

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.495 OF 2015

M/s. Ashwatha Developers)
a Registered Partnership firm,)
having its office at Shop No.1,)
Kalasagar, Plot No.73, Zaver Marg,)
Mulund (W), Mumbai – 400 080)

.. Appellant
(original defendant no.4)

Versus

1. Shree Vardhaman Stanakvasi Jain)
Shravak Sangh -Dadar, by its Trustees)
(i) Shantilal Dungershi Maru)
(ii) Anil Tokarshi Dharod)
(iii) Khimjibhai Popatlal Shah)
(iv) Ramji Dayabhai Gala)
(vii) Babubhai Bhavanji Chheda)
(viii) Visanji Harshi Sangoi)
(through its Chairman Trustee-)
Shri Shantilal D. Maru)
having its registered office at 12,)
Gyan Mandir Road, Dadar (West),)
Mumbai - 400 028)

2. The Municipal Corporation of)
Greater Mumbai, having head office)
at Mahapalika Bhavan, Mahapalika)
Marg, Opp. C.S.T.Rly. Station, Fort,)
Mumbai – 400 001.)

3. The Assistant Municipal Commissioner)
'G' North Ward, having his office at)
Harishchandra Yelvi Marg, 1st Floor,)
Dadar (West), Mumbai – 400 028)

4. Dadar Saiprasad Co-operative)
Housing Society Limited)
a Society constituted under the)

Maharashtra Co-operative Societies)
 Act, 1960 having its office at)
 Plot No.267, Kawliwadi, S.K.Bole Rd.)
 Dadar, Mumbai - 400 028.) .. Respondents

**ALONG WITH
 APPEAL FROM ORDER NO.496 OF 2015**

M/s. Ashwatha Developers)
 a Registered Partnership firm,)
 having its office at Shop No.1,)
 Kalasagar, Plot No.73, Zaver Marg,)
 Mulund (W), Mumbai – 400 080) .. Appellant
 (original defendant no.4)

Versus

1. Shree Vardhaman Stanakvasi Jain)
 Shravak Sangh -Dadar, by its Trustees)
 (i) Shantilal Dungershi Maru)
 (ii) Anil Tokarshi Dharod)
 (iii) Khimjibhai Popatlal Shah)
 (iv) Ramji Dayabhai Gala)
 (vii) Babubhai Bhavanji Chheda)
 (viii)Visanji Harshi Sangoi)
 (through its Chairman Trustee-)
 Shri Shantilal D. Maru)
 having its registered office at 12,)
 Gyan Mandir Road, Dadar (West),)
 Mumbai - 400 028)
2. The Municipal Corporation of)
 Greater Mumbai, having head office)
 at Mahapalika Bhavan, Mahapalika)
 Marg, Opp. C.S.T.Rly. Station, Fort,)
 Mumbai – 400 001.)
3. The Assistant Municipal Commissioner)
 'G' North Ward, having his office at)
 Harishchandra Yelvi Marg, 1st Floor,)
 Dadar (West), Mumbai – 400 028)

4. Shivram S.Korotu,Chief Promoter/)
 Chairman, Dadar Saiprasad Co-operative)
 Housing Society Limited)
 a Society constituted under the)
 Maharashtra Co-operative Societies)
 Act, 1960 having its office at)
 Plot No.267, Kawliwadi, S.K.Bole Rd.)
 Dadar, Mumbai - 400 028.) .. Respondents

ALONG WITH
APPEAL FROM ORDER NO.1210 OF 2015
with
CIVIL APPLICATION NO.1538 OF 2015
in
APPEAL FROM ORDER NO.1210 OF 2015

1. The Municipal Corporation of)
 Greater Mumbai, having head office)
 at Mahapalika Bhavan, Mahapalika)
 Marg, Opp. C.S.T.Rly. Station, Fort,)
 Mumbai – 400 001.)

2. The Assistant Municipal Commissioner)
 'G' North Ward, having his office at)
 Harishchandra Yelvi Marg, 1st Floor,)
 Dadar (West), Mumbai – 400 028)
 Versus

.. Appellants
 (original defts. no.1 & 2)

1. Shree Vardhaman Stanakvasi Jain)
 Shravak Sangh -Dadar, by its Trustees)
 (i) Shantilal Dungershi Maru)
 (ii) Anil Tokarshi Dharod)
 (iii) Khimjibhai Popatlal Shah)
 (iv) Ramji Dayabhai Gala)
 (vii) Babubhai Bhavanji Chheda)
 (viii)Visanji Harshi Sangoi)
 (through its Chairman Trustee-)
 Shri Shantilal D. Maru)
 having its registered office at 12,)
 Gyan Mandir Road, Dadar (West),)
 Mumbai - 400 028)

2. Shivram S.Korotu,Chief Promoter/)
 Chairman, Dadar Saiprasad Co-operative)
 Housing Society Limited)
 a Society constituted under the)
 Maharashtra Co-operative Societies)
 Act, 1960 having its office at)
 Plot No.267, Kawliwadi, S.K.Bole Rd.)
 Dadar, Mumbai - 400 028.) .. Respondents

ALONG WITH
APPEAL FROM ORDER NO.487 OF 2015
with
CIVIL APPLICATION NO.627 OF 2015
in
APPEAL FROM ORDER NO.487 OF 2015

Dadar Saiprasad Co-operative)
 Housing Society Limited)
 a Society constituted under the)
 Maharashtra Co-operative Societies)
 Act, 1960 having its office at)
 Plot No.267, Kawliwadi, S.K.Bole Rd.)
 Dadar, Mumbai - 400 028.) .. Appellant
 (original deft. no.3)

Versus

1. Shree Vardhaman Stanakvasi Jain)
 Shravak Sangh -Dadar, by its Trustees)
 (i) Shantilal Dungershi Maru)
 (ii) Anil Tokarshi Dharod)
 (iii) Khimjibhai Popatlal Shah)
 (iv) Hansrajbhai Punshi Gala (expired)
 (v) Amrutlal Karsan Nisar (Deleted))
 (vi) Ramji Dayabhai Gala)
 (vii) Babubhai Bhavanji Chheda)
 (viii)Visanji Harshi Sangoi)
 (through its Chairman Trustee-)
 Shri Shantilal D. Maru)
 having its registered office at 12,)
 Gyan Mandir Road, Dadar (West),)
 Mumbai - 400 028) (original plaintiff to Suit)

2. The Municipal Corporation of)
Greater Mumbai, having head office)
at Mahapalika Bhavan, Mahapalika)
Marg, Opp. C.S.T.Rly. Station, Fort,)
Mumbai – 400 001.)

3. The Assistant Municipal Commissioner)
'G' North Ward, having his office at)
Harishchandra Yelvi Marg, 1st Floor,)
Dadar (West), Mumbai – 400 028)

4. Ashwatha Developers)
a Registered Partnership firm,)
having its office at Shop No.1,)
Kalasagar, Plot No.73, Zaver Marg,)
Mulund (W), Mumbai – 400 080)

.. Respondents
(original defendant no.4 to Suit)

Mr.Pravin Samdhani, Senior Advocate a/w Mr.Anirudha Joshi, a/w
Mr.Satyen Vora, Mr.Atul Kshatriya, i/by Markand Gandhi & Co. for the
Appellant in Appeal from Order No.495 of 2015 and in Appeal from
Order No.496 of 2015 and for Respondent Nos. 4 in Appeal from Order
No.487 of 2015 and Appeal from Order No. 1210 of 2015.

Mr.E.P. Bharucha, Senior Counsel a/w Mr.A.V.Diwate i/by
Mr.U.H.Deshpande for B.M.C. for Appellants in Appeal from Order
No.1210 of 2015 and for Respondent Nos. 2 and 3 in Appeal from Order
No.495 of 2015 and Appeal from Order No.496 of 2015.

Mr.T.N. Subramanian, Senior Counsel a/w Mr.Shishir Joshi, a/w. Ms.Priti
Joshi i/by Mrs.Bhakti Jugal for the Appellant in Appeal from Order
No.487 of 2015 and for Respondent No.4 in Appeals from Order No.495
of 2015 and 496 of 2015.

Mr.Mukesh Chheda i/by Mr.Y.M. Chheda for the Respondent No.1 in Appeal from Order No.496 of 2015, Appeal from Order No.487 of 2015 and Appeal from Order No.1210 of 2015.

Mr.Mukesh Chheda i/by Mr.Y.M.Chheda for Respondent N.1 in Appeal from Order No.495 of 2015.

CORAM : **R.D. DHANUKA, J.**
RESERVED ON : **10th February 2016**
PRONOUNCED ON : **8th March 2016**

Judgment :-

. By three separate appeals bearing nos.496 of 2015, 1210 of 2015 and 487 of 2015, the appellants (original defendants nos.1, 2, 3 and 4) have impugned the order passed by the learned trial Judge allowing the Notice of Motion No.1396 of 2010 filed by the respondent no.1 herein (original plaintiff) for interim relief. The order dated 30th January 2015 passed by the learned trial Judge dismissing the Notice of Motion No.3339 of 2013 filed by the original defendant nos.4 inter alia praying for vacating the order dated 16th June 2010 read with order dated 19th October 2010 and for staying the effect and implementation of order dated 16th June 2010 read with order dated 19th October 2010 has been impugned by the defendant no.4 in Appeal from Order No.495 of 2015. By consent of parties, all four appeals were heard together and are being disposed of finally.

2. Appeal from Order Nos.495 of 2015 and 496 of 2015 are filed by the original defendant nos.4. Appeal from Order No.487 of 2015 is filed by the original defendant no.3 and Appeal from Order No.1210 of 2015 is filed by the Municipal Corporation for Greater Mumbai (original

defendant nos.1 and 2). The respondent no.1 herein was the original plaintiff before the learned trial Judge. For the sake of convenience, the parties in this judgment are described as they were described in the proceedings before the learned trial Judge. Some of the relevant facts for the purpose of deciding these four appeals are as under :-

3. It was the case of the plaintiff that the plaintiff was the owner of the original plot nos.267, 267 A and 267 B comprising of City Survey Nos.133 and 134 admeasuring 2893 sq.mtrs. On 25th June 1951, the defendant no.1-Corporation declared its intention to make a Scheme in respect of the area under Section 9 of the Bombay Town Planning Act, 1915. It was the case of the plaintiff that one basic feature of the Bombay Town Planning Act, 1954 was the preparation of development plan for the entire area within its jurisdiction. On 18th January 1957, the Bombay Town Planning Scheme Validation Act, 1956 was enacted. On 4th April 1957, the Bombay Town Planning Act 1954 came into force. On 15th October 1963, Town Planning Scheme IV (TPS) of Mahim came into force.

4. On coming into force of TPS, title of final plot no.267 vested in the defendant no.1 (Municipal Corporation), the Planning Authority under Section 88 of the Maharashtra Regional and Town Planning Act, 1966. It was the case of the defendants that a portion admeasuring 353 sq.mtrs. of the final plot no.267 remained in possession of the plaintiff. The said final plot no.267 was shown in TPS as reserved for 'Municipal School'. The final plot no.265 on its reconstitution admeasuring 2198.7 sq.mtrs. vested in plaintiff. It was, however, the case of the plaintiff that the portion admeasuring 353 sq.mtrs. of the final plot no.267 remained in

possession of the plaintiff and on reconstitution of the final plot no.265, the original plot continued with the plaintiff. On 30th April 1977, the plaintiff made an application to the defendant no.1-Municipal Corporation to retain the suit property which application came to be rejected.

5. Under the final development plan in the years 1991-1993, the final plot no.267 was shown as reserved for 'Housing for Dishoused.' On or about 25th March 1991, Development Control Regulations, 1991 came into force. Some time in the year 1992, the plaintiff made a proposal to the defendant no.1-Municipal Corporation for development of their final plot no.265.

6. It is the case of the defendants that the occupants of the tenements on final plot no.267 made various applications to the defendant no.1-Municipal Corporation for permitting them to develop the said final plot no.267 during the period between 1993-2003 under Regulation 33(7) of the Development Control Regulations, 1991. On 17th November 1994, the defendant no.1-Municipal Corporation granted 'Intimation of Disapproval (IOD)' to the plaintiff to develop the final plot no.265. Clause (u) of the said IOD provided for a registered undertaking to be filed by the plaintiff stating that an area of open plot at present in possession of the plaintiff shall be handed over to the Municipal Corporation when required and such registered undertaking shall be submitted to the office of Municipal Corporation. On 6th February 1995, the plaintiff gave such written undertaking duly registered to the Municipal Corporation that they will hand over possession of the suit property to the Municipal Corporation.

7. On 5th August 1996, the application of the plaintiff to retain the suit property as part of final plot no.265 was rejected by the Municipal Corporation for the second time. On 13th February 2003, the occupants of final plot no.267, the defendant no.3-Society passed a resolution appointing the defendant no.4 as a developer for the purpose of development of the said final plot no.267. On 19th May 2005, the defendant no.1-Municipal Corporation issued Annexure-II in favour of the defendant no.3 and the defendant no.4.

8. On 30th May 2005, the plaintiff received a Completion Certificate for their building constructed on final plot no.265. Condition 2 of the Completion Certificate provided that the area of adjoining plot bearing final plot no.267 of TPS IV at present in possession of the plaintiff shall be handed over to the defendant no.1-Municipal Corporation as and when insisted. It is the case of the defendants that the plaintiff accepted the condition of IOD and condition of Completion Certificate issued by the Municipal Corporation and took benefit and advantage thereof. It is the case of the defendants that if the plaintiff would not have accepted the condition of IOD, building plan submitted by the plaintiff for development of final plot no.265 or for construction thereon would not have been sanctioned and/or approved.

9. On 25th November 2005, the Scrutiny Committee of the Municipal Corporation approved the proposal for redevelopment of final plot no.267 under Regulation 33(7) of the Development Control Regulations, 1991. On 23rd November 2007, the Standing Committee of the Municipal Corporation approved the proposal for redevelopment of the final plot no.267. On 27th November 2007, the Improvement

Committee of the Municipal Corporation approved the redevelopment proposal of the final plot no.267. On 11th December 2007, the Letter of Intent came to be issued in favour of the defendant nos.3 and 4 for final plot no.267. It is the case of the defendants that in the month of December 2007, all the occupiers of tenements on final plot no.267 vacated their respective premises. On 6th May 2008, the defendant no.3-Society came to be registered.

10. It is the case of the defendants that on 29th July 2008, the plaintiff through a social worker approached the Chief Minister without disclosing earlier rejections and sought the suit property to be retained and obtained ex-parte stay from the Government. The ex-parte stay order is vacated on 11th May 2009.

11. On 13th August 2008, the defendant no.4 made a payment of Rs.1,72,54,012/- in compliance with the condition of Letter of Intent. It is the case of the defendants that on 29th November 2008, the plaintiff made an attempt to withdraw the undertaking given to the defendant no.1-Municipal Corporation for handing over possession of the suit property. There was no reply from the concerned department.

12. On 11th May 2009, pursuant to the letter of Intent, IOD was issued for redevelopment of the final plot no.267 to the defendant nos.3 and 4 under Regulation 33(7) of the Development Control Regulations, 1991. On 22nd July 2009, the defendant no.1 called upon the plaintiff to hand over the suit property. By a letter dated 27th July 2009, the plaintiff declined to hand over possession of the suit property. On 28th July 2009, the Commencement Certificate came to be issued

in favour of the defendant nos. 3 and 4 for final final plot no.267. On 10th August 2009, the defendant no.1, defendant no.3 and defendant no.4 executed a Tripartite Agreement for redevelopment of the final plot no.267. On 20th August 2009, the defendant no.1 once again demanded possession of the suit property from the plaintiff. The plaintiff once again refused to hand over possession of the suit property in response to the notice dated 20th August 2009.

13. On 20th August 2009, the plaintiff filed a writ petition (1731 of 2009) in this Court inter alia praying for various reliefs. The said writ petition was amended on two occasions. The third amendment to the writ petition allowed by the Division Bench of this Court has been impugned by the defendant no.4 before the Supreme Court. The said Special Leave Petition is pending.

14. On 3rd October 2009, the defendant no.1 rejected the proposal of the plaintiff for change of the Town Planning Scheme to retain the suit property. It is the case of the plaintiff that the Municipal Commissioner received a Government Directive dated 19th September 2009, despite filing of the writ petition by the plaintiff. It is also the case of the plaintiff that the order dated 3rd October 2009 was prepared by one of the officers of the defendant no.1-Municipal Corporation but it was not issued to the plaintiff.

15. It is stated that as per the provisions of the MRTP Act, the owner of original plot no. 267 i.e. the plaintiff herein should handover the vacant possession of the part of the original plot under question which was merged in final plot no.267 of the said Town Planning Scheme

irrespective of its user or reservation etc. It is further stated that as far as Town Planning Scheme is concerned, the due process of law as per MRTP Act is fully completed except the evacuation of the contestant by the Assistant Commissioner (G/North) as Implementation Authority under section 89 and 90 of the MRTP Act.

16. On 7th June 2010, the Division Bench granted interim relief in the Writ Petition No.1731 of 2009. It was held that the plaintiff had no right to the suit property. However, the Division Bench stayed the redevelopment of final plot no.267 to consider primacy of reservation in Town Planning Scheme and Development Plan. The Division Bench, however, permitted the defendant no.1 to take over possession of the suit property from the plaintiff in accordance with law.

17. On 9th June 2010, the defendant no.1 addressed a letter to a Senior Inspector of Police requesting him to depute police personnel at the time of demolition of the structures on the suit property. It is the case of the defendants that on 10th June 2010, defendant no.1 took over possession of the suit property and handed over the same to the defendant no.3 who, in turn, handed over the same to the defendant no.4. On 14th June 2010, the plaintiff filed a suit (L.C. Suit No.1405 of 2010) in the Bombay City Civil Court inter alia praying for a declaration that the action taken by the defendant no.1 on 10th June 2010 was illegal and bad and for a mandatory order against the defendant no.2 to immediately reconstruct the said structures. The plaintiff also prayed for a permanent order and injunction restraining the defendants from carrying out any development or construction activity on the disputed portion and

injunction from creating third party rights in respect of the disputed portion etc.

18. On 16th February 2013, the Bombay City Civil Court passed an interim order of status-quo in the notice of motion filed by the plaintiff in the said suit. In the said suit, neither the defendant no.3 nor the defendant no.4 were originally impleaded as parties. On 17th August 2010, the defendant no.4 filed a Special Leave Petition in the Supreme Court against the interim relief in the writ petition granted by this Court. By an order dated 14th October 2011, the Supreme Court remanded the matter on interim relief back to this Court with a direction to decide the same afresh.

19. On 26th June 2012, the Division Bench of this Court, on remand, rejected the interim reliefs in the writ petition by adverting to the judgment of the Supreme Court in the case of ***Manohar Joshi Vs. State of Maharashtra & Ors.*** and other companion matters, reported in ***(2012) 3 SCC 619***. The earlier interim relief which was in operation in the writ petition came to be vacated. The plaintiff filed a Special Leave Petition against the said order dated 26th June 2012 and withdrew the said Special Leave Petition on 26th November 2013. In the meanwhile, the defendant no.3 applied for its impleadment and came to be impleaded. The defendant no.4 also applied for its impleadment and was impleaded. The defendant no.4, thereafter, made ad-interim application for vacating interim order which was granted in favour of the plaintiff by the Bombay City Civil Court. The said application for ad-interim application was rejected by the Bombay City Civil Court and the notice of motion was made returnable. Against the said order, the defendant no.4 filed an

appeal from order in this Court. This Court by an order dated 10th April 2013 expedited the notice of motion.

20. On 30th November 2013, the Bombay City Civil Court passed an order dismissing the notice of motion which was filed by the plaintiff and allowed the notice of motion filed by the defendant no.4 inter alia praying for vacating the ad-interim order.

21. On 20th December 2013, this Court in the appeal from order filed by the plaintiff passed an order, remanding the matter back to the Bombay City Civil Court for the reason that there were pending chamber summons for amendment of the suit which are required to be decided. On 15th April 2014, Writ Petition No.325 of 2014 filed by the plaintiff came to be disposed of.

22. The plaintiff impugned the order passed by the Bombay City Civil Court allowing the impleadment of the defendant nos.3 and 4 to the suit by filing two separate writ petitions in this Court. By an order dated 28th March 2014, both the writ petitions filed by the plaintiff came to be dismissed. On 17th November 2013, the Special Leave Petition filed by the plaintiff against the order passed by this Court came to be dismissed.

23. Learned trial Judge passed an order on 30th January 2015 thereby allowing the Notice of Motion No.1396 of 2010 filed by the plaintiff inter alia praying for interim relief and continuing the status-quo order granted by the Bombay City Civil Court on 16th October 2010. The said order dated 30th January 2015 allowing the said notice of motion

filed by the plaintiff is a subject matter of challenge in the Appeal from Order No.496 of 2015. By the said order, the learned trial Judge dismissed the notice of motion filed by the defendant no.4 inter alia praying for vacating the order of the status-quo. The said order passed by the learned trial Judge is a subject matter of challenge in the Appeal from Order No.495 of 2015.

24. Mr.Samdhani, learned senior counsel for the defendant no.4 invited my attention to some of the documents forming part of the record, some of the paragraphs of the plaint and affidavits filed by the defendants and also the prima facie observations made by the learned trial Judge in the impugned order. He submits that the plaintiff themselves have claimed their area of final plot admeasuring 2198.7 sq. mtrs. This means that the suit plot admeasuring 536 sq. mtrs. is excluded by the plaintiff themselves from their ownership. He submits that there is no dispute that the suit plot is appended to final plot no.267 and that the final plot no.267 is awarded to the defendant no.1-Municipal Corporation. It is submitted that the plaintiff has, admittedly, not claimed any 'declaration of title' in respect of the suit property in any form whatsoever in the plaint. He submits that the entire cause of action in the suit is of dispossession of the plaintiff on 10th June 2010 without following due process of law under Sections 89 and 90 of the Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act") and therefore, seeks restoration of possession.

25. It is submitted by the learned senior counsel that the possession of the plaintiff of the suit property was permissive only on their registered undertaking dated 6th February 1995 to hand over

possession thereof to the defendant no.1. He submits that the learned trial Judge thus could not have granted any injunction in favour of the plaintiff against true owner on the basis of permissive possession of the plaintiff. He submits that if the plaintiff would not have given an undertaking pursuant to the condition contained in clause (u) of IOD, the defendant no.1 would not have issued Commencement Certificate in favour of the plaintiff and would not have permitted the plaintiff to carry out any development on their plot. He submits that the plaintiff having taken advantage of the said IOD condition and having submitted an undertaking as provided in the said IOD condition, and having obtained Commencement Certificate and thereafter, Completion Certificate could not have refused to hand over possession of the suit property in breach of such undertaking. In support of this submission, learned senior counsel placed reliance on the judgment of the Supreme Court in the case of ***Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (since deceased) through LR's.***, reported in ***(2012) 5 SCC 370***.

26. It is submitted by the learned senior counsel that in any event, the defendant no.1 had duly complied with the provisions of Sections 89 and 90 of the MRTP Act and had called upon the plaintiff to hand over possession on 22nd July 2009 and again on 20th August 2009. He submits that the plaintiff has not disputed the receipt of these letters calling upon the plaintiff by the defendant no.1 to hand over possession of the suit property.

27. It is submitted by the learned senior counsel that the order dated 3rd October 2009 also clearly indicates that consideration of the

objection of the plaintiff under Sections 89 and 90 of the MRTP Act. He submits that Internal Report of the defendant no.1 dated 22nd October 2009 also clearly indicates that the procedure had been fully completed except 'evacuation' under Sections 89 and 90 of the MRTP Act and would further indicate that everything prerequisite to the physical possession was fully complied with. He submits that though the plaintiff had subsequently challenged the notice dated 22nd July 2009 in writ petition filed by the plaintiff, no stay of the said notice was granted by this Court in the said writ petition. He submits that merely because in the notices dated 22nd July 2009 and 20th August 2009, the defendant no.1 had not mentioned the provisions of Sections 89 and 90 of the MRTP Act, that would not make the notices illegal or not in conformity with the said provisions of law.

28. It is submitted by the learned senior counsel that there is no dispute that the possession was taken over by the defendant no.1 from the appellants with the assistance of police which was the possession by force in accordance with law. He submits that the plaintiff cannot be allowed to blow hot and cold by taking inconsistent plea. It is submitted by the learned senior counsel that since the plaintiff does not have any title or legal right in the suit property, injunction could have been granted by the learned trial Judge against the true owner i.e. the defendant no.1 and the appellants who claimed through and under the defendant no.1. In support of this submission, learned senior counsel placed reliance on the judgment of the Supreme Court in the case of **Premji Ratansey Shah & Ors. Vs. Union of India & Ors.**, reported in (1994) 5 SCC 547.

29. It is submitted by the learned senior counsel that the plaintiff cannot be allowed to urge various issues which were urged by the plaintiff in the writ petition already filed by the plaintiff in this Court in which the Division Bench of this Court has already declined to grant interim relief in favour of the plaintiff. He submits that since there was no pleading in the plaint on the issues which were canvassed in the writ petition, the plaintiff could not be allowed to urge those issues across the bar in support of grant of injunction. He submits that there was no prayer in the plaint declaring the Town Planning Scheme as invalid or that there was no vesting of the suit property in the defendant no.1.

30. Learned senior counsel invited my attention to various averments in the plaint and would submit that the plaintiff has clearly admitted that there was an award of final plot no.267 including the suit property in favour of the defendant no.1. He submits that though the plaintiff had applied for amendment of the plaint for impugning the Town Planning Scheme and the vesting in favour of the defendant no.1, the said amendment application was rejected by the learned trial Judge and was upheld by this Court as well as by the Supreme Court.

31. It is submitted by the learned senior counsel for the defendant no.4 that the plaintiff could not have been allowed to urge before the trial Judge that the suit plot which was reserved in Town Planning Scheme for school without variation of Town Planning Scheme cannot be used for 'Housing for Dishoused' as per development plan. He submits that this issue could not have been raised and even if could have been raised, could not have been decided in the suit filed by the plaintiff. He submits that in any event, the said issue has already been

decided by the Division Bench of this Court in its order dated 26th June 2012 by adverting to the judgment of the Supreme Court in the case of *Manohar Joshi (supra)*. He submits that it is not the case of the defendant no.4 that the reservation shown in the Town Planning Scheme for school has been varied in the development plan by showing the said plot reserved for 'Housing for Dishoused.' It is submitted that in any event, the development plan sheet clearly shows that the final plot no.267 has been reserved for 'Housing for Dishoused.' He submits that the reservation shown in the development plan would prevail over the reservation shown in the Town Planning Scheme.

32. It is submitted by the learned senior counsel for the defendant no.4 that all the tenants who were occupying the suit plot have been shifted in transit camp for the last more than seven years awaiting their new accommodation. The defendant no.4 had already invested substantial amounts for carrying out the obligations under the Tripartite Agreement for redevelopment of the final plot no.267 executed between the defendant nos.1, 3 and 4. He submits that the balance of convenience is in favour of the defendant nos.3 and 4 and the Municipal Corporation and against the plaintiff. He submits that since the plaintiff does not have right, title and interest in the suit property, the plaintiff was not entitled to any interim relief. He submits that various issues argued before the learned trial Judge by the plaintiff were on the premise as if the suit filed by the plaintiff was to be tried as Public Interest Litigation.

33. It is submitted by the learned senior counsel that the plaintiff after obtaining the ex-parte ad-interim order from the trial Court had filed series of applications for amendments and a challenge to the

rejection of the amendment applications right upto the Supreme Court and has somehow delayed outcome of the notice of motion filed by the plaintiff and the notice of motion filed by the defendants for vacating the order of status-quo. He submits that the learned trial Judge thus could not have exercised the discretionary powers in favour of the plaintiff and ought not to have granted status-quo in favour of the plaintiff.

34. It is submitted by the learned senior counsel for the defendant no.4 that the defendant no.4 had agreed to carry out development on the suit property in implementation of the public purpose of 'Housing for Dishoused' shown in the development plan which public project could not be stalled by granting order of status-quo in favour of the plaintiff. The plaintiff did not have any semblance of right of any nature whatsoever in the suit property. The plaintiff was bound and liable to comply with an undertaking given to the defendant no.1 while applying for sanction of plan for development of the suit property owned by the plaintiff. He submits that the plaintiff has not come to this Court with clean hands and wanted to grab suit property. The discretionary relief could not have been granted by the learned trial Judge in favour of the plaintiff was a trespasser or a person who gained unlawful possession as against the true owner. Since the plaintiff had not demonstrated any personal interest in the suit plot or any claim therein, no injunction could be granted in favour of such trespasser. In support of this submission, learned senior counsel placed reliance on the judgment of the Supreme Court in the case of *Premji Ratansey Shah & Ors. (supra)*.

35. It is submitted by the learned senior counsel for the defendant no.4 that the learned trial Judge has granted an order of

status-quo and has rendered various prima facie observations though no such facts were pleaded by the plaintiff in the plaint. He submits that since the plaintiff had not applied for declaration of their title in respect of the suit property, the plaintiff could not have prayed for reliefs as claimed in the plaint. In support of this submission, learned senior counsel placed reliance on the judgment of the Supreme Court in the case of ***Union of India Vs. Ibrahim Uddin & Anr.***, reported in **(2012) 8 SCC 148**.

36. It is submitted by the learned senior counsel for the defendant no.4 that before granting any interlocutory proceedings under Order XXXIX of the Code of Civil Procedure, 1908 which relief being an equitable relief, the learned trial Judge ought to have taken into consideration the conduct of the plaintiff who had applied for such equitable relief. He submits that the plaintiff had voluntarily given an undertaking to the defendant no.4 for handing over possession of the suit property and when called upon him to do so, he ought not have refused to hand over possession of the suit property. The defendant no.1 had admittedly taken possession of the suit property from the plaintiff and handed over the same to the defendant nos.3 and 4 for the purpose of development of the said plot which was shown in the development plan for 'Housing for Dishoused.' He submits that interim order passed by the learned trial Judge is contrary to the principles of law laid down by the Supreme Court in the case of ***Gujarat Bottling Co. Ltd. & Ors. Vs. Coca Cola Co. & Ors.***, reported in **(1995) 5 SCC 545**.

37. It is submitted by the learned senior counsel that various prima facie observations made by the learned trial Judge in the impugned

order are contrary to law and without any pleadings and thus deserve to be set aside on that ground also.

38. Mr.Bharucha, learned senior counsel appearing for the defendant nos.1 and 2 (Municipal Corporation of Greater Mumbai) the appellants in Appeal from Order No.1210 of 2015 adopted the submissions made by Mr.Samdhani, learned senior counsel appearing for the original defendant no.4 and submits that the property vested in the Municipal Corporation and once having vested, it was at the discretion of the Municipal Corporation to use the said property for any public purpose as the Municipal Corporation desires. He submits that the Municipal Corporation can use the plot for public purpose other than for which it was reserved in the Town Planning Scheme as well as in the development plan. In support of this submission, learned senior counsel placed reliance on the judgment of the Supreme Court in case of ***Gulam Mustafa & Ors. vs. State of Maharashtra & Ors.***, reported in ***(1976) 1 SCC 800*** and in particular paragraph 5 and also the judgment of the Supreme Court in case of ***State of Maharashtra vs.Mahadeo Deoman Rai @ Kalal & Ors.***, reported in ***(1990) 3 SCC 579*** and more particularly paragraph 6 thereof.

39. It is submitted that the plaintiff having committed breach of the undertaking and in spite of the Municipal Corporation calling upon the plaintiff to hand over possession of the suit plot, the plaintiff did not hand over possession thereof to the Municipal Corporation in breach of the undertaking rendered by the plaintiff. The Municipal Corporation has already taken possession of the suit plot from the plaintiff and has already handed over the same to the defendant no.3 society and to the developer

for the purpose of redevelopment under a tripartite agreement entered into between the defendant no.1, the Municipal Corporation and the defendant no.3 and the defendant no.4. He submits that there is no merit in the appeal filed by the plaintiff and the same deserves to be dismissed.

40. Mr.T.N. Subramanian, learned senior counsel appearing for the defendant no.3 society and who are the appellants in Appeal from Order No.487 of 2015 adopted the submissions made by Mr.Samdhani, learned senior counsel appearing for the defendant no.4 and made additional submissions. He invited my attention to Annexure-II annexed to the paper book and would submit that 81 tenants which belonged to the lower middle class have been dishoused from 2007-2008 and have been staying in the transit camp. He submits that the plaintiff has suppressed these facts from the learned trial Judge as well as from this Court. He submits that the defendant no.3 society had been in possession of the suit plot even prior to finalization of the Town Planning Scheme. Learned senior counsel also invited my attention to the averments made by the plaintiff in the writ petition filed by the plaintiff before this Court. He submits that one of the prayer in the said writ petition was for relieving the plaintiff from the undertakings rendered to the Municipal Corporation which relief has not been granted by this Court. He submits that the plaintiff had also applied for an injunction against the defendant no.3 society from carrying out digging work which clearly indicates that the defendant no.3 society was in possession of the suit land. The plaintiff had also applied for an injunction from carrying out any redevelopment on the suit plot.

41. Learned senior counsel submits that though the plaintiff was fully aware that the defendant no.3 society was in possession of the suit plot, the plaintiff deliberately did not join the society as a party defendant to the suit filed before the Bombay City Civil Court and falsely claimed to be in possession of the suit land. He also placed reliance on the panchnama forming part of the appeal paper book and would submit that the possession of the suit plot was already handed over to the defendant no.3 society by the Municipal Corporation. He submits that the society was therefore, compelled to make an application for its impleadment to the said suit. He submits that by suppressing various true and correct facts the plaintiff obtained an order of *status-quo* from the learned trial Judge. He submits that since the plaintiff has made false statement and had suppressed various true and correct facts, the learned trial Judge could not have exercised discretionary powers in favour of the plaintiff. He submits that the plaintiff has committed gross abuse of process of law. It is submitted that after rejection of the amendments to the plaint, the plaintiff has filed fresh suit with the same amendments which is also illegal and improper. He submits that the impugned order passed by the learned trial Judge granting *status-quo* thus shall be set aside.

42. Mr.Rajiv Kumar, learned senior counsel and Mr.Chheda appearing for the plaintiff on the other hand would submit that since the Municipal Corporation had acted high handedly and since the action of the Municipal Corporation dated 10th June, 2010 demolishing the suit structure was without following statutory provisions of the MRTTP Act, the plaintiff was entitled to file a suit *inter-alia* praying for a declaration that such action on the part of the Municipal Corporation was illegal and

for various other reliefs. It is submitted that the Municipal Corporation has mis-interpreted the order passed by this Court in the writ petition filed by the plaintiff. It is submitted that the plaintiff was always in possession of 563 sq. mtrs. and had never handed over possession to the Municipal Corporation or to any of the defendants.

43. It is submitted that the action of the Municipal Corporation was without issuing a notice under section 89 read with section 90 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act) and was in gross violation of the principles of natural justice. It is submitted that the action of dispossession of the plaintiff on 10th June, 2010 was illegal and null and void. It is submitted that since the defendants themselves have admitted that retention of the suit plot by the plaintiff was permissive, it was clear that the plaintiff continue to be in possession of the suit plot and thus no action could be taken by the Municipal Corporation against the plaintiff of dispossession without issuing the mandatory notice under section 89 read with section 90 of the MRTP Act. It is submitted that the undertaking given by the plaintiff was withdrawn.

44. Learned senior counsel appearing for the plaintiff submits that the undertaking rendered by the plaintiff and accepted by the Municipal Corporation was for faithful compliance of the IOD condition and the said undertaking thus could not amount to waiver of the obligation or would not supersede mandatory obligations of the Municipal Corporation of issuing notice under section 89 read with section 90 of the MRTP Act. Learned senior counsel invited my attention to some of the internal notings of the Municipal Corporation forming part

of the record and would submit that though the Municipal Corporation was under an obligation to issue notice under section 89 read with section 90 of the MRTP Act before dispossessing the plaintiff, admittedly no such notice was issued. It is submitted that the procedure under section 89 read with section 90 of the MRTP Act was mandatory and cannot be waived even though the plaintiff had given an undertaking to the Municipal Corporation in terms of the IOD issued by the Municipal Corporation.

45. It is submitted by learned senior counsel that the undertaking dated 6th February, 1995 given to the Municipal Corporation was restricted to the final plot no.265. It is submitted that even if there was any breach of the undertaking rendered by the plaintiff, at most it would have attracted a penal action and that cannot by-pass mandatory prescribed procedure under section 89 read with section 90 of the MRTP Act. It is submitted that in any event the said undertaking was given under mistaken notion that the disputed plot was required by the Municipal Corporation for being developed as a school. It is submitted that the said undertaking was required to be given by the plaintiff since the Municipal Corporation had made it a condition precedent for grant of commencement certificate/occupation certificate in relation to the building on the final plot no.265 belonging to the Municipal Corporation.

46. It is submitted that the Municipal Corporation had not demanded possession of the land in order to enable itself to develop it but was claiming possession of the land so that it could offer the land to developer or to the society for construction of a free sale building. It is submitted that the Municipal Corporation in any event could not have

entered into an agreement with the defendant no.4-developer and the defendant no.3-society for the purpose of redevelopment of the plot for the purpose different than the purpose shown in the Town Planning Scheme i.e. for construction of a school which purpose was admittedly not changed in the development plot. Learned senior counsel made an attempt to distinguish the judgment of the Supreme Court in case of *Manohar Joshi vs. State of Maharashtra (supra)* and would submit that the said judgment would support the case of the plaintiff and not the defendants.

47. It is submitted by learned senior counsel that tripartite agreement dated 10th June, 2009 executed between the defendant nos.1, 3 and 4 is not admissible in evidence on the ground that the said agreement is neither stamped in accordance with law nor registered as required by law. He submits that the reservation of the school in the Town Planning Scheme for school could not be modified, varied or changed without complying with the procedure under section 39 read with section 92 of the MRTP Act, 1966. There was no valid and legal reservation for “Housing for Dishoused” on final plot no.267.

48. It is submitted that “Housing for Dishoused” is not an amenity falling within the definition of “Amenity” under section 2(2) of the MRTP Act, 1966 or Regulation 2(7) of Schedule Part-I of Development Control Regulations, 1991. He submits that the Municipal Corporation could not permit redevelopment of the plot under Regulation 33(7) of the Development Control Regulations, 1991. It is submitted that the suit land did not validly vest in the Municipal Corporation in view of

the provisions of section 61(q) of the Mumbai Municipal Corporation Act. It is submitted that all the contentions raised by the plaintiff in Writ Petition Nos.325 of 2014 and 902 of 2015 have been kept open by this Court and thus were subject matter of the suit filed by the plaintiff.

49. It is submitted by learned senior counsel for the plaintiff that under the provisions of Development Control Regulations, 1991, if there is any conflict between the Development Control Regulations and the Scheme Regulation, Scheme Regulations shall prevail. It is submitted that during the entire process of the development plan of 1991-2001, there was no reference to final plot no.267. No steps were taken under section 91 of the MRTP Act by the State Government. No notice under section 50 of the MRTP Act was issued. It is submitted that there was no reservation for "Housing for Dishoused" on final plot no.267. The Municipal Corporation has prepared a list of the existing amenities for the public purpose in the Revised Draft Development Plan of 1991-2001 where there is no mention of the suit plot no.267.

50. Mr.Rajiv Kumar, learned senior counsel for the plaintiff made an attempt to distinguish the judgments relied upon by Mr.Samdhani, learned senior counsel for the defendant no.4 and Mr.E.P. Bharucha, learned senior counsel for the defendant nos.1 and 2 on the ground that the facts before the Courts in those judgments were totally different than the facts in this case and were thus not applicable to the facts of this case.

51. Mr.Samdhani, learned senior counsel for the original

defendant no.4 clarified that it was not the stand of his client that the reservation shown in the Town Planning Scheme for “School” has been changed to “Housing for Dishoused” in the development plan finally sanctioned. He submits that the case of the defendant no.4 is that in case of any inconsistency between the purpose shown in the Town Planning Scheme and the development plan, the purpose shown in the development plan would prevail and not what is shown in the Town Planning Scheme. Mr.Samdhani has already submitted a written note of his arguments which would also be dealt with by this Court in later part of the judgment.

52. The above matter appeared on board on 13th January 2016 for conclusion of arguments. Since the learned senior counsel appearing for the plaintiff informed this Court that his brief was withdrawn by the plaintiff and since second counsel was not available for arguments, this Court closed the arguments of the plaintiff and passed an order to decide the matter on the basis of the arguments already advanced and the written statement filed by the parties. The plaintiff, thereafter, filed Civil Application No.129 of 2016 for recall of the said order and agreed to complete balance arguments and requested this Court to permit the plaintiff to file written submissions. This Court accordingly by an order dated 2nd February 2016 in the said civil application filed in Appeal From Order No.495 of 2015 recalled the earlier order dated 10th February 2016 and fixed the matter for hearing the learned counsel for the plaintiff and also the learned senior counsel for the defendants in rejoinder.

53. The plaintiff, thereafter, filed written submissions dated 10th February 2016 and advanced various further submissions for consideration of this Court. Along with written submissions, the plaintiff

also annexed various documents which were not forming part of the record before the learned trial Judge. Learned senior counsel appearing for the defendant no.4 raised an objection in this Court considering those documents annexed to the written submissions since the same were not forming part of the record before the learned trial Judge. This Court accordingly passed an order making it clear that those annexures to the written submissions dated 10th February 2016 since not forming part of the record before the learned trial Judge would not be considered.

54. The plaintiff, thereafter, filed Civil Application bearing (St.) No.4313 of 2016 in Appeal from Order No.495 of 2015 inter alia praying for recall of the order dated 10th February 2016 and prayed for a liberty to seek reliance on the documents annexed to the written submissions. During the course of the arguments on 10th February 2016, learned counsel appearing for the plaintiff disclosed that two more writ petitions were filed by the plaintiff in this Court for various reliefs which were pending. During the course of the rejoinder arguments, the learned senior counsel appearing for the defendant no.4 in Appeal from Order No.495 of 2015 furnished copies of those two writ petitions filed by the plaintiff recently which were referred by the learned counsel for the plaintiff.

55. Since both the parties had made a reference to the said two writ petitions filed by the plaintiff in Appeal from Order No.495 of 2015 and the respondent no.4 had furnished copies of the said two writ petitions along with annexures, this Court by an order dated 11th February 2016 recalled the earlier order dated 10th February 2016 and agreed to consider relevance of those documents to the written

submissions dated 10th February 2016. Learned counsel for the plaintiff after concluding his arguments informed this Court that his client proposed to rely upon few more judgments in support of his submissions already advanced and sought permission to tender photocopies of those judgments within few days. The plaintiff, thereafter, filed copies of 24 judgments before this Court and also extract of commentary/sections on different subjects. The list of the judgments is extracted as under :-

- i) *Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (deceased) through LRs.*, reported in (2012) 5 SCC 370;
- ii) *Prabhavanti Mulji Shah Vs. Municipal Corporation of Greater Mumbai*, reported in 2010 (3) Bom. C.R. 788;
- iii) *District Magistrate, Haridwar & Anr. Vs. Harish Malhotra*, reported in 2014 (13) SCALE 683;
- iv) *The Assistant Commissioner of Urban Land Tax & Ors. Vs. The Buckingham & Carnatic Co. Ltd.*, reported in 1969 (2) S.C.C. 55;
- v) *Jayesh Dhanesh Goragandhi Vs. Municipal Corporation of Greater Mumbai & Ors.*, reported in AIR 2013 S.C.C. 882;
- vi) *Bhatjiwale Vs. Municipal Corporation of Greater Mumbai & Anr.* decided on 11th August 1987 in Writ Petition No.453 of 1998;
- vii) *Municipal Corporation, Ludhiana Vs. Inderjit Singh and Anr.*, reported in MANU/SC/4530/2008;
- viii) *Sarva Shramik Sanghatana (KV), Mumbai Vs. State of Maharashtra & Ors.*, reported in (2008) 1 S.C.C. 494;
- ix) *Ramdev Food Products Pvt. Ltd. Vs. Arvindbhai Rambhai Patel & Ors.*, reported in AIR 2006 SC 3304;
- x) *Commissioner of Police, New Delhi & Anr. Vs. Shani Kumar*, reported in AIR 2013 S.C.C. 2861;

- xi) *Zenit Mataplast Private Limited Vs.State of Maharashtra and Ors.*, reported in (2009) 10 S.C.C. 388;
- xii) *Ajra Habib Vs. R.K. Gupta*, reported in AIR 2002 MP 95;
- xiii) *Goverdhan Singh Vs.Mulkh Rai*, reported in AIR 1973 J & K 63;
- xiv) *S.Ganapathy Chettiar Vs.Dharmalingam Mudliyar & Ors.*, reported in *The Madras Law Journal Reports* 1994, Page 602;
- xv) *Vasudeo Vs.Union of India, through the G.M.*, reported in 1973 *Mh.L.J.* 1994;
- xvi) *Gopal Singh & Anr.Vs.State of Rajasthan & Anr.*, reported in AIR 1964 RAJASTHAN 270;
- xvii) *Banglore Medical Trust Vs.B.S. Muddappa and Ors.*, reported in (1991) 4 S.C.C. 54;
- xviii) *Godrej Vs.State of Maharashtra and Ors.*, reported in (2009) 5 S.C.C. 24;
- xix) *Lokhandwala Infrastructure Pvt.Ltd. Vs. Municipal Corporation of Greater Mumbai*, reported in 2008 (5) All MR 743;
- xx) *Dr.G.N. Khajuria & Ors.Vs.Delhi Development Authority*, reported in 1995 (2) 4 j (S.C.) 656;
- xxi) *Raju S. Jethmalanai & Ors.Vs. State of Maharashtra & Ors.*, reported in 2006 (1) All M.R. (S.C.) (1);
- xxii) *Balak Vihar Vidya Trust Vs. M.C.G.M. & Ors.* decided on 3rd May 2011 in the Writ Petition No.1259 of 1997;
- xxiii) *Laxminarayan R. Bhattad and Ors. Vs. State of Maharashtra and Anr.*, reported in (2003) 5 SCC 413;
- xxiv) *SMS Tea Estate Pvt.Ltd. Vs. Chandmari Tea Company Pvt.Ltd.*, reported in (2011) 14 SCC 66.

56. On 10th February 2016, learned counsel for the plaintiff made further submissions. It is submitted that after sanction of Town Planning Scheme, the plaintiff continued in possession of area admeasuring 536 sq.mtrs. which was not part of final plot nos.265 & 266. The Municipal Corporation was not justified in seeking any undertaking from the plaintiff while granting building permission for vertical extension of building on plot no.265. It is submitted that in any event, the said undertaking given on 6th February 1995 was withdrawn by the plaintiff on 29th November 2008.

57. Reliance is once again placed on the judgment of the Supreme Court in the case of *Maria Margarida Sequeira Fernandes & Ors. (supra)* and it is submitted that since the plaintiff was in a settled possession, the plaintiff could be evicted only by adopting due process of law and not forcibly in the manner in which the Municipal Corporation had dispossessed the plaintiff. Reliance is also placed on the judgment of this Court in the case of ***Prabhavanti Mulji Shah Vs. Municipal Corporation of Greater Mumbai***, reported in **2010 (3) Bom. C.R. 788** in support of his submissions. Reliance is also placed on the judgment of the Supreme Court in the case of ***Laxminarayan R. Bhattad and Ors. Vs. State of Maharashtra and Anr.***, reported in **(2003) 5 SCC 413**. Learned counsel for the plaintiff also placed reliance on various paragraphs of the judgment of the Supreme Court in the case of *Manohar Joshi (supra)* and would submit that the said judgment of the Supreme Court would assist the case of the plaintiff and not the defendants. It is submitted that even if the Bombay Town Planning Scheme IV of Mahim was validly sanctioned by the State Government, the disputed land would not get vested in the Municipal Corporation.

58. Learned counsel for the plaintiff submits that the Draft Development Plan of 2014-2034 was placed before the Corporation on 23rd February 2015 and the Corporation by their resolution no.1195 dated 23rd February 2015 accorded approval for publishing the same as per provisions of Section 26(1) of the MRTP Act. The said draft development plan has been duly published by the Corporation. Reliance is placed on Section 46 of the MRTP Act in support of the submission that the planning authority, in considering application for permission for construction, shall have due regard to the provisions of any draft proposal published by means of notice.

59. It is submitted that the Municipal Corporation has issued some guidelines to be followed while the Draft Development Plan 2014-2034 is under consideration. It is submitted that under the Draft Development Plan 2014-2034, final plot no.267 has been reserved for public purpose viz. school. He also placed reliance on the transitory guidelines issued by the Corporation on 10th March 2015 which provide that in cases where commencement certificate has already been granted and work has not yet started or substantially progressed on the plots which were reserved in the draft development plan, the matter has to be separately examined on case to case basis with the sanction of competent authority and the action in respect of Section 51 of the MRTP Act can be thereafter initiated.

60. It is submitted by the learned counsel for the plaintiff that in so far as the final plot no.267 is concerned, the commencement certificate has been granted in 2009, however, no substantial progress is made by the Corporation. Reliance is placed on Circular dated 20th August 2015

excluding re-development project under Regulation 33(7) of the Development Control Regulations, 1991 from the purview of guidelines issued by the Corporation. It is submitted that the effect of the Circular dated 20th August 2015 is to exclude projects under Regulation 33(7) of the Development Control Regulations, 1991 from the provisions of Section 46 of the MRTP Act. It is submitted that the Municipal Corporation has no power to issue such circular dated 20th August 2015 on the ground that the same is beyond the competence of the Corporation.

61. Learned counsel for the plaintiff placed reliance on minutes of the proceedings of the meeting held in the Chamber of Chairman of Improvement Committee of the Municipal Corporation on 1st September 2015 in which it was decided that if the developer and the Society were willing to submit a fresh building proposal which excludes the disputed portion of final plot no.267 from construction, that proposal can be considered for sanction. It is submitted that since the Co-operative Society and the developer have submitted a fresh proposal before the Municipal Corporation which is contrary to the proposal in the sanctioned building plan, the developer has abandoned the sanctioned building plan and cannot go ahead and make construction according to the sanctioned building plan. It is submitted that while considering the fresh building plan submitted by the developer and the Society, the Municipal Corporation will have to consider the fact that in the draft development plan, final plot no.267, Town Planning Scheme IV, Mahim is now shown as reserved for school. Reliance is also placed on the judgment of this Court in the case of **Balak Vihar Vidya Trust Vs. M.C.G.M. & Ors.** decided on 3rd May 2011 in the Writ Petition No.1259 of 1997.

62. Mr.Samdhani, learned senior counsel appearing for the defendant no.4 in rejoinder submits that all these additional submissions made by the plaintiff across the bar and also in the additional written submissions dated 10th February 2016 are in the nature of submissions which could be made, if any, in the Public Interest Litigation and cannot be considered in these appeals from order arising from the suit proceedings in which the cause of action was very limited. It is submitted that the plaintiff had only applied for injunction in respect of plot admeasuring 536 sq.mtrs. in which the plaintiff had no legal right, title or interest of any nature whatsoever. The plaintiff has admitted that in respect of the suit property, the plaintiff has no claim in the ownership of title.

63. My attention is also invited to the prayers made in the writ petition filed by the plaintiff in this Court. He submits that admittedly, this Court has refused to grant any interim relief in the said writ petitions filed by the plaintiff and has held that the plaintiff had no right in the suit property. Reliance is more particularly placed on the order dated 7th June 2010 passed by the Division Bench of this Court. He submits that in the said writ petition, the plaintiff has also challenged the scheme for development of the Society under Regulation 33(7) of the Development Control Regulations, 1991. He submits that the learned trial Judge, however, has passed an order of status-quo which is contrary to the order passed by the Division Bench of this Court and is also contrary to the propositions of law laid down by the Supreme Court and this Court.

64. It is submitted by the learned senior counsel for the defendant no.4 that in so far as various paragraphs of the judgment of the Supreme Court in the case of *Manohar Joshi (supra)* relied upon by the learned counsel for the plaintiff is concerned, this Court in the writ petitions filed by the plaintiff has interpreted the said judgment and has held that the development plan is supreme than the Town Planning Scheme and the development thus can be proceeded with. He submits that this Court after interpreting the judgment of the Supreme Court in the case of *Manohar Joshi (supra)* has rightly refused to grant interim relief. He submits that the learned trial Judge could not have taken a different view in the matter. It is submitted that even this Court in these appeals from order cannot interpret the judgment of the Supreme Court in the case of *Manohar Joshi (supra)* differently as canvassed by the learned counsel for the plaintiff. This Court has also taken a view that the plaintiff had no interest in the suit property and thus the redevelopment of the property cannot be withheld at the instance of the plaintiff who had no immediate right in the suit property. Special Leave Petition filed by the plaintiff against the said order passed by the Division Bench of this Court is admittedly withdrawn. He submits that though the Supreme Court has stayed the order passed by this Court allowing the amendments to the writ petitions, the Supreme Court has not stayed the proceedings in the said writ petitions. The order passed by the Division Bench of this Court refusing to grant interim relief in favour of the plaintiff is in full force and is binding on the parties.

65. It is submitted that various submissions now made by the plaintiff across the bar and also forming part of the written submissions dated 10th February 2016 were sought to be inserted by seeking

substantial amendments in the plaint which were rejected by the learned trial Judge. The writ petitions challenging the said orders refusing to permit the amendments has been rejected. Special Leave Petition against the said two orders passed by this Court in the writ petition has also been dismissed. He submits that the amendments which were not permitted by the learned trial Judge in the suit and in respect of which special leave petition has been dismissed cannot be permitted to be advanced at this stage in these appeals from order.

66. Mr.Samdhani, learned senior counsel for the defendant no.4 would submit that some of the annexures to the written submissions dated 10th February 2016 are subject matter of the Writ Petition (L) Nos.111 of 2016 and 192 of 2016 which are pending before this Court. It is submitted that whether the construction on the suit plot is permissible or not is not the subject matter of the suit filed by the plaintiff. The challenge to the plan submitted by the developer and the Society is not allowed by the City Civil Court as also by this Court and the Supreme Court. He submits that commencement certificate issued in favour of the developer by the Municipal Corporation has already been revalidated and is in existence. He submits that in so far as the proposal made by the plaintiff across the bar for development of the suit plot for the purposes shown in the draft revised development plan is concerned, the said proposal was subject matter of the application for amendments and has already been rejected. He submits that in any event, the said proposal is also subject matter of one of the writ petitions now filed by the plaintiff as stated aforesaid and thus cannot be reconsidered by this Court at this stage. It is lastly submitted that the redevelopment on the plot which belonged to the Municipal Corporation cannot be done by the

plaintiff contrary to Regulation 33(7) of the Development Control Regulations, 1991.

REASONS AND CONCLUSIONS :-

67. A perusal of the impugned order passed by the learned trial Judge indicates that the learned trial Judge has, prima facie, held that the reservation of the suit plot no.267 remained and continued to be for school as per the reservation in the Town Planning Scheme and the Municipal Primary School as per the development plan (final) 1967. It is held that the defendant no.1-Municipal Corporation did not follow the provisions of Section 91 of the MRTP Act to change the reservation of plot no.267. It is held that suit plot was proposed to be reserved for housing for dishoused in the development plan of G/North ward of 1981-2000. However, the same had not been done in view of the provisions of the MRTP Act. Learned trial Judge has, prima facie, observed that the reservation of the plot continues to be for school as the change to housing for dishoused was an error, irregularity and informality which has to be corrected by following the provisions of Section 91 of the MRTP Act. It is observed that the plot reserved for a school which was an amenity as defined under the MRTP Act could not be diverted for housing for dishoused which was not an amenity.

68. It is observed by the learned trial Judge that since the scheme had not yet been brought in-conformity with the plan, it was not opened for the Municipal Corporation to sanction any development on the plot without complying with the procedure under Section 92 of the MRTP Act. It is observed that the suit plot in the development plan was

reserved for Municipal Primary School and, therefore, plot could not be developed and used for any purpose other than the Primary School. In paragraph 33 of the impugned order, it is held that the Municipal Corporation had changed the use of the suit land and thus the public purpose for which the land was reserved and its change of user, was an issue between the parties which would have to be decided during the course of trial.

69. There is no dispute that in the plaint, the plaintiff did not apply for a declaration of their alleged ownership in respect of the suit plot. The defendant no.1 had admittedly taken possession of the suit plot from the plaintiff and handed over the same to the defendant nos.3 and 4 for the purpose of redevelopment. The question that arises before this Court is whether the learned trial Judge could have passed an order of status-quo in the matter and thereby stalling the redevelopment of the suit plot though there was no claim of ownership made by the plaintiff in the suit and no relief in that regard was prayed in the plaint.

70. A perusal of the record produced before this Court which was also the subject matter of the record before the learned trial Judge clearly indicates the reservation of the final plot no.267 was for housing for dishoused. Learned senior counsel for the Municipal Corporation produced an authentic document for perusal of this Court in support of this submission. The entire order passed by the learned trial Judge proceeded on the erroneous premise that in the development plan, the reservation in respect of the suit plot continued to be for Municipal Primary School and not for housing for dishoused.

71. A perusal of the record indicates that under the final development plan in the years 1991-1993, the final plot no.267 was shown as reserved for 'Housing for Dishoused.' On or about 25th March 1991, Development Control Regulations, 1991 came into force. Some time in the year 1992, the plaintiff made a proposal to the defendant no.1-Municipal Corporation for development of their final plot no.265. Simultaneously, during the period between 1993 -2003, various occupants of the tenements on final plot no.267 made various applications to the defendant no.1-Municipal Corporation for seeking permission to develop the said final plot no.267 under Regulation 33(7) of the Development Control Regulations, 1991. It is not in dispute that on 17th November 1994, the defendant no.1-Municipal Corporation had already granted 'Intimation of Disapproval (IOD)' to the plaintiff to develop the final plot no.265.

72. It is not in dispute that Clause (u) of the said IOD provided for a registered undertaking to be filed by the plaintiff stating that an area of open plot in possession of the plaintiff that time shall be handed over to the Municipal Corporation when required. It is also not in dispute that on 6th February 1995, the plaintiff rendered such written undertaking duly registered to the defendant no.1-Municipal Corporation stating that the plaintiff would hand over the suit property to the Municipal Corporation when demanded. The plaintiff, thereafter, received a Completion Certificate for their building constructed on final plot no.265 on 30th May 2005. Condition 2 of the Completion Certificate also clearly provided that the area of adjoining plot bearing final plot no.267 of TPS IV which was then in possession of the plaintiff shall be handed over to the defendant no.1-Municipal Corporation as and when insisted. Based on such

undertaking rendered by the plaintiff, the Municipal Corporation allowed the plaintiff to develop their plot no.265 and issued a Completion Certificate. In my view, if the plaintiff would not have given an undertaking to hand over possession of the final plot no.265 of TPS IV which was allowed to be retained by the Municipal Corporation as a permissive user with an undertaking to return the said plot as and when insisted, the plaintiff could not have been permitted to develop their plot no.265.

73. A perusal of the record also indicates that the plaintiff had applied to the Municipal Corporation to retain the suit property as part of final plot no.265 which request of the plaintiff was rejected by the Municipal Corporation. Last of such rejection was on 5th August 1996. The plaintiff was thus fully aware that the plaintiff did not have any right, title or interest of any nature whatsoever in the suit plot i.e. final plot no.267 and the same was required to be handed over to the Municipal Corporation when insisted. Neither it was the case of the plaintiff before the learned trial Judge nor in the present proceedings that the plaintiff claimed any ownership in the suit plot.

74. A perusal of the record clearly indicates that the entire suit is based on the premise that the Municipal Corporation could not have demanded possession from the plaintiff without following the procedure under Sections 89 and 90 of the MRTP Act. Learned trial Judge, in so far as the issue raised by the plaintiff about change of user is concerned, has held that the said issue would have to be decided by the trial Court at the stage of final hearing of the suit.

75. On 13th February 2003, the occupants of final plot no.267, the defendant no.3-Society passed a resolution appointing the defendant no.4 as a developer for the purpose of development of the said final plot no.267. On 19th May 2005, the defendant no.1-Municipal Corporation had already issued Annexure-II in favour of the defendant no.3 and the defendant no.4. On 25th November 2005, the Scrutiny Committee of the Municipal Corporation had already approved the proposal for redevelopment of final plot no.267 under Regulation 33(7) of the Development Control Regulations, 1991. On 23rd November 2007, the Standing Committee of the Municipal Corporation had already approved the proposal for redevelopment of the final plot no.267.

76. On 11th December 2007, the Letter of Intent has been issued by the Municipal Corporation in favour of the defendant nos.3 and 4 for final plot no.267. All the occupants of the tenements on final plot no.267 have already vacated their respective premises in the month of December 2007 and have been shifted to a transit camp. The defendant no.3- Society has been registered on 6th May 2008.

77. On 11th May 2009, the Municipal Corporation has already issued IOD for redevelopment of the final plot no.267 to the defendant nos.3 and 4 under Regulation 33(7) of the Development Control Regulations, 1991. On 28th July 2009, the Municipal Corporation has issued a Commencement Certificate in favour of the defendant nos.3 and 4 for final plot no.267. On 10th August 2009, a Tripartite Agreement for redevelopment of the final plot no.267 came to be executed between the defendant no.1, defendant no.3 and defendant no.4.

78. A perusal of the record indicates that the Municipal Corporation by their letters dated 27th July 2009 and 20th August 2009 demanded possession of the suit property from the plaintiff pursuant to the undertaking rendered by the plaintiff and also in compliance with the terms and conditions of the Completion Certificate. The plaintiff, however, refused to hand over possession of the suit property in response to the notice dated 20th August 2009.

79. A perusal of the record indicates that the Municipal Corporation has already rejected the proposal of the plaintiff for change of Town Planning Scheme and to retain the suit property with them on 3rd October 2009. The plaintiff filed a writ petition in this Court on 20th August 2009 inter alia praying for various reliefs. Though this Court had initially stayed the redevelopment of the final plot no.267, by an order dated 7th June, 2010, Division Bench of this Court on remand of the writ petition by an order dated 14th October 2011 passed by the Supreme Court rejected interim reliefs in the writ petition filed by the plaintiff. Special Leave Petition filed by the plaintiff impugning the order dated 26th June 2012 rejecting the interim reliefs in favour of the plaintiff has been withdrawn by the plaintiff on 26th November 2013. Though in the writ petition, the plaintiff had prayed for various reliefs against the Society and in respect of the suit plot, neither the Society nor the developer were impleaded as party-defendants to the said suit. The defendant no.3 and the defendant no.4, therefore, separately applied for impleadment as party-defendants to the said suit. This Court had already rejected two writ petitions filed by the plaintiff impugning the order passed by the learned trial Judge allowing the impleadment of the

defendant nos.3 and 4 as party-defendants to the suit. Special Leave Petition filed by the plaintiff against the order passed by this Court came to be dismissed.

80. A perusal of the plaint filed by the plaintiff indicates that the plaintiff has prayed for declaration that the action taken by the defendant no.1 on 10th June 2010 was illegal and bad-in-law and for a mandatory order of the defendant no.2 to immediately re-construct the suit structure. The plaintiff has also prayed for permanent order and injunction restraining the defendants from carrying out development or construction activities on the disputed portion and injunction from creating any third party rights in respect of the disputed portion. Admittedly, the plaintiff is not in possession of the suit plot and the same is with the defendant nos.3 and 4.

81. Insofar as the submission of learned counsel appearing for the plaintiff that the Municipal Corporation could not have evicted the plaintiff and/or demolished the suit structure without following the provisions of sections 89 and 90 of the MRTP Act is concerned, it is not in dispute that the plaintiff had rendered an undertaking to the Municipal Corporation that the plaintiff would hand over possession of the suit plot to the Municipal Corporation without insisting by it. The completion certificate was also issued in favour of the plaintiff on the condition that the plaintiff will hand over possession of the suit plot to the Municipal Corporation. Admittedly, the plaintiff has not claimed any ownership in respect of the suit plot in the plaint and before the learned trial Judge. It is an admitted position that the plaintiff had also applied for withdrawal of the said undertaking and has urged that the said undertaking was rendered

by the plaintiff under a wrong notion that the Municipal Corporation would ask for possession of the suit plot for the purpose of carrying out construction of a school in accordance with the reservation shown in the Town Planning Scheme.

82. In my view, it is thus clear beyond doubt that the possession of the plaintiff in respect of the suit plot was as and by way of permissive user and the plaintiff was not in constructive possession. In my view, the notice under section 89 read with 90 of the MRTP Act, 1966 has to be issued if any person continues to occupy any land after the date on which final scheme came into force the Planning Authority or its officer have to follow a summary procedure for eviction of such person, if necessary with the help of the District Magistrate or Commissioner of Police. In this case, since the plaintiff had rendered an undertaking to hand over possession of the said plot and had no right, title and/or interest of any nature whatsoever in the suit plot and possession of the plaintiff was as and by way of permissive user, the Municipal Corporation in my view was not required to follow the procedure under sections 89 and 90 of the MRTP Act.

83. The Supreme Court in case of *Maria Margarida Sequeira Fernandes (supra)* has held that if a premises is given by a person to another as a caretaker or as a permissive user, the other person does not acquire title to the property and even by long possession of years or decades, such person would not acquire any right or interest in the said property. The caretaker or servant has to give possession forthwith on demand. It is held that the Courts are not justified in protecting

possession of a caretaker, servant or any person, who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant. It is held that the protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession. In my view, since the plaintiff had rendered an undertaking to hand over possession of the suit plot to the Municipal Corporation as and when demanded and in lieu of the suit plot was already given benefits under the provisions of the Town Planning Scheme, the plaintiff continued to be in possession of the suit plot almost as a caretaker or as a agent of the Municipal Corporation or as a permissive user.

84. In my view, the learned trial Judge thus could not have protected the alleged rights of the plaintiff for the reasons recorded in the impugned order or otherwise. The plaintiff having no right, title and/or interest of any nature whatsoever in the suit plot was thus not entitled to grant of any protection against the Municipal Corporation, who was the true owner of the suit plot. The principles laid down by the Supreme Court in case of *Maria Margarida Sequeira Fernandes (supra)* and in case of *Premji Ratansey Shah (supra)* would squarely apply to the facts of this case. I am respectfully bound by the judgments of the Supreme Court referred to aforesaid.

85. Be that as it may, a perusal of the record clearly indicates that the Municipal Corporation had in fact issued two notices to the

plaintiff calling upon the plaintiff to hand over possession of the suit plot in view of the plaintiff having rendered an undertaking in favour of the Municipal Corporation pursuant to the terms and conditions of the IOD and had also undertaken to hand over possession thereof in accordance with the terms and conditions of the completion certificate and thus the provisions of sections 89 and 90 of the MRTP Act are duly complied with. Since the plaintiff refused to hand over possession on some flimsy grounds, the Municipal Corporation was entitled to evict the plaintiff with the assistance of the Commissioner of Police by force.

86. It is not in dispute that the defendant no.1 Corporation has already taken possession of the suit plot and has demolished the then structure existing on the suit plot. A perusal of the provisions of section 90(3) of the MRTP Act clearly indicates that if any action is taken by the Planning Authority under section 90 is questioned, the matter shall be referred to the State Government or any officers authorized by the State Government and any notification and the decision of the State Government or of such officer as the case may be, shall be final and conclusive and binding on all persons. In my *prima-facie* view, the suit filed by the plaintiff *inter-alia* praying for a declaration that the action of the Municipal Corporation is illegal itself, is not maintainable on this ground.

87. In my view, the plaintiff having taken advantage of the terms and conditions of the IOD and having obtained the commencement certificate and thereafter completion certificate, was bound to comply with all the terms and conditions, including its undertaking to hand over possession of the suit plot to the Municipal Corporation as and when

demanded. The learned trial Judge could not have exercised discretionary power in favour of the plaintiff who was in breach of the registered undertaking and that also against the true owner of the property and other occupants who have claimed rights therein.

88. Insofar as the submission of learned senior counsel for the plaintiff that the undertaking rendered by the plaintiff was in faithful compliance of the IOD condition and that would not amount to waiver of the obligation or would not supersede the mandatory obligations of the Municipal Corporation of issuing the notice under section 89 read with section 90 of the MRTP Act is concerned, in my view, there is no merit in this submissions made by learned senior counsel for the plaintiff. The Planning Authority is even otherwise entitled to evict the person on the suit plot upon final Town Planning Scheme having been come into effect at the relevant time, the Municipal Corporation instead of exercising that power at that point of time had permitted the plaintiff to continue put in possession till possession was demanded by the Municipal Corporation.

89. Insofar as reliance placed on the internal notings of the Municipal Corporation that the procedure under section 89 read with section 90 of the MRTP Act was required to be followed is concerned, in my view without going into the question as to whether the plaintiff could have relied upon such internal notings or not, even such notings would clearly indicate that the Municipal Corporation had followed the procedure of issuance of notices but had not evacuated the plaintiff from the suit plot.

90. Insofar as the submissions made by learned senior counsel for the plaintiff that even if there was any breach of undertaking rendered by the plaintiff almost, it would at most attract penal action and would not by-pass the mandatory condition prescribed procedure under section 89 read with 90 of the MRTP Act is concerned, in my view, in view of the undertaking rendered by the plaintiff, the provisions of section 89 read with 90 of the MRTP Act were not attracted in the facts of this case. Be that as it may, the Municipal Corporation had already complied with the said provisions and has lawfully evicted the plaintiff from the suit plot.

91. Insofar as the submission made by learned senior counsel for the plaintiff that the undertaking rendered by the plaintiff was under a mistaken notion is concerned, this submission is totally frivolous and is devoid of merits. The plaintiff has already availed off the benefits under the provisions of the MRTP Act in lieu of the suit plot, the plaintiff cannot challenge the undertaking now on the ground that the Municipal Corporation could use the said plot only for the purpose of construction of a school on the suit plot and not for any other purpose. The Town Planning Scheme once having sanctioned, the suit plot already vested in the Planning Authority. The Supreme Court in *Gulam Mustafa & Ors. (supra)* and in case of *State of Maharashtra vs. Mahadeo Deoman Rai @ Kalal & Ors. (supra)* has held that once the property has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. The same view has been also taken by the Supreme Court in case of *Manohar Joshi vs. State of Maharashtra & Ors. (supra)*.

92. The Division Bench of this Court in the writ petition filed by the plaintiff (Writ Petition No.1731 of 2009) in this Court has held that the plaintiff had at no stage of draft development plan and the stage of inviting objections and the finalization raise any objection of any nature to the finalization of the development plan. This Court rejected the contention of the plaintiff that the development plan had been finalized illegally in that the Municipal Corporation had failed to mention any change of user in plot no.267 and to submit its decision on the objections to the Government. It is held that in the present case, the development plan having been reserved the land in question for the purpose of housing the dis-housed and not for a school as in the Town Planning Scheme, this Court has no hesitation in coming to the *prima-facie* conclusion that the proposed development was not illegal for that reason. This Court also rejected the contention of the plaintiff that the Municipal Corporation had illegally diluted the reservation for housing the dis-housed and permitted the construction of housing meant for free sale since there was no grade “A” structure on the land as contemplated by D.C. Regulation 33(7) and in any case the notification of 1992 under which the dilution has been permitted can only apply to re-development under Regulation 33(10) of the Development Control Regulations, 1991.

93. The Division Bench of this Case in its order dated 7th June, 2010 in Writ Petition No.1731 of 2009 filed by the plaintiffs has also held that the plaintiffs were earlier part owners of the land, but consequent on the plot vesting in the Municipal Corporation, they have no right in the land and they have been given an alternate plot. They were however

allowed to continue on the land pursuant to the undertaking given to the Municipal Corporation that they would vacate as and when the plot was required by the Corporation. It is also observed that it was clear that the plaintiffs themselves had no right on the land and it would be open to the Corporation to take such steps in law which they were entitled to. In my view, the impugned order granting *status-quo* in favour of the plaintiff is totally contrary to the judgment of the Division Bench of this Court in the writ petition filed by the plaintiffs. Admittedly Special Leave Petition filed by the plaintiff against the order passed by this Court refusing to grant *ad-interim* order has been withdrawn by the plaintiff.

94. Insofar as submission of the learned senior counsel for the plaintiff that the tripartite agreement executed between defendant nos.1, 3 and 4 is not admissible in evidence on the ground that the same is neither stamped nor registered in accordance with law is concerned, it is not in dispute that no such plea has been raised by the plaintiff before the learned trial judge. Be that as it may, the said issue can be raised by the plaintiff as and when the said document is tendered in evidence at the stage of trial. In my view at this stage, whether such agreement is sufficiently stamped or not or whether registered or not would not have any bearing on the issue whether the learned trial judge was justified in granting status quo order in favour of the plaintiff or not.

95. Insofar as submission of the learned senior counsel for the plaintiff that there was no valid and legal reservation for "Housing for Dishoused" for final plot no.267 is concerned, this contention is devoid of merits. The plaintiff themselves have admitted in the plaint as well as in

the Writ Petition No.1731 of 2009 that final plot no.267 was reserved for “Housing for Dishoused”. Be that as it may, the development plan clearly indicates that the final plot no.267 is reserved for “Housing for Dishoused”. The Division Bench of this court in its order dated 7th June, 2010 and 26th June, 2012 have already negated this contention of the plaintiff and has held that the plot no.267 was reserved for “Housing for Dishoused” in the development plan. The plaintiff thus cannot be allowed to agitate this issue once again.

96. A perusal of the record clearly indicates that there is no relief sought by the plaintiff for a declaration that the Town Planning Scheme is invalid or for a declaration that there is no vesting of the suit property in the Municipal Corporation. On the contrary the plaintiff has admitted in the plaint that there is an award of final plot no.267 including the suit property in favour of the defendant no.1 Corporation upon finalization of the Town Planning Scheme. Though the plaintiff had made an attempt to amend the plaint in this regard, admittedly the trial court by an order dated 14th February, 2014 has rejected the chamber summons filed by the plaintiff. The writ petitions filed by the plaintiff were also rejected by this court by two separate orders dated 28th March 2014. Special Leave Petition filed by the plaintiff impugning the order passed by the learned single Judge of this court in the two writ petitions also came to be rejected by the Supreme Court by an order dated 17th September, 2014.

97. Insofar as submission of the learned senior counsel for the plaintiff that “Housing for Dishoused” is not an amenity falling within the definition of Amenity” under section 2(2) of the MRTP Act 1966 or

Regulation 2(7) of Schedule Part I of the Development Control Regulations, 1991 and thus the Municipal Corporation could not permit the redevelopment of the plot under Regulation 33(7) of the Development Control Regulations, 1991 is concerned, the Division Bench of this court has already negated this contention. There is no prayer in the plaint challenging the validity of the tripartite agreement entered into between the parties and/or challenging the sanction granted by the Municipal Corporation for redevelopment of the Regulation 33 of the Development Control Regulations, 1991.

98. Insofar as submission of the learned senior counsel for the plaintiff that under the provisions of Development Control Regulations, 1991, if there is any conflict between the Development Control Regulations and the Town Planning Scheme, the Town Planning Scheme can prevail is concerned, the Supreme Court has considered this issue at great length in case of ***Manohar Joshi vs. State of Maharashtra & Ors. (supra)***. It is held by the Supreme Court that section 39 read with section 59 do indicate the approach of legislature, namely, superiority of the D.P. plan over the T.P. Scheme. It is held that the planning authority shall vary the T.P. scheme if the final D.P. Plan is in variation with the T.P. Scheme sanctioned before the commencement of the MRTP Act. It is also held that subsequent to the commencement of the Act, a T.P. Scheme will have to be in consonance with the D.P. Plan. Section 59(1)(b)(i) cannot take away the force of the provision contained in section 59(1)(a) of the MRTP Act.

99. It is held that section 39 specifically directs that the planning authority shall vary the T.P. scheme to the extent necessary by the

proposal made in the final Development Plan and section 59 (1)(a) gives the purpose of the T.P. scheme, viz. that it is for implementing the proposals contained in the final Development Plan. It is held that under section 31 (6) of the MRTP Act, a Development plan which has come into operation is binding on the planning authority. The Planning Authority cannot act contrary to the Development plan and grant Development permission to defeat the provision of the Development plan. It is held that duty is cast on every planning authority specifically under section 42 of the MRTP Act to take steps as may be necessary to carry out the provisions of the plan referred in Chapter III of the Act, namely the Development Plan.

100. Supreme Court in the said judgment has held that section 52 of the MRTP Act in fact provides for penalty for unauthorized development or for use otherwise than in conformity with the development plan. The Supreme Court has made it clear that when it comes to the development in the area of a local authority, a conjoint reading of the relevant sections makes the primacy of the Development Plan sufficiently clear. It is also held that under section 59(1)(a) of the MRTP Act, the the town planning scheme is to be prepared for the purpose of implementing the proposals in the final Development Plan and even if such a variation as directed under Section 39 does not take place, the land cannot be put to use in any way in contradiction with the provision in the D.P. Plan.

101. Supreme Court also held that having noted the inter-relation amongst the various sections of the statute, it cannot be said that the T.P.

scheme is either superior or of equal strength as the Development Plan. It is held that the right claimed under the erstwhile T.P. scheme could not be sustained in the teeth of the reservation shown in the development plan. In my view the submission of the learned senior counsel for the plaintiff that the Municipal Corporation cannot permit the development of the plot for Housing for Dishoused contrary to the reservation shown in the T.P. scheme is totally without merits and is contrary to the law laid down by the Supreme Court in case of *Manohar Joshi (supra)*. It is not the submission of any of the defendants that the reservation shown in the T.P. Scheme for school has been modified in the development plan. In my view even if the reservation shown in the T.P. scheme is different than the reservation shown in the development plan, reservation shown in the development plan would prevail. The submission of the learned senior counsel for the plaintiff is thus without any merits and is rejected.

102. Be that as it may, the Division Bench of this court has already dealt with the issue raised aforesaid in the writ petitions filed by the petitioners in its order dated 26th June, 2012 in Writ Petition No.1731 of 2009 and in Public Interest Litigation (L) No.64 of 2012. The Division Bench has interpreted the said judgments of Supreme Court in case of *Girish Vyas and another vs. State of Maharashtra (supra)* and in case of *Manohar Joshi vs. State of Maharashtra (supra)* and has held that in the present case, the development plan having been reserved land in question for the purpose of Housing for Dishoused and not for a school as for the town planning, the court has no hesitation in coming to the prima facie conclusion that the proposed development is not illegal for that reason. It is also held by the Division Bench that the land cannot be put to use in

any case in contradiction with the provisions of the Development plan. Admittedly the special leave petition filed against the said order and judgment of this court has been withdrawn by the plaintiff. In my view each and every prima facie observations of the learned trial judge on the issue of reservation of the plot in the Town Planning Scheme and also in the development plan while granting status quo in favour of the plaintiff is totally contrary to the principles of law laid down by the Supreme Court in case of *Manohar Joshi (supra)* and also in the order and judgment of the Division Bench dated 26th June, 2012 filed by the plaintiff against the defendants herein in respect of the same subject matter.

103. In my view there is no substance in the submission of the learned senior counsel for the plaintiff that the judgments of Supreme Court in case of *Manohar Joshi vs. State of Maharashtra (supra)* or in case of *Girish Vyas and another vs. State of Maharashtra and others (supra)* would assist the case of the plaintiff and not the defendants. This submission of the learned senior counsel is totally contrary to the law laid down by the Supreme Court and also contrary to the order and judgment delivered by the Division Bench of this court in the writ petitions filed by the plaintiff.

104. A perusal of the record clearly indicates that after taking possession of the suit plot from the plaintiff, the Municipal Corporation has already handed over possession thereof to the defendant no. 3 and defendant no.4 for the purpose of redevelopment thereon. The defendant no.1, defendant no.3 and defendant no.4 have also entered into a tripartite

agreement. Various permissions as referred to aforesaid are also granted in favour of the defendant nos. 3 and 4 for redevelopment of the suit plot. The occupants on the suit plot had applied for permission to carry out development of the plot under Regulation 33(7) of the Development Control Regulations, 1991 which has been sanctioned by the Municipal Corporation. Large number of tenants have been already shifted from the suit plot to the transit camp and are in the transit camp for last several years and on the other hand the plaintiff who has not claimed any ownership, right, title or interest in the suit plot and has already lost its possession which was allowed as permissive user has been granted relief of status quo by the learned trial judge without considering the mandatory and binding effect of the registered undertaking rendered by the plaintiff in favour of the Municipal Corporation.

105. Supreme Court in the case of ***Prakash Amichand Shah Vs. State of Gujarat & Ors.***, reported in ***(1986) 1 SCC 581*** has held that when the Town Planning Scheme has come into force, automatically all the lands were required to be acquired by the local authority unless otherwise provided in the local authority. I am thus not inclined to accept the submission of the learned counsel for the plaintiff that the final plot no.267 did not vest in the Municipal Corporation and thus could not have been handed over by the Municipal Corporation to the defendant nos.3 and 4 for the purpose of redevelopment.

106. Supreme Court in the case of ***Municipal Corporation for Greater Bombay and Anr. Vs. The Advance Builders (India) Private Limited and Ors.***, reported in ***1971 (3) SCC 381*** has considered the

provisions of the Maharashtra Regional and Town Planning Act, 1966 and has held that all rights in the original plots of the private owners would determine and if, in the Scheme, reconstituted or final plots are allotted to them, the same shall become subject to the rights settled by the Town Planning Officer in the final Scheme. The original plots of one owner might completely disappear, being allotted to the local authority for a public purpose. Such a private owner may be paid compensation or a reconstituted plot in some other place may be allotted to him. The said reconstituted plot may be also subject to certain other rights in favour of others as determined by the Town Planning Officer. It is held that the original plot of the owner may be substantially cut down and he may be compensated elsewhere by being allotted a smaller or a bigger piece of land in a reconstituted plot. It is held that it is inherent in every Town Planning Scheme that titles are liable to be displaced and an owner may get a reconstituted plot which belonged to some other owner. It is held that under the provisions of the Maharashtra Regional and Town Planning Act, 1966 which are self-contained code by which buildings and works situated in the whole of the area under the Scheme are liable to be removed or pulled down by the local authority if those buildings or works contravene the Town Planning Scheme.

107. In my view, on finalisation of the Town Planning Scheme, reconstituted plot i.e. final plot no.267 exclusively vested in the Municipal Corporation and such plot was liable to be dealt with by the Municipal Corporation in the manner in which it desired in accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966 read with Development Control Regulations, 1991. It is not in dispute

that the plaintiff themselves had at one stage made a suggestion to construct a school on the final plot no.267 which proposal was not accepted. In my prima facie view, the plaintiff thus has no right, title and interest of any nature whatsoever in the final plot no.267 which already vested exclusively in the Municipal Corporation and the Municipal Corporation, in turn, has dealt with the said plot by entering into a Tripartite Agreement with the defendant nos.3 and 4. The principles laid down by the Supreme Court in the case of *Municipal Corporation for Greater Mumbai Vs. The Advance Builders (India) Private Limited (supra)* and also in the case of *Prakash Amichand Shah (supra)* squarely apply to the facts of this case. I am respectfully bound by the said judgments.

108. The plaintiff has made various submissions before this Court which were not subject matter of the suit but were subject matter of the writ petition filed by the plaintiff in which this Court has refused to grant interim relief. Such submissions which were not pleaded before the learned trial Judge and were in any event not subject matter of the suit cannot be allowed to be urged before this Court.

109. In so far as the submission of the learned counsel for the plaintiff that under the Draft Development Plan 2014-2034, final plot no.267 has been reserved for public purpose viz. School, the Municipal Corporation cannot sanction plan for development of the suit property for 'Housing for Dishoused' is concerned, a perusal of the Circular dated 20th August 2015 issued by the Municipal Corporation makes it clear that by the said Circular dated 20th August 2015, the Municipal Corporation has excluded the projects under Regulation 33(7) of the

Development Control Regulations, 1991 from the provisions of Section 46 of the MRTP Act. Admittedly, the development of the suit plot sanctioned by the Municipal Corporation was under Regulation 33(7) of the Development Control Regulations, 1991.

110. The Municipal Corporation in the meeting held in Chamber of Chairman of Improvement Committee of the Municipal Corporation on 1st September 2015 as is apparent from the averments made in the Writ Petition (L) No.111 of 2016 which has been filed by the plaintiff herein makes it clear that in the said meeting, it was decided that if the developer and the Society were willing to submit a fresh building proposal which excludes the disputed portion of final plot no.267 from construction, that proposal can be considered for sanction.

111. A perusal of the Writ Petition (L) No.111 of 2016 filed by the plaintiff indicates that the plaintiff herein has challenged the powers of the Municipal Corporation in issuing the said Circular dated 20th August 2015 and has prayed for a writ of certiorari for quashing and setting aside the said Circular dated 20th August 2015 and has also prayed for a writ of mandamus directing the Municipal Corporation to consider the fresh building proposal submitted by the respondent no.3-Society and the respondent no.4-developer in accordance with the provisions of the MRTP Act, the Town Planning Scheme sanctioned, Development Plan and the Draft Development Plan and also prayed for interim relief not to carry on development activity or construction on the plot no.267 during the pendency of the said writ petition.

112. It is thus clear that in the suit filed by the plaintiff before the City Civil Court, whether the construction on the suit plot is permissible or not is not the subject matter of the said suit. Be that as it may, the amendments sought to the plaint in respect of various issues regarding development of the suit plot now raised in these proceedings were also subject matter of the application of the amendments made in the said suit which were admittedly rejected by the learned trial Judge and the said order has been upheld by this Court as well as the Supreme Court. In my view, the plaintiff cannot be thus allowed to agitate those issues once again in these proceedings.

113. In any event, it is not in dispute that the validity of the said circular is challenged by the plaintiff in the said Writ Petition (L) No.111 of 2016 and till date, the same is not quashed and set aside and is thus in force. The submissions thus made by the plaintiff, in my view, are contrary to the said Circular dated 20th August 2015 which is relied upon by the plaintiff which is issued by the Municipal Corporation which excludes the projects under Regulation 33(7) of the Development Control Regulations, 1991 from the provisions of Section 46 of the MRTP Act.

114. In my view, the learned trial Judge was bound to comply the principles laid down by the Supreme Court in the case of *Manohar Joshi (supra)* and the order passed by the Division Bench interpreting the said judgment and upon such interpretation, has negated the contention of the plaintiff. In my view, neither the learned trial Judge could have interpreted the judgment of the Supreme Court in the case of *Manohar Joshi (supra)* or the order of the Division Bench of this Court interpreting the said judgment and thereby rejecting the submission made by the

plaintiff differently nor can this Court interpret the said judgment and order differently. In my view, the order passed by the learned trial Judge granting status-quo in respect of the suit property thereby stalling the redevelopment of the suit property is contrary to and disregarding the order passed by the Division Bench of this Court in the writ petition which was binding not only on the parties but also the learned trial Judge shows illegality and deserves to be set aside.

115. In so far as the submission of the learned counsel for the plaintiff that the Municipal Corporation cannot consider the fresh proposal submitted by the defendant nos.3 and 4 which proposal is alleged to be contrary to the proposal in the building sanctioned plan or that the Municipal Corporation has to consider the fact that in the draft development plan 2014-2034, final plot no.267, Town Planning Scheme IV, Mahim is now shown as reserved for school is concerned, in my view, this submission of the learned counsel for the plaintiff is also contrary to the order passed by the Division Bench in the writ petition and also contrary to the Circular dated 20th August 2015 issued by the Municipal Corporation thereby excluding the redevelopment project under Regulation 33(7) of the Development Control Regulations, 1991 and is accordingly rejected.

116. In so far as the submission of the learned counsel for the plaintiff that the Municipal Corporation has not considered the proposal made by the plaintiff on 20th June 2010 to the Municipal Corporation is concerned, there is no dispute that the plaintiff had applied for amendments of the plaint and for various reliefs in respect of the said proposal made by the plaintiff to the Municipal Corporation which

amendments was admittedly rejected by the learned trial Judge and the said order is already upheld by this Court as well as the Supreme Court. In my view, the plaintiff thus cannot justify the impugned order passed by the learned trial Judge on the basis of such proposal made to the Municipal Corporation on 20th June 2010. Be that as it may, the plaintiff has filed a Writ Petition (L) No.192 of 2016 after closure of the arguments of the plaintiff initially on 13th January 2016. The said writ petition is pending before this Court. I am not inclined to re-consider any such proposal made by the plaintiff to the Municipal Corporation as far back as on 20th June 2010 while considering the issue whether the order of status-quo granted by the learned trial Judge shall be upheld or set aside.

117. In so far as the judgment of this Court in the case of *Prabhavanti Mulji Shah Vs. Municipal Corporation of Greater Mumbai (supra)* relied upon by the learned counsel for the plaintiff is concerned, this Court has held that the power under Section 89 of the MRTP Act can be exercised by the Planning Authority to evict any person summarily who continues to “occupy any land” which he is not entitled to occupy under the final scheme. In my view, the plaintiff continued to occupy the suit property which was admittedly forming part of the Town Planning Scheme as a permissive user and had refused to vacate and hand over the possession of the suit property inspite of the undertaking rendered to the Municipal Corporation, the Municipal Corporation was thus justified in evicting the plaintiff summarily. Be that as it may, demolition of the suit property after obtaining possession of the suit property from the plaintiff by the Municipal Corporation was after following the due procedure under Sections 89 and 90 of the MRTP

Act. The judgment of this Court in the case of *Prabhavanti Mulji Shah Vs. Municipal Corporation of Greater Mumbai (supra)* would squarely apply to the facts of this case.

118. In so far as the remaining judgments relied upon by the plaintiff in the additional compilation filed before this Court are concerned, I have gone through the each and every judgment relied upon by the plaintiff. In my view, none of those judgments are relevant for the purpose of deciding these proceedings and the reliance placed by the plaintiff thereon is totally misplaced and is placed with a view to make the record bulky and to cause further delay in disposal of the present proceedings.

119. A perusal of the record indicates that the plaintiff has filed several proceedings in this Court as also interlocutory proceedings before the learned trial Judge. The plaintiff had also filed a Special Leave Petition in the Supreme Court against most of the orders passed by this Court. Though in my prima facie view, the plaintiff has no right, title and interest of any nature whatsoever in the suit plot and had deliberately refused to handover possession of the suit plot inspite of the undertaking rendered in favour of the Municipal Corporation after having taken benefits of the terms and conditions of the IOD, Commencement Certificate and Completion Certificate, has stalled the redevelopment of the property for the reservation shown in the development plan and not having come to this Court with clean hands was not entitled to grant of any interim relief by the learned trial Judge by exercising his discretionary powers. As already highlighted aforesaid, the defendant nos.3 and 4 have already shifted large number of the

occupants of the suit plan to the transit camp who are in-transit camp for last several years. Municipal Corporation had granted various permissions and had also issued Letter of Intent in favour of the respondent no.4. The respondent no.4 has already spent substantial amount in furtherance of the permission granted by the Municipal Corporation and pursuant to the Tripartite Agreement entered into between the parties. In my view, the balance of convenience was thus in favour of the defendants and against the plaintiff.

120. Supreme Court in the case of *Gujarat Bottling Co. Ltd. & Ors. (supra)* has held that while exercising the discretion and while passing the order under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908, the following tests have to be applied (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. It is held that relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against the injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action until the uncertainties were resolved in his favour at the trial. It is held that the relief Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908 being an equitable relief, conduct of the parties seeking Court interference with the order of injunction must be fair.

121. In my view, the plaintiff in this case has not satisfied any of the tests laid down by the Supreme Court in the case of *Gujarat Bottling Co. Ltd. & Ors. (supra)* which are to be considered by the Court while considering the application under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908. The plaintiff, in my view, has not come to this Court with clean hands. The plaintiff has made every effort to delay the development of the suit property by filing frivolous proceedings one after another with ulterior motive. No prima facie case is made out for grant of order of status-quo in favour of the plaintiff and against the defendants. In my view, the impugned order passed by the learned trial Judge is thus contrary to the principles laid down by the Supreme Court in the case of *Gujarat Bottling Co. Ltd. & Ors. (supra)* and thus deserves to be set aside on that ground alone.

122. In my view, since the plaintiff had failed to demonstrate any alleged rights in the suit plot and had not even claimed any ownership in respect of the suit plot, the question of protecting the alleged rights of the plaintiff in the suit plot did not arise. The learned trial Judge thus could not have granted any order of status-quo in favour of the plaintiff in the facts and circumstances of this case. The Court must consider whether the balance of convenience was in favour of which party while granting any relief under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908. A party who had failed to comply with the undertaking given to the Municipal Corporation to handover possession of the suit plot when demanded could not be granted any equitable relief by the learned trial Judge by exercising its discretion under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908.

In my view, the principles laid down by the Supreme Court in the case of *Gujarat Bottling Co. Ltd. & Ors. (supra)* squarely applies to the facts of this case. I am respectfully bound by the said judgment of the Supreme Court.

123. I therefore pass the following order :-

- (i) The impugned orders dated 30th January 2015 passed by the learned trial Judge allowing the Notice of Motion No.1396 of 2010 and dismissing the Notice of Motion No.3339 of 2013 are set aside ;
- (ii) Notice of Motion No.1396 of 2010 filed by the original plaintiff is dismissed;
- (iii) Notice of Motion No.3339 of 2013 filed by the original defendant no.4 inter alia praying for vacating the order dated 16th June 2010 read with the order dated 19th October 2010 is allowed;
- (iv) The order dated 16th June 2010 read with the order dated 19th October 2010 passed by the learned trial Judge are vacated;
- (v) The aforesaid appeals are allowed in aforesaid terms;
- (vi) In view of disposal of the appeals from order, civil applications do not survive and the same are disposed of accordingly;
- (vii) The respondent no.1 (original plaintiff) shall pay cost of Rs.1,00,000/- to each of the appellant in four appeals within two weeks from today.

R.D. DHANUKA, J.

At this stage, learned counsel appearing for the respondent no.1 (original plaintiff) seeks continuation of the order of status-quo granted by the learned trial Judge for a period of four weeks from today

which is vehemently opposed by Mr.Samdhani, learned senior counsel appearing for the defendant no.4. Application of continuation of the status-quo order is rejected.

R.D. DHANUKA, J.