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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2823 OF 2016

Mehli Soonawala & others	.. Petitioners
Vs.	
Maharashtra Housing & Area Development Authority & ors.	.. Respondents

WITH
NOTICE OF MOTION NO. 239 OF 2018
IN
WRIT PETITION NO. 2823 OF 2016

Keystone Realtors Pvt. Ltd.	..Applicant/Res.No.5
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IN THE MATTER BETWEEN

Mehli Soonawala & others	.. Petitioners
Vs.	
Maharashtra Housing & Area Development Authority & ors.	.. Respondents

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Mr. Mayur Khandeparkar along with Mr. Chinmaya Acharya
I/by Mr. Susmit Sanjay Phatale, Advocate for the petitioners.

Mr. Prabhakar Jadhav I/by Mr. Vishwajit P. Sawant, Advocate
for the respondent Nos. 1 to 3.

Mr. Pravin Samdhani, Senior Counsel along with Mr. Sanjay
Kadam, Ms. Apeksha Sharma, Mr. Sanjeel Kadam, Ms. Sayalee
Rajpurkar I/by M/s. Kadam and Company, Advocate for the
respondent No.5 / Applicant in NMW/239/2018.

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**CORAM : B.R.GAVAI &
M.S. KARNIK, JJ.**

DATE : 11th SEPTEMBER , 2018

ORAL JUDGMENT (PER M.S.KARNIK, J.) :-

Rule. Rule made returnable forthwith by consent of the parties.

2. By this petition filed under Article 226 of the Constitution of India the petitioners pray for quashing and setting aside the NOC dated 4/5/2016 thereby granting composite redevelopment of the suit property in accordance with the modified D.C. Regulation 33(7) and Appendix-III of the Regulation. The petitioners have prayed for declaration that unless respondent No.4 – Developer avails consent of 70% of the tenants / occupants of K.S. Batliwala building and unless the scheme is sanctioned under D.C. Regulation 33(7) and unless No Objection Certificate is issued by respondent No. 1 to 3 for redevelopment, respondent No.4 cannot initiate any proceedings under Section 95A of the Maharashtra Housing and Area

Development Act, 1976 (hereinafter referred to as “the said Act” for short).

3. The petitioners, five in number claim to be the tenants/occupants of Building 'K.S. Batliwala' standing on Plot Nos. 739 to 742 of Dadar – Matunga Division, CS Nos. 552/10 to 555/10, Parsi Cololy, Road No.5, Mumbai – 400 014.

4. Respondent No. 4 owns three buildings on Plot Nos. 739 to 742 and these buildings are called as K.S. Batliwala Building, B.J. Patel Building and N.D.F. Cama Building. They are styled as 'A', 'B' and 'C' buildings. The petitioners state that they are the occupants of the building 'A' viz. K.S. Batliwala.

5. Respondent No.4 made an application for redevelopment of Building 'B' in 1995. Building 'B' though has been completed more than 20 years back, has not been issued Occupation Certificate. The other building 'C' has been demolished in the year 2010 is yet to be reconstructed. Learned

Counsel for the petitioners submits that with these irregularities the respondent No. 4 is now pursuing the redevelopment of Building 'A' and resorting to illegal means to forcefully evict the petitioners. Similar tactics were adopted to drive out the original tenants of Building 'B' all of whom were old Parsis.

6. Learned Counsel Shri Khandeparkar for the petitioners points out that Building 'A' has six tenants/occupants. Except one occupant, none of the five tenants/occupants viz. Petitioners have given their consent for redevelopment of the said building under D.C. Regulation 33(7) of the Development Control Regulations, 1991 (hereinafter referred to as 'DCR' for short). Learned Counsel points out that respondent No.4 filed suit for eviction against the petitioners in the Court of Small Causes being R.A.E. Suit No. 1369 of 2007 under Section 16(1) (i) of the Maharashtra Rent Control Act (hereinafter referred to as 'the Rent Act' for short) for recovering possession on the ground that the building requires to be demolished and a new building is to be erected. At the relevant

time, the suit was pending for adjudication before the Court of Small Causes. Learned Counsel has invited our attention to the additional affidavit of evidence filed by respondent No.4 in the suit to indicate the stand of respondent No.4 that the proposed redevelopment of the said building is not under Regulation 33(7) but in fact under Section 16(1)(i) of the Rent Act and therefore the requirement of the 70% consent of the tenants does not arise.

7. In his submission, the impugned NOC therefore is illegal and is issued by respondent No.1 in collusion with respondent No.4. Learned Counsel for the petitioners pointed out that on 21st January, 2016 respondent No.3 issued a Notice under Section 95A of the said Act to evict the tenants / occupants of the said building. According to him, as a suit was pending, subsequent notice issued under Section 95A of the said Act is illegal. The petitioners therefore had filed Writ Petition (L) No. 336 of 2016 in this Court challenging the communication dated 21st January, 2016. In the said petition the petitioners

have also challenged NOC granted by respondent No.1 for amalgamation and redevelopment of the Plot bearing CTS No. 552/10 (on which Building 'A' stands), 554/10, 555/10 and Plot No. 739 to 742 of Scheme No.5 at Parsi Colony. This Court by the order dated 15th February, 2016 disposed of the petition by observing thus :-

“15. They can resist these notices by pointing out that legal proceedings for their eviction are pending and unless and until they are dispossessed and evicted in accordant with law or by due process of law, such methods as are resorted to, namely by issuance of notice under Section 95A, Respondent No.3 cannot secure their eviction. Thus what is prohibited directly cannot be secured in an indirect or oblique manner. We have no doubt that the contents of the communications and the letters impugned in the Writ Petition themselves would enable the Petitioners to take recourse to such legal proceedings as are permissible in law.

16. We cannot, on some factual assertions of the Petitioners and when there is a clear dispute pending in a competent Court, entertain this Petition. We cannot entertain any of the claims and whether the Petitioners are bonafide occupants or have a right, title and interest in the premises, based on which they can occupy or claim tenancy against the Respondent No.3. For all these reasons we are unable to entertain the Writ Petition and it is dismissed but by the

above clarification and by expressing that we have not examined any of the contentions of the parties.”

8. Challenging the composite NOC for redevelopment of the property under DCR 33(7) granted by respondent No.3 – Authority, learned Counsel Shri Khandeparkar submits that grant of NOC is illegal as there was no consent of 70% tenants/occupants of building 'A' for the redevelopment. According to him, the respondent No. 3 has clubbed Building 'A', 'B' and 'C' together for determining the consent as 70%.

9. In his submission, Building 'A' is a separate building. Total number of tenants/occupants are six. Only one has consented for redevelopment. Five other tenants/occupants are the petitioners herein. Therefore, the impugned NOC is violative of the DCR 33(7) as there is no consent of 70% of the tenants/occupants of building 'A'. Learned Counsel relies upon Appendix-III of DCR 33(7) more particularly Clause 1 (a) which reads thus :-

“**1(a)** The new building may be permitted to be constructed in pursuance of an irrevocable written consent by not less than 70 percent of the occupiers of the old building.”

Learned Counsel thus submits that building 'A' is a separate and distinct building within the meaning of Clause 1(a) of Appendix-III and therefore, unless there is written consent of 70% occupants of building 'A', redevelopment cannot be permitted. Learned Counsel further submits that the petitioners have never consented to the redevelopment.

10. He further submits that even in so far as building 'B' is concerned, the list of tenants submitted by respondent Nos. 4 to 5 is incorrect as the name of only one tenant tallies with the Electoral Roll of the year 1995. He submits that five out of six names appearing in the list were never tenants in relation to building 'B'. He moreover submits that in so far as building 'B' is concerned, the tenant list has not been certified by MHADA. According to him, in view of the demolition of building 'B', the same has ceased to be cessed property and hence consent of erstwhile tenants cannot be considered as they have now become owners of the respective tenaments.

11. As indicated earlier, the principal contention of Shri Khandeparkar is that upon respondent No.4 requesting respondent No. 1 to grant composite redevelopment NOC by including building 'A' in the redevelopment scheme vide their application dated 1/11/2011, respondent No.3 in his report submitted to respondent No.1 pointed out that as per office record respondent Nos.4 and 5 – Owners/Developers have not applied for NOC in relation to building 'B' and rehoused tenants have not been verified by MHADA authorities. Relying on office note dated 21/4/2012, learned Counsel submits that MHADA erroneously seeks to combine consents of tenants of other two buildings 'B' and 'C' to account for 72.22% consent in favour of respondent Nos. 4 and 5. He invited our attention to the office note wherein it is mentioned that as there are total 18 tenants / occupants in all three buildings having separate cess numbers as such 72% of each building are required to process the proposal for development under DCR 33(7). In his submission, therefore, the application dated 3rd June, 2015 submitted by respondent Nos. 4 and 5 for composite NOC under 33(7) of the DCR for

including building 'A' in the redevelopment scheme ought to have been rejected.

12. Learned Counsel therefore submits that at best respondent Nos. 4 and 5 are presently having consent of 7 out of 12 tenants that have been verified by MHADA, the percentage of consent therefore is only 58.33%. Learned Counsel further submits that only with a view to obviate adjudication of the contentions raised by the petitioners, the respondent Nos.4 and 5 withdrew the eviction suit filed before Small Causes Court. He therefore submits that apart from the orders impugned in this petition, the order dated 20/11/2017 passed by MHADA under Section 95A is illegal and erroneous as there is no consent of 70% of the tenants / occupants.

13. Per contra, learned Senior Counsel for the respondents submits that the petitioners are lacking bonafides to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. According to him, respondent No.4 is the

owner of four plots adjoining each other. According to him, the petitioners were well aware that three buildings are to be redeveloped. He submits that the development was taken up in phase wise manner and in so far as building 'B' is concerned, the same has been constructed. In so far as building 'C' is concerned, the same has been demolished and respondent Nos. 4 and 5 are personally undertaking construction over those plots.

14. Learned Senior Counsel for the respondents submits that in so far as building 'A' is concerned, it is in highly dilapidated condition and the report of V.J.T.I. indicates that it is not possible to repair the building. Learned Senior Counsel invited our attention to the material averments in the petition to contend that the petitioners are well aware of the redevelopment in respect of building 'A'. In para 17 of the petition, the petitioners have stated that they are not against the redevelopment of the said building but are opposing the highhanded behaviour of the respondents in issuing impugned notice to unlawfully evict the petitioners. Learned Senior

Counsel further invites our attention to ground (t) wherein the petitioners state about their apprehension which have been brought to the notice of the respondent Nos. 1 and 3 and had requested that certain aspects be complied with before the petitioners are moved to the transit accommodation. Inviting our attention to Clause (vii) of ground (t) learned Counsel submits that one of the demand of the petitioners is that they do not desire to stay in transit for more than three years. Learned Senior Counsel also invites our attention to the communication dated 21st September, 2016 addressed by the petitioners through their Advocate to the respondents pointing out that the petitioners are not in position to vacate their respective premises and cannot be evicted from their respective premises unless their rights are secured. It is again reiterated in this communication that the petitioners are not against the redevelopment provided all the information as asked for in para 8 is made available to the petitioners so that mutually accepted consent terms can be worked out thereby securing the rights of the petitioners.

15. Learned Senior Counsel pointed out the communication dated 19th June, 2018 addressed by the petitioners' Advocate to the respondent No.4 in respect of the five draft Permanent Alternate Accommodation Agreements forwarded by the respondent No.4 to the petitioners. Learned Senior Counsel pointed out the grievance raised by the petitioners and submits that respondent No. 4 is willing to accede to most of the demands except those which are not at all feasible to comply with. Learned Senior Counsel therefore would submit that the contention that the NOC is granted without obtaining written consent of the occupants is raised only with a view to armtwist the respondent No.4 into submitting to unreasonable demands of the petitioners.

16. Learned Senior Counsel submits that the petitioners were well aware that respondent No.1 has already issued NOC on 31/1/1995 for redevelopment in favour of respondent No. 4 in relation to building 'B' under 33(7) of DCR. The NOC dated 31/1/1995 is revised by respondent Nos. 1 to 3 from time to

time. Inviting our attention to the NOC dated 31/1/1995, learned Senior Counsel submits that the same pertains to redevelopment of the entire property including building 'A' which the petitioners claimed to be occupants. The said NOC clearly mentions that it pertains to Phase I bearing Plot No. 553/10, building 'B'. In his submission, since the development was carried on in phases, the said NOC is virtually a composite NOC and therefore, the contention of the petitioners that written consent of 70% occupants of each building is required is untenable.

17. Learned Senior Counsel relies upon the decision of this Court in the case of **Sajid Abdul Sattar Urankar and others v/s. State of Maharashtra and others [2011(5) Mh.L.J. 131]** to contend that 70% of the tenants / occupants taken in the scheme as a whole must indicate their consents and to require consents to be obtained individually for each building in a composite scheme will defeat the purpose of the scheme, besides being tardy.

18. Learned Senior Counsel also relies upon the decision of this Court in the Case of **Atul Hasmukhari Doshi Vs. Mumbai Building Repairs and Reconstruction Board and others [2015 (6) Mh.L.J. 471]** in support of his contention that in the matter of transfer of tenements in redevelopment schemes under DCR 33(7) shall be governed by clause 18 in Appendix III to DCR, 1991.

19. We have heard learned Counsel. Let us deal with the first submission of Shri Khandeparkar that the NOC is illegal as written consent of the 70% of the occupants of the building 'A' where the petitioners reside is not obtained. We may again refer to Appendix III of DCR 33(7) more particularly Clause 1(a) relied by Shri Khandeparkar in support of his case which reads thus :-

“**1(a)** The new building may be permitted to be constructed in pursuance of an irrevocable written consent by not less than 70 percent of the occupiers of the old building.”

Shri Khandeparkar has submitted that so far as building 'A' is concerned there are six occupants. Consent of only one occupant

is obtained. According to him, respondent Nos. 1 to 3 are not justified in clubbing the occupants of building 'A', 'B' and 'C' to determine 70% consent.

20. A perusal of the NOC dated 31/1/1995 clearly reveals that the said NOC relates to redevelopment of the entire property also comprising the building 'A' occupied by the petitioners. Perusal of the NOC would reveal that the redevelopment is to be carried out phase wise and Phase I relates to building 'B'. Clause 12 of NOC clearly mentions that all the conditions for issuance of final NOC for the redevelopment of old buildings 'A','B' and 'C' will have to be complied with before demanding occupation permission / certificate for the new building/s constructed in place of old building 'B' on the above said property. Clause 13 further provide that in case the redevelopment of building 'A' and 'C' does not become feasible for any reasons, then a sub division of the property for building 'B' will have to be got approved from M.C.G.B. and modified plans for building 'B' approved by the B.M.C. will have to be

submitted by the petitioners. The conditions in the said NOC make it abundantly clear that unless all the conditions for issuance of final NOC for redevelopment of old buildings 'A', 'B' and 'C' are complied with, there cannot be a demand of occupation permission / certificate for the new building/s constructed in place of building 'B'. It is therefore apparent that in respect of four plots on which buildings 'A', 'B' and 'C' stand (one plot is vacant), a composite scheme for redevelopment of the property was submitted and NOC accordingly granted in a phase wise manner. NOC dated 31/1/1995 is revised by the respondent No.1 to 3 from time to time. Revised NOC issued on 4/5/2016 is now being challenged in the present petition on the ground that consent of 70% occupants of building 'A' is not obtained.

21. Admittedly, in so far as building 'A' is concerned, there are six occupants. Five of them being the petitioners are now opposing redevelopment. One of the occupant has consented to the development. In so far as buildings 'A', 'B' and

'C' are concerned, there are in all 18 occupants i.e. six occupants in each building. 13 have given written irrevocable consent to respondent No.4 for redevelopment of the property under DCR 33(7). Once we have come to the conclusion that this is a composite redevelopment scheme in respect of three buildings to be redeveloped in phases, it is not possible for us to accept the contention of Shri Khandeparkar that the consent would mean 70% consent of the occupants of each building. As noted earlier, of all the 18 occupants occupying three buildings, 13 have consented to the redevelopment. In this context we may make a useful reference to the decision of this Court in the case of **Sajid Abdul Sattar Urankar** (*supra*), relevant portion paragraph 5 which reads thus :-

“5. In the present case, the properties comprised in CS 1101 and CS 1102 are being redeveloped under DCR 33(7) as part of a composite project. Amalgamation of the two plots has been sanctioned. Since the project is being treated as a composite project of redevelopment, the total number of occupants involved is 105, comprised of 88 occupants of CS 1102 and 17 occupants of CS 1101. None of the occupants of CS 1102 has made any complaint and, as a matter of fact, all of them have shifted out of their erstwhile tenements so as to facilitate the process of redevelopment. Similarly, 7 of the 17 occupants of CS 1101 have also shifted out. Therefore, even if all the

10 Petitioners were to be treated as persons who have not consented to the scheme for redevelopment that would not make any difference to the computation of the figure of seventy percent. Besides, senior counsel appearing on behalf of the developer points out that not all the 10 Petitioners were eligible occupants. In a judgment of a Single Judge of this Court (Smt. Ranjana Desai,J.) in *Fathima Michael Pillai vs. Rajendra Rameshchandra Chaturvedi & anr.* 1998(6) LJ 1001, the Court held that where three plots had been amalgamated the consent of seventy percent of all the tenants put together would have to be taken into consideration in order to satisfy the requirement of Section 95A(2) of the MHADA Act, 1976. Counsel for the Petitioners submits that for the purpose of DCR 33(7) each building must be considered separately and the consents of seventy percent of the occupants of every building must be taken separately. The submission cannot be accepted. Once there is an amalgamation of two properties, as in this case, a composite scheme of redevelopment is envisaged. Seventy percent of the tenants/occupants taken in the scheme as a whole must indicate their consents. The scheme is to enure to the benefit of the entire body of them. To require consents to be obtained individually for each building in a composite scheme will defeat the purpose of the scheme, besides being tardy. This will virtually amount to a veto being conferred on a small group of occupants to obstruct the scheme though the large body of them in excess of seventy percent has agreed. The island city of Mumbai has numerous congested areas where it is desirable in the interests of urban planning to execute composite redevelopment of adjoining properties. Where this is sought to be achieved, the requirement of seventy percent must apply to the occupants taken as a whole.”

In the present case the NOC of 1995 pertains to all the buildings. The occupants of building 'B' and 'C' never made any

complaint and as a matter of fact shifted out to facilitate redevelopment. One of the occupant of building 'B' has consented to the redevelopment. Even if the five petitioners have not given their written consent will not make any difference to the computation of the figure of 70%. In this view of the matter we have no hesitation in holding that the requirement of 70% must apply to the occupants of the three buildings which are to be taken as a whole.

22. Shri Khandeparkar next submitted that as regards the list of tenants submitted by respondent Nos. 4 to 5 in respect of building 'B', the name of only one tenant tallies with the Electoral Roll. According to him, five out of the six names appearing in the list were never the tenants in relation to building 'B'. He places reliance on the relevant portion of the Electoral Roll at page 292 in support of his submission. In this regard it is material to note that NOC for redevelopment in relation to building 'B' was granted in 1995 which since has been redeveloped. The number of occupants of building 'B' has

not undergone any change. Furthermore none of the occupants who can be said to aggrieved by the contention raised by the petitioners have raised any grievance in this regard. Division Bench of this Court in the case of **Atul Hasumukhrai Doshi** (*supra*) has already held that in clause 18, Appendix III to DCR 33(7) there is no restriction on transfer of rehab tenements in new building. In fact clause 18 provides restriction on transfer of tenements shall be governed by provision of Rent Control Act till Co-operative Society is formed and after that the same shall be governed by the provisions of Maharashtra Co-operative Societies Act. On the contrary, the Division Bench of this Court in Atul Doshi's case (**supra**) quashed that part of the impugned circular dated 1st June, 2015 issued by the State Government which imposed restriction of sale / transfer of tenancy rights by any of the original occupiers to any one after the issue of the NOC and till giving possession of the tenements to the original occupiers in the new building. Even the restriction as regards the transfer of the rehab tenements for a period 10 years of the occupation was declared to be illegal. In our opinion, therefore,

the submission of Shri Khandeparkar is devoid of any merits and is also belated.

23. The contention of Shri Khandeparkar that upon demolition building 'B' ceases to be a cessed property, therefore the consent of occupants of building 'B' ought not be regarded, is devoid of any merits. Clause 12 of the NOC issued on 31/1/1995 indicates that all the conditions for issuance of final NOC for the redevelopment of old buildings A, B and C will have to be complied with before demanding occupation permission / certificate for the new building constructed in place of old building 'B' on the above said property. Once the composite NOC has been issued for three buildings and as we have already come to the conclusion that the requirement of 70% consent must be applied to the buildings to be taken as a whole, the argument that the consents of the occupants of building 'B' are to be excluded while computing 70% consent for building 'A' is without any basis.

24. We may now refer some of the correspondence exchanged between the petitioners and the respondents. In the communication dated 21st September, 2016 addressed by the Advocate for the petitioners to the respondent Nos. 1, 2 and 3, in paragraph 4, it is mentioned that the petitioners are not in a position to vacate their respective premises and cannot be evicted from their respective premises unless their rights are secured. Reference is also made to the communication dated 1st April, 2016 wherein the petitioners have stated that they are not against the redevelopment provided that all information as asked for in paragraph 8 is made available, so that mutually accepted consent terms be worked out thereby securing the rights of the petitioners.

25. We may also refer to the communication dated 19th June, 2018 addressed by the Advocate for the petitioners to the respondent No.5. The demands of the petitioners as mentioned in the said communication and listed by way of bullet points are as under :

- Fixed rent for 36 months at Rs.100/- per sq.ft. for Mr. Hoshang Khumbhatta with 5% increase after 36 months for Mr. Hoshang Khumbhatta and double rent after 60 months and fixed transit to others till the new flat is complete.
- Bank guarantee of an amount covering all expenses till obtaining pure O.C. of Rehab flats which will include lifts, water tanks, electricity, water connection etc.
- Height of the PAA from flooring to ceiling to be +11 feet.
- Fungible area at 35% extra over existing area free of cost.
- Undertakings to Court for rent, completing construction with all amenities.
- Rehab flats should not be adjacent / parallel to parking tower.
- Vacate the flat only after CC is obtained or upon the compliance of IOD conditions except for demolition.
- No possession to third party till the petitioners are rehabilitated.
- Corpus fund – 18 lakhs.
- Hardship compensation.

Learned Senior Counsel for respondent No.5 in response to the said communication pointed out that the respondent No. 5 is agreeable to most of the demands except the following to which his response is as under :-

- (a) It is not possible to accept the demand of the

petitioners that the height of the PAA from flooring to ceiling to be 11 ft. as the same is not viable. He submits that the requirement as per the DCR is 9.5 ft. which the respondent No.5 is willing to provide.

(b) The demand that Rehab flats should not be adjacent/parallel to parking tower is not acceptable to the respondent No.5. Learned Senior Counsel however submits that the respondent No.5 would be constructing a wall between rehab flats and the parking tower.

(c) Insofar as Corpus Fund of Rs.18 lakhs is concerned, learned Senior Counsel submitted that the respondent No.5 is willing to deposit the same with the Society.

26. Learned Senior Counsel also handed over to us a chart which lists out the details of the area and amenities the respondent No.5 commits to provide the petitioners. The chart as submitted is reproduced hereunder :

Sr. No.	Petitioner's Name	Old Flat Details		New Flat Details		Other Benefits to the petitioners
		No.	Carpet Area in Sq.Ft.	No.	Carpet Area in Sq.Ft.	
1	Meheli Soonawala	01	730	101	730 + 358.13* = 1088.13	1. Allotment of New Flats with better amenities and facilities absolutely FREE of COSTS. 2. Ownership rights are easily transferable and inheritable.
2	Adil Karakaria	03	770	301	770+380* = 1150	
3	Parvez P. Bhathena	04	770	401	770+380* = 1150	
4	Nargish D. Buchia	05	770	501	770+380* = 1150	

5	Hoshang Khambatta	06	770	601	770+380* 1150	=	3. Respondent No.5 ceases to be the owner of the property after completion of the scheme. Ownership vests with the Flat Owners' Association of which the Petitioners will be members. 4. Allotment of car parking facility to each Petitioner. 5. Petitioners become absolute owners of the New Flats. No fear of termination of tenancy rights. 6. No monetary liability towards Stamp Duty & Registration Fee Burden is with the Respondent No.5. 7. Respondent No.5 to bear expenses towards temporary transit accommodation to be provided in the vicinity instead of making such arrangement in MHADA's Transit Camps. 8. Respondent No.5 to provide to and fro transportation expenses. 9. Respondent No.5 to provide Corpus Fund for 10 years maintenance of rehab component. 10. Respondent No.5 to provide Bank Guarantee of 2.50 Crores to the Petitioners for securing completion of their New Flats. 11. Respondent No.5 has given undertaking not to part with possession of sale component until tenants are offered possession of their new flats.
* Additional (Fungible) Area. Not mandatory entitlement of the Petitioners u/DCR 35(4) as per Explanatory Note No. (I). It is being provided in view of settlement by amending the plans.							

27. We may also note that in the revised NOC dated 4th May, 2016 it has been mentioned that each occupant shall be rehabilitated and given the equivalent carpet area as occupied by him for residential purpose in the old building subject to the minimum carpet area of 27.88 sq. mt. (300 sq.ft. fixed exclusive of free of FSI and fungible area) and /or maximum carpet area 70 sq.mt. (753 sq.ft.) as provided in the MH&AD Act, 1976. The chart which has been reproduced herein before would indicate that the respondent No.5 is going to construct self-contained flats which are much larger than the area occupied by the petitioners free of cost on ownership basis. Learned Senior Counsel on behalf of the respondent No.5 has undertaken to comply with the assurances and the statements made in the pleadings filed on behalf of the respondent No.5 as well as comply with whatever area is to be allotted and the corresponding benefits mentioned in the chart. In this light of the matter, we do not appreciate the insistence on the part of the petitioners in challenging the NOC and therefore we are constrained to observe that the redevelopment is challenged

only with a view to get more benefits from the redevelopment.

28. From the photographs produced on record, it appears that the building is in dangerous and dilapidated condition. The Notice dated 29/6/2017 issued by the Corporation under Section 353 B of the Mumbai Municipal Corporation Act, 1888, clearly reveals that the building is more than 30 years old and it is observed that it is in dangerous and dilapidated condition. The respondent No.4 has obtained the Structural Stability Report of V.J.T.I. which certified that the said building is in weak condition. The concluding part of the report mentions thus :

“The damage/distress to the building structure is time dependant and same propagate at faster rate with time. The rate of damage propagation is an un-established technical phenomenon hence it is not possible to predict the further deterioration even after repair / retrofitting.”

29. It is therefore apparent that though the petitioners are not against the redevelopment but they want the benefits from the Developer on their terms. We are of the opinion that having regard to the stand taken by the respondent No.5 the interest of the petitioners is well taken care of.

30. In this view of the matter, we do not find any merit in this petition and the same is dismissed. Rule is discharged with no order as to costs.

31. At this stage, Shri Khandeparkar learned Counsel for the petitioners prays for continuation of the statement made by learned Counsel for the respondents for a further period of 4 weeks.

32. Shri Samdhani learned Counsel appearing for Respondents No.4 & 5 refuses to continue the said arrangement. Shri Khandeparkar therefore requested for directing the respondents to maintain status-quo for a period of 4 weeks from today.

33. We find that on account of pendency of the present Petition, the project is stalled for a period of more than 2 years. We find that the delay of the project apart from causing loss to the Respondents No. 4 & 5, it is also causing loss to the petitioners themselves.

34. We have perused the photographs which are placed on record. The photographs would show that building is not in a condition which can be said to be a decent one for accommodation.

35. Perusal of the material placed on record would reveal that the petitioners on redevelopment would get accommodation which is 35% more than what is in their occupation. Perusal of the amenities which the respondents No. 4 & 5 would be providing to the petitioners, which has been enumerated in the order hereinabove, would show that the project is much more beneficial to the petitioners than the accommodation they are having at present.

36. In that view of the matter, request is rejected.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)