

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1427 OF 2013**

Pant Nagar Mahatma Phule
Co-op. Hsg. Society Ltd. & ors. .. Petitioners
Vs.
State of Maharashtra and ors. .. Respondents

AND

WRIT PETITION NO. 2162 OF 2015

Pant Nagar Mahatma Phule
Co-op. Hsg. Society Ltd. & ors. .. Petitioners
Vs.
Maharashtra Housing and Area
Development Authority and ors. .. Respondents

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Mr. A.V. Anturkar, Senior Advocate i/b Mr. Tushar Kochale for the petitioners in both petitions.

Mr. M.V. More, Addl. GP for the respondent-State.

Mr. P. K. Dhakephalkar, Senior Advocate a/w. Mr. PG. Lad and Ms Murlidharan for respondent nos.1 to 3 in WP 2162/15 and for respondent nos.3 and 4 in WP 1427/13.

Mr. J.G. Reddy for respondent No.4 in WP 2162/15 and for respondent no.5 in WP 1427/13.

Mr. G.S. Gobdole a/w. Mr. S.B. Pawar and Ms Swati Sawant i/b S.K. Legal Associates for respondent no.5 in WP 2162/15 and for respondent no.6 in WP 1427/13.

Mr. V.A. Thorat, Senior Advocate a/w. S.B. Pawar and Ms Swati Sawant i/ b S.K. Legal Associates for respondent no.6 in WP 2162/15 and for respondent no.7 in WP 1427/13.

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**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

Date of Reserving the Judgment : 28 March 2016.
Date of Pronouncing the Judgment : 02 April 2016.

JUDGEMENT: (Per M.S. Sonak,J.)

1] Rule in both the petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The Hon'ble Supreme Court by its order dated 1 October 2015 in petition for special leave to appeal arising out of Diary No. 30817 of 2015 has requested this Court to dispose of S.W.P. No. 1416 of 2015 (Lodging No.), which corresponds to Writ Petition No. 2162 of 2015 within a period of six months, on its own merits and uninfluenced by the orders impugned in the said petition for special leave to appeal.

3] In these petitions, we are concerned with property bearing CTS Nos.190/1 to 190/8 and 190/9 (pt.) situated at Pant Nagar Ghatkopar (E), Mumbai-400 075, which is admittedly owned by the Maharashtra Housing and Area Development Authority (MHADA), a statutory authority constituted under the Maharashtra Housing and Area Development Act, 1976 (MHADA Act). There is however, a dispute between the contesting parties as to whether the property bearing CTS No.190/9 (pt.) admeasuring 4355 sq. mtrs., includes, the property bearing CTS Nos. 190/1 to 190/8 or whether the property bearing CTS

Nos.190/1 to 190/8 constitutes different and distinct property. Therefore, unless indicated otherwise, the property bearing CTS Nos.190/1 to 190/8 and CTS No.190/9 (pt.) shall hereinafter be referred to as *said property* for sake of convenience.

4] There is no serious dispute that the MHADA is the owner of the *said property*. By registered deed of lease dated 11 September 1995, MHADA has leased to Ghatkopar Septic Tank Gurukrupa Co-operative Hsg. Society Ltd. (respondent no.5), property described as bearing CTS No.190/9 (pt.) admeasuring 4355 sq. mtrs at Pant Nagar, Ghatkopar (East). The lease deed makes reference to Schedule-I as well as plan, in which the leased property has been described and demarcated.

5] The petitioner no.1 claims to be a cooperative housing society promoted by and having as its members petitioner nos.2 to 7. The petitioners, in their capacity as occupants of structures/property which they describe as bearing CTS Nos.190/1 to 190/8, claim certain rights in respect thereof. The structures/property had been earlier allotted by MHADA to its eight sweepers/employees during the tenure of their service. There is no proper documentation in the matter of such allotment. The petitioners claim to have acquired possession and rights from the said eight sweepers/employees. Again, there is no document on record as to the basis of such acquisition. Upon being queried, Mr. Anturkar, learned senior advocate for the petitioners, candidly stated that the petitioners have no document in the matter of

acquisition of rights or possession from the said eight sweepers/employees, but he maintained that there is no dispute with regard to the petitioners occupation of the structures/property and further submitted that the rights of the petitioners have been recognised by the MHADA vide office note dated 22 June 2009 and letter dated 21 January 2015, to which due reference will be made in the course of this judgment and order.

6] The respondent nos.5 and 6 (society and developer) have been issued approvals/sanctions for slum redevelopment scheme over the property leased by MHADA to respondent no.5 vide aforesaid registered lease deed dated 11 September 1995. The said respondents, together with the authorities who have issued such approvals/sanctions (remaining respondents) maintain that the leased property, in respect of which the slum redevelopment scheme has been sanctioned, though described at some places as bearing CTS No.190/9 (pt.), includes within its sweep, the structures/property bearing CTS Nos. 190/1 to 190/8 , which position according to them, is clear from the reference to the boundaries set out in Schedule-I appended to the registered lease deed dated 11 September 1995 and the plan appended thereto. The respondent nos.5 and 6 maintain that the statutory authorities have quite correctly included the names of the petitioners/occupants in Annexure-II (a statutory annexure indicating the names of occupants eligible to avail the benefits of slum redevelopment scheme) and further, since the petitioners/

occupants have failed to vacate the structures/property in their occupation, the authorities have rightly made orders for their eviction by resort to the statutory provisions contained under the Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act).

7] The petitioners, upon being served with notices under section 33 of the Slum Act, seeking their eviction from the structures/ property, initially instituted Writ Petition (L) No. 1185 of 2010 challenging the slum redevelopment scheme as well as their inclusion in Annexure-II as occupants eligible to avail the benefits of the scheme. During the pendency of the petition, however, the petitioners instituted appeal bearing Appeal Nos. 680 of 2010 and 719 of 2010 under section 35 of the Slum Act to question the notices under section 33 of the Slum Act and possibly on the said basis, withdrew Writ Petition (L) No. 1185 of 2010. The appeals were dismissed, *inter alia*, on the grounds of maintainability.

8] The petitioners thereafter instituted BCCC Suit No. 2150 of 2010 in the City Civil Court, Mumbai seeking various reliefs in relation to the slum redevelopment scheme, including *inter alia* the following reliefs:

a] A declaration that a Letter of Intent (LOI) dated 6 February 2009 issued in favour of respondent no.5 society for implementation of slum redevelopment scheme is illegal, null and void;

- b] Declarations that MHADA and the Assistant Land Manager had no authority to conduct survey in respect of the said property and consequently, the issuance of Annexure-II under DC Regulation 33(10) etc., is illegal, null and void;
- c] Declarations that the inclusion of the names of the petitioners in Annexure-II is illegal, null and void and for directions to delete the same; and
- d] Declarations that the LOI dated 6 February 2009 does not include structures/property bearing CTS No. 190/1 to 190/8 in the occupation of the petitioners.

9] The City Civil Court Mumbai vide judgment and decree dated 10 February 2012 rejected the plaint in BCCC Suit No. 2150 of 2010 *inter alia* citing the statutory bar contained in section 42 of the Slum Act, section 177 of MHADA Act, section 164 of the Maharashtra Cooperative Societies Act, 1960 and section 149 of the Maharashtra Regional & Town Planning Act, 1966 (MRTP).

10] The petitioners instituted First Appeal No. 382 of 2012 in this Court to impugn the aforesaid judgment and decree dated 10 February 2012, which was dismissed on 1 December 2014. The petition for Special Leave to Appeal (C) No(s). 1629-1630 of 2015 was withdrawn by the petitioners on 6 February 2015. The Civil Application (Review) No. 2 of 2015 in First Appeal No. 382 of 2012 was dismissed on 27 April 2015.

11] The MHADA on 30 April 2015 and 7 May 2015, once again

issued notices under section 33 of the Slum Act seeking eviction of the petitioners, against which, the petitioners instituted writ petition as well as Appeal Nos. 41 and 43 of 2015 before the Additional Collector. The appeals were dismissed on 26 May 2015. The petitioners, thereupon, instituted Writ Petition (L) No. 2605 of 2015 and Writ Petition No. 2042 of 2015, raising several challenges to the slum redevelopment scheme as also the orders directing the eviction of the petitioners from the structures/property bearing CTS Nos.190/1 to 190/8.

12] The Division Bench of this Court, by its judgment and order dated 11 September 2015 dismissed the aforesaid Writ Petition (L) No. 2605 of 2015 and Writ Petition No. 2042 of 2015 with costs quantified at Rs.1 lakh in each of the petitions. The copy of judgment and order dated 11 September 2015 was directed to be placed in the papers and proceedings in Writ Petition (L) No. 1416 of 2015, i.e., the present petition now renumbered as Writ Petition No.2162 of 2015, which the petitioners, in the meanwhile, instituted before this Court.

13] The petitioners questioned the aforesaid judgment and order dated 11 September 2015 before the Hon'ble Supreme Court by lodging petition for special leave to appeal arising out of Diary No. 30817 of 2015. On 1 October 2015, the Hon'ble Supreme Court has made the following order:

“UPON hearing counsel the Court made the following

O R D E R

Applications seeking exemption from filing certified as

well as the plain copy of the impugned order stands disposed of in view of the fact that the same has been filed along with applications seeking permission to file the same. The impugned judgment and order is taken on record and the unregistered application seeking permission to file the same is allowed.

Applications seeking permission to place on record additional facts and documents as well as to raise additional questions of law and urging additional grounds are granted.

Applications seeking exemption from filing official translation of Annexures P3, P8, P9, P13, P14, P16, P18, P27 and P30 is allowed.

Interim order shall remain in operation insofar as the eight petitioners alone in this petition are concerned and the respective lands which are in their possession as well as stay of costs of Rs. 1,00,000/- (Rupees One lakh). As far as the rest of the area is concerned, it is open to the respondents to proceed with the development. In the meanwhile, we request the High Court to dispose of the S.W.P. No. 1416 of 2015 (Lodging No.) which in our view would cover the substantive rights claimed by the petitioners as against the declared Census Slum Area, in particular, the inclusion of the names of the petitioners in Annexure-2. We only request the High Court to dispose of the said writ petition within six months. Whichever Division Bench which may decide the said Writ Petition, shall decide the same on its own merits uninfluenced by whatever stated in the impugned order.

The matters stand adjourned.”

14] In view of the request made by the Hon'ble Supreme Court that the present matter, i.e., Writ Petition No. 2162 of 2015 be disposed of within six months, we have taken up these petitions for final disposal.

15] We have heard learned senior advocates and advocates for the parties at great length. We have perused the pleadings as well as the materials placed on record by the parties. We now proceed

to dispose of these petitions finally.

16] Mr. Anturkar, learned senior advocate for the petitioners, has made the following four broad based submissions:

A] That by virtue of MHADA office note dated 22 June 2009 and MHADA letter dated 21 January 2015, the petitioners, who are presently the owners of the structures and "*lessees in the pipeline*" in respect of the property bearing CTS Nos.190/1 to 190/8, are entitled to a writ of mandamus directing the MHADA to execute conveyance deed in favour of petitioner no.1, so that, the title of the petitioners to the structures/property bearing CTS Nos. 190/1 to 190/18 stands perfected;

B] That the structures/property bearing CTS Nos. 190/1 to 190/8 in the occupation of the petitioners is different and distinct from the leased property admeasuring 4355 square meters bearing CTS No.190/9(pt.) and there is no basis whatsoever to contend that the leased property bearing CTS No. 190/9 (pt.) includes the property bearing CTS Nos. 190/1 to 190/8. On this fundamental basis, Mr. Anturkar contended that respondent nos.5 and 6 can claim no right, title or interest of whatsoever nature in the property bearing CTS Nos. 190/1 to 190/8 in occupation of the petitioners and further, a suitable declaration is liable to issue that all the permissions, sanctions, NOCs, LOIs issued by the statutory authorities, to the extent, they purport to include

the structures/property bearing CTS Nos.190/1 to 190/8 in the occupation of the petitioners are null, void and legally unenforceable ;

C] That assuming without admitting that the structures/property bearing CTS Nos. 190/1 to 190/8 in occupation of the petitioners, is included in the property bearing CTS No. 190/9 (pt) leased by MHADA to respondent no.5, the said property is neither a slum for the purposes of the Slum Act nor for the purposes of Development Control Regulations for Greater Mumbai, 1991, including in particular DCR 33(10). Upon this premise, Mr. Anturkar contended that the very sanction of a slum redevelopment scheme upon the said property and the attempts to oust the petitioners, on the basis of same, are acts without the authority of law, *ultra vires*, null and void; and

D] The provisions of DCR 33(10), if interpreted correctly permit approval of slum redevelopment schemes only in slum areas as declared under the Slum Act or within censused areas or slum rehabilitation areas. If the provisions of DCR 33(10) are interpreted to permit the Slum Rehabilitation Authority (SRA) to declare any area as “*slum area*” even beyond the aforesaid areas, then the very provision contained in DCR 33(10) is *ultra vires* its parent Act, i.e., MRTP, including in particular the provisions contained in section 22 (m) and section 159 of the MRTP

and therefore, should be declared as such. Mr. Anturkar contended that such wide interpretation, would render DCR 33(10) *ultra vires* Articles 14, 19 and 300-A of the Constitution of India.

17] On basis of the aforesaid contentions, the petitioners have applied for the following reliefs in Writ Petition No. 2162 of 2015 :

“A] That this Hon'ble Court be pleased to issue Writ of Certiorari and or any other appropriate Writ, Order exercising powers under Article 226 of the Constitution of India, 1950 holding that the inclusion of “Suit Premises” of the Petitioners from Sr. No. 202 to Sr. No. 209 into Annexure-II dated 14.06.2010 in respect of the “Slum Rehabilitation Scheme” approved by the SRA under the provisions of the MR & TP Act, 1966 and D.C. Regulation, 1991 is based on fraud, it is illegal, null, void, violates the fundamental rights of the Petitioners under Article 14, 19, 21 of the Constitution of India, 1950 and this Hon'ble Court be pleased to quash and set aside the said inclusion of Suit Property belonging to the Petitioner No.1 (Pant Nagar Mahatma Phule CHSL) from the List of Annexure II dated 14.06.2010 and LOI dated 06.02.2009 issued by the SRA claiming powers of “Commissioner” under D.C. Regulation, 1991.

B] That this Hon'ble Court be pleased to issue Writ of Certiorari and or any other appropriate Writ, Order under Article 226 of the Constitution of India, 1950 holding the approval of the Layout and Building Plans by the SRA as “Commissioner” in respect of the “Suit Property” of the Petitioner No.1 (Mahatma Phule CHSL) under Regulation Nos. 5, 6, Appendix X of D.C. Regulation, 1991 and u/s 337 of the MMC Act, 1888 as illegal, null, void and this Hon'ble Court be pleased to quash and set aside all the building plans/layout approved by the SRA under D.C. Regulation, 1991 and the MMC Act, 1888 in respect of the Petitioners “Suit Property” in all manners.

C] That this Hon'ble Court be pleased to issue Writ of Mandamus and or any other appropriate Writ or Order under Article 226 of the Constitution of India, 1950 directing the MHADA to proceed in furtherance of its letter dtd. 21.01.2015 for execution of Conveyance Deed of the "Suit Property" in favour of Petitioner No.1 (Mahatma Phule CHSL).

D] Pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to stay the effect, implementation, operation of Sr. No. 202 to 209 of the Annexure- II and LOI dated 06.02.2009 approved by the SRA under the D.C. Regulation and the MR & TP Act, to the extent it affects the "suit property" of the petitioners, in all manners.

E] Ad-interim and interim relief in terms of prayer clause [D] above may be awarded in favour of the Petitioners;

F] Cost of this Petition be provided for;

G] And for such further orders as the justice and convenience may demand on time to time, be passed in favour of the Petitioners;"

18] Similarly, in Writ Petition No. 1427 of 2013, the petitioners have applied for the following reliefs:

"A] That this Hon'ble Court exercising powers under Article 226 of the Constitution of India, 1950 may be pleased to quash and set aside the provisions under Regulation No. 33 (10) (Annexure) (II) (i), (ii), (iii), (iv) of Development Control Regulation for Greater Mumbai, 1991 in as much as these provisions provide jurisdiction to Slum Rehabilitation Authority in contravention to provisions contained u/s. 2(19) of the MR & TP Act r/w. Notification 13.09.1996 issued by the State Government and the provisions contained u/s. 354AAA of the MMC Act, 1888.

B] Pending the hearing and final disposal of this Petition, this Hon'ble Court may be pleased to stay the effect, operation

and implementation of Regulation No. 33 (10) (Annexure) (II), (i), (ii), (iii), (iv) of Development Control Regulation for Greater Mumbai, 1991 in respect of the "Suit Property" in all manner.

C] Ad-interim, interim relief in terms of prayer clause [B] may be granted in favour of the Petitioners and against the Respondents ;

D] And for such other orders as this Hon'ble Court may deems fit and proper to pass in the interest of justice in the given fact and circumstances of the case."

19] The MHADA, through its Executive Engineer, has filed affidavit-in-reply pointing out that the application for de-registration of the petitioners-society is pending before the Regional Joint Sub-Registrar of Cooperative Society, Mumbai. The slum redevelopment scheme has been approved *qua* the property bearing CTS No. 190/9 (pt.), which includes the structures/property bearing CTS Nos. 190/1 to 190/8. In this regard, reliance is placed upon the plan issued by the City Survey Office dated 18 October 2006 and communication dated 28 April 1995. The affidavit points out that the eight original allottees, who were sweepers in the MHADA had no right or authority to transfer their tenements and the petitioners can therefore, claim no right on the basis of such transfer. The affidavit points out that the petitioner no.1 society comprises in all seven persons, out of which five are from a single family. Notwithstanding all this, since the petitioners have claimed occupation and since the structures/property bearing CTS Nos.190/1 to 190/8 is a part of leased property bearing CTS No. 190/9 (pt.) , the names of the

petitioners/occupants were included in Annexure-II, so as to enable them to avail the benefits of slum redevelopment scheme. The challenges to the slum redevelopment scheme and the inclusion of the petitioners therein have been rejected by various authorities and such rejection has attained finality. For all these reasons, it was contended that these petitions be dismissed.

20] The MHADA's affidavit also specifically states that the letter dated 21 January 2015 (incorrectly referred to as letter dated 21 January 2001) was issued through “oversight”. The mistake was rectified by issuance of letter dated 22 May 2015, which cancels the earlier letter dated 21 January 2015. The affidavit also raises a dispute as to authenticity of signature of Executive Engineer on the plan annexed to letter dated 7 April 2010, upon which, reliance has been placed by the petitioners. Finally, the affidavit in no uncertain terms asserts that the structures/property bearing CTS No. 190/1 to 190/8 have neither been conveyed nor leased to the petitioners, but rather, the same are a part of the property already leased to respondent no.5 and the subject matter of the various permissions, approvals, NOCs and LOIs for the execution of the slum redevelopment scheme.

21] Respondent no.5 has also filed affidavit-in-reply disputing in entirety, the case set out by the petitioners. Respondent no.5 has pointed out that the scheme comprises in all, 209 beneficiaries (eligible occupants), out of which, almost 86 occupants have already vacated their tenements and shifted to temporary

alternate accommodation, for which, expenditure of almost Rs.76 lacs per year is borne. Respondent no.5 has further pointed out that even the remaining eligible occupants, except, the seven petitioners are willing to shift to temporary alternate accommodation, but have refrained from doing so due to the various litigations instituted by the petitioners. Respondent no.5 has pointed out that the petitioners have, by instituting vexatious proceedings, held the entire slum redevelopment scheme to ransom and this Court exercising extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, ought not to lend any assistance whatsoever to the petitioners in such misadventure.

22] The rival contentions now fall for determination.

23] The petitioners are quite aware that presently, they hardly have any rights, much less legal rights in respect of the structures/property bearing CTS Nos.190/1 to 190/8, on basis of which they seek to build their superstructure of challenges, not just to the slum redevelopment scheme, but also the very provisions of law which sanction such slum redevelopment schemes. That is the reason why the petitioners, vide prayer clause (C) in Writ Petition No. 2162 of 2015 have prayed for issue of writ of mandamus under Article 226 of the Constitution of India, directing the MHADA to proceed in furtherance of its letter dated 21 January 2015 for execution of the conveyance deed in favour of petitioner no.1. The petitioners recognize that such relief

constitutes the foundational relief, without which, the petitioners can hardly aspire to build their superstructure, in the form of the several reliefs claimed by them in these petitions.

24] As noted earlier, the eight structures/properties are admittedly owned by the MHADA, which had allotted them to its eight sweepers/employees upon terms, which are by no means clear. The MHADA in its affidavit-in-reply has made reference to certain statutory rules to suggest that the allottees/employees had no right or authority to transfer the possession, much less any rights in favour of the petitioners. The petitioners have also not placed on record any documents with regard to the acquisition of possession or the so called rights in respect of the said eight structures/properties from the original allottees. Mr. Anturkar, learned senior advocate for the petitioners, submitted that there is no such document readily available. In a city like Mumbai, it is difficult to imagine that the allottees/employees, simply hand over the possession of the structures/property without any documentation or in any case, without receipt of substantial consideration. Obviously, the petitioners do not wish to disclose their transaction with the eight original allottees/employees and to this extent, it is quite clear that the petitioners have not been candid with the Court, even though, they seek equitable reliefs. Suffice to note that the petitioners claim right or title to the structures/properties without there being or without they producing any documents, whether registered or unregistered in the context of acquisition of possession or rights from the

erstwhile allottees/employees of the MHADA. The very entry of the petitioners in the structures/property is therefore, quite in the realm of doubts.

25] The petitioners however, on the basis of MHADA's office note dated 22 June 2009 and MHADA's letter dated 21 January 2015, in all seriousness, claim the status of “*lessees in the pipeline*” and on the basis of these documents seek a writ of mandamus directing the MHADA to execute a conveyance in their favour. In effect, the petitioners virtually seek a decree of specific performance from this Court in the guise of claiming a writ of mandamus.

26] The MHADA's office note dated 22 June 2009, upon which, great emphasis has been placed by the petitioners, reads thus:

“No. MB/1116 of 2009

Date : 22/6/2009

OFFICE NOTE :

*Subject : Conveyance of the Chawl No.1, consisting of 8 Ts.
Under the E.W.S. scheme at Pant Nagar,
Ghatkopar in favour of Mahatma Phule Co. Op.
Housing Society Ltd.*

I have to report that the Mahatma Phule Co-operative Housing Society Ltd. have paid all the dues in respect of above chawl including the final sale price for the Bldg. and premium of the land.

1 *Final sale price of the
Chawl*

Rs.1,03,080/-

2. *Charges for common services
are paid up to March-2010*

*The rate of charges of
Common services payable by
The said society is*

Rs.95 x 8T/S x 3 months =	Rs.2280/-
3. Lease Rent paid upto March-2010. The rate of the lease rent payable by the said society is Rs.192/- per annum.	
Rs.2 x 2 T/S x 12 months	= Rs.192/-
4. N.A. Assessment paid upto March-2010. The rate of N.A. Assessment payable by the said society is Rs.574/- per Tenement/per annum	
Rs.6/- x 8T/S x 12 months =	Rs.576/-
Whether Municipal Taxes Are paid up to date (in case The society is paying the Municipal taxes directly to the B.M.C. the same Stated and accordingly.	
	paying directly to the M.C.G.M. W.e.f. Oct.-2001.
5. Date of allotment	3-1-1995
6. Date of Handing over of Pump House and under Ground tank to the Society.	
	Common

It is confirmed that no litigation with the Board involving the society or/and its any member is pending. So also there are no court order/injunction restraining the Board from conveying the above said building or any tenement and from leasing the land.

There is no objection whatsoever to convey the Building and lease the land to the above said society.

A :- Triplicate Tenants list.

*Sd/-
Estate Manager,
M.H. & A.D.B. Bombay.*

*To,
Shri. P.C. Suryawanshi
The Dy. Community Development Officer*

*Estate Manager (I),
M.H.& A.D. Board, Mumbai 400 051.
To,
Secretary,
Mahatma Phule Co-op. H.S.L.
Pantnagar, Ghatkopar (East),
Mumbai- 400 015.”*

27] Although, the MHADA has not dealt with the office note dated 22 June 2009 in its affidavit, Mr. Dhakephalkar, learned senior advocate for MHADA, submitted that the opinion expressed by the Estate Manager of MHADA in the office note can never be elevated to the level of any “*decision of MHADA*”. He submitted that the MHADA and its officials are required to function under the provisions of MHADA Act to be read with Maharashtra Housing and Area Development (Estate, Management, Sale, Transfer and exchange of Tenements) Regulation, 1981 and the Maharashtra Housing and Area Development (Disposal of Land) Regulation, 1982. In terms of these regulations, an Estate Manager has no power to deal with or dispose of MHADA's land or immovable properties. He submitted that the land or immovable properties can be disposed of in terms of Regulation 16 on the basis of directions issued by the State Government and vide orders to be made by the prescribed competent authorities.

28] As noted earlier, MHADA is a statutory authority established under MHADA Act. In matters of disposal of its property, MHADA is bound by rules and regulations referred to herein above. The petitioners were unable to point out any provisions under

MHADA Act or the rules and regulations referred to herein above, which empower an Estate Manager to take any decision in the matter of disposal of immovable property belonging to MHADA. Besides, the petitioners were unable to point out that any provisions under which the Estate Manager was authorised even to issue any communication to the petitioners, so as to bind the MHADA. Based therefore, upon office note dated 22 June 2009, the petitioners cannot draw any undue mileage or seek a writ of mandamus.

29] Admittedly, the office note dated 22 June 2009, upon which, the petitioners have placed so much emphasis is only an “*office note*” or rather an “*interdepartmental memo*”, by which, Estate Manager has expressed his opinion or made some report to his superiors. Such “*office note*” or “*interdepartmental memo*” can never be elevated to the level of any “*decision of MHADA*” . The “*office note*” or “*interdepartmental memo*” is only expression by an officer of his view point on the subject. There is no question of any party attempting to seek enforcement on the basis of such “*office note*” or “*interdepartmental memo*”.

30] In ***Sethi Auto. Service Station and anr. Vs. Delhi Development Authority and ors. - (2009) 1 SCC 180***, a plea of legitimate expectation based mainly upon office notings and communications of / between government agencies was turned down by the Hon'ble Supreme Court by holding that notings in a departmental file do not have sanction of law to be an effective

order. The relevant observations in paragraphs 13 and 14 read thus:

“13. Thus, the first question arising for consideration is whether the recommendation of the Technical Committee vide minutes dated 17-5-2002 for resitement of the appellants' petrol pumps constitutes an order/decision binding on DDA?

14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

(emphasis supplied)

31] In ***Shanti Sports Club and anr. Vs. Union of India - (2009) 15 SCC 705***, though, in the context of provisions contained in Articles 77 and 166 of the Constitution of India, the Hon'ble Supreme Court dealing with the contention based upon “notings in the file” made the following observations:

“42. This means that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government.

43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion

in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.”

(emphasis supplied)

32] In ***State of Bihar and ors Vs. Kripalu Shankar and ors. - (1987) 3 SCC 34***, the Hon'ble Supreme Court sounded a note of caution in dealing with the internal file of the Government. At paragraph 30, it is observed thus:

“30. Before parting with this case we would like to observe the need for restraint and care in dealing with the internal files of the Government. We have already indicated its privileged position and limited areas where exposure is permissible of the notings in the file. This is not to say that absolute privilege can be claimed of its exposure and protection from the view of the courts. But what is to be borne in mind is that the notings in the departmental files by the hierarchy of officials are meant for the independent discharge of official duties and not for exposure outside. In a democracy, it is absolutely necessary that its steel frame in the form of civil service is permitted to express itself freely uninfluenced by extraneous considerations. It might well be that even orders of court come in for adverse remarks by officers dealing with them, confronted with difficult situations to straightway obey such orders. Notings made on such occasions are only for the benefit of the officers concerned. When a subordinate official commits a mistake higher official will always correct it. It is necessary for courts also to view such notings in the proper perspective. In this case, the court, after

looking into the notes file could have passed appropriate orders giving relief to the affected party and expressing its displeasure at the manner in which its order was implemented instead of initiating action on the notings made in the file. That way the court would have enhanced its prestige”.

(emphasis supplied)

33] In view of the aforesaid, we can neither elevate the office noting dated 22 June 2009 to the status of some final decision of the MHADA nor can we issue a writ of mandamus directing the MHADA to execute a conveyance in favour of the petitioner no.1, in pursuance of the same.

34] The next document upon which the petitioners lay emphasis is MHADA's letter dated 21 January 2015, which reads thus:

*“Outward No. :- Dy.C.O/L. M/M.B/89/2014
Date : 21/01/2015*

*To,
Chairman,
Mahatma Phule Co-operative Housing Society
Chawl No.1, Room No.1 to 8,
Mumbai 400 077.*

*Subject :- Regarding immediate conveyance of your
building/Chawl on ownership basis in name of
your Co-operative Society.*

Sir,

In the colonies under Mumbai Housing and Area Development Board, Conveyance of Buildings/Chawls is done in favour of Co-operative Housing Societies. If you have not taken conveyance of your building so far, that is beneficial to be done immediately for your co-operative Housing Society.

For filling proposal of conveyance, following documents are necessary.

1. *Registration Certificate of Co-operative Housing society.*
2. *Proposal passed by your society for taking conveyance of your Co-operative Housing Society.*
3. *List of authorised occupants of your premises and no dues certificate.*
4. *C.T.S. No., Property card, Survey No, MAP and Technical information.*

For taking conveyance expeditiously, for obtaining no due certificate, for payment of due amount, if any obstruction is there, you can submit indemnity bond with land manager and you can pay the due amount within further one year. On timely conveyance of your Co-operative Housing Society, building/Chawl becomes on ownership rights of Co-operative Housing Society.

Similarly lease agreement of concerned land also comes in the name of your society. Similarly, if you want to further proceed for redevelopment of your building, it gets expedited.

Therefore, if you have not so far obtained conveyance of your Co-operative Housing Society of building/Chawl, immediately file your proposal along with above stated documents at below named office.

*Dy. Chief Officer (Land Management)
Room No.201, 1st Floor,
GrihanirmanBhavan,
Mumbai.*

*Yours faithfully,
Sd/-*

*Chief Officer
Mumbai Housing and Area Development Board Mumbai.”*

35] The MHADA, in its affidavit-in-reply, has clearly stated that such letter was issued by way of “oversight”. Mr. Dhakephalkar, learned senior advocate for MHADA, submitted that the MHADA is a large organization and unfortunately the right hand is unaware of what the left hand is up to. Besides, Mr. Dhakephalkar submitted that the communication dated 21 January 2015 signed by the Chief Officer of MHADA, can hardly be regarded as any communication binding upon the MHADA, particularly because the same is not backed by any other resolution or authority from the MHADA. Upon detection of oversight, necessary amends have been made and communication dated 22 May 2015 has been issued to withdraw, cancel or rescind the letter dated 21 January 2015. The petitioners have not challenged the communication dated 22 May 2015. In any case, there is no ground made out to challenge the same. Based upon the MHADA's letter dated 21 January 2015, therefore, the petitioners cannot seek a writ of mandamus to direct the MHADA to execute conveyance.

36] The petitioners have themselves neither produced nor relied upon any documents other than the office note dated 22 June 2009 and MHADA's letter dated 21 January 2015. The petitioners contend that these documents contain admissions with regard to the rights and title of the petitioners to the structures/property bearing CTS Nos.190/1 to 190/8 and on basis thereof, therefore, the petitioners are entitled to writ of mandamus to direct the MHADA to execute suitable conveyance in their favour. We are unable to accept such contentions for several reasons.

37] In the first place, as noted earlier, the office note dated 22 June 2009 or the MHADA's letter dated 21 January 2015 cannot be made the basis for claim to any rights or title, considering in particular the legal status of such office note and MHADA's letter. Secondly, the office note dated 22 June 2009 and the MHADA's letter 21 January 2015 contain no admissions as such with regard to any rights or title of the petitioners to the structures/property bearing CTS Nos. 190/1 to 190/8 as claimed by the petitioners. Thirdly, and most importantly, we must clarify that aspects like admission, waiver, acquiescence or estoppel are by no means sufficient to confer any rights or title upon the petitioners. If, in law, a person does not possess or acquire title, the same cannot be vested in him, only by reason of admission, acquiescence or estoppel on the part of other. In ***Kamakshi Builders Vs. Amebedkar Educational Society and ors - (2007) 12 SCC 27***, at paragraphs 23 to 25, the Hon'ble Supreme Court has observed thus:

“23. Acquiescence on the part of Respondent 3, as has been noticed by the High Court, did not confer any title on Respondent 1. Conduct may be a relevant fact, so as to apply procedural law like estoppel, waiver or acquiescence, but thereby no title can be conferred.

24. It is now well settled that time creates title.

25. Acquisition of a title is an inference of law arising out of certain set of facts. If in law, a person does not acquire title, the same cannot be vested only by reason of acquiescence or estoppel on the part of other.”

(emphasis supplied)

38] Similarly, in ***CanBank Financial Services Ltd. Vs. Custodian and ors. - (2004) 8 SCC 355***, the Hon'ble Supreme

Court has held that title in a property connotes a bundle of rights. Subject to prohibitory or regulatory provisions in the statute, such rights are capable of being transferred. The extinction in right, title and interest in property must be caused as a result of operation in law and not otherwise. The creation of title by an act of parties, is subject to law. Once a title vests in a person, he cannot be divested there from except by reason of or in accordance with statute and not otherwise. **An admission does not create a title** ; the logical corollary whereof would be that an admission of a party would not lead to relinquishment of right therein, if he has otherwise acquired the title in the property.

39] On the basis of office note dated 22 June 2009 and MHADA's letter dated 21 January 2015, therefore, the petitioners have failed to establish any present right or title with regard to structures/property bearing CTS Nos.190/1 to 190/8. So also, on the basis of such documents, the petitioners have failed to establish any legal right to obtain a lease or a conveyance from MHADA in respect of the structures/property bearing CTS Nos.190/1 to 190/8. The petitioners have also failed to establish that there exists any corresponding statutory or even contractual duty upon the MHADA to execute any lease deed or conveyance in favour of the petitioners. Since, the petitioners have failed to establish these crucial parameters, a writ of mandamus directing the MHADA to execute lease deed or conveyance in their favour, cannot be issued.

40] The law with regard to issuance of writ of mandamus is substantially settled. Mandamus is not a writ of right and is not granted as a matter of course. Such writ may be refused unless the applicant establishes a clear legal right in himself coupled with a statutory duty in the respondent and where there is no alternate and efficacious remedy available to such applicant¹. Mandamus is an equitable remedy and will not be issued on mere technical grounds or to effectuate, promote or perpetuate injustice. A writ of mandamus will not issue where more harm than good will result from its issuance.

41] The petitioners seeking writ of mandamus have to satisfy the following conditions:

- a] That they have some legal right ;
- b] That there is a corresponding legal duty upon the respondents;
- c] That they have no other alternate or efficacious remedy;
- d] That they have made a demand for justice, which demand has been unduly refused; and
- e] That the writ is applied for in utmost good faith ;

42] In *Mani Subrat Jain Vs. State of Haryana - 1977 (1) SCC 486*, the Hon'ble Supreme Court has held that there must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of

¹ Mansukhlal Vs. State of Gujarat (1997) 7 SCC 622 & Union of India Vs. S.B. Vohra 2004 (2) SCC 150

the duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duty by public bodies on application of a person, who can show that he has himself a legal right to insist on such performance. No petitioners can ask for a mandamus without a legal right. The existence of a right is a foundation of jurisdiction of a Court to issue a writ of mandamus.

43] In the present case, the petitioners have not established that they have any legal right to obtain conveyance from the MHADA. The petitioners have also not established the basis upon which they claim and that there is some legal duty upon the MHADA to execute conveyance in their favour. Although, a writ of mandamus is normally not issued for enforcement of purely contractual obligations, in the present case, the petitioners have not even established that the MHADA is contractually obliged to execute any conveyance in their favour. The petitioners virtually seek to hold to ransom the progress in the slum redevelopment scheme, which is to benefit over two hundred slum dwellers. As noted earlier, a writ of mandamus will not be granted where more harm than good will result from its issuance. If it appears that application for mandamus is really on behalf of some third party, the writ will be refused. The writ will also not be granted, if designed to harass the respondents with a view to settle personal grievances. Applying, all these principles to the facts and circumstances of the present case, we find that the prayer seeking

writ of mandamus directing MHADA to execute conveyance, is quite misconceived and the same is therefore, rejected.

44] Mr. Anturkar then contended that the structures/ property bearing CTS Nos.190/1 to 190/8 admeasuring about 958.75 sq. meters, is a property distinct and different from the property bearing CTS No.190/9 (pt.) admeasuring 4355 sq. meters, which has been leased by MHADA to respondent no.5. Elaborating further, Mr. Anturkar contended that the slum redevelopment scheme is and can be restricted only to such leased property and cannot extend to the structures/property bearing CTS Nos.190/1 to 190/8, which is in the occupation of the petitioners. Mr. Anturkar, on such basis, contended that the permissions, sanctions, NOCs, LOIs etc. issued by the statutory authorities, to the extent, they purport to include the structures/property bearing CTS Nos.190/1 to 190/8 are, therefore, liable to be declared as null, void and legally unenforceable.

45] Mr. Anturkar submitted that the registered lease deed dated 11 September 1995 makes reference only to the property bearing CTS No.190/9 (pt.) and not to the structures/property bearing CTS Nos.190/1 to 190/8. He submitted that the structures/property bearing CTS Nos.190/1 to 190/8 have been issued separate survey documents and this was not necessary, in case, the structures/property were a part of the property bearing CTS No. 190/9 (pt.). He submitted that the leased property bearing CTS No. 190/9 (pt.) is said to admeasure 4335 sq. meters

and if the structures/property bearing CTS Nos.190/1 to 190/8 admeasuring 958.78 sq. meters were included in the leased property, the same would admeasure $4355 + 958.75 = 5313.75$ sq. meters. He submitted that the names of eight sweepers/employees of MHADA, who are the predecessor-in-title of the petitioners find no mention in the annexures to the registered lease deed dated 11 September 1995 and this is an indication that the structures/property bearing CTS Nos.190/1 to 190/8 admittedly held by such sweepers/employees was excluded from the leased property. He also submitted that the office note dated 22 June 2009 and MHADA's letter dated 21 January 2015 were issued precisely because structures/property bearing CTS Nos.190/1 to 190/8 constitute properties different and distinct from the leased property bearing CTS No. 190/9 (pt.). On basis of all this, Mr. Anturkar contended that this Court may hold and declare that the structures/property bearing CTS Nos.190/1 to 190/8 is a different and distinct property independent of and not forming a part of the leased property bearing CTS No. 190/9 (pt.).

46] At the outset, we must state that adjudication upon the aforesaid contention would involve adjudication upon disputed questions of fact. Normally, the extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India is not to be resorted for the purpose of adjudication into disputed questions of fact. In *Bokaro & Ramgur Ltd. Vs. State of Bihar - AIR 1963 SC 516*, the petitioner filed a writ petition alleging that he was the owner of the property in question and the authorities had no

power or jurisdiction to initiate any proceedings under the Bihar Land Reforms Act, 1950 and the initiation of such proceedings was *ultra vires*. Dismissing the petition, the Hon'ble Supreme Court observed thus:

“The question whether the petitioner has any right to the property which it claims depends wholly on questions of fact which are plainly within the jurisdiction of the authorities constituted under the Bihar Land Reforms Act. Before a party can complain of an infringement of his fundamental right to hold property he must establish that he has title to that property and if his title itself is in dispute and is the subject of adjudication in proceedings legally constituted, he cannot obviously put forward any claim based on his title until as a result of that enquiry he is able to establish his title. It is only thereafter that the question whether his rights in or to that property have been improperly or illegally infringed could arise.”

47] In the context of the scope of writ jurisdiction in matters under the Slum Act, particularly, in the context of adjudication of private rights and disputed questions of fact, the Full Bench of this Court in ***Tulsiwadi Navnirman Co-op. Housing Society Ltd. and anr. Vs. State of Maharashtra – 2007 (6) Mh.L.J. 851***, at paragraphs 96 and 97, had observed thus:

“96. Thus, what emerges from these decisions is that :-

- a) There are self-imposed restrictions on the exercise of plenary and constitutional powers.
- b) They are not to be exercised for the asking and merely because it is lawful to exercise them.
- c) They are not meant to replace the ordinary remedy of a civil suit or statutory remedy.
- d) The powers under Article 226 will not be exercised in cases involving serious dispute about the right to claim the relief in writ jurisdiction. If such issues or

questions are to be determined and decided by elaborate examination of evidence.

e) Lastly, the power will not be exercised to facilitate avoidance of contractual obligations voluntarily incurred.

97. This much, according to us, is enough to bring home the point that writ jurisdiction is not the only remedy available to aggrieved parties, even while questioning the actions and inactions of the authorities in charge of implementation of rehabilitation schemes under the Slum Act and the D.C. Regulations. It is well settled that all actions of Public Bodies or those involving public bodies are not necessarily of public character. More so, when some of them involve private participation or concern acts undertaken jointly by a Public Authority and Private Operator. It cannot be assumed straight away that whenever they are participating in such scheme or measures, by the very nature of their participation, the duties and functions which are performed and discharged by them assume a public law character. It is not disputed before us that the functions and duties of these authorities are performed by them with the assistance of private entities. The same is envisaged and contemplated by the Act and Rules. Some incentives are provided to such private parties if they perform or fulfil the public function. Therefore, whenever, their actions are impugned or challenged, merely because public bodies are also involved does not mean that all of them are amenable to writ jurisdiction. There are several disputes and questions which may also involve public bodies but if their resolution is not possible in the limited jurisdiction, then, recourse to private law remedies is permissible and should be insisted upon.”

48] Mr. Anturkar, however, submitted that the petitioners had already instituted a civil suit, but the plaint therein was rejected on account of statutory bar contained in the Slum Act, the MHADA Act, the Maharashtra Cooperative Societies Act and the MRTD. He

submitted that in Writ Petition No. 1427 of 2013, the petitioners have questioned the constitutional validity of DCR 33 (10), for which, the petitioners have no other remedy, other than the institution of a writ petition. He also submitted that the documents sufficient for adjudication of issues raised are already on record and considering that the Hon'ble Supreme Court in its order dated 1 October 2015 has requested this Court to dispose of the writ petition on its own merits, the petitioners may not, at this stage, be relegated to avail alternate remedies, if any, before the High Power Committee or otherwise.

49] The petitioners, whether deliberately or otherwise, chose to combine the issues concerning their alleged private rights alongwith their challenges to statutory sanctions, permissions etc.. As a result, the statutory bar in the respective statutes referred to hereinabove was attracted and the petitioners plaint came to be rejected. The petitioners, on the basis of misjoinder of alleged causes of action, multifariousness and without compliance with statutory requirements have virtually invited the rejection of their plaint. In these circumstances, at least the petitioners, cannot claim any equities or indulgences in their favour. Be that as it may, since, the petitioners claim that the issues raised by them can be established by them on the basis of documents on record, we have proceeded to examine the contentions raised by and on behalf of the petitioners, on the basis of documents on record.

50] Since the petitioners seek to make some point on the basis of registered lease deed dated 11 September 1995, it was the duty of the petitioners to annex a certified or at least a true copy of the complete deed to the petition. The petitioners have however, annexed only a truncated copy of the lease deed. The crucial plan which accompanies the lease deed, was in fact, suppressed by the petitioners. Despite assurance that the same will be produced as the arguments proceeded, neither the complete copy of the lease deed nor the plan was produced by the petitioners. Instead, the petitioners entire attempt was to raise certain doubts in the context of the original lease deed shown to us by the learned counsel appearing for respondent nos. 5 and 6 in the present petitions. Such suppression or such conduct is sufficient to disentitle the petitioners any relief in exercise of extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India. However, we do not propose to base our decision on this score.

51] Ultimately, Mr. Madan K. Gala, Secretary and Authorised Signatory of respondent no.5 has filed an affidavit to place on record a colour photocopy of the registered lease deed dated 11 September 1995. In the said affidavit, it is clearly stated that respondent no.5 society has obtained certified copy of the lease deed on 23 March 2016 and even in the said lease deed, the plan is duly annexed indicating that the structures/property, which the petitioners claim, is a part of leased property.

52] The final arguments in these matters concluded on 28 March 2016. By that date, despite assurances, the petitioners did not produce the true and complete copy of the registered lease deed dated 11 September 1995, even though repeated opportunities were granted to them. On 30 March 2016, however, Mr. Tushar Kochale purporting to appear for the petitioners mentioned the matter for the purposes of filing an affidavit of Sunder Singh Lubana, Secretary of petitioner no.1. In this affidavit, the allegations have been made to the effect that the copy of registered lease deed produced by and on behalf of respondent no.5, under the cover of affidavit of Mr. Madan K. Gala, is not a genuine copy, but rather the same is forgery. There are allegations with regard to subsequent interpolations made upon the said document. There are allegations in the context of the plan appended to the lease deed. There are allegations with regard to boundaries of the leased property. Along with the affidavit, the deponent has produced certified copy of the lease deed dated 11 September 1995. It is stated that the said lease deed was enclosed by one Mr. Milind Kadam, Secretary of respondent no.5 in Notice of Motion No. 3105 of 2010 in L.C. Suit No. 2150 of 2010 before the Bombay City Civil Court and that the deponent has obtained certified copy from the Bombay City Civil Court on 28 March 2015.

53] We do not appreciate the conduct of the petitioners in not annexing the true and complete copy of the registered lease deed dated 11 September 1995 along with their petitions. In fact, the

petitioners, as noted earlier, have suppressed the plan annexed to the lease deed, possibly because the same would weaken the petitioners' claim that the structures/property bearing CTS Nos. 190/1 to 190/8 do not form a part of the leased property bearing CTS No. 190/9(pt). In the affidavit tendered on 30 March 2016, there is a statement that the certified copy, *inter alia*, of the lease deed had been obtained by the petitioners on 28 March 2015. If this be so, the suppression, assumes quite serious proportion. In any case, it was the duty of the petitioners to have annexed alongwith petition the true and complete copy of the registered lease deed. Rather, the entire approach of the petitioners is to themselves not produce any true and complete documents, but thereafter, pick holes in the documents produced by the respondents. We may at this stage, however, make reference to the following observations of the Hon'ble Supreme Court in ***S.P. Chengalavaraya Naidu (Dead) By Lrs. Vs. Jagannath (Dead) By Lrs. and ors. - (1994) 1 SCC 1***, which read thus:

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-

grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

"6. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

54] The allegations of fraud, forgery, interpolations, now recklessly made in the affidavit dated 30 March 2016, obviously, cannot be gone into at this highly belated stage and in these proceedings. In the context of the lease deed dated 11 September 1995, the petitioners have initiated several litigations in the past. The petitioners, from time to time, have been confronted with the defence, *inter alia*, based upon the registered lease deed dated 11 September 1995 that the structures/property bearing CTS Nos. 190/1 to 190/8 is part and parcel of the leased property. In such circumstances, if indeed, the petitioners, had any serious and genuine grievances in the context of the registered lease deed dated 11 September 1995, then, the minimum that was expected from the petitioners was to annex a true and complete copy thereof to the petitions and thereafter, make reference to their grievances and grounds in relation to the same. Instead, the

petitioners, chose to suppress the true and complete copy of the deed. Thereafter, despite opportunities, the petitioners chose not to produce the true and complete copy of the registered lease deed. At this belated stage, therefore, we are unable to either appreciate or entertain the allegations of fraud, forgery and interpolations.

55] We note that the lease deed dated 11 September 1995 is a registered document. There is no dispute between the executants, i.e., lessor-MHADA and lessee-respondent no.5 that the leased property includes the structures/property bearing CTS No. 190/1 to 190/8. The plan annexed to registered lease deed, substantially bears out this position. In *K.S. Nanji and Co. Vs. Jatashankar Dossa and ors. - AIR 1961 SC 1474*, the Hon'ble Supreme Court has held that a map referred to in a lease should be treated as incorporated in the lease and as forming part of the said document. The boundaries prescribed in Schedule-I appended to the registered lease deed also bear out this position. The presumptions that normally go with registered document of this nature, cannot be simply wished away by the petitioners on the basis of certain alleged admissions or commitments made in office note dated 22 June 2009 or MHADA's letter dated 21 January 2015, which in any case stands withdrawn.

56] Further, even MHADA alongwith its affidavit-in-reply has produced a plan issued by the City Survey Office on 18 October 2006, which again indicates that the structures/property bearing

CTS No.190/1 to 190/8 form a part of larger property bearing CTS No.190/9 (pt.). This affidavit also states that the boundaries referred to in registered lease deed dated 11 September 1995 and the boundaries as indicated in the city survey plan tally upon the inclusion of structures /property bearing CTS Nos.190/1 to 190/8 within the boundaries of larger property bearing CTS No. 190/9 (pt.).

57] Reference is also required to be made to communication dated 28 April 1995 addressed by the Deputy Chief Officer, MHADA to respondent no.5, in the context of inclusion of “*eight structure owners*” or “*eight MHADA sweeper workers*” in the slum redevelopment scheme. Mr. Anturkar, no doubt, raised certain issues with regard to translation of this document and contended that the correct translation would reveal that only an option was given to the eight sweepers to join the scheme of redevelopment, if they so desire. At this stage, we are not prepared to accept any such contentions. The communication dated 28 April 1995, when considered alongwith several other circumstances, at least establishes that some condition was imposed upon respondent no.5 in the matter of inclusion of eight MHADA sweeper workers, in the scheme of slum redevelopment scheme. In case, the structures/property held by such eight MHADA sweeper workers were intended to be outside the leased area, there was no reason to impose such condition upon respondent no.5.

58] The petitioners have hardly produced any documents of their own, but have only relied upon the office note dated 22 June 2009, MHADA's letter dated 21 January 2015 and survey documents in relation to structures/property bearing CTS Nos.190/1 to 190/8. The legal status of the office note dated 22 June 2009 and MHADA's letter dated 21 January 2015 has already been considered earlier. In any case, MHADA's letter dated 21 January 2015 has since been withdrawn by letter dated 22 May 2015. The survey documents are not documents of title. In fact, the survey documents suggest that the area of the structures/property bearing CTS Nos.190/1 to 190/8 is in the range of 22.1 to 24.1 sq. meters each, thereby totaling to about 182.3 sq. meters or thereabouts. This circumstance by itself, contradicts the petitioners assertion that the structures/ property bearing CTS Nos. 190/1 to 190/8 admeasures around 958.75 sq. meters. The petitioners, in any case, have failed to make good this assertion on the basis of any documentary evidence or other material on record.

59] The petitioners have hardly produced any documents to make good their contentions and their entire attempt was to pick holes in various documents produced by the respondents, including in particular, the MHADA. Mr. Dhakephalkar, learned senior advocate appearing for MHADA, whilst disowning some of the letters purported to have been addressed on behalf of MHADA or whilst disputing the authority of some of the officers of MHADA in putting up office notes or addressing letters, conceded that

there are occasions in the MHADA, where, the right hand does not know what the left hand is doing. Whilst this may be the unfortunate position in a statutory body like MHADA, we must observe that the MHADA must not only be careful whilst addressing letters, but must also initiate enquiry and take appropriate action against all those found indulging into unauthorised correspondence with private parties. As a result of such correspondence, not only valuable judicial time is wasted, but further, the implementation of the slum redevelopment scheme has been unduly protracted. The petitioners, however, have to either stand or fall on basis of the case pleaded by them and the petitioners cannot seek to derive any undue advantage on the basis of some correspondence or even the weakness in the defence raised by the respondents. By this, we do not suggest any weakness in the defence raised by the respondents.

60] In *Union of India and ors. Vs. Vasavi Cooperative Housing Society Ltd. ad ors.- (2014) 2 SCC 269*, the Hon'ble Supreme Court has held that even in a suit for declaration of title and possession, the burden is upon the plaintiff to establish its case, irrespective of whether the defendants prove their case or not. In absence of establishment of its own title, the plaintiff must be non-suited, even if the title set up by the defendants is found against them. The weakness of the case set up by the defendants cannot be a ground to grant relief to a plaintiff. The Hon'ble Supreme Court has also held that entries in revenue record can never confer any title. The relevant observations in paragraphs 15,17,18,

19 and 21, read thus:

“15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

16.

17. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in Moran Mar Basselios Catholicos v. Thukalan Paulo Avira (AIR 1959 SCC 31) observed that: (AIR p. 37, para 20)

20. in a suit [for declaration] if the plaintiffs are to succeed they must do so on the strength of their own title.”

18. In Nagar Palika, Jind v. Jagat Singh ((1995) 3 SCC 426) this Court held as under: (SCC p. 427c)

“The onus to prove title to the property in question was on the plaintiff-respondent. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit.”

19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against (sic them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.

20.

21. This Court in several judgments has held that the revenue records do not confer title. In Corpn. of the City of Bangalore v. M. Papaiah ((1989) 3 SCC 612) this Court held that: (SCC p. 615, para 5)

“5. It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law.”

In Guru Amarjit Singh v. Rattan Chand ((1993) 4 SCC 349) this Court has held that: (SCC p. 352, para 2)

“2. that entries in the Jamabandi are not proof of title.”

In State of H.P. v. Keshav Ram ((1996) 11 SCC 257) this Court held that: (SCC p. 259, para 5)

“5. an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs.”

(emphasis supplied)

61] Therefore, upon cumulative consideration of the aforesaid facts and circumstances, including, but not restricted to the inferences that can be legitimately drawn from the contents of the registered lease deed dated 11 September 1995, the description of the leased property contained therein, the plan annexed therewith, the plan issued by City Survey Office on 18 October 2006, the communication dated 28 April 1995, the survey documents, and upon applying the test of preponderance of the probabilities, we are satisfied that the structures/property bearing CTS Nos. 190/1 to 190/8 is a part of leased property bearing CTS No. 190/9 (pt.). The second contention of Mr. Anturkar, therefore, fails and is hereby rejected.

62] Mr. Anturkar then submitted that even if structures/property bearing CTS Nos. 190/1 to 190/8 are held to be a part of leased property bearing CTS No. 190/9 (pt.), since, the leased property is neither a 'slum' for the purposes of Slum Act nor 'slum' for the

purposes of DCR 33(10), therefore, the very sanction of slum redevelopment scheme upon the said property was illegal, *ultra vires*, null and void.

63] Mr. Anturkar pointed out that in Annexure-II, which is one of the important documents by which the slum redevelopment scheme came to be sanctioned, there is reference to the said property being “*censused slum colony on MHADA records*”. Mr. Anturkar, however, made reference to communication dated communication dated 20 May 2010 issued by Assistant Land Surveyor-Cum-Public Information Officer, MHADA, in which, he has categorically informed one of the petitioners that the slums at C.S. Nos. 190/1 to 9 at Mauje Ghatkopar, Pant Nagar, are not censused as per the records of Mumbai Board/MHADA.

64] Mr. Anturkar, relying upon the decision of the Hon'ble Supreme Court in ***State of Punjab Vs. Bandeep Singh & ors. - (2016) 1 SCC 724***, submitted that an administrative authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. Such stand cannot be varied by filing affidavits or such stand cannot be construed in the light of explanation subsequently given. Applying this principle, Mr. Anturkar contended that once it is established that the said property is not the “*censused slum colony on MHADA records*”, the *said property* does not qualify as a slum either for the purposes of Slum Act or for the purposes of DCR 33(10).

65] Mr. Anturkar is right in his submission that the *said property* has not been declared as a “*slum area*” under section 4 of the Slum Act. However, in our opinion, this makes no difference, as the slum redevelopment scheme in the present case has been sanctioned under DCR 33(10). Annexure-II appended to DCR 33(10) defines the expression “*slum, pavement and structure of hut*” and as long as the *said property* complies with such definition, the slum redevelopment scheme sanctioned under DCR 33(10), cannot be faulted. The exhaustive definition in Annexure-II to DCR 33(10) reads thus:

“II. Definitions of Slum, Pavement, and structure of hut. -

(i) For this purpose, slums shall mean those censused or declared and notified, in the past or hereafter under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Slum shall also mean areas/pavement stretches hereafter notified as Slum Rehabilitation Areas [or deemed to be and treated]

(ii) If any area, fulfills the conditions laid down in section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 to qualify as slum area and has been censused or declared and notified shall be deemed to be and treated as Slum Rehabilitation Area.

(iii) Slum rehabilitation area shall also mean any area declared as such by the Slum Rehabilitation Authority though preferably fulfilling the conditions laid down in section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 to qualify as slum area and/or “required for implementation of any slum rehabilitation project”. [Any area where a project under the Slum Rehabilitation Scheme has been approved by CEO/SRA shall be deemed slum rehabilitation area]”.

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

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

(v) A pavement shall mean any Municipal/Government/Semi-Government pavement and shall include any viable stretch of the pavement as may be considered viable for the purpose of Slum Rehabilitation Scheme.

(vi) A structure shall mean all the dwelling areas of all persons who were enumerated as living in that one numbered house in the electoral roll of the latest date, upto 1st January 1995 and regardless of the number of the persons or location of rooms or access.

(vii) A composite building shall mean a building comprising both rehab and freesale components or parts thereof in the same building.

(viii) Censused shall mean those slums located on lands belonging to Government, any undertaking of Government, or Brihan Mumbai Municipal Corporation and incorporated in the records of the land owning authority as having been censused in 1976, 1980 or 1985 or prior to 1 January 1995.

(emphasis supplied)

66] The expression “*slum, pavement and structure of hut*” has been exhaustively defined in Annexure-II to DCR 33(10). The same includes not only slums which may have been censused or declared and notified in the past under the Slum Act, but also means areas/pavements, stretches which may hereafter be notified as slum rehabilitation areas or “*deemed to be and treated*”. Further, if any area, fulfills the condition laid down in section 4 of the Slum Act to qualify as “*slum area*” and has been censused or declared and notified shall be deemed to be and treated as slum rehabilitation area. Similarly, slum rehabilitation area shall also mean any area declared as such by the Slum Rehabilitation Authority (SRA) though preferably fulfilling the conditions laid

down in section 4 of the Slum Act to qualify as “*slum area*” and/or “*required for implementation of any slum rehabilitation project*”. Further, any area where a project under the slum rehabilitation scheme has been approved by CEO/SRA shall be deemed slum rehabilitation area. Any area required or proposed for the purposes of construction of temporary or permanent transit camps and so approved by SRA shall also be deemed to be and treated as slum rehabilitation area, and projects approved in such areas by the SRA shall be deemed to be slum rehabilitation projects. The annexure goes on to define expressions like “*pavement*”, “*structure*”, “*composite building*” and “*censused*”.

67] In ***Om Sai Darshan Cooperative Housing Society (supra)***, the Division Bench of this Court has clearly ruled that neither declaration of a particular area as a slum area under section 4 of the Slum Act, nor issuance of notification under section 3C (1) of the Slum Act declaring any area “*slum rehabilitation area*” is a *sine-qua-non* for the purposes of sanction of a slum redevelopment scheme under DCR 33(10). In paragraphs 19 and 20, the Division Bench of this Court has observed thus:

“19. In the present case we are dealing with the scheme of slum redevelopment which is governed by Regulation 33(10). A General Scheme under section 3B of the Slum Act can be framed either by the State Government or by SRA with the prior approval of the State Government. However, the scheme under clause 33(10) is to be approved in individual cases by the SRA. Clause (II) of Annexure to the said Regulation provides that for the purpose of Regulation 33(10), a slum means that area which is either censused or one which is declared and notified under the Slum Act. It provides that the slum shall also mean

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

20. On plain reading of the Annexure to Regulation 33(10) it is obvious that for sanction of a scheme governed by the said Regulation in respect of a parcel of land, it is not necessary to have a declaration of the particular parcel of land as a slum rehabilitation area in exercise of power under section 3C(1) of the Slum Act. The Slum Rehabilitation Scheme can be sanctioned in respect of a slum as defined in clause II of Annexure to Regulation 33(10). Under the said Annexure there can be a scheme for a viable stretch of pavement also. The learned Single Judge deciding Ramkali's case was not concerned

with a scheme under D.C.Regulation No.33(10). The proposition laid down by him will have to be read as one confined to the situation before him. Question No.1 is therefore answered in the negative. The question No.2 has been also answered in the foregoing paragraphs.”

(emphasis supplied)

68] In the context of slum redevelopment scheme sanctioned under DCR 33(10), the Division Bench of this Court in ***Amba Chawl Wadi Rahiwasi Seva Sangh Vs. Municipal Corporation of Greater Mumbai & ors. - 2005 (3) ALL MR 889 = 2005 BCI 230***, turned down the plea that issuance of notification under section 4 of the Slum Act was a *sine-qua-non*, without which the provisions under the Slum Act for the eviction of the non-cooperating occupants cannot be applied. In paragraphs 7 and 8, this Court has observed thus:

“7. Development Control Regulation 33(10) permits redevelopment of slums whose inhabitants names and structures appear in the electoral roll prepared on or before 1.1.1995. A slum has been defined in 33(10)II to mean those areas which have been censused or declared and notified in the past or under the Slum Act after it was enacted in 1971. Therefore, a slum is not just an area which has been declared a slum under section 4 of the Slum Act. The issuance of a notification under section 4 of the Slum Act is not a prerequisite for an area to be considered a slum rehabilitation area. Censused slums have also been defined as those which are located on lands belonging to the government or any undertaking of the government or the Brihanmumbai Municipal Corporation and which have been censused in 1976, 1980, 1985 or prior to 1.1.1995. There is no dispute that the present area is owned by the Corporation. Nor is there any dispute that the slums located thereon have been censused prior to 1995.

8. The submission made on behalf of the Petitioners that the provisions of the Slum Act cannot be invoked unless there is

a declaration made under section 4 that the area is a slum area, is without merit. The provisions of sections 33 and 38 of the Slum Act have been invoked by the Respondents in order to evict the slum dwellers from the area which is a censused slum. It is only the machinery which is available under the Slum Act that is being utilised for the purposes of removing the occupants from a land which is declared a slum area. In fact under the D.C. Regulations steps can be taken to evict those hutment dwellers who do not join a rehabilitation project willingly. The provisions clearly stipulate that if the hutment dwellers do not join the scheme within 15 days after a slum rehabilitation project has been approved, then action under the provisions of the Slum Act including sections 33 and 38 as amended from time to time can be taken against the hutments. All those who do not join the project lose the right to any built up tenement and their tenement can be taken over by the slum rehabilitation authority and can be used for accommodating those slum dwellers from other slums who cannot be accommodated in situ. The Corporation on 24.5.1996 issued a letter of "no objection" after verifying the proposal of Respondent No.3 for rehabilitation of the slum area. After completion of various other formalities the Slum Rehabilitation Authority approved the project on certain terms and conditions. The impugned orders have been passed after the slum rehabilitation project was approved by the Slum Rehabilitation Authority (SRA). Factually what has been done is recourse taken to the provisions of sections 33 and 38 of the Slum Act for the purposes of implementing the development plan or project undertaken under D.C. Regulations in relation to a censused area. That being permissible in law, mere use of machinery provided under the Slum Act cannot be faulted. Therefore, there is no substance in the contentions of the petitioners that without a notification under section 4 of the Slum Act the provisions of the Act cannot be used at all."

[emphasis supplied]

69] In light of the aforesaid, we see no merit whatsoever in Mr. Anturkar's third contention premised upon the absence of slum

declaration under section 4 of the Slum Act. In the present petitions, although, there is some dispute as to whether the *said property* is a censused slum area, there is no dispute whatsoever that the CEO/SRA has approved a slum redevelopment scheme in and upon the *said property*. Considering the exhaustive definition of the expression “*slum, pavement and structure of hut*” in Annexure-II to DCR 33 (10), including the legal fiction employed therein, we are unable to accept Mr. Anturkar's contention that the *said property* in and upon which the CEO/SRA has approved a redevelopment scheme, is not included within the exhaustive definition of the expression.

70] The principle in ***Bandeep Singh (supra)***, is really not attracted to a matter of this nature. In any case, once the material on record establishes without doubt that the *said property* qualifies as a “*slum*” for purposes of DCR 33 (10), then, mere reference to some incorrect sub-clause, is by no means sufficient to attract the principle laid down in ***Bandeep Singh (supra)*** or to upset the slum redevelopment scheme sanctioned for the benefit of over 200 slum dwellers at the behest of the petitioners, who have failed to establish any legal rights in themselves.

71] Since, the petitioners have failed to establish any present legal right or title in respect of structures/property bearing CTS Nos. 190/1 to 190/8 and further since we have declined to issue a writ of mandamus to MHADA to execute conveyance in respect of the structures/property bearing property CTS Nos. 190/1 to 190/8

in favour of the petitioners, we do not deem it either necessary or appropriate to entertain any challenge to the constitutional validity of DCR 33(10) at the behest of such petitioners. The petitioners have also failed in establishing that the *said property* is not a slum and therefore, no slum redevelopment scheme could ever have been sanctioned in respect of the same. Since the petitioners have failed to secure the foundational reliefs, there is no question of entertaining a challenge to the constitutional validity of DCR 33 (10) at their behest. The Court will pronounce upon the constitutionality only when it is necessary for the decision of a case to do so. In ***Hari Prasad Mulshankar Trivedi vs V. B. Raju and ors. AIR 1973 SC 2602***, the Hon'ble Supreme Court has held that it is a wise tradition with Court not to adjudicate a constitutional question unless it is absolutely necessary to disposal of the case in hand. Accordingly, in the peculiar facts and circumstances of the present case and in the light of our findings that the petitioners have no right or title in respect of the structures/property bearing CTS Nos. 190/1 to 190/8, we do not deem it necessary or appropriate to decide Mr. Anturkar's last contention relating to the constitutional validity of DCR 33(10).

72] In the present case, the petitioners, whose names have been included in Annexure-II have been held as eligible to avail the benefits of the slum redevelopment scheme in or upon the *said property*. These benefits *inter alia* include temporary alternate accommodation or compensation in lieu of temporary alternate

accommodation during the period between the vacation of the structures/property and the allotment of permanent alternate accommodation once the scheme is completed. Mr. Anturkar however, submitted that the petitioners are not desirous of participating in the slum redevelopment scheme or availing the benefits thereof, because, the petitioners intend to themselves develop the structures/property bearing CTS Nos. 190/1 to 190/8 under DCR 33(5) which will give them tenements of additional area and further, the petitioners intend to retain the locational advantage of road frontage, which they presently possess.

73] The aspiration of the petitioners to themselves develop the structures/property bearing CTS Nos. 190/1 to 190/8 despite having failed to establish any right or title in respect of the same is quite inexplicable. Be that as it may, the contention similar to the one now raised by Mr. Anturkar, was rejected by the Hon'ble Supreme Court in ***Balasaheb Arjun Torbole and ors. Vs. Administrator and Divisional Commissioner and ors. - (2015) 6 SCC 534***. In the said case, the slum redevelopment scheme was in fact being resisted by Balasaheb Torbole (Torbole) and others, who were admittedly, the title holders in respect of the property over which slum redevelopment scheme had been sanctioned under DCR 33(10). In fact, in the said case, the slum redevelopment scheme came to be sanctioned over property held by Mumbai Municipal Corporation as well as private property owned and possessed by Torbole and others. The petitioners, in the present case, are on a much weaker footing, than the

petitioners – Torboles, because the present petitioners have failed to establish any right or title to the structures/property bearing CTS Nos. 190/1 to 190/8. The Hon'ble Supreme Court at paragraphs 21, 22 and 31, in *Torbole's* case has observed thus :

“21. When in aggregate consent of 70% or more slum dwellers has been obtained, the essential purpose of slum rehabilitation scheme cannot be put to peril on the ground that certain procedures were not strictly followed or some steps were against the procedures prescribed in the guidelines for preparation of Annexure II in a prescribed format. From the documents submitted and shown at the stage of hearing it has been noticed that even subsequent claims of some slum dwellers that they are eligible for rehabilitation have been verified and many have been allowed on the basis of relevant documents because it is not infrequent that at the time of one particular checking or verification some dwellers may be absent and might have gone to some other place. Clearly the process of preparation of the list described as Annexure II and its verification is meant to find out the claims of genuine slum dwellers who may be eligible for benefits under the slum rehabilitation scheme. Such beneficial provisions meant to ameliorate the poor condition of slum dwellers, in our considered view, should not be jettisoned only on technical grounds or procedural infirmities unless the persons coming to the court and seeking relief through writ petition are able to show that they have suffered injustice or legal injury.

22. In the present case, the only legal injury to the appellants as per submissions of Mr Parikh is that if the private plots were treated as a separate slum area, the residents of these plots alone could have formed and carried out development scheme through their own cooperative society and gained some advantages including monetary. Such a plea is too far-fetched to establish legal injury to the appellants who claim to be slum dwellers and on such plea, in our considered view the appellants could not have been granted relief in writ jurisdiction which has been rightly denied to them, albeit for other reasons, after

considering all their pleas on merits.

23. ...

24. ...

...

31. In the course of arguments, it has been shown to us by filing details of the appellant-petitioners that out of a total of 97, 60 are eligible and 33 non-eligible. Name of 4 petitioners i.e. 90, 91, 93 and 97 are not in Annexure II to which several other persons have been added after further verification of later claims, during the pendency of the litigation. It has also been shown through a summary that pending the hearing of this appeal, 26 appellants have settled their dispute and handed over possession of their respective structures. The impugned judgment (Balasaheb Arjun Torbole v. Administrator and Divl. Commr., 2010 SCC OnLine Bom 1279 : (2011) 1 Bom CR 304) of the High Court also records in para 25 that out of a total of 443 slum dwellers, 82% slum dwellers had already given consent for redevelopment of the slum and redevelopment is going on by allotment of permanent alternative accommodation to the slum dwellers. Majority of occupants of the municipal plots as noted in the High Court judgment had vacated their structures long back. Photographs produced before us show that redevelopment activity is going on and permanent structures have come up on a large area. Such facts also, in our estimate, were rightly considered by the High Court as relevant for dismissing the writ petitions”.

(emphasis supplied)

74] The petitioners have not seriously disputed the statements in the affidavits filed by the respondents that the slum redevelopment scheme comprises in all, about 209 beneficiaries (eligible occupants), out of which, almost 86 occupants have already vacated their tenements and shifted to temporary alternate accommodation, for which, expenditure of almost Rs.76 lacs per year is borne. Respondent no.5 has stated that even

remaining eligible occupants, except, the seven or eight petitioners are willing to shift to temporary alternate accommodation. The petitioners, without having established any rights to structures/property bearing CTS Nos.190/1 to 190/8, have virtually held up for years, the entire slum redevelopment scheme to ransom. Even though, the petitioners have failed to establish any rights *qua* the property bearing CTS Nos.190/1 to 190/8 , in terms of slum redevelopment scheme, the petitioners have been held eligible to avail the benefits of slum redevelopment scheme. Accordingly, the petitioners, once they vacate the structures/property will be eligible to avail temporary alternate accommodation or compensation in lieu of the same. Further, the petitioners will also be allotted permanent tenements, once the scheme is complete. These are some additional grounds, which prompt us not to exercise our extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, in favour of such petitioners.

75] We are satisfied that the petitioners, without establishing any rights in themselves, have virtually held up for years, the entire slum redevelopment scheme to ransom. The petitioners have also not been candid with this Court, in the matter of prosecuting the present petitions. The petitioners are not slum dwellers but claim to have acquired the rights from eight sweepers/employees of MHADA. These petitions came to be instituted and prosecuted on the said basis, without even disclosing the documentation, if any, between the petitioners and the said eight sweepers/employees of MHADA, who were original

occupants. For all these reasons, we deem it appropriate to direct the petitioners to pay costs of Rs. 1 lakh within a period of one month to respondent no.5, which is the society of slum dwellers, for whose benefits, the slum redevelopment scheme has been sanctioned.

76] For all the aforesaid reasons, we are satisfied that these petitions deserve to be dismissed and same are hereby dismissed.

77] Accordingly, Rule is discharged in both these petitions. The interim orders, if any, are hereby vacated. The petitioners are directed to pay costs of Rs.1,00,000/- (Rupees One Lakh) to respondent no.5 within a period of one month from today.

(CHIEF JUSTICE)

(M.S.SONAK, J.)