

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2530/2016

The Municipal Corporation of Greater Mumbai ... Petitioner

V/s.

M/s. Craftsman Electronic Corpn. Pvt. Ltd. & Ors. ... Respondents

Mr. S. U. Kamdar, Senior Advocate with Chirag Shah i/b. Vinod Mahadik for the petitioner

Mr. Atul Damle, Senior Advocate i/b. Rakesh Agrawal for Respondent No.1.

Mr. Vikram Chavan for respondent No.2.

CORAM: K.K. TATED, J.

DATED : AUGUST 9, 2016

JUDGMENT :

1. Heard the learned counsel for the parties. By consent of the parties, the matter is taken up for final hearing at the stage of admission itself.

2. By this petition under Article 227 of the Constitution of India, the petitioner Municipal Corporation of Greater Mumbai (hereinafter referred to as the Corporation) challenges order dated 29.09.2015 passed by the Bombay City Civil Court at Mumbai in Misc. Appeal No.128/2013 setting aside the order dated 02.05.2015 passed in Enquiry No.E/2/2013 by Enquiry Officer of the Municipal Corporation, whereby the respondents were directed to vacate the enquiry premises within a month from the date of service of notice u/s.105B(1) of the Mumbai Municipal Corporation Act, 1888 (MMC Act).

3. A plot of land bearing CTS No.366 and 1/367 at Mazgaon, Mumbai – 400010 (hereinafter referred to as “said plot”) belongs to the Union of India. Same was let out to the Corporation on 01.09.1902. The occupants of the said plot from Dholakwala Chawl, Shivdas Chapasi Marg, Mumbai & Sethna Hall Compound, Nesbit Road, Mazgaon, Mumbai – 400010 entered into development agreement with the developer on 04.09.2002 for the plot admeasuring 4,824.93 sq.mtr. Thereafter Annexure-II was issued.

4. The corporation being owner/ holder decided to develop the entire plot of land being CTS No.366, 1/367(p) admeasuring 13018.96 sq.mtr. To that effect, the Improvement Committee of Municipal Corporation passed resolution No.82 dated 10.08.2009 and resolution No.466 dated 12.08.2009. The corporation had revised Annexure-II. In that revised Annexure, structures of respondent Nos.1 and 2 were shown at Sr.No.38. As per revised Annexure-II, the respondent No.2 was shown having possession of 3330 sq.ft. area.

5. As the respondent failed and neglected to cooperate for redevelopment and handing over possession of land & structure to the developer, the corporation issued notice u/s. 105(B) of MMC Act calling upon the respondents to hand over vacant and peaceful possession of the suit premises to the developer for carrying out development activities. That notice was challenged by the respondents before the Estate Officer. The Estate Officer, by order dated 10.10.2013 held that the corporation required the suit premises which is in

possession of the respondents for redevelopment in the interest of public at large as per D.C. Rules 33(7). The Enquiry Officer ordered and directed the respondents to handover vacant and peaceful possession of the suit premises in their possession to the corporation for redevelopment within one month from the date of service of notice u/s. 105B(1) of the MMC Act.

6. Being aggrieved by the said order, the respondents filed Misc. Appeal No.30/2015 on several grounds. Their main contention was that, originally the redevelopment was sanctioned for 4,828.93 sq.mtr. and subsequently same was enlarged in respect of 13,018.96 sq.mtr. land which is contrary to law. The respondent's contention was that though the Annexure-II (Revised) shows only 3,330 sq.ft. area in their possession, in fact as on today, they are in possession of more than 28000 sq.ft. They also raised objection that the corporation failed to follow due process of law for sanctioning the redevelopment scheme for the entire area i.e. 13018.96 sq.mtr. Before the trial court the respondent raised several objections/ grounds. Some of them are as under:

“16. However, after the said proposal for redevelopment was sanctioned by the respondent No.1, the said developer has intimated to the Appellants that they are redeveloping the said property and they wanted the Appellants to join the said redevelopment project in the said property. The Appellants considering the said redevelopment project is as per the rules and regulation prescribed by the Government still agreed to join to the said redevelopment project of the said property on the condition that the Appellants should be offered the total premises that they are eligible and in occupation of the Appellants.

36(xxx). The redevelopment of the entire municipal property is

sanctioned under rule 33(7) of the D.C. Regulation. Being the tenant the Appellants No.1 is entitled to have an area which is the sole tenant, eligible & occupation of the Appellants. As stated hereinabove, the Appellants have made it clear before the Enquiry Officer that the Appellants are not objecting to the redevelopment of the said property. However, the Appellants have also made it clear that in law, the Appellants are entitled to have the permanent alternative accommodation to the extent of the area which is in his sole tenancy, eligibility and occupied by the Appellants.

45. The Appellants state that by letter dated 12.06.2013 the Appellants made it clear to the respondent No.1 that they are not opposing to the redevelopment of the said property. The Appellants have also made it clear that they will not tolerate the infringement of their right in redevelopment of the said property at the behest of Vardhaman Developers who is using the machinery of the respondent No.1 for pressurizing the Appellants to settle the redevelopment aspect at their own terms. The said Vardhaman Developer is neither entering into any agreement nor deciding as to what permanent alternate accommodation they are going to give to the Appellants, where they want to give the said permanent alternate accommodation to the Appellants, what is the transit accommodation they are going to provide to the Appellants, what further amenities they are going to give to the Appellants. Neither the departments of the respondent No.1 are answering the above questions, nor the said Vardhaman Developer is doing the same and therefore, the said enquiry notice is issued to the Appellants without any application of mind and to benefit the said Vardhaman Developers.

Grounds

(j) The respondent No.2 purposely ignored the fact which is on the record that the entire plot which is sought to be redeveloped is admeasuring about 13518.96 sq.mtrs. and the Mazgaon Dholakwala CHS (Proposed) were only in the part of the said property i.e. on 4824.937 sq.mtr. of the plot.

(l) *The respondent No.1 ought not to have granted the permission for redevelopment under 33(7) of the DCR for the entire plot.*

(m) *The respondent No.2 purposely and with sense of legal perversity had not considered that as far as the Appellant's premises is concerned it is not part and parcel of Mazgaon Dholakwala CHS (Proposed) and therefore there was no question of the Appellants to become the member of the said society and to give consent to the said society for the redevelopment of the construction thereof under 33(7) of the DCR.*

(o) *The respondent No.2 seriously erred in neglecting the factual aspect of the matter as far as the Appellants are concerned that they have their own independent building on the plot of land namely Sethna Hall Compound.*

(p) *The respondent No.2 seriously erred in not appreciating that even otherwise admittedly at no point of time even otherwise the Appellants were approached by the said society to become member of the said society Mazgaon Dholakwala CHS (Proposed).*

(u) *The respondent No.2 seriously erred in not considering as a matter of fact the entire redevelopment scheme which has been sanctioned by the respondent No.1 was done in a fraudulent manner in as much as when the said Mazgaon Dholakwala CHS (Proposed) was occupying only a part portion of the said entire plot then there was no question of respondent No.1 sanctioning the development of the entire plot to the said Mazgaon Dholakwala CHS (Proposed) by fraudulently showing that the said society is formed by the tenants of the entire plot consisting of Dholakwala Chawl, situated at Shivdas Champs Marg and Sethna Hall Compound situated at Nesbit Road just to give permission under 33(7) of D.C. Regulations.*

(v) *The respondent No.2 has purposely ignored the fact that even under DCR 33(7) the entire plot could not have been permitted to the Developer by the respondent No.1 in as much as the major portion of the said plot there was no tenant at all under the guise of consent of the tenants who were occupying only a portion of the*

said plot the entire plot was given for the redevelopment by the respondent No.1.

(y) The respondent No.2 has totally ignored the fact on the basis of documents produced by the respondent No.1 to show the consent of the Appellants had successfully shown that there was no 70% consent of the plot for redevelopment of the said property, and the respondent No.2 purposely and with ulterior motive ignored the said fact.

(aa) The respondent No.2 has lost his sight of the fact that he has seriously ignored the fact that the said Vardhman Developers was appointed by the Mazgaon Dholakwala CHS (Proposed) in respect of the area of the plot occupied by them and not for the entire plot and the agreement for the development between the Vardhaman Developers and the Mazgaon Dholakwala CHS (Proposed) is made with the said society which has only 45 members and not 93.”

7. After hearing both sides the trial court framed following points for consideration :

	POINTS	FINDINGS
1	Whether the enquiry premises were included in the redevelopment agreement of the proposed Dholakwala CHS ?	No
2	Whether the Appellants are liable to be evicted from over the enquiry premises vide section 105B of the MMC Act?	No
3	Whether impugned order is sustainable ?	No
4	What order ?	Appeal is allowed.

8. The trial court allowed Misc. Appeal filed by the respondents. Hence, the Writ Petition.

9. The learned senior counsel for the petitioner corporation submits that the impugned order dated 29.09.2015 in Misc. Appeal

No.30/2015 passed by the learned Principal Judge, Bombay City Civil Court at Mumbai is against justice, equity and good conscience and same is liable to be set aside. He submits that the learned Judge of the trial court allowed the respondent's appeal on two grounds i.e. (i) the property in possession of the respondents was not included in the redevelopment agreement of the proposed redevelopment scheme and (ii) the respondents are not liable to be evicted from the suit property vide section 105B of the MMC Act.

10. The learned senior counsel for the petitioner submits that in the present proceedings, initially the corporation sanctioned 4424.93 sq.mtr. area for redevelopment as per Redevelopment Agreement dated 04.09.2002. Thereafter considering the situation of the property, the Improvement Committee of Corporation decided to redevelop the entire city survey No.366 and 1/367 (P) admeasuring 13018.96 sq.mtr. Hence, the Improvement Committee passed resolution No.82 dated 10.08.2009 and resolution No.466 dated 13.08.2009, corporation also issued the amended Annexure-II, wherein the respondent's name appears at Sr.No.38. Annexure-II shows 3330 sq.ft. constructed area in possession of the respondent.

11. The learned senior counsel for the petitioner submits that, on site verification the corporation learnt that the respondent No.2 carried out unauthorised construction. Hence, they issued notice u/s.351 of the MMC Act calling upon the respondent No.2 to remove unauthorised construction. Earlier, the said notice was challenged by the respondents by filing a suit. Later on; the respondent withdrew that

suit. During pendency of the present proceedings, the corporation again issued notice u/s.351 of the said Act. Hence, the issue about the authorised area in possession of respondent No.2 is pending and that can be decided as per notice u/s.351 of the MMC Act.

12. The learned senior counsel for the petitioner corporation submits that bare reading of the appeal memo filed by the respondent before the Bombay City Civil Court at Mumbai shows that they have no objection to carry out redevelopment of the entire property. He submits that in several grounds, the respondent categorically admitted that they have no objection for redevelopment, if they provide 28000 sq.ft. area in redeveloped property. He submits that this itself shows that though the respondents have full knowledge that they carried out unauthorised construction, they are insisting the corporation to accept their demand for 28000 sq.ft. area for redevelopment of the property. He submits that the corporation has always been ready and willing to provide the area which is authorised and in possession of the respondent as stated in amended Annexure-II (Revised) in redevelopment scheme. These facts were not considered by the trial court at all. Hence, the judgment passed by the trial court is liable to be set aside on this ground.

13. The learned senior counsel for the petitioner submits that though earlier the corporation accepted the redevelopment proposal of Dholakwadi CHS for the area admeasuring 4424.93 sq.mtr., after considering the overall situation in the said plot, the corporation decided to develop the entire CTS No.366, 1/367 (P) admeasuring 13018.96 and the same was approved by the Improvement Committee

by resolution No.82 dated 10.08.2009. He submits that the resolution and the decision taken by the corporation to develop the entire property admeasuring 13018.96 was challenged by some of the occupants and Mr.Pramod Vitthal Salgaonkar, Chief Promoter of Shree Dattaguru CHS formerly known as Chamunda CHS and Arihant Realtors (Partnership) by filing a Writ Petition No.221/2010. He submits that in the Writ Petition No.221/2010, petitioners in that petition specifically challenged the resolution and decision taken by the corporation for redevelopment of entire area of CTS No.366 and 1/367. The learned senior counsel for the petitioner relies on para Nos.2,12,13,14,32,34,53,77 and ground Nos. 86a 86d 86e 86f 86t 86u 86x of Writ Petition No.221/2010, which read thus:

“The petitioners state that the petitioner No.1 is a proposed Cooperative Housing Society of the occupants, residing on property bearing C.S. No.1/367 of Mazgaon Division, E-Ward, known as “Sethana Compound,” situated at Balwant Singh Dhodi Marg, Shivdas Chapsy Road at mazgaon, Mumbai – 10 (hereinafter referred to as the said property). The petitioner No.2 is a developers, appointed by the petitioner No.1 proposed CHS by passing General Body Resolution for the redevelopment of the said property. The respondent No.1 is the State of Maharashtra, having overall supervision over the other respondent Nos. 2 to 9. The respondent No.2 is the Municipal Corporation of Greater Mumbai (M.C.G.M.) The respondent Nos.3 to 9 are the officers and office bearers of M.C.G.M. The respondent No.10 is the Chief Executive Officer of Slum Rehabilitation Authority, which is a Planning Authority for the Slum Rehabilitation Project in the city of Mumbai. The respondent No.11 is a developer appointed by the respondent No.12 society, in whose favour of Letter of Intent is issued by the respondent No.2 contrary to the provisions of alw and against the principles of law of natural justice.

12. The petitioners state that however in the year 2005 partners of said developers (a) Sunil S. Meher and (b) Rajiv S. Meher of

M/s. Shankala Associates requested the petitioner No.1 society to terminate the said agreement for development under DCR 33(7) dated 14th February 1999 executed in favour of M/s. Shankala Associates” and to execute a fresh agreement for development under DCR 33(10) relating to said property bearing C.S.No.1/367 in favour of “M/s. Earth Vastu Associates” which is another partnership firm of (a) Sunil S. Meher and (b) Rajiv S. Meher carrying on same business as Developers. The petitioners state that Sunil S. Meher and Rajiv S. Meher along with Bhupesh Babubhai Jain and Pramod Shankar Jadhav who were admitted as partners in M/s. Earth Vastu Associates had entered into Admission cum Partnership Deed on 17th October 2005. Hereto annexed and marked as Exhibit D is the copy of the Admission Cum Partnership Deed of Earth Vastu Associates dated 17.10.2005. The petitioners state that M/s. Shankala Associates requested petitioner No.1 society to change the name of the petitioner No.1 society from Chamunda CHS (Proposed) to Shree Dattaguru CHS (Proposed).

13. The petitioners state that as the petitioner society Chamunda CHS (P) were in urgent need of redevelopment of their property and since they did not have enough knowledge, expertise and were not aware of the legal implications, they terminated said agreement for development dated 14.02.1999 on 25.08.2005 in favour of M/s. Shankala Associates and appointed M/s. Earth Vastu Associates as their developers and once again appointed D. R. Vaidya & Co. as their Architect and also changed the name of then society from Chamunda CHS (P) to Shree Dattaguru CHS (P) as requested by said (a) Sunil S. Meher and (b) Rajiv S. Meher Partners of Developer M/s. Shankala Associates and M/s. Earth Vastu Associates. The petitioners state that Shri Sunil S. Meher and Shri Rajiv S. Meher are the common partners of M/s. Shankala Associates as well as M/s. Earth Vastu Associates.

14. The petitioners state that the Architect D.R. Vaidya by letter dated 20.03.2006 submitted the proposal under D.C.Regulation 33(10) before the respondent No.10 Slum Rehabilitation Authority of plot of land bearing C.S.No.1/367. The petitioner states that in the said letter it is mentioned that the said property is owned by respondent No.2 and occupants who are known as Sethna Compound, who had formed the society in the name and style of

Shree Dattaguru Cooperative Housing Society and desired to develop the said property by appointing M/s. Earth Vastu Associates as their developer and also appointed D.R. Vaidya as their architect.

32. The petitioners state that M/s. Earth Vastu Associates have also played a fraud on the petitioner No.1 society by forging purported letter dated 12.04.2007 which was illegally and dishonestly sent to the respondent No.10 whereby allegedly requesting the respondent No.10 to close the proposal for development under Development Control Rule 33(10) of Development Control Regulations in view of submitting a fresh proposal under Development Control Rule 33(7) of the Development Control Regulations submitted by the petitioner No.1 society.

34. The petitioners state and submit that respondent No.10 by his letter dated 19.06.2007 informed the Executive Engineer, Building Proposal (City) M.C.G.M. "E" Ward Office, 10, Sankli Street, Byculla, Mumbai – 8 that "the petitioner society has submitted proposal under Slum Rehabilitation Scheme to the office of the S.R.A. under D.C.R.33(10) on 07.04.2007. The similar proposal if submitted by any other society subsequent to the proposal of the petitioner society processed and prima facie approved, under D.C.R.33(7) may not be processed/considered till decision in the case of the proposal submitted by the petitioner society, to avoid complications in future. Hereto annexed and marked exhibit -M is the copy of the said letter dated 19.06.2007 of the respondent No.10 sent to the Executive Engineer, Building Proposal.

53. The petitioners state and submit that by letter dated 19.03.2009 respondent NO.9 Smt. Geeta Kanojia, having her office at Municipal Office at 10, Sheikh Hafizuddin Marg, Byculla, Mumbai 8, requested the respondent No.4 Shri Diggikar to issue Annexure-II to the petitioner society since the petitioner society submitted the consents of 61 occupants under D.C.R.33(9) as per the directions given by him in the joint meeting held on 03.03.2009. She further requested to carve out the suit plot bearing C.S.No.1/367 for the purpose of development, so as to allow and enable the petitioner society to redevelop the same through their

developers i.e. petitioner No.2 under modified D.C.R.33(9) and policy and norms of the M.C.G.M. Hereto annexed and marked Exhibit BB is the copy of the said letter dated 19.03.2009 sent by respondent No.9 Smt. Geeta Kanojia to the respondent No.4.

77. The petitioners state that while sanctioning the scheme under Development Control Rule 33(7) of Development Control Regulations all those aspects are not taken into consideration. The petitioners state that under the said scheme sanctioned under Development Control Rule 33(7) of Development Control Regulations, developer is only required to make payment of sum of Rs.49 crores, which amount is also paid in installments and while carrying out the development of the said plot of land under Development Control Rule 33(9) of Development Control Regulations, respondent No.2 may earn profit to the tune of more than Rs.150-200 crores.

Grounds:

86(a) The petitioners state that the respondent passed by the respondent No.8 in its meeting held on 10.08.2009 bearing No.82 by permitting the respondent No.11 to amalgamate the plots of land bearing C.S.No.366(part) and 1/367 and to jointly develop said plots of land under Development Control Rule 33(7) of Development Control Regulations is illegal, bad in law and in gross violation of the provisions of Development Control Rule 33(9) of Development Control Regulations and the same is liable to be set aside.

(d) The respondent No.2 failed to consider that out of 55 tenants/ occupants/ slum dwellers, 40 have formed proposed CHS i.e. petitioner No.1 society and appointed the petitioner No.2 as their developer for redevelopment of property bearing C.S.No.1/367 of Mazgaon Division, by passing a resolution in the General Body meeting.

(e) The respondent No.2 failed to consider that the petitioner has submitted the redevelopment proposal under Development Control Rule 33(7) along with Annexure II to respondent No.2 through their Architect on 08.05.2000.

(f) *The respondent No.2 ought to have considered that even the petitioner society on 07.04.2006 submitted Slum Rehabilitation Scheme to the respondent No.10 under the provisions of amended D.C.Rules 33(10) through their earlier developer M/s. Earth Vastu Associates and the respondent No.10 accepted the proposal along with letter of intent scrutiny fee of Rs.9500/-.*

(t) *The respondent No.2 ought to have considered that by letter dated 19.03.2009 respondent No.9 Smt. Geeta Kanojia requested the respondent NO.4 Mr. Diggikar to issue Annexure-II to the petitioner society since the petitioner society has submitted consents of 61 occupants under D.C.Rules 33(9) as per the directions given by him in the joint meeting held on 03.03.2009 and even she further directed to carve out the said plot bearing C.S.No.1/367 for the purpose so as to allow and enable the petitioner society to redevelop the same through their developer petitioner No.2 under modified D.C.Rules 33(9).*

(u) *The respondent No.2 ought not to have relied upon the report submitted by Architect of respondent No.11 and 12 pointing out that the proposal under D.C.Rules 33(7) is beneficial to the respondent No.2 compared to the proposal under D.C.Rules 33(9) which itself is totally contrary to the provisions of amended D.C.Rules 33(7) and 33(9).*

(x) *The action of respondent NO.7 forwarding the report dated 01.04.2009 with its annexure, requesting the respondent NO.4 to process the proposal under D.C.Rules 33(7) which is totally contrary to the provisions of law and against the interest of respondent No.2 since if the proposal under 33(9) were sanctioned, the respondent No.2 could have got more than Rs.100-150 crores and after sanctioning the proposal under 33(7) the respondent No.2 would get only Rs.50 crores.”*

14. The learned senior counsel for the petitioner submits that bare reading of above mentioned paragraphs of Writ Petition No.221/2010 shows that the petitioner in that petition challenged the scheme of

redevelopment on all counts. He submits that the Division Bench of this court (Coram : Dr. D. Y. Chandrachud, as he then was and Mr. Anoop V. Mohta, JJ) by order dated 25.11.2010 dismissed the said Writ Petition. He submits that the issue involved in the present proceedings is squarely covered by the said judgment of the Division Bench. He relies on following paragraphs of the oral judgment dated 25.11.2010.

“1. The First Petitioner is a proposed society of unauthorized occupants residing on immovable property known as “Sethana Compound” bearing C.S. 1/367 of Mazgaon Division. The Petitioner seeks to impugn;

(i) Resolutions of the Improvement Committee dated 10 August, 2009 and the Municipal Corporation of 12 August 2009;

(ii) A letter of intent of 2 September 2009 issued to the Twelfth Respondent which is a proposed Cooperative Society;

(iii) Revised Annexure II certifying the list of eligible occupants; and

(iv) A report of the Deputy Chief Engineer dated 1 April 2009.

5. A proposal was, as a matter of fact, propounded by municipal tenants. On 9 October, 2002, the municipal tenants of C.S. 1/367 formed the Twelfth Respondent as a proposed Cooperative Housing Society and submitted a proposal for redevelopment under DCR 33(7). For this purpose the Eleventh Respondent was appointed as a developer. Together with the proposal, the consents obtained from the tenants were forwarded. According to the Petitioners, 46 out of 54 tenants consented to the proposal. Besides, of the 29 unauthorized occupants, who are eligible having been in occupation on the cutoff date of 1 January 2005, 22 had consented to the proposal. The computation of 70% eligible occupants in support of the scheme was required to be determined with reference to municipal tenants.

9. The Petitioners submitted a proposal for redevelopment of C.S. 1/367 under DCR 33(9) on 17 March 2009. On 20 March 2009, a note was put up by the Deputy Chief Engineer and the Additional Municipal Commissioner to issue a revised AnnexureII to the Twelfth Respondent, being a Society of Municipal Tenants. On 23 March 2009 a meeting was held between the Additional Municipal Commissioner, Deputy Chief Engineer and the other officials of the Municipal Corporation. The minutes record that the proposal under DCR 33(7) was more beneficial to the Corporation than DCR 33(9). The minutes record that the First Petitioner is a society of Slum Dwellers while the Twelfth Respondent has the consent of more than 70% of the tenants. The proposal of the Petitioners was, therefore, rejected. On 1 April 2009, minutes were recorded for rejecting the proposal of the Petitioners under DCR 33(9). The reasons recorded state that (i) The municipal tenants have given their consent to the Eleventh and the Twelfth Respondents; (ii) On 30 November, 2006, the proposal has been recorded by the SRA as the plot belongs to the Municipal Corporation; (iii) 70% of the tenants had consented in favour of the Twelfth Respondent; (iv) A comparative statement under DCR 33(7) and DCR 33(9) was discussed at the meeting held on 19 March 2009; (v) The eligible hutment dwellers would be accommodated in that scheme; and (vi) Shri Dattaguru Cooperative Society did not meet the eligibility criteria. 10 On 10 July 2009, the Municipal Corporation issued a revised AnnexureII, to the Twelfth Respondent including in addition, the names of 29 unauthorized occupants, to whom alternate accommodation would be provided. The Improvement Committee sanctioned redevelopment by the Eleventh and Twelfth Respondents on 10 August 2009. The general body of the Municipal Corporation sanctioned the redevelopment on 12 August 2009. The Municipal Corporation issued a letter of Intent on 2 September 2009. Following this, the Twelfth Respondent made a payment of Rs. 10.26 crores to the Municipal Corporation.

12 Before we deal with the merits of the rival contentions, we must note that the locus of the Petitioners to pursue the Petition is seriously questioned by the Respondent. It has been stated before the Court that on 25 September, 2010, a Resolution has been

passed by the Cooperative Housing Society recording that the First Petitioner is not authorized to represent the Society and calling upon the Advocate appearing for the Petitioner to withdraw the Petition. That apart, it has been stated before the Court, that save and except for six occupants, who have not consented to the scheme, no other occupants have supported the Petitioners. Annexure II, as noted earlier, has already been issued, under which 54 municipal tenants and 29 unauthorized occupants are eligible to participate in the proposed scheme. 46 out of the 54 municipal tenants and 22 out of 29 unauthorized occupants have consented to the Scheme which is to be implemented by the Eleventh and Twelfth Respondents.

15 The aforesaid provision therefore, requires that while calculating the permissible FSI, the extent of the reservations/designations on the gross plot area have to be excluded. However, the built up area under reservation/designation has to be included. An FSI of 4.00 is thereupon available. In the present case, it is an admitted position that the entire land is reserved for the public purpose of Municipal Staff Quarters and a Municipal Primary School. The area of the land is 13,018.96 square meters. The fallacy in the chart submitted by the Petitioners is that the Petitioners proceed on the assumption that an FSI of 4.00 would be available to the entire extent of the land (save and except for 510.77 square meters, representing structures after 1940). Counsel appearing on behalf of the Municipal Corporation has relied on the charts which were considered during the decision making process by the Municipal Authorities. These charts show that since the entire area of the plot is under reservation, the FSI of 4.00 would have to be applied only in respect of the built up areas under reservation/designation as provided in Clause 5(a) of Appendix IIIA of DCR 33(9), which has been noted above. The comparative charts which have been relied upon by the Municipal Corporation show that if the scheme for redevelopment was to be approved under DCR 33(9), the total share which would accrue to the Municipal Corporation is 17,868.71 square meters (comprising of 7081.34 square meters, being the share in surplus area and 10,787.37 square meters in the reservation area). As opposed to this, under DCR 33(7) the share of the Municipal Corporation would work out to 28,530.64

square meters. The scheme under DCR 33(9) is hence not demonstrated by the Petitioners to be more beneficial in the facts of the present case.

16 While dealing with the analysis which has been accepted by the Municipal Corporation, this Court has to be mindful of the fact that the jurisdiction of the Court has been invoked under Article 226 of the Constitution. Unless the Court finds patent illegality, arbitrariness or perversity, the Court would to be loath to reappraise such issues which also involve determinations of fact. The Municipal Authorities considered the entire issue of the applicability of DCR 33(7) vis-a-vis DCR 33(9) at several stages. The record before the Court would indicate that on 12 March, 2009, 19 March, 2009 and 1 April, 2009 the comparative merits of a proposal under DCR 33(7) and DCR 33(9) were evaluated at meetings inter alia attended by the Additional Municipal Commissioner, the Deputy Chief Engineer and other Officials. Their evaluation is not established to be unlawful.

17 Counsel appearing on behalf of the Municipal Corporation has stated before the Court that the entire record was placed before the Technical Scrutiny Committee when it evaluated the proposal of the Twelfth Respondent on 29 July 2009. The proposal was eventually approved by the Improvement Committee and by the general body of the Municipal Corporation.

18 Cases such as the present involve ostensible conflicts between occupants. In reality, rival builders step into the fray ostensibly to support the cause of a particular group of unauthorized occupants. Builders' avarice exploits the needs of a hapless segment of society for whom even bare essential housing is a luxury. Occupants switch loyalties, swayed by the lure of an offer by a competing builder. While dealing with such cases, the jurisdiction under Article 226 must be exercised by applying norms of administrative law which elucidate whether the decision making process adopted by regulatory authorities is flawed. The application of established norms of administrative law provides an objective foundation to adjudicate upon rival claims in such cases. Many of them involve disputed questions of fact which are not conventionally amenable to the writ jurisdiction under Article 226. The application of the

principles of administrative law will ensure objectivity, certainty and consistency in the judicial process.

19 Having considered the challenge in all its perspectives we are of the view that no case of arbitrariness, perversity or illegality has been demonstrated to the Court. The Petitioners represent some of the unauthorized encroachers to whom also alternate accommodation would be provided under the Scheme as approved. All the eligible occupants whose names have been certified in Annexure II are entitled to the benefit of alternate accommodation. The scheme has the approval and the consent of 70% of the municipal tenants. In that view of the matter, no case for interference under Article 226 of the Constitution is made out. The Petition is accordingly dismissed. No order as to costs.”

15. The learned senior counsel for the petitioner submits that bare reading of the above mentioned paragraphs show that the Division Bench of this court already held that the redevelopment scheme of the corporation is according to law and they are entitled to evict the persons who failed and neglected to cooperate in the said scheme. He submits that in the present scheme, more than 80% occupants already agreed to participate and hand over vacant and peaceful possession of the suit premises. He submits that just because of few persons and the present litigation, the entire scheme is held-up for more than 7-8 years. He submits that the IOD has already been issued on 25.04.2012 and the commencement certificate on 17.04.2013. He submits that though the trial court in para 23 referred to the judgment dated 25.11.2010 delivered by the Division Bench of this court in Writ Petition No.221/2010, it failed to consider it properly. The trial court, in para 22 of the impugned judgment gave reasons for differing the judgment of the Division Bench dated 25.11.2010 that the said matter was pertaining to the Sethna Compound bearing CTS No.1/367 of Mazgaon

Division. The trial court failed to consider the fact that in Writ Petition No.221/2010 the issue was in respect of the entire property being CTS No.366, 1/367(P). Even the petitioner's property comes in CTS No.1/367(P). Hence, on this ground also the impugned judgment passed by the trial court is liable to be set aside.

16. The learned senior counsel for the petitioner submits that the provisions of section 105B of MMC Act are applicable in the present matter. He submits that the trial court failed to consider the fact that if the occupant failed and neglected to vacate the premises which is required by Corporation for redevelopment, in that case, the corporation can take action u/s.105B of the MMC Act for taking forcible possession. In support of this contention, the learned counsel for the petitioner relies on the order dated 12.10.2007 passed by this court (Coram : A. P. Deshpande,J.) in Writ Petition No.4487/2007 Sadanand Palkar Vs. Municipal Corporation and others along with 17 connected matters. In order dated 12.10.2007 this court in Writ Petition No.4487/2007 held that once it is found that the redevelopment of the property is in the public interest, then the order of eviction cannot be interfered with. Paragraph 5 of the said judgment reads thus:

“5. Learned senior counsel Shri Sakhare, appearing for the Corporation has in all fairness submitted that even if the petitioners show their readiness and willingness now to join the redevelopment project they will be treated at par with other occupants/tenants who have joined the project willingly and vacated the premises. With a view to enable the petitioners to consider the said offer I had adjourned the matter. Learned counsel for the petitioners conveyed that the petitioners are not

ready and willing to join in the project. In view of the refusal by the petitioners to positively respond to the offer made by the Corporation, when the petitioners were being heard, the learned counsel for the respondent corporation submitted that he be permitted to withdraw the offer and the writ petitions be decided on merit. As the petitioners have not positively responded to the offer made by the Corporation to treat the present petitioners at par with other tenants who have already willingly joined the scheme and vacated earlier, I have no option but to permit the Corporation to withdraw the offer and I proceed to decide writ petitions on merits. The petitioners have not challenged the bona fides on the part of Corporation in implementing redevelopment scheme nor is it seriously challenged that the purpose is not a public purpose or that redevelopment is not in public interest. It is thus clear that all the objections raised by the petitioners fall outside the scope of inquiry under section 105B(2) of the act and thus could not have been considered by the inquiry officer or the Principal Judge of the City Civil Court. The transit accommodation at nearby place has been provided. The allotment of tenement after redevelopment is regulated by rules and regulations. The petitioners cannot insist as to what amenities need to be provided at the transit accommodation. Once it is found that redevelopment of the property is in public interest then the order of eviction cannot be interfered with. As the petitioners have not challenged that the redevelopment is not in public interest no other objection can vitiate the eviction order. Perusal of the appellate order reveals that at no stage the legality of the eviction notice has been challenged. The order categorically records that :

“They are not even challenging the Corporation's case that the premises are required in public interest. Their grievance is mainly in respect of so called defective documentation, agreements, etc. and lack of proper assurance coming from the Corporation. They are skeptical about the faithful implementation of the scheme.”

The action on the part of the inquiry officer to issue eviction order cannot be challenged on the grounds sought to be raised by the petitioners. Few tenants/occupants cannot be permitted to defeat

the redevelopment scheme wherein almost all the tenants have willingly joined the project and vacated the premises. In the first place I hold that there is no merit in writ petitions and the same thus deserve to be dismissed summarily. I also refuse to exercise discretion in favour of the present petitioners by entertaining these petitions as the same would not be just and equitable having regard to interest of other occupants/tenants who have vacated the premises or who would be soon vacating the premises. In the result writ petitions are summarily dismissed.”

17. The learned senior counsel for the petitioner submits that in the present proceedings the corporation decided to redevelop the entire property in the interest of public at large and these facts were not considered by the trial court. Hence, the impugned order passed by the trial court is required to be set aside.

18. The learned senior counsel for the petitioner submits that at present, more than 80% occupants agreed and decided to hand over vacant and peaceful possession of the suit premises in their possession for redevelopment. He submits that because of the present litigation, the entire project is held up for more than 8 years. Hence, in the interest of justice, this Hon'ble Court be pleased to set aside the impugned judgment dated 29.09.2015 passed by the Bombay City Civil Court at Mumbai in Misc. Appeal No.30/2015 and allow the petitioner corporation to take appropriate steps as per Enquiry Officer's order dated 02.05.2015 passed in Enquiry No.E/2/2013 to complete the redevelopment as early as possible.

19. On the other hand, the learned senior counsel for the respondents submits that the trial court properly held that the scheme

under Rule 33(7) of the D.C.Rules itself is not maintainable in the facts and circumstances of the present case in respect of the entire area i.e. 13018.96 sq.mtr. He submits that initially the petitioner corporation allowed Chief Promoter of the Dholakwala CHS to redevelop Dholakwala Building admeasuring 4824.93 sq.mtrs. only. He submits that even the redevelopment agreement dated 04.09.2002 shows that the corporation has sanctioned redevelopment in respect of 4824.93 sq.mtr. area only. He submits that without following due process of law, the Improvement Committee passed resolution dated 10.08.2009 for redevelopment of entire area admeasuring 13018.96 sq.mtr. He submits that the respondents in their appeal memo before the trial court raised several grounds about the maintainability of the redevelopment scheme itself. In support of this contention, the learned senior counsel for the respondent relies on ground Nos. (l), (m), (o), (p), (u), (v) of appeal memo, which read thus:

“(l) The respondent No.1 ought not to have granted the permission for redevelopment under 33(7) of the D.C.R. for the entire plot.

(m) The respondent No.2 purposely and with sense of legal perversity had not considered that as far as the Appellant's premises is concerned it is not part and parcel of Mazgaon Dholakwala CHS (Proposed) and therefore there was no question of the Appellants to become the member of the said society and to give consent to the said society for the redevelopment of the construction thereof under 33(7) of the D.C.R.

(o) The respondent No.2 seriously erred in neglecting the factual aspect of the matter as far as the Appellants is concerned that they have their own independent building on the plot of land namely Sethna Hall Compound.

(p) *The respondent No.2 seriously erred in not appreciating that even otherwise admittedly at no point of time even otherwise the Appellants were approached by the said society to become member of the said society Mazgaon Dholakwala CHS (Proposed).*

(u) *The respondent No.2 seriously erred in not considering as a matter of fact the entire redevelopment scheme which has been sanctioned by the respondent No.1 was done in a fraudulent manner in as much as when the said Mazgaon Dholakwala CHS (Proposed) was occupying only a part portion of the said entire plot then there was no question of respondent No.1 sanctioning the development of the entire plot to the said Mazgaon Dholakwala CHS (Proposed) by fraudulently showing that the said society is formed by the tenants of the entire plot consisting the Dholakwala chawl, situated at Shivdas Champsi Marg and Sethna Hall Compound situated at Nesbit Road just to give permission under 33(7) of D.C.Regulations.*

(v) *The respondent No.2 has purposely ignored the fact that even under DCR 33(7) the entire plot could not have been permitted to the developer by the respondent No.1 in as much as the major portion of the said plot there was no tenant at all under the guise of consent of the tenants who were occupying only a portion of the said plot the entire plot was given for the redevelopment by the respondent No.1.*

20. The learned senior counsel for the respondents submits that the respondents are neither members of the proposed society nor participated in the said redevelopment scheme. Therefore, there is no question of setting aside the impugned order passed by the trial court. He submits that even the improvement committee report of the Municipal Corporation dated 17.07.2009 shows that the redevelopment scheme was only in respect of 4824.93 sq.mtr. Without following due process of law, the corporation on its own, decided to include the entire area of CTS No.366 and 1/367 (P). He submits that the trial court rightly held that without following due process of law

the corporation included the entire area of CTS No.366 and 1/367 (P) in redevelopment scheme. Therefore, on this ground, and as there is no substance in the Writ Petition, same is liable to be dismissed with costs.

21. The learned senior counsel for the respondent submits that even the Corporation verified the tenancy in respect of the suit premises. To that effect, the Committee for verification for tenancy called a meeting on 25.07.2008. Even the said committee verified the tenancy in respect of the area of the plot admeasuring 5609.73 sq.mtr. as per Annexure-II. He submits that this itself shows that initially, the Corporation decided to redevelop the property consisting 5609.73 sq.mtr. only. In support of this contention, the learned senior counsel for the respondent relies on the Committee's report of the Corporation dated 17.07.2009. He submits that even at the time of preparing the revised Annexure-II, the Corporation has taken into consideration the area of Dholakwala CHS (proposed). This itself shows that the Corporation decided to develop the property consisting 5609.73 sq.mtr. only. He submits that on the basis of this document, the Trial Court categorically held that the Corporation failed to disclose the source on the basis of which later-on they sanctioned the redevelopment of entire area admeasuring 13018.96 sq.mtr. To that effect, the Trial Court observed in paragraph 20 of the judgment and order. He submits that the Trial Court, in paragraph 20 observed that "there is absolutely no explanation given by the witness of respondent No.1 for increase of the area of redevelopment from 4824.937 sq.mtr. to 13018.96 sq.mtr." Hence, the Trial Court allowed their appeal. He further submits that the Trial

Court specifically recorded in paragraph 32 that the Corporation would be at liberty to take decision to redevelop / reconstruct its entire property if they so desire, according to the provisions contained in Development Control Regulations for Greater Mumbai 1991. Therefore, there is no question of entertaining the present Writ Petition. He submits that if the Corporation wants, they can follow due process of law as required by the Development Control Regulations and take their own decision after following due process of law. Therefore, there is no substance in the present Writ Petition and same is liable to be dismissed.

22. The learned senior counsel for the respondent submits that the Corporation heavily relies on the averments made in Writ Petition No.221/2010 and the oral judgment passed by the Division Bench of this court on 25.11.2010 in support of their contention. He submits that though in the said Writ Petition No.221/2010 the challenge was made to the resolution dated 10.08.2009 passed by the Improvement Committee and resolution dated 12.08.2009 bearing No.82 and 466 of Corporation, the facts in that matter and the facts in the case in hand are altogether different. He submits that the said Writ Petition No.221/2010 was filed by the unauthorized occupants in the suit premises. In support of this contention, the learned senior counsel for the respondent relied on the averments and the grounds in Writ Petition No.221/2010. He further submits that even the oral judgment dated 25.11.2008 passed by the Division Bench of this court in Writ Petition No.221/2010 is not applicable in the facts and circumstances of the present case. He submits that in the case in hand, the respondents are in occupation of the area more than 28000 sq.ft. for

last several years. Their structure is not unauthorized. Hence, the issue involved in Writ Petition No.221/2010 and the case in hand is altogether different. Therefore, the Division Bench judgment dated 25.11.2010 is not applicable to the facts in the case in hand. In support of this contention, he relies on the following judgments:

- i) Raipur Ruda meha and Ors. Vs. State of Gujarat
AIR 1980 SC 1707
- ii) The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Anr. AIR 2003 SC 4172
- iii) Prakash Chandra Pathak Vs. State of U.P.
AIR 1960 SC 195
- iv) The Mumbai Kamgar Sabha Vs. M/s. Abdulbhai Faizullabhai and Ors. AIR 1976 SC 1455
- v) B. Shama Rao Vs. Union Territory of Pondicherry AIR 1967 SC 1480
- vi) Municipal Corporation of Greater Bombay and ors. Vs. Thukral Anjali Deokumar and Ors. AIR 1989 SC 1194
- vii) The Regional Manager and Anr. Vs. Pawan Kumar Dubey AIR 1976 SC 1766
- viii) Ambica Quarry Works Vs State of Gujarat and Ors. AIR 1987 SC 1073
- ix) Neta Ram and Ors. Vs. Jiwan Lal and Anr. AIR 1963 SC 499
- x) Smt. Somawanti and Ors. Vs. The State of Punjab and Ors. AIR 1963 SC 151

23. The learned senior counsel for the respondents submits that in all these judgments, the Apex Court held that the decision is binding not

because of its conclusion but regard to its ratio and particulars laid down therein. On the basis of this submission, the learned senior counsel for the respondents submits that in the interest of justice, this Hon'ble Court be pleased to dismiss the Writ Petition filed by the Corporation with compensatory costs.

24. Heard the learned counsel for the parties. In the present proceedings, at the time of deciding the Misc. Appeal No.30/2015, the Bombay City Civil Court at Mumbai framed following points for determination:

- i. Whether the enquiry premises were included in the redevelopment agreement of the Dholakwala CHS (proposed)?
- ii. Whether the Appellants are liable to be evicted from the enquiry premises vide section 105B of the Mumbai Municipal Corporation Act, 1888 ?
- iii. Whether the impugned order is sustainable ?
- iv. What order?

25. At the time of deciding point No.1, the trial court mainly relied on development agreement dated 04.09.2002 and supplementary agreement dated 25.10.2004 executed by the Chief Promoter of the proposed Dholakwala CHS in favour of the developer viz. Vardhaman Developers Ltd. in respect of the Dholakwala Building and land out of city survey No.366, 367 and 1/367 (P) of Mazgaon Division. It is to be noted that, initially by development agreement and supplementary agreement, the corporation considered the proposal of Dholakwala CHS for redevelopment of 4028.73 sq.mtrs. Thereafter, considering the situation of the property, the Improvement Committee of

corporation decided to redevelop the entire CTS No.366, 1/367 (P) admeasuring 13018.96 sq.mts. Hence, the Improvement Committee passed resolution No.82 dated 10.08.2009. On the basis of the said resolution, the committee also passed resolution dated 12.08.2009 bearing No.466 to that effect i.e. the development to be made in respect of the entire CTS No.366 and 1/367(P) admeasuring 13018.96 sq.mtr. The corporation also issued amended Annexure-II wherein the respondent's name appears at Sr.No.38. In Annexure-II, the authorised area shown in possession of the respondent is 3330 sq.ft. On the basis of the said resolution and after following due process, I.O.D. was issued on 25.04.2012 and commencement certificate on 17.04.2013 in respect of the entire area of CTS No.366, 1/367 (P) admeasuring 13018.96 sq.mtr. Though all these documents were on record before the trial court, the trial court failed to consider the same. The trial court decided the matter only on the ground that initially, the development agreement dated 04.09.2009 and supplementary agreement dated 25.10.2004 was in respect of 4824.937 sq.mtr. only. Hence, the finding given by the trial court on point No.1 is contrary to the documents on record. Hence, same is set aside.

26. It is to be noted that, the resolution passed by the Improvement Committee dated 10.08.2009 and 12.08.2009 being No.82 and 466 was challenged by some of the occupants from land being CTS No.1/367 of Mazgaon Division before this court by filing Writ Petition No.221/2010 on several grounds. After hearing the parties, the Division Bench of this court, by oral judgment dated 25.11.2010 (Coram : Dr. D. Y. Chandrachud, as he then was and Anoop V.

Mohta, JJ) upheld the resolutions passed by the corporation for developing the entire property admeasuring 13018.96 sq.mtr. considering the provisions of Development Control Rules and also other documents on record. Though the copy of the order dated 25.11.2010 in Writ Petition No.221/2010 was placed before the trial court and same was referred to by the trial court in its impugned order in para 23, failed to consider the same at the time of deciding the appeal preferred by the respondent.

27. Though the respondent relied upon on several authorities of the Apex Court on the point that if any observation in the judgment is to be read and understood in the context of facts of that particular case, such observations should not be treated as precedent in another matter. But the same is not applicable in the facts and circumstances of the present case. In the present case, the issue involved in the Writ Petition No.221/2010 was about the validity of the resolution No.82 dated 10.08.2009 passed by the Improvement Committee of the corporation and the resolution dated 12.08.2009 of the corporation being No.466 was in respect of CTS No.1/367 of Mazgaon Division only in which the respondent's structure is also situated.

28. The issue involved in the present Writ Petition about the validity of the decision taken by the corporation to develop the entire area admeasuring 13018.96 sq.mtr. from CTS No.366, 1/367(P) was finally concluded in Writ Petition No.221/2010. Hence, on the basis of these facts also, I am of the opinion that the point No.1 decided by the trial court in negative is contrary to the facts and the documents on record and same is required to be set aside.

29. The second point decided by the trial court about “whether the respondents are liable to be evicted from enquiry premises under section 105B of the Mumbai Municipal Corporation Act, 1888 or not ? The trial court held that the corporation cannot evict the respondent as per the provisions of section 105B of the Mumbai Municipal Corporation Act, 1888. It is to be noted that, in the present proceedings, when the corporation called upon the respondent to hand over the premises in their possession for redevelopment, they failed and neglected to do so.

30. Chapter V-A of Mumbai Municipal Corporation Act, 1888 is in respect of the powers to evict the persons from corporation premises. In the present proceedings, the corporation / Commissioner satisfied that the area in possession of the respondent required for redevelopment in the interest of public at large. To that effect, they called upon the respondent to hand over the same. As the respondent failed and neglected to do so, the corporation followed due process of law as per Chapter V-A of the Mumbai Municipal Corporation Act, 1888 and passed order u/s. 105B of the Mumbai Municipal Corporation Act, 1888 for eviction of respondents. It is to be noted that, this court in ***Sadanand Palkar Vs. The Municipal Corporation of Greater Mumbai in Writ Petition No.4487/2007 (High Court Original Side)***, by order dated 12.10.2007 in para 5 held that “*once it is found that redevelopment of the properties is in public interest, then the order of eviction cannot be interfered with. As the petitioners have not challenged that the development is not in public interest, no other objection can vitiate the eviction order.*”

31. This itself shows that if the corporation requires the property for redevelopment in the interest of public at large, then they can evict the occupants and take possession by following due process of law as per section 105B of the Mumbai Municipal Corporation Act, 1888. The trial court, in the impugned order held that as the respondents were not members of the Dholakwala CHS and not participated in the redevelopment, there is no question of evicting them as per section 105B of the Mumbai Municipal Corporation Act, 1888. That is contrary to law declared by this court as stated hereinabove and the provisions of the Mumbai Municipal Corporation Act, 1888. On this count also, I am of the opinion that point No.2 has been incorrectly decided by the trial court. Hence, same is required to be set aside.

32. In the present proceedings, when the respondent filed Misc. Appeal No.128/2013 before the Bombay City Civil Court at Mumbai challenging the order dated 10.10.2013 passed in Enquiry No.E/2/2013 by the Enquiry Officer, raised several grounds. From perusal of those grounds, one thing is clear that the respondent shown their willingness to join the redevelopment only on the ground that the corporation should provide them 28000 sq.ft. area in redeveloped property. It is to be noted that, as per Annexure-II (Revised), the respondent shows in possession of 3330 sq.ft. only. Not only that the corporation issued notice to the respondent u/s.351 of the Mumbai Municipal Corporation Act, 1888 for calling upon them to remove/demolish the unauthorised construction carried out by them. Initially, when the corporation issued notice u/s.351 of the Mumbai Municipal

Corporation Act, 1888, the respondent filed suit challenging the same. Later on, they withdrew the said suit. During pendency of the present proceedings, the corporation again issued notice u/s.351 of the Mumbai Municipal Corporation Act, 1888 in respect of the unauthorised construction carried out by the respondent. This itself shows that though the respondent carried out unauthorised construction over and above 3330 sq.ft., they were insisting to provide them 28000 sq.ft. area in redeveloped property. If a person is in unauthorised occupation and/or carried out unauthorised construction, he is not entitled to the same area in developed property under Rule 33 of the Development Control Rules, 1991.

33. Considering the above mentioned facts and the resolutions passed by the corporation and the judgment dated 25.11.2010 of the Division Bench of this court in Writ Petition No.221/2010, I am of the opinion that the petitioner has made out a case for allowing this Writ Petition.

34. Hence, following order is passed:

- a. Writ Petition is allowed.
- b. Impugned judgment dated 29.09.2016 passed by the Principal Judge, Bombay City Civil Court at Mumbai in Misc. Appeal No.36/2015 is set aside.
- c. Order dated 02.05.2015 passed in Enquiry No.E/2/2013 by Enquiry Officer is restored with liberty to the corporation to take appropriate steps.

d. At the request of learned senior counsel for the respondent, the operation and implementation of the present order is stayed for a period of two months on condition that the respondent has to file an undertaking within four weeks from today, in the Registry of this court with copy to other side stating that they will not create any third party right, title and interest in respect of the property in their possession and/or carry out any construction.

e) If such an undertaking is not filed within stipulated time as stated hereinabove, the stay shall stand vacated without reference back to the court.

(K.K. TATED, J.)