

Sumedh

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1048 OF 2024
WITH
INTERIM APPLICATION NO. 1843 OF 2024

1. **ABDUL AZIZ,**
Son of late Ashraf Baig, Serial No. 778
in Annexure-2, Aged 63 years, Occ.:
Retired, Residing At Post No. 9, Room
No. 1521, Bharat Nagar, Bandra (E),
Mumbai 400 051.
2. **SHAIKH ABDUL GAFFAR,**
Son of Late Shaikh Abdul Rahim, Serial
NO. 793 in Annexure-2, Aged 50 years,
Occ.: Service, Residing At Plot No. 9,
Room No. 1536, Bharat Nagar,
Bandra (E), Mumbai 400 051.
3. **MOHD SHAHID SHAIKH,**
Son of Alamgir Muraja Shaikh,
Aged 35 years, Occ.: Self-Employed,
Residing At Plot No. 9,
Room No. 1556, Bharat Nagar,
Bandra (E), Mumbai 400 051.

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4. **ZARINA SHAIKH NIZAMUDDIN**,
Serial No. 822 in Annexure-2,
Aged 67 years, Occ.: Housewife,
Residing At Plot No. 9, Room No. 1565,
Bharat Nagar, Bandra (E),
Mumbai 400 051.
5. **ZUBAIDA MOMIN**,
D/o Late Zainab Shaikh Kasam, Serial
No. 836 in Annexure-2, Aged 63 years,
Occ.: Retired, Residing At Plot No. 9,
Room No. 1679, Bharat Nagar,
Bandra (E), Mumbai 400 51.
6. **MOHAMMED YUSUF SHAIKH**,
Serial No. 851 in Annexure-2, Aged 55
years, Occ.: Driver, Residing At Plot
No. 9, Room No. 1594, Bharat Nagar,
Bandra (E), Mumbai 400 051.
7. **JALAUDDIN ALIMUDDIN
SHAIKH**,
Son of Late Alimuddin Shaikh Chottu,
Serial No. 854 in Annexure-2, Aged 52
years, Occ.: Self-Employed, Residing
At Plot No. 9, Room No. 1597, Bharat
Nagar, Bandra (E), Mumbai 400 051.
8. **NUSRAT YAKUB SHAIKH**,
Serial No. 884 in Annexure-2, Aged 35
years, Occ.: Housewife, Residing At
Plot No. 9, Room No. 1626, Bharat
Nagar, Bandra (E), Mumbai 400 051.
9. **MOHAMMED ASLAM**,
S/o Late Mohammed Hussain
Suleman, Serial No. 779 in Annexure-2,
Aged 47 years, Occ. Driver, Residing at
Plot No. 9, Room No. 1522, Bharat
Nagar, Bandra (E), Mumbai 400 051.

**10. SHAIKH MOHAMMED AKRAM
MOHAMMED SIDDIQUE,**
Serial No. 855 in Annexure-2, Aged 34
years, Occ.:Service, Residing at Plot
No. 9, Room No. 1598, Bharat Nagar,
Bandra (E), Mumbai 400 051.
All situated at Basera Co-operative
Housing Society Ltd, Village-Kole
Kalyan, Taluka – Andheri,
Bharat Nagar, Bandra Kurla Complex,
Bandra (E), Mumbai 400 051.

... PETITIONERS

~ VERSUS ~

- 1. APEX GRIEVANCE REDRESSAL
COMMITTEE,**
Administrative Building, Slum
Rehabilitation Authority, AK Marg,
Bandra (E), Mumbai 400 051.
- 2. TEHSILDAR - 1 (SPECIAL DESK,**
Slum Rehabilitation Authority,
New Administrative Building,
Prof. Kanekar Marg, Bandra (East),
Mumbai 400 051.
- 3. SLUM REHABILITATION
AUTHORITY,**
Through its Chief Executive Officer,
New Administrative Building,
Prof. Kanekar Marg, Bandra (East),
Mumbai 400 051.
- 4. BUDHPUR BUILDCON PVT LTD,**
Having registered address as, Adani
House, Near Mithikhali Six Road,
Navrangpura, Ahmedabad 380
009. Having alternate address as, 601,
6th Floor, Hallmark, Business Plaza,

Opp. Guru Nanak Hospital, Bandra (E),
Mumbai 400 051.

5. **MAHARASHTRA HOUSING AND
AREA DEVELOPMENT
AUTHORITY (MHADA),**
Through its Competent Authority and
Land Manager, Grihanirman Bhavan,
Kala Nagar, Bandra (East),
Mumbai 400 051.

6. **BASERA CO-OPERATIVE
HOUSING SOCIETY LTD,**
Through its Secretary / Authorized
Representative, Situated at Plot No. 7, 8
9 & 12, CTS No. 7643 (pt), 5370 (pt),
Village – Kolekalyan, Bharat Nagar,
BKC, Bandra (East), Mumbai 400 051.

...RESPONDENTS

WRIT PETITION NO. 859 OF 2024

WITH

INTERIM APPLICATION NO. 878 OF 2024

WITH

INTERIM APPLICATION (ST) NO. 5553 OF 2024

IN

WRIT PETITION NO. 859 OF 2024

1. **SHAMSUNNISA SAEED AHMED,**
Age 81 years,
Through Constituted Attorney,
Mr Kafeel Ahmed Khan, Residing at
Plot No. 12, Shop No. 5, Bharat Nagar,
Bandra (E), Mumbai 51.

2. **MOHD. JAVED ZAKIR ALI,**
Age 52 years, Residing at Plot No. 12,
Shop No. 4, Bharat Nagar, Bandra (E),
Mumbai – 51.
3. **SALIM ISMAIL MULLA,**
Age 56 years,
Age 52 years, Residing at Plot No. 12,
Shop No. 4, Bharat Nagar, Bandra (E),
Mumbai – 51.
4. **ABDUL RASHID,**
S/o Abdul Sattar,
Age 43 years, Residing at Plot No. 12,
Shop No. 10, Bharat Nagar, Bandra (E),
Mumbai – 51.
5. **ABDUL KADAR,**
S/o Usman Gani Toofani,
Age 57 years, Residing at Plot No. 12,
Shop No. 14, Bharat Nagar, Bandra (E),
Mumbai – 51.

...PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
Through Apex Grievance Redressal
Committee, Rehabilitation Authority,
AK Marg, Bandra (E),
Mumbai 400 051.
2. **SLUM REHABILITATION
AUTHORITY,**
Through Tahsildar (Spl. Cell-1), SRA,
5th Floor, Administrative Building,
Bandra (East), Mumbai 400 051.

3. **BASERA WP. HOUSING SOCIETY LIMITED,**
Plot No. 8/843, Bharat Nagar,
Bandra (EaWPumbai 400 051.
4. **BUDHPUR BUILDCON PVT LTD,**
6th Floor, Hallmark Plaza, BWP(E),
MumWP 51.
5. **MHADA,**
Griha Nirman BWP Bandra
(EaWPMumbai 400 051.
6. **MMRDA,**
BWPKurla Complex, Bandra (E),
Mumbai – 51.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONERS & APPLICANTS	Mr Vijay Kurle, with Trupti Gaikar
FOR RESPONDENTS NOS. 1 & 2 IN IAL/5553/2024.	Mr Bhushan Deshmukh, with <i>Aditya Miskita, Aayushi Gohil, Umair Merchant, Akshay Dhayalkar, Triveni Jawale, Akash ShWP.</i>
FOR RESPONDENTS NOS. 1 TO 3 IN WP/1048/2024 & FOR RESPONDENT NO. 2 IN WP/859/2024.	Mr Jagdish G Aradwad (Reddy).
FOR RESPONDENT NO. 4 DEVELOPER IN BOTH PETITIONS	Mr Mayur Khandeparkar, with <i>Bhushan Deshmukh, Aditya Miskita, Aayushi Gohil, Umair Merchant, Akshay Dhayalkar, Triveni Jawale, Akash Shah.</i>
FOR RESPONDENT NO.	Mr Atithi Abhay, i/b Anjali Helekar.

**6- MMRDA IN
WP/859/2024**

**FOR RESPONDENT
MHADA**

**Mr PG Lad, with Sayli Apte & Shreya
Shah.**

**FOR RESPONDENT-
STATE**

Ms MP Thakur, AGP.

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 22nd & 23rd February 2024

ORAL JUDGMENT (Per GS Patel J):-

INTERIM APPLICATION (ST) NO. 5553 OF 2024

1. This Interim Application seeks reliefs *inter alia* under Section 340 of the Code of Criminal Procedure, 1973 (“CrPC”) on the basis that there has been a fraud on the Court, by persuading this Court to accept that the Maharashtra Housing & Area Development Authority (“MHADA”) had filed an Affidavit dated 17th February 2023, though no such Affidavit is found in the physical record and proceedings. According to Mr Kurle, the impeached Affidavit purports to say that MHADA had withdrawn its cancellation of a No Objection Certificate (“NOC”) granted to the Slum Rehabilitation Authority (“SRA”). According to him, the land in question purportedly under a slum scheme is MHADA land, that the Petitioners are MHADA tenants and there is therefore no question of them being included in a slum scheme or of MHADA giving any NOC to the SRA. Certainly, there is no question of

MHADA literally cancelling any NOC it may have granted in the past. All this is, Mr Kurle submits, based only on a non-existent MHADA Affidavit, one that was never filed and is not to be found in the record. He points to a response from the Registry confirming that no such Affidavit is found in the record and proceedings.

2. Mr Lad on behalf of MHADA has taken instructions. He says that the Affidavit dated 17th February 2023 by MHADA regarding the NOC to SRA was indeed affirmed. A copy of that Affidavit in Writ Petition (L) No 2217 of 2019 is at Exhibit “C” to this Interim Application. The Affidavit is dated 17th February 2023. It was affirmed by one Sanjaykumar Naryan Bhosale, the then Deputy Engineer of MHADA. Mr Bhosale is personally present in Court today. He confirms before us that the contents of the Affidavit are not only true but also that he indeed affirmed it and gave it to Utangale & Company for filing. The learned Advocate on behalf of Utangale & Company says that no physical copy was filed but, following administrative directions of this Court, the Affidavit was e-filed in Writ Petition No 2217 of 2019 sometime in February 2023. Copies were served on all other Advocates. It is pointed out to us today that the SRA had referenced this very Affidavit in an Affidavit that the SRA has filed in Writ Petition No 3614 of 2022 through one Umesh Bodake, Executive Engineer. That Affidavit is dated 14th August 2023. The MHADA Affidavit is annexed at Exhibit “R3” at page 139 of the SRA Affidavit. There is also a reference at page 138 to a government directive on the basis of which the MHADA Affidavit was filed. The Developer confirms that a copy of Mr Bhosale’s Affidavit was served on the Developer as well by Utangale

& Company by an email on 20th February 2023. A copy of that email is shown to us.

3. In view of this factual position, Mr Kurle on instructions does not press the present Interim Application. The present Interim Application is thus dismissed as not pressed. We have expressed no opinion on any other contentions that may have been raised in the present Interim Application which sought reliefs *inter alia* under Section 340 of the CrPC.

4. We also note for good order that these matters are both assigned to this Division Bench by an administrative order dated 21st February 2024.

5. For statistical purposes, the present Interim Application (L) No 5553 of 2024 is to be finally numbered by 27th February 2024.

**WRIT PETITION NO. 1048 OF 2024 AND WRIT PETITION
NO. 859 OF 2024**

6. We have heard Mr Kurle at length in both Petitions. We have also heard Mr Khandeparkar for the Developer to the extent we deem necessary.

7. In Village Kole Kalyan at Bandra East, there exists at least one CTS No 7642 (part) that is evidently very fertile ground, not for horticultural or agricultural purposes unfortunately, but for litigation. We say this because litigations such as the present ones

have gone on for over a decade now. The litigations reiterate the same arguments again and again. No amount of decision-making by successive Division Benches of this Court seems to be a sufficient deterrent to the same group of people raising substantially the same grounds again and again. We hope this will be the last time.

8. In Writ Petition No 1048 of 2024 there are 10 Petitioners. Every one of them in the cause title is described *inter alia* as holding a certain position in a serial list of persons eligible for slum rehabilitation maintained in the form known as Annexure II. The 4th Respondent is the Developer, Budhpur Buildcon Pvt Ltd (“**Budhpur**”), apparently an entity in the Adani Group. Mr Kurle has more than once hinted that this association or linkage between Budhpur and Adani is somehow in itself some dastardly deed. We refuse to entertain such allegations that seem to us nothing more than an attempt to smear and malign. These are courts of law, and we have neither the time nor the space for such populist posturing.

9. The 6th Respondent is the Basera Cooperative Housing Society Limited (“**Basera CHSL**”). In paragraph 1.1 of the Petition the Petitioner says that they are members of the Basera CHSL. But here arises the first conundrum. While claiming membership of Basera CHSL, the Petitioners also say that the Basera CHSL is not and cannot be the ‘recognized slum society’.

10. They also say that there is in fact no slum so far as they are concerned or if there is a slum it does not cover them and their structures.

11. The inevitable conflict remains unanswered. If there is no slum there cannot be a 'slum society'. If there is a slum and there is a slum society, but if it does not encompass the Petitioners' structures, then the Petitioners cannot be members of it. None of this is satisfactorily explained.

12. The challenge in Writ Petition No 1048 of 2024 is to an order dated 9th January 2024 (page 70) passed by the Apex Grievance Redressal Committee ("AGRC") and to an order of 18th July 2023, passed by the tehsildar of the SRA. The appeal before the AGRC was from the order of the tehsildar. Interestingly, the Applicants were not only Basera CHSL, but also the 1st Writ Petitioner Abdul Aziz who is before us. Therefore: sometimes together when convenient, sometimes not when inconvenient. That is the way these matters have drifted.

13. The sole final prayer in Writ Petition No 1048 of 2024, prayer clause A], reads:

"A] That, this Hon'ble Court exercising superintendence jurisdiction under **Article 227 of the Constitution of India, 1950** be pleased to quash and set aside the impugned order dated 09.01.2024 passed by Respondent No. 1 [AGRC] as well as initial Order dtd 18.07.2023 of Respondent No. 2 passed claiming powers u/s. 33, 38 of the Slum Act, 1971 by holding the same as illegal, null, void, perverse and bad-in-law;"

14. We will let it pass that this prayer is fundamentally misconceived. It cannot be framed under Article 227 of the

Constitution of India. It should be under Article 226 of the Constitution of India. But even that will not matter.

15. Clearly, this Petition seeks judicial review of quasi judicial or administrative action. There are well settled principles governing the exercise of such jurisdiction but regrettably, not one of these principles is followed except in the breach. For instance, it is well settled that judicial review addresses the decision-making process, not the decision itself; and the writ court will not substitute the order being judicially reviewed with its own order on merits. No heed is paid to this principle, or to any of the others that go with it. As we shall presently see, what is being canvassed is every possible argument including those previously attempted and closed and those that cannot now possibly be reopened.

16. In Writ Petition No 859 of 2024 there are five Petitioners. Budhpur is Respondent No 4. Basera CHSL is Respondent No 3. MHADA is Respondent No 5. In this Petition, the five Petitioners say in paragraph No 4 that Basera CHSL falsely claims to be a registered society. The Petitioners here say that they are tenants of MHADA. Then there are allegations to which we will presently turn that orders of this Court were obtained by fraud. Ultimately, the two prayers in the Petition are again directed to the same AGRC order of 9th January 2024 and the SRA order of 18th July 2023. We find these prayers at page 19, and they read as follows:

“a) That this Hon’ble Court be pleased to issue an order or direction calling for the records and proceeding of the Order dated 9.1.2024 passed by the AGRC i.e. Respondent No. 1 and upon examining the propriety,

legality and correctness of the order passed by the Respondent No. 1, be pleased to set aside and cancel the same.

b) That this Hon'ble Court be pleased to issue an order and/or direction calling for the records and proceeding of the Order dated 17.7.2023 passed by the Respondent No.2 and upon examining the propriety, legality and correctness of the order dated 18.7.2023 passed by the Respondent No.2, be pleased to set aside and cancel the same.”

17. There is no ad interim relief in Writ Petition No 859 of 2024. In Writ Petition No 1048 of 2024, there was a protective order by the learned Single Judge which we had temporarily continued. Now both matters are assigned to this Bench.

18. There are several narratives that will have to be taken up sequentially. One is about the manner in which these litigations have unfolded before this Bench in the last year or year and a half. The second relates to a more historical narrative from the beginning of the project. The third possibly relates to the various orders that have been passed by Division Benches from time to time.

19. We first propose to get out of the way all questions of how these matters came before us. We dealt with this at some length in our order of 7th February 2024. We reproduce that order below:

“1. This matter is moved today in somewhat peculiar circumstances. The complaint is that despite a specific order of a Division Bench of which one of us GS Patel, J was a member (with Neela Gokhale, J) that in regard to this massive slum rehabilitation project all applications would have to be made before the Division Bench hearing the main

Division Bench matters and not by way of separate Writ Petitions in different Courts, parties are yet persisting in filing Petitions before Single Judges.

2. Now to explain the context of this, we are concerned with a group of Writ Petitions filed by individuals in regard to a slum project at the Bandra Kurla Complex. Our first order was of 22nd March 2022. After a detailed hearing we took the unusual steps of dictating in Court an order that we released in draft for corrections and necessary changes given the complex factors. That draft itself was discussed in Court and a separate order dated 24th March 2022 was dictated and uploaded setting these circumstances and further particulars.

3. In our order of 22nd March 2022, we issued several directions regarding fixing transit rent, identifying eligible slum dwellers and so on. Those details are presently not material. In the companion order of 24th March 2022, after referring to our 22nd March 2022 order, we noted inter alia that this project covers over 70000 sq mts or roughly more than 17 Acres. There were nearly 3000 slum structures. The previous principal developer was HDIL, now under a Resolution Professional. Many eligible slum dwellers remained in transit accommodation for an inordinately long time. Others were supposedly on transit rent but have not paid the transit rent for years. Their position, we noted was even worse. No uniform transit rent was ever fixed. Taking first things first, i.e., ascertaining and fixing the transit rent, we issued some directions.

4. Then we heard Counsel on our draft order and considered additional documentation that had been made available to us. There followed on 19th and 20th June 2023 a lengthy 54 page order in which we set out part of our previous orders. We dealt with several lists that were given to us. We considered the background. We took up the

matter of case management and organising for the hearings. We considered cited authorities including of a Division Bench and we looked at some of the statutory provisions as well.

5. The substitute developer is Budhpur Buildcon, a part of the Adani Group. It had an Interim Application even at that time. We had by then organised the various applications before us. We took cases of illicit dealing in rehab entitlements and rehab tenements including in transit rent. We noted the submissions made on behalf of HDIL's Resolution Professional and then allegations of fraud and double benefit that were made. We issued operative directions regarding rehab buildings, receivership and then we made a series of recommendations in regard to how slum rehabilitation project should be more efficiently handled. That order had several annexures.

6. The matter then travelled out of our roster but there is one order in between of Single Judge which referenced our Division Bench order.

7. Then came our order of 4th August 2023. We noted that in paragraph 5 that parties were given to moving different Benches at different times. We notice that there was wholesale misdealing and racketing in slum rehabilitation tenements.

8. Finally in paragraph 20 of our order of 4th August 2023 at page 8 we said this.

“20. We have also in our previous orders anticipated precisely this issue of different people going to different Courts and getting conflicting orders, and therefore directed that all applications must be made before this Court (or as per the extant roster). The Petitioners will therefore not proceed with any other matter in any other Court and

Advocates in all three Petitions assure us that they will not press any of the other Petitions between today and Tuesday, 8th August 2023. That statement is accepted and noted as an undertaking to the Court.”

9. Then there was an order of 8th August 2023. There were Special Leave Petitions and these were withdrawn.

10. On 29th January 2024, the present Division Bench heard an Interim Application No. 878 of 2024 in Writ Petition No. 859 of 2024. Mr Kurle appeared for the Petitioners. We did not dispose of the Petition, but we declined interim relief. We were told that a Special Leave Petition was filed and that it was dismissed yesterday.

11. It seems that another group then filed Writ Petition No. 1048 of 2024 before a learned Single Judge and claiming that this was an Article 227 Petition, moved the Bench ultimately of Justice MN Jadhav. That order in paragraph 3 referenced paragraph 20 of our 4th August 2023 order and said that the Petitioners ought to seek a clarification. In the meantime, the Single Judge directed that no coercive steps should be taken for a week.

12. The complaint by Mr Khandeparkar for Budhpur Buildcon is that this is precisely what paragraph 20 of our order of 4th August 2023 anticipated: that different parties would move different Courts and get orders conflicting with the orders passed by the Division Bench. We have no difficulty with the Petitioners in Writ Petition No. 1048 of 2024 making whatever application they want in the Petitions that are before this Division Bench and which is within our roster, and where we passed the previous orders. Mr Kurle is quite wrong in saying that we are taking up a Single Judge matter outside our roster. We are doing nothing of a kind. On the contrary, we have afforded every petitioner the opportunity of moving the Court but to

preserve consistency and to ensure that there are no conflicting orders we have only required that those applications must be made to the Court to which the matters listed in our 4th August 2023 order are assigned in the extant roster. Presently that happens to be this Bench.

13. Accordingly, we propose to hear Mr Kurle on whatever applications he wishes to make. It is his choice whether he wishes to press Writ Petition No. 1048 of 2024 but as an Interim Application, or to file a fresh one. If he choose to press it as an Interim Application, a second set will be needed. We have no difficulty in treating the writ petition as an Interim Application and having it registered and numbered as such before this Court, on such a date as convenient to him.

14. The order of Single Judge will continue until the next date.

15. List these matters on 14th February 2024.”

20. This is the order in Writ Petition No 1048 of 2024 that has since continued. Now there are administrative orders of 21st February 2024 assigning both matters to this Bench.

21. This summation is somewhat incomplete. We must therefore refer to a series of orders starting from late 2021 when litigations relating to this project began to come before this Bench or at least before a Bench of which one of us (GS Patel J) along with Madhav J Jamdar J was a member. This also provides some factual context.

22. On 29th November 2021, Writ Petition (L) No 3583 of 2019 (*Shanaazbano M Shaikh v Apex Grievance Redressal Committee & Ors*) along with Writ Petition (L) No 76 of 2020 (*Sattar Malang Shaikh v*

AGRC) were before us. We issued notice. We took on record an Affidavit of SRA. We directed SRA to commence the process of issuing a revised Letter of Intent (“**LoI**”) in the name of Budhpur Buildcon.

23. On 22nd March 2022, the Bench of GS Patel and Madhav Jamdar JJ passed a detailed order. That order was dictated in Court on 22nd March 2022. A draft of the order, perhaps unusually in such cases, was released for factual corrections and necessary changes. Those changes were then taken up and discussed in Court. The final order was passed on 24th March 2022.

24. The very first paragraph of that order refers to the project. It includes a reference to CTS No 7643 (part). We note, however, that the project spreads over several CTS numbers, including CTS Nos 5370 (part), 5371 (part), 5372 (part), 5373 (part), 5390 (part) and 4207 (part) in addition, all these in Village Kole Kalyan. There were then 111 slum dwellers as Petitioners before the Court. The original developer was HDIL. It had gone into CIRP. There were seven slum societies. Most of these were unregistered. We noted that Budhpur had come in as a “recognized co-developer”.

25. We considered the questions that arose, including Budhpur’s liability for past arrears of transit rent. That transit rent, we found, had never been fixed and this put eligible slum dwellers at a disadvantage. We addressed the question of transit rent, an aspect that need not detain us today. We then noted that there were some difficulties in ascertaining what HDIL had paid and reconciling this

with present liabilities. Then there was the question of heirship of eligible slum dwellers who had passed away. There were also the questions of determining the eligibility of other slum dwellers, of the revised LoI to be issued to Budhpur and so forth.

26. MHADA was represented before the Bench as Respondent No 4 by Mr Utangale. Paragraph No 16 of this order is of crucial importance to canvass the case presented by Mr Kurle today. Paragraph 16 reads as follows:

“16. So far as the first is concerned, MHADA is Respondent No. 4 in Writ Petition No. 3517 of 2021. Mr Utangale is present in court. We will require him to take instructions urgently by Friday, 25th March 2022 on item 1 for reinstatement of the NOCs dated 16th November 2005 and 1st June 2006 for two MHADA-owned plots CTS Nos. 7643(pt.) and 4207(pt.). Mr Samdani states and we find it reasonable that the question of reinstatement of NOC from MHADA can be deferred to the time of sanction of the relevant plans for these two CTS Nos. Nonetheless, we require MHADA to give instructions to its Advocates.”

(Emphasis added)

27. We then set aside certain orders passed by the Assistant Registrar declining to determine arrears of transit rent.

28. There was a separate order of 24th March 2022. We began by recounting the events of 22nd March 2022 and then proceeded to describe the size and complexity of the project. It spreads over more than 70,000 square meters or roughly 17.35 acres. We were told that

there were 2965 slum structures here. We set out the circumstances in which our order of 22nd March 2022 was passed. Then came the question of transit rent and a reconciliation between what HDIL had paid and present liabilities.

29. On 19th and 20th June 2023, a Bench of GS Patel and Neela Gokhale JJ passed a long order of 54 pages.¹ The Bench not only set out the preceding events and orders of 22nd and 24th March 2023, but also identified the individual areas of controversy that were before the Court. There were as many as 26 separate proceedings. Ms Gulnar Mistry who appeared in one of them had compiled a list of these various proceedings which we took on record and marked “M1”. We first disposed of one Interim Application and then (paragraph 8 onwards) we noted the issues that arose. We proceeded to give directions for case management and organizing further hearings. We then set out the background. To appreciate more fully the manner in which Mr Kurle has today presented this case, we think it is important to note certain portions of that order. Paragraphs 14 to 26 of the order of 19th and 20th June 2023 read as follows:

“14. To understand how some of these problems have arisen, a very short background, though we have repeated this frequently, is necessary. This is unrelated to the specific site conditions that we noted in our order of 22nd/24th March 2022.

15. Encroachments on public lands owned by the Government or some authority are everywhere. Their existence is undeniable. Over the last half-century, these

¹ *Moinuddin Pashmiya Shaikh v Slum Rehabilitation Authority*; with connected matters, 2023:BHC-OS-5471-DB.

encroachments have proliferated. There is also material, not just anecdotal, but part now of record of this Court in other matters, that there is no basis for the assumption that everybody who lives in a slum is, only for that reason, impoverished. By definition in law, all structures in all slums are unauthorised. If a structure is authorised, it cannot be a slum, although it may be surrounded on all sides by a sea of slums and slum-like conditions. Recently, that peculiar mixing up of authorised and unauthorised structures on a single tract of land has generated a separate set of questions. We are addressing that in other cases. For this order, we confine ourselves to unauthorised structures. For our purposes, therefore, all these are encroachments, i.e., acts of trespass, the initial entry on the land not being juridical, such as the law recognises.

16. Slums present an enormous social, civil engineering and civic planning problem. It has significant political and economic overtones too. Many come to the city in search of work and a livelihood. They vote with their feet. The city remains a powerful magnet, and this phenomenon has been the subject of much sociological study and discussion. Some move into slums because of life circumstances. What the city does not provide is a systematic form of affordable housing. Over time, these slums ‘solidify’. They acquire the trappings of permanency. Not all are only shanties. Some are constructions of brick and cement. In the larger ones, we see roads, bus routes, schools, places of worship and individuals gain documentation related to their ‘addresses’. These are, therefore, often called ‘informal settlements’ — settlements because they are indeed that, and ‘informal’ for lack of planning, development and building permissions. They remain ‘slums’ in law.

17. This is where the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“**the Slum Act**”) comes into play. The Act establishes

what we may call a system or a protocol for slum re-development. It is not necessary to examine these in detail, and all these are well known: the identification of a slum, the resultant Slum Act notification/s, a survey of the structures and so forth. A developer builder is typically chosen by slum society and obtains a Letter of Intent from the Slum Rehabilitation Authority (“SRA”). There is the preparation of what is called the Annexure II a list of those who are eligible for the benefits of slum rehabilitation. These benefits include transit rent being paid to them while redevelopment is going on and then the assurance of a free-of-cost tenement of a prescribed size. The development is not done by the SRA itself, which is the special planning authority (under the Maharashtra Regional & Town Planning Act, 1966). The so-called public-private partnership paradigm contemplates the developer first constructing the permanent rehab tenements; and while that is under way, compulsorily taking on the financial burden of providing transit rent or making available transit accommodation to those entitled to permanent rehab accommodation. The benefit and consideration for the developer is the FSI made available for ‘free-sale’ units, developments for sale in the open market. The right to start and continue free-sale unit construction is linked to the progress on rehab tenements: as the latter gets complete, the developer gains phased rights to build the former.

18. Three aspects stand out. *First*, that the slum re-development, i.e., the provision of rehab tenements is in situ. *Second*, that the rehab tenements are provided free of all cost on ownership basis. True, there is a supposed ‘lock-in’ period of ten years within which the rehab tenement cannot be transacted, but that has never been monitored. *Third*, there is in place no systematic method or protocol of foolproof identification of those entitled to rehab benefits. Some sort of biometric verification is said to be in place but

only relatively recently, from 2016. There is no Aadhaar or UIDAI-based identification, and none at all of family members.

19. It is this trifecta or — if we may be forgiven the latitude — this ‘unholy trinity’ that lies at the heart of the colossal problems with slum re-development today. That the Slum Act is a welfare legislation is undeniable. It held out a promise: homes for the ‘needy’, an augmentation of housing stock in the city and, therefore, the gradual reduction of slums across the city. That promise has not been kept. Slums have not diminished. If anything, they have increased; and they increase daily. Conditions in many slums are of the utmost squalor and indignity.

20. In *Abdul Majid Vakil Ahmad Patvekar & Ors v Slum Rehabilitation Authority & Ors*,² a Division Bench of this Court of Dipankar Datta CJ (as he then was) and GS Kulkarni J made these observations:

8. On the other hand, learned counsel for the respondents supported their actions as assailed. It is their common submission that the petitioners, being encroachers on the Government land, only because of the beneficial policies of the State Government are required to be considered as protected slum dwellers for rehabilitation by providing of a permanent alternate accommodation at public cost. It is submitted that the petitioners cannot assert any right to remain on the same plot of land and in fact they ought to be content with their rehabilitation, being made at Hadapsar and Viman Nagar, which are also areas within the Pune Municipal Corporation limits. It is their contention that the

2 2021 SCC OnLine Bom 13719 : (2022) 2 Mah LJ 382.

petitioners are causing unnecessary obstruction in the execution of the public project in the absence of any legal right to remain on the land in question. It is submitted that this petition is also wholly untenable, as for the same cause the petitioner-Society has already approached this Court and the petition is pending. It is, therefore, submitted that this petition apart from not being bona fide is an abuse of the process of law, which deserves to be dismissed with cost.

9. Having heard the learned counsel for the parties and having perused the record, at the outset, we may observe that the petitioners, who initially encroached on the Government land and who had remained on the same for sometime so as to fall within the beneficial policy of the State Government of being protected slum dwellers, cannot elevate their protection to such an extent that such slum dwellers have to be rehabilitated either on the same land, if any remaining after the project work is completed or they be provided a permanent alternate accommodation within the vicinity. In our clear opinion, any encroachment on public land at the threshold ought not to be tolerated and prompt action is required to be taken to remove such encroachment, more particularly when those who are custodians of the public land are well aware that encroachments for long periods will clothe the encroachers with rights to seek rehabilitation at public costs under the prevalent Government policies. It is not new that valuable Government land on account of

the negligent approach of the officers in charge by not protecting such lands from encroachment have stood extinguished from the Government's holding, causing a serious cascading effect, namely, that whenever land is required for any public purpose, the Government is required to acquire the same from private holdings, causing an unwarranted burden on the public exchequer and a sheer waste of the tax payers money. This for the reason that the Government despite its mighty machinery did not protect its valuable land and permitted to be encroached to be developed by the slum dwellers and their developer, with the Government nowhere in the picture. **Such inaction, in our opinion, amounts to grossest violation of the public trust doctrine as a result of the patent abuse of the powers vested in such Government machinery in not protecting public property. We also have a grave doubt about the policy of the State Government which rewards the encroachers of the public land by a free of cost accommodation. In our opinion, such policies qua the Government land not only violate the 'principles of equality' but certainly fall foul of the doctrine of public trust. We wonder as to whether at any point of time an audit in regard to the encroached Government land or lands belonging to public authorities in the State of Maharashtra was undertaken. As to how many such lands have vanished due to encroachment and as to what steps have**

been taken to preserve such lands are questions which need to be answered to “we the people”, and accountability fixed for negligence in this regard. We say so, as there can be no two opinions that even land for important public institutions and other government utilities is not available, which certainly has adversely affected the very functioning of such institutions in a democratic set up. We hope that the Government awakens on such issues before it is too late and restores all the encroached Government lands for the benefit of public and strictly to be used for public purposes. This would certainly require a genuine political will and consciousness towards larger public benefit.

10. The petitioners occupying Government land cannot take such an adamant stand as canvassed by them, when they are occupying Government land. Mere rights of rehabilitation cannot be recognized to be equivalent to a right of ownership or as if it is some compensation being offered to the slum dwellers for their encroachment and occupation of Government land. This is neither the intention nor the object even of the slum legislation and slum policies of the State Government. The insistence of the petitioners if accepted and that too in the context of the ‘State’ undertaking such public projects, it would be impossible to plan any such project using the Government land for the benefit of the public at large.

(Emphasis added)

21. In *High Court on its own motion (in the matter of Jilani Building at Bhiwandi) v Bhiwandi Nizampur Municipal Corporation & Ors*,³ the same Division Bench said:

7. In the above paragraphs, we have noted our previous directions only to point out the anxiousness of the Court on the burning issues, with the sole focus of saving human lives so as to bring about a regime of respectable and dependable living in the city by having lawful and authorized structures, only to realize that, for the concerned law enforcing agencies everything mattered except the mandate of law and the Court's orders. We are seriously concerned about such state of affairs. The common impression that is being created is that municipal officers or those who are concerned with implementing the municipal laws, function on a premise that for such matters, they are, law unto themselves, and the regime of "the rule of law" as set down by the Constitution and the laws, and the binding effect of the Court orders hardly mattered to them, needs to be completely wiped out. **Any power vested with such authorities is coupled with a binding duty towards the society at large.** We may observe that the municipal authorities cannot be pawns at the hands of land mafia, elected representatives and their own Corporators who appear to be totally disinterested in taking action against growing slums which is apparent,

3 2022 SCC OnLine Bom 386 : 2022:BHC-AS:4075-DB.

considering the large number of slums in the city. In fact, there is a clear impression that their action has encouraged slums and encroachments on public lands, obviously such inaction is for extraneous reasons. As far as the civic administration is concerned, in our opinion, primacy has to be given to the strictest implementation of the municipal laws, so as to prevent unauthorized and illegal constructions, prevent land grabbing by slum mafia, protecting government land and land belonging to statutory bodies. Also there is a need to do away with such policies which confer a premium illegality in favour of the encroachers, by granting them a windfall of State largesse, namely, a gift of valuable government land in the form of tenements on Government lands wherever situated. This is nothing but legalizing encroachments on prime public lands, in a manner nullifying the “public trust doctrine” and catering to private gains in the teeth of the well established Constitutional requirements while dealing with State largesse. By such mechanism, valuable public lands are gone forever. Given the financial burden on the public exchequer it is impossible for the government to acquire such prime land for any public requirement except at an unimaginable burden on the public exchequer. If such land acquisition cannot be achieved, in that case, is it not the duty of the State to save these lands from being thrown to

the encroachers and private gains? Is it necessary that the encroachers are rehabilitated on the same land, when others who want to purchase a small dwelling unit are required to go miles away from such prime places, where encroachments on public land happen with impunity? There cannot be such an imbalance in the societal position in which the citizens are placed when Article 14 of the Constitution stares at the State. Merely because the slums turn into potential 'vote banks' such policy of rehabilitation on hypothetical cut off dates is being implemented under the garb of slum rehabilitation. This, in our opinion, is a mockery of the public trust doctrine. We were constrained to make these observations, as not only these larger issues stare at us in plethora of litigations reaching the Courts, but also for the reason that the building collapse with which we are concerned has taken place in a purported rehabilitation and/or a slum area.

(Emphasis added)

22. We cited *Jilani Building* in our order of 17th April 2023 in *Sapphire Enterprises & Ors v State of Maharashtra & Ors*.⁴ As a bench of coordinate strength, we are bound by the ratio in both *Patvekari* and *Jilani Building*; but we go further, lest it be argued that the 'observations' in *Patvekari* and *Jilani Building* are not binding, and we emphatically re-affirm those observations. We adopt them as our own. It is our understanding that these are not stray observations in

4 Writ Petition No. 1654 of 2021.

passing but set out the correct position in law and under the Constitution.

23. And we go further. We take it as firmly settled that the right to shelter is part of the right to life.⁴ But there is no fundamental right to trespass. There is no fundamental right to squat. There is no fundamental right under the Constitution to rehabilitation at the very site of trespass or squatting. Both decisions cited commend the need for the statute — the Slum Act — to revisit this, and point out that it has no basis at all under the Constitution. Rather, it is against fundamental Constitutional precepts. Equally importantly, while the State may have an obligation to provide shelter, it has no Constitutional obligation to provide a marketable asset to anyone; and most emphatically not to someone whose initial entry on the land is illegal and unlawful. And yet this is precisely what the existing slum rehabilitation policy contemplates and promises. We are forced to ask, what is this if not the distribution of state largesse? One that comes at a very real public cost? Public lands for common public good are rendered unavailable. Every slum dweller is now confident in the assurance that the State will give him not just shelter but a high value marketable peace of real estate entirely free of cost.

24. And there is an inherent injustice built into any such scheme: those who lawfully purchase housing must take loans, pay interest, and carry this burden for decades. But those who simply encroach get tenements at the site of encroachments — free. In this very High Court, what are we to tell our staff who may be in need of housing? That the optimal solution in Mumbai is for them to go ahead and encroach or commit trespass, confident in the assurance of being given, sooner or later, ‘free in-situ housing’? The most telling response to this injustice, far more than the

words in all our judgments and orders, is the expression on the faces of those who are refused housing loans.

25. We are putting this as plainly as possible. There is now concrete evidence before us that shows wholesale trafficking and illicit dealing in this free-of-cost asset — because it is free. The question of whether rehabilitation should be in-situ is more complex. It involves a consideration of eviction, translocation, displacement, provision of underlying infrastructure and transport to places of work and more. It is not our purpose today to venture into those areas of policy beyond the findings returned in the decisions we have cited and our reaffirmation today of those findings.

26. It is this promise of free housing that we are now forced to question.”

(Emphasis in the original)

30. We then considered several statutory provisions. We will not have need to reiterate those today. We went on to consider HDIL rehab tenements and an SRA report and then proceeded to take up Budhpur’s Interim Application that alleged widespread trafficking in rehab tenements. Again, that is not of consequence to us today. By then, HDIL had a Resolution Professional. He was before us. Budhpur’s Interim Application made allegations of fraud and double benefit. In paragraph 52 we endeavoured to resolve the three different aspects of the matter and issued directions in that regard. These directions pertained to rehab tenements, transit rent, the question of transfers of rehab entitlements or rehab tenements and then we issued to operative directions regarding rehab buildings, other claims. Finally, we made a series of recommendations in regard to how SRA should continue to monitor SRA projects.

31. In this order however, immediately germane to the present two Writ Petitions, is paragraph 81. It reads thus:

“81. For completeness of record, we note Mr Khandeparkar’s statement in relation to the erstwhile claim of MHADA. It had revoked its NOC because MHADA was the owner of the land. In an Affidavit of 17th February 2023 filed by one Sanjaykumar Bhosle, in Writ Petition (L) No. 2217 of 2019, it was said on behalf of MHADA that the NOC has been reinstated. Paragraph 6 says that the NOCs dated 16th November 2005 and 1st June 2006 for the MHADA owned plots are valid and subsisting. Subsequent letters of 13th April 2018 and 31st July 2018 by MHADA revoking the NOCs are withdrawn and of no effect. This statement is noted.”

(Emphasis added)

32. On 4th August 2023, we had before us three Writ Petitions, including one by Basera CHSL. We noted some of the previous orders. We expressed our displeasure and the manner in which written applications were being made to the Registry purporting to record incorrectly what transpired in Court. We noted that the Petitioners were directly located on the portion of the project site that was scheduled immediately next for a rehab development. In paragraph 10 we noted that all these persons claimed to be tenants of MHADA. That is the claim that is made even now by Mr Kurle and we therefore reproduce paragraphs 10, 11, 14, 16 and 19 of our order of 4th August 2023:

“10. To begin with they claim to be tenants of MHADA. This is stoutly denied by Mr Lad for MHADA who says that the record itself shows that they are

trespassers on MHADA land and are therefore covered by the SRA project.

11. Then there is a challenge to the LOI issued to Budhpur Buildcon asserting that this society namely the Basera Co-operative Housing Society Limited is the only registered society. But this is a misdescription because even before us on 19th and 20th June 2023 there were at least three societies including two represented by Mr Rebello and Ms Mistry. We heard them as well.

14. In the general scheme of slum rehabilitation law, no exception can be made for these persons. We do not propose to reinvent settled law of several decades' standing. There is no dispute that a survey has been carried out of the structures. This is the initial requirement in any slum rehabilitation project. After this comes the process of determining eligibility. Eligibility is based on documents. It has nothing whatever to do with the continuance of structures on site. Those who are found eligible will receive according to the directions and under supervision of the SRA, transit rent from the date they vacate, Permanent Alternative Accommodation Agreements ("PAAA") after they vacate and other benefits as required under the Letter of Intent and under SRA law. Those who are found ineligible are not entitled to these benefits. In either case, demolition must proceed.

16. Our order of 19th and 20th June 2023 points out the numbers involved. There are 1,336 slum dwellers in transit camps. There are another 111 slum dwellers who were Petitioners before us. The entire project covers a vast area of over 70,000 sq mtrs. Of the original 2,965 slum dwellers, 2,622 have been found eligible. Of these, 996 have been rehabilitated already. Another 1,428 are awaiting rehabilitation and 1,336 slum dwellers are in transit camps.

On transit rent are 1,286 persons and there are yet remaining 3,896 tenements to be constructed.

19. Since learned Advocate for the society seriously wishes to urge before us that Budhpur Buildcon has no authority at all in law to continue as a developer, **that MHADA and not SRA is the designated planning authority, that there can be no slum rehabilitation project but that this must be a MHADA redevelopment project, and since this matter was mentioned at 10:30 am today and only for that reason and so as to not disadvantage the Advocates for the Basera society and the individuals in the other two Petitions, we will list the matter first on board on Tuesday, 8th August 2023.** After it was mentioned this morning, we kept it at 12:30 pm and asked the Petitioners to give notice to all. This is how Mr Khandeparkar for Budhpur Buildcon, Mr Reddy for SRA and Mr Lad for MHADA are in Court today. Undoubtedly, they will need to take a closer look at the Petitions also.”

(Emphasis added)

33. On 8th August 2023, a very large group of Petitions were before a bench of GS Patel and Neela Gokhale JJ. Here again paragraphs 3, 4, 5, 6, 7 and 8 are of relevance. They read thus:

“3. The case of the Petitioners in the present three Writ Petitions is that the Basera society is the only registered society and, therefore, has a priority right over everyone else to decide who is to be the developer recognised by Slum Rehabilitation Authority (“SRA”). The second question raised is that since the society and the individuals in the two companion Petitions claim to be “tenants” of Maharashtra Housing and Area Development Authority (“MHADA”), then, there is no

possibility of these structures being included in the SRA scheme.

4. On behalf of MHADA, Mr Lad states that there is already a No Objection Certificate (“NOC”) issued, and that SRA is unquestionably the special planning authority for the entire project. This has in fact been stated on affidavit. He further clarifies that while the Petitioners and the society members may be residing in certain MHADA quarters, these were given to them temporarily and for transit. All of them were initially trespassers on public property. They acquire no greater right by virtue of being accommodated in MHADA buildings. These are the rival considerations that we will take into account.

5. But what the Petitioners seek is that while these affidavits are being filed and questions being determined, there must be an interim relief fashioned by this Court which would have the effect of bringing to a halt all further progress of the scheme. As we have elsewhere noted, this covers a staggering 70,000 sq mts and involves over 3,000 persons to be accommodated in rehabilitation. Several thousand tenements are yet to be built. There are the additional complications as noted in our 54-page order of 19th and 20th June 2023 regarding the amounts spent by the previous developer. All of this makes no difference to the present Petitioners who seek in prayer clause (D) of the Basera CHSL Petition that:

“(D) Pending the hearing and final disposal of this Writ Petition, this Hon’ble Court may be pleased to stay the effect, implementation, operation of:-

(i) Letter of Intent dated 13th October 2022 being SRA/ENG/828/HE/ MMRDA/LOI [Exhibit-D];

(ii) appointment of Respondent No.2 [M/s. Budhpur Buildcon Pvt Ltd] as “Co-Developer” of Petitioner Society and Respondent No.3 [M/s HDIL] as developer on the Suit Property.”

In prayer clause (F) the relief sought is thus:

“(F) Pending the hearing and final disposal of this Writ Petition, this Hon’ble Court may be pleased to restrain the Respondent No.5 [In-charge Tehsildar-1(Special Desk), SRA] and Respondent No.7 [Competent Authority and Land Manager-Mumbai Housing And Area Development Board, MHADA] from exercising their powers as Competent Authority in respect of the Petitioner Society’s SRA Scheme plot of land under reference in any manner.”

In the Petitions by the individuals, the interim relief sought is worded as follows:

“(B) Pending the hearing and final disposal of this Writ Petition this Hon’ble Court may be pleased to stay the effect, implementation, operation of the impugned order bearing No.TEH-1 [SP.Desk] /33/ 38/ Basera/ Kavi/ 23/ 32177 dated 18th July 2023 passed by Tehsildar-1 [Special Desk], Slum Rehabilitation Authority in all manners qua the Petitioners.”

6. What these Petitioners do not seem to realise is that when deciding on interim relief, the usual threefold considerations must be borne in mind. There must be a firmly established prima facie case. Then comes the question of balancing equities and finally the question of the

Petitioners demonstrating irretrievable injury and prejudice.

7. There is certainly no prima facie case that has been made out so far given the complexity of the facts at hand. As regards the question of balance of convenience, it is not merely these Petitioners, i.e., this society or these few Petitioners. We have to bear in mind the interest of several thousands of others including other societies, some of them said to be on this very plot. But the final determinant in refusing interim relief must be the question of irretrievable prejudice and injury.

8. **Mr Khandeparkar, on the last occasion, appearing for Budhpur Buildcon stated on instructions that all eligible Petitioners in these three Petitions would receive 11 months' transit rent in advance and have available to them for execution and registration Permanent Alternative Accommodation Agreements ("PAAA") on the same terms as all others. This answers the questions of both balance of convenience and irretrievable prejudice. There is no prejudice that is caused to the Petitioners if relief is refused because their entitlements in law, one way or the other, are not only capable of being compensated but are being compensated immediately. Repeatedly, the Petitioners say they are not opposed to re-development. But they want to be able to dictate the nature of the re-development and the identity of the developer. Mr Lad for MHADA maintains that no such submission can be accepted from or on behalf of those who were originally trespassers on public land.**"

(Emphasis added)

34. Special Leave Petitions from this order were rejected on 22nd August 2023.

35. There then is an order of 31st August 2023 by a Division Bench of Sunil B Shukre and Firdosh P Pooniwalla JJ. This pertains directly to CTS No 7643 and the claim was that this was not covered by the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“**Slums Act**”). This order is directly relevant to the present discussion, and we reproduce paragraphs 1, 2, 3 and 4:

“1. Heard. By this Petition, the Petitioners are seeking the declaration that the plot of land bearing CTS No.7643, Village- Kole Kalyan, Barat Nagar, Bandra (East), Mumbai-400 051, Mumbai is not covered by the provisions of Slum Rehabilitation Act nor is the Slum Rehabilitation Authority could be considered to be an appropriate authority for the purpose of re-development of the said land. On this ground, the Petitioners have also sought interim relief from this Court regarding restraining the Respondents from demolishing their huts on the said land.

2. Mr. Khandeparkar learned Counsel for Respondent No.5 has tendered physical copy of the Affidavit in Reply filed on behalf of Respondent No.5 which is collectively marked as document ‘A’ for identification. **He points out from the said Affidavit in Reply so filed that the issue involved in the Petition is already conclusively decided by this Court not once but several occasions. Therefore, this Petition deserves to be dismissed. In support learned Counsel relies upon the findings recorded by co-ordinate bench of this Court in the previous round of litigation being WP No. 741 of 2010 and also another**

round of litigation represented by several representations, one of them being WPL No. 7714 of 2023.

3. On going through the order passed on 20th July 2011 in WP No.741 of 2010, we find that there is substance in the submission of learned Counsel for Respondent No.5 and consequently, no merit in this Petition. By the order passed on 20th July 2011, this Court has already taken a view that the huts existing on CTS No. 7643 are censused slums and therefore, they are covered by the provisions of Slum Rehabilitation Act and if that is so, no declaration as sought for by this Petition can be granted by this Court. The finding so recorded previously has been reiterated later on when review Petition being RPWL No. 50 of 2011 was dismissed by this Court on 16th December 2011. As if this was not enough, in the later round of litigation WPL No. 7714 of 2023 together with other connected matter, another bench of this Court made observations indicating that the Slum Rehabilitation Authority would be the authority to recognize as to whom should be the rightful developer of the said land. This supports our conclusion that the issue raised by this Petition is no longer res-integra and this Petition is not maintainable

4. Learned Counsel for the Petitioner has invited out attention to the observations made by another bench of this Court by its order dated 19th March 2019 in Writ Petition No.2534 of 2018, just to highlight an aspect which in his opinion is important and which shows that MHADA is the Authority, which had claimed that it was the owner of the plot. This observation is indeed there in Paragraph 3 of the said order dated 19th March 2019, passed in Writ Petition No.2534 of 2018 where the Division Bench has observed that the property bearing CTS No.7643 was vesting in MHADA, a statutory authority and therefore

without consent of statutory authority in which the property vests, no SRA scheme could be implemented on such a property. **But, later on this Petition was withdrawn by the Petitioners and if that is so, we do not think that any observations made by another bench of this Court at an intermediate stage, would have any binding effect upon the findings already recorded in the aforesaid Writ Petitions by different division benches of this Court.** Then, as rightly pointed out by Mr. Khandeparkar, learned Counsel for Respondent No.5, **MHADA has later on given its No Objection Certificate for SRA to propose re-development scheme in terms of the provisions of the SRA and this fact has already been taken note by another division bench of this Court while passing the order on 8th August 2023 in group matters with WPL No. 7714 of 2023 as the lead matter.** Useful reference in this regard may be made to observations made in paragraph 4 of the order dated 8th August 2023. Thus, we find that there is no merit in the Petition.”

(Emphasis added)

36. The Petitions were dismissed.

37. The present Writ Petition No 859 of 2024 was before this Division Bench on 29th January 2024. Paragraphs 6 to 11 of our order of that day read thus:

“6. The submission on behalf of Mr Kurle is that all previous orders are (and this is his description) non-est in law. This is being canvassed on behalf of a few persons. The order impugned in Appeal was by 10 slum dwellers. At least five other Appellants have not joined in the Writ Petition. The reason we say this is important is that the numbers tell their own story. There was a total number of 3209 slum

dwellers in the slum rehabilitation scheme. Of these 1326 have been rehabilitated, 1400 have vacated and about 500 remained on site. In regard to the 3rd Respondent, the Basera CHSL, there was a total of 1035 slum dwellers, of which 250 have been rehabilitated and about 450 have vacated their structures and are awaiting rehab.

7. The reason this becomes important is that the interim relief that Mr Kurle seeks is without any regard at all to what is to happen to the future of those who are already off-site or even to those who are on-site awaiting redevelopment.

8. The mistaken impression is that the interim relief only affects the developer. That is demonstrably incorrect, and the developer's travails is not the foremost of our concerns. Several others who are identically situated as the Petitioners at least to this extent that they were slum dwellers will be adversely affected by any ad-interim order because there will be a consequential delay in progress of the project and of completion and delivery of possession of rehab tenements.

9. There is no principle in law or equity by which such an ad interim relief can be granted in a one-sided fashion without demanding security for the consequential and inevitable prejudice. We make no demand of these Petitioners to provide such security because clearly they cannot.

10. But it seems equally inconceivable to us that these Petitioners could be exempted from an otherwise ordinary requirement of providing security and, at the same time, seek in equity an interim relief that does or is likely to prejudice others similarly or substantially similarly situated.

11. The question that Mr Kurle raises is that if interim relief is denied, the Petition will be infructuous. We do not think so at all. The question is not whether the Petitioners

are entitled to continue as slum dwellers in slum like conditions at all. The question is of entitlement to redevelopment and the benefits of redevelopment.”

38. We therefore declined ad interim relief. An SLP from this order was dismissed on 6th February 2024.

39. On 7th February 2024, this Bench had before it a Writ Petition No 1048 of 2024 which had been originally filed before a Single Judge. We noted that we had earlier said that all Applications pertaining to this project ought to be made before a Division Bench. The Single Judge had granted temporary ad interim relief which we continued but we said that a broader policy preventing forum shopping required that these applications should be made before the Division Bench. Ultimately, Writ Petition No 1048 of 2024 has been now administratively assigned to this Bench.

40. With this, we return to the present two Petitions that are before us.

41. As we have noted, the challenge is to orders of the AGRC and of the SRA. This is a form of judicial review. But Mr Kurle’s arguments have travelled much further. We turn first to the impugned order of the AGRC. This order is dated 9th January 2024. Before the AGRC, grounds seem to have been taken that there was no slum declaration either under Section 4 or under Section 3C of the Slums Act. The challenge was however to orders passed under Sections 33 and 38 of the Slums Act. The AGRC noted the rival submissions. Its reasons and findings are from paragraph 29

onwards. The Applicants included Basera CHSL, present Respondent No 6 in Writ Petition No 1048 of 2024, and Abdul Aziz, the 1st Petitioner in Writ Petition No 1048 of 2024. The other Petitioners were also applicants before the AGRC. The AGRC noted the CTS numbers over which the project is spread. It noted that the plot of land was one in respect of which a certified Annexure II had been issued by MHADA for a total of 3209 slum dwellers of which 2725 were held to be eligible. We note this because during arguments there was some attempt made to say that similar figures noted in our previous orders are uncorroborated and that the SRA should be made to file an Affidavit. These figures are by the AGRC itself and we see no reason to disbelieve the figures that have been given to us. It is pointless for the Petitioners to say that they do not know what the correct figures are but that the figures given to us should not be accepted because some other figure may be possible.

42. The AGRC found that every single one of the Applicants was eligible for rehab residential premises in the Annexure II.

43. This is of consequence because it is this very order that is also challenged in the companion Writ Petition No 859 of 2024. This is interesting because the Petitioners in Writ Petition No 859 of 2024, Shamsunnisa Saeed Ahmed and others, had filed a separate Application (L) No 11 of 2023 before the AGRC, which received a separate order on 9th January 2024. Those Petitioners also claimed to be MHADA tenants. The figures are identical. Paragraph 23 of the order challenged in Writ Petition No 859 of 2024 notes that

there were totally 3209 slum dwellers and 1326 have been habilitated, that 2596 have vacated and that 613 are on site. A total of 1035 slum dwellers are in Basera CHSL of which 250 are rehabilitated and 450 have vacated premises.

44. The reasons and conclusions are from paragraph 37 in that Writ Petition. There is a specific finding in paragraph 37 itself that all the Petitioners in Writ Petition No 859 of 2024 were eligible for residential premises in Annexure II. This statement of eligibility seems to be entirely missing from the body of the Writ Petition.

45. The AGRC proceeded on the basis that the scope of Sections 33 and 38 of the Slums Act is limited. The Competent Authority has merely to see whether the structure is required to be demolished/removed or not. These Sections do not extend to questions about the validity or legality of the scheme although such arguments seem to have been canvassed before the AGRC.

46. Both applications thus failed.

47. Two questions immediately arise. First, given that the AGRC orders are in the context of Sections 33 and 38 of the Slums Act, and that the only prayer in the Petition is to set aside those orders, can it be legitimately taken as a contention that the entire scheme is invalid or illegal? There is no such relief sought in the Petitions. That cannot be the canvass of a challenge to an order of the AGRC in proceedings under Sections 33 or 38. In any case, as we shall see, that entire argument is misconceived.

48. Turning to the statutory provisions, it is perhaps understandable that any person would have difficulty navigating the Slums Act. Over the course of amendments, there are wholesale substitutions of sections by the introduction of chapters and it is sometimes difficult even for an experienced practitioner to see which section applies in what circumstances. To add to all this confusion, is the fact that under the DCPR 2034, and specifically under DCPR 33(10), there is also a provision for slum redevelopment. Perhaps the final nail in this legislative coffin is that the DCPR 2034 is itself something of a departure from DCR 1991.

49. It is pointless in our view, to go about this in a numerical sequence, section by section. The first question that will arise is about Sections 33 and 38 of the Slums Act.

50. A careful study of the Slums Act will show us that there are two Sections 33 and two Sections 38. One set is in the original Act as framed. The second comes about in a very peculiar manner because the Slums Act was amended to introduce Chapters I-A and I-B. Chapter I-A had a series of sections numbered from 3A onwards. The most befuddling of these is Section 3D. What this does is take other Chapters and Sections of the original Act and apply them to what is described as a slum rehabilitation area with modifications (which include wholesale substitutions). Section 3D for instance substitutes Section 14 but for our purposes, in Section 3D(e)(I-A), Section 33 is wholly substituted. Similarly, Section 3D(e)(v) inserted by an amendment wholly amends Section 38. It is not contentious

that it is these two provisions that are relevant for our purposes.

They read as follows:

“33. Power of eviction to be exercised by Chief Executive Officer.

Where the Chief Executive Officer is satisfied either upon a representation from the owner of a building or from the developer or the Co-operative Society of the Slum Rehabilitation Scheme in the Slum Rehabilitation Area or, upon other information in possession that the occupants of the building have not vacated it in pursuance of any slum clearance order under section 12 or direction issued or given by him or the tenements constructed in Slum Rehabilitation Area are occupied without the permission or allotment by him or tenements are occupied without Occupation Certificate, he shall, by order, direct the eviction of the occupants from such building in such manner and within such time which is not more than thirty days as may be specified in the order, and for the purpose of such eviction, may use or cause to be used such force as may be necessary:

Provided that, the Chief Executive Officer shall exercise his powers under this section only in respect of the Slum Rehabilitation Area on which Slum Rehabilitation Scheme has been approved by him:

Provided further that, before making any order under this section, the Chief Executive Officer shall give a reasonable opportunity of being heard within such time which is not more than thirty days, as may be specified in the order, to the owners or occupants of the buildings, to show cause why they should not be evicted therefrom.

38. Order of demolition of building in certain areas.

(1) Where the erection of any building has been commenced, or is being carried out, or has been completed,

in contravention of any restriction or condition imposed under sub- section (10) of section 12, or a plan for the redevelopment of any Slum Rehabilitation Area or in contravention of any notice, order or direction issued or given under this Act, the Chief Executive Officer may, in addition to any other remedy that may be resorted to under this Act or under any other law, make an order directing that such erection shall be demolished by the owner or by the developer or by the occupant, as the case may be, thereof within such time not exceeding thirty days as may be specified in the order, and on the failure of the owner or the developer or the occupant, as the case may be, to comply with the order, the building so erected shall be liable for forfeiture or for summary demolition by an order of the Chief Executive Officer and the expenses of such demolition shall be recoverable from the owner as arrears of land revenue:

Provided that, no such order shall be made unless the owner or the occupant, as the case may be, has been given a reasonable opportunity of being heard.

(2) The forfeiture under this section be adjudged by the Chief Executive Officer and any property so forfeited shall be disposed of as the Chief Executive Officer may direct; and the cost of removal of the property under this section shall be recoverable as arrears of land revenue.

(3) For the purpose of causing any building to be demolished under sub-section (1), the Chief Executive Officer use or cause to be used such force as may be necessary:

Provided that, the Chief Executive Officer shall exercise his powers under sub-section (1), (2) and (3) above only in respect of the Slum Rehabilitation Area on which the Slum Rehabilitation Scheme has been approved by him.”

51. Also of relevance in this is a definition in Section 2(1b) inserted by the same amendment which has the definition of a 'censused' slum.

“(2)(1b) ‘Censused Slum’ means any cluster of dwelling structures which has been **censused, surveyed and enumerated and incorporated in the records of land owning authority** as having been censused by the Collector or Competent Authority or any other person of a Planning Authority or Special Planning Authority by order of the State Government or any authority empowered by order of the State Government.”

(Emphasis added)

52. This is relevant when we look at Section 33(10) of the DCPR 2034. As we know, the whole of DCPR 33 is an exception to the general Floor Space Index (“FSI”) norm because it provides for additional FSI for various categories or classes or projects depending on how they fall. Originally, DCR 33(10) of the DCR 1991 had to be read with Annexure II of DCR 1991. All of this is now brought into one place in the revised DCPR 33(10) of DCPR 2034. This relates to redevelopment for the rehabilitation of slum dwellers.

53. A few preliminary provisions of this DCPR are important for our purposes. These are DCPR 33(10)I(a) and (b) and DCPR 33(10)II(i) to (viii). They read thus:

“33(10) Redevelopment for Rehabilitation of Slum Dwellers:

I. Eligibility for redevelopment scheme:

(a) A person eligible for redevelopment scheme shall mean a protected occupier as defined in Chapter IB of Maharashtra Slums Areas (Improvement, Clearance and Redevelopment) Act, 1971 as amended time to time, hereinafter referred to as Slum Act and orders issued there under.

(b) Subject to the foregoing provisions, only the actual occupants of the hutment shall be held eligible, and the so-called structure-owner other than the actual occupant if any, even if his name is shown in the electoral roll for the structure, shall have no right whatsoever to the reconstructed tenement against that structure.

II Definition of Slum, Pavement, and Structure of hut:

(i) **Slums shall mean those censused, or declared and notified, in the past or hereafter under the Slum Act. Slum shall also mean area/pavement stretches hereafter notified or deemed to be and treated as Slum Rehabilitation Areas.**

(ii) **If any area fulfils the condition laid down in section 4 of the Slum Act, to qualify as slum area and has been censused or declared and notified shall be deemed to be and treated as Slum Rehabilitation Areas.**

(iii) Slum Rehabilitation area shall also mean any area declared as such by the SRA though preferably fulfilling conditions laid down in section 4 of the Slum Act, to qualify as slum area and/or required for implementation of any slum rehabilitation project. Any area where a project under Slum Rehabilitation Scheme (SRS) has been approved by CEO, SRA shall be a deemed slum rehabilitation area.

(iv) Any area required or proposed for the purpose of construction of temporary or permanent transit camps and so approved by the SRA shall also be deemed to be and

treated as Slum Rehabilitation Areas, and projects approved in such areas by the SRA shall be deemed to be Slum Rehabilitation Projects.

(v) A pavement shall mean any Municipal/Govt. /Semi-Govt. pavement, and shall include any viable stretch of the pavement as may be considered viable for the purpose of SRS.

(vi) A structure shall mean all the dwelling area of a protected occupier as defined in Chapter I-B of Slums Act, and orders issued thereunder.

(vii) A composite building shall mean a building comprising both rehab and free-sale components and part thereof in the same building.

(viii) **Censused shall mean those slums located on lands belonging to Govt., any undertaking of Govt., or MCGM and incorporated in the records of the land-owning authority as having been censused in 1976, 1980, or 1985 or prior to 1st January, 1995, and 1st Jan 2000.”**

(Emphasis added)

54. As we have seen, the Petitioners have constantly canvassed that their eligibility in Annexure II notwithstanding, they are not slum dwellers. They are not encroachers. They are and always were from inception tenants of MHADA and are therefore entitled to separate and differential treatment in rehabilitation. Mr Kurle has been at some pains to point out that the Petitioners should not be misunderstood as being opposed to redevelopment per se. Although he may have concerns regarding the manner in which Budhpur was appointed, that is a separate question. It has nothing at all to do with the matter or question of the Petitioners' entitlement in law. He

positions this as a straightforward challenge under Article 14. His case is that like must be treated like and there is no possibility of people who are differently positioned, all being swept under the same “slum rehab scheme” and all being treated as eligible for slum rehab tenements. The Petitioners have no grievance about the rehab being offered to other slum dwellers. But there is not the slightest possibility, according to the Petitioners, that a MHADA tenant could ever be labelled or consequently treated or classified as a slum dweller for any purposes whatsoever.

55. This is more than a question of labelling. It is not just a question of stigma. It is a question of a very real entitlement. According to Mr Kurle, this makes a significant difference.

56. This may be approached in two ways. *First*, if the Petitioners are correct in saying that they are MHADA tenants then slum redevelopment cannot be applied to them or forced upon them. *Second*, if slum redevelopment cannot be applied to them but some form of redevelopment is inevitable, then the question is what form that redevelopment should take and under what provision in law. It would therefore be his submission that neither DCPR 33(10) nor the Slums Act itself could ever be made to apply to persons such as the Petitioners who are and were MHADA tenants on MHADA-owned land. That status as original MHADA tenants is not, he says, in controversy. It is not a question of the Petitioners dictating what form development should take but it is more a question of whether it is permissible as a matter of State action to treat those who are dissimilarly placed in an identical fashion. It is his submission that

this is entirely impermissible under Article 14 of the Constitution of India and particularly so when there is a specific provision in the form of DCPR 33(5) that provides for the distinct redevelopment of properties such as those held by the Petitioners, i.e., as tenants of MHADA.

57. This is apart from his submission that there is no declaration under Section 4(1) or 3C of the Slums Act.

58. We believe this argument is more than somewhat misplaced. On a careful reading of DCPR 33(10) and the provisions of Chapters I-A and I-B, if this is a censused slum, no question of a separate declaration under Sections 4(1) or 3C would ever arise. This argument will not assist Mr Kurle in the manner that he seeks because it actually creates a conflict in his own position. It would necessarily mean that if there is a slum declaration under Section 4 or Section 3C or if this is held to be unnecessary then the Petitioners would also automatically be included in the slum scheme.

59. But Mr Kurle's endeavour has throughout been to put as much distance as possible between the Petitioners and anything resembling a slum. Whatever may be the situation elsewhere in that vicinity at Kole Kalyan, the Petitioners' structures were not slum structures. They were not slum huts. They could not therefore be treated as slums.

60. Specifically, he submits that if DCPR 33(5) is applied to the Petitioners then on rehabilitation the Petitioners would be entitled

to much larger premises than are being made available to them by simply treating them as eligible “slum dwellers”. This is the centrality of the Article 14 invidious discrimination argument placed by Mr Kurle.

61. There are other tangential arguments that in our view are mere distractions. These relate to the legitimacy of Budhpur’s anointment as the developer and whether the Principal Secretary, Housing is in a conflict of interest. These are not matters that will affect the merits of the central dispute that is being canvassed by Mr Kurle.

62. There are two difficulties in Mr Kurle’s way as we see it today, and these emerge from the record. The first relates to what has now become, at least in these proceedings before us, a legendary affidavit by MHADA. Mr Kurle opened his innings before us with an approach fairly similar to that of the present English Test cricket team, by launching a frontal assault on the MHADA Affidavit. He claimed it did not exist. This led to his attempting to pursue a Section 340 CrPC Interim Application. An equally agitated Mr Lad told us that the officer who had sworn their Affidavit, one Sanjaykumar Narayan Bhosale, was very much present in Court. He confirmed having sworn that Affidavit. Mr Utangale’s office confirmed that the Affidavit was e-filed. The SRA and the developers said this Affidavit had been relied on. We have already noted in the extracts quoted above how this Affidavit and what it says were already referenced by this Court. Mr Kurle did not press the Section 340 CrPC Interim Application.

63. But the filing or non-filing of an Affidavit is one thing. Its contents are another. Mr Kurle is right in this respect that the contents of this Affidavit make for very interesting reading, but, unfortunately, not from his perspective. There is no manner of doubt that this Affidavit was pursuant to our directions in our order of 22nd March 2022, referred to above. The SRA said that MHADA had originally issued an NOC of 16th November 2005 and 1st June 2006 *inter alia* in respect of CTS No 7643 (part). Then MHADA had attempted to cancel this NOC on 13th April 2018 and 31st July 2018. The SRA complained that the NOC had not been reinstated. Mr Bhosale filed the Affidavit of 17th February 2023 to explain this position. He agreed that the NOCs were granted on 16th November 2005 and 1st June 2006. He agreed that MHADA had on 13th April 2018 and 31 July 2018 said that since the land was owned by MHADA, i.e., CTS No 7643 (part), MHADA had taken a policy decision to, and this is important, “implement the slum scheme by itself on its own land” and therefore told SRA not to grant further permissions. Then in paragraph 4, Mr Bhosale said that the State Government called for a report from MHADA *inter alia* in respect of CTS No 7643 (part). On 27th April 2022, the State Government wrote to the SRA with a copy to MHADA saying that once the scheme was sanctioned by SRA, the land-owning authority in the present case, MHADA could not cancel its NOC given on 16th November 2005 and 1st June 2006 for the MHADA-owned plots. The State Government said there was no provision in law to cancel such an NOC once given by the land-owning authority. In paragraph 5, Mr Bhosale confirmed that MHADA’s letters of 13 April 2018 and 31 July 2018 revoking the NOC would stand withdrawn and of no effect.

64. The result was, and this is Mr Kurle's complaint, that MHADA owned land went back to the SRA and with that the Petitioners once again, although allegedly MHADA tenants, began to be treated as eligible slum dwellers, i.e., those whose names appear in Annexure II.

65. Throughout, Mr Lad has maintained that the Petitioners are not MHADA 'tenants' but are simply encroachers on MHADA land.

66. Mr Kurle's submission is that this entire process is fundamentally wrong and misconceived. He draws our attention to a Division Bench order of 19th March 2019 in Writ Petition No 2534 of 2018. This is the very order referenced by the Division Bench of Shukre and Pooniwalla JJ (extracted above). The order is by AS Oka J (as he then was), and MS Sanklecha J in Writ Petition No 2534 of 2018 filed by one Sawdhan Foundation, an NGO. The order is *inter alia* in respect of CTS No 7643 (part) as paragraph 2 of the order shows. The order notes that members of this Sawdhan Foundation and the 2nd petitioner were residents on CTS No 7643 (part) and that this was the subject matter of an LoI issued to the developer (presumably HDIL at that time) on 5th February 2007. MHADA was the 3rd respondent before that Court. It was found that it was the owner of CTS No 7643 (part) and the order noted that the NOC granted by MHADA to SRA had been revoked. This is a reference to the facts that we have just noted above and which we find mentioned in Mr Bhosale's Affidavit. This, the Division Bench said, was clear from another Affidavit filed by the SRA. Again, there was

a reference there to the MHADA communication of 13th April 2018, the very communication that is referenced in Mr Bhosale's Affidavit.

67. Paragraph 3 of the order of 19th March 2019 reads as follows:

“3 It is undisputed that the third respondent – MHADA has right, title and interest in respect of the land bearing CTS No.7643 (P). Thus, the said property is vesting in MHADA which is a statutory authority under the said Act of 1976. Prima facie, it appears that the implementation of the slum rehabilitation scheme is in progress on the said public property without consent of the third respondent. Even assuming that substantial development has taken place, remedy of the developer is to challenge the action of the third respondent of issuing the letter dated 13th April 2018. Surprisingly, the fourth respondent which is also a statutory authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 has not directed the fifth respondent to stop construction. Notwithstanding the letter dated 18th April 2018 issued by the third respondent calling upon the fourth respondent to delete the said property from the letter of intent, the Slum Rehabilitation Scheme is being implemented on the said public property. Prima facie, without consent of the concerned public authority in which the land is vesting, the Scheme cannot be implemented. Hence, a case is made out for grant of limited ad interim relief. By way of a limited ad interim relief, we restrain the fifth respondent from developing the land bearing CTS No.7643 (P) and from creating any third party interests in respect thereof or construction carried out thereon.”

68. It is therefore Mr Kurle's case that the slum scheme cannot be implemented without the consent of the Public Authority concerned in whom the land vests, namely MHADA.

69. But as is so frequently the case with Mr Kurle's Petitions, there is no shortage of complications. It seems this petition by Sawdhan Foundation was withdrawn. Mr Kurle would have it that behind this withdrawal lurks a dark conspiracy. Leaving aside the adjectives, what happened is that some other entity then sought to have that Sawdhan Foundation Petition restored (so that paragraph 3 could be given effect to). That Application floundered. The applicant was told to file a separate writ petition. That has been done and that writ petition is as yet pending. Therefore, Mr Kurle argues, unless the restoration writ petition is heard and decided first, and this question of whether MHADA consent is given is gone into, no further slum redevelopment should be permitted at least on the lands the present Petitioners occupy.

70. The difficulty with this approach is clear from the Affidavit of Mr Bhosale. That order of withdrawal has not been set aside. The interim order will not survive today. Subsequent events, particularly those noted in Mr Bhosale's Affidavit, have overtaken events. This includes the State Government communication of 27th April 2022.

71. Mr Kurle realises this. He therefore says that the State Government communication of 27th April 2022 is also itself separately under challenge. In other words, according to him, the State Government could never have permitted a MHADA-owned

property to be taken up for slum redevelopment by the SRA. But this is at something of a remove from what even the 19th March 2019 order said. That order did not hold (as it could not have done) that no slum redevelopment is *ever* possible on MHADA-owned land. Paragraph 3 in the highlighted portion above expressed only a *prima facie* view to the limited extent that without the consent of MHADA, the slum scheme could not be implemented. In other words, if there was consent of MHADA (in the form of the original NOCs of 2006–2007 which were reinstated) then there was no impediment to the slum scheme. Consequently, the 19th March 2019 order says precisely the opposite of what Mr Kurle is attempting to canvass. It holds that a slum scheme on MHADA-owned land is possible; it just needs the NOC of MHADA.

72. But there is finally an additional set of factors to which we must have regard. These are entirely jurisprudential. Conceivably, they represent the biggest hurdle to Mr Kurle.

73. Writ Petition No 741 of 2010 came up before a Division Bench of Dr DY Chandrachud J (as he then was) and Anoop V Mohta J on 20th June 2011.⁵ There were four Petitioners. They challenged the slum rehabilitation project under DCR 33(10), the present one. Paragraphs 1, 4, 5, 6 and 7 of the order are of direct relevance.

“1. The Petitioners are four occupants, who have challenged a slum rehabilitation project under DCR 33(10).

The grievance of the Petitioners is two fold. The first

⁵ *Rafique Abdul Sattar Sayyed & Ors v State of Maharashtra & Ors*, 2011:BHC-OS:10169-DB.

submission which has been urged is that the land on which the project is being implemented is not declared as a slum under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Secondly, it has been submitted that the adjoining plots are being redeveloped under DCR 33(5) where the occupants would be entitled to a greater area of 350 sq.ft. of permanent alternate accommodation, whereas the Petitioners would be allotted 270 sq.ft. of accommodation free of costs.

4. As regards the first grievance of the Petitioners, it has been stated that the office of the Deputy Collector (Encroachment) addressed a letter on 7 September 1996 to the Additional Collector (Encroachment) and informed him that on the basis of the names of the slum dwellers reflected in the voters list of 1985, 201 photo passes were issued to slum dwellers of Plot Nos.7, 8, 9 and 12. In view of what is stated in affidavit in reply, there is no substance in the challenge to the scheme on the ground that the land is not declared as a slum. Evidently, this is a censused slum. The letter dated 7 September 1996 adverts to the fact that photo passes were issued after a census was carried out of the slum dwellers. On 19 September 1996, a primary NOC was issued by the Chief Officer of the Housing Board to the Eleventh Respondent Society to carry out redevelopment under DCR 33(10). On 8 October 1996, the DILR under the Rajiv Gandhi Nivara Prakaalpa working under MHADA as nodal agency for the Slum Upgradation Scheme carried out a survey of Plot Nos.7, 8, 9 and 12 for implementing a slum rehabilitation scheme under DCR 33(10). On 10 December 1996, an NOC was issued to the Eleventh Respondent for undertaking a slum rehabilitation project under DCR 33(10) in respect of 1027 hutment dwellers. Subsequently, on 3 January 2006, a Letter of

Intent has been issued to the Ninth Respondent who is a developer. On 4 April 2006, MHADA has issued Annexure II. Though initially in 1996, 978 slum dwellers were certified under the NOC, a total of 1003 slum dwellers have been certified in revised Annexure II, which contains the names of eligible slum dwellers.

5. The second grievance of the Petitioners in respect of the area which is being allotted to them is without any basis. Under DCR 33(10) every occupant is entitled to the allotment of alternate accommodation admeasuring 270 sq.ft. The Petitioners cannot seek the benefit of a redevelopment under DCR 33(5). DCR 33(5) applies to layouts prepared by MHADA. MHADA had neither constructed structures in the occupation of the Petitioners and other occupants, nor were tenements allotted to them. In contrast, it has been brought to the notice of the Court in the affidavit in reply that the occupants of Tata Colony layout have formed seven Cooperative Societies and in May and June 2005, MHADA executed lease deeds in favour of the seven societies. The seven societies amalgamated on 23 December 2005 and formed the Tata Colony Housing Society Ltd. on 7 March 2007. An NOC for redevelopment under DCR 33(5) is stated to have been issued to those Societies and a fresh Indenture of Lease was executed on 8 June 2007.

6. The case of the Petitioners cannot possibly stand on the same footing as that of the Housing Societies. The Petitioners were allotted pitches when they were shifted from the Slaughter House area to Bharat Nagar in Bandra (East). As occupants of a censused slum, they would be entitled to the allotment of permanent alternate accommodation admeasuring 270 sq.ft.

7. **The Court has also been informed that of the over 1000 slum dwellers only four have moved these proceedings. The project has also been implemented in part and four buildings are stated to have been constructed.** In this view of the matter, besides finding that there is no substance in two submissions which were urged before the Court, we do not consider it appropriate to interfere under Article 226 of the Constitution. The Petition is dismissed.”

(Emphasis added)

74. A Review Petition failed on 16 December 2011.⁶

75. On 11th August 2014, a Division Bench of SJ Vazifdar J (as he then was) and AK Menon J took up Writ Petition No 188 of 2014. This also related to the same tract of land. The order of 11th August 2014 referenced the previous orders of 2011 in the Writ Petition and the Review Petition. The Division Bench found that this was a third proceeding for the same reliefs and on the same ground. There again there was an allegation that there was fraud played by the Respondents. The Division Bench said that the Petitioner was not entitled to keep filing Petitions. The Petition was dismissed.

76. A Review Petition failed. The order sheet at pages 552 and 553 of Writ Petition No 1048 of 2024 makes for the most extraordinary reading of the cause title. Here, we find that there is a Notice of Motion in a Review Petition in the Writ Petition (before SJ Vazifdar and AK Menon JJ) and a Notice of Motion in another Review Petition in another Writ Petition along with a Restoration

6 Review Petition (L) No 50 of 2011.

Application in the Review Petition in the Writ Petition that was before SJ Vazifdar and AK Menon JJ and a Notice of Motion in the Review Petition in another Writ Petition. The application by way of a Notice of Motion was for a condonation of delay. The delay was not condoned. The entire pack of cards collapsed.

77. Then there is something of a quietus from 2015 to 2023 when Writ Petition (L) No 15579 of 2023 came to be filed on the Original Side of this Court. It was dismissed by the order of 31st August 2023 of Shukre and Pooniwalla JJ, referred to earlier. This also pertained to CTS No 7643. It sought a declaration that no slum project could continue on this land because it was not covered by the Slums Act nor was the SRA the appropriate authority for the purposes of the redevelopment.

78. In other words, from 2011 to 2023, the same argument was being repeated again and again. And it is repeated now in 2024.

79. One significant difference is that by now Mr Khandeparkar appears for the developer. Otherwise, everything has been more or less the same.

80. Mr Khandeparkar places reliance on these previous orders, including those of 2011, 2014 and 2015. These are noted in paragraph 3 of the 31st August 2023 order. There was a reference again even here to the 19th March 2019 order in Writ Petition No 2534 of 2018. This also was considered. Paragraphs 3 and 4 of this order are already reproduced above.

81. It is difficult to understand how we can possibly, as a Bench of coordinate strength, take an entirely different view simply because there is now a fourth or fifth attempt to canvass the same point, namely that no slum project can be implemented by the SRA on this tract of land. This argument has been made and rejected by Division Bench after Division Bench for the last 13 years. It is true that as Counsel at the Bar, Mr Kurle is at liberty not to be bound by previous orders. That freedom is however not available to later Division Benches of coordinate strength. There is not the slightest possibility of us holding that any of these orders since 2011 are *per incuriam*. That would be an invitation to a beheading. Perhaps realizing this, Mr Kurle's argument is that 'fraud vitiates everything' and that if there is indeed fraud then every order obtained by fraud is an order obtained by playing fraud upon the Court and is therefore nullity, *non est* and can be disregarded.

82. But merely chanting "fraud" is no argument at all. Indeed, fraud is essentially a matter of fact. It requires particularisation. It demands proof. Every available straw has been grasped at but to no avail.

83. The fundamental point remains, namely the case of the Petitioners that as MHADA 'tenants' they cannot be subjected to a slum redevelopment scheme. But it is precisely this argument that has been canvassed steadily since 2011 by a series of petitioners (and MHADA has denied that these are tenants). A change in the identity of the petitioner does not change the substance of the

argument. It does not mean that the argument can be taken again and again. There must be finality to these matters.

84. The scheme of the Act was noted *inter alia* in *Kantabai Vasant Ahir v Slum Rehabilitation Authority*.⁷ In *Andrade Motors v Additional Collector (Eng./Rem)*,⁸ the question of the ambit of powers under Sections 33 and 38 of the Slums Act has been discussed. That decision was by a learned Single Judge of this Court. We entirely endorse that view.

85. This is not a question of the application of the principle of res judicata or some principle analogous to it. There is little purpose achieved in claiming that previous petitions were ‘by other people’ and are therefore not binding. In every case, the petitioners have canvassed the grievances of a *class*, i.e., those who claim they are MHADA ‘tenants’ (denied by MHADA, and a factual dispute outside the purview of a writ court); that they cannot be treated as ‘slum dwellers’; that DCPR or DCR 33(10) cannot be applied to them; that they are entitled to demand re-development under DCPR or DCR 33(5). Every single one of these has been considered and repelled *for the entire class*.

86. The argument that there is no slum declaration under Section 3C or Section 4 has also been repeatedly taken and rejected. The argument has been that even if the development is under DCR/DCPR 33(10), a declaration under Section 4 or Section 3C is a

7 (2019) 10 SCC 194.

8 2009 SCC OnLine Bom 358 : (2009) 3 Bom CR 120.

pre-requisite. This issue is also not res integra. Mr Khandeparkar correctly relies on the decision of the Division Bench of this Court in *Om-Sai Darshan CHSL (Proposed) v State of Maharashtra*⁹ particularly paragraphs 16, 19 and 20. They read thus:

“16. The following questions arise for consideration in this petition:

(i) Whether the issuance of notification under Section 3C(1) of the Slum Act is a condition precedent for sanction of slum redevelopment scheme governed by D.C. Regulation 33(10)?

(ii) What is the meaning of the slum rehabilitation area for the purpose of D.C. Regulation 33(10)?

(iii) Whether the Petitioner No. 1-proposed society is entitled to grant of sanction to develop a particular area out of CTS 539/C-1?

19. **In the present case we are dealing with the scheme of slum redevelopment which is governed by Regulation 33(10). A General Scheme under Section 3B of the Slum Act can be framed either by the State Government or by SRA with the prior approval of the State Government. However, the scheme under Clause 33(10) is to be approved in individual cases by the SRA. Clause (II) of Annexure to the said Regulation provides that for the purpose of Regulation 33(10), a slum means that area which is either censused or one which is declared and notified under the Slum Act. It provides that the slum shall also mean areas pavement stretches hereafter notified as slum rehabilitation areas. The clause provides that if any area fulfills conditions laid down in Section 4 of the Slum Act to qualify as a slum area and has been either**

9 2006 SCC OnLine Bom 480: (2007) 1 Bom Cr 476.

censused or declared and notified as slum, it shall be deemed to be and treated as Slum Rehabilitation Areas. The said clause also provides that censused means those slums located on lands belonging to Government, any undertaking of Government, or to Brihan Mumbai Municipal Corporation and incorporated in the records of the land owning authority as having been censused in 1976, 1980, or 1985 or prior to 1st January 1995. Thus for the purpose of scheme under Regulation 33(10), the following areas are Slum Rehabilitation Areas: (a) any area which fulfills the conditions laid down in Section 4 of the Slum Act which is declared and notified as such and (b) slum rehabilitation area declared as such by the Slum Rehabilitation Authority fulfilling the conditions laid down in Section 4 of the Slum Act to qualify as slum area and/or required for implementation of any slum rehabilitation project. Regulation 33(10) contemplates that there can be redevelopment of slums including pavements. The slums are defined by Clause II. The slums mean either censused slums or slums declared and notified as such under the Slum Act. Clause II also defines the word censused which means slums located on lands belonging to Government, any undertaking of the Government or Mumbai Municipal Corporation and incorporated in records of the land owning authority as having been censused in 1976, 1980 or 1985 or prior to 1st January 1985.

20. On plain reading of the Annexure to Regulation 33(10) it is obvious that for sanction of a scheme governed by the said Regulation in respect of a parcel of land, it is not necessary to have a declaration of the particular parcel of land as a slum rehabilitation area in exercise of power under Section 3C(1) of the Slum Act. The Slum Rehabilitation Scheme can be sanctioned in respect of a slum as defined in clause of Annexure to Regulation 33(10). Under the said Annexure there can

be a scheme for a viable stretch of pavement also. The learned Single Judge deciding Ramkali's case was not concerned with a scheme under D.C. Regulation No. 33(10). The proposition laid down by him will have to be read as one confined to the situation before him. Question No. 1 is therefore answered in the negative. The question No. 2 has been also answered in the foregoing paragraphs."

(Emphasis added)

87. Therefore, this is nothing but an attempt now to serve up old wine in a new bottle. Various persons made the *same arguments* in regard to structures *on the same land*. These submissions have found no favour with the Court since 2011. From the very first order it was held that it was not possible to accept the argument that the redevelopment should be under Regulation 33(5) of the 1991 DCR.

88. It also remains unexplained to this day how these persons, all claiming to be MHADA 'tenants', have simultaneously submitted documents and submitted themselves to the process of slum eligibility determination and have come through, every single one of them, as persons eligible for permanent alternative accommodation in a slum rehabilitation scheme. All their names are listed in Annexure II.

89. In these circumstances, we find there is no ground made out for interference. The previous orders will bind us. Even independently we do not see any justification for interference with the impugned orders.

90. The two Writ Petitions are rejected. In the facts and circumstances of the case there will be no orders as to costs. All previous orders stand vacated.

91. All Interim Applications are also disposed of.

92. Mr Kurle's request for a continuance of two weeks is rejected. We have already set out our reasons above. This argument is reiterated time and time again. These kinds of steps do not affect only the Petitioner. They adversely affect several hundred others and no security is being offered or provided for the prejudice. The Application is rejected.

93. Mr Khandeparkar asks us to note that so far these Petitioners are concerned, the developer has deposited 24 months' transit rent in advance with the SRA and this is available to the Petitioners for withdrawal. So noted.

(Kamal Khata, J)

(G. S. Patel, J)