IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2428 OF 2013

1.	Nehru Nagar Soubhagya Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960, having its office at Building No. 129, Nehru Nagar, Kurla (East), Mumbai – 400024.	]
2.	Bhaskar V. Sonavane, An Adult, Indian Citizen, Secretary of Petitioner No. 1 having his office at Building No. 129, Nehru Nagar, Kurla (East), Mumbai – 400024.	] ..Petitioners.

VERSUS.

1.	State of Maharashtra through its Department of Housing & Special Assistance & Urban Development, having its office at Mantralaya, Mumbai – 400032.	]
2.	Maharashtra Housing & Area Development Authority, a Statutory Authority consitutted under the provisions of the Maharashtra Housing and Area Development Act, 1976, having its office at Griha Nirman Bhavan, Bandra (East), Mumbai – 400051.	]

3.	Mumbai Housing & Area Development Board, a Board constituted under the provisions of the Maharashtra Housing and Area Development Act, 1976, having its office at Griha Nirman Bhavan, Bandra (East), Mumbai – 400051.	] .]]]]]] ..Respondents.

Dr. V. V. Tulzapurkar, Senior Advocate with Mr. S. U. Kadam and Ms. Apeksha Sharma i/b Kadam & Co., for the Petitioner.

Ms. Geeta Shastri, AGP for Respondent No.1.

Ms. Phiroz Ankalesaria, Senior Advocate with Mr. P. G. Lad and Aparna Murlidharan for Respondent Nos.2 and 3.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date of reserving : 10th February 2016.
Date of Pronouncement : 5th May 2016.

Judgment [Per Ranjit More, J.] :

1. Rule. Rule is made returnable forthwith. Counsel appearing on behalf of the Respondents waive notice. With the consent of the learned Counsel appearing for the respective parties, matter is heard finally and is being disposed of at the stage of admission itself.

2. Heard the learned Counsel appearing for the

respective parties.

3. By this petition filed under Article 226 of the Constitution of India, the Petitioner is seeking a direction that the discretion to select between Option Nos.(i) and (ii) contained in Clause (2)(c) of DCR 33(5) rests with the concerned society/ developer undertaking the redevelopment schemes under DCR 33(5). The Petitioner has also prayed for quashing and setting aside of :

[a] Resolution bearing No.2849 dated 8th September 2010 passed by Respondent No.3;

[b] Decision No.6507 dated 20th September 2010 taken by Respondent No. 2;

[c] Circular dated 22nd May 2012 issued by Respondent No.2; and

[d] The Offer Letter dated 16th September 2013 issued in favour of the Petitioner by Respondent No.3.

4. The case of the Petitioner as can be discerned from the writ petition is as under :

That, Petitioner No.1 is the co-operative housing registered under the provisions the Maharashtra Co-operative Societies Act, 1960. Petitioner No.2 is the member of the

Petitioner No.1-society and presently the honorary secretary of the society. The society is the lessee of the plot of land belonging to Respondent Nos.2 and 3 and the owner of the building standing thereon. Respondent No.2 is the statutory authority constituted under the provisions of the Maharashtra Housing and Area Development Act, 1976 [for short "the MHADA Act"] and Respondent No.3 is the Board constituted under the provisions of section 18 of the MHADA Act.

. That, Respondent No.2 is the owner of the plot of land bearing Survey No.229 and 267, CTS No.2(Part) of village : Kurla, District Mumbai Suburban admeasuring around 725 sq. meters situated at Nehru Nagar, Kurla (East), Mumbai [Hereinafter referred to as *"the said land"*]. There is a building standing on the said land, being Bldg. No.129 [Hereinafter referred to as *"the said building"*]. The said building is constructed by Respondent No.2 around 60 years back under the subsidized industrial housing scheme formulated by the Government of India for providing rental housing to the industrial workers. The members of Petitioner No.1–Society were occupying the tenements in the said building on tenancy basis, however, by executing a deed of sale dated 25th May 2010 in favour of Petitioner No.1, Respondent No.2 has sold the said building to Petitioner No.1 and further by the lease deed of the even date, Respondent No.2 has granted lease of he said land to Petitioner No.1 for a period of 90 years.

. That, the members of Petitioner No.1 belong to the lower income group category, i.e., LIG. Since the said building is in dilapidated and dangerous condition and its complete reconstruction was necessary for the safety, security and well-being of the occupants, Petitioner No.1 decided to redevelop the same by implementing redevelopment scheme under Regulation No.33(5) of the Development Control Regulations for Greater Mumbai, 1991 [for short, ***"DCR 33(5)"***]. Accordingly, on 21st September 2011, Petitioner No.1 submitted a proposal to Respondent No.3 for obtaining NoC to undertake the redevelopment of the said land under DCR 33(5). It is the case of the Petitioner that they expressly stated in its proposal that it has opted for sub-clause (2)(c)(ii) of DCR 33(5), viz., the retention of additional built-up area over and above the existing built up area after paying premium in lieu thereof to Respondent No.3. It is further case of the Petitioner that in the month of January 2011 they received letter from Respondent No.1 stating that their said proposal was incomplete as some papers were not submitted with it. The Petitioner thereafter provided all the requisite papers and resubmitted the proposal to Respondent No.3 in January 2011 itself. However, the Petitioner's proposal was not processed by Respondent No.3;

. That, in our around July 2012, the Petitioner learnt following things :

[a] that, on 24th February 2009 Respondent No.3–Board has passed a resolution bearing Resolution No.6383 whereby it has arrogated the power of exercising options given under clause 2(c) of DCR 33(5). The said resolution provides that if additional area is less than 1000 sq. mtrs. (carpet), then MHADA can exercise either of the options provided under clause 2(c), but if such additional area is more than 1000 sq. mtrs. (carpet), then MHADA will take it in the form of constructed area only;

[b] that, on 5th May 2009, Respondent No.2-Authority has passed a resolution being Resolution No.6397 whereby it has

accepted with some modifications the resolution passed by the Board, being Resolution No. 6383. By this resolution, Respondent No. 2 has laid down that Resolution No. 6383 passed by Respondent No. 3 will be applicable in the city of Mumbai, and in case of the MHADA colonies in the suburban areas both the options will be available and choice will be with the concerned society.

[c] that, on 8th September 2010, Respondent No.3-Board has passed another resolution, being Resolution No. 2849 whereby it gave complete go-bye to MHADA's Resolution No.6397 and provided that redevelopment proposals under DCR 33(5) would be processed only under sub-clause (ii) of Clause 2(c), i.e., MHADA's share in the additional FSI will be accepted in the form of housing stock only.

[d] that, in its meeting dated 20th September 2010, MHADA took a decision approving the resolution passed by Respondent No.3, i.e., Resolution No.6397, subject to approval thereof by the Urban Development Department of Government of Maharashtra. However, MHADA did not wait for the approval

from the UDD and thus the resolution become effective from 20th September 2010.

[e] that, on 22nd May 2012 MHADA issued a circular directing that for the plot size less than 1000 sq. mtrs, where the society has already been granted NoC under old DCR 33(5) on premium basis, the revised NoC for consumption of 2.5 FSI shall also be granted under sub-clause (c)(ii) of Clause (2) of DCR 33(5). In the Circular, it is further provided that the aforesaid direction would be applicable only in respect of such MHADA owned plots for which the societies have already been granted redevelopment NoCs under the old DCR 33(5) prior to the appointed date, i.e., 20th September 2010.

[f] that, MHADA has refused to approve the Petitioner's proposal for the reason that the Petitioner has opted to pay premium in lieu of MHADA's share in the additional built up area which is not in conformity with MHADA's resolution dated 20th September 2010 which states that MHADA would be entitled to the additional housing stock.

. In above set of facts and circumstances, by filing a writ petition in this Court, being Writ Petition No.2138 of 2012, the Petitioner had challenged Resolution No.2849 dated 8th September 2010 passed by Respondent No.3, Decision No.6507 dated 20th September 2010 taken by Respondent No.2 and the Circular dated 22nd May 2012 issued by Respondent No.2. The Division Bench of this Court *vide* order dated 12th July 2013 disposed of the said writ petition giving directions to Respondent Nos.2 and 3 to decide the Petitioner's proposal dated 21st September 2010 "*in accordance with law*". The Court, however, kept open all the rights and contentions between the parties including and especially as regards the interpretation of DCR 33(5).

. That, in pursuant of the order dated 12th July 2013 passed by this Court in Writ Petition No.2138 of 2012, Respondent No.3 decided the Petitioner's proposal and issued Offer Letter dated 16th September 2013, whereby the Board has demanded housing stock admeasuring 207.70 sq. mtrs (built up area) as MHADA's share in the additional FSI. It is the case of the Petitioner that the computation of additional area was made on the incorrect basis that the scheme was for the EWS category and as such each member's entitlement is for 27.88 sq. mtrs. (carpet area), whereas the scheme being for LIG, each member's entitlement is for 45.00 sq. mtrs. (carpet area).

5. Dr. Tulzapurkar, the learned Senior Counsel appearing for the Petitioners submitted that the discretion to exercise the option provided under sub-clause (c) of clause (2) of DCR 33(5) vests with the concerned Society / Developer / Occupier. He submitted that under Resolution No.6397 dated 5th May 2009 the choice was made available to the concerned society under clause (2)(c) of the DCR 33(5) in case of the MHADA colonies in suburban areas. This provision with regard to exercise of choice is consistent with the Rules and Regulations framed under the MHADA Act and by the impugned Resolution, Decision and Circular, this choice is taken away from the society, which is contrary to the Rules and Regulations framed under the MHADA Act.

. Dr. Tulzapurkar also submitted that in view of the subsisting contract between the MHADA and the Petitioner-

Society, ie. Lease-Deed dated 25th May 2010, especially clause 2(m) thereof, MHADA is dis-entitled to contend that the discretion to exercise the option under sub-clause (c) of clause (2) of DCR 33(5) vests in it.

. He then submitted that the impugned resolution is contrary to the law and is not sustainable in law as the same is not in conformity with the MHADA Rules and Regulations He also urged that the impugned circular is the offshoot of the impugned resolution and since the impugned resolution is not sustainable in law, the impugned circular too cannot sustain. It is the contention of the Petitioner that impugned circular makes arbitrary and unfair distinction between the proposals which were sanctioned as per DCR 33(5) on premium basis on or before 20th September 2010 and the proposals which were submitted after the said appointed date. Thus, according to Mr. Tulzapurkar, the impugned circular is violative of Article 14 of the Constitution of India.

. Dr. Tulzapurkar then submitted that the Offer Letter has its basis in impugned Resolution which is not at all sustainable and therefore, the Offer Letter is also liable to be quashed and set aside. In this regard, he submitted that since the Petitioner's scheme is for LIG, members of the Petitioner are entitled for carpet area of 45.00 sq. mtrs, however in the impugned Offer Letter, the board has computed the rehab area at the rate of 33.45 sq. mtrs. (built up area), which in fact works out to carpet area of 27.88 sq. mtrs. He submitted that this amounts nothing but to confiscating the area lawfully belonging to the Petitioner's members, which is impermissible under the law.

6. Ms. Ankalesaria, the learned Senior Counsel appearing for Respondent Nos.2 and 3 vehemently opposed the petition. She submitted that sharing of the additional FSI is the rule prevailing under the DCR 33(5) and the premium is an alternative only in cases of grave hardship. If premium is considered as the prevailing rule, then, the purpose and object of DCR 33(5) of providing larger size tenements to the weaker sections of the society and to create more housing stock for the homeless would be frustrated. She submitted that the impugned resolution, decision and circular are the administrative guidelines of the

Board; they do not create nor confer any right in favour of the Petitioner and as such cannot be considered against the statutory provisions of the DCR enacted under section 152 of the MRTP Act. It is her further contention that administrative guidelines are not amenable to the writ jurisdiction under Article 226 of the Constitution of India. The reliefs claimed in the present writ petition are not tenable in law and if such reliefs are granted it would defeat the purpose and object of DCR 33(5), which is to provide housing for the weaker sections of the society and it is the fundamental right of such weaker section, which would be violated.

. She further submitted that as per Resolution No. 6383 dated 24th February 2009, the MHADA has determined that the minimum area to be allotted to EWS/LIG would be 300 sq. ft or the existing carpet area, whichever is larger. The Government Resolution dated 26th August 2009 prescribes the minimum area to be allotted to LIG category would be 45 sq. mtrs and not more than that, even when his existing area of occupation is much larger. Thus, the said Government Resolution does not generally fix the maximum allottable area for LIG category at 45 sq. mtrs. It is also submitted on behalf of the MHADA that the Petitioner's reliance on Resolution No.6383 dated 24th February 2009 is misplaced and the said Resolution is an administrative decision and does not prevail upon the Government Resolution dated 26th August 2009 prescribing the maximum area to the LIG Category at 45 sq. mtrs. It is specific case of MHADA that its order dated 16th September 2003 showing he maximum area of 300 sq. fts (free of cost) to each occupant, who were earlier living in tenements of a smaller size, i.e., 262 sq. fts. and accordingly computed the surplus area of 207.70 sq. mtrs to be surrendered to the Board.

. Ms. Ankalesaria further submitted that the Petitioners are being used as front by the Developer appointed by them and in fact the interest of the builder concerned is represented by the Petitioner-Society. She submitted that MHADA has showed its readiness and willingness to consider the Petitioner's proposal in accordance with new DCR 33(5) which came into force with effect from 8th October 2013. According to the learned Counsel appearing for MHADA if the Petitioner's proposal is considered in accordance with new DCR, its members would get larger rehab area which is more than what they are claiming in the present petition. But this better proposal is not acceptable to the Petitioner. On the basis of these submissions, Ms.Ankalesaria submitted that the petition is without any merit and the same deserves to be dismissed.

7. Regulation No. 33 of Development Control Regulation for the Greater Mumbai, 1991 prescribes different development and rehabilitation schemes that can be undertaken within the city of Mumbai and its suburbs, including that all of the old building and slums. Regulation No.33(5) of DCR as introduced on 6th December 2008 provides for development and redevelopment of MHADA buildings. For ready reference, the relevant provision of DCR 33(5) is reproduced hereinbelow :

> **"(5) Development / Redevelopment of Housing Schemes of Maharashtra Housing and Area Development Authority :-**
>
> (1) The FSI for a new constructed tenements schemes of Low Cost Housing Schemes on vacant plots for Economically Weaker Section, Low Income Groups and Middle Income Groups of the MHADA having at least 60% built-up area in the form of tenements under EWS, LIG and MIG

categories shall be 2.50.

(2) For redevelopment of existing housing schemes of MHADA, undertaken by the MHADA departmentally or jointly with societies / occupiers of buildings or by housing societies / occupiers of buildings or by lessees of MHADA of by the developer, the FSI shall be as under :-

(a) Total permissible FSI shall be 2.5 on gross plot area.

(b) The incentive FSI admissible against the FSI required for rehab shall be as under -

(i) In Island City, for the area upto 4,000 s. mt. the incentive FSI admissible will be 50%.
(ii) In Island City, for the area above 4,000 sq. mt. the incentive FSI admisible will be 60%.
(iii) In suburban area, for the area upto 4,000 sq. mt, the incentive FSI admissible will be 60%.
(iv) In the suburban area, for the area above 4,000 sq. mt. the incentive FSI will be 75%.

(c) In the redevelopment scheme either

(i) difference between 2.5 FSI and the FSI required for rehab + incentive shall be shared between MHADA and society / developer in the ratio of 2 : 1; OR

(ii) for additional built up area over and above the permissible FSI as per DCR 32, MHADA shall charge premium at the rate decided by Government in Housing Department from time to time."

8. The issue involved in the present writ petition is about the interpretation of sub-clause (c) of clause (2) of DCR 33(5). Thus, for permitting such redevelopment, MHADA under sub-clause (c) of Clause (2) of DCR 33(5) gets the benefit in either of the following two forms :

> [a] share in incentive FSI in the prescribed ratio. MHADA gets housing stock from the society/ occupants/ builders ; **OR**
> [b] premium on the additional built up area over and above the existing built up area/ FSI. Premium is paid at the rate decided by the Government in Housing Department.

. Clause (2)(c) of DCR 33(5) is, however, silent about who is entitled to exercise the above option.

9. Respondent Nos.2 and 3 in pursuance of its delegated powers have framed policy by passing resolutions from time to time. The first of such resolutions on the subject was passed by Respondent No.2 on 24th February 2009, being Resolution No. 6383. Clause (b) of the said Resolution reads thus :

> "(b) in case of proposals received if area becoming available under Rule 2(c)(i) is 1000

> sq. mtrs. or less, then MHADA can use the option of accepting premium in respect of the balance carpet area as per regulation No.2c(ii). In cases, where carpet area more than 1000 sq. mtrs. becomes available, it will be necessary that such carpet area should be in the form of constructed tenements as per the plans approved by the MHADA."

. Reading of this Resolution makes it abundantly clear that Respondent No.3 was entitled to exercise the option provided therein.

10. Respondent No.2 thereafter on 5th May 2009 passed Resolution No. 6397, approving the Resolution of Respondent No. 2, bearing No. 6383, subject to following modifications :

> (I) The said Resolution No.6383 will be applicable in respect of MHADA colonies situated within the city of Mumbai;
>
> (II) In respect of MHADA colonies situated in Mumbai Suburban area, sanction was granted to take action in pursuance to both the alternatives under sub-clause (c) of Clause (2) of the Regulation No. 33(5). Both the alternatives available under the said rule will be available to the concerned societies to choose from.

11. Respondent No.3 in its meeting dated 8th September 2010, passed Resolution No.2849 under which it was resolved

that the redevelopment proposal under DCR 33(5) would be accepted and processed under sub-clause (2)(c)(i) only. This meant that MHADA would accept its share in the balance FSI becoming available in such schemes, in the form of housing stock only.

12. The above resolution, i.e., Resolution No. 2849 dated 8th September 2010, came to be approved by Respondent No. 2 under section 16(2) of the MHADA Act. Respondent No. 2 in its meeting dated 20th September 2010 took a decision *vide* their Resolution No. 6507 to approve the Resolution bearing No.2849, passed by Respondent No.3 subject to approval thereof by the Urban Development Department of Government of Maharashtra. On the same day, Respondent No.2 modified Resolution No. 6507 which came to be subsequently confirmed in the meeting dated 3rd March 2011 whereby it was decided that approval of UDD of Government of Maharashtra was not required and the said Resolution/Decision would be implemented immediately.

13. MHADA thereafter issued Circular on 22th May 2012

directing that for plot size of less than 1000 sq. mtrs., where the society has already been granted NoC under the old DCR 33(5) on premium basis, the revised NoC for consumption of 2.5 FSI shall also be granted under Regulation No.33(5)(2)(c)(ii). In this Circular, it is provided that the same would be applicable only in respect of the MHADA owned properties for which the society has already been granted NoC under the old DCR 33(5) prior to the appointed date, i.e., 20th September 2010. As stated earlier, the Petitioner's proposal was submitted on 21st September 2010 and in view of the policy as prevalent on that day, coupled with the decision of this Court in Writ Petition No.2138 of 2012, Respondent No.3 issued the Offer Letter to the Petitioner under which MHADA demanded from the Petitioner the housing stock of 207.70 sq. mtrs (built up) area as MHADA's share in the additional built up area.

14. The Petitioner as stated above, has challenged Resolution No.2849 dated 8th September 2010 passed by Respondent No.3, Decision No. 6507 dated 20th September 2010 taken by Respondent No.2, Circular dated 22nd May 2012 issued

by Respondent No.2 and the Offer Letter dated 16th September 2013 given by Respondent No.3 in favour of the Petitioner. By these Resolutions and Circulars, MHADA has changed its earlier policy whereunder option under clause (2)(c) of DCR 33(5) is to be exercised by MHADA. In our considered view, the said Resolutions and Decisions are consistent with and in furtherance of the object sought to be achieved by DCR 33(5). The whole object and purpose of granting of additional FSI of 2.5 to the societies redeveloping the MHADA colonies is to provide for comfortable and larger size tenements to the economically weaker section of the society residing in the MHADA colonies and to create additional housing stock for housing the homeless. The submission of the Petitioner that the discretion of exercising option under sub-clause (c) of clause (2) of DCR 33(5) vests with the Society / Developer / Occupier, in our considered view, has no merit inasmuch as DCR 33(5) is silent as to who can exercise that discretion. Though in the guidelines issued by MHADA earlier namely as contained in Resolution No.6397, there was a choice given to the concerned society to exercise the option, the said policy is changed by passing subsequent resolution, namely, Resolution No.2849 dated 8th September 2010 and Resolution No. 6507 dated 20th September 2010. This change in the policy, in our considered view, cannot be said to be contrary to the provisions of clause (2)(c) of DCR 33(5). On the contrary, the same is consistent with the object sought to be achieved by the said provision.

16. The Petitioner's contention that the earlier policy as contained in Resolution No.6397 was consistent with the provision of Regulation No.23 of the Maharashtra Housing and Area Development (Estate Managements, Sale, Transfer and Exchange of Tenements) Regulations, 1981 also cannot be accepted. Under the said Regulation No.23, where the FSI in respect of any building, the tenements in which have been allotted, has not been fully utilised, the authority may utilise the FSI by erecting an additional floor/floors or otherwise, at any time before the building is conveyed under a duly executed deed of sale to the housing society. DCR 33(5) prescribes the different redevelopment and rehabilitation schemes that can be undertaken within the city of Mumbai and its suburbs. The

common premise for providing these schemes is that the occupant of the old buildings and slums do not have financial capacities / resources to undertake the redevelopment on their own nor do the Respondent authorities have adequate funds at their disposal. Therefore, the additional FSI of 2.5 is granted to the societies to redevelop the MHADA colonies and this is with an object to provide more comfortable and larger size tenements to the economically weaker sections of the society and simultaneously to create additional housing stock for housing the homeless. Thus, provisions of Regulation No.23 of the Regulation of 1981 and the DCR 33(5) operate in different fields. In any case, Regulation No.23 of the Regulations of 1981 are not applicable to the present case and the same cannot be relied upon by the Petitioner to interpret Clause (2)(c) of the DCR 33(5) inasmuch as the said Regulation deals with the cases in respect of the buildings in which FSI has not been fully utilised. In the present case, the proposal of the Petitioner is about the redevelopment of the said building situated on the said land which are admittedly owned by MHADA.

17. The Petitioner strongly relied upon the lease deed dated 25th May 2010 and especially clause 2(m) thereof. Clause 2(m) of the lease deed reads thus :

> "It is agreed that lessee is entitled only to the FSI consumed under the building conveyed to him. Any unutilised FSI for the said land in excess of the said building or any additional FSI becoming available due to any change or modification in the DC Rules and Regulations at any point of time shall be the property of the Authority. The lessee shall be <u>entitled to make a request</u> to the authority for utilisation of such additional or balance FSI. <u>Such request shall be considered on merits and on payment of additional premium and additional lease rent and on additional terms and conditions as determined by the authority from time to time</u>."

. Admittedly, the Petitioner-Society has not applied to MHADA under Clause (2)(m) of the lease-deed, to enable it to consider their application. Therefore, relying upon this clause the Petitioner cannot contend that the option under clause (2)(c) of DCR 33(5) is with the society.

19. The Petitioner's contention that the impugned resolutions and decisions are contrary to the rules and

regulations of MHADA Act, cannot be accepted in view of the observations made by us hereinabove, namely, that the said regulation and DCR 33(5) operate in different fields and the Petitioner cannot take support of the said Regulation.

20. The Petitioner's challenge to the impugned Circular dated 22nd May 2012, in our considered view, is without any substance. We have perused the said Circular. The cases contemplated under it are not comparable, even remotely to the the Petitioner's case. The said Circular is intended to relieve the hardships of the societies who have been granted only FSI of 1.2. under the old DCR on premium basis and which are already well into the process of redevelopment on that basis. In such cases, Circular says MHADA should not turn about and ask for sharing FSI on the application of the society to ask for enhanced FSI which would make the redevelopment scheme already in progress, unviable.

21. So far as the cut-off date of 20th September 2010 is concerned, it is fixed on the basis that Resolutions of the Board to be valid and effective, have to be confirmed by MHADA Authority

under section 16(2) of the MHADA Act and since such confirmation was made by MHADA Authority on 20th September 2010, from that date, Board's Resolution became effective for exercise of powers under the DCR 33(5) and therefore 20th September 2010 came to be fixed as the cut-off date. In our considered view, there is a logic behind fixing this cut-off date and the same cannot be said to be arbitrary and violative of Article 14 of the Constitution of India.

22. This takes us to consider the Petitioner' challenge to the impugned Offer Letter dated 12th July 2013. The Petitioner has challenged the said Offer Letter as the same is based on the impugned Resolution and Decision, which resolution and decision, according to the Petitioner are contrary to the Rules and Regulations framed under the MHADA Act. The Petitioner's challenge to the said Resolutions and Decisions has already been overruled by us and on that ground challenge to the impugned Offer Letter will also not sustain.

23. In support of its submission that Respondent No.3-Board has committed patent mistake in computing the rehab

area, the Petitioner has relied upon the Government Resolutoin dated 26th August 2009, under which the maximum ceiling of rehab area to be provided in schemes for lower income group is 45 sq. mtrs (carpet) and in the schemes for economically weaker sections, it is 27.88 sq. mtrs. (carpet). It is the case of the Petitioner that since the Petitioner's scheme is for the LIG, its members are entitled to get 45 sq. mtrs. carpet area, however, in the impugned Offer Letter, MHADA has computed the rehab area at the rate of 33.45 sq. mtrs of built up area ie., 27.88 sq. mtrs. per member. Having seen the relevant Government Resolution and having gone through the Offer Letter, we do not see any merit in the Petitioner's submission in this regard. Under Resolution No.6383 dated 24th February 2009, MHADA has determined that the minimum area to be allotted to the EWS would be 300 sq. fts or the existing carpet area whichever is higher.

. In order to ensure that the benefit of the surplus area is made available to the large number of members from the eligible category, the Government of Maharashtra by Resolution dated 26th August 2009 has prescribed the maximum area to be allotted to a member of LIG category would be 45 sq. mtrs and not more than that, even if his existing area in occupation is much larger. Thus, the said Resolution was intended to apply to cases of LIG occupants, who occupied a much larger existing area and by virtue of that benefit, would take away a large chunk of the redeveloped area, to the grave detriment of those others who are also entitled to the benefit of redevelopment. In our view, the said Government Resolution viz., GR dated 26th August 2009, does not generally fix the maximum area allottable to the LIG Category. By the Government Resolution dated 26th August 2009, the existing area occupied by LIG category is limited to 45 sq. mtrs after redevelopment. The Petitioner as a matter of right cannot claim 45 sq. mtrs carpet area to each of its occupant, after redevelopment. In this regard, learned Counsel appearing for the Petitioner has placed reliance on the Chart of computation giving details of the additional area as per DCR 33(5)(2)(c)(i), as made by the Petitioner and the MHADA. Since we find that MHADA's decision to allot 33.45 sq. mtrs. area to each of the Petitioner's member/occupant, cannot be said to be unreasonable and contradictory to the said Resolutions, computation arrived at by MHADA cannot be said to be erroneous. In terms of these computations, MHADA's share is 207.70 sq. mtrs. , which cannot be faulted with.

24. Reference must be made at this stage to the Petitioner's argument that Respondent No.3 in similar situations has allotted 45 sq. mtrs carpet area to the occupants of other societies after redevelopment by those societies. The Petitioner in this regard placed reliance upon the NoCs granted by Respondent No.3 to Chembur Vrushali CHS Ltd, Chembur and to Ekta CHS Ltd, village Majiwade, Vartak Nagar, Thane. Ms. Ankalesaria submitted that these are not comparable cases. The case of Chembur Vrushall CHS Ltd and Ekta CHS Ltd are under DCR 33(5)(2)(c)(ii) and their proposals were submitted prior to 2010 and on the contrary, the present case is covered by DCR 33(5)(2)(c)(i) and arises after the cut-off date, i.e., 20th September 2010. We find substance in the argument of Ms. Ankalesaria inasmuch as the allotment of the area to the members of Chembur Vrushali CHS Ltd and Ekta CHS Ltd, Thane was not on sharing basis as contemplated under DCR 33(5)(2)(c)(i) and the proposals of these societies were prior to 2010 and therefore the

benefit of the impugned circular dated 22nd May 2012 was given to them. We do not find any merit in the contention of the Petitioner in this regard.

25. Before parting with the matter, reference must also be made to the admitted fact that the Petitioner by their letter dated 1st July 2011 informed Respondent No.3 that the Petitioner has decided to accept either of the options provided under sub-clause (c) of Clause (2) of DCR 33(5). The Petitioner having accepted that the choice under sub-clause (c) of clause (2) of DCR 33(5) has to be made by MHADA, cannot be permitted to take u-turn and claim that the exercise of option under sub-clause (c) of Clause (2) of DCR 33(5) vests with the society.

26. In the backdrop of the above discussion, we find no merit in the petition and the same is accordingly dismissed. Rule is discharged.

[SMT. ANUJA PRABHUDESSAI, J.] **[RANJIT MORE, J.]**