



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9218 OF 2025

- | | | |
|-----------------------------------|---|-------------|
| 1. Nikhil Vithal Jhaveri | } | |
| Adult/53 years, Indian Inhabitant | } | |
| through Mr. Ashok Becharay, | } | |
| Power of Attorney Holder, | } | |
| Bahar, 25 Vishwamitra Colony, | } | |
| Off. Law College Road, Pune | } | |
| Maharashtra – 411004 | } | |
| 2. Kirti V. Jhaveri alias | } | |
| Adult/63 years, Indian Inhabitant | } | |
| through Mr. Ashok Beharay | } | |
| Power of Attorney Holder, | } | |
| Bahar, 25 Vishwamitra Colony, | } | |
| Off. Law College Road, Pune | } | |
| Maharashtra – 411004 | } | Petitioners |

Versus

- | | | |
|---|---|-------------|
| 1. Chief Executive Officer, | } | |
| Pune Cantonment Board, | } | |
| Golibar Maidan, Pune 411 001 | } | |
| 2. Defense Estate Office, Pune Circle, | } | |
| Pune, B No.16, Rajendrasinghi | } | |
| Road, Pune 411001 Maharashtra | } | |
| 3. General Officer Commanding-in-Chief | } | |
| (GOC-in-C) of the Headquarters Sub | } | |
| Area (HQSC), Pune Cantonment Board, | } | |
| Head Quarters, Southern Command, | } | |
| Pune 411001 | } | |
| 4. Principal Director, Defense Estates, | } | |
| Pune Cantonment Board, | } | |
| Southern Command, Pune 411001 | } | Respondents |

WITH
WRIT PETITION NO. 9220 OF 2025

Mamta Jain }
Age 52 years, Indian Inhabitant }
11, Napier Road, Near Pulgate Bus Stop, }
Camp, Pune 411 001 } Petitioner

Versus

1. Chief Executive Officer, }
Pune Cantonment Board, }
Golibar Maidan, Pune 411 001 }
}
2. Defense Estate Office, Pune Circle, }
Pune, B No.16, Rajendrasinghi }
Road, Pune 411001 Maharashtra }
}
3. General Officer Commanding-in-Chief }
(GOC-in-C) of the Headquarters Sub }
Area (HQSC), Pune Cantonment Board, }
Head Quarters, Southern Command, }
Pune 411001 }
}
4. Principal Director, Defense Estates, }
Pune Cantonment Board, }
Southern Command, Pune 411001 } Respondents

Dr. Birendra Saraf, Senior Advocate with Mr. Bhushan Deshmukh, Mr. Abinash Pradhan, Ms. Garima Agrawal and Mr. Yash Dedhia i/b. Wadia Ghandy & Co., for the Petitioners in both Petitions.

Mr. K. J. Presswalla with Mr. Tushad Kakalia and Mr. Sandeep Goyal i/b. Mulla & Mulla & Craigie Blunt & Caroe, for Respondent No. 1.

Mr. A. S. Khandeparkar, Senior Advocate with Ms. Shehnaz V. Bharucha and Mr. Mohamedali M. Chunawalla, for Respondent Nos. 2, 3 & 4.

Captain Harkaran Singh, Officer present.

**CORAM : RAVINDRA V. GHUGE, ACJ. &
GAUTAM A. ANKHAD, J.**

**RESERVED ON : 2nd SEPTEMBER, 2026
PRONOUNCED ON : 7th SEPTEMBER, 2026**

JUDGMENT : (Per, Ravindra V. Ghuge, ACJ.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioners in Writ Petition No.9218 of 2025 have put-forth the following prayers: -

“a) *that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and proceedings culminating into the issuance of the Impugned Communication dated 20th March 2025 (Exhibit 'A' hereto) by which Respondents have purported to reject the Petitioners' application dated 10th July 2020 (Exhibit 'T' hereto) for planning permission and after going through the legality, validity and proprietary thereof, quash and set aside the same;*

b) *that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to forthwith sanction the plans for proposed construction on the subject Land in terms of the Petitioners' application dated 10th July 2020 (Exhibit 'T' hereto) by taking into consideration only the town planning norms;”*

3. The Petitioner in Writ Petition No.9220 of 2025 has put-forth the following prayers: -

- “a) that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and proceedings culminating into the issuance of the Impugned Communication dated 20th March 2025 (Exhibit 'A' hereto) by which Respondents have purported to reject the Petitioner's application dated 13th September 2022 (Exhibit 'F' hereto) for planning permission and after going through the legality, validity and propriety thereof, quash and set aside the same;*
- b) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to forthwith sanction the plans for proposed construction on the subject Land in terms of the Petitioner's application dated 13th September 2022 (Exhibit 'F' hereto) by taking into consideration only the town planning norms;”*

4. The dates and sequence of events in the first Petition no. **9218 Of 2025** (Nikhil Vithal Jhaveri and Ms. Kirti V. Jhaveri), are summarized as under: -

- a) By and under an Indenture of Lease dated 31.01.1944, executed between the then President of India (Lessor) and Mr. Khan Saheb M.H. Moledina (Lessee), Khan Saheb was granted lease of the land admeasuring 3.10 acres situated at Poona Cantonment, which is recorded in the General Land Register of the Cantonment bearing Survey No.30, Bungalow No.5, Queens Garden (Larger Land) for a period of 30 years, and renewable upto a period of 90 years.

- b) The yearly rent was Re. 1/-, which was renewable for a period of 90 years (Head Lease).
- c) Under the Head Lease, the lessee could not erect any building on any part of the Larger Land, except the existing building, without the previous consent of the Officer Commander-in-Chief. The said parcel of land should not be used for any purpose other than for a dwelling house.
- d) On 23.03.1944, Khan Saheb transferred his leasehold rights in the Larger Land to H.H. Maharani Chimnabai Gaekwad of Baroda (the Maharani).
- e) After the demise of the Maharani, intestate, Letters of Administration were granted to Prince Khanderao Raje Gaekwad and Princess Usha Raje Ranisaheb, (Administrators) by the Hon'ble High Court, on 20.03.1959, to administer all assets and property of the late Maharani.
- f) On 29.09.1962, the Administrators sold the leasehold rights of the Larger Land to Shri Tulsidas Chaturbhuj Gandhi.

g) Under the orders of this Court, a Deed of Assignment dated 15.07.1963 was executed by the Administrators for the transfer of leasehold rights in the Larger Land in favour of the nominees of Shri Tulsidas, viz. Mrs. Madhukanta Tulsidas Gandhi, Mr. Vishnu Gopal Kanetkar and Mrs. Usha D. Sathe.

h) By a judgment and decree dated 24.10.1972, delivered in a Suit filed by Vishnu Gopal Kanetkar for partition of the Larger Land, the said land was sub-divided into four plots which were numbered as 5-A, 5-B, 5-C and 5-D, each admeasuring 0.725 Acre. The Plot No. 5-B came to the share of Vishnu Gopal Kanetkar.

i) On 22.08.1974, Vishnu Gopal Kanetkar sold his leasehold rights on Plot No.5-B, to Mrs. Charulata Jhaveri.

j) On 03.07.1976, the lease of the Larger Land was renewed for a second term of 30 years from 01.12.1973 to 30.11.2003.

k) On 22.04.1993, the Government of India sanctioned the sub-

division of the Larger Land into four parts, 5-A to 5-D, on the following conditions:

“i) That the then lessees of the sub-divided plots of the Larger Land will surrender their then existing lease to the Government of India;

ii) That the then lessees of the sub-divided plots of the Larger Land will enter into four separate lease deeds for the unexpired portion of the surrendered lease;

iii) No building/structure to be constructed on the sub-divided premises without prior sanction of the GOC-in-Chief of the Command.”

l) After the death of Mrs. Charulata Jhaveri in 1992, by virtue of her bequest, the Petitioners became the owners of the leasehold rights of the subject land.

m) On 13.11.1993, the Petitioners executed a Surrender Deed in favour of the President of India, thereby surrendering their leasehold rights in the subject land in favour of the President of India.

n) On 13.11.1993, the President of India simultaneously executed a Lease Deed in favour of the Petitioners for renewal of the lease of the subject land for a period of 10 years from 01.11.1993 till 30.11.2003.

- o) On 19.04.2006, the Petitioners, through their Power of Attorney Holder, requested the Defence Estate Officer/Respondent No.2, for renewal of the lease for a further term of 30 years, till 2033. The Petitioners also conveyed through the same letter that they desired to undertake construction for residential purpose on the subject land for which, building plans were under preparation and were planned to be submitted shortly.
- p) After several reminders to the Defence Estate Office, on 18.05.2007, the President of India renewed the lease for the last term of 30 years (the last portion of the 90 years lease), from 01.12.2003 to 30.11.2033.
- q) On 26.06.2007, the Petitioners addressed a letter to the Director General, Director of Defence Estates, seeking permission to construct two buildings comprising of four dwelling units on the subject land. A reminder was sent on 05.10.2007. One more letter was issued on 19.11.2007, seeking permission to construct two residential structures as per FSI Rules and Building Bye-laws. Despite several reminders, there was no response.
- r) On 10.07.2020, the Petitioners submitted another Application along with the plan for construction of a residential bungalow consisting of a ground floor, under Section 235 of the Cantonments Act, 2006.

s) One more letter was sent by the Petitioners on 07.09.2020 confirming to Respondent No.2 that they are aware of the lease on the subject land which would expire on 30.11.2033, and yet they would like to continue to build their home, at the earliest.

t) On 09.09.2020, Respondent No.2 responded to the Application of the Petitioners stating that their request was under consideration with the Principal Director, Defence Estates, Southern Command, Pune and sought certain clarifications, as follows:

“You have informed that the building plan has been submitted by POAH Sh Ashok S. Beharay. It is requested to examine the POA and ascertain whether it is operative as on date and whether Sh. Ashok S. Beharay is authorized to submit the building plan. A copy of POA along with your recommendations may be submitted.”

t is also requested to ascertain whether the lessee(s) are alive and they may be informed that the lease renewed for last and final term of 30 years in possession of the land will be taken over by the Govt. on 01.12.2033. As such, whether they are still willing to invest for construction on Govt. land merely for remaining 13 years.”

u) On 15.09.2020, the Petitioners submitted an affidavit declaring and confirming that the POA was still valid and the Petitioners desired to build a home at the earliest, in full compliance of all conditions of the Defence Estate Office, applicable at the time of the expiry of lease.

v) On 15.02.2023, the Petitioners addressed a letter to the Minister of State for Defence praying for permission to construct the residential bungalow.

w) In October, 2024, as Respondent No.2 failed to provide any response to the Petitioners' Application, Petitioner No.1 filed a Writ Petition (C) No.15364 of 2024 before the Delhi High Court.

x) On 20.03.2025, Respondent No.1 issued the impugned communication informing the Petitioners that the Application dated 10.07.2020 was rejected vide communication dated 27.01.2025. The endorsement is that '*An objection is raised on behalf of Government under Section 238(3) of the CA 2006 to proposed constructions*'.

5. In the second **Writ Petition No. 9220 of 2025** (Mrs. Mamta Jain), the dates and events are more or less similar. As such, the distinct dates and events in this case, in addition to the entire history from 1944 recorded herein above with reference to the first Writ Petition, read as under:-

(a) The subject land Plot No.5-A was allotted by Vishnu Gopal Kanetkar to Mrs. Madhukanta Tulsidas Gandhi.

(b) Mrs. Madhukanta expired on 02.07.2005, leaving behind a last Will and Testament dated 11.11.1991, under which all her rights, claims and interests in the subject land were bequeathed to Mr. Chirag Gandhi.

(c) Between 2012 to 2022, Chirag Gandhi (Predecessor-in-title of the Petitioner) also sent several letters to the concerned authorities for renewal of lease.

(d) Akin to the facts as narrated herein above with reference to the first Petition, the President of India granted a lease in favour of Chirag Gandhi for a period of 30 years, until 30.11.2033.

(e) On 20.03.2025, after a period of two and half years, the Petitioner's Application dated 13.09.2022 was rejected by the authorities by order dated 06.03.2025.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

6. The learned Senior Advocate, Dr. Birendra Saraf, has tendered his written notes of submissions. The salient features of his oral and written submissions are as under: -

7. **Re: Maintainability**

a) The contention regarding alternate remedy is baseless and has no merit for the mere fact that admittedly, the Impugned Communication has been issued by Respondent No. 1 solely on the basis of the aforesaid purported 6th March 2025 order and 13th March Letter. Thus, when Respondent No. 3, who is the Appellate Authority under the Cantonments Act, has already made up its mind and refused to grant consent qua the Petitioner's Application under its 6th March 2025 order, no fruitful purpose would be served by relegating the Petitioner to avail the alternate remedy and it would be an empty formality. Thus, this statutory appeal provision, however, is not efficacious and is rather redundant [Para 31/Pg. 22].

b) Even otherwise, the availability of an alternative remedy is a self-imposed restriction and does not operate as an absolute bar to the 'maintainability' of a Writ Petition under Article 226 of the Constitution of India before this Hon'ble Court. The power to issue prerogative Writs under Article 226, is plenary in nature. Article 226 does not cast any fetters on

High Courts whilst exercising their power to issue Writs, and the mere fact that the Petitioners have not pursued an alternative and/or efficacious remedy, cannot mechanically be construed as a ground for dismissal. The rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion, rather than a rule of law.

c) Following the principles laid down in **Whirlpool Corporation v. Registrar of Trademarks, Mumbai & Ors.**, (1998) 8 SCC 1, where a Writ Petition seeks enforcement of any of the fundamental rights or where there is a violation of principles of natural justice, as is in the facts of the present case, a Writ Petition is certainly maintainable and ought to be entertained.

8. **Re: Legality of the alleged Reasons**

a. The alleged Reasons contained in the collateral 6th March 202 Letter, are extraneous to Section 238 (4) of the Cantonment Act. None of the reasons mentioned in the purported 6th March 2025 order, fall under any of the grounds contained in Section 238 of the Cantonment Act.

b. Respondent No. 3 has provided the alleged Reasons

(under its 6th March 2025 order) after an inordinate and unexplained delay of 2.5 years from the Petitioner's Application dated 13.09.2022, and the same has been disclosed to the Petitioner for the very first time only through the said Reply, thereby clearly demonstrating the arbitrary and unfair conduct of Respondent No. 3. The Respondents cannot be allowed to take advantage of their own wrong.

c. Even otherwise, the reasons for which Respondent No. 3 has 'not consented' to the Petitioner's Application for construction of a residential bungalow on the subject Land for her personal use, are ex facie illegal, arbitrary, unjust, untenable, unreasonable and mala fide. The alleged Reasons are wholly irrelevant and / or have no causal connection to the purposes for which Respondent No. 3's consent is required

d. Admittedly, the lease of the subject Land in favour of the Petitioner is subsisting as on date and is valid till 30.11.2033. The lease contemplates erection of building on the subject Land. Moreover, Petitioner's Application is in conformity with the terms and conditions of the Head Lease and the applicable building regulations. Neither the 6th March 2025 order/13 March Letter nor the said Affidavit even remotely state that the Petitioner's Application is faulty, defective and/or in breach/violation of the Head Lease

and the applicable building regulations. Given this, there is absolutely no reason for the Respondents to reject the Petitioner's Application and not grant sanction thereof

e. In such circumstances, merely because the lease expires on 30.11.2033 and granting building permission would purportedly jeopardise the Respondents' efforts to determine the subject Land, and that the resumption process post construction would entail paying the escalated costs of the building which would allegedly be a colossal loss to the exchequer, cannot be a valid reason for the Respondents to reject the proposal of the Petitioner. Seven years prior to the scheduled expiry of lease, the Respondents cannot refuse permission to the Petitioner on the basis of any pre-emptive unreasonable grounds and withhold consent when there is a valid, binding and subsisting lease in favour of the Petitioner.

f. The Petitioner in the captioned Petition has already given an undertaking on oath that the Petitioner undertakes to comply with all legal consequences upon the expiry of the lease and abide by the applicable laws in that regard. In view thereof, the Respondents' aforesaid apprehension/contention stands adequately safeguarded and addressed. Accordingly, the Petitioner's undertaking to this Hon'ble Court is sufficient

and complete protection, and no further objection and/or reservation survives on that count [Ground M/Pg. 18].

g. The Respondents cannot be permitted to deprive/defeat the valuable rights of the Petitioner in such a circuitous manner, and frustrate the Petitioner's valid, subsisting and binding lease in respect of the subject Land and present the Petitioner with a '*fait accompli*'. The Respondents cannot be permitted to be derelict in their statutory duties and act in a mala fide manner in this fashion.

h. Respondent No. 1 has granted permission to the lessee of Plot No. 5-D, Survey No. 30/4 for construction of a building consisting of 2 residential bungalows. The said plot and the said Land are a part of the same layout, and the lease for both the plots would expire on 30.11.2033. Respondent No. 1 has sought to single out the Petitioner and rejected the application without any reason. The same is in violation of Article 14 of Constitution (Ground B/Pg. 14).

9. In addition to the above grounds, the Petitioners in both these Petitions have given certain undertakings thereby agreeing to bind themselves to such conditions which were stated before this Court and which

were recorded in the order dated 20.01.2026, which are reproduced hereunder: -

“a. The construction, if permitted, shall be used only as a home by the Petitioners for personal residential purposes.

b. The bungalows shall not be apartments or a multi-storeyed high-rise cluster of flats.

c. No third party rights or encumbrances would be created on such bungalows.

d. These bungalows would not be used for commercial purposes.

e. The Petitioners would enjoy the said bungalow property as a family-dwelling.

f. If the lease is not extended after 2033 and the property vests in the Government, the Petitioners shall not claim ex gratia compensation as provided under Clause 2(II)(a) of the Land Policy in Cantonments.

g. If the building is permitted to be constructed, it will enable the parties to at least enjoy their newly constructed homes for around 8 years, the Petitioners would abide by the policy as may be applicable in 2033 with regard to vesting of the bungalow either with the Government or if the authorities insists.

h. If the Petitioners are aggrieved by non-continuation of the lease and if the Petitioners have any right to assail such a decision, the same would be exercised, but the construction of the bungalow and the bungalow standing on the leased land would not be a ground to be canvassed for claiming equities and such a decision of non-renewal would be assailed only on the basis of the policy then in force and on such grounds of parity as may be available, if others are granted extension.”

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 2 TO 4

10. The learned Senior Advocate, Shri Abhay Khandeparkar, has tendered his written submissions in extenso. He has reiterated that the land

is a defence land and the ownership vests absolutely in the Union of India. The Petitioners are merely leaseholders possessing limited and conditional rights governed under the terms of grant (Schedule VIII), Cantonment Land Policy and applicable statutory Regulations. It is canvassed that a lessee of Government land cannot claim vested or proprietary right inconsistent with the defence interest or organization purposes. The lease documents in question which is of paramount importance (Schedule VIII) is expressly a building lease. A plain reading of the lease shows that it pertains to an existing building and the land appurtenant thereto. The adjoining land is also incidental to the enjoyment of the building and may be treated as a lawn, garden or open space forming part and parcel of the residential premises.

11. It is further canvassed in the written notes that the subject property forms part of defence land originally leased in 1944 for a limited tenure extendable upto 90 years. Defence bungalows in India were originally built during the British era for military officers under Cantonment Act. Some civilians occupied a few bungalows through old British era leases, long term lease agreements or special permissions. But this was always an exception. After independence, the Ministry of Defence continues to reserve lease bungalows for serving and retired officials and the laws like Cantonments Act, 2006 strictly prevents civilian residential use except where authorised lease exists.

12. Condition 6 of the Lease Deed determines the reason for which the lease was granted. This condition demonstrates that there existed a building and the lease was restricted from altering the structure and/or the elevation. In other words, the intention was to retain the existing structure in the same form. Condition 5 of the Lease Deed restricts the inherent right of a lessee to erect any structure in the leased premises, other than the existing bungalow. In an event the lessee desires to construct, he has to secure permission from the lessor. Such permission was strictly within the domain of the lessor. Over the time, any civilian occupation has mostly been due to legacy leases or Court's sanctioned arrangement.

13. It is further canvassed that the leasehold rights have undergone multiple changes over decades. The lease dated 31.01.1944 is a building lease and not a lease of open land for development. The land mentioned in the lease is attached to the government building only for its proper use and enjoyment. Ownership of the land remains with the Government. The lease clearly states that no new building can be constructed and no structural changes can be made, without prior written permission of the competent authority. The title of the lease (Schedule VIII) itself belies the contention of the Petitioners, it being a 'Building Lease' and not a property lease, thereby signifying the nature of the property which entails enjoyment of the existing

bungalow, with upkeep and renovation within the scope of the lease, but not new construction except with the express consent of the competent authority (being GOC-in-C).

14. Notwithstanding such transfers, ownership has, at all times, remained with the Government of India and the land continues to retain its Defence character.

15. Since the early 1990s, Defence authorities have consistently examined proposals for resumption and utilisation of the entire Bungalow No. 5 for Defence purposes, particularly for Officers' Married Accommodation and related infrastructure. Pune Cantonment is a land-deficient military station, and long-term operational planning necessitates preservation of compact Defence land parcels. In matters involving competing private leasehold interests and national security considerations, public interest and Defence preparedness must prevail. The Competent authorities are legally entitled to refuse permissions that may prejudice future Defence utilisation.

16. Pune is a strategically important station in an evolving security environment, and the ongoing process of integration of the three services at

the theatre level makes this compact block of land operationally significant for tri-services requirements. Pune Cantonment is a land-deficient station, particularly for Officers' Married Accommodation, as already pointed out in affidavits filed in the present writ proceedings.

17. The Petitioners have offered undertakings before the Court that they will use the proposed constructions only as their own residential houses, will not put them to commercial use, will not convert them into apartments or high-rise clusters, will not create third-party rights or encumbrances, will not claim ex gratia compensation, and, if they challenge non-renewal of the lease in future, they will not rely on the existence of construction to claim equity but only on applicable policy and parity. To this effect, both the Petitioners have also filed an affidavit declaring that if they are aggrieved by non-continuation of the lease, then they will exercise their respective right to assail only as per policy in force, equities or on parity and not on the grounds of construction of bungalow on lease land. Thus, the petitioners are not giving up their right to challenge non-renewal of the lease.

18. Further, the undertakings in affidavits do not fully address the core concerns as once construction is permitted and the structures are erected, subsequent transfers, intra-family arrangements, grounds of parity,

or changes in policy may materially alter the nature of occupation and control before effective action can be taken. Therefore, there is a real and foreseeable risk/ contingency that, upon non-renewal of the leases in 2033, the resumption of the land for Defence purposes would be delayed or frustrated, resulting in continued non-utilisation of a strategically located Defence asset, thereby affecting the military and strategic objectives in the highly sensitive global security scenario.). Further, the construction of new structures of residential nature may create further unforeseeable grounds for challenge or perceived rights in the eyes of the petitioners, which for all the wisdom of the present litigants and parties involved, are not yet seen, but may nevertheless delay, frustrate or embroil the parties in litigation at the pertinent moment.

19. It would be necessary to consider with respect, that during the entire tenure of 90 years around 84 years the lessee rightly understood that the plot was to be used only as a garden. The requirement of Defence is well spelt out and that therefore, it is respectfully submitted that permitting any construction on the leased land would embroil the Defence in further litigation which would be contrary to the interest of the security of the country, especially taking into consideration the volatile situations existing in and around the security of the Country. It is respectfully submitted that the

nature of warfare has changed and hence, with the triple services required to work in co-ordination with each other, the countries interests would be left to the Defence to exercise its discretion in the manner in which the land is required to be put to use.

20. It is canvassed by Respondent No.2 that the GOC-in-C has considered the defence requirements, audit objections, long term strategic planning, the limited subsisting tenure of the lease upto 2033 and the legal implications of permitting permanent construction on the defence land. The impugned decision is reasoned and founded strictly upon organizational requirement. It is settled law that judicial review under Article 226 does not entail substitution of administrative wisdom with judicial opinion.

21. Respondent No.2 has placed reliance upon *Chief Executive Officer v. Surendra Kumar Vakil & Ors., (1999) 3 SCC 555*, wherein the Hon'ble Supreme Court has held that occupants of old grant properties possess only limited rights. Reliance is placed on *Tata Cellular v. Union of India, (1994) 6 SCC 651*, wherein the Hon'ble Supreme Court has held that Courts should practice judicial restraint while reviewing the decision making process, not the merits of the decision itself and interference is warranted only where the decision is arbitrary, mala fide or contrary to the statute.

22. It is further submitted that, once permanent private constructions/structures arise, resumption of land becomes practically difficult, financially burdensome, and prone to litigation, thereby causing serious impediments in the resumption of the lands. In the case of Survey No. 30/4 (Plot 5-D), the permission was given for construction improperly without approval of the General Officer Commanding-in-Chief, and the leasehold rights, were ultimately passed on to 'Kumar Builders', who is a private builder. This transaction and the consequential loss of effective Defence control over valuable B-3 land has been adversely commented upon by Audit Authorities and culminating in observation that, due to oversight, Defence land of significant value has effectively passed into the hands of a private builder and that the feasibility of regaining the land after the lease period is remote and may actual delay in resumption, as the land is likely to become embroiled in litigation upon expiry of the lease in 2033. In these circumstances, the earlier grant of permission in respect of Plot 5D, which was criticised by Comptroller and Auditor General (CAG), cannot be treated as a precedence to follow. Thus, negative parity cannot be claimed as a right.

23. According to the lease agreement itself, it is amply clear that the lease was a covenant for the already existing building and any Structure

(only non commercial, residential being allowed in the first place) requires express consent of the GOC-in-C. Earlier permission granted on Plot 5-D was severely criticised in Performance Audit proceedings, noting that Defence land of substantial value, was effectively passed onto a private builder. The audit observations underscore the obligation of Defence authorities to prevent further dilution of Government ownership and to safeguard public property. Administrative decisions must conform to standards of financial propriety, and repetition of an earlier error cannot be compelled through judicial review.

24. It is further canvassed that the lease expires in 2033, leaving only a short residual tenure. Construction of permanent structures at heavy cost for a limited remaining period is commercially and administratively impractical and indicates an attempt to create equities that may later obstruct lawful resumption. It is a settled principle and only consistent with fairness that creation of equities against the Government on expiring leases, cannot be encouraged.

25. It is then canvassed, that the undertakings proposed by the Petitioners do not mitigate the legal and practical risks arising from construction, Administrative authorities cannot dilute statutory powers or future sovereign rights through private undertakings. Enforcement of such

undertakings would require continuous monitoring and would not prevent future transfers, indirect commercialization, or litigation upon non-renewal of lease. And permission granted at this stage may create unforeseen rights which may or may not be prejudicial by the undertaking, leading to ambiguity and prolonged litigation.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1

26. The Pune Cantonment Board, Respondent No.1, has filed an affidavit in reply dated 06.10.2025. The first objection raised by Respondent No.1 is that the Writ Petition is not maintainable. The Impugned Order has been passed under Section 238 of the Cantonments Act, 200 (Cantonments Act). Under Section 340, read with the fourth column of Schedule V of the Cantonments Act. An appeal against a decision under Section 238, lies to the General Officer Commanding-in-Chief of the Command (GOC-in-C). The Impugned Order has admittedly been passed by Respondent No. 1 and not the GOC in C. It is not the Petitioner's case that the GOC-in-C is personally biased or otherwise not competent to entertain the Petitioner's appeal against the Impugned Order. The Petitioner's contention that no purpose would be served by filing an appeal from the Impugned Order is, therefore, misplaced. In the circumstances, given that the Petitioner has an efficacious alternate remedy in the form of an appeal under Section 340 of the Cantonments Act, the present Petition is not maintainable and ought to be dismissed by this Hon'ble Court at the threshold.

27. In the light of the provisions of the Head Lease (which, it is reiterated, are applicable to the Petitioners by virtue of the provisions of the Lease Renewal), the consent of the General Officer Commanding-in-Chief of the army is required for the purpose of erecting any building other than the buildings already existing on the said Land. In the present case, it is an admitted position that the said Land is vacant and that the Petitioner seeks to erect an entirely new bungalow.

28. Further, under Section 238(3) of the Cantonments Act, the Respondent No. 1, before sanctioning the erection or re-erection of a building on land which is under the management of the Defence Estates Officer (DEO), is required to refer the application to the DEO for ascertaining whether there is any objection on the part of the Government to such erection or re-erection and the DEO is required to return the application together with his report thereon to the Respondent No. 1.

29. Since the said Land falls under the management of Respondent No. 2, i.e. DEO, Respondent No. 1, in accordance with Section 238(3) and in light of the provisions of the Head Lease, duly forwarded the Petitioner's building application to Respondent Nos. 2 to 4 in order to ascertain if the Government had any objections thereto.

30. By a letter dated 13th March 2025, Respondent No. 4 communicated to Respondent No. 1, the fact that by a letter dated 27th January 2025, the Headquarters, Southern Command had, after noting the provisions of the Head Lease requiring the prior consent in writing of the GOC-in-C, Respondent No. 3, stated that it had not consented to the erection of a building on the said Land. Respondent No. 1 was instructed to take further necessary action regarding the building plans.

31. Respondent No. 1, by the Impugned Order, informed the Petitioners that the building application had not been consented to by Respondent No. 3. Respondent No. 1 further pointed out that an objection had been raised on behalf of the government to the proposed construction under Section 238(3) of the Cantonments Act. Respondent No. 1 accordingly, by the Impugned Order, informed the Petitioners that the building application had been rejected. The Impugned Order explicitly sets out the reason for refusal i.e. the objection raised by the government under Section 238(3) of the Cantonments Act. Thus, there is a substantial compliance of Section 238(5) of the Cantonments Act. For Respondent No. 1, the reason for its inability to sanction the Petitioner's building plan is the lack of prior consent of the government (as provided for under the Head Lease) and the objection raised by the government, as more particularly set

out above. In the circumstances, there is no infirmity whatsoever with the Impugned Order. The Petitioner's challenge thereto is wholly misplaced.

32. An affidavit in reply has also been filed by Lieutenant Colonel Naveen Chauhan on behalf of the Union of India. No where in the said affidavit in reply dated 12.01.2026, is it mentioned as to which Respondent is represented by Shri Naveen Chauhan. There is no verification affidavit in support of the said affidavit in reply. It is canvassed that the Petitioner has failed to exhaust the statutory appeal remedy under the Cantonment Act, 2006.

33. It is also submitted that the subject land on which construction is proposed is at a close proximity to Headquarters of the Southern Command (within 200 meters), which served as a staging area during conduct of Operation Sindoor, operational readiness and operational footing, wherein all co-ordination and planning was conducted by senior officers. Further, it is also submitted that in the present day and age of advanced drone warfare, such physical proximity also results in constant security concern of surveillance and attack, over Headquarters of a Command (especially, Southern Command). Although full trust and faith is extended to all citizens of the nation, inimical elements working through other,

technology and proximity dependent means have to be taken into consideration.

34. In response to the averments in paragraph 8 of the Petition, it is submitted as follows:

(a) **Vital Defence Interests & Land Scarcity.** The subject property (B3 property at Queen's Garden, Survey No 30/01, 30/02, and 30/03) is critical to the operational and administrative requirements of the Army

(b) **Land Deficiency:** Pune Cantonment faces a land deficiency of approximately 600 Acres. There is a 43% deficiency in Officer Married Accommodation, due to non-availability of land.

(c) **Zonal Planning:** The property at Queens Garden is specifically zoned for Officer Married Accommodation in the Zonal Plan. Determination of this B3 property is essential to meet this military administrative requirement.

(d) **Lease Expiry:** The lease of the complete property expires on 30 November 2033. Currently, the pockets of land under Survey Nos. 30/01, 30/02, and 30/03, are vacant. It is the intent of the Local Military Authority

(LMA) to determine the property in 2033 upon expiry, ensuring no cost to the exchequer.

(e) **Audit Observations:** A Draft Para (DP-85/2010-11) issued by the Director of Audit Defence Services highlighted that the failure to resume this land resulted in prime defence land being transferred to private builders for commercial exploitation, leading to a private gain of Rs 1.65 Crore.

(f) **Loss to Exchequer:** Granting the Petitioner sanction to construct on vacant land when the lease expires in 2033 would jeopardize the determination process and cause a colossal loss to the exchequer, as the Government would be liable to pay escalated building costs upon eventual resumption.

OUR ANALYSIS AND CONCLUSIONS

35. We have considered the submissions of the parties, in details, as is evident from the foregoing paragraphs.

36. These plots are in the Pune Cantonment, which is said to be a prime location and the cost of the land has skyrocketed to unimaginable proportions. Each plot measures approximately 0.725 acres, forming part of a single parcel of land admeasuring 3.10 acres, recorded in the General Land

Register of the Cantonment at Survey No. 30. These plots are identified as Plot 5-A in Survey No. 30/1 and Plot 5-B in Survey No. 30/2.

37. The Petitioners have applied for permission to construct residential bungalows/dwellings as is otherwise permissible under Condition 1(5) under Schedule VIII of the Cantonment Land Administration Rules, 1937. As such, it is not an anathema to construct a dwelling house. The embargo is on erection of any building other than a dwelling house.

38. The Petitioners in the first petition, seek permission to construct a bungalow for personal residential use. The Petitioners in the second Petition desire to construct a two-floor building comprising eight rooms. Such applications were made in 2020. The lease, as per the present extension, subsists until 2033, and it is undisputed that, depending upon the policy and the Rules, a further extension is permissible. The authorities can also conclude the lease agreement and resume the land.

39. By these Petitions, the Petitioners have assailed the reports of Respondent Nos. 2 and 3, thereby refusing to grant permission for construction, and the subsequent rejection by the Pune Cantonment Board relying upon the objections raised by Respondent Nos. 2 and 3. Vide the

pleadings and the written submissions, it is conveyed to us that since the lease is to expire in 2033, there remains a period of only seven years. Under Clause 2(II)(a) of the Land Policy in Cantonments, which was shown to us, a lessee who has a standing immovable property on the leased land, can claim ex-gratia compensation equal to 50% of the value of the authorized constructions, if the lease is not renewed, resulting in the constructions vesting in the Government.

40. It is in the above backdrop that the learned Senior Advocate representing the Petitioners, points out that adjacent plot holders bearing Nos. 5-C and 5-D have been granted permission to construct and that their buildings are standing. Whereas, the Petitioners are denied permission for reasons based only upon apprehensions of the Respondents,

41. We have perused the Order dated 30/09/2005 passed in Writ Petition No. 5069 of 1997 on 30/09/2005. Though Respondent Nos. 2 and 3, had taken the ground that there was a requirement of land for construction of Married Officers' Accommodation, not a single such accommodation has been constructed thereafter, till today. Further, even in 2005, when the judgment was delivered, permission to construct was granted to the plot holder of Plot 5-D.

42. Under Chapter XIV of the Land Policy in Cantonments under the Cantonment Laws, Clause 2 (II) (a), it is provided as under: -

II. Leases not containing resumption provision :

(a) The existing lease hold sites held on non-resumable tenure would be continued on the existing terms during the tenure of the lease, and fresh lease granted thereafter on the normal terms unless the sites/property is required for Defence purposes. Where, in the event of refusal to renew the lease the constructions vest in Govt., ex-gratia compensation equal to 50% of the value of the authorised construction will be paid to the holder.

43. It is, thus, apparent that Respondent Nos.2 to 4 and the Cantonment apprehend the following eventualities : -

(a) The Petitioners would first construct bungalows on the said plots purportedly to be used as their personal dwelling.

(b) After such bungalows are constructed, these Petitioners would utilize the said bungalows as residential houses, initially, and then would start renting out the same to close relatives, kith and kin and close friends for earning revenue.

(c) At the time of the decision making as to whether the lease should be extended or not, these Petitioners would create third party interests in favour of builders/promoters/developers, as was done by the lease plot holder of Plot No.5-D. This would create innumerable legal complications

and such property developers would construct multi-storeyed tower buildings and would keep the Respondents involved in litigation for decades to come.

(d) If tower buildings are constructed, the security of the defence installations around would be compromised. Considering the immense progress made in the technology of warfare, the cantonment areas would be under a grave security threat.

(e) Even if the Respondents succeed in regaining the lands by not extending the lease period from 01.12.2033 and resume the lands, these Petitioners would claim ex-gratia compensation equal to 50% of the value of the authorized construction in the light of Clause 2(II)(a) of the Land Policy in Cantonments and the Cantonment Laws.

44. The question in this petition is whether the statutory and administrative power has been properly exercised by the Respondents and whether the impugned rejection is based on relevant considerations of the present case.

45. In the present case, the Petitioners do not seek to alter the character of the land, use it for a commercial purpose or create a development of a nature inconsistent with the residential character of the

lease. What is proposed is the construction of a dwelling house for personal residential use. The Respondents have not pointed out any provision of the subsisting lease, or any applicable building regulation, which prohibits such construction for residential and personal use. The objection of Respondent Nos.2 and 3 proceeds upon a purported apprehension that the construction may make future resumption difficult, or rather impossible. In our view, such an apprehension, however, cannot by itself justify defeating a presently subsisting contractual and statutory right. That apart, the Petitioners have expressly undertaken to abide by the consequences of the expiry or non-renewal of the lease including handing over of the constructed portions and not claiming any compensation from the Respondents.

46. We also clarify that granting permission to construct a residential house today does not confer upon the Petitioners any right to renewal in 2033. Nor does it prevent the Government from taking an independent decision, in accordance with the applicable law and policy prevailing at the relevant time, to resume the land if it is genuinely required for defence purposes. The Petitioners have expressly accepted this position before us vide their Undertaking.

47. We are conscious that matters concerning defence land require a

degree of institutional deference and that this Court would be slow to interfere. We are examining whether the decision impugned before us has been taken upon relevant material, whether the reasons bear a rational connection with the decision, and whether the Petitioners' subsisting rights have been denied on the basis of a legally sustainable consideration or apprehensions. On that limited scrutiny, the impugned decision cannot be sustained. The material placed before us does not demonstrate that the proposed construction would interfere with any identified defence activity.

48. The Respondents have undoubtedly asserted that the land may be required in future for Officers' Married Accommodation and other defence purposes. However, the record does not disclose any concrete project, sanctioned plan, identified commencement date or immediate utilisation of these particular plots for such purpose. A general assertion of future requirement cannot be treated or accepted as an immediate operational requirement, more so, when such a requirement is being voiced since the last two decades.

49. Equally significant is the fact that the proposed construction is not being sought with a view to defeating or circumventing the Government's title. The Petitioners accept that the land belongs to the

Government and that their interest is confined to the subsisting leasehold rights. They seek only to enjoy the leased premises in accordance with the permissible residential use during the subsistence of the lease. The Government's ownership is, therefore, not diluted merely because permission to construct is granted. The character of the land as defence land, remains unaffected. If the Respondents consider that any further or particular safeguards are necessary, then those safeguards can be incorporated as conditions while granting permissions. But the Respondents cannot reject a permissible residential construction merely because there may be a policy change in the future. Such an approach would convert every regulatory power into a power to prohibit, which is not the legislative scheme.

50. The lease is renewed until 30.11.2033. The Respondents cannot, during the subsistence of that term, treat the lease as though it were already at an end. The fact that only about seven years remain is a consequence of the contractual term itself and cannot, today, extinguish rights which the lease otherwise permits. If the competent authority intended that no construction whatsoever should be permitted during the residual period of the lease, such a prohibition would have been incorporated in the document. The Respondents cannot introduce the same indirectly through an administrative objection.

51. The Respondents have not satisfactorily explained why similarly situated lessees forming part of the same larger parcel, were permitted to construct, while the present Petitioners have been denied permission, although the tenure of the leases is stated to expire on the same date. We are not holding that an erroneous permission granted to another person creates an indefeasible right in favour of the Petitioners. However, once a claim of unequal treatment is specifically raised, the State is required to furnish a rational and intelligible basis for the distinction. Mere reference to a subsequent audit objection concerning Plot 5-D does not adequately explain the differential treatment. In these circumstances, we are of the view that the refusal of permission is unwarranted. We may also observe that the decision making process must be tested on the reasons which actually informed the decision. The elaboration of reasons in affidavits filed before this Court cannot cure an otherwise infirm decision-making process.

52. For all the above reason, the impugned communications/orders refusing permission to the Petitioners to construct the proposed residential bungalows cannot be sustained and are liable to be quashed and set aside. Needless to state, permission to construct shall not confer upon the Petitioners any right to renewal of the lease beyond 30.11.2033, nor shall the Petitioners be entitled to claim any equity merely on account of the

construction. Any decision concerning renewal, continuation or resumption after expiry of the present lease shall remain open to the competent authority and shall be governed by the law and policy applicable at the relevant time.

53. We do appreciate the serious apprehensions voiced by the Respondents. If any of the said apprehensions happen to be true, the Respondents would be in a difficulty. However, we find that the Respondents' apprehensions have already been put to rest completely, by the Petitioners, vide their statement made to the Court, which was recorded in the order dated 20.01.2026. These undertakings are reproduced in paragraph 7 of this judgment, for reference. A single glance at the eight statements made by the Petitioners would indicate that the entire apprehensions of the Respondents would not survive.

In addition to the same, we deem it proper to impose two more conditions on the Petitioners, while granting them the permission to construct, as follows: -

(a) As like lease land holder of Plot No.5-D, who created third party rights in favour of Kumar Builder, these Petitioners would not create any such right in favour of any builder/developer/promoter, etc., directly or indirectly;

(b) If these Petitioners create any such rights, in violation of the undertakings or the directions of this Court, such acts would be rendered illegal and *non est* and no equities or enforceable rights would be created in favour of such property developer/entity, etc., and;

Notwithstanding the undertaking given by the Petitioners, which is recorded in our order dated 20.01.2026, each of the Petitioners would submit their individual affidavits containing all the eight conditions set out in the order dated 20.01.2026, as well as the above stated two directions, and such affidavit undertakings in original form would be tendered to Respondent No.1 and Respondent No.3. A Notarized copy of the original affidavit undertakings shall be filed in this Court, within 15 days from today.

54. Considering the above and the directions being issued, **both these Writ Petitions are allowed in terms of prayer Clause (a) and (b),** reproduced above. The Respondents would issue the appropriate permissions, only after compliance of the above directions, within 30 days. To ensure proper compliance, we are listing these Petitions on **23rd October, 2026** in the 'Urgent Supplementary Board' for recording compliance.

55. Rule is made absolute in the above terms.

[GAUTAM A. ANKHAD, J.]

[ACTING CHIEF JUSTICE]