

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

WRIT PETITION NO. 841 OF 2012

1. Sadanand Shankar Mane }
Age-80 years, Occ. Retired, }
Room No. 7, Dattaraj HSG. Soc., }
Andheri-Ghatkopar Link Road, }
Ghatkopar (W), }
Mumbai 400 084 }
2. Janardhan Maruti Malvade }
Age-74 years, Occ. Retired, }
Room No. 6, Dattaraj HSG. Soc. }
Andheri-Ghatkopar Link Road, }
Ghatkopar (W), }
Mumbai 400 084 }
3. Sadashiv R. Bhise, through }
his son and Constituted }
Attorney Uday Sadashiv Bhise }
Age-73 years, Occ.:Retired, }
Room No.10, Dattaraj HSG. Soc. }
Andheri-Ghatkopar Link Road, }
Ghatkopar (W), }
Mumbai 400 084 }
4. Sopan Narayan Pawar }
Age-72 years, Occ. Retired }
Room No.5, Dattaraj HSG. Soc. }
Andheri-Ghatkopar Link Road, }
Ghatkopar (W), }
Mumbai 400 084 }
5. Balaram B. Sawant }
Age-72 years, Occ. Retired }
Room No. 8, Dattaraj HSG. Soc. }
Andheri-Ghatkopar Link Road, }
Ghatkopar (W), }
Mumbai 400 084 }
6. Nandakishor L. Gaikwad }
Age-53 years, Occ. Business }
Room No.9, Dattaraj HSG. Soc., }

Andheri-Ghatkopar Link Road, }
Ghatkopar (W), }
Mumbai 400 084 }

7. Pandurang K. Shitole }
Age-82 years, Occ. Retired }
Room No.11, Dattaraj HSG. Soc. }
Andheri-Ghatkopar Link Road, }
Ghatkopar (W), }
Mumbai 400 084 }

8. Sarvajani Shri Maheshwar }
Mandir Trust, Reg. No. A-4197, }
Asalpa Village, Maheshwar }
Mandir Chowk, Andheri-Link }
Road, Ghatkopar (E), }
Mumbai 400 078 }

9. Avinash Sadanand Mane }
Age 50 years, Trustee of Shree }
Maheshwar Mandir, Situated }
on land bearing CTS No. 185-A, }
Village - Asalfa, Taluka - }
Kurla, MSD. }

10. Ramesh Sadanand Mane }
Age 47 years, Trustee of Shree }
Maheshwar Mandir, Situated }
on land bearing Cts No. 185-A, }
Village - Asalfa, Taluka - }
Kurla, MSD. }

Petitioners

versus

1. State of Maharashtra (OOCJ) }
High Court }
(Summons to be served on the }
Ld. Govt. Pleader appearing for }
State of Maharashtra under }
Order XXVII, Rule 4 of the }
Code of Civil Procedure 1908) }

2. The urban Development }
Department, Government of }
Maharashtra, Mantralaya, }
Mumbai - 400 032 }

3. The Collector – Mumbai	}	
Suburban District, 10 th floor,	}	
Administrative Building,	}	
Bandra (E), Mumbai – 400 051	}	
	}	
4. Mumbai Metropolitan	}	
Region Development Authority,	}	
through its Metropolitan	}	
Commissioner, C-14 and C-15,	}	
Bandra Kurla Complex,	}	
Bandra (East),	}	
Mumbai – 400 051	}	
	}	
5. Municipal corporation for	}	
Greater Mumbai, through its	}	
Municipal Commissioner,	}	
MCGM Head Office, Mahapalika	}	
Marg, Mumbai – 400 001	}	
	}	
6. Suresh Kakani	}	
Deputy Secretary to Govt.	}	
Of Maharashtra, Urban	}	
Development Department,	}	
Mantraya, Mumbai 400 032	}	Respondents

WITH
PUBLIC INTEREST LITIGATION NO. 3 OF 2011

Raj Kumar Awasthi	}	
Age-38 years, Occ. Business	}	
and Social Service, Residing	}	
at :-B-14, Shanti Nagar,	}	
CST Road, Kurla (West),	}	
Mumbai – 400 070.	}	
Mobile 09869037787,	}	
PAN No. AAGPA6093B	}	Petitioners

versus

1. State of Maharashtra	}
(Summons to be served on the	}
Learned Government Pleader	}
appearing for State of	}
Maharashtra under Order	}
XXVII, Rule 4 of the Code of	}
Civil Procedure, 1908,	}

Ordinary Original Civil	}	
Jurisdiction, High Court,	}	
Mumbai 400 001	}	
	}	
2. Urban Development	}	
Department, through its	}	
Principal Secretary,	}	
Government of Maharashtra,	}	
Mantralaya, Mumbai 400 032	}	
	}	
3. The Municipal Corporation	}	
of Brihan Mumbai, through	}	
its Municipal Commissioner,	}	
MCGM Head Office, Mahapalika	}	
Marg, Mumbai CST - 400 001	}	
	}	
4. Mumbai Metropolitan	}	
Regional Development	}	
Authority, MMRDA Office,	}	
Bandra Kurla Complex,	}	
Bandra (E), Mumbai 400 051	}	Respondents

WITH
WRIT PETITION NO. 1063 OF 2013

1. Rajesh Narayan Tiwari	}
Aged-44 years, Occ. Business,	}
2/31, Netaji Nagar Subash	}
Chandra C.H.S.L., Netaji Nagar,	}
S.G.Barve Marg, Kurla (W),	}
Mumbai 400 070	}
	}
2. Smt. Chandrakala O. Jain	}
Aged-36 years, Occ. Housewife,	}
2/32, Netaji Nagar Subash	}
Chandra C.H.S.L., Netaji Nagar,	}
S.G.Barve Marg, Kurla (W),	}
Mumbai 400 070	}
	}
3. Smt. Mangala D. Chopdekar	}
Aged-70 years, Occ. Housewife,	}
2/45, Netaji Nagar Subhash	}
Chandra C.H.S.L., Netaji Nagar,	}
S.G.Barve Marg, Kurla (W),	}
Mumbai 400 070	}

4. Smt. Sudha L. Kocharekar
Aged-53 years, Occ. Housewife,
2/51, Netaji Nagar Subash
Chandra C.H.S.L., Netaji Nagar,
S.G.Barve Marg, Kurla (W),
Mumbai 400 070
5. Vishwanath A. Pise
Aged-50 years, Occ. Business,
2/52, Netaji Nagar Subash
Chandra C.H.S.L., Netaji Nagar,
S.G.Barve Marg, Kurla (W),
Mumbai 400 070
6. Sunil S. Gurav
Aged-44 years, Occ. Business,
2/54, Netaji Nagar Subash
Chandra C.H.S.L., Netaji Nagar,
S.G.Barve Marg, Kurla (W),
Mumbai 400 070
7. Venichand N. Jain
Aged-54 years, Occ. Business,
3/63, Netaji Nagar Parijatak
C.H.S.L., Netaji Nagar,
S.G.Barve Marg, Kurla (W),
Mumbai 400 070
8. Milind Jamsandekar
Aged-41 years, Occ. Business,
3/81, Netaji Nagar Parijatak
C.H.S.L., Netaji Nagar,
S.G.Barve Marg, Kurla (W),
Mumbai 400 070
9. Smt. Archana A. Chopdekar
Aged-36 years, Occ. Business,
3/83, Netaji Nagar Parijatak
C.H.S.L. Netaji Nagar,
S.G.Barve Marg, Kurla (W),
Mumbai 400 070
10. Surajmal Jain
Aged-44 years, Occ. Business,

3/84, Netaji Nagar Parijatak }
C.H.S.L. Netaji Nagar, }
S.G.Barve Marg, Kurla (W), }
Mumbai 400 070 }

11. Smt. N. K. Iyer }
Aged-53 years, Occ. Service, }
3/87, Netaji Nagar Parijatak }
C.H.S.L. Netaji Nagar, }
S.G.Barve Marg, Kurla (W), }
Mumbai 400 070 }

Respondents

versus

1. State of Maharashtra }
(Summons to be served on the }
Learned Government Pleader }
appearing for State of }
Maharashtra under Order }
XXVII, Rule 4 of the Code of }
Civil Procedure, 1908) }

2. The Secretary, }
Urban Development }
Department, Government of }
Maharashtra, Mantralaya, }
Mumbai - 400 032 }
(Summons to be served on the }
Learned Government Pleader }
appearing for State of }
Maharashtra under Order }
XXVII, Rule 4 of the Code of }
Civil Procedure, 1908) }

3. Mumbai Metropolitan }
Region Development Authority, }
through its Metropolitan }
Commissioner, having its office }
at:- MMRDA Building, Bandra }
Kurla Complex, Bandra (East), }
Mumbai 400 051 }

4. Maharashtra Housing and }
Area Development Authority, }
through Chef Officer, }

Mumbai Housing and Area }
Development Board, a MHADA }
Unit, Grah Nirman Bhavan, }
Bandra (East), }
Mumbai 400 051 }
}
5. Municipal Corporation for }
Greater Mumbai, through the }
Municipal Commissioner, }
MCGM Head Office, }
Mahapalika Marg, }
Mumbai CST – 400 001 }
}
6. Netaji Nagar Co-operative }
Housing Society Union Ltd., }
Federation of Co-op. Hsg. }
Societies, bearing Registration }
No. H.S.G. (O) H 1787/ }
1985-86, having office }
at:- Netaji Nagar, S.G.Barve }
Marg, Kurla (West), }
Mumbai 400 070 }
}
7. Netaji Nagar }
Subhashchandra Co-operative }
Housing Society Ltd., Building }
No. 2, registered under the }
provisions of Maharashtra }
Co-operative Societies Act, }
1960, having office at:- Netaji }
Nagar, S.G.Barve Marg, Kurla }
(West), Mumbai 400 070 }
}
8. Netajinagar Parijatak }
Co-operative Housing Society }
Ltd., Building No. 3, registered }
under the provision of }
Maharashtra Co-operative }
Societies Act, 1960, having }
office at:- Netaji Nagar, }
S.G.Barve Marg, Kurla (West), }
Mumbai 400 070 }
}
9. Slum Rehabilitation }
Authority, through its Chief }

Executive Officer, A.K.Marg,	}	
Bandra (E), Mumbai 400 051	}	
	}	
10. The Collector, Mumbai	}	
Suburban District and the	}	
Competent Authority,	}	
10 th floor, Administrative	}	
Building, Government Colony,	}	
Bandra (East),	}	
Mumbai 400 051	}	
	}	
11. Shri. Satish Telang	}	
Age - adult, 1/7, Netaji Nagar	}	
Safalya CHS, Netaji Nagar,	}	
S.G.Barve Marg, Kurla (W),	}	
Mumbai 400 070	}	
	}	Respondents

Mr.Anil Anturkar, Senior Counsel a/w
Mr.Nitesh Acharya, Shraddha S.
Chaurasiya i/b Moin Khan and Mrs.Anjali
Awasthi for the Petitioners in WP/841/12.

Mr.Rajkumar Awasthi, Petitioner-in-
person in PIL/3/11 present.

Mr.Ashif Husain a/w Altaf Khan,
Shraddha S. Chaurasiya i/b Ms.Anjali
Awasthi and Moin Khan for the
Petitioners in WP/1063/13.

Mr.Ashutosh A. Kumbhakoni, Advocate
General with Ms.P.H.Kantharia-
Government Pleader for the State in
WP/841/12.

Mr.Ashutosh A. Kumbhakoni, Advocate
General with Ms.Geeta R. Shastri-
Additional Government Pleader for the
State in PIL/3/11.

Mr.Ashutosh A. Kumbhakoni, Advocate
General with Mr.Milind More-Additional
Government Pleader for the State in
WP/1063/13.

Ms.Kiran Bagalia i/b Ms.Chitra Phadke for the MMRDA in all matters.

Mr.Javed Shaikh a/w Ms.Kejali Mastakar for the respondent- MCGM in PIL/3/11.

Ms.Kejali Mastakar for the respondent- MCGM in WP/841/12 and WP/1063/13.

**CORAM :- S. C. DHARMADHIKARI &
R.I.CHAGLA, JJ.**

DATE :- NOVEMBER 15, 2019

ORAL JUDGMENT (Per S.C. Dharmadhikari, J.) :-

1. The writ petitions and the Public Interest Litigation (PIL) involve common questions of fact and law. They were heard together and are being disposed of by this common judgment. We take, for the sake of convenience, the facts from Writ Petition No. 841 of 2012.

2. By this petition (WP/841/2012) under Article 226 of the Constitution of India, the petitioners have challenged the Constitutional validity of Sections 17(2) and 32(1) (Proviso) of the Mumbai Metropolitan Region Development Authority Act, 1974 (for short, “the MMRDA Act”).

3. We have noted that on this writ petition, detailed orders have been passed by this Court earlier. It is in these

circumstances and in view of the order dated 19th March, 2012 and further orders, we grant Rule on these petitions. Since affidavits have been filed and detailed arguments have been canvassed, with the consent of the parties, we dispose of the petitions finally.

4. The petitioners in this case are citizens of India. They have their premises located at the addresses mentioned in the cause title. These premises are in a chawl type structure, which is situate on part of plot bearing CTS No.185-A of village-Asalpa, Ghatkopar, Mumbai Suburban District. The petitioner Nos.1 to 7 claim to be the co-owners of this chawl/structures/property and the land admeasures about 484.80 sq.mtrs. The entire description is set out at Exhibit 'A' to the petition with the copy of the property card and a sketch map.

5. It is claimed that petitioner No.8 is a registered Trust. There is a temple, which is administered and managed by this Trust. The land on which this temple stands was leased by the original owners to the Managing Committee of the temple. The lease is of 100 years. The Trust, therefore says that, it is in possession of the land and the structure, namely, the temple. With this, petitioners claim a right in the immovable property.

6. The first respondent is the State of Maharashtra. The second respondent is the Urban Development Department. This Department has initiated acquisition proceedings under the MMRDA Act for acquiring 310 sq.mtr. out of total 739 sq.mtrs. of the property. The third respondent is the Collector of Mumbai Suburban District and is claiming to be a “competent authority” for the purpose of Section 32(1) of the MMRDA Act. The fourth respondent is the Mumbai Metropolitan Region Development Authority (**for short, “MMRDA”**). It is appointed as a “Special Planning Authority” under Section 40(1)(c) of the Maharashtra Regional and Town Planning Act, 1966 (for short, **“the MRTP Act”**) in respect of the “Undeveloped Notified Area” as defined under Section 2(31-A) of the MRTP Act. As per Section 17(2) of the MMRDA Act, the MMRDA is deemed Municipal Corporation for Greater Mumbai. The fifth respondent is the Municipal Corporation for Greater Mumbai, whereas the sixth respondent is the Deputy Secretary, Urban Development Department, Government of Maharashtra, who has issued the show cause notice dated 25th April, 2011 and final notification dated 27th December, 2011.

7. Now, that notification, copy of which is annexed to the petition, needs to be referred in some details. It reads as under:-

“URBAN DEVELOPMENT DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 26th December 2011

NOTIFICATION

Mumbai Metropolitan Region Development Authority Act, 1974

No. MRD. 3311/ C.R.126/UD-7. - Whereas, on representation from Mumbai Metropolitan Region Development Authority established under section 3 of the Mumbai Metropolitan Region Development Authority Act, 1974 (Mah. IV of 1975) (hereinafter referred to as “the said Authority”); it appears to the State Government that, in order to carry out the widening of Andheri-Ghatkopar Link Road under the Mumbai Urban Infrastructure Project in Mumbai Suburban District by the said Authority, it is necessary to acquire the certain land, specified in Schedule appended hereto, along with structures appurtenant thereto;

And whereas, the Notice as required under the proviso to sub-section (1) of section 32 of the Mumbai Metropolitan Region Development Authority Act, 1974 (Mah. IV of 1975), has been published in the *Maharashtra Government Gazette*, Extraordinary Part I-A, Central Sub-Division, dated 19th March 2011 and the said Notice was also duly served on the owner and other persons interested in the said land;

And whereas, after considering the cause shown by the owner and other person interested in the said land pursuant to the said notice, the Government of Maharashtra has decided to acquire the land specified in the Schedule-appended hereto; alongwith the structures appurtenant thereto.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 32 of the said Act, the Government of Maharashtra hereby acquires, the land specified in the Schedule appended hereto, along with the structures appurtenant thereto:-

Schedule

Name of Village or Ward	C.T.S.No.	Total Area (in sq. meters.	Areas acquired (in sq. meters.)
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(1)	(2)	(3)	(4)
Asalfa	185A	739.00	310.00
	Total Area..	739.00	310.00

By order and in the name of the
Governor of Maharashtra

SURESH KAKANI
Joint Secretary to Government”

8. The petitioners state in the writ petition that the MMRDA is claiming itself as a “Nodal Agency” for construction and widening of the existing Andheri-Ghatkopar Link Road. It is a Development Plan road. The reservation of a Development Plan road is subsisting and this is not a project of the MMRDA, but that of the State Government. The MMRDA is merely the “Nodal Agency”. Now, the MMRDA says that there is a policy for rehabilitation and relocation of those affected by such public project and that is how the allotment of the alternate tenements has been made. We are not concerned with further details of the project, but what is emphasised before us is that the Government of Maharashtra has established the MMRDA under the MMRDA Act. However, the present property is not “Undeveloped Notified Area”. It is outside such area. The MMRDA is not appointed as a Special Planning Authority for that area. On 1st June, 1993, by the 74th amendment to the Constitution of India, Part IX A, “Municipality” was inserted. A schedule known as Twelfth Schedule was also

added. By Maharashtra Act V of 2003, Section 17 of the MMRDA Act has been substituted. The substituted provision has been extensively referred and it is stated that on 12th January, 2003, the Special Land Acquisition Officer acquired 431.00 sq.mtrs. of land, namely, CTS No.185 and it was given new CTS No.185-B. The unaffected portion was numbered as 185-A. The State Government, by order dated 26th August, 2003, granted statutory protection to all project affected households and guaranteed the compulsory free of cost rehabilitation in exchange of all the project affected structures. By notification dated 10th August, 2008, the sixth respondent, acting on behalf of the State Government, appointed the Collector-Mumbai Suburban District as the “Competent Authority” under Section 40 of the MMRDA Act for the purpose of Sections 32 to 39 thereof. Petitioner No.8-Trust requested the Commissioner, MMRDA to intimate the details of the project affecting the temple property, as there was no information of any proposed project available to the trustees.

9. On 20th October, 2009, a person, claiming to be the Executive Engineer, acting on behalf of the MMRDA, issued notice under Section 488 of the Mumbai Municipal Corporation, 1888 (for short, “the MMC Act”). This notice is dated 20th October, 2009. The notice was issued for taking possession of the

petitioners' property. That notice was challenged by petitioner Nos.1 to 4, before the City Civil Court. The LC Suit No.99 of 2010 is pending. An application for interim relief was rejected by the Trial Court. An Appeal from Order was filed bearing No.410 of 2010. Though there was a statement made by the MMRDA that they would not demolish the disputed structures, that statement did not continue after this Court passed final orders on this Appeal from Order. Thus, the impediment in taking over possession of the immovable property was removed. Thereafter, there has been correspondence, but the details of which need not be referred, as the acquisition proceedings were complete.

10. The dates and events leading to the acquisition of the land are set out in the writ petition. Reference to the same is not necessary for appreciating the larger challenge.

11. It is conceded before us that there are replies, which have been filed. The affidavit in reply filed by Mr.Ashok Namdev Bhasme, Executive Engineer of MMRDA, was referred to us and in that affidavit, it is stated as under :-

“3. At the further outset, I state that construction and widening of Andheri Ghatkopar Link Road Project (AGLR for short) is admittedly carried out by MMRDA. The said project is of great importance to alleviate severe traffic congestion in Greater Bombay. It is a Mumbai Urban Infrastructure Project (MUIP). I state that MMRDA is implementing the project as per the

alignment of the AGLR in the sanctioned Development Plan for Greater Bombay. The AGLR is a major road project. The road will also be used for the elevated Varsova-Andheri-Ghatkopar Metro Rail project which is also a Public Transport project of great importance. I, therefore, say that it is overwhelming in public interest to ensure that the AGLR project is completed expeditiously. I further state that at present the petitioners' structures are coming within the AGLR alignment. So far as the Maheshwar Mandir is concerned, I state that the main place of the deity is not affected by the road project. A part constructed area in front of the main temple is affected. I state that after acquisition of the area falling within the AGLR alignment, an area of about 5 mtrs. X 9 mtes. (about 16' x 28') in which the deity is situate, remains unaffected. MMRDA has been willing to discuss alternative area in lieu of the area of the temple acquired, in the vicinity as per the existing rehabilitation policy for the religious structure affected in the Public Projects. MMRDA has successfully rehabilitated many religious structures by adopting the same rehabilitation policy in various infrastructure projects including AGLR. A similar opportunity was given to the trustees of the temple structures. However, it was not availed by them. In the premises, I submit that a public project of great importance may not be delayed by a stay on Petitioner's eviction and demolition of the structures in the alignment of AGLR.

4. At the further outset, I state that the Petitioners Nos. 1 to 7 have been identified as project affected persons. The Petitioners No. 1 to 7 have been offered both commercial and residential tenements in lieu of their structures coming within the project area. The petitioners Nos. 1 to 7 have accepted the commercial tenements allotted to them at prime locations at Bhandup and Mulund. I say that the Petitioners Nos. 1, 2, 4 and 6 have accepted the commercial tenements directly and Smt. Malti Sadashiv Bhise, Mr. Dinesh B. Sawant and Smt. Mangal Pandurang Shitole are the family members of petitioner Nos. 3, 5 and 7 and have accepted commercial tenements. The Petitioners Nos. 5, 6 and 7 have also taken possession of the residential tenements in lieu of their structures in the affected area. The petitioners have thus taken advantage of the brand new authorised commercial tenements in prime locations and also residential premises. The petitioners are, therefore, now estopped from challenging the

acquisition of their structures for the AGLR project. The petitioners Nos. 1 to 4 are malafide holding on to their residential structures and stalling a public project of importance. On this ground alone, the present petition is liable to be summarily dismissed.

5. I state that MMRDA is established inter alia for planning, coordinating, supervising proper, orderly and rapid development of the Metropolitan Region as well as to execute plans, projects and schemes for development of the Metropolitan Region and connected matters. Basically the projects undertaken by MMRDA are in public interest. For the purpose of implementing various development proposals, MMRDA is empowered to take several actions as stipulated in the Mumbai Metropolitan Region Development Authority Act, 1974. MMRDA is also authorised to prepare any project or scheme to provide infrastructure within the territorial limits of MCGM. MMRDA is implementing Andheri Ghatkopar Link Road (AGLR for short) project which is expedient to alleviate severe traffic congestion in the city.

6. I state that in the previous Development Plan for Mumbai, the width of AGLR was marked as 100ft. About 431 sq. mtrs. area of CTS No.185 was acquired (in or about the year 1973, though the possession appears to have been taken some time in the year 2003) for the purpose of 100ft. wide road given CTS No.185-B as per the earlier Development Plan. The revised sanctioned Development Plan for Greater Mumbai came into force in the year 1994. In the Revised Development Plan of Greater Mumbai, the width of AGLR in the subject alignment is 150 ft. An additional strip of land on both the sides of the earlier 100 ft. alignment is now required for the 150 ft. (45.70 m) wide road. I crave leave to refer to and rely upon the plan of the AGLR as per the Development Plan for Greater Mumbai. The acquisition of land bearing CTS 185-A affected by 150 ft. wide road is, therefore, in public interest.”

12. In further paragraphs it is stated that the scheme of the Act is such that for a limited purpose, the MMRDA Act allows the MMRDA to step in and when it steps in for laying an infrastructure in the city of Mumbai, naturally, it must possess all

the powers and should not be compelled to approach every single public official concerned with development of infrastructure. Therefore, the MMRDA is understood to be a planning authority while implementing such infrastructure projects of which development is entrusted to the MMRDA. The affidavit attempts to say that the impugned provision is neither unconstitutional nor it in any way affects, much less interfere with any rights claimed by the petitioners.

13. It is then pointed out in terms of the affidavit in rejoinder that the petitioners are project affected persons. Some of the petitioners have been offered and have accepted the commercial tenements, whereas others may not have commercial tenements, but residential. They have also taken possession of the residential tenements in lieu of their existing structures. However, they have not given up the challenge. The petitioners have thus pointed out that there are serious infirmities and particularly, in the affidavit and the stand of the MMRDA.

14. Thereafter, the Government of Maharashtra has filed an affidavit of Mr.Suresh Kakani, Joint Secretary, Department of Urban Development, Government of Maharashtra. He has explained in the affidavit as to how, the provision, namely, Section 17 has been inserted in this Act to supplement the efforts of the

development of infrastructure and other related projects of public interest. There is no intention of displacing the Municipal Corporation. The Municipal Corporation, as an institution of self governance, will continue to function and will fulfill the task assigned to it by the Constitution of India. MMRDA, in no way, interferes with that status of the Mumbai Municipal Corporation.

15. With the above material, we turn to the submissions of the parties.

16. Mr. Anil Anturkar, learned senior counsel, appearing on behalf of the petitioners, would submit that the challenge in this petition and the Public Interest Litigation (PIL) is identical. The challenge is to the constitutional validity of certain provisions.

17. The two provisions, which are under challenge, read as under:-

“17. Power of Authority to provide amenity within Brihan Mumbai.- Notwithstanding anything contained in this Act or the Mumbai Municipal Corporation Act or any other law for the time being in force, the Authority may, in consultation with the Municipal Commissioner of the Brihan Mumbai Municipal Corporation, prepare any project of scheme with a view to provide an infrastructure within the territorial limits of the Brihan Mumbai Municipal Corporation and execute the same.

Explanation :- For the purposes of this section, the term “infrastructure” shall also mean and include streets, roads, bridges and any other means of transport and communication, and activities related or incidental for the

execution of such infrastructure project or scheme and shall not include other items specified in sections 61 and 63 of the Mumbai Municipal Corporation Act, 1888 (Bom.III of 1888).

(2) For the purposes of preparation and execution of a project or scheme under sub-section (1), the Metropolitan Commissioner and the Authority shall be deemed to be the Municipal Commissioner and the Corporation, respectively, under the Mumbai Municipal Corporation Act, 1888 (III of 1888) and the Maharashtra Regional and Town Planning Act, 1966, and shall, respectively, exercise the powers of the Municipal Commissioner and the Corporation under the said Acts.

(3) Notwithstanding anything contained in the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 for the purposes of preparation and execution of the projects and schemes under sub-section (1), the Metropolitan Commissioner shall be deemed to be a Slum Rehabilitation Authority under the said Act and shall have all the powers and discharge all the duties of the concerned Slum Rehabilitation Authority under the said Act, for the said purposes.

(4) Notwithstanding anything contained in section 20 of the Bombay Motor Vehicles Tax Act, 1958 or any other law for the time being in force, the Authority may charge toll for the use of the amenity provided by it :

Provided that, the amount of toll shall not be more than the capital outlay or expenses incurred by the authority on such project scheme and expenses incurred for collection thereof.

Explanation :- For the purposes of this section, the expression “capital outlay” shall have the same meaning as assigned to it, in the Explanation to sub-section (1A) of section 20 of the Bombay Motor Vehicles Tax Act, 1958”

18. Thereafter follows Section 32, which is to be found in Chapter VIII and that reads as under :-

“32. Power of State Government to acquire land.-(1) Where, on any representation from the Metropolitan Authority, it appears to the State Government that, in order to enable the Authority to discharge any of its functions or to exercise any of its powers or to carry out any of its projects or schemes or development programmes or to provide any amenity by itself

or through any recognised agency it is necessary that any land in any part of the Metropolitan Region should be acquired, the State Government may acquire the land by publishing in the Official Gazette a notification to the effect that the State Government has decided to acquire the land in pursuance of this section :

Provided that, before publishing such notification, the State Government shall by notice published in the Official Gazette and served in the prescribed manner, call upon the owner of, or any other person who, in the opinion of that Government, may be interested in such land to show cause, why it should not be acquired, and after considering the cause, if any, shown by the owner or any other person interested in the land, the State Government may pass such order as it deems fit.

Explanation.- For the purposes this Chapter “recognised agency” means any Department of the Central Government or the State Government or a local authority or a Government Company as defined in Section 617 of the Companies Act, 1956 or any other Corporation or Government undertaking established by or under any law for the time being in force.

(2) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose, and the acquisition of any land for such purpose shall in all cases be made in accordance with the relevant provisions of this Chapter.

(3) When a notification as aforesaid is published in the Official Gazette, the land shall, on and from the date on which the notification is so published, vest absolutely in the State Government free from all encumbrances.”

19. Mr.Anturkar has confined his argument to the constitutional validity of Section 17(2) of the MMRDA Act. He would submit that MMRDA does not comprise of persons chosen by direct election from territorial constituencies in the municipal area. The municipal area is divided into territorial constituencies to be known as Wards and, therefore, MMRDA cannot be a municipality. Inviting our attention to Part IXA of the Constitution of India, Mr.Anturkar would submit that Article

243Q employs the words that, there shall be constituted in every State, a Nagar Panchayat for a transitional area, a Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area, in accordance with the provisions of Part IXA. Therefore, in order to constitute a Municipality, the provisions of Article 243R have to be complied with. If the mandate of Articles 243R and 243(2) is not complied with, then, by a backdoor method and by inserting a provision like Section 17(2), the status of Municipality cannot be conferred upon MMRDA. Section 17(2) of the MMRDA Act attempts precisely to do that and that is how, Mr.Anturkar would submit that the said sub-section needs to be struck down. It is submitted that there are two types of developments. One is a development in the restricted sense (micro development) and secondly, a development as a homogeneous (mega scale). Mr.Anturkar submits that the expression "Development" is defined separately and distinctly in the MMRDA Act, MRTP Act and the Maharashtra Housing and Area Development Act, 1976 (for short, **"the MHAD Act"**.) That carries a distinct meaning in these Acts. The expression has to be defined and its interpretation, unless the context otherwise requires, ought to be consistent with the object and purpose sought to be achieved by the respective statutes in which this definition has been inserted. As far as the

Maharashtra State is concerned, the word “development” has been used in a restrictive sense in the MHAD Act. However, that would be inclusive of certain aspects in the MMRDA Act and the MRTP Act. The argument is that by virtue of the deeming provision “outside the notified area”, for which the MMRDA is planning authority under Section 40 of the MRTP Act, it can function only because of Section 17(2) of the MMRDA Act. Thus, the field occupied by the MMC Act is taken over by the stipulation contained in Section 17(2) of the MMRDA Act. Such a stipulation ousts the Mumbai Municipal Corporation. Mr. Anturkar submits that Article 243Q says that there shall be a Municipal Corporation for a larger urban area. This means that there is one Corporation. Section 17(2) of the MMRDA Act creates two Corporations. Part IXA to the Constitution defines ‘Municipality’. That means an institution of self-government. MMRDA cannot be an institution of self-government. Treating MMRDA as deemed Corporation defies the concept of an institution of self-government. Thereafter our attention is invited to Article 243W of the Constitution and the word “endow” as employed therein. The word “endow” is to confer upon. Thus, the status has been conferred upon the MMRDA. The obligation to implement a Development Plan is distinct than that of conferment of status.

20. Mr.Anturkar, learned senior counsel, was throughout aware of the fact that there is a decision of the Hon'ble Supreme Court of India in the field. That decision is rendered by the Hon'ble Supreme Court of India in the case of *Bondu Ramaswamy and Ors. Vs. Bangalore Development Authority and Ors.*¹. Mr.Anturkar submits that there are several distinguishing features. This judgment cannot be applied to the facts and circumstances of the present case. Mr.Anturkar would submit that the distinguishing features are that the validity of the relevant provisions of the Bangalore Development Authority Act was not challenged. The Hon'ble Supreme Court was concerned with the challenge to the acquisition simplicitor. Further, while considering the scheme of Part IX and Part IXA of the Constitution of India, the attention of the Hon'ble Supreme Court was not invited to Article 243R of the Constitution. Once the attention of the Court was not invited to a Constitutional provision, then, the judgment in *Bondu Ramaswamy (supra)* has lost importance of its binding force. The judgment can safely be termed as perfunctory. Mr.Anturkar, therefore, relies upon the judgment of the Hon'ble Supreme Court in the case of *Hyder Consulting (UK) Limited vs. Governor, State of Orissa*².

1 (2010) 7 SCC 129

2 (2015) 2 SCC 189

21. The arguments of Mr.Anturkar are adopted by the PIL petitioner in the Public Interest Litigation No.3 of 2011 and the petitioners in Writ Petition No.1063 of 2013 more or less. The other counsel, therefore, canvassed ancillary submissions, but essentially supported the line of argument of Mr.Anturkar.

22. Mr.Kumbhakoni, learned Advocate General, appearing for the State has invited our attention to Section 17 of the MMRDA Act. He would submit that sub-section (1) of Section 17 has not been challenged on the grounds noted above. It is only sub-section (2) of Section 17 that has been challenged. Such a challenge can never be of substance for the simple reason that Section 17(2) is not a substantive provision. It follows sub-section (1) of Section 17. The opening words of sub-section (2) of Section 17 are clear in-as-much as it is only for the purposes of preparation and execution of a project or scheme under sub-section (1) that the Metropolitan Commissioner and the Authority shall be deemed to be the Municipal Commissioner and the Corporation, respectively, under the Mumbai Municipal Corporation Act, 1888. Thus, there is not a take over of a Municipal Corporation, much less a power exclusively vesting in the Mumbai Municipal Corporation. It is only to enable the MMRDA to step in and supplement the efforts of the Municipal

Corporation to prepare any project or scheme with a view to provide infrastructure within the territorial limits of the Brihan Mumbai Municipal Corporation and to execute the same, that it has stepped in. This is also when the MMRDA in its discretion prepares any project or scheme. While preparing any project or scheme with a view to provide a infrastructure, the MMRDA has to consult the Municipal Commissioner of the Corporation. Thus, neither the Municipal Commissioner nor the Municipal Corporation is displaced by a supplementary role. This role must be properly understood and so understood, there is no scope for the arguments canvassed by Mr.Anturkar.

23. For properly appreciating the rival contentions, a reference is required to be made to the MMRDA Act. It is an Act for forming Brihan Mumbai and certain areas round about into Mumbai Metropolitan Region and for setting up an Authority for the purpose of planning, co-ordinating and supervising the proper, orderly and rapid development in that region and to execute plans, projects and schemes for such development and to provide for matters connected therewith.

24. The Act is divided into IX Chapters. Chapter I contains preliminary provisions. Section 2 falls therein. Section 2 is the definition section. It defines the word “amenity” as under:-

“amenity” includes road, bridge, any other means of communication transport, supply of water and electricity, any other source of energy, street lighting, drainage, sewerage and conservancy, and any other convenience as the State Government, in consultation with the Authority, may from time to time, by notification in the Official Gazette, specify to be amenity for the purposes of this Act.”

Thereafter the crucial definition is of the “Mumbai Metropolitan Region” or “Metropolitan Region”. We are not concerned with other definitions, save and except, that of the word “regional plan”.

25. Chapter II of the Act provides for establishment and construction of the authority, namely, the Mumbai Metropolitan Region Development Authority. The composition is set out in Section 4 and that reads as under:-

“4. Composition of the Metropolitan Authority.-(1) On and from the date of commencement of the Mumbai Metropolitan Region Development Authority (Amendment) Act, 1983 (Mah.XXX OF 1983), in place of the existing members, the Metropolitan Authority shall consist of the following members, namely:-

- (i) The Minister for Urban Development;
- (ii) The Minister for Housing;
- (iii) The Minister of State for Urban Development;
- (iv) The Mayor of Mumbai;
- (v) The Chairman Standing Committee, Municipal Corporation of Brihan Mumbai;
- (vi) (vii) and (viii) three Councillors of the Municipal Corporation of Brihan Mumbai, elected by the Corporation, the election being held by ballot according to the system of

proportional representation by means of the single transferable vote;

(ix) and (x) two members of the Maharashtra Legislative Assembly, representing constituencies falling, wholly or partly, within the limits of the Mumbai Metropolitan Region, to be nominated by the State Government;

(xi) One member of the Maharashtra Legislative Council to be nominated by the State Government;

(xii) the Chief Secretary to the Government of Maharashtra;

(xiii) The Municipal Commissioner of the Municipal Corporation of Brihan Mumbai;

(xiv) the Secretary to the Government of Maharashtra, Urban Development Department;

(xv) the Secretary to the Government of Maharashtra, Housing Department;

(xvi) the Managing Director, City and Industrial Development Corporation of Maharashtra;

(xvii) the Metropolitan Commissioner.

(2) The Minister for Urban Development shall be the Chairman, and the Metropolitan Commissioner shall be the Member-Secretary, of the Authority.

(3) With effect from the date of commencement of the said Act, the Authority shall be deemed to be duly constituted, notwithstanding that there may be any vacancies as some of the members may not have been elected or nominated or appointed or for any other reason may not be available to take office on that day, and the members of the Authority, who may, from time to time, be available shall be competent to exercise, perform and discharge all the powers, duties and functions of the Authority from the date.

(4) The State Government may, from time to time, by notification in the Official Gazette, publish the names of members, who are elected under clauses (vi), (vii) and (viii) or nominated under clauses (ix), (x) and (xi) of sub-section (1).

(5) The members shall receive such allowances as may be determined or regulations for meeting the personal expenditure in attending the meetings of the Authority or any Committee or body thereof, or in performing any other functions as members. Such regulations shall require the previous approval of the State Government.

(6) Where a person becomes or is elected or nominated or appointed as a member of the Authority by virtue of holding any office or bring member of the Legislature or any local authority, or Committee or body, he shall cease to be a member of the Authority, as soon as he ceases to hold that office or to be such members, as the case may be.

(7) A member of the Authority, other than *ex-officio* members, may, at any time, by writing under his hand addressed to the Chairman, resign his office.

(8) No act or proceeding of the Metropolitan Authority, or of any Committee or other body thereof, shall be deemed to be invalid at any time merely on the ground that-

(a) any of the members of the Authority or its Committee or Body are not duly elected, nominated or appointed or for any other reason are not available to take office at the time of the constitution or any meeting of the Authority or of its Committee or Body or there is any defect in the constitution thereof, or any person is a member in more than one capacity or there are one or more vacancies in the offices of any such members;

(b) there is any irregularity in the procedure of the Authority or such Committee or body, affecting the merits of the matter under consideration.”

26. A perusal of this Section leaves us in no manner of doubt that elected representatives have been also included in the Authority. It is a body having representatives of voters, namely, the voters in the municipal elections electing their Councillors, Legislative Assembly, Legislative Council together with functionaries. The powers and duties of Chairman, Metropolitan

Commissioner are set out in Section 4A, whereas, Chapter III is titled as “Officers and Servants” in which, there is sole Section 11. Thus, the Authority comprises of the representatives of the voters as also executive functionaries. It is futile to urge that the elected representatives having not been given complete representation, MMRDA cannot be performing any supplemental role also. The position of the MMRDA, the object and purpose of the MMRDA Act having not been appreciated, such extreme arguments have been canvassed. We have used deliberately the expression ‘futile’. This aspect of the matter will become clear after our further observations, findings and conclusion on the main question.

27. Chapter IV of the Act contains Sections 12 to 17. It is titled as “Powers and Functions of the Authority”. Mr.Anturkar would read Section 17(2) in isolation, but that is improper. Chapter IV contains firstly, Section 12 and that deals with the functions of the Metropolitan Authority. The main object of the Authority shall be to secure the development of the Bombay Metropolitan Region according to the regional plan and for that purpose, the functions of the Authority shall be to review any physical, financial and economical plan, review any project or scheme for development which may be proposed or may be in the course of execution or may be completed in the Metropolitan Region,

formulate and sanction schemes for the development of the Metropolitan Region or any part thereof, execute projects and schemes, make recommendation to the State Government, participate with any other authority for inter-regional development. For properly discharging these functions, certain powers have to be conferred in the Authority. Such a power is found to be conferred by Section 13 and that is carved out in the negative language. Section 13 says that no other authority without permission of the MMRDA (Metropolitan Authority), shall undertake certain development. Thereafter, Section 14 enlists powers of the Metropolitan Authority to give directions. Section 14 follows Section 15, which empowers the Metropolitan Authority to require Local Authority to assume responsibilities in certain cases. Where any amenities are provided by the Metropolitan Authority, the Authority may assume responsibility for the maintenance of the amenities, which have been provided by it or may require the local authority, under whose local limits the area so developed is situated, to assume such responsibility for the maintenance of the amenities, and for the provision of such other amenities which have not been provided by the Metropolitan Authority, but, which, in its opinion, should be provided in the area, on such terms and conditions as may be agreed upon between the Metropolitan Authority and that Local

Authority. Far from taking over the functions and assuming the role of a Municipal Corporation, the MMRDA has been allowed to step in for performing its functions set out in Section 14. The law postulates total cooperation, coordination between the Local Authority and MMRDA in fulfilling the aim and object of the MMRDA Act. It is for that limited purpose that the Act contains enabling provisions so as to enable MMRDA to step in and assume responsibilities. This is not a take over or displacement at all. The MMRDA and the local authority both exist and work in harmony. By Section 16, a power is conferred to execute any plan. Now, the Metropolitan Authority, as defined in the law and established and constituted under Section 3, has been permitted to execute any plan. Section 16 throws light on the next two Sections appearing in this Chapter and, therefore, we usefully reproduce it:-

“16. Power of Metropolitan Authority to execute any plan.-(1)

Where the Metropolitan Authority is satisfied that any direction given by it under sub-section (1) of section 14 with regard to any development project or scheme has not been carried out by the authority referred to therein, within the time specified, in the direction or that any such authority is unable to fully implement any project or scheme undertaken by it for the development of any part of the Region, the Authority may, with the sanction of the State Government, itself undertake any works and incur any expenditure for the execution of such development projects or implementation of such schemes, as the case may be, and recover the cost thereof from the concerned authority.

(2) The Metropolitan Authority may also undertake any work in the Region of development in accordance with the Regional Plan as may be directed by the State Government and may incur such expenditure as may be necessary for the execution of such work. Such direction may be issued to the Authority only where in the opinion of the State Government (a) there is no other suitable authority to undertake such work, or (b) where there is such an authority but it is unwilling or unable to undertake such work, or (c) where the Metropolitan Authority has specifically requested the State Government to entrust such work to it.

(3) Where any work is undertaken by the Metropolitan Authority under sub-section (1), it shall be deemed to have, for the purposes of the execution of such work, all the powers which may be exercised by or under any law for the time being in force by the authority referred to in sub-section (1).

(4) The Metropolitan Authority may, for the purpose of sub-sections (1) and (2), undertake the survey of any area within the Metropolitan Region and for that purpose it shall be lawful for any officer or servant of the Metropolitan Authority-

- (a) to enter in or upon any land and to take level of such land;
- (b) to dig or bore into the sub-soil;
- (c) to mark levels and boundaries by placing marks and cutting trenches;
- (d) where otherwise the survey cannot be completed and levels taken and boundaries marked, to cut down and clear away any fence or jungle:

Provided that, before entering upon any land, the Metropolitan Authority, shall give notice of its intention to do so in such manner as may be specified in the regulations.”

28. A perusal of Section 16 leaves us in no manner of doubt that execution of any plan and prior thereto, all responsibilities, discharging certain obligations in terms of Section 12 places the MMRDA not as a planning authority or a Municipal Corporation/

Municipality in terms of Part IXA of the Constitution, but permits the MMRDA to oversee the execution of such development projects or implementation of such schemes, which have not been carried out by any authority other than MMRDA expeditiously and completed them. There is a role assigned to the Metropolitan Authority and which is specific. The MMRDA on realising that the overall development of the region or any part thereof has been adversely affected due to inaction or acts of omission and commission of any authority other than MMRDA, it can with the sanction of the State Government step in to remedy the situation. If it is directed by the State Government in terms of section 16(2) of the Act in which case, it can all the more assume a proactive role. Now, section 16(3) which enables the MMRDA to perform such role has not been challenged though it purports to achieve the same result as section 17(2). Once this statutory framework is understood, then, everything falls in place. Sub-section (1) of Section 16 empowers the Authority to obtain sanction of the Government or undertake itself any work or incur any expenditure for the execution of such development projects or implementation of such schemes as envisaged in sub-section (1) of Section 16. The sub-sections of Section 16, therefore, contain provisions to enable effective exercise of the power conferred by sub-section (1) of Section 16. Thus, what holds good for the

purpose of execution of any plan and the power conferred in that behalf equally holds good for provision of amenity within Brihan Mumbai. Sub-section (1) of Section 17 contains a non-obstante clause and it overrides the MMRDA Act or the MMC Act or any other law for the time being in force. It confers a discretion in the MMRDA and in this discretionary power, it can provide the amenity within Brihan Mumbai. While it is empowered in its discretion to prepare any project or scheme, with a view to provide infrastructure within the territorial limits of Brihan Mumbai Municipal Corporation, and execute it, the law says that it has to consult the Municipal Commissioner of the Brihan Mumbai Municipal Corporation. The explanation to sub-section (1) of Section 17 clarifies that the term “infrastructure” shall not include other items specified in sections 61 and 63 of the MMC Act. Thus, while providing infrastructure, which also mean and include streets, roads, bridges and any other means of transport and communication, and activities related to the execution of such infrastructure project or scheme, the MMRDA Act does not deprive or denude the Municipal Corporation of its status or performance of the obligagtory and discretionary duty in terms of Sections 61 and 63 of the MMC Act. It is not a displacing or take over and we agree with the learned Advocate General Mr.Kumbhakoni that the sub-sections of Section 17 only

supplement the MMC Act. The emphasis by Mr.Kumbhakoni that this provision in the MMRDA Act supplements the efforts of development of infrastructure and other related projects of public interest finds acceptance from the language of sub-section (1) of Section 17 and as emphasised above, the prior sections in the relevant Chapter itself. Sub-section (2) of Section 17 cannot be read in isolation. It will have to be read together and harmoniously with other sub-sections of Section 17. It is a well settled rule of interpretation that sections, sub-sections and parts thereof would have to be read together and harmoniously. So read, one can achieve the best. To harmonise is not to destroy. The attempt is, therefore, to harmonise the provisions or to read them harmoniously. There is no question of reading sub-section (2) as a standalone provision. Sub-section (2) itself refers to sub-section (1) of Section 17 and it is for a limited purpose of preparation and execution of a project or scheme contemplated by sub-section (1) that the Metropolitan Commissioner and the Authority shall be deemed to be the Municipal Commissioner and the Corporation respectively under the MMC Act and the MRTP Act, and shall, respectively, exercise the powers of the Municipal Commissioner and the Corporation under the said Acts. It is not a take over of the Municipality (Local Authority) and the Planning Authority at all. It is only to enable the MMRDA to effectively,

efficiently and properly exercise its powers to provide amenities within Brihan Mumbai that this ancillary or incidental power is conferred. This is an arrangement limited for the purposes of preparation and execution of projects or schemes under sub-section (1) of Section 17. If read with the explanation below sub-section (1) of Section 17, it is more than clear that the Municipal Commissioner and the Municipal Corporation retain their status as conferred on them by the MMC Act and Part IXA of the Constitution of India. The Municipal Corporation remains a unit of self-governance and is not denuded of its constitutional authority/validity. It continues to be endowed with the powers conferred by the Constitutional provisions. It continues to be responsible for providing the amenities as set out in the twelfth Schedule of the Constitution. Thus, the Constitutional scheme is, in no way, interfered with.

29. We do not think that Mr.Anturkar is right in his submission that sub-section (2) of Section 17 is ultra vires. His arguments overlook sub-sections (3) and (4) to Section 17. If sub-section (3) is carefully perused, then, it is evident therefrom that the Metropolitan Commissioner shall be deemed to be a Slum Rehabilitation Authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and

shall have all the powers and discharge all the duties of the concerned Slum Rehabilitation Authority under the said Act, but for a limited purpose. The overriding effect given to MMRDA Act is only because a discretionary power is conferred in the MMRDA to prepare and execute a project or scheme under sub-section (1) of Section 17 as far as the slum area is concerned. Mr. Anturkar, advisedly, does not challenge sub-section (3) of Section 17. If he had challenged it, the same answer would have been provided by us. The fact that the petitioners do not challenge sub-section (3), but, they are selective in their challenge and once they only challenge sub-section (2) of Section 17 without raising any ground as to the legality and validity of sub-section (1) thereof, then, their endeavour has to fail. The oblique motive is to somehow or the other bring in a issue or matter of alleged interference with the Constitutional status of the Mumbai Municipal Corporation in order to create a conflict situation or to generate a rift between MMRDA and Mumbai Municipal Corporation. That the status and the power and authority in respect thereof of neither has been diluted nor interfered with is obvious from the reading of Section 17. The Legislature has been careful in stating that only for the purposes of preparation and execution of a project or scheme under sub-section (1) that the Authority has been deemed to be either Municipal Corporation or Slum

Rehabilitation Authority. Beyond that, the MMRDA can never be understood to have displaced the Mumbai Municipal Corporation or its Commissioner.

30. Mr.Kumbhakoni's reliance on the judgment of the Hon'ble Supreme Court on ambit and scope of a legal fiction is apposite. The legal fiction is created for a limited purpose. The same need not be carried beyond its limited effect. The Hon'ble Supreme Court, in its decision in the case of *State of W.B. vs. Sadan K. Bormal and Anr.*³, has clarified this aspect in the following paragraphs :-

"25. So far as interpretation of a provision creating a legal fiction is concerned, it is trite that the court must ascertain the purpose for which the fiction is created and having done so must assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. In construing a fiction it must not be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. It cannot be extended by importing another fiction. These principles are well settled and it is not necessary for us to refer to the authorities on this subject. The principle has been succinctly stated by *Lord Asquith in East End Dwellings Co. Ltd. v. Finsbury Borough Council [(1951) 2 All ER 587]*, when he observed : (All ER p.599 B-D)

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

3 (2004) 6 SCC 59

26. The above principle has been approved by this Court in a large number of decisions.”

31. We have done nothing, but applied this principle in negating the challenge to the constitutional validity of sub-section (2) of Section 17 and 32(1)(Proviso).

32. Finally, what remains for consideration is the reliance by the petitioners on the judgment of Hon’ble Supreme Court in Bondu Ramaswamy’s case (supra). In that, an identical challenge was raised. Concededly, Mr.Anturkar does not say that the challenge was not identical. All that he would urge is that the provisions of Bangalore Development Authority Act and the MMRDA Act are not similar or identical. The second aspect highlighted by him is that in Bondu Ramaswamy’s case, the constitutional validity of any provision contained in Bangalore Development Act was not challenged. That takes his case no further. The precise questions formulated for consideration in Bondu Ramaswamy’s case (supra) are as under:-

“11. The said judgment is challenged by the landlosers on several grounds. On the contentions urged, the following questions arise for consideration :

(i) Whether the BDA Act, insofar as it provides for compulsory acquisition of property, is stillborn and ineffective as it did not receive the assent of the President, as required by Article 31(3) of the Constitution of India?

(ii) Whether the provisions of the BDA Act, in particular Section 15 read with Section 2(c) dealing with the power of

the Authority to draw up schemes for development of Bangalore Metropolitan Area became inoperative, void or was impliedly repealed, by virtue of Parts IX and IX-A of the Constitution inserted by the the 73rd and 74th Amendments to the Constitution?

(iii) Whether the sixteen villages where the lands have been acquired, fall outside the Bangalore Metropolitan Area as defined in Section 2(c) of the BDA Act and therefore, the Bangalore Development Authority has no territorial jurisdiction to make development schemes or acquire lands in those villages?

(iv) Whether the amendment to Section 6 of the LA Act requiring the final declaration to be issued within one year from the date of publication of the preliminary notification is applicable to the acquisitions under the BDA Act; and whether the declaration under Section 19(1) of the BDA Act, having been issued after the expiry of one year from the date of the preliminary notification under Sections 17(1) and 17(3) of the BDA Act, is invalid?

(v) Whether the provisions of Sections 4, 5-A and 6 of the LA Act, would be applicable in regard to acquisitions under the BDA Act and whether non-compliance with those provisions, vitiate the acquisition proceedings?

(vi) Whether the development scheme and the acquisitions are invalid for non-compliance with the procedure prescribed under Sections 15 to 19 of the BDA Act in regard to :

(a) absence of specificity and discrepancy in extent of land to be acquired;

(b) Failure to furnish material particulars to the Government as required under Section 18(1) read with Section 16 of the BDA Act; and

(c) absence of valid sanction by the Government, under Section 18(3) of the BDA Act?

(vii) Whether the deletion of 1089 acres 12 guntas from the proposed acquisition, while proceeding with the acquisition of similar contiguous lands of the appellants amounted to hostile discrimination and therefore the lands of the appellants also required to be withdrawn from acquisition?"

33. Pertinently, question No.(ii) reproduced above is identical in terms to the arguments canvassed before us. It is no use saying that no specific provision of the Bangalore Development Authority Act was challenged and, therefore, Bondu Ramaswamy would not apply. A binding effect of the judgment of the Hon'ble Supreme Court cannot be diluted by saying that the attention of the Hon'ble Supreme Court was not invited to any provision in a statute or that the judgment was rendered without reference to another statute. Merely because it does not refer to any specific provision does not mean that it has no binding effect. If we persuade ourselves and accept the argument like the one canvassed before us by Mr.Antrukar, we would be acting contrary to judicial discipline. The judicial discipline obliges us to follow a binding judgment of the superior court. We cannot tinker with its binding effect. We do not have that power or authority and we do not think that we should go by the method adopted by Mr.Anturkar. We are clear in our mind that the paragraphs of the judgment, to which Mr.Anturkar invites our attention, particularly paras 48, 51,53, 57, 58 so also 59 in Bondu Ramaswamy (supra), deal with an identical challenge. Once the Hon'ble Supreme Court has declared that the MMRDA or the Authority like it do not displace or take over the municipal governance or a unit of self-government like the Municipal

Corporation, then, all the more we do not find any substance in the arguments of Mr.Anturkar.

34. As a result of the foregoing discussion, it is not necessary to refer the definition of the term “development” and the attempt of Mr.Anturkar in distinguishing the definition of this term in different statutes. It is well settled that the definition section and which opens with the words “unless the context otherwise requires” must be read consistently and together with the preamble of a statute and the intent and object sought to be achieved by that statute. The purpose of a statute is most important. It should be read so as to advance the object and purpose and not for the purpose of defeating it. That the word is comprehensively defined in one statute and not in other statutes will not carry the case of the petitioners before us any further.

35. As a result of the above discussion, we find no merit in the petitions. Rule is discharged. The writ petitions and the PIL are dismissed. There will be no order as to costs.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)