occasion for the State Government to invoke its powers under Section 65-A of the Act. In our opinion, the State Government cannot for itself exercise the statutory functions of the Registrar under the Act or the Rules."

19. In Anirudhsinhji Karansinhji Jadeja v. State of Gujarat [(1995) 5 SCC 302 : 1995 SCC (Cri) 902 : AIR 1995 SC 2390] *it was observed : (SCC p. 307, para 11)*

> *"11. ... This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether."*
>
> *(emphasis added)*

20. In K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] *this Court has delineated the functions of the State Government and the Development Authority, observing that : (SCC pp. 596-97, paras 59-60 & 62-63)*

> *"59. Both the State and JDA have been assigned specific functions under the statute. JDA was constituted for a specific purpose. It could not take action contrary to the scheme framed by it nor take any action which could defeat such purpose. The State could not have interfered with the day-to-day functioning of a statutory authority. Section 72 of the 1973 Act authorises the State to exercise superintendence and control over the acts and proceedings of the officers appointed under Section 3 and the authorities constituted under the Act but thereby the State cannot usurp the jurisdiction of the Board itself. The Act does not contemplate any independent function by the State except as*

specifically provided therein.

60. ... the State in exercise of its executive power could not have directed that lands meant for use for commercial purposes may be used for industrial purposes.

62. ... the power of the State Government to issue direction to the officers appointed under Section 3 and the authorities constituted under the Act is confined only to matters of policy and not any other. Such matters of policy yet again must be in relation to discharge of duties by the officers of the authority and not in derogation thereof.

63. ... The direction of the Chief Minister being dehors the provisions of the Act is void and of no effect."

21. In Municipal Corpn. v. Niyamatullah [(1969) 2 SCC 551 : AIR 1971 SC 97] *this Court considered a case of dismissal of an employee by an authority other than the authority competent to pass such an order i.e. the Municipal Commissioner, the order was held to be without jurisdiction and thus could be termed to have been passed under the relevant Act. This Court held that : (SCC p. 554, para 12)*

"12. ... To such a case, the statute under which action was purported to be taken could afford no protection."

22. In Tarlochan Dev Sharma v. State of Punjab [(2001) 6 SCC 260] *this Court, after placing reliance upon a large number of its*

earlier judgments, observed as under : (SCC p. 273, para 16)

> *"16. In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior."*
>
> *(emphasis added)*

23. Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the statutory authority and passes an

order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act."

25. In view of the law laid down by Hon'ble Apex Court in in ***Manoharlal (Supra)***, this court is of the considered opinion that Collector Ratlam had no jurisdiction to constitute a committee to examine the validity of layout sanction and building permission and the exercise undertaken by the Collector as reflected from the report (Annexure P/24) clearly falls in the realm of "*legal malice/malice in law*" i.e. something done without lawful excuse. Hon'ble Apex Court in the case of ***State of A.P. V. Goverdhanlal Pitti (2003) 4 SCC 739*** has held that if an act is done wrongfully, willfully without reasonable or probable cause, although not necessarily from ill feeling or spite, such an act in disregard to the rights of others clearly constitutes malice in law. It is further held that where malice is attributed to state authority it is not a case of personal ill will or personal spite on the part of the state rather it is a malice in legal sense which can be described as an act which is taken with an oblique or indirect object. It is further held that if the state action is not taken bonafide under due sanction law it can be a case of legal malice. In the case of ***Punjab State Electricity Board V. Zora Singh (2005) 6 SCC 776*** it is held in Para 41 by the Apex Court that when a person inflicts injury upon another in contravention of law, the person inflicting the injury cannot be allowed to say that he did so with an innocent mind, rather he is taken to know the law and he must act within the law otherwise he is guilty of malice in law because he may have acted ignorantly and even innocently. Again, in the case of ***Somesh Tiwari (supra) (2009) 2 SCC 592*** in Para 16 the aforesaid

principles have been reiterated. Learned Counsel for the Respondents could not show us any provision either in T&C Adhiniyam, Municipal Corporation Act and Rules made there under which confer such jurisdiction upon the collector to re-open statutory sanctions of layout and building permission especially when such sanctions were upheld in two previous enquiries.

26. In this view of the matter we hold that constitution of the committee by the Collector on 09.08.2021 is without jurisdiction and suffers with malice in law and hence all the subsequent actions based upon the report of the committee are also liable to be held to be illegal as it is a settled legal proposition of law that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. Legal maxim "*sublato fundamento cadit opus*" which means that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case. Also, once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally. It is also a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then

all further proceedings consequent thereto will be *non est* and have to be necessarily set aside. (***Vide State of Punjab Vs, Debender Pal Singh 2011 (14) S.C.C 770, Badrinath v. State of Tamil Nadu & Ors., AIR 2000 SC 3243; State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr., (2001) 10 SCC 191 and State of Orissa & Others Vs. Mamata Mohanty, (2011) 3 SCC 456.)***

27. The matter did not rest at constitution of the committee but the committee at the dictate of the Collector submitted an *ex-parte* inquiry report on 24.08.2021 (Annexure P/24) without affording any opportunity to the petitioners to explain. A perusal of this report shows that the petitioners have not raised any construction on 8950 Sq.ft. out of 15276 Sq ft of survey no. 43/1 except to construct a CC road. In our considered opinion, if a portion of government land actually used and proposed as a road/street exists as "*a kaccha road*" then laying down a "*pucca/CC road*" thereupon does not amount to an encroachment. Based on ex-parte report of the committee the Collector registered a *case no. 24/B-121/21-22* and passed an *ex-parte* order dated 11.12.2021 (Annexure P/27) and held that road can be constructed on a government land only and only if "*it is recorded as a public road in revenue records*". To say the least, such an understanding of legal position is totally unwarranted and beyond the comprehension of a prudent and experienced Administrative Officer who does not understand the implication and binding nature of Master Plan on all lands including private, Government, or otherwise. Based on such a misconceived understanding of law, the Collector proceeded further and directed the T&C department and Municipal Corporation to revoke the permissions

after examination. Not only this but the collector also directed that disciplinary proceeding be initiated against all erring officials with a further direction to produce such report regarding departmental proceedings within 15 days. However, the pleading and documents produced by the respondents does not show that any such action was taken against any erring officers rather the entire wrath fell upon the project of the petitioners in as much as following the mandate of the Collector; on 21.10.2021 the Municipal Commissioner revoked the building permission vide Annexure P/29 clearly mentioning only one reason that the name of petitioners with regards to their subject lands was not mutated in the municipal records, although as pleaded by the petitioners in Para 5.36(a) of the petition *Appendix A-2* referable to Rule 14 of BVR, 2012 does not refer to Municipal Mutation as a pre-requisite for seeking building permission. In this view of the matter, the order dated 21.10.2021Annexure P/29 is clearly beyond the jurisdiction contemplated by Rule 25 of BVR, 2012 which provided that a building permission can be revoked if it is obtained by *mis-representation of a material fact* OR *concealment of a material fact* OR *for violation of terms of the building permission*. None of these three jurisdictional ingredients provided by statutory Rule 25 of BVR Rules, 2012 are satisfied in the case at hand as there is no discussion much less a finding regarding these necessary jurisdictional facts. Thus, the order Annexure P/29 is wholly without jurisdiction.

V. THE REMEDY OF APPEAL UNDER RULE 25-A AND NOTIFICATION DATED 29.01.2001 (ANNEXURE P/31):-

28. Learned counsel for respondents forcefully argued regarding

remedy of appeal under Rule 25-A of BVR read with section 31. On behalf of the petitioners it was submitted that issuance of a Notification is a legislative function as held by the Apex Court in ***Video Electronics Pvt. Ltd. V. State of Punjab (1990) 3 SCC 87***. It was further submitted that unless the Adhiniyam, 1973 or the M.P Town and Country Planning Rules, 2012 or BVR, 2012 contain an enabling provision conferring power upon the state govt. to issue a notification, it cannot be issued in vaccum in absence of a statutory enabling provision. It was further submitted that section 31 provides for an appeal against "*conditional grant*" or "*refusal*" of layout by the competent authority to an authority "*as may be prescribed*". The word "*prescribed*" means "*prescribed by Rules*" as per section 2 (32) of the M.P. General Clauses Act, 1957. According to the petitioners M.P Town and Country Planning Rules, 2012 were framed in accordance with section 85(2)(X) but Rule 23 omitted to prescribe the authority to whom appeal would lie U/s 31.

29. The Learned counsel for respondent No. 4 relied upon the decision in ***BSNL (Supra)***; ***Surendra Singh (Supra)***;***S. Srinivasan (Supra)*** and ***Orissa State (Prevention and Control of Pollution) Board (Supra)***. The decisions cited by the learned counsel for Respondent no. 4 in the case of ***BSNL (supra)*** is totally out of place. Similarly, the decision in the case of ***Surendra Singh (Supra)*** only lays down that when a statute is silent regarding a particular subject then executive instructions can be issued to fill in the gap. This decision cannot be relied upon to hold that a notification can be issued without any enabling statutory provision in exercise of administrative and executive power. The decision in the case of ***Orissa State (Prevention and***

Control of Pollution) Board (Supra) is distinguishable as in *Para 11* of the said judgments it was noted that section 19 of the concerned statute conferred enabling power of issuing notification. Likewise, the decision in the case of ***Power Machines India Ltd. (Supra)*** also is out of context as in that case the Apex Court was considering the inter-play between Arbitration and Conciliation Act, 1996 and MSME Act.

30. During the course of hearing, we pointedly invited the attention of the learned counsel for Respondents to point out any enabling provision in Adhiniyam, 1973 or Rules made there under to issue notification. However, the learned counsel for Respondents could not point out any express enabling statutory provision either in the Adhiniyam or in the Rules conferring upon the Govt. any enabling power to issue any notification for appointing an appellate authority for the purposes of section 31. In this view of the matter the notification dated 29.01.2021 (Annexure P/31) appears to have been issued without a statutory sanction and as such is unsustainable in law.

VI. VIRES OF RULE 25-A

31. Although the learned senior counsel for the petitioners had forcefully argued regarding constitutional invalidity of Rule 25-A on the ground that since Rule 25-A is a subordinate legislation framed under section 24(3) and section 85 of the M.P Town and Country Planning Act, 1973 but the true purport of the Rule enlarges the scope of section 31 in as much as section 31 of the Act does not provide for an appeal against revocation of building permission. In essence the Learned senior counsel submitted that whenever a subordinate legislation is in excess of the parent statute and it does not conform to the statute under which it is

made then it is arbitrary hence violative of Article 14 of the Constitution of India, therefore, ultra-vires. In support of this submission the petitioners relied upon ***Indian Express News Papers V. UOI (1985) 1 SCC 641*** reiterated by a Constitution Bench decision in ***Shayara Bano V. UOI (2017) 9 SCC 1***.

32. The Learned counsel for respondents opposed the arguments of Senior Counsel challenging the vires of Rule 25-A but for the reasons stated hereinafter we do not deem it fit to decide the said question rather we leave it open to be decided in future, if the occasion so arises.

33. We are not dealing with the constitutional validity of Rule 25-A in this petition because in Para 20 to 26 above, we have already held that the entire exercise of constituting the committee by the Collector and all consequential actions to be unsustainable. We have already decided in Para 27 to 29 above that the notification dated 29.01.2001 (Annexure P/31) is not sustainable for want of sanction of an enabling statutory provision. In view of these findings, since the remedy of appeal is found to be not a bar in the facts of this case. For the aforesaid reasons, therefore, in absence of a validly prescribed appellate authority the petitioners do not have any remedy under Rule 25-A against revocation of building permission (Annexure P/29).In these peculiar facts and circumstances, we leave the question of constitutional validity of Rule 25-A of Bhumi Vikas Rules, 2012 open in view of findings reached by us hereinabove.

34. In view of the foregoing discussion, this petition deserves to be allowed and is hereby **allowed**.

35. *Ex Consequenti*, we hereby grant following reliefs to the

petitioners:-

i. Notification dated 29.01.2001 (Annexure P/31) nominating the Divisional Commissioner as *Ex-officio* appellate authority under section 31 of the T&C Adhiniyam, 1973 is declared to be invalid, illegal and inoperative for want of enabling statutory provision; and it is consequently quashed.

ii. The *ex-parte* inquiry report by the committee dated 24.08.2021 (Annexure P/24); ex-parte order of the Collector dated 11.10.2021 (Annexure P/27); cancellation of building permission by Municipal Corporation Ratlam dated 21.10.2021 (Annexure P/29); cancellation of Nazul NOC dated 25.10.2021 (Annexure P/36); cancellation of sanctioned layout by T&C Department dated 26.10.2021 (Annexure P/37) and demand notice of 2,40,000/- as demolition charges of RCC road dated 26.10.2021 (Annexure P/38) are also hereby **quashed**.

i. The Nazul NOC dated 14.01.2019 (Annexure P/13), layout sanction permission dated 21.02.2019 (Annexure P/15), colony development permission dated 25.05.2019 (Annexure P/18) and building permission dated 14.10.2019 (Annexure P/19) are restored with a direction to the petitioners to complete the development in accordance with the statutory sanctions.

36. No order as to cost.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(GAJENDRA SINGH)
JUDGE

Shanu